



## Letter to the Editor – Legal privilege in the corporate context in Canada

We received a Letter to the Editor following our series on legal privilege and in particular, [the comparison between US law and English law of privilege in the corporate context](<https://gard.no/insights/maintaining-confidentiality-for-communications-with-your-attorney-comparing/>). We are pleased to publish the contribution from Daniel Watt and Sara Mahaney of McInnes Cooper, Halifax and to add a third jurisdiction to our comparison.

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We read with great interest the recent Gard Insight articles discussing U.S. attorney-client privilege and England's legal advice privilege. The most recent article of February 8, 2017 commented on how, in those jurisdictions, the privilege applies differently in the corporate context.

In Canada, solicitor-client privilege in the corporate context more closely resembles U.S. law than it does English law. In Canada, as in the United States, the corporation is considered to be the client and enjoys the protection of the privilege. In contrast, in English law it appears the privilege does not extend to the entire corporate entity, but only to certain individuals within the corporation.

The [Supreme Court of Canada recently confirmed that solicitor-client privilege is a substantive protection of fundamental importance](#) in Canadian law. In Canada, the privilege applies to all communications from employees that assist legal counsel to provide legal advice to the corporate client. In certain circumstances, the privilege can even apply to communications of officers or employees of a wholly-owned subsidiary of the corporate client. Where legal counsel is an employee of the corporation, communications are privileged if they concern the employee's function as a lawyer, but not if the lawyer is performing a business or other function in the corporation ( *Mutual Life Assurance Co. of Canada v. Canada (Deputy Attorney General)* , [1988] OJ No 1090 (Ont HCJ)).

P&I Clubs and their assureds should consider that in shipping claims, whether civil or criminal, there may be a number of related corporations (technical managers, single purpose ship-owning companies, and so on). However, depending on the circumstances, a related company might not also qualify as the "client" for the purposes of solicitor-client privilege. It is therefore advisable that P&I Clubs and their members raise the issue of solicitor-client privilege with their legal counsel if the scope of the privilege is ever unclear.

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