

COURT OF APPEAL OF
NEW BRUNSWICK



COUR D'APPEL DU
NOUVEAU-BRUNSWICK

59-25-CA

B E T W E E N :

E N T R E :

TRAVIS TIMOTHY PROSSER

TRAVIS TIMOTHY PROSSER

APPELLANT

APPELANT

- and -

-et-

HIS MAJESTY THE KING

SA MAJESTÉ LE ROI

RESPONDENT

INTIMÉ

Prosser v. R., 2026 NBCA 9

Prosser c. R., 2026 NBCA 9

Motion heard by:
The Honourable Justice LeBlanc

Motion entendue par :
l'honorable juge LeBlanc

Date of hearing:
January 26, 2026

Date de l'audience :
le 26 janvier 2026

Date of decision:
January 26, 2026

Date de la décision :
le 26 janvier 2026

Counsel at hearing:

Avocats à l'audience :

Travis Timothy Prosser, on his own behalf

Travis Timothy Prosser, en son propre nom

Dustin Caissie, on his own behalf

Dustin Caissie, en son propre nom

For the Respondent:

Pour l'intimé :

Patrick McGuinty
Christian Girouard

Patrick McGuinty
Christian Girouard

DECISION

[1] Mr. Prosser faced multiple criminal charges under the *Criminal Code*, R.S.C. 1985, c. C-46, and the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, set out in seven separate Informations.

[2] With the assistance of counsel, Mr. Dustin Caissie, he negotiated a global resolution with both Provincial and Federal crown counsel. As part of the plea agreement, several charges were withdrawn or reduced. In March 2025, Mr. Prosser pleaded guilty to the remaining and amended charges and agreed to a jointly recommended sentence of four years' incarceration.

[3] In April 2025, Mr. Prosser filed a Notice of Appeal challenging both his convictions and sentence, alleging ineffective assistance of counsel as the sole ground of appeal. In January 2026, he brought a motion to adduce fresh evidence on appeal, supported by an affidavit elaborating on those allegations. The panel assigned to determine whether Mr. Prosser should be granted leave to appeal his convictions, and sentence will also determine the fate of his motion to adduce fresh evidence.

[4] Mr. Prosser's allegations engaged this Court's protocol, published on its website, governing appeals involving claims of ineffective misrepresentation of counsel at first instance. Mr. Prosser's trial counsel, Mr. Caissie, was accordingly notified of the proceedings. Mr. Caissie subsequently filed a motion seeking directions regarding the manner and scope of his response to Mr. Prosser's allegations, and judicial recognition that, by making the allegations, Mr. Prosser waived solicitor-client privilege.

[5] Mr. Prosser participated in the hearing of Mr. Caissie's motion by telephone and confirmed on the record that he waived solicitor-client privilege with respect to his communications with Mr. Caissie concerning the matter before this Court.

[6] A similar motion was brought before this Court by trial counsel in *R. v. Boucher*, [2021] N.B.J. No. 93 (QL), in which Chief Justice Richard summarized the law governing solicitor-client privilege and its express or implied waiver:

[...] In *Harich v. Stamp et al.* (1979), 27 O.R. (2d) 395 (C.A.), Lacourcière J.A. summarized these principles as follows:

[...] When the client alleges a breach of his solicitor's duty to him, he waives the privilege as to all communications relevant to that issue: see *Wigmore on Evidence*, p. 638, para. 2328 (McNaughton Revision), vol. VIII. [...] [para. 6] [para. 11]

[7] Noting that these principles had been considered by the Nova Scotia Court of Appeal in *R. v. Hobbs*, 2009 NSCA 90, [2009] N.S.J. No. 409 (QL), the Chief Justice adopted Saunders J.A.'s review of the law at paragraphs 15 to 20. He concluded that Mr. Boucher's affidavit in support of his motion to adduce fresh evidence placed before the Court "the substance of otherwise privileged communications between him and [his former counsel] concerning the conduct of his defence as the basis upon which he seeks a finding of ineffective counsel and an overturning of his conviction on appeal" (para. 13).

[8] Applying these principles to this matter, and independently of Mr. Prosser's express waiver, I find that the solicitor-client privilege has been waived. As in *Boucher*, this does not mean that all communications between Mr. Caissie and Mr. Prosser are waived. Rather, Mr. Caissie must determine the nature and scope of the disclosure reasonably necessary to respond to the specific allegations of ineffective assistance in this matter.

[9] As Mr. Prosser's appeal is scheduled to be heard on January 30, 2026, and in accordance with the Chief Justice's directive and s. 24(2) of the *Official Languages Act*, S.N.B. 2002, c. O-0.5, this decision is issued first in English and will be published in French at the earliest possible time thereafter.