

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

REPLY FACTUM OF THE APPLICANT

1. On June 11, 2013, the Elliot Lake Commission of Inquiry (the “Commission”) served on Paul Mand materials related to an Application before Goudge J.A for a determination of Mr. Mand’s claims of privilege.
2. Mr. Mand’s responding materials, served on Commission Counsel on June 17, 2013, consist of an affidavit sworn by Mr. Mand.
3. Mr. Mand deposes that providing further information to the Commission regarding his claims of privilege would jeopardize solicitor-client privilege. However, setting out the legal basis on which documents authored by third parties fall under the umbrella of solicitor-client privilege would not breach solicitor-client privilege even if such documents were so privileged. Mr. Mand has not, at any time, provided such legal basis.

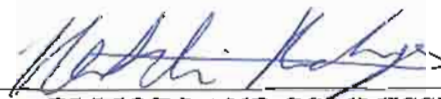
4. Further, it is submitted that Mr. Mand could have provided affidavit evidence with respect to each document without jeopardizing solicitor-client or litigation privilege, assuming such documents were so privileged. For example, it would not be a breach of litigation privilege to depose that a document with a particular date, authored by a particular individual to another individual is protected by litigation privilege because it was created for the dominant purpose of litigation and the litigation is still ongoing. In this case, we have no such evidence.

5. The Commission has, at all times, sought affidavit evidence to substantiate the legal requirements of Mr. Mand's privilege claims. Mr. Mand has failed to provide such evidence.

6. Absent evidence to support the privilege claims vis-à-vis the disputed documents, Mr. Mand's claims for privilege must fail.

7. The Commission therefore seeks a Ruling on whether the documents listed in Exhibit A, B and C of the Applicant's Factum fall within the scope of solicitor-client privilege or litigation privilege.

All of which is respectfully submitted this 21st day of June, 2013.



**ELLIOT LAKE COMMISSION
OF INQUIRY**

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