

Ontario Superior Court confirms what communications are protected by spousal privilege

November 03, 2025

In *Wendy Sokoloff Professional Corp. v Chorney*, the Superior Court of Justice for Ontario found that section 11 of the Ontario Evidence Act does not allow spouses to refuse to disclose their communications to their spouse, only the communications made to them by their spouse.

Facts

The plaintiff, the law firm of Sokoloff Lawyers, brought this action claiming breach of contract, breach of fiduciary duty, and the duty of good faith. The plaintiffs alleged that the defendants took steps to take over their Brampton office in 2021. The defendants to the action were the office manager and lead lawyer, who also happened to be married to each other. At examinations for discovery, they each refused specific questions based on spousal privilege.

The plaintiffs brought a motion to produce further and better Affidavits of Documents from the defendants, along with an order that both defendants attend further examinations for discovery.

Decision

The sole issue on this motion was whether the defendants were able to assert spousal privilege over their communications, and if so, the scope of that privilege.

Pursuant to the Ontario Evidence Act, parties to an action are considered competent and compellable to give evidence on behalf of themselves or any of the parties. One of the exceptions is contained under section 11, which provides that a person is not compellable to disclose any communication made to the person by his or her spouse during the marriage (similar to subsection 4(3) of the Canada Evidence Act).

The Court found that the statute does not confer a privilege over communications made by a person to their spouse, as the wording of the statute was not that broad. While a

spouse can decline to disclose communications made from their spouse to them, section 11 does not allow them to refuse to disclose their communications to their spouse.

The defendants argued that the Court's interpretation created an outcome that was contrary to the underlying policy rationale protecting conversations between spouses. The Court disagreed, holding that the legislature's intention was to create a limited spousal privilege, and the defendants interpretation ignored the clear language of section 11, to create a different and expanded privilege.

In this case, because both spouses were parties to the litigation, the consequence was that the plaintiffs could, through discovery, obtain the entire relevant conversation between the defendants, which included text messages exchanged.

Key takeaways

- Spousal privilege does not allow spouses to refuse to disclose their communications to their spouse, the privilege is given to the recipient of the communications and protects only the communications made to them by their spouse.
- This decision would be equally applicable to spousal privilege under subsection 4(3) of the Canada Evidence Act.
- **The outcome of this decision could be relevant in actions where a plaintiff's spouse is included as a Family Law claimant.**

By

[Alyson Sutton, Jonathan Thoburn](#)

Expertise

[Disputes](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices**Calgary**

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.