

Publisher's Note

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Constitutional Litigation in Canada

This one volume looseleaf is a comprehensive resource on the topic of constitutional litigation. It features a full and systematic treatment of the issues that arise at all stages of a proceeding from a practical perspective. Both practitioners and students alike will find included precedents, such as pleadings, affidavits, and facta, useful.

This release features a brand new Words & Phrases Section. This new section is a valuable reference tool for accessing words and phrases that are applicable to and have been considered in the context of constitutional litigation in Canada. Additionally, the table of cases and index have been fully updated.

Words & Phrases Highlights

- **Words and Phrases — Impartiality — Supreme Court of Canada:** Expert witnesses have a special duty to the court to provide fair, objective and non-partisan assistance... Underlying the various formulations of the duty are three related concepts: impartiality, independence and absence of bias. The expert's opinion must be impartial in the sense that it reflects an objective assessment of the questions at hand. It must be independent in the sense that it is the product of the expert's independent judgment, uninfluenced by who has retained him or her or the outcome of the litigation. It must be unbiased in the sense that it does not unfairly favour one party's position over another. The acid test is whether the expert's opinion would not change regardless of which party retained him or her: P. Michell and R. Mandhane, "The Uncertain Duty of the Expert Witness" (2005), 42 Alta. L. Rev. 635, at pp. 638-39; *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 CarswellNS 313, 2015 CarswellNS 314, 2015 SCC 23, [2015] 2 S.C.R. 182, 18 C.R. (7th) 308, 383

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D.L.R. (4th) 429, 67 C.P.C. (7th) 73, 360 N.S.R. (2d) 1, 1135 A.P.R. 1, 470 N.R. 324, [2015] S.C.J. No. 23 (S.C.C.), at paras. 2, 32, Cromwell J. (McLachlin C.J.C. and Abella, Rothstein, Moldaver, Wagner and Gascon JJ. concurring).

- **Words and Phrases — Paramountcy — Supreme Court of Canada:** In keeping with cooperative federalism, the doctrine of paramountcy is applied with restraint. It is presumed that Parliament intends its laws to co-exist with provincial laws: *Alberta (Attorney General) v. Moloney*, 2015 CarswellAlta 2091, 2015 CarswellAlta 2092, 2015 SCC 51, [2015] 3 S.C.R. 327, 22 Alta. L.R. (6th) 287, 29 C.B.R. (6th) 173, 391 D.L.R. (4th) 189, 85 M.V.R. (6th) 37, [2015] 12 W.W.R. 1, 476 N.R. 318, 606 A.R. 123, 652 W.A.C. 123 (S.C.C.), at para. 27, Gascon J. (Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ. concurring).
- **Words and Phrases — Privilege — Ontario:** Privilege is the right of a person or class of persons to exclude certain communications from evidence or to refuse to testify about matters covered by the privilege. Privilege may relate to a class of relationships — for example, solicitor-client privilege — or may be established on a case-by-case basis: *R. v. Nguyen*, 2015 CarswellOnt 5855, 2015 ONCA 278, 323 C.C.C. (3d) 240, 20 C.R. (7th) 287, 125 O.R. (3d) 321, 333 C.R.R. (2d) 255, 333 O.A.C. 199, [2015] O.J. No. 2098 (Ont. C.A.), at para. 16, Gillese J.A. (van Rensburg and Weiler J.J.A. concurring).