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Mary Ann Winterhalt

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Solicitor-Client Privilege in Canadian Law

Ronald D. Manes & Michael P. Silver

Toronto, Ont.: Butterworths, 1993, 285 pp.

Reviewed by Mary Ann Winterhalt†

In almost any area of legal counselling or advocacy, a lawyer may be faced with the dilemma of having to choose between breaching the confidential communications of a client or participating in some purposeful deception of the court. The common law rule of solicitor-client privilege was designed to prevent confidential information, passed between the solicitor and the client, from becoming evidence in a court of law. Privilege exists for the benefit of the client, allowing for full and frank consultation with a solicitor for the purpose of obtaining legal advice. Solicitor-client privilege serves as a safeguard within the adversarial system, protecting "the integrity of the relationship most vital to the continuing operation of the legal system."¹

This topic has received minimal attention; at best it was confined to a chapter in an evidence text. *Solicitor-Client Privilege* attempts to fill the gap by focussing solely on privilege in Canadian law. The result is a book that is the first of its kind for Canada.

Solicitor-Client Privilege is designed to be a reference guide to the Canadian law of privilege for the student, academic, and practitioner alike. The use of clear headings allows for easy reference and assists the reader in locating desired information quickly. Much of the material is repetitive which, though making for a somewhat arduous read, is understandable as the book is intended for reference use. Thus, crucial points are reiterated where required. It is also important to note that the authors rely rather heavily on the Ontario experience, thereby reducing the utility of the book outside Ontario. A noteworthy inclusion in this work is the three appendices which contain the *Canadian Bar Association Code of Professional Conduct—Confidential Information*, the provincial rules of civil procedure involving privilege, and a listing of federal and

† B.A. (Waterloo), M.A. (Western), LL. B. anticipated 1994 (Dalhousie).

¹ R. D. Manes & M. P. Silver, *Solicitor-Client Privilege in Canadian Law* (Toronto: Butterworths, 1993) at 1 [hereinafter *Solicitor-Client Privilege*].

provincial statutes referring to solicitor–client privilege. The inclusion of these materials makes *Solicitor–Client Privilege* a comprehensive reference tool. In light of the authors' forecast of continual change in this area, however, the reader should be cautious of the currency of the material.

The underlying theme throughout this work is the ability of the common law of privilege to adapt over time. The authors present the rationale for, and the history behind, each rule of privilege, allowing the reader to trace the evolution of the law in this area. *Solicitor–Client Privilege* also attempts to highlight some of the more significant statutory modifications of solicitor–client privilege within Canada. As a result of the current trend toward broader discovery, the increasing emphasis placed upon the intention of confidentiality as a requirement, and the evidentiary principle of admitting all that is relevant, the authors predict a reduction of the scope of the law of privilege. Undoubtedly, the tension between the search for truth and the need for privilege to ensure the proper administration of justice will continue.