Superior Court of Québec
Criminal Division

Directive concerning applications for access to seized and sealed items that may be subject to privilege (s. 32 *R.S.C.Q.C.M.*)

In accordance with section 32 of the *Rules of the Superior Court of Quebec in Criminal Matters* ("*R.S.C.Q.C.M.*"), this Directive applies to all applications for access to seized and sealed items that may be subject to privilege, such as solicitor-client privilege.

Application

1. The application must be assigned a jurisdictional number "36" in the judicial district where the seized items are held pursuant to judicial authorizations.

2. The application must include:

   (a) The names of the parties, including the applicant-seizing authority, the seized respondents, the impleaded parties, and the sheriff of the judicial district acting as custodian of the items under seal;

      i. The Attorney General of Quebec ("AGQ") must be impleaded when the conclusions of the application seek the appointment of an *amicus curiae*.

   (b) A list of the judicial authorizations, the items seized, and the reports on the items seized;

   (c) A list of the items that may be subject to one or more privileges and whose access is sought by the applicant;

   (d) The names of any known person likely to claim any privilege regarding the items seized;

   (e) The circumstances of the searches, including whether the seized person, or that person's representative, were on the premises when the searches were conducted;

   (f) The identity of any person who has claimed one or more privileges at the time of the seizure or since its execution.

3. The application must set out the terms of the draft protocol for the analysis of the items seized and under seal.

4. The application must be accompanied by a notice of presentation of not less than three working days setting the matter *pro forma* for a case management hearing.

Draft Analysis Protocol

1. The draft analysis protocol must indicate:

   (a) The identity of the custodian of the items to be analyzed;

   (b) The procedure for the analysis;

   (c) Whether the appointment of an *amicus curiae* and/or a technology assistant is required for the identification of the items that may be privileged and their transmission to the seized respondents and to the Court to rule on the application. Should such an appointment be required, a confidentiality agreement must be obtained from the *amicus curiae* and/or the technology assistant;

   (d) The measures intended to protect the confidentiality of items that may be subject to a privilege pending a final decision on the application of a privilege.

2. The draft analysis protocol must be accepted and signed by all parties.

3. The protocol must be endorsed by the Court. If the parties fail to come to an agreement, the Court will determine the terms of the protocol.