Date: 20240812
Docket: CI 22-01-34947
(Winnipeg Centre)
Indexed as: Rochelle v. The Rural Municipality of St. Clements et al
Cited as: 2024 MBKB 118

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

BARRY WAYNE ROCHELLE,	)	
	)	
applicant,	)	Ryan Nerbas
	)	for the applicant
- and -	)	
	)	
THE RURAL MUNICIPALITY OF ST. CLEMENTS and RED RIVER PLANNING DISTRICT,	)	Curran P. McNicol
	)	for the respondents
	)	
respondents.	)	
	)	
	)	Judgment delivered:
	)	August 12, 2024

ASSOCIATE JUDGE GOLDENBERG

INTRODUCTION

[1] The applicant brought an application pursuant to section 14(1) of *The Limitations of Actions Act*, C.C.S.M. c. L150, as repealed by *The Limitations Act*, C.C.S.M. c. L150 (the "*LAA*"), seeking leave to commence an action against the respondents. During cross-examination on the applicant's affidavit, counsel for the respondents requested an undertaking relating to the extent to which the applicant engaged counsel for advice regarding a potential claim against the respondents. The applicant refused that undertaking based on solicitor-client privilege. The respondents brought this motion to compel the applicant to respond to the undertaking.

DECISION

[2] For the following reasons, I find that the applicant has waived solicitor-client privilege, and I direct the applicant to respond to the undertaking in part, as detailed in my analysis.

FACTUAL BACKGROUND

[3] The underlying dispute between the applicant and the respondents relates to a property in the Rural Municipality of St. Clements (the "RM") at 5218 Rebeck Road (the "Property"). The applicant purchased the Property in September 2012 and applied to the Red River Planning District (the "RRPD") in October 2012 for approval to subdivide the 4.0 acre lot into two lots (the "Subdivision Application"). He intended to sell the two lots after the subdivision.

[4] The RM provided conditional approval of the subdivision in November 2014, but the RRPD then rejected the subdivision in December 2014. The applicant pursued an appeal to the Manitoba Municipal Board. In June 2015, the Municipal Board ordered that the Subdivision Application be conditionally approved. The RRPD approved the subdivision in July 2015, but subject to a number of procedural conditions. The applicant says he attempted to raise a formal objection to the procedural conditions but was advised that the limitation period to do so had expired. He subsequently lost the Property to foreclosure proceedings.

[5] In his affidavit sworn on April 1, 2022, the applicant deposed that a series of events beginning in April 2021 resulted in him discovering further material facts. In April 2021, after browsing the Multiple Listing Service website, he determined that another property

owner in the vicinity of the Property had subdivided a similar property without the respondents' prior approval. That caused him to conduct further research through the Winnipeg Land Titles Office ("WLTO").

[6] The applicant then reviewed a copy of *The Planning Act*, R.S.M. 1987, c. P80, (the "*1987 Planning Act*") and learned that if a title contains two physically separate non-contiguous lots, the owner can apply to the district registrar for two separate titles without requiring approval from the approving authority.

[7] These discoveries led the applicant to retain the services of lawyer Maureen Terra ("Terra"). Terra conducted research into the Property over a period of time from May 3, 2021, to May 12, 2021. She corresponded with the applicant and confirmed that the construction of the Red River Floodway caused a break in the contiguity of the Property such that subdivision of the Property should have been exempt from requiring approval from the RM or RRPD.

[8] The applicant conducted further research on his own into the circumstances of the creation of the Floodway in the late 1950's and 1960's, which suggested that a rail line was relocated at that time, such that the break in contiguity of the Property represented by the rail line ought to have been reflected in the title by referencing a water control works plan as a rail right of way.

[9] The applicant asked Terra to confirm if his understanding was correct: that is, if the relocated rail line would have converted the water control works plan into a rail right of way, severing contiguity in the Property, making approval of the RRPD and RM unnecessary to complete the subdivision. Terra confirmed her opinion that it had.

[10] As a result, as of the end of May 2021, the applicant says that he had learned that the RM and the RRPD had been negligent in their handling of the Subdivision Application several years prior. In particular, the property was two physically separate, non-contiguous lots, each having access to a road (Raleigh and Rebeck), and therefore subdivision of the Property ought to have been a formality without any need for approval.

[11] The application brief indicates that the proposed cause of action against the respondents is based in negligence. The applicant alleges that the respondents never advised him that he could have subdivided the property at the boundary of the CN rail line without first obtaining the respondents' approval, that he relied on their advice, and that the negligence resulted in significant loss and damage.

[12] The applicant was cross-examined on his affidavit. During his cross-examination, counsel for the respondents requested the following undertaking, which was objected to based on solicitor-client privilege:

> UNDERTAKING NO. 5 (UNDER ADVISEMENT): To the extent that counsel was engaged to provide advice regarding the respondents' handling of the subdivision application or any potential claim against either or both of them, produce a copy of the counsel's file in due course.

[13] The applicant confirmed during his cross-examination that he had retained the services of Hill Sokalski Walsh LLP ("HSW") regarding possible litigation involving the RM. He undertook to advise when he retained HSW, and later advised that he did so in July 2020. However, he maintained his objection to the undertaking.

[14] After receiving the applicant's answers to undertakings and discovering the applicant first retained legal counsel regarding a potential claim against the RM and/or the RRPD in July 2020, the respondents requested the production of:

> Any and all communications or documents exchanged between the applicant and HSW from July 2020 until the end of May 2021, relating to the applicant's knowledge of a potential claim against the respondents and any advice provided about those facts including whether the applicant had a claim with a reasonable prospect of success.

[15] The respondents also requested production:

> Of any communications between the applicant and HSW relating to further investigations, if any, to determine additional facts or whether the applicants had a claim with a reasonable chance of success.

[16] The applicant refused that request on the basis of solicitor-client privilege. Going forward, I will refer to all of this requested information as the "undertaking" or the "requested disclosure."

APPLICABLE LEGAL FRAMEWORK

[17] The motion is brought under Rule 39.03.1 of The Court of King's Bench Rules, M.R. 553/88 ("*KBR*"). *KBR* 39.03.1 provides as follows:

> **Order re undertakings**
>
> **39.03.1** If a person being cross-examined on an affidavit or examined as a non-party refuses to give an undertaking or fails to provide the information or documents requested after giving an undertaking to do so, the court may order the person to provide the information or documents in question if
>
> (a) the undertaking relates to an important issue in the application or motion;
> (b) it would not be overly onerous or expensive to obtain the information or documents; and
> (c) the provision of the information or documents would significantly assist the court in determining the application or motion.

[18] Manitoba's new limitations statute, *The Limitations Act*, C.C.S.M. c. L150 came into force by proclamation on September 30, 2022. Under the transitional provision of that statute, the *LAA* continues to apply to a proceeding commenced under the *LAA*. This application was commenced on April 4, 2022. Accordingly, despite the repeal of the *LAA* since this proceeding was commenced, the previous limitations regime, and in particular Part II of the *LAA,* continues to apply to this proceeding.

[19] The applicant seeks leave to file a claim against the respondents under s.14(1) of Part II of the *LAA* regarding allegations of negligent advice regarding the subdivision application provided to the applicant by both the RM and the RRPD.

[20] Section 14(1) of the *LAA* provides as follows:

> PART II
> EXTENSION OF LIMITATION PERIOD
> Extension of time in certain cases
> 14(1)
> Notwithstanding any provision of this Act or of any other Act of the Legislature limiting the time for beginning an action, the court, on application, may grant leave to the applicant to begin or continue an action if it is satisfied on evidence adduced by or on behalf of the applicant that not more than 12 months have elapsed between
>
> > (a) the date on which the applicant first knew, or, in all the circumstances of the case, ought to have known, of all material facts of a decisive character upon which the action is based; and
> > (b) the date on which the application was made to the court for leave.

[21] Section 20(3) sets out criteria relating to the nature of material facts for the purpose of Part II of the *LAA*. It provides as follows:

> **Nature of material facts**
> 20(3) For the purposes of this Part, any of the material facts relating to a cause of action shall be taken, at any particular time, to have been facts of a decisive character if they were facts which a person of his intelligence, education and experience, knowing those facts and having obtained appropriate advice in respect of them, would have regarded at that time as determining, in relation to that cause of action, that, apart from any defence based on a provision of this Act or any other Act of the Legislature limiting the time for bringing an action, an action would have a reasonable prospect of succeeding and resulting in an award of damages or remedy sufficient to justify the bringing of the actions.

POSITION OF THE PARTIES

[22] The respondents acknowledge that the requested disclosure is subject to solicitor-client privilege. However, they submit that the applicant has waived privilege over the

documents such that they ought to be produced. They say that the elements in *KBR* 39.03.1 are met.

[23] The applicant does not dispute that the second element of *KBR* 39.03.1 is met, namely that it would not be overly onerous or expensive to obtain the information or documents. However, the applicant takes the position that the first and third elements are not met. That is, he disagrees that the undertaking relates to an important issue in the application and that the provision of it would significantly assist the court in determining the application or motion.

[24] The applicant denies that he has waived solicitor-client privilege relating to his communications with HSW. He agrees that he has waived it concerning his retainer with Terra whom he retained in April 2021 to conduct research and consultation on various issues involving the land at issue. He says that to advance his application, he waived solicitor-client privilege only over communication between himself and Terra in April and May 2021.

ANALYSIS

***KBR* 39.03.1**

[25] To assess whether the undertaking relates to an important issue in the application and whether the provision of the information or documents would significantly assist the court in determining the application, it is helpful to review the requirements for the leave application in question.

[26] In ***Winnipeg Condominium Corporation No. 881 v. T & T et al***, 2022 MBQB 33, the court summarizes the requirements for an application for leave under the *LAA* as follows:

> **25** The issues to be determined on a Part II application were set out in ***Cahill v. Pasieczka***, 2014 MBQB 217, 311 Man. R. (2d) 138 ("***Cahill***") as follows:
>
> > [26] The onus is on the applicants to file sufficient evidence to support the application. The decision to extend the time is discretionary in the sense that section 14(1) provides that the court "may grant leave" to the applicant to bring an action. The primary question or issue argued in this case is the date on which the applicant first knew, or, in all the circumstances of the case, ought to have known, of all material facts of a decisive character upon which the action is based.
> >
> > [27] The requirements on an application for leave were summarized by this court in ***Sochasky v. Winnipeg (City)***, 2013 MBQB 204, [2013] M.J. No. 291 (QL), as follows:
> >
> > > [22] Taken together, these sections provide that in order to be successful on an application for leave under sections 14(1) and 15(2) of *The Limitation of Actions Act*, the moving party must:
> > > (a) prove by evidence that he or she has a cause of action which, subject to any defence that may be raised, has a reasonable chance of success;
> > > (b) prove, at the very least, that he or she first learned of a fact material to his or her cause of action within the 12 months next before the application was filed;
> > > (c) establish that the fact, first learned within that period, is "material" within the sense defined in section 20(2); it must be of "a decisive character" as that phrase is defined in section 20(3);
> > > (d) establish that the fact must not be one which the applicant ought to have known about earlier.

[27] Accordingly, the onus will be on the applicant to prove that he first learned of the material facts within the 12 months before the application was filed. With the application having been filed on April 4, 2022, the court will need to consider whether the applicant knew, or ought to have known, all material facts of a decisive character upon which the proposed action is based before April 4, 2021.

[28] In ***Goodman v. East St. Paul (Rural Municipality)***, 2011 MBQB 111, ("***Goodman***"), the court found that an applicant must establish that reasonable diligence was used to obtain the facts upon which the claim is based (see para 11). In particular, the court found as follows at para 13:

> 13. If the material facts of the decisive character are ascertained within the year preceding the application, but such facts could have been ascertained much earlier, an applicant has not satisfied the requirements of this section. The court therefore also has to assess whether reasonable diligence has been utilized by the applicant.

[29] In ***Goodman***, the application for leave related to a cause of action against a third party. The plaintiff's evidence was that she had become aware of certain material facts relating to a third party contractor in 2009 and 2010. However, the court noted that her evidence showed that she was investigating the matter as early as 2005. The court found that it ought to have been apparent to the plaintiff that the named defendant was not the only foreseeable candidate for a lawsuit. Her application was dismissed.

[30] The respondents argue that a critical issue in the substantive application is whether the applicant lacked the factual and legal knowledge necessary to commence an action for leave before April 4, 2021. They say that to determine what material facts were within the applicant's knowledge, the court must review and consider what the applicant actually did, who was consulted for advice, when, and what advice was received. They say that without access to the requested documents, they have no way to challenge the applicant's position as to when he learned of the material facts of a decisive character upon which his proposed action is based. Similarly, they say that the requested documents are

necessary to properly address the issue of whether the applicant exercised reasonable diligence in discovering the reasonable facts of a decisive character.

[31] The respondents say that it is evident from the listing of privileged documents provided by counsel for the applicant that, in addition to email communication starting on July 6, 2020, HSW provided the applicant with an "Opinion Memorandum" on April 2, 2021, more than 12 months before the notice of application was filed. The applicant advised on cross-examination that he retained HSW regarding possible litigation against the respondents. The respondents say it is, therefore, reasonable to question whether the requested disclosure would reveal information to show that the applicant knew, or ought to have known, of all material facts of a decisive character before April 4, 2021, including whether he could have ascertained them earlier had he exercised reasonable diligence. Accordingly, the respondents say that the requested disclosure relates to an important issue in the application and that the provision of the documents would significantly assist the courts in its determination.

[32] The applicant does not agree that the privileged documents are important or would significantly assist the court in determining. He points out that he has not alleged that the discovery of the additional material facts occurred by advice through or research conducted by HSW. Instead, he has stated that those discoveries occurred through a combination of his efforts along with inquiries made by Terra, who was retained specifically for that purpose at the end of March 2021, and with her findings discussed with him in April and May 2021. Therefore, the applicant agrees that the Terra documents

and communications unquestionably relate to an important issue in this application and assist the court in determining the matter.

[33] The applicant says that the requested disclosure, on the other hand, goes too far. He says that if this court accepts the approach argued by the respondent, any applicant who seeks leave to bring an action under Part II of the *LAA* would potentially be required to reveal the entirety of their privileged communications with their legal representative to responding parties, simply because the applicant has acknowledged that they retained counsel before bringing the application.

[34] While I agree with the applicant that the courts must be cautious respecting the waiver of solicitor-client privilege, I do not accept the applicant's position that it is not important and useful to consider what material facts he knew or ought to have known more than 12 months before he applied.

[35] The remedy of an extension of time for leave is discretionary. However, the court may only exercise that discretion if it is satisfied that not more than 12 months have passed between when the applicant knew or ought to have known of the material facts and the date of the application for leave. In the present case, the evidence must show that the applicant did not know, or ought not to have known, the material facts before April 4, 2021. If he did, the court cannot grant leave to extend time.

[36] I find that it is not enough that the applicant asserts that he learned of the material facts based on his efforts and those of Terra in April and May of 2021. He confirmed that he retained HSW on July 20, 2020, regarding possible litigation involving the RM. If there are no communications or documents between the applicant and HSW regarding his

knowledge of a potential claim, the applicant can provide that answer. However, if there are such communications and documents, I find that these do relate to an important issue and would significantly assist the court in determining the application.

[37] Accordingly, I agree with the respondents that the disclosure requested relates to an important issue and would significantly assist the court. Given that the documents or communications in question are privileged, I must determine whether solicitor-client privilege has been waived.

Waiver of Privilege

[38] The applicant submits that the information and documents sought by the respondents are clearly covered by solicitor-client privilege, in the context of his file at HSW, which is his litigation counsel. Accordingly, the applicant says the onus shifts to the respondents to satisfy the court that this privilege has been waived (see ***Man-Shield Construction Inc. v. Renaissance Station Inc.***, 2014 MBQB 101, at para 8).

[39] The applicant relies on a recent decision by the Manitoba Court of King's Bench in ***WSIB Investments (Infrastructure) Pooled Fund Trust et al v. Plenary Group (Canada) Ltd., et al***, 2022 MBQB 145 ("***WSIB***"). The court applied the following summary of the governing principles related to solicitor-client privilege and the circumstances in which it may be waived at paragraph 11 (citations omitted):

> 11 What is the law governing waiver? I glean the following principles from the cases to which I was referred:
> - Solicitor-client privilege belongs to the client.
>   - Solicitor-client privilege is a fundamental and substantive rule of law.
>
> …

- Solicitor-client privilege must remain as close to absolute as possible. It will not be lightly abrogated.
  …

- Waiver can be express or implied:
  - Express waiver requires:
    - knowledge of the privilege
    - the waiver to be voluntary by the party entitled to the privilege
      …

- Implied waiver (the topic in this case) -- What constitutes implied waiver has been articulated in a number of similar, but not entirely uniform ways. I believe the following describes the proper approach:

  - The inquiry into whether solicitor-client privilege was waived must occur in the context of my earlier statement that the privilege is a fundamental and substantive rule of law.

  - As with express waiver, the act giving rise to implied waiver should be as near to deliberate or voluntary as possible. …

  - For implied waiver to occur, the party entitled to the privilege must voluntarily inject into the litigation, in a material way, its understanding of the law or legal advice it received. An alternative formulation with the same meaning is that waiver occurs when a party chooses to use legal advice as a material element of its claim or defence. …

  - This "choice" may be evidenced in, among other things, pleadings, evidence or argument. …

  - The reason privilege will be waived in these circumstances is because it would be unfair and inconsistent to permit a party to use privileged information in a material way to advance its case while at the same time prevent the other side from testing the justification or explanation. …

  - The mere fact state of mind is in issue or that a party refers to receiving legal advice is not sufficient to waive privilege. …

[40] In ***WSIB***, privilege was found to have been implicitly waived by the plaintiffs. The plaintiffs were represented by a law firm that negotiated and drafted a series of loan agreements with the defendants. The plaintiffs alleged, among other things, that the "final" agreement, which had purportedly been agreed to several years prior, was not the

agreement actually agreed to by the parties and sought rectification. The defendants sought a declaration that the plaintiffs implicitly waived privilege over the communications and documents they exchanged with the law firm and their in-house counsel, related to the various agreements and issues.

[41] The court granted the declaration and found that an implied waiver had occurred. The plaintiffs' state of mind had been placed in issue because one of the central questions in the litigation was how the plaintiffs did not know that a certain loan agreement was the wrong agreement. The plaintiffs' own pleadings put into issue the actions of the legal counsel, including what was and was not communicated to the client. The court noted further that it is difficult to imagine deciding the case without addressing whether the plaintiffs knew about a mistake, including what their counsel told them about the loan agreement they were advised to sign (see ***WSIB*** at para 15).

[42] The applicant says that unlike in ***WSIB***, he has not put into issue his counsel's actions. Accordingly, his position is that, unlike the plaintiffs in ***WSIB***, he has not waived privilege over his communications with his counsel.

[43] In ***Brooks Equipment Ltd., et al v. La Salle Credit Union Ltd. et al***, 2016 MBQB 98, (***Brooks***), the court considers an implied waiver of privilege in the context of invoking a postponement of a limitation period. It found that where a party invokes a postponement of a limitation period, there is an implied waiver of privilege over any communication tending to prove facts in relation to the parties' knowledge or state of mind (see ***Brooks*** at para 39).

[44] The underlying rationale for finding an implied waiver is based on fairness, specifically, the unfairness resulting from the privileged holder's affirmative act misusing the privilege in some way (see ***Brooks*** at para 37).

[45] In ***Brooks***, the plaintiff had brought an action against the defendants alleging that they had conspired to defraud the plaintiff by refinancing one defendant debtor's business in a manner that extinguished the debt owed to the plaintiff without an actual repayment and acted to conceal such fraud. The defendants took the position that the claim, which was filed in 2013, was statute barred in that it related to events that occurred more than six years before the claim was brought. The plaintiff filed a reply claiming that the facts underlying the action had not been discovered until the examination in bankruptcy of the debtor's principle in 2013.

[46] In August 2015, a representative of the plaintiff was examined for discovery. One undertaking required him to "advise of any new information learned from the 2013 transcript for grounds for a lawsuit against the defendants that weren't already known". In his answer, the representative stated that he did not know the complexity of the relationship between two individual defendants or its extent until he read the 2013 transcripts.

[47] The plaintiff prepared a supplemental affidavit of documents claiming solicitor-client or common interest privilege over several documents, and the defendants brought a motion for production of the privileged documents. The defendants argued that privilege had been waived by the plaintiff voluntarily on discovery and that an implied

waiver applied because the plaintiff placed at issue its state of mind and/or knowledge of facts at a given point in time in the action.

[48] The court found that it would be unfair to maintain privilege as the plaintiff placed its state of mind and knowledge in issue (see ***Brooks*** at para 41). The defendants' motion was granted in part, and certain portions of documents were ordered to be produced.

[49] The applicant points out that in ***Brooks***, where the court found that implied waiver had occurred and production of privileged communication was necessary, it still limited production to privileged documents that were relevant to the "specific information as to when (the plaintiff) first learned of the grounds for a law suit against the defendant" and "… deliberately excluded production of advice and opinions provided by the plaintiff's counsel at the time." (See ***Brooks*** at paras 46 to 47).

[50] The applicant says that "specific information" has already been provided to the respondents in this matter, namely, privileged communications exchanged between Terra and the applicant. He submits that even if the court is prepared to grant the production order sought by the respondents, the request is too broad. The applicant says that plainly, any correspondence between HSW and the applicant after April 4, 2021, ought not be produced, as the application was filed on April 4, 2022.

[51] The applicant also says that disclosure of all discussions between the applicant and HSW could prejudice the applicant's position in the event that the application is successful and an action is allowed to proceed.

[52] In the course of discussing the undertaking, counsel for the applicant provided a list of the documents over which privilege is claimed in the time period in question. There

is an opinion memorandum from HSW to the applicant dated April 2, 2021. The balance of the documents are numerous emails between the applicant and HSW between July 6, 2020, and May 18, 2021. There are 15 emails listed after April 4, 2021.

[53] The respondents are seeking disclosure from July 2020 (when HSW was retained) to the end of May 2021. Even though the one-year point before the application was April 4, 2021, the respondents seek the disclosure until the end of May 2021 to match up with the time frame that the applicant says he learned of the material facts.

[54] I find that the applicant has waived privilege over some of the requested documents. He has put his state of mind at issue as to when he first discovered various alleged material facts, including when he found out about the exception in the *1987 Planning Act*, and obtained advice from his lawyer that his property was non-contiguous (as found in that exception). In addition, he has deposed that he retained legal counsel concerning possible litigation involving the RM prior to his engagement with Terra.

[55] I find that it would be unfair for the applicant to retain the benefit of privilege in the circumstances. The applicant seeks to obtain the benefit of an extension of the limitation period while at the same time trying to shield potentially relevant information relating to his knowledge of the material facts upon which the proposed action is based. Without access to the documents, the respondents cannot challenge the applicant's assertion that he did not know of all material facts of a decisive character before April 4, 2021, or that he could have ascertained them earlier had he exercised reasonable diligence.

[56] I also note that ***Brooks*** deals with an implied waiver of privilege where a party placed at issue their state of mind and knowledge but was not a consideration of whether to extend a limitation period. In a section 14(1) application under the *LAA*, the court must consider what the applicant knew or ought to have known more than one year before bringing the application. Where an applicant must show that he exercised due diligence in obtaining the facts upon which the claim is based and has put that state of knowledge in issue, the scope of the implied waiver of privilege may necessarily be wider than a case where the question of due diligence is not in issue.

[57] In my view, the scope of the disclosure can be narrowed by reference to the list of documents over which the applicant claims privilege in his counsel's letter of March 3, 2023. I find that the applicant has waived privilege over any portions of the documents set out in the March 3, 2023, list that relate to the applicant's knowledge on or before April 4, 2021, of a potential claim against the respondents, any advice provided about these facts including whether the applicant had a claim with a reasonable prospect of success and relating to any investigations to determine additional facts or whether the applicant had a claim with a reasonable chance of success.

[58] For clarity, to the extent that this covers any documents that postdate April 4, 2021, I find that privilege is only waived if the communications refer to anything the applicant knew or advice provided, etc., before April 4, 2021.

[59] In ***Brooks***, Edmond J., as he then was, examined the documents and determined for which documents or portions thereof privilege had been waived. There has not been an examination by me in this case, although the applicant expressed a willingness for

such an examination to occur. In my view, counsel for the applicant can determine which documents, or portions thereof, if any, fall within the category of documents over which I have determined that the applicant has waived privilege.

CONCLUSION

[60] For the reasons set out above, I direct the applicant to disclose any document, or portion thereof, from the list of documents over which privilege is claimed that relates to:

i) the applicant's knowledge of a potential claim against the respondents;

ii) any advice provided about those facts, including whether the applicant had a claim with a reasonable prospect of success; and

iii) further investigations, if any, to determine additional facts or whether the applicant had a claim with a reasonable chance of success.

[61] The disclosure shall be made to the respondents' counsel within 20 days of signing the order.

[62] If the parties cannot agree on costs, counsel may arrange to speak to the issue.

_____

J. L. Goldenberg
Associate Judge