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### CRIMINAL TRIAL HANDBOOK

**Roger E. Salhany**  
**Release No. 3, October 2024**

This release features updates to the commentary and case law in Chapters 1 (Pre-Trial Review), 2 (Pre-Arraignment Matters), 4 (Arraignment and Plea), 9 (Kinds of Evidence), 10 (Excluded Evidence), 11 (Order of Proof), 12 (Addresses of Counsel and the Charge to the Jury), 14 (Rendering the Verdict), and 15 (Sentencing).

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## Highlights

- **Proceedings at Trial — Kinds of Evidence — Oral testimony — Protection or Privilege from Answering Questions — Public Interest Privilege — Identity of Informers** — The Supreme Court held that informer privilege is not limited simply to the informer's name, but rather extends to any information that might lead to identification. Informer privilege is non discretionary. Once informer status is established, courts are not permitted to weigh the maintenance or scope of the privilege on a case by case basis in light of the circumstances of the case and competing legitimate interests, such as the level of risk faced by the informer, the pursuit of truth or the preservation of public confidence in the administration of justice. Recognition of the non discretionary and thus virtually absolute nature of informer privilege means that the interests protected by the open court principle yield to those protected by the privilege. The social justification for this privilege is found in the need to ensure performance of the policing function and maintenance of law and order. The ban on revealing the informer's identity has dual objectives: to protect the informer from possible retribution and to encourage other people to cooperate with the police in the future by sending them a signal that their identity too will be protected: *Société Radio-Canada c. Personne désignée*, 2024 SCC 21, 2024, CarswellQue 5474, 2024 CarswellQue 5475, 438 C.C.C. (3d) 275 (S.C.C.).
- **Pre-Trial Proceedings — Pre-Trial Review — The Pre-Trial Conference — Suggested Areas of Discussion — Pleas of Guilty — Pre-Trial Proceedings — Arraignment and Plea — Plea of Guilty — The Plea Should be Fully Understood** — It is sufficient, for an informed plea, that the accused knows the possibility that a criminal conviction or sentence will place his or her immigration status in serious jeopardy. Proof that an accused knew of the possibility of removal or deportation is sufficient to refute the assertion that a plea was uninformed: *Johnson*, 2024 SKCA 58, 2024 CarswellSask 247, 438 C.C.C. (3d) 504 (Sask. C.A.).
- **Pre-Trial Proceedings — Pre-Arraignment Matters — Adjournment; Stay for Unreasonable Delay — Stay for Unreasonable Delay** — There was a misapplication of the *Jordan* framework when assessing whether this case took markedly longer than it should have. *Jordan* directs the judge to consider case-specific factors, including: the complexity of the case, local considerations, and whether the Crown took reasonable steps to expedite proceedings: *Musclow*, 2024 ONCA 565, 2024 CarswellOnt 10635 (Ont. C.A.).