

mcmillan

CONFIDENTIALITY AND PRIVILEGE

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Privilege

1. Solicitor Client Privilege
2. Common Interest Privilege
3. Litigation Privilege

Solicitor Client Privilege

Protects from disclosure communications:

1. Between a lawyer and a client
2. Made in confidence
3. For the purpose of giving/receiving legal advice

Solicitor Client Privilege

Who is a lawyer ?

Solicitor Client Privilege

Giving/Receiving Legal Advice

Solicitor Client Privilege

In circumstances of confidence

Ethical Duty of Confidentiality

Rule 2.03(1) of the Law Society Rules of Professional Conduct:

“A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship and shall not divulge any such information unless expressly or impliedly authorized by the client or required by law to do so.”

What is apparent from the Rule

- “All information concerning the business and affairs of the client”
- “At all times”
- “Shall not divulge”

Exceptions to the Duty of Confidentiality

- Expressly or impliedly authorized by the client
- Required by law or court order
- Reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily harm including serious psychological harm
- For the protection of the lawyers' interest
- In order to establish or collect legal fees

Solicitor Client Privilege

Waiver by disclosure

Solicitor Client Privilege

Implied Waiver

Common Interest Privilege

What is it ?

Common Interest Privilege

Dangers in default position

Common Interest Privilege

Exacerbated within corporate family

Common Interest Privilege

Common Interest Privilege Agreement

Litigation Privilege

Dominant purpose test

Litigation Privilege

Danger for corporate investigations

Litigation Privilege

Capturing privilege for investigations

Litigation Privilege

Ends with the litigation

Litigation Privilege

Offensive tool against government

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