

Lawyer not removed from record despite failure to promptly disclose receipt of privileged settlement information (Candido v Bramview Holdings Inc.)

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During the course of litigation, lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties which contain privileged information. If a lawyer knows or reasonably should know that such a document was sent inadvertently, [Rule 7.2-10 of the Rules of Professional Conduct](#) of the Law Society of Ontario (titled "Inadvertent Communications"), requires the lawyer to notify the sender promptly to permit that person to take protective measures.

The inadvertent disclosure of a privilege document by one side to another during litigation has been likened by one motion judge to the transmission of an infection. Lawyers have a duty to promptly advise the party that they have received such communications and to take appropriate steps to contain the spread of the potential infection. In the judge's words, "the more quickly it is contained, the easier it may be to eradicate its harmful effect": [White v. 123627 Canada Inc., 2014 ONSC 2682 \(CanLII\)](#).

The failure to act promptly and appropriately may lead to prejudicial effects that threaten the integrity of the proceedings and the legal system in general.

In [Candido v Bramview Holdings Inc., 2026 ONSC 2622 \(CanLII\)](#), counsel for a party who was six weeks away from a lengthy trial narrowly avoided being removed from the record due to the failure to take appropriate steps to contain the receipt of privileged information.

The litigation stemmed from a slip-and-fall that occurred in 2016. The plaintiffs commenced an action for negligence against Planet Ford and the City of Brampton in January 2018, and the action was eventually scheduled for trial in May 2026.

In November 2025, the plaintiffs settled the action against Planet Ford under the terms of a Pierringer Agreement, which is a settlement agreement between a plaintiff and one of multiple defendants which allows the plaintiff to continue their claim against the remaining defendants for their portion of liability. Typically, the amount of the plaintiff's settlement is not disclosed to the remaining defendants or the court until the conclusion of trial.

As a matter of law, the financial terms of a Pierringer Agreement are protected by settlement privilege until fault is apportioned between the co-defendants. This enables the trial judge to apportion liability between the parties notwithstanding that settlement has been reached with one or more of them.

A redacted copy of the Pierringer Agreement between the plaintiffs and Planet Ford was served on the lawyer for Brampton as part of the plaintiffs' motion to amend the statement of claim in accordance with the settlement.

The redaction of the precise settlement amount, however, was not "burned in" which meant that someone in the lawyer's office was able to unredact the document and see the settlement amount. Brampton's lawyer then emailed that information to his client.

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At a pre-trial conference in April 2026, Brampton's lawyer disclosed that he knew the financial terms of the settlement between the plaintiffs and Planet Ford. The lawyer had not previously disclosed to the other parties that he had discovered this information.

The plaintiffs brought an urgent motion to have the lawyer removed as Brampton's lawyer of record. The parties agreed that if the lawyer was removed from the record, the trial would need to be adjourned. At the time of the motion, the parties intended to call over 30 witnesses, including 11 experts, for the trial which was estimated to take at least five weeks.

The motion judge commented that settlements are a critical tool in the civil justice system which help reduce litigation delay, expense, and stress, and allow a defendant to achieve finality. Pierringer Agreements, in particular, encourage settlements in multi-party proceedings by mitigating the different risk tolerances of defendants.

The evidence of Brampton's lawyer was not clear as to whether he actively sought the privileged information regarding the settlement amount or whether it was provided to him by a colleague without solicitation. Regardless, the motion judge noted that the lawyer's actions weren't a mistake or inadvertent. Even if a colleague "blurted the information out," the lawyer should not have shared the settlement amount with his client.

While the lawyer's evidence was that he did not appreciate that the settlement amount was privileged, the motion judge found that to be incredible, noting that he had been practicing law in this area for almost 40 years.

Had there been some doubt as to whether the settlement amount was confidential, the lawyer could have asked the plaintiffs if the agreement was redacted by mistake.

In the motion judge's view, the lawyer either intentionally disclosed privileged information or, at worst, he participated in his colleague's breach of the plaintiffs' settlement privilege.

Referring to paragraph 16 of *White v. 123627 Canada Inc.*, the motion judge stated that the lawyer was obligated to tell the plaintiffs immediately that he accessed the settlement amount in the Pierringer Agreement and to have permanently deleted the document. He failed to do so.

Even though the lawyer's conduct was blameworthy, however, the motion judge concluded that removal from the record would be too extreme as there were other measures that could be taken to avoid prejudice to the conduct of the trial.

Importantly, what was at issue was not a broad range of documentary disclosure but a single piece of privileged information—the Pierringer settlement amount. As a protective measure, Brampton and its lawyer undertook not to mention or rely on the settlement amount until the apportionment phase of the trial, and not to disclose the settlement amount to anybody else.

While the plaintiffs argued that these measures were inadequate, the motion judge did not see any prejudice to the trial proceedings. The settlement amount was irrelevant to whether Brampton was liable for negligence and, if so, any damages that should be awarded to the plaintiffs. The plaintiffs did not establish any express disadvantage they would suffer because of the lawyer's knowledge of the settlement amount.

Of note, the long and complex trial was less than a week away and the motion judge was cognizant of the observations of the Supreme Court of Canada that "an order removing counsel can be 'extreme' and may have a 'devastating' effect on the party whose counsel is removed": *Celanese Canada Inc. v Murray Demolition Corp.*, 2006 SCC 36, paragraph 64. The action was already ten years removed from the slip-and-fall incident. An adjournment would have resulted in another year or two delay in the case reaching trial.

Based on these considerations, the plaintiffs' motion to have counsel removed from the record was [dismissed](#). The lawyer and his client were ordered to abide by their undertaking not to disclose the settlement amount to any third party or otherwise rely on that information during the trial.

The decision illustrates the high standards of professional conduct to which lawyers are held when they inadvertently receive information from an adverse party that they know or ought to know was intended to be privileged. In closing comments, the motion judge stated that the passing grade on matters of ethics is 100 percent and that by failing this test, Brampton's lawyer undermined the integrity of the justice system. Whether any costs consequences result from the decision remains to be seen. A PDF version is available for download [here](#).

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