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DISCLOSURE & PRODUCTION IN CRIMINAL CASES

Murray D. Segal
Release No. 7, July 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in August 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the August 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This release features updates to the case law and commentary in Chapters 7 (Remedies for Breach), 8 (Production of Confidential Third Party Records), and 10 (Appeals from Orders of Production of Confidential Third Party Records).

Case Highlights

- **Production of Third Party Records — General Procedure: Post-O'Connor — Insufficient Grounds (s. 278.3(4))** — The witness, who suffered from schizophrenia, was in a relationship with one of the accused and had participated in a conversation with them shortly after the time of the alleged murder. The Superior Court of Justice found the third party records regarding the witness's psychiatric treatment over a span of several years were not likely relevant — this request for disclosure was overly broad, disproportionate, unsupportable and did not rest on permissible chains of reasoning: *R. v. Lipsett and Sinclair*, 2021 ONSC 6928, 2021 CarswellOnt 20496 (Ont. S.C.).
- **Appeals from Orders of Production of Confidential Third Party Records [10:4] — Specific Examples** — Manitoba's Court of Appeal upheld the refusal to order production of the victim's therapy records, since there was no evidence the records would likely be relevant to an issue at trial — the victim merely testified that she had discussed the sexual abuse with a therapist, and the accused presented no more than the bald assertion that the records may touch upon the victim's credibility or otherwise feature something relevant to the question of credibility: *R. v. TPR*, 2022 MBCA 14, 2022 CarswellMan 37 (Man. C.A.).

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