

Federal Court



Cour fédérale

**Date: 20110616**

**Docket: T-536-11**

**Citation: 2011 FC 713**

**Ottawa, Ontario, June 16, 2011**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**THE MINISTER OF NATIONAL REVENUE**

**Applicant**

**and**

**MOODYS LLP**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] On March 31, 2011, the Minister of National Revenue commenced three separate but related applications for Compliance Orders under s. 231.7(1) of the *Income Tax Act*, RSC 1985, c 1 (5<sup>th</sup> Supp) regarding Requests for Information issued by the Minister pursuant to s. 231.1(1) of the Act. The Requests for Information, and the subsequent applications, were directed to Moodys LLP (Court File T-536-11), Dennis L. Nerland (Court File T-537-11), and Dennis L. Nerland (Court File T-538-11).

[2] These Reasons relate to all three applications. Separate, but identical, Reasons for Order and Order will issue with respect to each file.

[3] The applications in these three Court files involve Requests for Information regarding the Holmes Family Trust and the Sheila Holmes Spousal Trust. Dennis L. Nerland is the Trustee of both Trusts. He is also a barrister and solicitor licensed to practise law in the Province of Alberta. He is a partner of the firm Shea Nerland Calnan LLP (“SNC”).

[4] The applications first came before Justice Mosley of this Court at Calgary, Alberta, on April 11, 2011. A barrister and solicitor with SNC appeared for the respondents in each of the three applications. Orders on consent issued directing the respondents to release any non-privileged documents to the Canada Revenue Agency (CRA) and to provide copies of those documents with respect to which privilege was claimed to the Court in a sealed container.

[5] By subsequent Order dated April 13, 2011, the respondents were ordered to file no later than May 6, 2011, any *ex parte* written representations that they wished the Court to consider in determining the claims of solicitor-client privilege. A hearing was scheduled for May 18, 2011, in Calgary, Alberta, for the purpose of determining whether any of the sealed documents requested by the Minister were not subject to solicitor-client privilege and could be released to the Minister.

[6] When the applications came back before the Court on May 18, 2011, the respondents were represented by Mr. James Shea of SNC. Prior to the hearing a sealed envelope had been filed in

each of the three applications by the respondents. The content of each was identical. Solicitor-client privilege was claimed over each document. No *ex parte* representations were filed by any respondent.

[7] Mr. Shea, on behalf of all three respondents, informed the Court that he had just learned that there were additional documents in the possession of the respondents that ought to have been disclosed pursuant to the Order of Justice Mosley and that some of them might be privileged.

[8] Following a discussion as to how to proceed, on May 18, 2011, I issued an Order, on consent, in each of the three Court files that reads as follows:

**THIS COURT ON THE CONSENT OF THE PARTIES  
ORDERS that:**

1. The Respondent shall produce and provide to this Court, in a sealed container, any additional documents over which it claims solicitor-client privilege no later than Friday, May 27, 2011;
2. The Respondent shall serve and file an affidavit or affidavits setting out the basis of the claims for solicitor-client privilege with respect to documents that are to be identified as relating to each of the Sheila Holmes Spousal Trust and the Holmes Family Trust and, at a minimum, the identity and position of the persons who authored, received, or were copied on document(s) over which solicitor-client privilege is claimed, including whether the person is authorized to practice law in a Province of Canada;
3. The Applicant shall have the right to cross-examine any affiant, which cross-examination shall take place no later than Friday, June 3, 2011;
4. Any remaining dispute between the parties as to whether a document is subject to solicitor-client privilege shall be dealt with as a motion in writing pursuant to Rule 369 of the *Federal Court Rules* and shall be determined by myself in accordance with the following procedure;

5. The Respondent shall serve and file a written memorandum of argument with respect to any disputed documents over which solicitor client privilege continues to be claimed, no later than Wednesday, June 8, 2011, and the Applicant shall serve and file a responding memorandum of argument no later than Friday, June 10, 2011;
6. I shall remain seized of this matter and shall issue a decision in writing to the parties on the outstanding claims of solicitor-client privilege no later than Friday, June 17, 2011;
7. Should any issue arise between the parties that requires clarification or resolution, they shall send a brief joint written submission to me; and
8. I reserve the right to amend the timelines provided for herein with the consent of the parties.

[9] Notwithstanding the Court's Order, nothing further has been filed by the respondent Moodys LLP in Court File T-536-11 nor has SNC informed the Court that they no longer represent that respondent.

[10] Identical information was filed in each of Court Files T-537-11 and T-538-11; namely an affidavit of Fola Olaniyan, an associate of SNC, and written submissions. Ms. Olaniyan attests in Court File T-537-11 that SNC is legal counsel for Dennis L. Nerland, as trustee for the Sheila Holmes Spousal Trust, and she attests in Court File T-538-11 that SNC is legal counsel for Dennis L. Nerland, as trustee for the Holmes Family Trust. Ms. Olaniyan was examined on those affidavits by written interrogatories.

[11] In Court File T-537-11, the Sheila Holmes Spousal Trust claims solicitor-client privilege with respect to 23 documents, a list of which is attached as Annex A to these Reasons. In Court File

T-538-11, the Holmes Family Trust claims solicitor-client privilege with respect to 52 documents, a list of which is attached as Annex B to these Reasons.

[12] “Solicitor-client privilege” is defined in s. 232 of the *Income Tax Act*, as follows:

<p>“solicitor-client privilege” means the right, if any, that a person has in a superior court in the province where the matter arises to refuse to disclose an oral or documentary communication on the ground that the communication is one passing between the person and the person’s lawyer in professional confidence, except that for the purposes of this section an accounting record of a lawyer, including any supporting voucher or cheque, shall be deemed not to be such a communication.</p>	<p>« privilège des communications entre client et avocat » Droit qu’une personne peut posséder, devant une cour supérieure de la province où la question a pris naissance, de refuser de divulguer une communication orale ou documentaire pour le motif que celle-ci est une communication entre elle et son avocat en confiance professionnelle sauf que, pour l’application du présent article, un relevé comptable d’un avocat, y compris toute pièces justificative out tout chèque, ne peut être considéré comme une communication de cette nature.</p>
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[13] The jurisprudence on solicitor-client privilege and its basic tenets were recently canvassed by Justice Mandamin in *Taxpro Professional Corp v Canada (Minister of National Revenue)*, 2011 FC 224. From that and other decisions, the following basic principles are gleaned:

- a. The burden of proof rests on the party asserting privilege: *General Accident Assurance Co v Chrusz* (1999), 45 OR (3d) 321 (CA), at para. 95 and *Camp Development Corp v South Coast Greater Vancouver*, 2011 BCSC 88, at para. 10.
- b. One must distinguish between the concepts of confidentiality and privilege. “It is not every item of correspondence passing between a solicitor and client to which privilege attaches, for only those in which the client seeks the advice of counsel in

his professional capacity, or in which counsel gives advice, are protected: *Canada v Solosky*, [1980] 1 SCR 821.

- c. Communications between the client and employees of the law firm (articling students, law clerks and secretaries) are also privileged if the communication is made “for the purpose of facilitating the obtaining of legal advice”: A.W. Bryant, S.N. Lederman and M.K. Fuerst, *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, 3d ed. (Markham: LexisNexis, 2009), at 14.101, cited in *Copthorne Holdings Ltd v Canada*, 2005 TCC 491.
- d. Communications between agents of the client to the solicitor are also protected if they are for the purpose of seeking legal advice: *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, at para 14.101, cited in *Copthorne Holdings*, *supra*.
- e. The privilege attaches to communications made for the purpose of enabling the client to seek and obtain the necessary information or advice in relation to his “conduct, decisions or representation in the courts” it does not extend to the facts contained therein or the documents from which those facts are drawn: *Belgravia Investments Ltd v Canada*, 2002 FCT 649.

[14] When privilege is claimed in circumstances such as those before the Court it would be appropriate, and expected, that the party asserting the privilege would set out the basis of the claim with respect to each document. In the applications before the Court the respondents have filed an affidavit that sets out what can only be described as a most general description of the basis of the privilege, as follows:

15. That in relation to those documents for which solicitor-client privilege is sought, that I am advised arise out of instructions given

by clients to consider and advise on a structure that could implement a plan that allow *[sic]* a Canadian resident to best plan for the results of a then prospective plan to agree to the sale of a private corporation.

16. I am further advised that in regard to that plan, the clients instructed creation of trusts in the Province of Alberta.

17. I am further advised that the Trustee of the Alberta Trusts who is a member of our firm, required advice from the firm and received same.

18. I am still further advised that firm members some times as his agent, implemented his decisions which were based on the advice he had received from members of the firm.

19. I also can advise that the firm members communicated with the instructed agents in regard to the affairs of the Trust, including banking, tax filings, distributions and ultimately the wind up of the subject estate, which as the non-privileged documents attest occurred in the 2009 taxation year.

20. The individuals who authored the Privileged Documents are lawyers, employees of law firms or consultants that I am informed and verily believe were engaged by these counsel or the settlor, namely, Shea Nerland Calnan LLP, Global Tax Professional Corporation, TaggartGalt, Bayshore Group of Companies, (including Bayshore Wealth Management) and Harris and Harris LLP.

21. The recipients of the Privileged Documents are lawyers or employees of law firms or consultants that I am informed and verily believe were engaged by these counsel or the settlor, namely, Shea Nerland Calnan LLP, Global Tax Law Professional Corporation, TaggartGalt, Bayshore Group of Companies, (including Bayshore Wealth Management) and Harris and Harris LLP.

22. Furthermore, some of the Privileged Documents are to and from the settler, trustee, beneficiaries and professional advisors of the Trust.

23. The persons identified as lawyers are in paragraphs 14, 20, 21 and 22 are authorized to practice law in the Provinces of Alberta or Ontario, Canada.

[15] Exhibit F to that affidavit sets out the names of the persons on the correspondence over which solicitor-client privilege is claimed. The only solicitor who is a member of the SNC firm is Dennis L. Nerland. He is also the client of SNC in his roles as Trustee of the Sheila Holmes Spousal Trust and Trustee of the Holmes Family Trust. No evidence or submissions have been provided as to when he was acting as a solicitor, if ever, and when he was acting as Trustee.

[16] As to the others named in the correspondence, the respondent fails to identify in what role and for whom the following were acting: Paul Lebreux, Mark L. Swartz, and Lisa Ballie. With respect to Michael (“Mike”) Perris, Bill Evans, Faizal Valli, Kim Moody, Sandy Kleeman, and Andrew Hawryluk, it is attested that they acted as “agents of the client and legal professionals.” There is nothing provided as to why they were communicating and whether it was for the purpose of enabling their client to obtain legal advice.

[17] The respondents were asked to provide the name of the individual or entity that retained Global Tax Law Professional Corporation, TaggartGalt, Bayshore Group of Companies, Harris + Harris LLP, and Moodys LLP. The response given was that SNC “engaged, or were engaged by, and, or retained Global Tax Law Professional Corporation, Bayshore Group of Companies and Moodys LLP.” No information was given respecting TaggartGalt or Harris + Harris LLP. I agree with the characterization given by the Minister to this response: “The evidence of the Respondent is unclear at best, and confusing at worst, regarding communications for the purpose of legal advice as between the Respondent, the settlor, the beneficiaries or any agents of those individuals.” I cannot conclude from the affidavit filed in support of the claims of privilege or from the above response that any of the individuals employed with the above-noted entities, including those who may be



lawyers, were acting as agent for the client for the purpose of seeking legal advice or were communicating for the purpose of enabling the client to seek and obtain legal advice.

[18] In short, the respondents in these matters have provided the Court with very little on which to determine whether the claims of privilege are warranted. Keeping in mind that the burden of establishing the privilege rests on the party claiming it, I find that most of the documents are not protected by solicitor-client privilege. The documents may be grouped for the purposes of determining whether privilege attaches.

[19] The first group of documents constitutes communications to and from Jadranka Sahacic of SNC or her assistant. She is not a lawyer licensed to practise law in Canada. It is clear from the documents that it was she who received instructions to draft the Trust documents from the settlor of the Trust or his agent and that she did so personally. There is no evidence that any solicitor of SNC was involved or that any legal advice was requested or given with respect to the documentation. Absent such evidence by way of affidavit or from the content of the document itself, the respondent has failed to meet the burden of establishing that the communications to or from Jadranka Sahacic were made for the purpose of facilitating the obtaining of legal advice. These documents are not privileged.

[20] They are the following as listed on Annex A:

2. Privileged E-mails to/from SNC and Bayshore dated March 8, 9, and 12, 2007.
3. E-mail from Bayshore to SNC dated March 6, 2007.
4. Privileged E-mails to/from SNC and Bayshore dated March 15, 2007.

[21] They are the following as listed on Annex B:

3. Privileged E-mails to/from SNC and GTLPC dated March 31, 2006 and April 2, 2006.
4. Privileged E-mails from SNC and GTLPC dated May 31, 2006.
5. Privileged E-mails to/from SNC and GTLPC dated June 2, 2006.
6. Privileged E-mail from SNC to Gypsum Technologies Inc. (“Gypsum”) dated June 2, 2006.
9. Privileged E-mail from SNC and GTLPC dated September 6, 2006.
10. Privileged E-mails to/from SNC and GTLPC dated September 6, 2006; Internal SNC E-mails dated September 6 and 7, 2006.
11. Privileged E-mails to/from SNC and GTLPC dated September 6 and 7, 2006.
12. Privileged E-mails to/from SNC and Bayshore Group of Companies/ Wealth Management (“Bayshore”) dated March 8, 9, and 12, 2007.
13. Privileged E-mails to/from Les Holmes, Bayshore, SNC and RSM Richter (Calgary) LLP (“RSM Richter”) dated March 9, 2007.
14. Privileged E-mails to/from SNC, Les Holmes and Bayshore dated March 9, 2007.
20. E-mails to/from Les Holmes, GTLPC and SNC dated May 15, and June 4, 2007.
24. Privileged E-mails to and from Les Holmes, SNC and GTLPC dated October 29, and December 11, 2007.

[22] The second group of documents constitutes communications to or from Dennis L. Nerland or his staff where he is explicitly identified as trustee and not as a solicitor. They are not subject to the claimed privilege.

[23] They are the following as listed on Annex A:

9. Privileged E-mail from SNC to Sheila Holmes dated June 19, 2008.
10. Privileged E-mail from SNC to Sheila Holmes dated June 23, 2008.
13. Privileged E-mail from SNC to Sheila Holmes dated September 30, 2008.
15. Privileged E-mail from SNC to Sheila Holmes dated January 16, 2009.
19. Privileged E-mail from SNC to Sheila Holmes dated April 24, 2009.

[24] They are the following as listed on Annex B:

32. Privileged E-mails to and from SNC and Les Holmes dated April 27 and 28, 2008.

[25] The third group of documents constitutes communications transmitting documents or information relating to the Trust, such as the Deed of Settlement, financial spreadsheets, details of bank accounts, tax returns, and memoranda from accountants. There is no evidence that Dennis L. Nerland or anyone else was involved in a legal capacity in creating, analyzing or advising on these documents. They are not subject to the claimed privilege.

[26] They are the following as listed on Annex A:

6. Privileged E-mails to/from SNC and Taggart Galt dated November 9, 12, and 13, 2007.
17. Privileged E-mails to/from SNC, Les Holmes and Moodys dated March 19 and 25, 2009.
21. Privileged E-mails to/from SNC and Les Holmes dated December 16, 2009.
22. Privileged E-mail from Moodys to SNC dated December 18, 2009.

[27] They are the following as listed on Annex B:

19. E-mails to/from Les Holmes and SNC dated May 15, 2007 and May 16, 2007.
38. Privileged E-mail from SNC to Les Holmes dated October 29, and 30, 2008.
39. Privileged SNC E-mails dated November 7, 2008; E-mail from Royal Bank of Canada (“RBC”) to SNC dated November 7, 2008.

[28] The fourth group of documents constitutes correspondence between Dennis L. Nerland and his staff and Moodys LLP stemming from communications with the CRA. The content of the communications is factual in nature and does not contain or seek any legal advice. The communications are consistent with Dennis L. Nerland acting as trustee and not as a solicitor. They are not subject to the claimed privilege.

[29] They are the following as listed on Annex A:

11. Privileged E-mails to/from SNC and Moodys dated July 30 and 31, 2008.
12. Privileged E-mails to/from SNC and Moodys dated July 30 and 31, 2008.
14. Privileged E-mails to/from SNC and Moodys dated November 4, 24 and December 10 and 11, 2008.

[30] No documents falling into this group are listed on Annex B.

[31] The fifth group of documents relate to discussions, instructions given, and information provided as to the administration of the Trust. The involvement of Dennis L. Nerland is consistent with his role as trustee and frequently relates to financial advice, transactions and investment

decisions. There is no evidence that any legal advice was requested or given with respect to the documentation.

[32] They are the following as listed on Annex A:

7. Privileged E-mails to/from SNC, Les Holmes and Moodys LLP Tax Advisors (“Moodys”) dated April 8, 2008.
8. Privileged E-mails to/from SNC, Les Holmes and Moodys dated April 8, 9, and 10, 2008.
16. Privileged E-mails to/from SNC and Moodys dated February 19, 2009.
18. Privileged E-mails to/from SNC, Les Holmes and Moodys dated March 27, 2009.
20. Privileged E-mails to/from SNC and Les Holmes dated December 15 and 16, 2009.
23. Privileged E-mail from SNC to Sheila Holmes dated December 23, 2009.

[33] They are the following as listed on Annex B:

1. Privileged E-mail from Global Tax Law Professional Corporation (“GTLPC”) to Shea Nerland Calnan LLP (“SNC”) dated March 25, 2006.
2. Privileged E-mails to/from SNC and GTLPC dated March 28, 2006.
8. Privileged E-mails to/from SNC and Gypsum dated June 2, July 30, and July 31, 2006.
15. Privileged E-mail from Bayshore to SNC; Internal SNC E-mail dated April 28, 2007.
17. Privileged E-mails to/from SNC, Bayshore and Harris dated April 28 and 30, 2007.
18. Privileged Correspondence to and from SNC and Harris dated May 1, 2007.
21. Privileged E-mails to/from SNC and Harris dated August 1, 2007.
22. Privileged E-mails to/from SNC and Harris dated August 29, and September 5, 2007.
25. Privileged E-mails to and from Les Holmes and Bayshore dated December 18 and 22, 2007.

26. Privileged E-mails from Les Holmes to SNC dated December 27, 2007.
28. E-mails to/from SNC, LH and Royal Bank of Canada dated December 27, 2007, February 25 and 26, 2008.
29. Privileged E-mails from Les Holmes to SNC dated March 25, 2008.
30. Privileged E-mails to/from SNC, LH, KPMG, Moodys and Perris & McIntyre LLP (“PML”) dated March 26, 2008.
31. Privileged E-mail from Les Holmes to SNC and Bayshore dated April 27, 2008.
34. Privileged E-mail from Harris to SNC, Les Holmes and Bayshore; Privileged internal SNC E-mail dated April 29, 2008.
35. Privileged E-mails to SNC to Harris dated April 29, 2008.
36. Privileged E-mail from Harris to SNC; Privileged internal SNC E-mail dated May 6, 2008.
37. Privileged E-mail from SNC to Harris dated May 6, 2008.
40. Privileged E-mail from SNC to Les Holmes dated February 26, 2009.
41. Privileged E-mail from Les Holmes to SNC and internal SNC mail dated March 2, and 3, 2009.
42. Privileged E-mails to/from SNC and Moodys dated February 25, 2009 and March 6, 2009.
43. Privileged E-mails to/from SNC, Les Holmes and Moodys dated March 24, and 25, 2009.
44. Privileged E-mails to/from Moodys, LH and SNC dated March 27, 2009.
45. Privileged E-mail from Moodys to SNC dated August 13, 2009.
46. Privileged E-mail from SNC to LH dated November 26, 2009.
47. Privileged E-mails to/from Moodys, SNC and Les Holmes (LH) dated December 14, and 15, 2009.
48. Privileged E-mails to/from SNC, LH and Moodys dated December 14, and 15, 2009.

49. Privileged E-mails from LH to SNC dated December 14, and 16, 2009.
50. Privileged E-mails to/from SNC, LH and Moodys dated December 14, 15, 16, and 17, 2009.
51. Privileged E-mail from SNC to Moodys dated December 21, 2009.
52. Privileged E-mail from SNC to LH dated December 23, 2009.

[34] Two documents remain from Annex A. They are retainer agreements.

“1. Privileged letter from SNC to Dennis L. Nerland, Trustee dated March 9, 2007” is the retainer agreement between Dennis L. Nerland as Trustee of the Sheila Holmes Spousal Trust and SNC. It sets out the terms and amounts of the retainer; the arrangements with respect to payment; and the types of services rendered and their cost. In keeping with the decisions of the Federal Court of Appeal in *Stevens v Canada (Prime Minister)*, [1998] FCJ No 794 (CA) and the Supreme Court of Canada in *Maranda v Richer*, [2003] 3 SCR 193, it is privileged.

“5. Moodys-SNC Retainer letter dated October 1, 2007” is a letter from Moodys LLP to SNC setting out the agreement between them whereby SNC retains Moodys LLP “as an agent to assist in various taxation matters for your clients” by providing tax consulting services. No solicitor-client privilege attaches to this document as it does not relate to the provision of legal advice.

[35] Five documents remain from Annex B.

“7. Privileged letter from SNC to Dennis L. Nerland, Trustee dated June 2, 2006” is the retainer agreement between Dennis L. Nerland as Trustee of the Holmes Family Trust and SNC. It sets out the terms and amounts of the retainer; the arrangements with respect to payment; and the types of

services rendered and their cost. For the reasons given regarding Document 1 in Annex A, above, it is privileged.

“16. Privileged letter from KPMG to LH dated April 28, 2007” is a document, only part of which is claimed to be privileged. In a memorandum attached to the document counsel for the respondents writes:

The attached document being a letter from KPMG dated April 28, 2007 to Mr. Holmes with copies to counsel, is in our view subject to privilege only in the following paragraphs:  
Last paragraph on the bottom of the fourth page in its entirety.  
The fifth page step 2 and step 3.

Neither the author nor the recipient is a lawyer. There is no reference in the correspondence to any legal advice being sought or provided, with the exception of the first sentence of the last paragraph on page four which begins as follows: “According to the legal memorandum ...” That sentence discloses legal advice provided to a client and is privileged. None of the remainder of the document is subject to solicitor-client privilege. The privileged sentence is to be redacted and the remainder of the document provided to CRA.

“23. Moodys LLP Tax Advisors (“Moodys”) – SNC Retainer letter dated October 1, 2007” is the same document listed as Document 5 in Annex A and for the reasons given above is not subject to privilege.

“27. RSM Richter – SNC Retainer letter dated February 9, 2008” is not subject to solicitor-client privilege. It confirms the engagement of RSM Richter LLP Chartered Accountants by the Holmes



Family Trust to prepare the financial documents of the Trust for the year ending December 31, 2007. It does not relate to the provision of legal advice.

“33. Privileged letter from Moodys to the Holmes Family Trust dated March 31, 2008” is not subject to solicitor-client privilege. It confirms the engagement of Moodys LLP by the Holmes Family Trust to provide tax advice to the Trust for the year ending December 31, 2007. None of those providing advice are legal professionals.

[36] The Minister has asked for the costs of these applications. The applicant has been largely successful and it is appropriate that it be awarded one set of costs in all three applications. If the parties cannot agree on the amount of costs within 15 days, they may make submissions, not exceeding five pages, to the Court. The Minister shall have 20 days from the date hereof to serve and file his submissions and the respondents shall have a further 10 days to respond.

**ORDER**

**THIS COURT ORDERS that:**

1. The following documents listed in Annex A are subject to solicitor-client privilege and are exempt from disclosure pursuant to paragraph 232(5)(b)(i) of the *Income Tax Act*:  
“1. Privileged letter from SNC to Dennis L. Nerland, Trustee dated March 9, 2007”.
2. The following documents listed in Annex B are subject to solicitor-client privilege and are exempt from disclosure pursuant to paragraph 232(5)(b)(i) of the *Income Tax Act*:  
“7. Privileged letter from SNC to Dennis L. Nerland, Trustee dated June 2, 2006”.
3. The first sentence of the last paragraph on page 4 of the document identified in Annex B as “Privileged letter from KPMG to LH dated April 28, 2007” is subject to solicitor-client privilege and it is exempt from disclosure pursuant to paragraph 232(5)(b)(i) of the *Income Tax Act*. That sentence shall be redacted by the respondent and the remainder of the document shall then be produced and provided to the Canada Revenue Agency.
4. The respondent shall produce and provide to the Canada Revenue Agency all of the other documents described in Annexes A and B attached to these Reasons for Order and Order, save those that have been ordered exempt from disclosure.
5. The Minister is awarded his costs in accordance with these Reasons.

“Russel W. Zinn”

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Judge

ANNEX "A"

T-537-11

Documents the Sheila Holmes Spousal Trust claims are subject to solicitor-client privilege

1. Privileged letter from SNC to Dennis L. Nerland, Trustee dated March 9, 2007.
2. Privileged E-mails to/from SNC and Bayshore dated March 8, 9 and 12, 2007.
3. E-mail from Bayshore to SNC dated March 6, 2007.
4. Privileged E-mails to/from SNC and Bayshore dated March 15, 2007.
5. Moodys-SNC Retainer letter dated October 1, 2007.
6. Privileged E-mails to/from SNC and Taggart Galt dated November 9, 12 and 13, 2007.
7. Privileged E-mails to/from SNC, Les Holmes and Moodys LLP Tax Advisors ("Moodys") dated April 8, 2008.
8. Privileged E-mails to/from SNC, Les Holmes and Moodys dated April 8, 9 and 10, 2008.
9. Privileged E-mail from SNC to Sheila Holmes dated June 19, 2008.
10. Privileged E-mail from SNC to Sheila Holmes dated June 23, 2008.
11. Privileged E-mails to/from SNC and Moodys dated July 30 and 31, 2008.
12. Privileged E-mails to/from SNC and Moodys dated July 30 and 31, 2008.
13. Privileged E-mail from SNC to Sheila Holmes dated September 30, 2008.
14. Privileged E-mails to/from SNC and Moodys dated November 4, 24 and December 10 and 11, 2008.
15. Privileged E-mail from SNC to Sheila Holmes dated January 16, 2009.
16. Privileged E-mails to/from SNC and Moodys dated February 19, 2009.
17. Privileged E-mails to/from SNC, Les Holmes and Moodys dated March 19 and 25, 2009.
18. Privileged E-mails to/from SNC, Les Holmes and Moodys dated March 27, 2009.
19. Privileged E-mail from SNC to Sheila Holmes dated April 24, 2009.
20. Privileged E-mails to/from SNC and Les Holmes dated December 15 and 16, 2009.
21. Privileged E-mails to/from SNC and Les Holmes dated December 16, 2009.
22. Privileged E-mail from Moodys to SNC dated December 18, 2009.
23. Privileged E-mail from SNC to Sheila Holmes dated December 23, 2009.

**ANNEX “B”**

T-538-11

Documents the Holmes Family Trust claims are subject to solicitor-client privilege

1. Privileged E-mail from Global Tax Law Professional Corporation (“GTLPC”) to Shea Nerland Calnan LLP (“SNC”) dated March 25, 2006.
2. Privileged E-mails to/from SNC and GTLPC dated March 28, 2006.
3. Privileged E-mails to/from SNC and GTLPC dated March 31, 2006 and April 2, 2006.
4. Privileged E-mails from SNC and GTLPC dated May 31, 2006.
5. Privileged E-mails to/from SNC and GTLPC dated June 2, 2006.
6. Privileged E-mail from SNC to Gypsum Technologies Inc. (“Gypsum”) dated June 2, 2006.
7. Privileged letter from SNC to Dennis L. Nerland, Trustee dated June 2, 2006.
8. Privileged E-mails to/from SNC and Gypsum dated June 2, July 30, and July 31, 2006.
9. Privileged E-mail from SNC and GTLPC dated September 6, 2006.
10. Privileged E-mails to/from SNC and GTLPC dated September 6, 2006; Internal SNC E-mails dated September 6 and 7, 2006.
11. Privileged E-mails to/from SNC and GTLPC dated September 6 and 7, 2006.
12. Privileged E-mails to/from SNC and Bayshore Group of Companies/ Wealth Management (“Bayshore”) dated March 8, 9 and 12, 2007.
13. Privileged E-mails to/from Les Holmes, Bayshore, SNC and RSM Richter (Calgary) LLP (“RSM Richter”) dated March 9, 2007.
14. Privileged E-mails to/from SNC, Les Holmes and Bayshore dated March 9, 2007.
15. Privileged E-mail from Bayshore to SNC; Internal SNC E-mail dated April 28, 2007.
16. Privileged letter from KPMG to LH dated April 28, 2007.
17. Privileged E-mails to/from SNC, Bayshore and Harris dated April 28 and 30, 2007.
18. Privileged Correspondence to and from SNC and Harris dated May 1, 2007.
19. E-mails to/from Les Holmes and SNC dated May 15, 2007 and May 16, 2007.
20. E-mails to/from Les Holmes, GTLPC and SNC dated May 15, and June 4, 2007.
21. Privileged E-mails to/from SNC and Harris dated August 1, 2007.
22. Privileged E-mails to/from SNC and Harris dated August 29, and September 5, 2007.
23. Moodys LLP Tax Advisors (“Moody’s”) – SNC Retainer letter dated October 1, 2007.

24. Privileged E-mails to and from Les Holmes, SNC and GTLPC dated October 29, and December 11, 2007.
25. Privileged E-mails to and from Les Holmes and Bayshore dated December 18 and 22, 2007.
26. Privileged E-mails from Les Holmes to SNC dated December 27, 2007.
27. RSM Richter – SNC Retainer letter dated February 9, 2008.
28. E-mails to/from SNC, LH and Royal Bank of Canada dated December 27, 2007, February 25 and 26, 2008.
29. Privileged E-mails from Les Holmes to SNC dated March 25, 2008.
30. Privileged E-mails to/from SNC, LH, KPMG, Moodys and Perris & McIntyre LLP (“PML”) dated March 26, 2008.
31. Privileged E-mail from Les Holmes to SNC and Bayshore dated April 27, 2008.
32. Privileged E-mails to and from SNC and Les Holmes dated April 27 and 28, 2008.
33. Privileged letter from Moodys to the Holmes Family Trust dated March 31, 2008.
34. Privileged E-mail from Harris to SNC, Les Holmes and Bayshore; Privileged internal SNC E-mail dated April 29, 2008.
35. Privileged E-mails to SNC to Harris dated April 29, 2008.
36. Privileged E-mail from Harris to SNC; Privileged internal SNC E-mail dated May 6, 2008.
37. Privileged E-mail from SNC to Harris dated May 6, 2008.
38. Privileged E-mail from SNC to Les Holmes dated October 29 and 30, 2008.
39. Privileged SNC E-mails dated November 7, 2008; E-mail from Royal Bank of Canada (“RBC”) to SNC dated November 7, 2008.
40. Privileged E-mail from SNC to Les Holmes dated February 26, 2009.
41. Privileged E-mail from Les Holmes to SNC and internal SNC mail dated March 2 and 3, 2009.
42. Privileged E-mails to/from SNC and Moodys dated February 25, 2009 and March 6, 2009.
43. Privileged E-mails to/from SNC, Les Holmes and Moodys dated March 24 and 25, 2009.
44. Privileged E-mails to/from Moodys, LH and SNC dated March 27, 2009.
45. Privileged E-mail from Moodys to SNC dated August 13, 2009.
46. Privileged E-mail from SNC to LH dated November 26, 2009.
47. Privileged E-mails to/from Moodys, SNC and Les Holmes (LH) dated December 14 and 15, 2009.

48. Privileged E-mails to/from SNC, LH and Moodys dated December 14 and 15, 2009.
49. Privileged E-mails from LH to SNC dated December 14 and 16, 2009.
50. Privileged E-mails to/from SNC, LH and Moodys dated December 14, 15, 16 and 17, 2009.
51. Privileged E-mail from SNC to Moodys dated December 21, 2009.
52. Privileged E-mail from SNC to LH dated December 23, 2009.

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-536-11

**STYLE OF CAUSE:** THE MINISTER OF NATIONAL REVENUE v.  
MOODYS LLP

**PLACE OF HEARING:** Calgary, Alberta

**DATE OF HEARING:** May 18, 2011

**REASONS FOR ORDER  
AND ORDER:** ZINN J.

**DATED:** June 16, 2011

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