

THE HONOURABLE STEPHEN T. GOUDGE J.A.

**IN THE MATTER OF an Application Under Rule 11(c) of the
*Rules of Procedure of the Elliot Lake Commission of Inquiry***

BETWEEN:

THE ELLIOT LAKE COMMISSION OF INQUIRY

Applicant

– and –

PAUL MAND

Respondent

MEMORANDUM OF ARGUMENT OF THE APPLICANT

**ELLIOT LAKE COMMISSION
OF INQUIRY**

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PART I – OVERVIEW

1. The Elliot Lake Commission of Inquiry (the “Commission”) served a summons on Paul Mand, a lawyer for Eastwood Mall, one of the participants in the Commission, requiring production of documents relevant to the Commission’s mandate. Mr. Mand has refused to produce any documents, claiming that each and every document in his possession, power, or control, is subject to either solicitor-client privilege or litigation privilege. Despite numerous requests to do so, he has failed to provide any or adequate affidavit evidence to support his claims to privilege.
2. The Commissioner would prefer that the determination of the privilege claims be determined by the Honourable Stephen T. Goudge pursuant to the provisions of the Commission’s *Revised Rules of Procedure*, section 11. Commission counsel seek an

order from Justice Goudge determining some of the privilege claims asserted by Mr. Mand.

PART II – FACTS

3. The Elliot Lake Commission of Inquiry (the “Commission”) was established on July 19, 2012 by the Government of Ontario under the *Public Inquiries Act, 2009*. Its mandate is to inquire into and report on events surrounding the collapse on June 23, 2012, of the Algo Centre Mall in Elliot Lake, the deaths of Lucie Aylwin and Doloris Perizzolo and the injuries to other individuals as well as the emergency management and response. The Honourable Paul R. Bélanger (the “Commissioner”) was appointed Commissioner by Order in Council.

Order in Council 1097/2012, *Application Record of the Applicant* (“AR”), Tab 2.

***Public Inquiries Act, 2009*, SO 2009, c 33, Sch 6 (the “Act”), *Applicant’s Book of Authorities* (“BA”), Tab 1.**

4. Paul Mand is the Managing Partner at the law firm Mand Rai LLP Lawyers. Mand Rai LLP Lawyers are the former lawyers for the Algo Centre Mall and for Eastwood Mall Inc., owners of the Algo Centre Mall at the time of the collapse.

Affidavit of Paul Mand sworn March 27, 2013 (“Mand Affidavit”) at para. 1, AR, Tab 3.

5. On December 11, 2012, the Commissioner issued a Summons to Produce Documents and Information to Mr. Mand under s. 10(1)(b) of the Act.

Summons to Produce Documents and Information issued to Paul Mand on December 11, 2012 (“Mand Summons”), AR, Tab 4.

6. The Summons issued to Mr. Mand required him to disclose:

1. All documents generated from any source and related to the inspection, testing or sampling of the property known as the Algo Centre Mall, located at 151 Ontario Avenue, Elliot Lake, Ontario, including any of its tenants, with respect to compliance with by-laws, policies, processes and procedures or with respect

to the health, safety and structural integrity of such property generally;

2. Any and all plans, sketches, drawings, graphic representations, and specifications of the Algo Centre Mall and proposed or actual construction or renovations of same;

3. Documents relating to the construction, structural integrity, insurance, and upkeep of the Algo Centre Mall, including any of its tenants;

4. All documents relating to mortgage compliance and/or re-financing of the Algo Centre Mall by Eastwood Mall Inc., including any inspection or technical reports with respect to value and upkeep; and,

5. Any and all documents directly or indirectly relating to the Algo Centre Mall, which are in your possession or control.

Mand Summons, *supra*, AR, Tab 4.

7. Enclosed in the December 11, 2012 Summons to Mr. Mand was a covering letter from Peter Doody, Commission Counsel. In his letter, Mr. Doody explained, among other things, the procedure to follow should Mr. Mand wish to assert privilege over any document and he directed Mr. Mand to Rule 11 of the Commission's *Revised Rules of Procedure*, dealing with privilege claims. Mr. Doody stated,

The Commission requires a list setting out pertinent details of the document(s), or part thereof, over which claims for privilege are being asserted. This list must include the date, author, recipient, and a brief description of the document(s). The rules provide that the list may include additional material, such as an affidavit, to support the claims. The rules also provide that Commission counsel shall review the list and decide if they will recommend to the Commissioner that he accept the claim for privilege. Additionally, individuals claiming privilege are required to submit an affidavit providing an evidentiary basis for the privilege claim.

Letter from P. Doody to P. Mand dated December 11, 2012, AR, Tab 5.

8. On December 20, 2012, Mr. Mand wrote to Peter Doody, Commission Counsel, to advise that he was enclosing a list of approximately 152 documents in his possession over which he was claiming solicitor-client privilege as the documents were "prepared in contemplation of litigation or during litigation". Mr. Mand claimed solicitor-client privilege over the documents listed in Exhibit "A" and in Exhibit "B". Exhibit "A"

consisted of a chart setting out the date, author, document code, description and type of privilege claimed for each document. Exhibit "B" consisted of a chart setting out the date, to, from, description and the type of privilege claimed for each email. Mr. Mand did not provide an affidavit in support of his solicitor-client privilege claim.

Letter from P. Mand to P. Doody dated December 20, 2012, AR, Tab 6.

9. On March 21, 2013, Natalia Rodriguez, Commission Counsel wrote to Mr. Mand advising him that he was required to submit an affidavit providing an evidentiary basis for his privilege claim. Ms. Rodriguez stated,

For each document over which solicitor-client privilege is sought, please provide evidence to establish that the communication within the corresponding document is for the purpose of obtaining or providing legal advice. I note that you have not made any claims of litigation privilege.

Letter from N. Rodriguez to P. Mand dated March 21, 2013, AR, Tab 7.

10. On March 27, 2013, Mr. Mand wrote to Ms. Rodriguez and enclosed an affidavit in support of his privilege claim. In its entirety, the affidavit reads:

I Paul H. Mand of the City of Toronto, in the Province of Ontario MAKE AN OATH AND SAY:

1. I am the Managing Partner at the law firm of Mand Rai LLP Lawyers, former lawyers for Eastwood Mall Inc. and Algo Centre Mall.

2. I have conducted a diligent search of my records and have made appropriate enquiries of others to inform myself in order to make this affidavit. This affidavit encloses to the full extent of my knowledge, information and belief, all documents relating to any matter in issue in this action that are or have been in my possession, control or power.

3. I am in possession of the documents listed in the attached Exhibits. "Exhibit A" of this affidavit consists of all documents in file and "Exhibit B" consists of all e-mail correspondence.

4. The documents listed in "Exhibit A" are all communications made between my client and I. These communications were made in drafting a Statement of Defence and Cross-Claim for my client in the matter of 1204112 Ontario Inc. o/a Peak Building

Restoration & General Contracting and Eastwood Mall Inc. and The Algo Centre Mall. Thus, these communications are privileged under the umbrella of solicitor-client privilege.

5. The documents listed in "Exhibit B" are all communications made in confidence via email regarding the matter of my client and thus are privileged under the umbrella of solicitor-client privilege.

6. The documents listed in "Exhibit C" are documents that are available in the Public record.

7. I therefore verily believe that I cannot disclose the documents listed in "Exhibit A" and "Exhibit B" of this affidavit.

Mand Affidavit, *supra*, AR, Tab 3.

11. On April 2, 2013, Ms. Rodriguez wrote to Mr. Mand. In her letter, Ms. Rodriguez set out the requirements of solicitor-client privilege (a communication between a lawyer and his or her client, for the purpose of seeking or obtaining legal advice and intended to be confidential) and stated that Mr. Mand's affidavit did not establish that each document over which he was claiming privilege met these requirements. Further, she noted that some of the documents listed in Exhibit "A" and Exhibit "B" appeared to be communications from or to third parties, which, at first glance, would not fall under the umbrella of solicitor-client privilege. She reiterated the following:

As already stated in my letter of March 21, 2013, the Commission expects that you will substantiate your claim of solicitor-client privilege with evidence in respect of each document. As you can appreciate from the examples I have provided, this is necessary for the Commission to determine whether each document over which you have claimed privilege in fact falls under the umbrella of solicitor-client privilege.

[Emphasis in original.]

Letter from N. Rodriguez to P. Mand dated April 2, 2013, AR, Tab 8.

12. On April 5, 2013, Mr. Mand wrote a letter to Ms. Rodriguez enclosing a list setting out details of the documents over which claim was being asserted. He stated that he was now also claiming litigation privilege over 51 documents listed in "Schedule 'B'" (also referred to as "Appendix B"). He maintained that he was claiming solicitor-client privilege over 46 documents in "Schedule 'A'" (also referred to as "Appendix A") and 27

documents in "Schedule 'C'" (also referred to as "Appendix C"). He also attached a list at "Schedule 'D'" (also referred to as "Appendix 'D'") which he claimed were in the public record. He provided none of the documents. No further affidavit evidence was provided.

Letter from P. Mand to N. Rodriguez dated April 5, 2013, AR, Tab 9.

13. On April 8, 2013, Mr. Doody wrote to Mr. Mand. In his letter, Mr. Doody stated that Mr. Mand had not provided any affidavit evidence to support the additional information he had provided in his April 5, 2013 letter, including his new claim of litigation privilege. Mr. Doody stated,

The affidavit evidence that you have produced does not provide Commission counsel sufficient information on which to base any recommendation to the Commissioner regarding your clients' privilege claims with respect to many of the claims of privilege asserted. Commission counsel cannot, on the basis of this affidavit, recommend to the Commissioner that he accept a significant number of the privilege claims.

Letter from P. Doody to P. Mand dated April 8, 2013, AR Tab 10.

14. On April 12, 2013, Mr. Mand wrote to Mr. Doody and stated the following:

Further to your letter dated April 8, 2013, we respectfully submit that the lists of documents that we have provided earlier are privileged. The lists of documents that we submitted under the solicitor-client privilege are those documents that we have produced for our client, or our client has given to us. These documents were meant to help us in providing legal advice and service to our client at all times. These documents were intended to be confidential. At this time we do not feel comfortable releasing any further details of these documents, keeping in mind our duty to our client and the duties imposed upon us by our profession.

We take the duty to our client very seriously and as such retain our position as was stated in our letter to your colleague Natalia Rodriguez on April 5, 2013. At this time we do not comfortable making any further submissions, especially given the foregoing reasons.

Letter from P. Mand to P. Doody dated April 12, 2013, AR Tab 11.

15. Rule 11 of the Commission's *Revised Rules of Procedure* read:

11. Where a participant or summons recipient objects to the production of any document, or part thereof, on the grounds of privilege, pursuant to subsection 8(3) of the Act, the following procedures will apply:

a. The participant or summons recipient shall deliver to Commission Counsel a list setting out pertinent details of the document(s), or part thereof, over which claims for privilege are being asserted. This shall include the date, author, recipient and a brief description of the document(s), and may include additional material, such as an affidavit, to support its claims;

b. Commission Counsel shall review the list and decide if they will recommend to the Commissioner that he accept the claim for privilege;

c. If Commission Counsel are not prepared to recommend to the Commissioner that he accept the claim for privilege, the list and any further material filed by the participant or summons recipient shall be submitted forthwith, together with Commission Counsel's written submissions, to the Commissioner or, at the Commissioner's option, to the Honourable Stephen T. Goudge, Justice of the Ontario Court of Appeal, for determination. If the Commissioner or Justice Goudge is unable to make a determination based on the record before them, they may request a copy of the disputed document(s) for inspection; and

d. If the claim for privilege is dismissed, the document(s) shall be produced to Commission Counsel forthwith.

Commission's Revised Rules of Procedure, AR, Tab 12.

16. Commission counsel seeks a determination of privilege in respect of 61 of the documents – 26 documents from Schedule "A", over which solicitor client privilege is claimed; 29 documents from Schedule "B", over which litigation privilege is claimed, 2 documents from Schedule "C", over which litigation privilege is claimed, and 4 documents from Schedule "D", which were not produced because they are allegedly in the public record.

17. Commission counsel are not, in this application, seeking an order determining the legitimacy of the privilege claim in respect of communications between Eastwood Mall Inc., Bob Nazarian, or Levon Nazarian, the clients of Mr. Mand, and Mr. Mand or

another of their lawyers, or between two lawyers for any of those clients. While we do not accept that all of the claims to privilege have been established, a determination of that issue is not being sought.

18. The documents over which Commission counsel seek a determination of the privilege claims fall, generally, into two main categories:

- (a) Documents over which a claim to solicitor client privilege has been asserted and the evidence provided indicates that the document in question was not privileged when it was created – i.e. was not a communication to or from the lawyer for the purpose of obtaining or providing legal advice – but rather was a document provided to a lawyer so that the legal advice could be informed by the information contained in the document; and
- (b) Documents over which litigation privilege has been asserted and the evidence provided does not establish that, even if the documents were created for the dominant purpose of being utilized in litigation, that litigation is not still ongoing.

PART III – ISSUES

19. This Application raises the following issues:

- (a) Do the documents over which Commission counsel seek a ruling in “Schedule ‘A’” fall within the scope of solicitor-client privilege?
- (b) Do the documents over which Commission counsel seek a ruling in “Schedule ‘B’”, Schedule “C”, and “Schedule ‘D’” fall within the scope of litigation privilege?

PART IV – LAW AND ANALYSIS

A. The Documents in Schedule “A” For Which Commission Counsel Seek a Determination Are Not Solicitor-Client Privileged

20. Solicitor-Client privilege applies to any communication between a lawyer and his or her client for the purpose of seeking or giving legal advice. The requirements are as follows:

- (a) There must be a communication, whether oral or written;
- (b) The communication must be of a confidential character;
- (c) The communication must be between a client and a legal advisor; and
- (d) The communication must be directly related to the seeking, formulating or giving of legal advice.

See e.g. *General Accident Assurance Company v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.) per Doherty J.A., concurring with Carthy J.A., BA, Tab 2.

See also *Descoteaux v. Mierzwinski*, [1982] 1 S.C.R. 860 at 872-73, BA, Tab 3.

21. In some instances, communications by third parties are also covered by solicitor-client privilege. However, (i) not every communication by a third party to a lawyer that facilitates or assists in giving or receiving legal advice is protected by solicitor-client privilege; and (ii) where the third party serves as a channel of communication between the client and solicitor, communications to or from the third party by the client or solicitor will be protected by the privilege as long as those communications meet the criteria for the privilege.

See *Chrusz, supra* at para. 106, per Doherty J.A.

22. In *Chrusz*, Doherty J.A. held that delivering a document to a lawyer so that the lawyer may give legal advice informed by the information in the document does not render that document privileged. He wrote that the view of privilege which would cover such a document

confuses the unquestioned obligation of a lawyer to maintain confidentiality of information acquired in the course of a retainer

with the client's much more limited right to foreclose access by opposing parties to information which is material to the litigation. Client-solicitor privilege is intended to allow the client and lawyer to communicate in confidence. It is not intended, as one author has suggested, to protect "... all communications or other material deemed useful by the lawyer to properly advise his client ...".... While this generous view of client-solicitor privilege would create what clients might regard as an ideal environment of confidentiality, it would deny opposing parties and the courts access to much information which could be very important in determining where the truth lies in any given case.

Chrusz, supra at para. 127, per Doherty J.A.; concurred in by Carthy J.A. at par. 1 and Rosenberg J. at par. 167.

23. As a result, the Court of Appeal held that reports of an insurance adjuster, directed to be delivered to a lawyer by the client insurer so the lawyer's advice could be informed by their contents, were not privileged and had to be produced.

Chrusz, supra at para. 130.

24. Consequently, a document which is transmitted to a lawyer for the purpose of the lawyer giving legal advice is not, simply by reason of that delivery, privileged. It is only privileged if the document itself was privileged when it was created.

25. Schedule "A" to this Memorandum of Argument copies Schedule "A" to Mr. Mand's letter of April 5, 2013, but adds two columns: Position of Commission Counsel and "Comments". As can be seen, Commission counsel seek a determination that documents 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 24, 25, 26, 27, 28, 31, 36, 37, 38, 39, and 40 are not subject to solicitor client privilege. Each of those documents except document 40 are, from the descriptions provided by Mr. Mand, documents provided to Mr. Mand to inform his legal advice but are not established to be a communication from or to his client for the purpose of obtaining legal advice. Document 40 is a communication to the lawyer for the other party in litigation to which Mr. Mand's client was a party; it cannot, for the reasons set out below, be litigation privilege even if there were evidence to establish that the litigation was still extant, but there is no such evidence.

26. As the one asserting privilege, the onus is on Mr. Mand to provide evidence to establish that the documents over which he is asserting privilege are in fact subject to a privilege. Mr. Mand has provided no such evidence with respect to the disputed documents.

B. The Documents in Schedules “B”, “C”, and “D” For Which Commission Counsel Seek a Ruling Are Not Subject to Litigation Privilege.

1) Communications with Opposing Counsel, in Litigation Which has not Been Established to Be Ongoing, are Not Litigation Privileged

27. Litigation privilege is intended to protect the solicitor's work product within a “zone of privacy” while a dispute or potential dispute is ongoing. It ceases to apply once the dispute has concluded, unless related litigation remains pending or may reasonably be apprehended.

Blank v. Canada (Department of Justice), [2006] 2 S.C.R. 319 at paras. 37-39, BA, Tab 4.

28. It is submitted that litigation privilege cannot exist in respect of communications between two lawyers representing different sides of a dispute. The communication itself is an indication that no such “zone of privacy” was expected or claimed for the document in issue.

29. Litigation privilege will attach to those records that were created for the dominant purpose of litigation, whether actual or contemplated, where litigation is a reasonable prospect at the time the record or communication was created.

See e.g. *Chrusz, supra*.

See also *Blank, supra*, at paras. 59-61.

30. Schedules “B” and “C” to this Memorandum of Argument copy Schedules “B” and “C” to Mr. Mand’s letter of April 5, 2013, but add two columns: Position of Commission Counsel and “Comments”. As can be seen, Commission counsel seek a determination that documents 11, 13, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 34, 36, 37, 40, 41, 42, 45, 46, 47, 48, 49, and 50 of Schedule “B” are not subject to

litigation privilege. Each of those documents are documents which were sent by one lawyer for a party to litigation to the lawyer representing the opposing party. Furthermore, there is no evidence that the litigation to which those documents are relevant is ongoing.

31. Commission counsel seek a determination that document 4 of Schedule "C" is not subject to litigation privilege, because there is no evidence to establish that the dominant purpose of the creation of that document, which is a communication originated by Shawn Rees, an individual not identified, was for the dominant purpose of litigation, and there is no evidence that the litigation in question is ongoing.

32. Commission counsel seek a determination that document 13 of Schedule "C" is not subject to litigation privilege, because it is a communication with opposing counsel and, in any event, there is no evidence that the litigation is ongoing.

2) The Documents in Schedule "D" for which Commission Counsel Seek a Ruling are Not Subject to Litigation Privilege

33. In Ontario, the law is not entirely clear as to whether documents gathered or copied – but not created – for the purpose of litigation are litigation privilege. In the *Chrusz* case, Carthy J.A. would have held that documents which were not created for the dominant purpose of being used in litigation but which were copied and put in a lawyer's brief – which would include documents publicly available – were not covered by litigation privilege. Doherty and Rosenberg J.J.A., however, would have held that while such documents did not, simply by reason of their having been copied and put in the brief, become privileged, if the copying and procurement was a result of research or the exercise of skill and knowledge on the part of the solicitor, it may be that the privilege did apply. They left the determination of that issue to another case.

Chrusz, supra at paras. 36-38, 136-138, and 171.

34. Schedule "D" to this Memorandum of Argument copies Schedule "D" to Mr. Mand's letter of April 5, 2013, but adds two columns: Position of Commission Counsel and "Comments". As can be seen, Commission counsel seek a determination that

documents 5, 10 15, and 24 of Schedule “D” are not subject to litigation privilege. Even if the law of Ontario is as Doherty and Rosenberg J.J.A. suggest, these documents would not be litigation privileged. They were produced and provided to the opposing party as part of the litigation process. There is no “zone of privacy” for the purpose of litigation preparation and strategy in respect of these documents – they are in the public record, not the lawyer’s brief, as a result of the lawyer’s work and there can be no legitimate reason to refuse their production.

35. As the one asserting privilege, the onus is on Mr. Mand to provide evidence to establish that the documents over which he is asserting privilege are in fact subject to a privilege. Mr. Mand has provided no such evidence with respect to the disputed documents.

PART V – ORDER SOUGHT

36. Commission Counsel seek a ruling that the documents set out in Schedules “A”, “B”, “C”, and “D” to this Memorandum of Argument and which they submit are not privileged are not subject to a privilege and must be produced to the Commission forthwith.

All of which is respectfully submitted this day of May, 2013.

**ELLIOT LAKE COMMISSION
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TAB 1

Schedule A

	Date	Author	Code	Description Provided by Mr. Mand	Privilege	Commission Counsel Position	Comments
1	05/13/2008	John Clinckett Architect	ADMIN	Defeasance Quote Quote given to us by our client, for the purposes of providing legal advice, and intended to be confidential.	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
2	5/13/2008	Defeasance	ADMIN	LTR - confirming tenants intentions to not renew Letter given to us by our client, for the purposes of providing legal advice, and intended to be confidential.	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
3	5/14/2008	MHD - Paul Mand	OFAX	OFLTR - Nazarian - advising of plan Communication between us and our client.	Solicitor Client Privilege	Production not being sought in this Application	
4	07/07/2008	Bob Nazarian	IFAX	IFLTR - Nazarian - Request for additional funding - RBC Communication between us and our client. Sent to us by our client.	Solicitor Client Privilege	Production not being sought in this Application	
5	07/08/2008	RBC	CORR	CLTR - Davison - RBC - Conditions for Release of funds Confidential communication sent to us by our client, for the purposes of providing legal advice.	Solicitor Client Privilege	Not Privileged	Mr. Davidson is a loans officer at RBC; Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
6	07/09/2008	Commercial Defeasance	ADMIN	Amended Defeasance Cost Confidential communication sent to us by our client, for the purposes of providing legal advice.	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication

								for the purpose of obtaining legal advice
7	7/23/2008	Charge/ Mortgage of Land	CLDO	Pictures From Elliot Lake Confidential communication provided to us by our client for the purposes of providing legal advice.	Solicitor Client Privilege	Not Privileged	Pictures are real evidence; Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice	
8	7/23/2008	RBC	CLDO	Inspection Survey - Provided by our client - answers to their questions Confidential communication provided to us by our client for the purposes of providing legal advice.	Solicitor Client Privilege	Not Privileged	Survey provided by RBC, the lender, not the client borrower. Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice	
9	7/23/2008	Defeasance	CLDO	RBC report from inspection Report provided to us by our client for the purposes of providing legal advice.	Solicitor Client Privilege	Not Privileged	RBC is the client's lender, not the client; Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice	
10	7/23/2008	Unknown	ADMIN	Amended Defences Quote Documents provided to us by our client for the purposes of providing legal advice.	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice	

11	7/25/2008	Hurmizi & Company	CLDO	Financial Statements for Elliot Lake Documents provided to us by our client for the purposes of providing legal advice.	Solicitor Client Privilege	Not Privileged	Mr. Humizi is the client's accountant, not the client, Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
12	7/29/2008	Unknown	REG	Rent Rolls Documentation provided to us by our client for the purposes of providing legal advice.	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
13	8/15/2008	Unknown	CLDO	Elliot Lake Joint Repairs Documentation provided to us by our client for the purposes of providing legal advice.	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
14	8/15/2008	Unknown	CLDO	Draft Contract between Eastwood Mall and Empire Roof Documentation provided to us by our client for the purposes of providing legal advice.	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
15	09/08/2008	Empire Roofing and Restoration INC	IFAX	IFLTR - Empire Roofing – Contract Documentation provided to us by our client for the purposes of providing legal advice.	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice

16	09/10/2008	Brown and Fabris Law Office	IFAX	Incoming Fax from Nazarian's other lawyer. This communication is privileged because it was made between Brown and Fabris Law (Bob Nazarian's other lawyer) who Bob had asked to speak to us. Bob Nazarian is our client. This information was intended to be confidential and Bob had asked Brown and Fabris Law Office to give us this information to help us formulate our legal opinion.	Solicitor Client Privilege	Not Privileged, but do not need this document, another copy already in Commission possession	This does not appear to be from the client, Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
17	9/22/2008	FundingLinx	ADMIN	Draft Mandate and Fee Letter Documentation provided to us by our client for the purposes of providing legal advice.	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
18	10/29/2008	Glen Day - Peak Building Restoration Given to us by Bob Nazarian	EVID	Un-executed Term sheet between - Peak and Eastwood Documentation provided to us by our client as evidence. Provided during our solicitor-client relationship communications for the purposes of allowing us to give appropriate legal advice and intended to be confidential.	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
19	11/12/2008	Paul Mand Lawyers	PLED	Draft Statement of Defence Created for our client. Statement of Defence that was filed in court is available in the Public Record. D and CC revised	Solicitor Client Privilege	Production not being sought in this Application	
20	11/14/2008	Paul Mand Lawyers	PLED	Revised Statement of Defence and Counterclaim Draft. Actual filed Statement of Defence and Counterclaim are available in the Public Record.	Solicitor Client Privilege	Production not being sought in this Application	
21	11/17/2008	Identi McClury of Eastwood Mall Inc	IFAX	IFLTR - Eastwood - List of Equipment Fax received by us, sent by our client. Communication between solicitor-client. Provided to us for the purposes of providing legal advice.	Solicitor Client Privilege	Production not being sought in this Application	

22	11/17/2008	Unknown	PLED	Schedule A for statement of claim Actual filed statement of claim is available in the public record.	Solicitor Client Privilege	Production not being sought in this Application	
23	11/24/2008	Paul Mand Lawyers	PLED	Draft - Statement of Defence and Counter-Claim Finalized Statement of Defence and Counter-Claim are available in the public record.	Solicitor Client Privilege	Production not being sought in this Application	
24	12/19/2008	Ian Caskie	ADMIN	Allie Katz - Tenant Estoppel Certificate Documentation given to us by our client for the purposes of providing legal advice.	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
25	12/24/2008	Judy Fudge	CLDO	2111606 Ontario Inc. - Estoppel Certificate Documentation provided to us by our client for the purpose of providing legal advice.	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
26	12/24/2008	Crawford	CLDO	Arts Gallery - Estoppel Certificate Documentation provided to us by our client for the purpose of providing legal advice.	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
27	12/24/2008	Mabel Regimbald	CLDO	Eggs-Ceptions Estoppel Certificate Documentation provided to us by our client for the purpose of providing legal advice.	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
28	12/24/2008	Marc Marengere	CLDO	VacMan's Vacuums - Estoppel Certificate Documentation provided to us by our client for the purpose of providing legal advice.	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice

29	2/25/2009	Paul Mand Lawyers	PLED	Draft requisition to note in default Finalized requisition to note in default would be of public record.	Solicitor Client Privilege	Production not being sought in this Application	advice
30	08/06/2009	Paul Mand Lawyers	PLED	Draft Affidavit of Nazarian in support of Motion Finalized affidavit would be of public record	Solicitor Client Privilege	Production not being sought in this Application	
31	10/29/2009	Peak Building Restoration & General Contracting	CORR	Ltr from Peak to Client- Aug. 5, 2008 Document faxed to us by our client, meant to be confidential, and given for the purposes of obtaining legal advice.	Solicitor Client Privilege	Not Privileged	Peak is a contractor engaged to fix the leaky roof of the mall, engaged in litigation with the client; Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
32	11/26/2009	Bob Nazarian	IFAX	IFLTR - Fabris - Advice that we may have to pursue Peak for Scotia Bank Claim Incoming fax from other lawyers for our client. Privileged because the other lawyer is sending this on behalf of our joint client.	Solicitor Client Privilege	Production not being sought in this Application	
33	12/15/2009	Brown and Fabris Law Office	IFAX	IFLTR - Fabris Law Office - Instruction to make offer to settle matter Privileged communication between lawyers for our joint client.	Solicitor Client Privilege	Production not being sought in this Application	
34	12/17/2009	Nazarian	DRAF	Minutes Communication between us and our client.	Solicitor Client Privilege	Production not being sought in this Application	
35	01/04/2010	Paul Mand Lawyers	ADMN	Billing to Jan 4th, 2010 Invoice for work done for our client Confidential communication between us and our client.	Solicitor Client Privilege	Production not being sought in this Application	

36	01/05/2010	Unknown	N/A	DOCSING- Eastwood Mall's insurer- policy wording SKHATKUR Documentation provided to us by our client for the purposes of allowing us to form our legal opinion.	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
37	01/05/2010	Unknown	DOCS	ING- coverage endorsement Documentation provided to us by our client for the purposes of allowing us to form our legal opinion.	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
38	01/05/2010	Unknown	DOCS	ING- Eastwood Mall's insurer- policy wording Documentation provided to us by our client for the purposes of allowing us to form our legal opinion	Solicitor Client Privilege	Not Privileged	Document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
39	01/07/2010	Brown and Fabris Law Office	IFAX	IFLTR- from Fabris + Peak Certificate of Insurance Privileged communication between our clients other lawyers and us.	Solicitor Client Privilege	Not Privileged in its entirety	The letter from Mr. Fabris, the client's other lawyer, may be privileged but the Certificate of Insurance of the contractor, Peak, is a document provided to lawyer to inform legal advice but not communication for the purpose of obtaining legal advice
40	02/04/2010	Paul Mand Lawyers	OFAX	OFLTR- to Baker- Feb. 4, 2010 Requesting response regarding Minutes of Settlement	Solicitor Client Privilege	Not Privileged	Communication to other lawyer in litigation is not subject to solicitor-client privilege

41	7/27/2010	Brown and Fabris Law Office	FAX	IFAX - Fabris - Request for Pleadings Communication between our clients other lawyer (on behalf of our client) and us.	Solicitor Client Privilege	Production not being sought in this Application
42	8/19/2010	Brown and Fabris Law Office	FAX	IFLTR - Fabris- request for Defence Communication between our clients other lawyer (on behalf of our client) and us.	Solicitor Client Privilege	Production not being sought in this Application
43	8/29/2010	Paul Mand Lawyers	DRAF	Draft - Motion material - for 2 Year Limitation Completed and filed motion would be of Public Record.	Solicitor Client Privilege	Production not being sought in this Application
44	12/16/2010	Unknown	EXDC	EXECUTED ACKNOWLEDGMENT Application to register court order. Solicitor-client communication	Solicitor Client Privilege	Production not being sought in this Application
45	02/11/2011	Paul Mand Lawyers	ADMIN	Invoice number 4450 Privileged communication between us and our client.	Solicitor Client Privilege	Production not being sought in this Application
46	10/14/2011	Steinberg Morton Hope & Israel LLP	FAX	IFAX - Messerkhanian - Our client changed lawyers and the other lawyer sent a request for our File	Solicitor Client Privilege	Production not being sought in this Application

TAB 2

Schedule B

	Date	Author	Code	Description	Privilege Claimed by Mr. Mand	Position of Commission Counsel	Comments
1	10/29/2008	Paul Mand	OFAX	Outgoing fax to opposing counsel requesting an extension of time to file the statement of defence.	Litigation Privilege	Production not being sought in this Application	
2	11/18/2008	Paul Mand Lawyers	CORR	Fax request to accept counter claim on behalf of clients Fax sent by us to opposing counsel, enclosing the Statement of Defence and Counter-claim.	Litigation Privilege	Production not being sought in this Application	
3	11/24/2008	Charles Baker	IFAX	IFLTR - Baker - Request for Statement of Defence Fax by opposing counsel asking for a copy of the Statement of Defence and Counter-claim.	Litigation Privilege	Production not being sought in this Application	
4	12/22/2008	Legal Link	INV	Legal Link Invoice - Process service Invoice from our process server.	Litigation Privilege	Production not being sought in this Application	
5	12/23/2008	Ministry of the Attorney General Local Registrar	ADMIN	Legal link receipt Receipt of Payment to our process server.	Litigation Privilege	Production not being sought in this Application	
6	12/23/2008	Legal Link	ADMIN	Legal link invoice Invoice from our process server.	Litigation Privilege	Production not being sought in this Application	
7	01/10/2009	Paul Mand Lawyers	OFAX	OFLTR - Baker - Request for defence Fax from us to opposing counsel requesting a copy of their statement of defence to our counter-claim.	Litigation Privilege	Production not being sought in this Application	
8	02/04/2009	Paul Mand Lawyers	OFAX	OFLTR - Baker - 2nd Request for SOD Fax from us to opposing counsel requesting a copy of their statement of defence to our counter-claim.	Litigation Privilege	Production not being sought in this Application	

9	02/09/2009	Charles Baker	IFAX	IFLTR - Baker – Response to request for defence	Litigation Privilege	Production not being sought in this Application	
10	09/08/2009	Charles Baker	IFAX	IFLTR - Baker – Opposing Counsel requesting Consent to file Defence to Counter-Claim	Litigation Privilege	Production not being sought in this Application	
11	9/17/2009	Paul Mand Lawyers	OFAX	OFLTR- to Baker Outgoing fax to opposing counsel (whether damages are lienable)	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
12	9/21/2009	Paul Mand Lawyers	CFAX	OFLTR- Baker Outgoing fax advising that it is ok to consent to file Statement of Defence.	Litigation Privilege	Production not being sought in this Application	
13	10/09/2009	Charles Baker	IFAX	IFLTR - Baker Incoming fax from Baker advising that Statement of Defence and money will be forwarded	Litigation Privilege	Not Privileged	Communication from lawyer for other side No evidence the litigation is ongoing
14	10/29/2009	Paul Mand Lawyers	OFAX	OFLTR- Baker Outgoing fax to Baker requesting dates for cross-examination	Litigation Privilege	Production not being sought in this Application	
15	10/30/2009	Paul Mand Lawyers	CTOP	OLTR- to Baker Outgoing fax to Baker requesting dates for cross-examination	Litigation Privilege	Production not being sought in this Application	
16	11/05/2009	Paul Mand Lawyers	OFAX	OFLTR- to Baker - re: \$600 Outgoing fax to Baker requesting funds.	Litigation Privilege	Not Privileged	Communication from lawyer for other side No evidence the litigation is ongoing
17	11/06/2009	Unknown	OFAX	OFLTR- Baker - Notice of Cross-exam Outgoing fax to Baker enclosing Notice of Cross-examination	Litigation Privilege	Production not being sought in this Application	

18	11/10/2009	Paul Mand Lawyers	OFAX	OFLTR- to Baker- Nov. 10/09 Giving reasons for the cross-examination	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
19	11/18/2009	Charles Baker	IFAX	IFLTR - Baker - Settlement Offer Fax from Baker regarding logistics of trial.	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
20	11/19/2009	Charles Baker	IFAX	IFLTR- Baker Incoming fax regarding settlement	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
21	11/20/2009	Paul Mand Lawyers	OFAX	OFLTR- re re-scheduled Notice of Exam. and response to offer to settle Outgoing fax to Baker	Litigation Privilege	Not Privileged	Communication from lawyer for other side No evidence the litigation is ongoing
22	11/23/2009	Paul Mand Lawyers	IFAX	IFLTR- Baker- Nov. 20/09 Incoming fax from Baker regarding logistics of litigation.	Litigation Privilege	Not Privileged	Communication from lawyer for other side No evidence the litigation is ongoing
23	11/23/2009	Charles Baker	OFAX	OFLTR- to Baker Outgoing fax to Baker regarding litigation	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
24	11/26/2009	Charles Baker	IFAX	IFLTR- from Baker Incoming fax from Baker regarding litigation	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
25	12/01/2009	Paul Mand Lawyers	OFAX	OFLTR- to Baker- Dec. 1/09 Incoming fax from Baker.	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
26	12/03/2009	Unknown	OFAX	OFLTR- to Baker- Dec. 3/09 Incoming fax from Baker.	Litigation Privilege	Not Privileged	Communication from lawyer for other side No evidence the litigation is ongoing

27	12/17/2009	Unknown	CLAW	Alkok case Case found during research in anticipation of litigation	Litigation Privilege	Production not being sought in this Application	Public Document
28	12/18/2009	Paul Mand Lawyers	OFAX	OFLTR- to Baker Outgoing fax to Baker	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
29	12/29/2009	Paul Mand Lawyers	OFAX	OFLTR- to Baker- Dec.29	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
30	01/05/2010	Paul Mand Lawyers	N/A	OFAXOFLTR- to Baker- Dec.SKHATKUR Outgoing fax to Baker.	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
31	01/05/2010	Paul Mand Lawyers	N/A	OFAXOFLTR- to BakerSKHATKUR Letter to Baker discussing damages.	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
32	01/05/2010	Paul Mand Lawyers	N/A	OFAXOFLTR- to Baker- Jan. 5, 2010SKHATKUR Letter to Baker requesting dates for cross-examination	Litigation Privilege	Production not being sought in this Application	
33	01/05/2010	Unknown	CLAW	Cases found during research in anticipation of litigation.	Litigation Privilege	Production not being sought in this Application	
34	01/05/2010	Paul Mand Lawyers	N/A	CORRLetter to Baker (2)- Jan. 5, 2010SKHATKUR Fax Cover Letter for cases found during research.	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
35	01/05/2010	Unknown	N/A	CLAWCasesSKHATKUR Case law found during research for case	Litigation Privilege	Production not being sought in this Application	

36	01/05/2010	Paul Mand Lawyers	OFAX	OFLTR- to Baker- Jan. 5, 2010 Communication regarding settlement	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
37	01/05/2010	Paul Mand Lawyers	CORR	Letter to Baker (2)- Jan. 5, 2010 Enclosing copies of cases	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
38	01/11/2010	Paul Mand Lawyers	OFAX	Amended notice of cross-exam	Litigation Privilege	Production not being sought in this Application	
39	01/11/2010	Paul Mand Lawyers	OFAX	OFLTR- to Baker re: Notice of Cross-Examination	Litigation Privilege	Production not being sought in this Application	
40	1/13/2010	Paul Mand Lawyers	OFAX	OFLTR- to Baker - Jan. 13, 2010 Conversation regarding settlement	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
41	1/18/2010	Paul Mand Lawyers	OFAX	OFLTR- to Baker - Jan. 18, 2010 (2) Conversation regarding insurance	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
42	1/18/2010	Paul Mand Lawyers	OFAX	OFLTR- to Baker- Jan. 18, 20101 Conversation regarding settlement.	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
43	1/18/2010	Charles Baker	IFAX	IFLTR- from Baker- Jan. 15, 2010 Incoming fax from Baker providing dates for cross-examination	Litigation Privilege	Production not being sought in this Application	
44	03/08/2010	Paul Mand Lawyers	OFAX	OFLTR- to Baker re: closing of sale of mail Outgoing fax to Baker advising of the closing date	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing

45	3/28/2010	Charles Baker	IFAX	IFLTR Incoming letter from Baker - Settlement Offer - 30k	Litigation Privilege	Not Privileged	Communication from lawyer for other side No evidence the litigation is ongoing
46	3/30/2010	Paul Mand Lawyers	IFAX	ILTR Outgoing letter to Baker regarding offer to settle	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
47	4/19/2010	Charles Baker	FAX	IFAX - Baker - Request for information regarding sale Incoming Fax from Baker requesting information regarding sale	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
48	3/30/2010	Paul Mand Lawyers	CORR	OLTR to Baker Letter to Baker regarding settlement.	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
49	4/19/2010	Charles Baker	CORR	Incoming letter from Baker re: vacating of lien Conversation regarding settlement	Litigation Privilege	Not Privileged	Communication from lawyer for other side No evidence the litigation is ongoing
50	1/28/2010	Paul Mand Lawyers	CORR	OLTR- Baker- Jan. 28, 2010 Fax cover letter enclosing draft Minutes of Settlement	Litigation Privilege	Not Privileged	Communication to lawyer for other side No evidence the litigation is ongoing
51	11/18/2010	Paul Mand Lawyers	CORR	OLTR Sault Ste. Marie trial coordinator re: written confirmation matter not set down for trial	Litigation Privilege	Production not being sought in this Application	

TAB 3

Schedule C

Date	To	From	Description	Privilege Claimed by Mr. Mand	Position of Commission Counsel	Comments
1 11/13/2008	Antoine-Rene Fabris	Paul Mand	Solicitor client communication	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application	
2 11/16/2008	Nav Rai	Bob Nazarian	Solicitor client communication	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application	
3 11/17/2008	Paul Mand	Antoine- Rene Fabris	Solicitor client communication	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application	
4 02/19/2009	Paul Mand	Shawn Rees serees@studeo-ei8ht.com	Solicitor client communication	Litigation Privilege	Not Privileged	No evidence to establish that the dominant purpose is litigation or that the litigation is still extant
5 09/17/2009	Bob Nazarian	Sareena Khattur	Solicitor client communication	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application	
6 10/15/2009	Bob Nazarian	Paul Mand	Solicitor client communication, Communication with our client.	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application	
7 10/29/2009	Bob Nazarian	Sareena Khattur	Solicitor client communication	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application	
8 11/09/2009	Sareena Khattur	Reception	Communication within Law Firm	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application	

9	11/26/2009	Antoine-Rene Fabris	Paul Mand	Solicitor client communication	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application	
10	12/15/2009	Antoine-Rene Fabris	Paul Mand	Solicitor client communication	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application	
11	12/17/2009	Paul Mand	Antoine- Rene Fabris	Solicitor client communication	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application	
12	01/05/2010	Bob Nazarian; Paul Mand	Sareena Khatkur	Solicitor client communication Communication between our client and counsel.	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application	
13	01/05/2010	Charles Baker	Sareena Khatkur	Communication with opposing counsel	Litigation Privilege	Yes	Not Solicitor-Client Privileged; communication to lawyer for other side, and no evidence litigation is still extant
14	01/12/2010	Bob Nazarian	Sareena Khatkur	Solicitor client communication	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application	
15	01/13/2010	Bob Nazarian	Sareena Khatkur	Solicitor client communication	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application	
16	01/16/2010	Sareena Khatkur	Paul Mand	Communication between Lawyers	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application	
17	01/27/2010	Paul Mand	Sareena Khatkur	Communication between Lawyers	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application	

18	02/23/2010	Sareena Khatkur	Paul Mand	Communication between Lawyers	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application
19	02/23/2010	Paul Mand	Sareena Khatkur	Communication between Lawyers regarding the matter of our client	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application
20	02/23/2010	Sareena Khatkur	Paul Mand	Communication between Lawyers	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application
21	02/24/2010	Antoine-Rene Fabris	Sareena Khatkur	Communication between Lawyers	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application
22	07/27/2010	Antoine-Rene Fabris	Paul Mand	Communication between Lawyers	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application
23	11/23/2010	Paul Mand	Sareena Khatkur	Communication between Lawyers	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application
24	11/26/2010	Basil, Marc (JUS) Trial Coordinator	Sareena Khatkur	Communication with the trial coordinator arranging for trial dates.	Litigation Privilege	Not Contesting Privilege Claim in This Application
25	12/13/2010	Nav Rai	Paul Mand	Communication between Lawyers	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application

26	02/11/2011	Bob Nazarian	Paul Mand	Solicitor client communication	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application
27	10/14/2011	Amesserkhanian@smhlaw.com	Paul Mand	Solicitor client communication	Solicitor Client Privilege	Not Contesting Privilege Claim in This Application ;

Bob Nazarian is our Client.

Antoine Rene Fabris is also another lawyer for Bob Nazarian (our client).-

Nav Rai is a solicitor at Mand Rai Law Office.

Sareena Khatkur is a solicitor at Mand Rai Law Office.

Charles Baker is the counsel for the opposing party.

A Messerkhanian (Amesserkhanian@smhlaw.com) is another lawyer [sic] that has been retained by Bob Nazarian (our client).

[These notes in original.]

TAB 4

Schedule D

	Date	Author	Code	Description	Privilege Claimed by Mr. Mand	Position of Commission Counsel	Comments
1	7/23/2008	Canadian Mortgage Rating service	REG	Registered Charge	Available in Public Record	Production not being sought in this Application	
2	08/06/2008	Construction Lien	SER	Construction Lien Registered as AL40953	Available in Public Record	Production not being sought in this Application	
3	09/10/2008	Brown and Fabris Law Office	SER	Construction Lien Registered as AL40953	Available in Public Record	Production not being sought in this Application	
4	09/10/2008	Parcel	SER	Teraview Parcel Search	Available in Public Record	Production not being sought in this Application	
5	10/28/2008	Charles Baker	PLED	Statement of Claim	Available in Public Record	Not Privileged	Documents are public
6	10/28/2008	Charles Baker	PLED	Certificate of Action	Available in Public Record	Production not being sought in this Application	
7	11/27/2008	Paul Mand Lawyers	PLED	Affidavit of Service	Available in Public Record	Production not being sought in this Application	
8	08/06/2009	Unknown	DOCS	PARCEL SEARCH ELLIOT LAKE 08-06-09	Available in Public Record	Production not being sought in this Application	
9	08/06/2009	Charles Baker	REG	REGISTERED CERTIFICATE AL43931	Available in Public Record	Production not being sought in this Application	
10	10/15/2009	Charles Baker	PLED	Statement of Defence to Counter-Claim and Reply	Available in Public Record	Production not being sought in this Application	Documents are public
11	11/06/2009	Paul Mand Lawyers	PLED	Notice of Examination	Available in Public Record	Production not	

12	11/06/2009	Paul Mand Lawyers				Record	being sought in this Application
13	01/11/2010	Paul Mand Lawyers	PLED	Notice of Cross-Examination	Available in Public Record	Production not being sought in this Application	
14	1/25/2010	Unknown	DRAF	Minutes, Consent and Order	Available in Public Record	Production not being sought in this Application	
15	02/09/2010	Charles Baker	EXDC	Minutes of Settlement dated Sunday, February 7, 2010	Available in Public Record	Not Privileged Documents are public	
16	10/21/2010	Unknown	DRAF	Affidavit of process server	Available in Public Record	Production not being sought in this Application	
17	10/28/2010	Jeannine Butt	EXDC	Affidavit of Jeannine Butt re: confirmation trial has not been set down	Available in Public Record	Production not being sought in this Application	
18	11/22/2010	Unknown	SER	Parcel Registers for all 3 Pins + Teraview Invoice	Available in Public Record	Production not being sought in this Application	
19	12/10/2010	Paul Mand Lawyers	DOCS	Order- issued and entered	Available in Public Record	Production not being sought in this Application	
20	12/10/2010	Unknown	SER	Parcel Registers (November 29/10)	Available in Public Record	Production not being sought in this Application	
21	12/13/2010	Unknown	REG	Registered Court Order	Available in Public Record	Production not being sought in this Application	
22	12/13/2010	Superior Court of Justice	ADMIN	Notice of Dismissal	Available in Public Record	Production not being sought in this Application	

23	12/20/2010	Unknown	ADMN	Issued and Entered Order	Available in Public Record	Production not being sought in this Application	
24	12/21/2010	Paul Mand Lawyers	EXDC	Affidavit of Paul Mand	Available in Public Record	Not Privileged	Documents are public
25	7/28/2012	Unknown	ADMN	Issued Claim v Nazzarain for fees	Available in Public Record	Production not being sought in this Application	
26	12/01/2010	Paul Mand Lawyers	CORR	OLTR to registrar's office (Sault Ste. Marie)	Available in Public Record	Production not being sought in this Application	
27	12/01/2010	Paul Mand Lawyers	EXDC	Order- re: expiry of claim for lien	Available in Public Record	Production not being sought in this Application	