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<p>The Law of Privilege in Canada Robert W. Hubbard and Katie Doherty Release No. 1, January 2025</p>

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 2 (Informer Privilege), 3 (Public Interest Privilege Under Section 37 of the *Canada Evidence Act* and Common Law) and 6 (Parliamentary Privilege).

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Highlights

Public Interest Privilege Under Section 37 of the Canada Evidence Act and Common Law — Ancillary Measures to Protect Witnesses — Non-Publication Orders Under Section 486 of the *Criminal Code* — The author updated commentary related to section 486 of the *Criminal Code*. The open court principle, “protected by the constitutionally entrenched right of freedom of expression, is a pillar of our free and democratic society”. Within this reality, the *Criminal Code* provides a number of tools to protect witnesses while also abiding by the open court principle. In particular, the Code provides for measures to restrict public access to the courtroom, limit publication of information regarding witnesses and permits a presiding justice to adopt other measures to “protect the security of any witness” that’s otherwise in the interest of the proper administration of justice. Section 486 of the Code recognizes that proceedings against an accused “shall be held in open court”. However, the section also provides the presiding judge or justice with the discretion, on application of the prosecutor or witness (or on their own motion) to make an order excluding all or any members of the public from the courtroom for all or part of the proceedings or to order that a witness testify behind a screen or other device that would allow the witness not to be seen by members of the public. The author reviews how courts interpret this section.

Parliamentary Privilege — Statutory Limitations to Parliamentary Privilege — In this section the author discusses the decision *Alford v. Canada (Attorney General)*, 2022 ONSC 2911, 2022 CarswellOnt 6733 (Ont. S.C.J.), reversed 2024 ONCA 306, 2024 CarswellOnt 5782 (Ont. C.A.). The author notes that Mr. Alford sought leave to appeal to the Supreme Court of Canada. He argued that this case raised the important question:

Can Parliament abrogate the inherent and constitutional privilege of freedom of speech and debate of legislators using only ordinary legislation? Or, stated otherwise, does authorizing the imprisonment of Members of Parliament and Senators for what they say in their legislative chambers and committee meetings require a constitutional amendment in conformity with the provisions of Part V of the Constitution Act, 1982?

The respondent Attorney General of Canada opposed the leave application. The Attorney General argued that the leave application disclosed no issue of public importance. It submitted that s. 18 of the Constitution Act, 1867 was clear and unequivocal. It permitted the enactment of s. 12 of the National Security and Intelligence Committee of Parliamentarians Act. On November 28, 2024 the Supreme Court granted the application for leave to appeal.