

Index

ABUSE OF PROCESS

Stay of proceedings, **2:28**

ADULT INTERDEPENDENT RELATIONS

Generally, **7:1, 7:6, 7:10, 7:11**

AGENT

See **POLICE AGENT**

AMICUS

See **CANADA EVIDENCE ACT** s. 38. see also **INFORMER PRIVILEGE**

APPEALS

Canada Evidence Act

Section 37, applications re, **3:17**
Supreme Court of Canada, to, **3:18**

Section 38, applications re, **4:24**
Certificates of, **4:31**
Supreme Court of Canada, to, **4:25**

Ineffective assistance of counsel claims, **11:86**

Self-incrimination of third parties, **10:42**

ATTORNEY GENERAL

Canada Evidence Act

Defending right to silence, **4:21**

Section 38

AG agreement to disclose under, **4:9, 4:10**

Applications for disclosure, **4:10**

Certificates prohibiting disclosure, **4:30**

Disclosure under, **4:8**

ATTORNEY GENERAL—Cont'd

Canada Evidence Act—Cont'd

Section 38—Cont'd

Duty to notify under, **4:5**

Exceptions, **4:6**

Fiat under, **4:33**

Role under, **4:15**

CABINET CONFIDENCES

See also **CANADA EVIDENCE ACT** s. 39

Applications of s. 39, **5:11**

Certification requirements, **5:7**

Disclosed confidences, **5:7**

Inadvertent disclosure, **5:7**

Protection by public interest privilege, **5:7, 5:13**

Exemptions from protection, **5:3**

Inspection of documents, **5:14**

Judicial review, **5:9, 5:10**

Key points to remember, **5:1**

Provincial protections, **5:13**

Public interest immunity, **5:13, 5:14**

Reason for secrecy, **5:5**

Statutory history, **5:4**

Summary of Cabinet confidences privilege, **5:1**

Waiver by the state, **5:8**

CANADA EVIDENCE ACT

Section 4 (spousal competence and compellability)

Common law relationships, **7:10**

Same sex relationships, **7:11**

Spousal communications, **7:5**

Testimonial privilege, **7:9**

Section 5

generally, **10:5 to 10:7**

CANADA EVIDENCE ACT

—Cont'd

Section 5—Cont'd
 Comparison with s. 13 of the Charter, **10:13**
 History, **10:6**
 Invoking the section, **10:7**
 Use of prior testimony, **10:25**
 Section 37
 generally, **3:1, 3:4**
 Admissible evidence, **3:16**
 Appeals, **3:17**
 Supreme Court Canada, to, **3:18**
 Balancing interests, **3:3**
 Common law, **3:6, 3:23, 3:26, 3:35**
 Conditional orders, **3:15**
 Constitutionality, **3:10**
 Continuing trials pending applications, **3:13**
 Criminal Code, and s. 650, **3:10**
 Defence applications, **3:8**
 Delay, **3:12**
 Distinct from trial, **3:10**
 English roots, **3:5**
 Ex parte proceedings, **3:8, 3:10, 3:20**
 Fair trial rights, **3:21**
 Forum, **3:10**
 Fragmenting proceedings, **3:13**
 History, **3:5**
 Implied undertaking rule, and, **3:33**
 In camera, **3:8, 3:19**
 Informer privilege, **2:6.50, 2:53, 2:58, 3:26**
 Injurious information, **4:4**
 Inspecting documents, **3:14**
 Interlocutory appeals, **3:17**
 Investigative privilege, **3:27**
 Invoking s. 37, **3:8**
 Key points to remember regarding s. 37, **3:2**
 Limiting disclosure, **3:15**

CANADA EVIDENCE ACT

—Cont'd

Section 37—Cont'd
 Master's jurisdiction, **3:9**
 National defence, **4:4**
 Nature of s. 37 privilege, **3:3**
 Observation posts, **3:31**
 Onus, **3:14**
 Orders, **3:15**
 Other statutes, **3:22**
 Preliminary inquiry, **3:9, 3:23**
 Procedure, **3:1, 3:9, 3:10, 3:12**
 Provincial matters, **3:8**
 Publication bans, **3:29, 3:34, 3:35**
 Public interest immunity, **3:3**
 Reactive use, **3:3**
 Sensitive information, **4:4**
 Subject-matter of s. 37, **3:7, 3:8**
 Summary of s. 37 protections, **3:1**
 Superior court jurisdiction, **3:9**
 Test, **3:14**
 Timing, **3:11**
 Undertakings by counsel, **3:20**
 Waiver, **3:14**
 Section 38
 Admissible evidence, **4:15**
 AG agreement to disclose, **4:9, 4:10**
 AG ordered disclosure, **4:8**
 Amicus in ex parte proceedings, **4:27**
 Appeals, **4:24**
 Certificates, of, **4:31**
 Supreme Court of Canada, to, **4:25**
 Applications to court, **4:10, 4:12**
 Certificates, **4:8**
 Appeal of, **4:31**
 Prohibiting disclosure, **4:30**
 Constitutionality, **4:3, 4:7, 4:10, 4:26**
 Criminal Trials, **4:11, 4:32**
 Cross-examination, **4:28**

**CANADA EVIDENCE ACT
—Cont'd**

Section 38—Cont'd
 CSIS, **2:44, 4:4, 4:15**
 Deference to decision, **4:10**
 Disclosure
 AG, by, **4:8**
 Editing of, **4:19**
 Limits imposed, **4:20, 4:23**
 Prohibited, **4:7**
 Duty to notify AG, **4:5**
 Exceptions, **4:6**
 Exclusive jurisdiction of Federal Court, **4:11**
 Ex parte, **4:12, 4:26**
 Fair trial rights, **4:19, 4:32**
 Fiat by Attorney General of Canada, **4:33**
 Foreign governments, **4:14**
 Hearing, **4:10**
 History of section, **4:3**
 Inadvertent disclosure, **4:35**
 In camera, **4:26**
 Information summaries, **4:14**
 Injurious information, **4:4**
 Inspection of documents, **4:15, 4:23**
 Interested parties, **4:22**
 Interlocutory appeals, **3:17**
 International relations, **4:19**
 Introduction, **4:1**
 Key points to remember regarding s. 38, **4:2**
 Minister of National Defence, **4:5**
 Mosaic effect, **4:19**
 National defence, **4:19**
 National security, **4:19**
 Notice to parties, **4:10, 4:22**
 Notification of AG, **4:5**
 Exceptions, **4:6**
 Officials, **4:5**
 Onus, **4:15**
 Open court principle, **4:10, 4:26**
 Orders, **4:14**
 Participant, **4:5**

**CANADA EVIDENCE ACT
—Cont'd**

Section 38—Cont'd
 Preliminary inquiry, **4:15**
 Private hearings, **4:12, 4:26**
 Protective orders, **4:29**
 RCMP, **4:8**
 Relevance, **4:15**
 Reports, **4:13**
 Right to Silence, **4:21**
 Sealing orders, **4:10, 4:29**
 Secrecy, **4:14**
 Sensitive information, **4:4**
 Sharing information, **4:14**
 Special advocates, **4:27**
 Stay of proceedings, **4:32**
 Stinchcombe duties and, **4:4**
 Summaries of information, **4:14, 4:19**
 Test, **4:14, 4:15**
 Applications of three-stage test, **4:19**
 The First Stage, **4:16**
 The Second Stage, **4:17**
 The Third Stage, **4:18**
 Three-stage test, **4:15**
 Third party rule, **4:19**
 Trials, **4:15**
 Ultimate issue, **4:15**
 Undertakings by counsel, **3:20**
 Witness restrictions, **4:20**
 Section 39
 Ambit of s. 39, **5:3**
 Applications of s. 39, **5:11**
 Certification requirements, **5:7**
 Constitutionality of s. 39, **5:12**
 Exemptions from protection, **5:3**
 Inadvertent disclosure, **5:7**
 Introduction, **5:1 to 5:3**
 Judge, **4:14**
 Judicial Review, **5:9, 5:10**
 Key points to remember regarding s. 39, **5:2**
 Reason for secrecy, **5:5**

CANADA EVIDENCE ACT
—Cont'd

- Section 39—Cont'd
 - Scope of protection, **5:6**
 - Statutory history, **5:4**
 - Summary of s. 39 protections, **5:1**
 - Twenty year rule, **5:3**
 - Waiver by the state, **5:8**
- Section 39.1, **13:6, 13:11**

CASE-BY-CASE PRIVILEGE
Generally, **1:5**

CERTIFICATES

- See CANADA EVIDENCE ACT s. 38
- Parliament of Canada Act s. 7, **6:14**

CHARTER OF RIGHTS AND FREEDOMS

- CHILD WELFARE, see DOCTOR-PATIENT PRIVILEGE
- Notices subject to limited privilege, **12:70**
- Quebec, **8:5**
- Religious communications, **8:1 to 8:5**
- Section 2(b), **13:1 to 13:3, 13:13, 13:16**
- Section 1 and self-incrimination, **10:33**
- Section 7 and self-incrimination, **10:15**
 - Compelled passwords, and, **10:18**
 - Health information, and, **9:7**
 - National interest privilege, and, **4:4**
 - Solicitor-client privilege, **10:17**
 - Statutory compulsion, **10:16**
- Section 8 and self-incrimination, **10:19**
- Section 10(b) and self-incrimination, **10:20**
- Section 11(c) and self-incrimination, **10:8 to 10:10**

CHARTER OF RIGHTS AND FREEDOMS—Cont'd

- Section 13 and self-incrimination, **10:11 to 10:14**
 - Comparison with the Canada Evidence Act, **10:13**
 - Cross-examination of witnesses on s. 13, **10:14**
 - History, **10:12**
- Section 24 of the Charter, **10:34 to 10:37**
- Solicitor-client privilege, and, **11:61**
- Spousal privilege, and, **7:1**

CLASS PRIVILEGE

- See INFORMER PRIVILEGE RULE; SOLICITOR CLIENT PRIVILEGE
- Generally, **1:5**

CLERIC-CONGREGANT PRIVILEGE

- See RELIGIOUS COMMUNICATION PRIVILEGE

COMMON LAW MARRIAGE

- Spousal privilege, **7:1, 7:10**

CONFESSIONS

- See RELIGIOUS COMMUNICATIONS PRIVILEGE; SELF-INCRIMINATION

CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL

- See CANADA EVIDENCE ACT, s. 39

CONFIDENTIALITY

- The distinction between and privilege, **1:2, 1:3**

CONSTITUTION ACT, 1867

- Generally, **6:1, 6:12, 6:25**

CRIMINAL CODE

- Journalist protections under, **13:22**
- Production Orders
 - Exemptions, **13:24**

CRIMINAL CODE—Cont'd

Publication bans under, **13:15**

Wiretap

Journalist communications under,
13:22

CROWN PREROGATIVE

Generally, **6:22**

CROWN PRIVILEGE

See PUBLIC INTEREST PRIVI-
LEGE

Generally, **3:24**

CSIS

Generally, **2:3, 4:4, 4:14, 4:26**

DISCLOSURE

A summary of the Stinchcombe and
O'Connor Regimes, **1:4**

Canada Evidence Act

Section 38, **4:7, 4:8, 4:14**

AG agreement to disclose, **4:9**

Applications for disclosure,
4:10

Disclosure regimes, **1:3**

Editing, **2:36 to 2:43**

Over-editing, **2:47**

First versus third party obligations,
1:4

Inadvertent disclosure of informers,
2:25

Journalist sources, and, **13:6, 13:11**

Known informant, **2:33**

Limiting disclosure

Canada Evidence Act

Section 37, **3:15**

Section 38, **4:20**

Section 38, CEA and, **4:35**

Section 39.1, CEA and, **13:6**

The distinction between first and
third party disclosure, **1:4**

Using criminal disclosure in civil
proceedings, **3:33**

Wagg hearings, **3:33**

DIVORCE

Spousal privilege, **7:1**

DOCTOR-PATIENT PRIVILEGE

Generally, **9:1 to 9:4**

Access to own records, **9:10**

Application of privilege, **9:20**

Child as patient, **9:18**

Child welfare, **9:18**

Civil proceedings, **9:8**

Class actions, **9:13**

Confidentiality considerations, **9:5,**
9:14

Criminal proceedings, **9:8, 9:17**

Disciplinary hearings, **9:14**

Disciplinary records, **9:14**

Duty of confidentiality, **9:5**

Exceptions, **9:16**

Expediency, **9:7**

Family Proceedings, **9:8**

Federal legislation, **9:6**

History, **9:3**

Interviews with doctors, **9:12**

Invoking, **9:9, 9:14, 9:20**

Malpractice suits, **9:15, 9:16**

Origins, **9:3**

Provincial legislation, **9:7**

Quality assurance records, **9:14**

Releasing records, **9:9**

Scope, **9:4**

Sealing, **9:11**

Search warrant, **9:11**

Sexual assault proceedings, **9:15 to**
9:17

Similar fact productions, **9:15**

Solicitor-client privilege, and, **9:4**

Waiver, **9:16**

Wigmore criteria, **9:14**

DUTY TO NOTIFY AG

Generally, **4:5**

Exceptions, **4:6**

ECCLESIASTICAL PRIVILEGE

See RELIGIOUS COMMUNICA-
TIONS PRIVILEGE

**EDITING TO PROTECT
INFORMER PRIVILEGE**

Guidelines for editing, **2:44**
Judicial Summaries, **2:43**
Over-editing, **2:47**
Pre-editing of warrant material,
2:36 to 2:43
Protection of informers, **2:1, 2:34,**
2:36 to 2:43
Wiretap materials, **2:44**

EX PARTE PROCEEDINGS

Canada Evidence Act
Section 37, **3:8, 3:10, 3:20**
Section 38, **4:26**
Detention orders, **3:29**
Protection of informers, **2:1, 2:15,**
2:30, 2:50.50, 2:51
Statutory provisions, **2:53**
Step Six, **2:40**

FAIR TRIAL RIGHTS

Canada Evidence Act
Section 37, **3:21**
Section 38, **4:32**

FEDERAL COURT ACT

Section 41, **5:4**

FEDERAL TERRITORIES

Generally, **6:30**

FIAT

Generally, **4:33**

FIRST STAGE HEARINGS

See INFORMER PRIVILEGE
RULE

FOREIGN GOVERNMENTS

Generally, **4:14**

FULL ANSWER AND DEFENCE

Innocence at stake not trumped,
2:12, 2:13, 2:36 to 2:44

GUILTY PLEAS

Informers who mitigate sentence,
2:57

HEALTH CARE INFORMATION

Adoption records, **9:19**
Child custody and welfare case
records, **9:18, 11:22**
Confidentiality considerations, **9:5**
Court ordered production, **9:9**
Criminal proceedings, in, **9:8**
Disciplinary records, **9:14**
Exceptions to privilege, **9:16**
Expert witness exception, **9:7**
Federal legislation governing
confidentiality, **9:6, 9:10**
Gamete donation records, **9:19**
Interviewing doctors, **9:12**
Invoking privilege, **9:9, 9:20**
Patient access, **9:6, 9:10**
Privacy commissioners, **9:7**
Production orders, and, **9:11**
Provincial legislation governing
confidentiality, **9:7**
Quality assurance/peer review, **9:8,**
9:14
Quality assurance records, **9:14**
Releasing records, **9:9**
Search warrants, and, **9:8**
Seeking access, **9:14**
Sexual assault proceedings, **9:15,**
9:17
Similar fact productions, **9:15**
Standards for release - Criminal vs.
civil proceedings, **9:15**
Statistics and surveys, **9:7**
Summary, **9:1**

**IMMIGRATION AND REFUGEE
PROTECTION ACT**

Impeachment, **10:28**
Informer privilege and, **2:3**

IMPLIED UNDERTAKING RULE

Litigation privilege, and, **12:56,**
12:57
Self-incrimination implications,
10:28
Use of civil evidence in criminal
proceedings, **10:28**

IN CAMERA PROCEEDINGS

- Canada Evidence Act
 - Section 37, **3:8, 3:19**
 - Section 38, **4:26**
- Common law protection, **3:31**
- National security proceedings, media presence at, **13:14**
- Protection of informers, and, **2:30, 2:51**
- Statutory provisions, **2:53**

INFORMER PRIVILEGE RULE

- Amicus curiae, **2:15, 2:50.50, 2:51, 2:52**
- Anonymous informers, **2:9, 2:11, 2:23**
- Appeal, **2:15, 3:26**
- Application of rule
 - Civil proceedings, **2:7**
 - Criminal proceedings, **2:7**
- Appointment of legal counsel, **2:50**
- Basil hearing, **2:15**
- Breaching informer privilege, **2:12 to 2:27**
 - Death of informer, by, **2:26**
 - Informer is accused, when, **2:22**
 - No expectation of confidentiality, when, **2:23**
 - Waiver, by, **2:24**
- 911 calls and, **2:23**
- Canada Evidence Act, **2:35, 2:53, 2:58, 3:6, 3:26**
- Canada Revenue Agency informers, **2:3**
- Civil litigation by informers, **2:24**
- Civil proceedings, and, **2:7, 2:10**
- Class privilege, **2:6**
- Corrections and Conditional Release Act and, **2:44**
- Crime exception, **2:22**
- Crime stoppers, **2:11, 2:22**
- Criminal records, and, **2:34**
- Cross-examination of affiant, **2:44, 2:45**
- Cross-examination of informant handler, **2:35**

INFORMER PRIVILEGE RULE

—Cont'd

- CSIS, **2:3, 2:4, 2:44, 2:51, 4:27**
- Death of informer, **2:26**
- Defence investigation, **2:27**
- Differences from public interest privilege, **2:5**
- Disclosure
 - Crown responsibility, **2:36 to 2:43**
 - Handler's notes, **2:36 to 2:43, 2:45, 2:46**
 - Improper police disclosure and damages, **2:10**
 - Inadvertent disclosure, **2:25**
 - Information to obtain, **2:35, 2:36 to 2:43**
 - Innocence at stake, **2:13**
 - Investigative file, **2:36 to 2:43, 2:45, 2:46**
 - Known informant, **2:33**
 - Middle Ground Approach, **2:46**
 - Redactions of Information, **2:19, 2:30**
 - Self identification by informer, **2:31**
- Disseminating informer information, **2:8**
- Duty to disclose identity, **2:11**
- Duty to protect, **2:6**
- Editing
 - Generally, **2:36 to 2:43**
 - Editing by judge, **2:7**
 - Judgments, **2:40**
 - Over-editing, **2:47**
- Entrapment, and, **2:18**
- Ex parte proceedings, **2:15, 2:20, 2:51, 2:53**
- Step Six, **2:40**
- First stage hearing, **2:20, 2:32**
- Full answer and defence, and, **2:5, 2:6, 2:12, 2:13, 2:44**
- Garofoli Six Step Procedure
 - Generally, **2:37 to 2:39, 2:43**
 - Entrapment, **2:39**

INFORMER PRIVILEGE RULE

—Cont'd

Garofoli Six Step Procedure
—Cont'd
Innocence at stake in, **2:42**
The Constitutionality of Step 6,
2:42
Using Amicus in, **2:41**
Guilty plea considerations, **2:57**
Handler Notes, Reports and Files,
2:45, 2:46
Implied or express promise of
confidentiality, **2:23**
In camera proceedings
Generally, **2:15, 2:51, 2:53**
Court viewing documents, **2:51**
Defence counsel presence at,
2:51
Statutory provisions, **2:53**
Independent legal advice, **2:50**
Informer as accused, **2:1, 2:10, 2:22**
Innocence at stake exemption
Generally, **2:4, 2:6, 2:7**
Applications, **2:18**
Civil proceedings, **2:7**
Full answer and defence, **2:12,**
2:13
Immunity to holder when
breached, **2:17**
Invoking the exception, **2:12**
Procedure to establish, **2:14**
Two-step threshold, **2:16**
Ultimate test, the, **2:17**
Innocence not at stake in Garofoli,
2:42
Investigative authority to grant
informer privilege, **2:3**
Invoking privilege, **2:12, 2:14,**
2:15, 2:23, 2:28, 2:31, 2:33,
2:34
Invoking Step 6 of Garofoli, **2:36**
Jailhouse informants, **2:62**
Judicial Summaries and the
Garofoli Steps, **2:43**
Key points, **2:2**

INFORMER PRIVILEGE RULE

—Cont'd

Known informants, **2:21, 2:25, 2:33**
Letters of Agreement, **2:20**
Material witness, **2:12, 2:20, 2:28**
Motivation of informers, **2:7**
Narrowing the pool, **2:34**
Observation posts, **2:59**
Open court, **1:6, 2:6.50, 2:15, 2:27**
Physical protection of informer, **2:6**
Police agent, **2:19**
Line between informers, **2:20**
Preliminary inquiry, **2:35**
Pre-trial hearing, **2:19**
Procedure for handling informers,
2:8
Procedure when informer status is
challenged, **2:15**
First stage hearing, **2:32**
Protecting informers
Generally, **2:10, 2:28 to 2:61**
Editing, **2:36 to 2:43**
Invoking Step 6 of Garofoli,
2:30, 2:37 to 2:39
Limiting cross-examination, **2:29**
Sealing, **2:49**
Testifying under assumed name,
2:55
Undertakings by counsel, **2:30**
Witness protection, **2:60**
Protecting witnesses from revealing
informers, **2:33**
Publication bans, **2:54**
Public interest privilege, **2:58**
Purpose of informer privilege rule,
2:3
Scope of privilege, **2:6, 2:34**
Search warrants, **2:28, 2:34, 2:36 to**
2:43
Sharing information with solicitor,
2:4, 2:17
Sharing informer information, **2:7**
For law enforcement purposes,
2:8
Special counsel, **2:51**

INFORMER PRIVILEGE RULE

—Cont'd

- Statutory protection for informers, **2:61**
- Stay of proceedings, **2:28, 2:56**
- Step 6 of Garofoli
 - Applications of steps 5 and 6 of Garofoli, **2:39**
 - Ex parte submissions during steps 1-6, **2:40**
 - Innocence is not at stake in step 6, **2:42**
 - Invoking step 6, **2:36**
 - Judicial summaries and the Garofoli steps, **2:43**
 - Overview of step 6 process, **2:37**
 - Relationship between steps 1-5 and step 6, **2:38**
 - Using amicus in step 6 proceedings, **2:41**
- Summary of informer privilege rule, **2:1**
- Tax Authorities and, **2:3**
 - Tear-aways as protection, **2:36 to 2:43**
- Testifying anonymously, **2:55**
- Testifying under assumed name, **2:55**
- Tip lines, **2:23**
- Understanding of confidentiality, explicit or implicit, **2:23**
- Undertakings by counsel, **2:30, 2:51**
- Waiver of privilege, **2:9, 2:20**
- Whistle blowers, **2:7**
- Wiretap orders, **2:36 to 2:43**
- Witness, Informer as, **2:21, 2:28, 2:30**
- Witness protection, **2:55, 2:60**

INJURIOUS INFORMATION

- See also CANADA EVIDENCE ACT s. 38
- Generally, **4:4**
- Prohibited disclosure, **4:7**

INNOCENCE AT STAKE

EXEMPTION

- Civil proceedings, **2:7**
- Full answer and defence, **2:13**
- Immunity to holder when breached, **2:17**
- Invoking the exception, **2:12**
- Procedure to establish, **2:14**
- Trial forum, **2:12**
- Two-step threshold, **2:16**
- Ultimate test, the, **2:17, 2:18**

INTERNATIONAL INTEREST PRIVILEGE

- See CANADA EVIDENCE ACT Section 38

INVESTIGATIVE PRIVILEGE

- Generally, **3:4, 3:6, 3:7, 3:27**

INVESTIGATIVE TECHNIQUES

- Generally, **3:6, 3:7, 3:27**

JAILHOUSE INFORMANTS

- Generally, **2:62**

JOURNALIST SOURCE PRIVILEGE

- Generally, **13:1, 13:2, 13:5, 13:6, 13:11, 13:12**
- Applications of CEA source protection provisions, **13:11**
- Common law test, **13:24**
- Contempt, and, **13:12**
- History, **13:4**
- Lessard thresholds, **13:24**
- Search warrants, productions orders, authorizations, and, **13:22, 13:24**
- Section 39.1, CEA, **13:5, 13:6, 13:11**
- Subpeonas, and, **13:25**

JUDICIAL SUMMARIES AND INFORMER PRIVILEGE

- Generally, **2:43**

LEGISLATIVE PRIVILEGE

Generally, **6:29**

LITIGATION PRIVILEGE

Abrogate litigation privilege, **12:35**

Access requests, **12:82**

Access to information, **12:34**

Actionable misconduct, **12:67**

Affidavit evidence's importance,
12:11

Affidavit of documents, **12:6, 12:12**

Anticipated litigation test, **12:18**

Balancing interests, **12:90**

Civil Rules of Procedure, **12:6**

Effect of, **12:6**

Common interest privilege, **12:32,**
12:33

Competing interests, **12:5**

Correspondence between expert and
his/her own lawyer, **12:52**

Criminal conduct exception, **12:66**

Criminal proceedings, **12:58 to**
12:71

Definition of litigation, **12:14**

Denial of liability, **12:18**

Determining litigation privilege,
12:11, 12:19

Disclosure of underlying facts,
12:30

Discovery aide-memoire, **12:17**

Documents covered by litigation
privilege, **12:17**

Dominant purpose test, **12:18,**
12:20, 12:23

Dual purpose documents, **12:24**

Employer reporting, **12:29**

End of litigation privilege, **12:15**

Exceptions to, **12:36**

Expert communications during trial,
12:28

Expert communications of with
counsel, **12:51**

Expert findings, **12:7, 12:50**

Expert testimony for opposing
party, **12:46**

Formerly adverse parties, **12:27**

LITIGATION PRIVILEGE

—Cont'd

History, **12:4**

Implied undertaking rule, **12:56,**
12:57

Inadvertent Disclosure, **12:31,**
12:46

Inquest proceedings, **12:69**

Inquiries, **12:69**

Key points to remember, **12:2**

Lawyer's involvement, **12:26**

Misconduct, bad faith allegations,
12:28

Misconduct, criminal conduct,
12:67

Non-party to action, **12:10**

Onus to establish, **12:9 to 12:11**

Plea bargaining, **12:85**

Privacy Act, **12:71**

Privacy zone, **12:5**

Process applied by courts, **12:6,**
12:8

Production of documents at trial,
12:13

Public interest and litigation privi-
lege, **12:36**

Rationale for litigation privilege,
12:3

Reasonable prospect of litigation,
12:18, 12:20

Related proceedings, **12:15**

Removal of Counsel after Inadver-
tent disclosure, **12:31**

Same litigation, **12:15**

Search for truth, **12:5**

Setting down for trial and affidavit
for documents, **12:6**

Settlement agreement effect on liti-
gation privilege, **12:15**

Settlement privilege

Generally, **12:72 to 12:89**

Application to

Access requests, **12:82**

Child protection matters, **12:83**

Negotiations and, **12:74, 12:75**

LITIGATION PRIVILEGE

—Cont'd

Settlement privilege—Cont'd
 Application to—Cont'd
 Release, **12:75**
 Breach of, **12:76**
 Case conference, **12:83**
 Class or case privilege, **12:73, 12:85**
 Collaborative process, **12:78**
 Common law settlement privilege, **12:81**
 Criminal context, **12:85**
 Exceptions, **12:76, 12:80, 12:88**
 General principles, **12:72**
 Limitations defence, **12:73, 12:84**
 Meaning of without prejudice, **12:76, 12:79**
 Mediation agreement, **12:84**
 Mediation process, **12:83**
 Nature of dispute, **12:74**
 Over compensation, public policy, **12:76**
 Plea bargain discussions, **12:85**
 Privilege holder, the, **12:77**
 Public interests as exceptions to settlement privilege, **12:76**
 Related proceedings, **12:76, 12:84**
 Remediation agreements, **12:86.50**
 Settlement Agreement, **12:75, 12:78**
 Settlement agreements and subsequent litigation, **12:84**
 Settlement amounts, **12:76**
 Settlement brief, **12:76**
 Settlement offers and pleadings, **12:73**
 Waiver of settlement privilege, **12:76, 12:78**
 Who does it belong, **12:77**
 Without prejudice communications, **12:76, 12:78, 12:79**

LITIGATION PRIVILEGE

—Cont'd

Statutory duty to investigate does not preclude, **12:22**
 Statutory limitation not an exception, **12:80**
 Stays of civil proceedings pending criminal action, **12:58**
 Summary of litigation privilege, **12:1**
 Surveillance and video evidence disclosure, **12:18, 12:39**
 Third party documents, **12:25, 12:73**
 Underlying facts, **12:18, 12:30**
 Waiver of litigation privilege
 Generally, **12:37 to 12:55**
 Bad faith allegation, **12:46, 12:47**
 Consistency and fairness, **12:39**
 Correspondence of expert, **12:51**
 Effect of production of expert report, **12:50**
 Expert as witness effect, **12:51**
 General principles, **12:37**
 Implied waiver, **12:39**
 Inadvertent waiver, **12:45**
 Involuntary waiver, **12:42**
 Limits of litigation privilege, **12:55**
 Medical reports, **12:50**
 Note to refresh memory, **12:44**
 Partial waiver's effect, **12:39**
 Professional Rules re confidential information, **12:40**
 Relationship of parties, **12:48**
 Review before discovery, **12:43**
 Statutory requirement of disclosure and waiver, **12:39**
 Waiver of one or more, **12:38**
 Waiver of settlement privilege, **12:78**
 Who can waive, **12:41**
 Who can claim litigation privilege, **12:10**

LITIGATION PRIVILEGE

—Cont'd

Who covered by litigation privilege, **12:16**

Without prejudice, **12:79**

Witness interview, **12:30**

Witness statements

Generally, **12:28**

Fairness considerations, **12:28**

Sworn witness statement and
litigation privilege, **12:49**

Work product privilege in criminal
proceedings

Generally, **12:60 to 12:71**

Ambit of coverage, **12:62**

Application to inquests, **12:69**

Application to work of police,
12:66

Charter notices, **12:70**

Determination of, **12:64**

General principles, **12:60**

Rationale, **12:61**

Right of accused to make full
answer and defence, **12:65**

Statutory privileges, **12:71**

MARITAL PRIVILEGE

See SPOUSAL PRIVILEGE

MEDICAL RECORDS

See HEALTH CARE INFORMATION

**MINISTER OF NATIONAL
DEFENCE**

See CANADA EVIDENCE ACT

**MOBILE DEVICE IDENTIFIER
(MDI)**

See PUBLIC INTEREST PRIVILEGE

**NATIONAL DEFENCE
PRIVILEGE**

See CANADA EVIDENCE ACT
Section 38

**NATIONAL INTEREST
PRIVILEGE**

See CANADA EVIDENCE ACT
Section 38

OBSERVATION POSTS

Generally, **2:59, 3:31**

O'CONNOR REGIME

See also THIRD PARTY
RECORDS

Generally, **1:3**

OPEN COURT PRINCIPLE

Generally, **1:6, 2:53, 3:19, 4:27,
13:13**

**PARALEGAL-CLIENT
COMMUNICATIONS**

Generally, **11:15**

PARLIAMENTARY PRIVILEGE

Affidavit of documents and, **6:17**

Ban broadcasting, **6:4, 6:21, 6:25**

Charter, **6:4**

Immunity from, **6:4, 6:24 to 6:26**

Colonial Laws Validity Act, **6:3**

Common law power, **6:3**

Components

Generally, **6:4**

Allowances of members, **6:30**

Ban broadcasting, **6:4, 6:21, 6:25**

Control of publication of debates,
6:4

Control over internal affairs, **6:7,
6:20**

Control over staff, **6:4, 6:20**

Discipline members, **6:30**

Election of members issues, **6:4**

Exclusion of strangers, **6:4, 6:21,
6:25**

Exclusive control of own
proceedings, **6:4, 6:20, 6:25,
6:29**

Expulsion of members, **6:22,
6:26**

Failure to legislate, **6:8**

Freedom from civil arrest, **6:19**

PARLIAMENTARY PRIVILEGE

—Cont'd

Components—Cont'd
 Freedom of speech, **6:4, 6:13**
 Immunity from civil proceedings, **6:4, 6:10, 6:11**
 Immunity from subpoena, **6:15 to 6:17**
 Obstructing members, **6:4**
 Power to summons witnesses, **6:4**
 Reports immune from review, **6:4, 6:14**
 Rights and privileges of members, **6:4, 6:10**
 Summons witnesses, **6:23**
 Criminal law immunity, **6:10**
 Crown's representative, **6:3**
 Definition, **6:3**
 Employment disputes, and, **6:8**
 Exclusion of strangers, **6:4, 6:21**
 Exclusive control of own proceedings, **6:4, 6:20, 6:25**
 Executive branch, **6:4**
 Expulsion of members, **6:22, 6:26**
 Federal territories, **6:30**
 Freedom from civil arrest, **6:19**
 Freedom of speech, **6:4, 6:13, 6:14**
 History, **6:3**
 Immunities
 Generally, **6:3, 6:4, 6:10**
 Charter, **6:4, 6:24 to 6:26**
 Judicial review, **6:20**
 Limits, **6:10, 6:11**
 Subpoena, **6:15 to 6:17**
 Indictment of members, **6:10**
 Introduction, **6:1**
 Judicial notice, **6:12, 6:20**
 Judicial review
 Generally, **6:3**
 Limits, **6:4**
 Necessity principle, **6:4, 6:20, 6:27**
 Test, **6:27**
 Key features, **6:2**

PARLIAMENTARY PRIVILEGE

—Cont'd

Legislatures
 Generally, **6:3, 6:29**
 Legislative Process, **6:27**
 Legislature's members, **6:3**
 Members of Parliament, **6:3, 6:17, 6:18, 6:22**
 Municipal council, **6:31**
 Qualified privilege, **6:31**
 Necessity Principle, **6:4, 6:27**
 Ontario Legislative Assembly Act, **6:3**
 Onus of proving, **6:6**
 Parliamentary Budget Officer, **6:8**
 Parliament of Canada Act, **6:2, 6:12, 6:15**
 Punish witnesses, **6:23**
 Qualified privilege, **6:31**
 Scope, **6:3, 6:4**
 Statutory limitations, **6:8.50**
 Summary, **6:1**
 Summary motion for judgment and, **6:6**
 Summons, **6:16, 6:17**
 Summons witnesses, **6:23**
 Voter's rights, **6:4**
 Waiver, **6:9**

PARLIAMENT OF CANADA ACT

Generally, **6:1, 6:12, 6:14 to 6:17**

PARTICIPANT

See CANADA EVIDENCE ACT s. 38
 Duty to notify AG, **4:5**

PASSWORDS

Compelled passwords and s. 7 of the Charter, **10:18**

PATIENT CONFIDENTIALITY

See DOCTOR-PATIENT PRIVILEGE

POLICE AGENT

Agent provocateur, **2:19, 2:28**

POLICE AGENT—Cont'd

Informer privilege, **2:19**
Line between informers, **2:20**

POLICE DISCIPLINARY RECORDS

Generally, **1:3**
Disclosure in civil proceedings, and, **12:71**

PRELIMINARY INQUIRY

Canada Evidence Act
Section 37, **3:9, 3:23**
Section 38, **4:15**
Informer rule, **2:35**

PRESS PRIVILEGE

See also JOURNALIST SOURCE PRIVILEGE
Applications of CEA source protection provisions, **13:11**
Assistance orders and media organizations, **13:26**
Cameras in courts, **13:31**
Charter, s.2(b), **13:2**
Confidentiality orders, **13:16**
Contempt, refusal to reveal source, **13:12**
Defamation, and press, **13:29**
Exhibits, media access to, **13:20**
Freedom of the press, see Charter
Government information, media access to, **13:28**
Journalist-source privilege, **13:4 to 13:6, 13:12, 13:17**
Key points, **13:2**
Libel chill, **13:30**
Media presence at proceedings, **13:13**
National security matters, **13:14**
Open courts principle, **13:13**
Production of press materials, civil matters, **13:27**
Production orders, **13:22, 13:24**
Publication bans
Generally, **13:15 to 13:19**

PRESS PRIVILEGE—Cont'd

Publication bans—Cont'd
Dagenais/Mentuck test, **13:16, 13:17, 13:19**
Procedure for seeking publication bans, **13:19**
Pseudonyms, **13:17**
Public interest in, **13:17**
Social networking, **13:17**
Statutory publication bans, **13:15**
Whistle blowers and, **13:18**
Public interest responsible journalism defence, **13:30**
Search Warrants
Journalist-related materials, and, **13:22, 13:24**
Journalist-source confidentiality, and, **13:22**
Materials, access to, **13:21**
Sections 488.01 and 488.02, Criminal Code, **13:22, 13:24**
Summary, **13:1**
Unsealing applications, **13:21**

PRIEST-PENITENT PRIVILEGE

See RELIGIOUS COMMUNICATIONS PRIVILEGE

PRIVACY

Fear of identity theft, **13:20**
Journalist activity and sources, **13:6, 13:22**
Protection of privacy and open court principle, **13:13**
Third party records, **1:3, 1:5**

PRIVACY COMMISSIONER

Federal legislation governing, **9:6**
Health information and, **9:6, 9:7**
Informer privilege and, **2:51**
Provincial legislation governing, **9:7**

PRIVY COUNCIL

Clerk of Privy Council, **5:7**
Definition, **5:3**
Queen's Privy Council, **5:3**

PRODUCTION ORDERS

Generally, **6:29**
Journalist related-material, and,
13:22

PROTECTIVE ORDERS

See CANADA EVIDENCE ACT s.
38

PUBLICATION BANS

Cyberbullying, **2:54, 13:13, 13:17**
Discretionary publication bans,
13:15 to 13:19
Dagenais/Mentuck test for,
13:16, 13:17, 13:19
Recast by Sherman Estate,
13:16.50
Investigative privilege, **3:29**
Non-publication orders, **2:54, 3:34**
Statutory, **13:15 to 13:19**

PUBLIC INTEREST IMMUNITY

Generally, **2:51, 3:3, 5:13**

PUBLIC INTEREST PRIVILEGE

See also CANADA EVIDENCE
ACT
Amicus curie, **3:17**
Balancing interests, **3:3**
Cabinet confidences, **5:7, 5:13**
Common law survives s. 37, Can-
ada Evidence Act, **3:6, 3:23**
Competition Act and, **3:28**
Corrections and Conditional
Release Act, and, **3:28**
Criminal disclosure, **3:33**
Crown immunity, **3:24**
In camera proceedings, **3:31**
Inferior tribunals, **3:13, 3:23**
Informer privilege, **3:26**
Investigative privilege
Generally, **3:27**
Bans on publication, **3:29**
Exhibits, **3:29**
Invoking
Generally, **3:24, 3:25**
By private parties, **3:24**

PUBLIC INTEREST PRIVILEGE

—Cont'd

Key points re public interest privi-
lege, **3:2**
Mobile Device identifiers (MDI),
3:6, 3:28
Nalictors prosecution, **3:28**
Nature of privilege, **3:3**
Non-publication orders, **3:34, 3:35**
Observation posts, **3:31**
Procedure, **3:25**
Protected Information, **3:28**
Protecting informants, **2:58**
Protection of disclosed Cabinet
confidences, **5:7**
Sealing orders, **3:25**
Summary of protections, **3:1**
Wagg, application of, **3:33**
Witness contact information, **3:30**

QUALIFIED PRIVILEGE

Generally, **6:31**

**RELIGIOUS
COMMUNICATIONS
PRIVILEGE**

Applications, **8:7**
Expert evidence, **8:6**
History, **8:4**
Invoking the privilege, **8:6**
Key Points, **8:2**
Nature and Purpose, **8:3**
Provincial Statutes, **8:5**
Quebec, **8:5**
Spirit counsellor, **8:7**
Summary, **8:1**

RIGHT TO SILENCE

Canada Evidence Act
Section 38, **4:21**
Self-incrimination, **10:39**

SAME-SEX SPOUSES

Application of spousal privilege,
7:15

SEALING ORDERS

- Generally, **2:49**
- Canada Evidence Act
 - Section 38, **4:10, 4:29**
- Indefinite sealing orders, **2:49**

SEARCH WARRANTS

- Informers, **2:36 to 2:43**
- Journalist-related material, and,
13:22, 13:24
- Materials, media access to, **13:21**
- Pre-editing, **2:36 to 2:43**
- Sealing, **2:49**
- Section 488.01, Criminal Code,
13:22, 13:24

SELF-INCRIMINATION

- Actus reus exception, **10:26**
- Adverse inferences from failure to testify, **10:9**
- Appeals of third parties, **10:42**
- Applications of privilege
 - Generally, **10:24, 10:33**
 - Parallel criminal and civil proceedings, **10:27**
 - Parallel proceedings abroad and in Canada, **10:29**
 - Perjury proceedings, **10:26**
 - Sentencing proceedings, **10:30**
 - Terrorism, **10:31**
 - Use of prior testimony, **10:25, 10:28**
- Bill of Rights, **10:4**
- Bodily substances, **10:38**
- Border procedures, **10:16**
- “But for” test, **10:23, 10:35**
- Canada Evidence Act
 - History, **10:6**
 - Invoking the section, **10:7**
 - Section 5, **10:5 to 10:7**
- Charter
 - Section 1, **10:33**
 - Section 7
 - Generally, **10:15**
 - Compelled passwords, and,
10:18

SELF-INCRIMINATION—Cont’d

- Charter—Cont’d
 - Section 7—Cont’d
 - Solicitor-client privilege,
10:17
 - Solicitor-client privilege, statutory compulsion, **10:16**
 - Section 8, **10:19**
 - Section 11(c)
 - Generally, **10:8 to 10:10**
 - Nature of the protection, **10:8**
 - Voir Dire testimony and, **10:8**
 - Section 13
 - Generally, **10:11 to 10:14**
 - Comparison with the Canada Evidence Act, **10:13**
 - Cross-examination of witnesses on s. 13, **10:14**
 - History, **10:12**
 - “Other Proceedings,” **10:11**
 - Overview, **10:11**
 - Testimonial protection, **10:11**
 - Use of compelled incriminating evidence, **10:26**
 - Section 24, **10:34 to 10:37**
 - Section 10(b), **10:20**
- Compelling passwords, **10:18**
- Compelling prior testimony, **10:28**
- Confessions in “Mr. Big” investigations, **10:41**
- Confessions rule, **10:40**
- Confessions to cell mates, **10:39**
- Conscriptive evidence, **10:35, 10:38**
- Corporations, **10:21**
- Derivative evidence, **10:37**
- Detention, **10:20, 10:39**
- Discoverability, **10:37**
- DNA, **10:19**
- Duty to assist police, **10:39**
- Failure to testify, **10:10, 10:39**
- Fingerprints, **10:4, 10:38**
- History of rule, **10:4**
- Immunity, **10:23**
- Implied undertaking rule, **10:28**
- Inducements, threats, **10:40**

SELF-INCRIMINATION—Cont'd

Inevitability doctrine, **10:23, 10:35**
 Invocation
 Timing, **10:22**
 Key points to remember, **10:2**
 Line ups, **10:4**
 “Mr. Big” confessions, **10:41**
 Nature of privilege, **10:3**
 Non-testimonial, **10:38**
 Obstruct justice, **10:27**
 “Other Proceedings,” **10:11**
 Parallel proceedings
 Abroad and in Canada, **10:29**
 Criminal and civil proceedings,
 10:27, 10:29
 Parole hearings, **10:8**
 Passwords, **10:18**
 Perjury proceedings, **10:26**
 Persons in authority, **10:40**
 Police notebooks, and, **10:32**
 Prospective breaches of, **10:22**
 Protection of self-incriminatory
 statements, **10:16**
 Purpose, **10:3**
 Quashing subpoenas, **10:22**
 Real evidence, **10:4, 10:38, 10:40**
 Regulatory investigations, **10:16**
 Right to silence, **10:3, 10:20, 10:38,**
 10:39
 Searches, **10:4**
 Sentencing proceedings, **10:30**
 Standing to raise self-incrimination,
 10:21
 Stay of civil proceedings pending a
 criminal trial, **10:27**
 Summary, **10:1**
 Testimonial, **10:4, 10:5**
 Timing of invocation, **10:22**
 Undercover officers, **10:39**
 Use immunity, **10:4, 10:23**
 Use of civil evidence in criminal
 proceedings, **10:28, 10:33**
 Voice identification, **10:39**
 Waiver, **10:30**

SENSITIVE INFORMATION

See also CANADA EVIDENCE
 ACT s. 38
 Generally, **4:4**
 Prohibited disclosure, **4:7**

SETTLEMENT AGREEMENTS

See LITIGATION PRIVILEGE

**SOLICITOR-CLIENT
PRIVILEGE**

Abuse of process, **11:52, 11:101,**
 11:126
 Access to information requests
 Generally, **11:19, 11:37**
 Definition of solicitor-client privi-
 lege, **11:38**
 Freedom of expression and infor-
 mation, **11:42**
 Right of Commissioner or Audi-
 tor-General to see privileged
 documents, **11:39**
 Right of Requester to view
 privileged documents, **11:40**
 Accounting advice, **11:44**
 Acquiescence by privilege holder,
 11:77
 Addresses of clients, **11:110**
 Advent of the solicitor-client rela-
 tionship, **11:12**
 Affidavit of documents to preserve
 privilege, **11:29**
 Amicus, **11:129**
 Auditor usage, **11:94**
 Authority to waive, **11:64**
 Balancing with Charter and open
 court principle, **11:61**
 Bankruptcy, **11:27, 11:115, 11:121**
 Billing accounts, **11:112**
 Breach by witness, **11:126**
 Briefing note to Minister of Fisher-
 ies, **11:84**
 Burden on Crown in criminal
 context, **11:10**
 Cell phone records, **11:136**
 Charge approval materials, **11:32**

SOLICITOR-CLIENT

PRIVILEGE—Cont'd

Charter, s. 7, **10:17**
 Children's communications, **11:17**
 Class action against solicitor,
 11:118
 Class privilege, **11:8**
 Client's name, **11:109**
 Common interest exception, **11:58**
 Communication seeking advice,
 11:19, 11:44, 11:47
 Confidentiality distinction, **11:6**
 Confidentiality requirements, **11:7**
 Contingency fee arrangements,
 11:116
 Corporate counsel, **10:34 to 10:37**
 Corporate documents, access by
 director, **11:27**
 Corrections facilities, **11:127**
 Counsel as witness, **11:25**
 Court appointed lawyers, **11:129**
 Crown advice to police, **11:31,**
 11:52, 11:132
 Crown brief, **11:31, 11:125**
 Defence counsel appointed as Amicus,
 11:129
 Definition, **11:3, 11:42**
 Detained persons, **11:148**
 Determining solicitor-client privilege,
 11:10
 Disclosure of Crown brief, **11:125**
 Discovery, aide-memoire, **11:19**
 Disqualification of lawyer, **11:102**
 Doctor patient privilege, **9:4**
 Documents by non-solicitors, **11:23**
 Documents signed by solicitors,
 11:24
 Duty counsel, **11:33**
 End of Privilege, **11:27**
 Establishing Solicitor-Client Relationship,
 11:12, 11:18, 11:102
 Evidence from other sources,
 11:130
 Evidence to determine privilege,
 11:19

SOLICITOR-CLIENT

PRIVILEGE—Cont'd

Exceptions
 Generally, **11:48**
 Abuse of process, proof of, **11:50**
 Common interest exception,
 11:58
 Concealing wrongdoing, **11:57**
 Future crimes, **11:52**
 Incapacity, **11:60**
 Innocence at stake exemption,
 11:49, 11:50
 In Rules of Civil Procedure,
 11:55
 Limitations on the defence, **11:56**
 National security, **11:53**
 Public safety exception, **11:54**
 Wills exception, **11:59**
 Existence outside litigation, **11:9**
 Experts, **11:45**
 Expert reports, **11:96**
 External audit use, **11:94**
 Extradition Proceedings, **11:6,**
 11:50
 Extra jurisdictional communications,
 11:22
 Facts v. Legal advice, **11:19**
 Failure to admit intentional breach,
 11:105
 Federation of Law Societies
 Protocol, **11:134**
 Fees, access to information request,
 11:112
 Fees, non-payment of disclosure,
 11:113
 Fraud exception, **11:52**
 Future crimes exception, **11:52**
 Government lawyers, **10:34 to**
 10:37, 11:19, 11:31
 History, **11:4**
 Identifying the client, **11:18**
 Immigration and Refugee Protection Act regulations,
 11:147
 Implied waiver, **11:75, 11:77,**
 11:78, 11:85, 11:87
 police, **11:35**

SOLICITOR-CLIENT

PRIVILEGE—Cont'd

Inadvertent disclosure, **11:100**
 Incapacity, **11:60**
 Income Tax Act, enforcement and, **11:122**
 Income Tax Act, tax advice or legal advice, **11:122**
 Indicia of solicitor-client relationship, **11:12**
 Infant settlement approval materials, **11:55**
 Information to obtain, **11:106**
 Informer privilege and solicitor-client privilege, **11:57**
 In-house lawyers, **10:34 to 10:37**
 Innocence at stake exemption
 Generally, **11:49 to 11:51, 11:57**
 Full answer and defence, **11:50**
 Immunity to holder when breached, **2:35**
 Procedure to establish, **2:31, 11:51**
 Two-step threshold, **2:33, 11:50**
 Ultimate test, the, **2:35**
 Instructions to settle
 Generally, **11:108**
 Limited waiver doctrine, **11:94**
 Intentional breach, **11:105**
 Intention to maintain confidentiality, **11:7**
 Investigation related advice, **11:19, 11:20, 11:31**
 IRPA security certificate proceedings, **11:145**
 Joint retainer, joint interest, and, **11:58**
 Key points to remember, **11:2**
 Law office search, **11:52, 11:141**
 Law Society access for investigation, **11:138**
 Law Society requirement to preserve privilege, **11:139**
 Law Society seizures, **11:140**
 Lawyer as accused, **11:146**

SOLICITOR-CLIENT

PRIVILEGE—Cont'd

Lawyer as business advisor, **11:12**
 Lawyer's affidavit, **11:75**
 Lawyers as witness, **11:25**
 Legal Advice, **11:12, 11:19, 11:23, 11:31**
 Legal advice to administrative tribunals, **11:35**
 Legal Aid, **11:31, 11:114**
 Legal strategy, **11:19**
 Medical reports, **9:4**
 Mobile Phone Records, **11:136**
 Money laundering statute, exclusion of lawyers from, **11:141**
 Name of client, **11:109**
 "Near Client," **11:12, 11:102**
 Out of jurisdiction communications, **11:22**
 Outside litigation process, **11:9**
 Paralegal-client communications, **11:15**
 Police advice, **11:132, 11:133**
 Prima facie case of illegality basis for waiver, **11:50**
 Private investigative advice, **11:44**
 Privilege log, **11:120**
 Prosecution advice, **11:31**
 Prosecutorial independence, **11:32**
 Public safety exception, **11:54**
 Rationale, **11:5**
 Referees, **11:134**
 Reliability of witness statements, **11:131**
 Remedy for violation of solicitor-client privilege, **11:124**
 Remedy where privilege claim improperly made, **11:11**
 Request to be removed as counsel, **11:113**
 Sealing Order, **11:26**
 Search warrants, **11:134, 11:135, 11:137, 11:146**
 Sentencing, **11:128**
 Settlement instructions, **11:108**

SOLICITOR-CLIENT

PRIVILEGE—Cont'd

Severance of bad faith from
contracted claims on insurance
litigation, **11:36, 11:82**

Special costs, **11:123**

Statutory construction qualities nec-
essary to abrogate solicitor-
client privilege, **11:39**

Statutory duty to sever non-
privileged communications,
11:41

Statutory protection of solicitor-
client privilege, **11:28**

Sufficiently related test, **11:102**

Summary, **11:1**

Surveillance at lawyer's office,
11:142

Taxation documents, **11:122**

Third parties, **11:7, 11:13, 11:19,**
11:44, 11:106, 11:117

Third party funding, **11:117**

Timing of legal advice, **11:21**

Transaction records, **11:119**

Trust accounts, **11:119**

Trustee in bankruptcy, **11:58,**
11:121

Waiver of privilege

Generally, **11:63 to 11:107**

Access to information context,
11:90

Adverse Inference, **11:79**

Affidavit for or by solicitor on
motion, **11:73, 11:84, 11:88**

Authority to waive, **11:67**

Background documents, **11:91**

Bad faith claim, defence, **11:82**

Bad faith claim, insufficient for
waiver, **11:81**

Bad faith claim, severance, **11:82**

Calling counsel as witness,
11:75, 11:88

Class actions, **11:86, 11:119**

Conduct of solicitor in issues,
11:85, 11:119

SOLICITOR-CLIENT

PRIVILEGE—Cont'd

Waiver of privilege—Cont'd

Confidential information, **11:101**

Conflict of interest, **11:101 to**
11:103, 11:105

Continuation of communications
between solicitor and client,
11:71

Definition, **11:63**

Disclosure, **11:103**

Discovery, **11:83**

Expert reports

Generally, **11:96**

Civil proceedings, **11:97**

Criminal proceedings, **11:96**

Fairness, **11:85, 11:105**

Good faith allegations, **11:80**

Implied, **11:75, 11:77, 11:78,**
11:84, 11:85, 11:87

Waiver not implied on
employee use of employer
computer, **11:78**

Impugning conduct of counsel,
11:85

Inadvertent disclosure, **11:89,**
11:100, 11:101

Removing counsel, **11:101**

Incompetence of counsel, **11:86**

Information or facts related to
legal advice, **11:71**

Internal communication within
client is not waiver, **11:67**

Lack of understanding constitutes
waiver, **11:75**

Limited waiver, **11:94**

Loss, **11:98**

Non-party to action and
disclosure, **11:95**

No waiver if to fulfill
Stinchcombe obligations,
11:84

Partial waiver, **11:73, 11:75,**
11:89

Payment and legal bill, effect of,
11:76

SOLICITOR-CLIENT

PRIVILEGE—Cont'd

- Waiver of privilege—Cont'd
 - Plea agreement purposes, **11:74**
 - Preservation of waiver through conditions on disclosure, **11:95**
 - Redaction, **11:93**
 - Reliance on legal advice, **11:75, 11:99**
 - Remedy for breach of privilege, **11:105**
 - Removal of counsel, **11:101, 11:102, 11:105**
 - Reporting letter, **11:119**
 - Resolution of charges, **11:64**
 - Retraction, **11:107.50**
 - Reviewing counsel's notes, **11:92**
 - Settlement offer, **11:107**
 - Solicitors affidavit, **11:89**
 - State of mind, **11:75, 11:83, 11:88**
 - Successor, receiver, bankruptcy trustee, **11:69**
 - Suit against solicitor, **11:87**
 - Testamentary capacity, **11:60**
 - Third party, **11:106**
 - Undertakings by counsel and waiver, **11:100**
 - Voluntariness, **11:73, 11:83**
 - Who can appeal waiver, **11:65**
 - Who can waive privilege over advice from Crown to RCMP, **11:67**
 - Wills, **11:59**
 - Wiretap authorizations, **11:142**
 - Witness can waive, **11:64**

SPECIAL ADVOCATES

- Informer privilege, and, **4:27**
- Journalist-related search warrants, order and authorizations, and, **13:22**

SPOUSAL PRIVILEGE

- Adult interdependent relationship, **7:6, 7:10, 7:11**

SPOUSAL PRIVILEGE—Cont'd

- Canada Evidence Act, **7:1, 7:5, 7:10**
- Charter, s. 15 violation, **7:10**
- Civil actions, **7:12**
- Common law, **7:1, 7:2, 7:5, 7:7, 7:9 to 7:11, 7:13**
- Common law spousal relationships, and, **7:10**
- Communications not private, **7:21**
- Compellability
 - Generally, **7:4, 7:5, 7:7**
 - Civil, **7:10**
 - Separated spouses, **7:16, 7:17**
- Competence, **7:5**
- Conspiracy, **7:2, 7:3, 7:10, 7:22**
- Constitutional challenge to, **7:10**
- Criticism of, **7:3**
- Death of a spouse, **7:15**
- De facto relationship, **7:15**
- Digital communications, **7:9**
- Discovery, **7:12**
- Divorce, **7:16**
- Exceptions
 - Common law, **7:13 to 7:17**
- Hearsay, **7:20**
- History, **7:4**
- Interdependent relationships, **7:6**
- Invoking, **7:8**
- Jury proceedings, **7:8**
- Key features, **7:2**
- Marriages made to thwart proceedings, **7:18**
- Nature, **7:3**
- Plaintiff spouse, **7:19**
- Principled approach to hearsay and, **7:20**
- Proposals for change, **7:23**
- Provincial statutes, **7:6, 7:11**
- Purpose, **7:3**
- Same-sex spouses, **7:11**
- Scope, **7:9**
- Separated spouses, **7:17**
- Sham marriages, **7:18**
- Spousal incompetence rule, **7:10**

SPOUSAL PRIVILEGE—Cont'd

Spouse as plaintiff, **7:19**
Summary, **7:1, 7:2**
Testimonial privilege, **7:5, 7:9**
Voir dire regarding, **7:8**
Waiver, **7:12**
Wiretap, **7:21**

**STATUTORY COMPULSION AND
SECTION 7 OF THE
CHARTER**

Generally, **10:16**

STAY OF PROCEEDINGS

Abuse of process, **2:28**
Canada Evidence Act s. 38, **4:32**
Protection of informers, **2:27.50,**
2:28, 2:44, 2:56

STEP 6 OF GAROFOLI

See INFORMER PRIVILEGE
RULE, Protecting informers

TERRORISM

Self-incrimination, **10:31**

THIRD PARTY RECORDS

A summary of the Stinchcombe and
O'Connor Regimes, **1:4**
Ferguson Five factors, **1:3**
O'Connor regime, **1:3**
Protecting third party confidential
records, **1:3, 1:5**

UNDERCOVER OFFICERS

Testifying via zoom, **2:55**

UNSEALING APPLICATIONS

See PRESS PRIVILEGE
Not to distribute disclosure mate-
rial, **3:30**
Protection of informers, **2:30, 2:51**

VOIR DIRE

Determining religious privilege, **8:6**

WAGG HEARINGS

Generally, **3:33, 11:125**

WIGMORE

Criteria
Application, **1:5**
Establishing privilege, four
criteria for, **1:5, 8:1, 9:14**
Journalist-source privilege,
application to, **13:4, 13:5,**
13:17
Religious communication, **8:1,**
8:3, 8:6

WIRETAP ORDERS

Access to wiretap evidence for civil
purposes, **3:33**
Cross-examination of affiant, **2:44**
Editing, **2:44**
Guidelines for editing, **2:44**
Informers, **2:36 to 2:43**
Journalist communications, **13:22**
Packet materials, **2:44**
Pre-editing, **2:36 to 2:43**
Sealing, **2:44, 2:49**
Solicitor-client privilege, **11:142**
Spousal privilege, **7:21**

WITNESS PROTECTION

Anonymity, **2:55**
Non-publication orders, **3:34**
Testifying under pseudonym/screen,
2:55
Video conference, **2:55**
Witness contact information, **3:35**
Witness Protection Act, **2:60**

WORK PRODUCT PRIVILEGE

See LITIGATION PRIVILEGE