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Inadvertently disclosed privileged documents: How to respond

By **James R.G. Cook**

Law360 Canada (June 2, 2026, 1:48 PM EDT) -- 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: "[T]he more quickly it is contained, the easier it may be to eradicate its harmful effect" (*White v. 123627 Canada Inc. (c.o.b. Algonquin Petro Canada)*, 2014 ONSC 2682).

In Ontario, the professional obligation to respond appropriately upon receipt of inadvertently disclosed privileged documents is codified in Rule 7.2-10 of the *Rules of Professional Conduct*: a lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably ought to know that the document was inadvertently sent shall promptly notify the sender.

The commentary to the rule does not outline any additional steps that should be taken, such as returning the original documents, as these matters are beyond the scope of the rule.

At the least, lawyers who inadvertently receive privileged communications from an adverse party have a duty to promptly advise the party that they have received such communications. The failure to do so may lead to a lawyer being removed as counsel of record by the court or other sanctions.

In *Candido v. Bramview Holdings Inc.*, 2026 ONSC 2622, counsel for a party who was weeks away from a lengthy trial narrowly avoided being removed from the record due to his 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 that 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.



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Planet Ford's lawyer then emailed that information to his client.

At a pretrial 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 plaintiffs or Planet Ford that he had discovered this information.

The plaintiffs brought an urgent motion to have the lawyer removed as Brampton's lawyer of record, which would have required Brampton to retain new counsel for the imminent trial.

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 parties agreed that if the lawyer was removed from the record, the trial would need to be adjourned.

The motion judge commented that settlements are a critical tool in the civil justice system that 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 defendants' differing risk tolerances.

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, noted the motion judge, 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.

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.

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 practising 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. 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.

However, even though the lawyer's conduct was blameworthy, 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.

What was at issue in this case was not a broad range of documentary disclosure but a single piece of privileged information, the Pierringer settlement amount, that Brampton learned about shortly after the settlement in November 2025 and was not disclosed to the plaintiffs until April 2026. During that time, three pretrial conferences had occurred.

The motion judge could not determine whether Brampton's settlement posture changed after its lawyer learned the settlement amount or the degree to which the disclosure prejudiced the parties' settlement discussions. The motion judge nevertheless inferred that Brampton's position on settlement had changed once it knew the plaintiffs would receive some compensation at the end of the case.

As a protective measure, Brampton and its lawyer undertook not to mention or rely on the settlement amount until the apportionment phase, 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 proper. The settlement amount was irrelevant to whether Brampton is 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.

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 35, para. 64. An adjournment would have been another year or two delay for trial of an action that was already 10 years removed from the slip-and-fall incident.

As a result, 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. Whether costs consequences will follow remains to be seen.

The decision reiterates the stringent ethical standard that applies when a lawyer receives material that is, or reasonably appears to be, privileged. Containment and disclosure obligations are immediately engaged. While removal from the record was declined given the narrow scope of the breach and proximity to trial, the court’s censure was unequivocal: the “passing grade” is 100 per cent. The decision also demonstrates the court’s balancing of ethical breaches against the practical imperatives of trial fairness and efficiency, favouring targeted safeguards where they can neutralize prejudice.

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