



ESSENTIAL SOLICITOR UPDATE 2023

LEGAL PRIVILEGE

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Legal Privilege

Absolute Privilege

Settlement Negotiations

“Without Prejudice”

Waiver

Confidentiality

GDPR

Legal Privilege

- The underlying basis of any claim of privilege is the attainment of public policy objectives through a balancing test where the public interest in the production of the particular document in which the privilege is claimed is weighed against the public interest in the withholding of that document from production.
 - Private Privilege
 - Public Privilege
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Legal Privilege

- A privilege is considered “private” if the public policy objectives were established at the time that the actual definition of the privilege was established.
 - Legal Professional Privilege – the fostering of the relationship of trust between the client and the lawyer outweighed the right of the opponent to obtain information in furtherance of the litigation process.
 - Other examples include informer privilege, statutory privilege
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Legal Privilege

- Certain categories of private privilege have been rejected by the courts.
 - These include a journalist and his or her source, a doctor and his patient, a banker and his or her customer, an agent and principle.
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Legal Privilege

- A privilege is considered “public” or in the public interest when government agencies and their employees in a confidential relationship are permitted to withhold certain documents.
 - The courts must in each individual case of public interest privilege , “...balance the public interest in the ... production of the documents which are relevant to the issues to be determined against some other public interest which is invoked to justify their being withheld”.
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Legal Privilege

Waiver of privilege

Duration of privilege

Privilege and copy Documents

Procedure for claiming privilege – Rules of the Superior Courts
Ord. 31,r.13

Legal Privilege

- Legal professional privilege can be defined as the confidential communications between the client and the lawyer which are made;-
 - (a) for the purpose of giving legal advice; and
 - (b) in the course of the legal relationship.
 - Legal advise;
 - The lawyers work in preparation of litigation;
 - Documents concerning settlement negotiations;
 - Documents headed “without prejudice”.
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Legal Privilege

- Distinction between legal advice and legal assistance.
 - Calderbank letter – “without prejudice as to costs”
 - Exceptions – where the communication is part of a criminal or fraudulent act, or the person making the communication is guilty of moral turpitude or dishonest conduct.
 - Disclosure under the Rules of the Superior Courts Ord. 39, rr. 45-51.
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Legal Privilege

- A claim of public interest must be particularised;
 - The court is not required to examine each individual document described;
 - Judicial Power and the Executive Power;
 - Arguments in favour of non-disclosure e.g. the vital interests of the state, the preservation of international relations, the proper functioning of the public service, detection of crime, cabinet privilege.
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Practice Support Information Service



- Upcoming Information Sessions June 2023
- 7 June - Hear from Small Urban and Rural Practitioners on the benefits of running a small practice. [Register Online](#)
- 14 June - Conflict of interest – questions to ask yourself which will help determine if you are conflicted? An overview of current guidance with Catherine MacGinley & Wesley Hudson [Register Online](#)
- 28 June - Tech, AI and the future of ethics with Jennifer O Sullivan [Register Online](#)

Each session takes place at 1pm for 30 minutes

Any questions?



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