

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 94
Date: September 15, 2025
File No.: HR-DP-2910-22

Between:

Patricia Raymond

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Peters First Nation

Respondent

Ruling

Member: Catherine Fagan

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I. OVERVIEW

[1] Peters First Nation filed a motion on July 8, 2025 seeking an order to exclude the evidence of a proposed witness, Andrew Genaille, regarding information obtained as a result of his employment as a researcher for Peters First Nation between December 12, 2012 and January 1, 2014 on the grounds that the evidence is privileged by reason of solicitor-client privilege.

[2] Section 50(4) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 ["CHRA"] prohibits a Member from accepting evidence "that would be inadmissible in a court by reason of any privilege under the law of evidence", including solicitor-client privilege.

[3] The Canadian Human Rights Commission ["Commission"] filed submissions contesting the motion. The Complainant, Patricia Raymond, also contests the motion and relies on the submissions filed by the Commission.

[4] Mr. Genaille is not a lawyer. He, along with his sister, Lisa Genaille, and his brother, Robert Genaille, were hired by Peters First Nation through a Band Council Resolution on January 15, 2013, to conduct genealogical research on behalf of Peters First Nation. The researchers were tasked with assessing applications for membership submitted on October 24, 2012, by 66 individuals. Specifically, their job was to conduct research to help Peters First Nation determine whether these individuals met the eligibility criteria for membership, which included finding and examining birth records, death records, marriage/divorce records, Indian Status, and registration/enfranchisement records. According to the resolution, the researchers were authorized to share their findings with the Band Council, authorised employees, including the Band Manager and Administrator, and any authorized officers, including legal counsel, Stan H. Ashcroft.

[5] The Complainant intends to call Mr. Genaille to provide evidence on information and observations from his time as a researcher with Peters First Nation on the membership applications filed on October 24, 2012.

[6] For the reasons set out below, the motion is allowed in part. Mr. Genaille may not testify about discussions he had or participated in with legal counsel, whether written or in

person, in the context of legal counsel providing legal advice to Peters First Nation. Otherwise, solicitor–client privilege does not apply and may not be raised to exclude or limit evidence concerning the research, records, or observations Mr. Genaille made in the context of his work for Peters First Nation between December 12, 2012 and January 1, 2014.

II. LAW OF PRIVILEGE

[7] As noted by the Commission and stated by the Supreme Court of Canada on numerous occasions, all persons, including governments such as a First Nation Council, have the right to legal representation and expertise without fear that these communications will be used against them. The protection of solicitor-client communications is grounded in the fact that the relationship and communications between a solicitor and their client are vital to the effective functioning of the legal system (*R. v. Gruenke*, 1991 CanLII 40 (SCC), [1991] 3 S.C.R. 263, at p. 289).

[8] However, the administration of justice also requires that the zealous protection of solicitor-client communications only be applied to communications that can properly be considered solicitor-client. Inappropriately expanding solicitor-client privilege would unfairly prevent relevant and probative evidence from going before courts and tribunals. In *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 S.C.R. 821, the Supreme Court of Canada articulated three criteria for solicitor–client privilege to apply:

- (i) the communication must be between solicitor and client;
- (ii) it must entail the seeking or giving of legal advice; and
- (iii) the parties must intend it to remain confidential.

[9] As set out in *General Accident Assurance Co. v. Chrusz*, 1999 CanLII 7320 (ON CA) [*Chrusz*], solicitor-client privilege may be extended to third-party communications in one of the following four situations:

- a. The third party is serving as a channel between solicitor and client;

- b. The third party is employing expertise in assembling information provided by the client and explaining that information to the solicitor;
- c. The third party is authorized by the client to direct the solicitor on behalf of the client;
- d. The third party is authorized by the client to seek legal advice from the solicitor on behalf of the client.

A central issue in this motion is whether Mr. Genaille's third-party communications are properly covered by one of these allowable expansions of solicitor-client privilege.

[10] Another central issue in this motion is whether there was a waiver of the solicitor-client privilege. Only the client (holder of the privilege) can waive solicitor-client privilege, either expressly (by deliberate, informed disclosure or consent) or implicitly (through the client's conduct). This motion raises the issue of implied waiver. Implied waiver may be found if a client's actions are inconsistent with the privilege, such as voluntarily disclosing part of a legal advice. The intention to disclose the information must be clear and a waiver can be complete or partial (*Vidcom Communications Ltd. v Rattan*, 2022 BCSC 522 (CanLII) at paras 41-43).

[11] As set out below, I am not persuaded that any of the above criteria for establishing privilege are satisfied in relation to many of Mr. Genaille's communications at issue in this motion. However, solicitor-client privilege *would* apply to certain communications at issue. Therefore, at the outset, I identify the communications that are covered by solicitor-client privilege and therefore cannot be included in Mr. Genaille's evidence.

III. COMMUNICATIONS COVERED BY SOLICITOR-CLIENT PRIVILEGE

[12] Mr. Genaille previously testified before this Tribunal in *Lock et al. v. Peters First Nation*, 2023 CHRT 55 (CanLII) [*Lock*] also regarding his role as a researcher during the same period. During the hearing, Peters First Nation objected to Mr. Genaille testifying about the assessment of applications at meetings where counsel was present. In response, the Tribunal made an oral ruling that Mr. Genaille could not testify about meetings where

counsel was present. Peters First Nation never suggested that meetings that did not involve counsel were similarly protected by solicitor-client privilege and the ruling further clarified that he could testify about these. The Tribunal finds that solicitor-client privilege would similarly apply in the current matter, although it would be expanded to include written communications as well.

[13] As stated in the affidavits filed for this motion by Mr. Genaille, Councillor Victoria Peters, and Chief Norma Webb, Mr. Genaille attended many meetings and was part of written communications that involved Peters First Nation's legal counsel. Many or most of those communications involved the provision of legal advice from legal counsel and related discussions, such as interpreting documents and advising on the success or failure of applications. These discussions are properly protected by solicitor-client privilege, and, as such, Mr. Genaille may not testify on these discussions.

IV. COMMUNICATIONS NOT COVERED BY SOLICITOR-CLIENT PRIVILEGE

[14] For reasons set out below, with the important exception of communications with legal counsel in the context of legal counsel providing legal advice, the criteria for solicitor-client privilege are not met for Mr. Genaille's proposed evidence. Specifically, I find that solicitor-client privilege does not extend to Mr. Genaille's evidence relating to the research, records, or observations he made during the 2012–2013 mass application process. This includes any testimony about Mr. Genaille's independent findings, facts he is aware of, and his discussions with Chief and Council outside the presence of lawyers.

A. Are the communications between solicitor and client?

[15] Mr. Genaille is not a lawyer. Clearly, his communications with Peters First Nation are not, strictly speaking, between solicitor and client. The issue here is whether the solicitor-client privilege covering communications between Peters First Nation and its lawyers at the relevant time extends to Mr. Genaille through one of the four accepted expansions of privilege to third parties as set out in caselaw referenced above. Below, I review whether any of those expansions of solicitor-client privilege applies to the present case.

(i) Does solicitor-client privilege expand to 3rd party communications in this case?

(a) Serving as a channel between solicitor and client

[16] Peters First Nation argues that Mr. Genaille acted as an intermediary or line of communication between it and its legal counsel, similar to a translator or a messenger. Peters First Nation referenced Justice Doherty's dissent in *Chrusz*, although all the judges agree with his analysis of solicitor-client privilege. He assesses that solicitor-client privilege may be extended:

[...] to communications by or to a third party who serves as a line of communication between the client and solicitor. Thus, where a third party serves as a messenger, translator or amanuensis, communications to or from the party by the client or solicitor will be protected. In these cases the third party simply carries information from the client to the lawyer or the lawyer to the client.

[17] Mr. Genaille was hired directly by Peters First Nation, as set out in the band council resolution. Although he was authorized to share his findings with legal counsel and did so on many occasions, he also reported directly to the Chief and Council. Similarly, the evidence indicates that legal counsel reported their advice directly to their client. Therefore, Mr. Genaille was not merely a translator of information between Peters First Nation and its lawyer.

[18] Mr. Genaille's stated in his affidavit:

While I reported my factual findings from the internal archives of the Band office to the legal team, I regularly reported them to Victoria Peters. It was then up to the Chief and Council to request legal advice at the meetings during which I was present at times. I prepared the factual information while the lawyers reviewed the information with Chief and Council and advised them directly concerning prospective members.

[19] Victoria Peters stated in her affidavit that Council decided to hire the researchers to report directly to legal counsel. However, this is not what is reflected in the hiring resolution, and it is contrary to the reality that Mr. Genaille did, in fact, meet directly with the Peters First Nation Council and staff (with and without legal counsel). This was acknowledged later in Victoria Peter's affidavit: "Each of the Genailles referred to herein had authority to enter into

any Band records they could find which recorded the personal information of the past Band members and to report to the lawyers and the Band Council the findings.”

[20] Given the above, I find that Mr. Genaille did not act as a liaison and simple channel of information between Peters First Nation and Mr. Ashcroft. Mr. Genaille reported his findings both to legal counsel and to Peters First Nation. As such, it would be inaccurate to classify Mr. Genaille as a simple carrier of information between Peters First Nation and legal counsel. As such, the research completed by Mr. Genaille and the communications he had with Peters First Nation outside the presence of legal counsel and his related observations cannot properly be considered communications between a solicitor and their client.

(b) Employing expertise in assembling information provided by the client and explaining that information to the solicitor

[21] Peters First Nation also argues that Mr. Genaille acted as an agent of Peters First Nation. He obtained information from Peters First Nation and transmitted it to the lawyer on behalf of the First Nation for the purpose of preparing legal advice.

[22] In *Chrusz*, Justice Doherty explained when solicitor-client privilege can be expanded in such scenarios:

The privilege also extends to communications and circumstances where the third party employs an expertise in assembling information provided by the client and in explaining that information to the solicitor. In doing so, the third party makes the information relevant to the legal issues on which the solicitor's advice is sought.

[23] *Chrusz* made a distinction between a third party using specialised knowledge to communicate information already in the client's possession to counsel and an individual gathering information from extraneous sources, which is, at least partially, relevant here:

I would not describe Mr. Bourret [a claims adjustor] as a channel of communication between General Accident and Mr. Eryou [a lawyer]. Nor would I characterize him as translating or interpreting information provided by General Accident. Mr. Bourret was not passing information from General Accident on to Mr. Eryou, but rather was gathering information from sources extraneous to General Accident and passing that information on to General Accident and/or Mr. Eryou. Similarly, Mr. Bourret was not a channel of

communication from General Accident to Mr. Eryou, but rather was a channel of communication from the outside world to Mr. Eryou. His position was very different from that of the financial advisers/accountants referred to in *Susan Hosiery Ltd.* It was much closer to the position of the surveyors in *Wheeler*. Like the surveyors, he was retained to gather information from sources extraneous to the client and pass that information on to the solicitor so the solicitor could give legal advice to the client.

[24] In the facts of the current case, Mr. Genaille's investigative role was similar to that of Mr. Bourret in *Chrusz*. Mr. Bourret's activities of gathering information from extraneous sources did not fall within the scope of solicitor-client privilege in *Chrusz*. Similarly, according to the affidavits filed, the research completed by Mr. Genaille, his brother and his sister was based on gathering information from both internal and external sources, compiling the results and sharing them. While the internal sources were a crucial part of Mr. Genaille's analysis, so were the external sources. There's no suggestion that his work could have been completed without reliance on the external sources. As such, this is much more similar to the facts in *Chrusz* or *Wheeler* where the engagement with "the outside world" was essential to Mr. Genaille's role. Once the results were compiled, they were shared with Chief and Council, Peters First Nation staff and legal counsel.

[25] As stated in *British Columbia Securities Commission v Branch*, 1995 CanLII 142 (SCC), [1995] 2 SCR 3 at para 43, "solicitor-client privilege cannot be claimed for all documents that have passed between solicitor and client for the purpose of obtaining legal advice unless the documents were brought into existence for this purpose." As per the hiring resolution, Mr. Genaille was hired to carry out research. The results of the research, including related documents, were primarily to assist Peters First Nation and its Membership Committee in rendering membership decisions. Even if the research results were used by Mr. Ashcroft in preparing his legal advice, I find that the work was not done primarily for legal counsel.

[26] In *Chrusz*, Justice Doherty noted "communications to or by a third party are not protected by client-solicitor privilege merely because they assist the solicitor in formulating legal advice for a client". In *Chrusz*, the Court referenced other caselaw to demonstrate when solicitor-client privilege would and would not extend to third party communications. For example, the Court references *Wheeler v. Le Marchant* (1881), 17 Ch. D. 675 at p. 682,

50 L.J. Ch. 793, which involved a client who hired a solicitor for advice on property and the solicitor hired a surveyor to gather information. During a later legal claim, the client argued that the surveyor's information was protected by privilege. Justice Doherty emphasized that only representatives employed to obtain legal advice are protected, not anyone employed for other purposes. *Chrusz*, also referenced *Susan Hosiery Ltd. v. M.N.R.*, 1969 CanLII 1540 (CA EXC), [1969] 2 Ex. C.R. 27. In that case, at the request of the client, their financial advisors communicated with the lawyer to convey information concerning the business affairs of the client. *Chrusz* noted in its interpretation of this case that “[i]n a very real sense, the accountants served as translators, assembling the necessary information from the client and putting the client's affairs in terms which could be understood by the lawyer. In addition, they served as a conduit of advice from the lawyer to the client and as a conduit of instructions from the client to the lawyer.”

[27] As discussed, the context for the information that was collected and shared by Mr. Genaille and legal counsel was quite different then the situation in *Susan Hosiery*. This is supported by Victoria Peters’ second affidavit, where she writes “I agree that [...] Andrew were hired by the Peters Band Nation [...]. This was to assist Fran Genaille, myself and the other members of Chief and Council in determining membership applicants [...]”. This supports the position that although Mr. Genaille worked with legal counsel and his research was of assistance to legal counsel, he was not a “conduit” of information or a mere translator of information from the client to legal counsel, but also provided his own advice and findings directly to Peters First Nation.

(c) Authorized by client to direct solicitor on behalf of client

[28] Peters First Nation is not arguing that Mr. Genaille was authorized to direct its legal counsel on Peters First Nation’s behalf, so I will not analyze this further.

(d) Authorized by client to seek legal advice from the solicitor on behalf of client

[29] Based on the affidavits, there is no clear evidence to suggest that Mr. Genaille was authorized by Peters First Nation to seek and receive legal advice directly from legal counsel

and to report it back to Peters First Nation on behalf of legal counsel. Mr. Ashcroft had a direct relationship with the Chief and Counsel and reported advice directly to them. As such, there is no need to examine this scenario further. Furthermore, there is no suggestion that Mr. Genaille relied on legal advice in determining how to approach his research.

[30] As a final note on extending privilege to third party communications, I reference the case of *SNC-Lavalin Engineers & Constructors Inc. v. Citadel General Assurance Co.*, 2003 CanLII 64289 (ON SC) ("*SNC-Lavalin*"), highlighted by Peters First Nation. In this case, the Ontario Superior Court determined that parts of an insurance adjuster's reports to the client, which referenced opinions from the solicitor's reports, were privileged and required redaction. The decision on this motion aligns with *SNC-Lavalin*, indicating that any of Mr. Genaille's communications involving legal counsel in the context of legal advice are protected by solicitor-client privilege. Similar to *SNC-Lavalin*, other third-party communications are generally not protected by privilege.

B. Are the communications either the seeking or giving of legal advice?

[31] Mr. Genaille is not a lawyer and did not provide legal advice, even if he was at times present when legal advice was given by legal counsel. He had no decision-making role in the determination of whether an applicant qualified for membership. Such a decision was solely in the hands of Chief and Council in their capacity as members of the Membership Committee. In this role, Chief and Council requested advice from their lawyers directly. In his role as researcher, Mr. Genaille at times voiced his own views on whether an individual should be a member based on his factual findings relating to eligibility criteria under the Membership Code. This, however, does not constitute legal advice.

[32] In his affidavit, Mr. Genaille explained the process he and his siblings undertook to assess each membership application, including reviewing the affiliate list, reviewing archives held by Peters First Nation as well as archives in Chilliwack and Boston Bar and other research. He would compare the results of this research to see if, factually, any of the four criteria for membership were met. This type of work done by Mr. Genaille is not the giving of legal advice, even if the facts uncovered by Mr. Genaille would have been used by legal

counsel in the formulation of their legal advice. In contrast, any legal advice provided by Mr. Ashcroft is covered by solicitor-client privilege, including when Mr. Genaille was involved in such communications.

C. Did the Parties intend the communications to remain confidential?

[33] Peters First Nation maintains that it intended all of Mr. Genaille's communications to remain confidential. It states that significant personal information was collected and assessed in the context of Mr. Genaille's research, which is considered confidential under the *Privacy Act*, RSC, 1985, c. P-21, and that it did its best not to make personal information about members or applicants public.

[34] The Commission argues the opposite. It maintains that the subject matter of much of Mr. Genaille's research is public and thus, by its nature, not confidential and cannot be privileged. For example, it states that information obtained from public archives or cemeteries would be public information. The Commission also argues that other information, such as membership records, Band lists, and financial records, are accessible by members or the public by request. In his affidavit, Mr. Genaille stated that Indigenous Services Canada's policies and training courses taken by Peters First Nation staff include information on the accessible nature of this information.

[35] The Commission also argues that the actions of Peters First Nation demonstrate that there was no intention to keep the information confidential. Firstly, they state that Victoria Peters discussed the information publicly on multiple occasions. More specifically, Mr. Genaille stated in his affidavit that Victoria Peters freely discussed membership findings with family members, including her nephew and that these discussions occurred at public locations, such as the Bingo hall and a local restaurant. Victoria Peters, in her second affidavit, contests that personal details were discussed at these events. She states that only general discussions on the processing of the applications were held in these public locations.

[36] The Commission also points to the fact that during the *Lock* hearing, where Peters First Nation was also the respondent, Peters First Nation did not object to Mr. Genaille's

evidence on his same period as a researcher, except in relation to meetings where legal counsel was present. The objection was made by their lawyer, Mr. Ashcroft, in the presence of a representative of Peters First Nation. Mr. Genaille's evidence was then heard, including through cross-examination by Mr. Ashcroft, and that testimony is now part of the public record. By allowing Mr. Genaille's communications during the same period of research to become part of the public record, not objecting to communications not involving legal counsel and by cross-examining on the same subject in a public hearing, I find that Peters First Nation demonstrated a lack of intention to keep the information confidential.

[37] As stated in *Solosky*, communications between solicitor and client would only be considered privileged if there was an intention to maintain confidentiality of the information. In this case, it seems that Peters First Nation intended to keep some of the personal identifying information confidential, such as personal identifying information included in applications as well as any communications involving legal counsel. Otherwise, I find that Peters First Nation did not intend to treat and keep the remainder of Mr. Genaille's communications and findings during his period as a researcher confidential. As well, any information that is publicly available could not, in any event, be privileged information.

V. WAIVER OF PRIVILEGE

[38] The Commission and Ms. Raymond argue that if Mr. Genaille's communications not involving legal counsel are in fact covered by solicitor-client privilege, Peters First Nation clearly waived that privilege when they did not object to the majority of Mr. Genaille's testimony before this Tribunal in *Lock*, on the same subject matter now being claimed is covered by solicitor-client privilege, as discussed above.

[39] Peters First Nation contends that there was no waiver and, if there was any waiver, it was improperly done by legal counsel without its consent. It argues that it did not know the communications were privileged and did not intend to waive the privilege or consent to Mr. Ashcroft waiving any privilege.

[40] The Commission argues that Peters First Nation advances this claim without an evidentiary foundation. There is no indication that Peters First Nation contested the waiver

in any way before this motion, or made any complaint against Mr. Ashcroft to the relevant law society.

[41] Nonetheless, given my finding in this Ruling that Mr. Genaille's communications not involving legal counsel and his findings during his period as a researcher are not covered by solicitor-client privilege, there is no need to determine whether there was a waiver of such privilege.

VI. CONCLUSION

[42] The motion is hereby granted in part. Mr. Genaille may not testify about discussions he participated in with Peters First Nation's legal counsel, whether written or in person, in the context of legal counsel providing legal advice to Peters First Nation.

[43] Beyond that, I agree with the Commission that the proposed application of solicitor-client privilege to much of the proposed evidence does not apply.

[44] As such, Peters First Nation may not invoke solicitor-client privilege to exclude or limit evidence concerning the research, records, or observations Mr. Genaille made during the 2012–2013 mass application process, apart from the exception above regarding communications with legal counsel. For clarity, this includes the ability for Mr. Genaille to discuss his independent findings and his discussions with Chief and Council outside the presence of lawyers.

Signed by

Catherine Fagan
Tribunal Member

Ottawa, Ontario
September 15, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-2910-22

Style of Cause: Patricia Raymond v. Peters First Nation

Ruling of the Tribunal Dated: September 15, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Patricia Raymond, Self-represented Complainant

Caroline Carrasco, for the Canadian Human Rights Commission

B. Rory B. Morahan, for the Respondent