

Protocol Between the Law Society of British Columbia and the Office of the Registrar, *Security Services Act* With Respect to Issues Relating to the Protection of Solicitor-Client Privilege in Connection with Investigations Carried Out in Accordance with the said *Act*.

DEFINITIONS

“*Act*” means the *Security Services Act* S.B.C. 2008 c. 30;

“Client” means a client who may have a claim of privilege in relation to any Documents;

“Document(s)” means documents that are identified in a Requirement and that may be impressed with solicitor-client privilege;

“law firm” means a partnership or other association of lawyers, and includes entities such as the Law Society of British Columbia, the Legal Services Society of British Columbia, the Insurance Corporation of British Columbia, the Public Prosecutions Service of Canada, and lawyers working for government departments;

“private investigator” means private investigator as defined in the *Act*;

“Registrar” means the Registrar of Security Services;

“Requirement” means a demand by the Registrar to produce documents in accordance with the provisions of the *Act*.

PROCEDURE

1. A private investigator retained or employed by a lawyer or law firm who receives a Requirement will be given a reasonable opportunity to contact his or her principal or employer prior to producing any Documents in order for the lawyer or law firm to consider whether any client of a lawyer may have a claim of privilege over any Document.
2. A lawyer or law firm who receives a Requirement, or who is notified by any private investigator retained or employed by the lawyer or law firm, will be given a reasonable opportunity to contact any Client in order to receive instructions from such Client as to whether the Client wishes to waive any claim of privilege that may exist.
3. If a client waives his or her claim of privilege, the lawyer or law firm may produce the Document in accordance with the provisions of the *Act*.
4. If a Client does not waive his or her claim of privilege, or in the event the lawyer or law firm is unable to obtain instructions from a Client, the lawyer or law firm will seal the Documents in a package, suitably marked for identification.

5. The lawyer or law firm will retain the package unless the Registrar and the lawyer or law firm otherwise agree, or the Supreme Court otherwise directs.
6. The lawyer or law firm (or, where the nature or number of the Documents require, any other independent person appointed by the Supreme Court), will inform the Registrar in writing of the nature of any Document for which privilege is claimed. Without revealing information that may be privileged, the Document must be described in a way that will enable the Registrar to assess the claim of privilege consistent with Rule 26(2.1) of the Rules of Court.
7. The Registrar may commence a proceeding in the Supreme Court for the purpose of determining the application of solicitor-client privilege to the Documents, including the manner by which any Client will be notified of the proceeding.
8. A report will be made to the Court by the Registrar on the efforts made to contact all potential Clients, who will then be given a reasonable opportunity to present arguments with respect to any claim of privilege over any of the Documents.
9. If notification of potential Clients is not possible, the Registrar may seek directions from the Court with respect to any procedure to determine whether a claim of privilege should be advanced.
10. Where it is necessary for the Court to appoint an independent person other than the lawyer to perform any of the requirements of this protocol, the reasonable fees and disbursements of such person will be paid by the Registrar.
11. The Registrar may make submissions to a Judge of the Court on the issue of privilege, but will not be permitted to inspect the sealed Documents.
12. Where the sealed Documents are determined by the Court not to be privileged, they will be released to the Registrar for his use in connection with any provisions pursuant to the *Act*.
13. Where the documents are determined by the Court to be privileged, they will be returned to the lawyer or law firm or to another person designated by the Court.