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DISCLOSURE & PRODUCTION IN CRIMINAL CASES

Murray D. Segal
2026-3

This year's first release presents the entirety of Disclosure and Production in Criminal Cases in a new, more user-friendly, softbound format in two volumes. Subscribers will receive comprehensively updated versions of these volumes every quarter, ready for immediate use without the need to file individual pages within a limited binder system.

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What's New in This Update

Updates to Chapters 1, 2, 3, 6, 7 and 8.

Highlights

- **Exceptions to Disclosure—Privilege**—The Alberta Court of King's Bench refused to order disclosure certain information involving a Cell Site Simulator, after finding police investigative privilege had applied – the information was used by police in their law enforcement function, and disclosure may assist individuals to interfere with or defeat future police investigations. Further, the court found the defence not to have demonstrated that disclosure of this information was necessary to make full answer and defence: *R. v. Nguyen*, 2025 ABKB 397, 451 C.C.C. (3d) 1 (Alta. K.B.).
- **Remedies for Breach—Trial—Relationship with s. 11(b) of the Charter**—Although there had been outstanding Crown disclosure at the time defence delay was accumulating, the Court of Appeal for Ontario found there was nothing in the record to suggest that the outstanding disclosure had interfered with the orderly progress of the case or had caused any additional delay, and dismissed this ground of appeal: *R. v. Dunnett*, 2025 ONCA 392 (Ont. C.A.), leave to appeal refused 2026 CarswellOnt 1048 (S.C.C.).
- **Production of Confidential Third Party Records—General Procedure: Post-O'Connor—Second Step: Review and Balancing**—The Crown had withheld portions of the complainant's statement on the basis of privacy. Such redacted information included details of an alleged sexual assault twelve years earlier; details of her struggles with addiction, her mental health, her employment, and her prior sexual history. The British Columbia Provincial Court reviewed the complainant's statement and found that the redacted information had also included communities where potential witnesses reside. Since the redacted information could inform defence decisions about potential applications for the disclosure of third party records or decisions concerning evidence of other sexual history under s. 276 of the *Criminal Code*, and may assist with cross-examination of the complainant, the court ordered disclosure of the complainant's statement, including any transcript and audio or video recording of it: *R. v. J.A.K.*, 2025 BCPC 103 (B.C. Prov. Ct.).

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable