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<p><b>The Law of Privilege in Canada</b> <b>Robert W. Hubbard</b> <b>and Katie Doherty</b> <b>Release No. 2, April 2024</b></p>
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The Law of Privilege in Canada is a comprehensive guide to privilege and confidentiality. It includes chapters on each type of privilege with “key points”, case law and commentary as well as a table of cases, relevant legislation, and an index.

**What’s New in this Update:**

The authors have updated the commentary and case law in chapters 11 (Solicitor-Client Privilege); 12 (Litigation Privilege) and 13 (Press Privilege)

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## Highlights

**Chapter 12 — Litigation Privilege — In General — Dominant Purpose Need Not be Litigation Contemplated by the Party Seeking Production** — In *R. v. Griffin*, a criminally charged accused sought an order prohibiting the Crown from utilizing medical records that his former counsel had provided to the Crown. The accused had been interviewed by police while he was in hospital recovering from an emergency surgery. The Crown intended to rely on the statement as part of its case against the accused. In preparation for the voir dire on the statement, the accused's prior counsel obtained the accused's medical records to assess the impact of his medical intervention on his "operating mind." The accused provided his consent for the hospital to provide the records to his former counsel. When the Crown reviewed one set of records she was provided by counsel, she expressed concern to prior counsel that potentially incriminating materials may be contained in the records (notes made by a psychiatrist of utterances purported made by the accused about the events that led to the charges). The accused argued that the records were subject to litigation privilege and stressed that the defence needed a "protected zone of privacy offered by litigation privilege" to explore potential defences. The Court was not satisfied that the original medical records were subject to litigation privilege. The dominant purpose test was not satisfied. The Court considered the authorities regarding whether a copy of a non-privileged document could itself be privileged. Here, the Court was not satisfied that the medical record copies provided to the Crown were properly shielded by litigation privilege. To find otherwise, the Court concluded, "would erode what it means for documents to have been created for the dominant purpose of litigation": *R. v. Griffin*, 2023 NLSC 36, 2023 CarswellNfld 57 (N.L. S.C.)