Dockets: 2023-1599(IT)G
2023-2208(IT)G

BETWEEN:

ALARIS EQUITY PARTNERS INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

2026 TCC 185 (CanLII)

Respondent's Motion heard on May 13, 2026
at Vancouver, British Columbia

Before: The Honourable Justice Randall S. Bocock

Appearances:

Counsel for the Appellant:	Ken S. Skingle K.C. Trent Blanchette
Counsel for the Respondent:	Matthew Turnell Kristina Mansveld

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ORDER

WHEREAS the Respondent brings this motion to request the production of certain documents in which the Appellant has claimed solicitor-client or litigation privilege;

AND WHEREAS the Court has published on this date its specific Reasons for Order concerning the issue of the claimed privilege in the withheld documents, all of which are described in Schedule "A" attached (the "Disputed Documents");

NOW THEREFORE THIS COURT ORDERS THAT:

1. Disputed Documents Numbers 1,2,3,4,9,10, 11, 12, 13 and 14 contain privileged information and have been rightfully redacted, and/or withheld from production by Appellant's counsel and the Respondent's motion to compel production of such Disputed Documents is denied;

2. The Respondent's Motion for fully unredacted copies of Disputed Documents 5,6,7 and 8 is allowed, subject to paragraph 3 below;

3. Concerning the Disputed Documents described in paragraph 2 above, the Appellant shall produce complete and unredacted copies of same within 30 days of the date of this Order, and;

4. Given the mixed result on the motion, no costs are presently assessed but may subsequently be raised by either party through communications with the Court should there have been impactful offers to the settle the motion exchanged between the parties.

Signed at Ottawa, Ontario this 28th day of October 2026.

"R.S. Bocock"

Bocock J.

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Schedule "A" – Disputed Documents

No.	Date	Type	From	To	Copying	Lawyer as sender or addressee	Finding: Privileged or Not?
1	May 30 2008	Memo	Ernst & Young	Felesky Flynn	N/A	Addressed to law firm	Privileged
2	May 7 2008	Email	Alycia Calvert (EY)	Darren Driscoll (Alaris)	Steven Plath (EY); Doug Jenkinson (EY)	None	Privileged
3	May 14, 2008	Email	Steven Plath (EY)	Gary Bentham (Alaris)	Darren Driscoll (Alaris); Alycia Calvert (EY)	None	Privileged
4	May 14, 2008	Email	Gary Bentham (Alaris)	Steven Plath (EY)	Darren Driscoll (Alaris); Alycia Calvert (EY)	None	Privileged
5	May 14, 2008	Email	Gary Bentham (Alaris)	Michael Ervin (then BDP)	Alycia Calvert (EY); Steven Plath (EY)	Recipient with accounting firm copied	Not Privileged
6	May 22, 2008	Email	Gary Bentham (Alaris)	Michael Ervin (then BDP)	Steven Plath (EY)	Recipient with accounting firm copied	Not Privileged
7	May 22, 2008	Email	Steven Plath (EY)	Michael Ervin (then BDP)	N/A	Recipient, no Alaris involvement	Not Privileged
8	May 22, 2008	Email	Steven Plath (EY)	Michael Ervin (then BDP)	N/A	Recipient, no Alaris involvement	Not Privileged
9	May 23, 2008	Email	Steven Plath (EY)	Don Biberdorf (Felesky Flynn)	Brett Anderson (Felesky Flynn); Catherine Gerrits (Felesky	Felesky Flynn recipients and in copy, no Alaris involvement	Privileged

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					Flynn), Darren Driscoll (Alaris), Alycia Calvert (EY)		
10	May 24, 2008	Email	Don Biberdorf (Felesky Flynn)	Steven Plath (EY)	Brett Anderson (Felesky Flynn), Catherine Gerrits (Felesky Flynn), Darren Driscoll (Alaris), Alycia Calvert (EY), Don Biberdorf (Felesky Flynn),	Felesky Flynn sender and in copy; no Alaris involvement	Privileged
11	May 24, 2008	Email	Gary Bentham (Alaris)	Steven Plath (EY)	Alycia Calvert (EY); Darren Driscoll (Alaris)	None	Privileged
12	June 9, 2008	Email	Brenda Riddell (Alaris)	Steve King (Alaris); Darren Driscoll (Alaris)	N/A	None	Privileged
13	June 13, 2008	Email	Steve King (Alaris)	Stephen Reid (Alaris)	N/A	None	Privileged
14	June 13, 2008	Email	Steve King (Alaris)	Stephen Reid (Alaris)	N/A	None	Privileged

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Citation: 2026 TCC 185
Date: 20261028
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BETWEEN:

ALARIS EQUITY PARTNERS INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Bocock J.

I. **Introduction**

[1] The Respondent brings this motion for the production of certain documents withheld and/or redacted by the Appellant on the advice of counsel during the discovery process. Only 14 of a much larger group of documents, withheld because of claimed solicitor-client and/or litigation privilege, are the subject of this motion. Such documents are described in Schedule A attached to the Order preceding these reasons (the “Disputed Documents”).

Background to underlying appeals

[2] The sole issue in the appeals is whether the general anti-avoidance rule ("GAAR") applies to certain equity financing transactions. More specifically, the issue is whether the GAAR applies to deny the Appellant's carry forward and utilization of certain tax attributes ("Tax Attributes") consequential to certain transactions which occurred in 2006 (the "2006 Transactions") and 2008 (the "2008 Transactions").

2006 transactions

[3] As part of the 2006 Transactions, the Appellant, then named 6550568 Canada Inc., engaged in certain preliminary reorganization transactions pursuant to a plan of arrangement and, ultimately, 20 Canadian-resident individuals acquired non-voting equity interests in the Appellant.

2008 Transactions

[4] The 2008 Transactions involved transactions with entities controlled directly or indirectly by Clayton Riddell (or persons related to Clayton Riddell), which entities (the "Alaris Group") were in the business of providing alternative financing to various private entities.

[5] As part of the 2008 Transactions, on July 31, 2008:

a) the Appellant acquired an interest in Alaris Income Growth Fund L.P. ("Alaris LP"), which was part of the Alaris Group;

b) the Appellant raised over $55 million from new investors; and

c) two Alaris Group entities, Alaris Commercial Trust and 409790 Alberta Ltd. ("409 Co."), became minority shareholders of the Appellant.

Disputed Documents arise in 2008

[6] The Disputed Documents relate entirely to the 2008 Transactions and were created during six weeks in May and June of 2008.

II. **The Facts and Disputed Documents**

Felesky Flynn retained as tax counsel in 2008

[7] In early May 2008, prior to the creation of the Disputed Documents, Alaris Group retained Felesky Flynn LLP as legal tax counsel to provide legal tax advice to the related Alaris Income Growth Fund ("Alaris Fund") and other entities in the Alaris Group in relation to the 2008 Transactions.

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Felesky Flynn’s legal services related to tax advice

[8] Felesky Flynn's services were limited to providing legal tax advice for the 2008 Transactions. This required it to conduct due diligence on certain historical transactions and consider the structuring and related tax consequences for the Appellant and the broader Alaris Group in future taxation years, all not surprisingly and perhaps presciently, within the context of potential disputes with the CRA. Felesky Flynn's engagement did not involve the provision of corporate, commercial, or other legal advice, beyond that collectively branded as tax advice.

Substantive commercial details complete before Felesky Flynn

[9] At the time Felesky Flynn was retained, the commercial negotiations between the Appellant and the Alaris Group in relation to the 2008 Transactions had been substantially completed; the various parties entered into a letter agreement dated May 12, 2008 ("Alaris LOI"). In doing so, the Appellant and the Alaris Group factually created a common interest directed towards a successful transaction outcome.

Time crunch

[10] The Appellant/Alaris Group wanted the 2008 Transactions to close quickly. The Alaris LOI initially required the due diligence to be completed by May 31, 2008. Consequently, Felesky Flynn had only several weeks to provide its legal tax advice regarding a complex series of transactions. The entire period from retainer commencement until the date of the last Disputed Document is a mere 37 days.

Help needed: EY retained by Felesky Flynn

[11] With those time constraints, help was needed. Felesky Flynn directly engaged Ernst & Young LLP (“EY”) to assist it with certain aspects of the due diligence activities which Felesky Flynn believed it required in order to provide its legal tax advice to the Appellant concerning the 2008 Transactions.

Written retainer of EY

[12] The work anticipated or services EY was engaged to perform, and did perform (i.e., the “Due Diligence Activities”), was memorialized in advance in an engagement letter dated May 14, 2008, between EY and Felesky Flynn ("EY Engagement Letter"). That document was produced in its entirety.

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Nature of EY assistance to Felesky Flynn

[13] The Due Diligence Activities required EY to gather, compile, sort, review, and summarize certain identified information regarding the Appellant's corporate structure and historical tax reporting prior to the 2008 Transactions. A report was generated by EY for Felesky Flynn dated May 30. 2008. This report is the leading and paramount Disputed Document in which privilege is claimed. Meaningfully, it is numbered Disputed Document #1.

The Disputed Documents: EY The Report and fall out

[14] All 14 Disputed Documents are listed in Schedule A to the Order accompanying these reasons. Those various documents may be divided as follows:

a) Document #1 – the over-arching EY Report;

b) Emails between various people ("actors": used in its etymological sense of sender, author and/or recipient only) identified as Disputed Documents 2 through 14, greater details of which are provided for in a description of the email chains in paragraph 22 below.

[15] The genesis of all documents occurred within the period of May 7 to June 13, 2008.

The essential actors in the cast

[16] Lawyers at Felesky Flynn EY involved in the Disputed Documents were Don Biberdorf (sometimes communicating through his assistant Amber McComb); Brett Anderson and Catherine Gerrits. The EY accountant actors engaged in the Due Diligence Activities were Steve Plath, Warren Paskowich, Doug Jenkinson and Alycia Calvert. Beyond the lawyers at Felesky Flynn and accountants at EY, the names of the other actors appearing in the various emails follow in the descriptions below.

Alaris Group actors

[17] The Appellant/Alaris Group actors were as follows (each of whom was both on officer and it seems investor):

a) Gary Bentham was a CFO of the Appellant.

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b) John Brussa was simultaneously an investor, a corporate director, and a lawyer at BDP.

c) Stephen Reid is described by the Appellant as an "employee of an entity within the Alaris Group".

[18] In the 2008 Transactions, Darren Driscoll figures as a sender or addressee in several of the emails. He was Chief Financial officer of the Appellant. He seems to have been tasked with tracking the provision of information to EY and/or Felesky Flynn.

Burnet, Duckworth & Palmer LLP – general legal counsel

[19] Burnet, Duckworth & Palmer LLP ("BDP") was engaged as legal counsel to the Appellant in relation to the 2006 Transactions and the 2008 Transactions and was also engaged as legal counsel to the Alaris Group generally in relation to the 2008 Transactions.

The morphing role of Michael Ervin

[20] Michael Ervin is a lawyer who articled at BDP in 2006 and practised there as a corporate lawyer from 2007 to 2013. In 2013, he joined Alaris as Vice President, Legal. He has been the Chief Legal Officer and Corporate Secretary of Alaris since 2016.Accordingly, Mr. Ervin was also examined for discovery as the Appellant's nominee on October 23, 2024. Mr. Ervin described his involvement in the 2008 transactions as a BDP associate as "low-level in terms of papering closing documents and some other matters." Mr. Ervin confirmed that he was not involved in the planning or structuring of the 2008 transactions. Mr. Ervin is the affiant who provided evidence of the transactions, roles of various actors and how the privilege arose and why it contains protected information.

Riddle family actors

[21] The Riddell family, of which Brenda Riddell is a member, controlled Alaris LP, the entity that operated Alaris Group's investment business prior to the 2008 transactions in issue in the appeals. Ms. Riddell is a lawyer and transmitted one of the Disputed Documents.

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Email chains which bind the actors

[22] The following descriptions contain the names of various actors who appear or are copied within the emails comprising the Disputed Documents:

i. Emails between an EY accountant and Alaris Group - Four emails (Disputed Documents 2,3,4 and 11) between personnel at EY and personnel associated with the Alaris Group, with no legal counsel as sender, recipient or in copy.

ii. Emails from Alaris to Michael Ervin (BDP) - Two emails (Disputed Documents 5 and 6) from Alaris personnel to Michael Ervin (who was then a junior associate at BDP), with EY personnel in copy.

iii. Emails from EY to Michael Ervin (BDP) - Two emails (Disputed Documents 7 and 8) from Steven Plath of EY to Michael Ervin (then a junior associate at BDP) with no Alaris Group personnel as recipients or in copy.

iv. Emails between EY, Alaris, and Felesky Flynn - Two emails (Disputed Documents 9 and 10) between Steven Plath of EY and Don Biberdorf (previously a partner at Felesky) with various Alaris Group, Felesky Flynn and EY personnel in copy.

v. Email amongst Alaris Group personnel involving Brenda Riddell – One email (Disputed Document 12) from Brenda Riddell (who is a lawyer) of Alaris Group to Steve King and Darren Driscoll, also of Alaris Group.

vi. Emails amongst Alaris Group personnel with no lawyer involved – Two emails (Disputed Documents 13 and 14) between Steve King and Stephen Reid (Mr. King and Mr. Reid are Alaris Group personnel and are not lawyers).

The Court Process followed for determination of privilege

[23] At the hearing of the motion, Appellant's counsel handed up unredacted and sealed copies of the Disputed Documents solely for the Court's purposes. The parties agreed this would facilitate the Court's confidential review of the Disputed Documents and its determination of the claimed privilege.

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[24] This process for review is generally observed as compliant with section 88(d) of the *Tax Court of Canada Rules* (*General Procedure*) (the "Rules"). Further, it has been used as a procedure in previous motions before the Tax Court: *Imperial Tobacco v HMQ* 2013 TCC 144 at para. 52 ("Imperial Tobacco"); see also *CIBC v HMQ* 2015 TCC 280 at paras. 244 – 245; and, *Stack v. HMK* 2024 TCC 137, ("Stack").

III. **The Law**

Solicitor-client privilege generally

[25] Solicitor-client privilege limits the scope of discovery when potential information gathering during the discovery process conflicts with privilege: *M.(A.) v. Ryan*, [1997] 1 SCR 157. Privilege protects information from disclosure in court. It also protects communications between a lawyer and client, including an agent of the client: *Solosky v. The Queen*, [1980] 1 SCR 821 at para 837 ("Solosky").

[26] The general principles of solicitor-client privilege were summarized in *Imperial Tobacco* where Justice D'Arcy cited a paragraph in *Blank v. Canada* [2006] 2 SCR 319 at para 16, summarizing the doctrine of solicitor-client privilege:

> …The solicitor-client privilege has been firmly entrenched for centuries. It recognizes that the justice system depends for its vitality on full, free and frank communication between those who need legal advice and those who are best able to provide it. Society has entrusted to lawyers the task of advancing their clients' cases with the skill and expertise available only to those who are trained in the law. They alone can discharge these duties effectively, but only if those who depend on them for counsel may consult with them in confidence. The resulting confidential relationship between solicitor and client is a necessary and essential condition of the effective administration of justice.

[27] The basic test for determining whether solicitor-client privilege applies was described by the Supreme Court of Canada in *Solosky.* The party asserting privilege must demonstrate that the communication: (a) has been made for the purpose of giving or receiving professional advice; (b) was made in confidence with no third-party present and with the intent it be kept confidential; and (c) was made within the scope of ordinary professional employment.

[28] Solicitor-client privilege "protects all communications, written or oral, between a solicitor and a client that are directly related to the seeking, formulating or giving of legal advice; it is not necessary that the communication specifically

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request or offer advice, as long as it can be placed within the continuum of communication in which the solicitor tenders advice": *Samson Indian Nation and Band v. Canada*, 1995 CarswellNat 675 (FCA) at para 8.

[29] Nonetheless, the party asserting privilege bears the burden of proving that the documents constitute a privileged communication:

> [47] The party asserting privilege carries the evidentiary burden. The Applicants must show, on a balance of probabilities, that the documents in question are a communication between a solicitor and a client that involves the seeking or giving of legal advice, and that the parties intend to be confidential. …
>
> [48] The party claiming the privilege must do more than baldly assert the privilege. …: *Belgravia Investments Limited v. Canada*, 2002 FCT 649 at paras 47-48 ("Belgravia").

[30] Provided the circumstances indicate the parties intend to keep the communication secret, the communication will be privileged. The privilege encompasses all communication in the solicitor-client relationship but is for communications only. Disclosure of facts independent of a communication may be ordered to be produced.

Some specific observations re: the Disputed Documents

[31] As the Court noted during oral argument, at first glance, all documents comprising the work product which form the basis of the Disputed Documents arose consequentially to the retainer by the Appellant/Alaris Group of Felesky Flynn (the "solicitors"). That retainer was the *sine qua non* of the genesis of the Disputed Documents. It is also true that none of the Disputed Documents was created by the solicitors, arguably save for portions of Disputed Documents 9, 10 and 12. Nonetheless, the information within the Disputed Documents obtained by the solicitors sub-contracted accountants through its Due Diligence Activities was, without much serious dispute, insinuated into, and formulated part of the solicitor's work product. Such solicitor's work product, *per se*, is clothed with solicitor-client privilege, or the like, but that of accountant's generally is not: *Redhead Equipment Ltd. v. Canada (AG)*, 2016 SKCA 115 ("Redhead") at paragraph 33 citing *Belgravia, supra*.

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Exceptions rendering accountant's work privileged

[32] The law is not so simple in the specifics. There are exceptions. The first exception concerns the context and circumstances where the accountant is acting as an agent within the solicitor-client relationship. At a general level, the Supreme Court of Canada stated this in *Descôteaux et al. v. Mierzwinski* [1982] 1 SCR 860 when it stated at page 892:

> In summary, a lawyer's client is entitled to have all communications made with a view to obtaining legal advice kept confidential. Whether communications are made to the lawyer himself or to employees, and whether they deal with matters of an administrative nature such as financial means or with the actual nature of the legal problem, all information which a person must provide in order to obtain legal advice and which is given in confidence for that purpose enjoys the privileges attached to confidentiality. This confidentiality attaches to all communications made within the framework of the solicitor-client relationship, which arises as soon as the potential client takes the first steps, and consequently even before the formal retainer is established.

[33] The second exception falls within the above cited case of *Redhead*, and as cited by Justice Hill of this Court in *Coopers Park Real Estate Development Corporation v HMK*, 2024 TCC 122, it may be summarized as follows:

> [52] In *Redhead Equipment Ltd.* [[2016] SJ No 471 at para. 45], the Saskatchewan Court of Appeal summarized the applicable principles:
>
> > a. whether a communication is privileged depends on the function served by the third party in relation to the communication;
> >
> > b. the privilege extends only to communications in furtherance of a function essential to the solicitor-client relationship or the continuum of legal advice provided by the solicitor, for example:
> >
> > > i. a channel of communication between solicitor and client;
> > >
> > > ii. a messenger, translator or transcriber of communications to or from the third party by the solicitor or client;
> > >
> > > iii. employing expertise to assemble information provided by the client and explaining the information to the solicitor; and
> >
> > c. no privilege attaches to a communication to an accountant who must consider it and provide his or her own accounting opinion.

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> [53] The Saskatchewan Court of Appeal applied a functional approach, where privilege is determined based on an analysis of the function of the third party vis-à-vis the client and the solicitor in respect of the communication [*Redhead* at para. 43].
>
> [54] This Court applied similar principles in a decision that pre-dates *Redhead Equipment Ltd*. In *Imperial Tobacco* [2013 TCC 144 at para. 73], the Court reviewed similar case law and held that the application of solicitor-client privilege to a third-party communication depends on the true nature of the function that the third party was retained to perform.

[34] The extension of privilege to specific due diligence situations was also canvassed by Justice Southcott of the Federal Court in an income tax matter in *Minister of National Revenue v. Atlas Tube Canada ULC*, 2018 FC 1086 at paragraphs 34-36, where he states:

> [34] The Minister also refers the Court to the decision of the Ontario Superior Court of Justice in *L'Abbé v Allen-Vanguard Corp.*, 2011 ONSC 7575 [*L'Abbé*], which dealt specifically with claims of privilege over documents generated in the course of due diligence conducted as part of a decision whether to make a share purchase. After reviewing the nature of a due diligence process in the context of a contemplated transaction, the Court explained as follows at paragraph 46:
>
> > [46] It is important to remember that the ultimate objective of these inquiries is a business decision – whether or not to proceed with the purchase or whether or not to lend money to fund the acquisition. In that sense the ultimate outcome is not a legal opinion but business advice. Most of the inquiries made in support of the due diligence processes are not legal inquiries and they are not gathered for the purpose of giving legal advice.
>
> [35] However, Atlas points out that the Court in *L'Abbé* did not rule out the possibility that some documentation generated in the course of a due diligence process could be subject to a legitimate privilege claim (see paragraphs 51-52). At paragraph 53, the Court emphasized the requirement to assess the principal purpose for which a document is created:
>
> > [53] For all of these reasons, I conclude that the due diligence documents are not inherently privileged. Any claims of privilege over specific components of the due diligence will have to be shown to be exceptions. That would require that they be either legal advice or documents created for the principal purpose of obtaining such advice and that also survive any deemed waiver of privilege created by these pleadings.

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> [36] Atlas also emphasizes the importance of focusing not upon the purpose for which the overall due diligence was conducted, but rather upon the principal or dominant purpose behind the creation of the particular document for which privilege is claimed. I agree that this position is supported by the jurisprudence canvassed above and is the correct analysis for the Court to undertake.

Some practicalities in evaluating the Disputed Documents

[35] The Court will undertake its review of the Disputed Documents within certain operable constraints. First, both parties were constrained when making submissions because of the claim of privilege, which, if sustained, involves preserving certain protected information as confidential. This creates irony. The Respondent argues for the disclosure of information he has never seen because it is not privileged. Conversely, the Appellant argues privilege exists in information, the details of which need to be circumspectively described by it, in order to maintain that very confidentiality, The Court is similarly constrained. Second, to be subject to privilege, the Disputed Documents, upon examination, need:

i. to place the accountants in the position of agent for the solicitors ("solicitor agent");

ii. to represent information needed to further a function essential to solicitor-client privilege ("solicitor essential");

iii. to fall within the stream or flow as a conduit of the legal advice ("communication continuum") or;

iv. to be the subject of litigation privilege because it facilitated investigation of a case for trial by counsel ("potential litigation").

IV. Analysis and conclusion

Some preliminary observations

[36] The Respondent's written argument highlighted that some Appellant and Alaris Group representatives held roles beyond the scope of that played strictly for the Appellant: lawyers, investors and/or directors. Assuming this is true, no authority suggests a multiple role, provided the critical role as representative of the Appellant exists, vitiates or lessens, in the absence of conflict, the capacity as a representative of the Appellant as a party to the transaction and/or litigation. It may add intrigue, but it does not automatically diminish privilege or the obvious common interest among these actors, *inter se.*

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EY exclusively bound to the solicitors

[37] The procurement by retained lawyers of services of contractually bound third party agents for specific tasks, such as EY, should not generally be conflated with the usual exchange between solicitors and accountants, generally retained, by an entity. Factually, the present circumstance is different: the "work product" or legal opinion of Felesky Flynn required specific services of the solicitors in order to render the legal opinion in the necessary time. EY did not act for the Appellant or Alaris Group, in conducting the Due Diligence Activities, but solely and directly for Felesky Flynn: *Descôteaux supra* at 878. EY was contractually an exclusive solicitor agent.

EY work: essential to solicitor's opinion or not?

[38] The work product embodied within the report generated by EY and the collateral and consequential emails and their contents, to be protected by solicitor-client privilege, must in the Court's mind be work product capable of being generated by Felesky Flynn or its employees. If the work is simply accounting work rather than services parsed out because of time constraints placed upon Felesky Flynn to EY, then it will not be protected either by solicitor-client privilege or litigation privilege. In short, Due Diligence Activities needed to render a legal opinion customarily undertaken by lawyers, where unilaterally and solely contracted to capable third parties as agents, does not by that sole delegatory act lose its privileged status. This is subject to the assigned task and work product being privileged in the first instance. If the information is foundational and confirmatory to the legal opinion, not otherwise disclosed to third parties and thereby waived, and arises in the capacity of agency by the subcontracted party, it will remain protected. The question is: were the Due Diligence Activities provided by EY central and/or solicitor essential to Felesky Flynn's opinion? The document by document review is conducted below mindful that this essence be present within the various Disputed Documents.

The EY Report – Disputed Document no. 1

[39] This document is clearly privileged. Its genesis occurred purposively to provide information comingled with evidential foundations necessary to the formation of the solicitor's legal opinion. This satisfies the first criterion of *Solosky*. There is no evidence the exclusively retained agent of the solicitors, EY, provided the information contained in the report to any third party and the Respondent has not asserted the information was otherwise disclosed, and privilege thereby waived. This

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satisfies the second requirement of *Solosky*. Lastly, the speedily collected material and identified waypoints and customary issues are whether outsourced or internal entirely within the usual and customary scope of due diligence conclusions which a law firm might render to a client as part of its retainer. This fulfils the final hurdle in *Solosky* and the document is privileged.

Disputed Documents nos. 2,3, 4 and 11

[40] These documents initiate a targeted litany of information required by EY to complete its task for Felesky Flynn. Patently, in doing so, EY acts within as the solicitor's agent, makes detailed enquiries of the Appellant's representatives for specific information and data essential to the purposes of providing the specifically sought legal opinion and receiving collected information which is responsive. The entirety of the documents and content are exchanged between the solicitor's agents, EY and the broader Alaris Group, are essential to the legal opinion, and flow within the conduit of the protected channel. The information is within the communication continuum. These emails and attachments are privileged.

Disputed Documents nos. 5,6 and 8

[41] Disputed Documents 5, 6 and 8 are simply emails which describe process, availability and timing for the delivery of documents. There is nothing in the emails essential to the provision of a legal opinion. Frankly, it has the same effect as a delivery slip, waybill or packing slip. While the emails reveal a request for information, there are no specific details, titles or contents of the information or dates disclosed. In short, the contents have no informational value. Absent that, logically, how can they be "part of the necessary exchange of information", the object of which is the giving of legal advice? The emails have the same qualitative content as a requisition by overall description of a "box in the corner of the room" or "a binder made of all the annual invoices". All this is achieved without reference to the description, name or contents of data which may be within. As such, these emails are not privileged.

Disputed Document no. 7

[42] The Court examines and isolates Disputed Document #7 from Disputed Documents 5,6 and 8 above because it is precisely that: the provision of an isolated 2006 public document without specific request or context. While it may fit within the communications continuum, the document is an outlier, innocuous and merely accompanies an email employing the description of a "box of documents" described

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in Disputed Documents 5,6 and 8 above. This email exchange and unexplained public document are not privileged.

Disputed Documents nos. 9 and 10

[43] Documents 9 and 10 are privileged. They are detailed communications between the lead actor at EY (Steven Path), solicitor's agent, and the principal lawyer at Felesky Flynn, Don Biberdorf. That is likely sufficient to substantiate privilege. However, the contents of the emails are central, essential and substantive to the role of EY as agent for the solicitors. They contain information provided by the agent essential to the provision of the legal opinion by the principal, the solicitors. The exchanges have limited circulation among the Appellant's representative and EY, the solicitor's agent. In summary, the communication contains information which is delivered by either the solicitors, agent or Appellant, is solicitor essential and falls within the protected advice conduit. Hence, it is privileged and need not be produced.

Disputed Documents nos. 12, 13 and 14

[44] These emails are circulated solely among various representatives of the Appellant concerning a process for discussing identified legal issues raised by the solicitors, specifically Don Biberdorf of Felesky Flynn. The communications encompass the process and refinement by which the legal issue shall be formed and returned to Felesky Flynn. Its existence sprang from initial legal advice and queries. That legal issue was forwarded by Mr. Biberdorf of Felesky Flynn; Felesky Flynn's initiation is the first step in the circulation of the solicitor email among representatives of the Appellant. Any inter-company banter is qualified, but the expressed overriding caveat is that legal counsel will provide the answer to the issue raised, and after very factual client refinement and confirmation, solicitor input is to be further sought. The emails are evidence in action of providing and refining factual inputs in order to obtain, after entreaty from the solicitors, a legal conclusion. The emails are privileged and fall within the legal advice communication continuum.

[45] Further, no party, aside from the Alaris Group's representatives, the client, received the query of Mr.Biberdorf, directly or indirectly. The mere identification of the issue among the client recipients of the solicitors ought not to disqualify the request, categorize first impressions as anything other than that or dishonour the overriding warning evident within the communications: that the very legal advice sought and anticipated ought to be obtained from Felesky Flynn before any

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conclusions or decisions are made. These exchanges reveal bedrock actions needed to solicit legal advice. By definition, they are privileged.

V. Summary and Costs

[46] In conclusion, Disputed Documents 1, 2, 3, 4, 9, 10, 11, 12, 13 and 14 are privileged and need not be produced. Disputed Documents 5, 6, 7 and 8 are not privileged. They must be produced within 30 days of the date of this Order.

[47] Given the mixed result on the motion, no costs are presently assessed but may subsequently be raised by either party through communications with the Court should there have been impactful offers to the settle the motion exchanged between the parties.

Signed at, Ottawa, Ontario this 28th day of October 2026.

"R.S. Bocock"

Bocock J.

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CITATION:	2026 TCC 185
COURT FILE NO.:	2023-1599(IT)G 2023-2208(IT)G
STYLE OF CAUSE:	ALARIS EQUITY PARTNERS INC., AND HIS MAJESTY THE KING
PLACE OF HEARING:	Vancouver, British Colombia
DATE OF HEARING:	May 11, 2026
REASONS FOR ORDER BY:	The Honourable Justice Randall S. Bocock
DATE OF ORDER:	October 28th, 2026

APPEARANCES:

Counsel for the Appellant:	Ken S. Skingle Trent Blanchette Sarah S. Chiu
Counsel for the Respondent:	Matthew Turnell Kristina Mansveld

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