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Is a Draft Agreement Prepared by Your Lawyer a Form of Legal Advice?

*Malaysia Debt Ventures Berhad v Platinum TechSolve Sdn Bhd & Ors (CA)*¹

The doctrine of legal professional privilege is well-established in Commonwealth jurisdictions. It protects confidential communication between a lawyer and his client, including legal advice, from disclosure. The underlying rationale of the privilege afforded to lawyer-client communication is one of public policy — it is to enable clients to freely consult and seek legal advice from his lawyer without fear that what he tells his lawyer will be disclosed without his consent.

In the above appeal, the question that arose was whether a draft agreement prepared by a solicitor for his/her client amounts to legal advice and, therefore, ought to be protected from disclosure on the ground of legal professional privilege.

The brief facts of the matter are as follows. Malaysia Debt Ventures Berhad (**MDV**) commenced a suit against Platinum TechSolve Sdn Bhd (**PTS**) for recovery of a sum due and owing under an Islamic financing facility. PTS denied liability, claiming in its defence that a compromise had been reached between the parties, and that MDV had breached the terms of the compromise.

In the course of preparation for the trial, PTS filed an application under O 24 r 7 of the Rules of Court 2012 for discovery of a draft settlement agreement that was being prepared by MDV's solicitors. At all material times, the draft agreement remained in the form of a working draft and was never forwarded to PTS. MDV claimed privilege over the draft agreement as it amounted to legal advice given to them by their solicitors.

The High Court allowed the discovery application and held that the draft agreement was not legal advice and hence, not a privileged document. On appeal, the Court of Appeal reversed the decision of the High Court. From its brief oral judgment, the Court of Appeal held that, among others, the draft agreement that was being prepared by MDV's solicitors and still in the form of a working draft would fall within the scope of legal advice to MDV and, therefore, ought to be protected from disclosure on the ground of legal professional privilege.

It is the authors' respectful view that the decision of the Court of Appeal is in line with well-established principles locally and abroad that save for certain limited circumstances,² legal professional privilege protects all forms of legal advice given by a lawyer to his client from disclosure.

PTS has filed an application for leave to appeal to the Federal Court.

MDV was represented by partners Kumar Kanagasingam and [Chia Oh Sheng](#), and associate Ngo Su Ning, of [Lee Hishammuddin Allen & Gledhill](#).

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² See provisos to sections 126(1) and 129 of the Evidence Act 1950