

Chapter 11: Privilege

In this chapter the sections of the *Evidence Act 2009* dealing with client privilege, religious confessions, parliamentary privilege and informers are considered. From the point of view of the legal practitioner client privilege is probably the most important area of privilege to understand. Part 12 of the *Evidence Act* contains the relevant privilege sections.

Right to Privilege

Privilege is a right that does not allow for exceptions except where they are provided by statute, and it protects the guilty as well as the innocent. These propositions are clearly stated by Toohey, Gaudron, McHugh and Gummow JJ in *Reid v Howard*:

15. There is simply no scope for an exception to the privilege, other than by statute. At common law, it is necessarily of general application - a universal right which, as Murphy J pointed out in *Pyneboard Pty Ltd v Trade Practices Commission* [1983] HCA 9; (1983) 152 CLR 328 at 346, protects the innocent and the guilty. There is no basis for excepting any class or category of person whether by reference to legal status, legal relationship or, even, the offence in which he or she might be incriminated because, as already indicated, its purpose is the completely general purpose of protecting against "the peril and possibility of being convicted as a criminal" *Lamb v Munster* (1882) 10 QBD 110 at 111.¹

The exercise of the right to privilege allows a person who is competent and compellable to refuse to answer a question 'directed to a particular subject, a question which is otherwise relevant to the matters in issue'.² When a privilege is being claimed it is usual for the defence practitioner to take objection to each question that may evoke the claim.

Legal Professional Privilege

Legal professional has been described as a 'true privilege' which 'operates as a substantive rule of law and not a rule of evidence'.³ Sections 143, 144 and 145 of the *Evidence Act* govern legal professional privilege, which is also known as client privilege. These sections state:

143. No person shall be compelled to disclose to the court any confidential communication which has taken place between the person and his or her legal practitioner.
144. (1) Except with the express consent of his or her client, no legal practitioner shall at any time be permitted to disclose, during the course of evidence given by that legal practitioner –

¹ [1995] HCA 40; (1995) 184 CLR 1.

² *Australian Crime Commission v Stoddart* [2011] HCA 47, 186.

³ *Ibid.*

- (a) any communication made to the legal practitioner by or on behalf of the legal practitioner's client in the course and for the purpose of acting for the client; or
 - (b) the contents of any document with which the legal practitioner has become acquainted in the course and for the purpose of acting for the client; or
 - (c) any advice given by the legal practitioner to the legal practitioner's client in the course and for the purpose of acting for the client.
- (2) This section does not protect from disclosure –
- (a) anything done, or any communication made or document prepared in furtherance of the commission of a fraudulent or corrupt act, or a criminal offence, or an act that renders a person liable to a civil penalty, or of an act which constitutes an abuse of office; or
 - (b) any fact observed by any legal practitioner in the course of the legal practitioner's acting for the client as such showing that any crime of fraud has been committed since the legal practitioner commenced acting for the client.
- 145.** (1) Evidence is not to be adduced if, on objection by a party who is not represented in the proceeding by a legal practitioner, the court finds that adducing the evidence would result in disclosure of –
- (a) a confidential communication between the party and another person; or
 - (b) the contents of a confidential document (whether delivered or not) that was prepared, either by or at the direction or request of, the party;
- for the dominant purpose of preparing for or conducting the proceeding.
- (2) This section does not protect from disclosure anything done, or any communication made or document prepared in furtherance of the commission of a fraudulent or corrupt act, or a criminal offence, or an act that renders a person liable to a civil penalty.

The definition of 'client' is considered by Barrett J in *Apple v Wily* where emphasis is also placed on the confidentiality of lawyer client communications.⁴ Barrett J stated:

In ordinary parlance, a "client" vis-à-vis a lawyer is a person for whom the lawyer performs legal services. Whether a relationship of that kind exists

⁴ [2002] NSWSC 855.

is to be determined by reference to the intentions of the parties objectively ascertained. This is, I think, recognised in the judgment of Mahoney JA (with whom Priestley and Powell JJA agreed) in *Maxwell v Chittick* (unreported, NSWCA, 23 August 1994):

“It is, of course, to be accepted that persons in the relationship that existed between Mr Maxwell and the plaintiffs may also undertake the relationship of solicitor and client. Whether that relationship existed depends essentially upon whether it was the intention of the parties that it should be created. I am of the opinion that, having regard to the circumstances, no such relationship was intended to be created ... [W]hat occurred between them at each of these times did not constitute in terms the making of a contract of the accepting of a retainer so as to create the relationship of solicitor and client. And I do not think that the circumstances require it to be implied that such a relationship was intended to be created between them.”

The kinds of circumstances from which the existence of the relationship may be inferred are described in the judgment of Somers J in *Day v Mead* [1987] 2 NZLR 443:

“The Judge found in respect of this transaction that Mr Day had not established that Mr Mead was acting as his solicitor. He was much influenced in this by the fact that no account for professional services was rendered by Mr Mead to Mr Day. With respect I must disagree. On this occasion, as on the first, the proposal was made by Mr Mead to Mr Day at his office to which Mr Day had been asked to go for the very purpose of its being put to him. Mr Mead attended to all the legal matters including a temporary mortgage by Mr Day to Mr Mead’s nominee company to secure a loan to enable him to invest the full \$80,000. The latter sum Mr Mead received into his trust account to Mr Day’s credit from which he disbursed it, presumably to the company’s account, from whence it was no doubt paid out in part satisfaction of the debenture of the nominee company. Those features, together with the whole background of the relations between Mr Mead and Mr Day both generally and in relation to Pacific Mills in particular, lead me to conclude that the case is one in which although there was no formal or express retainer nevertheless the existence of a retainer in relation to the investment of further moneys and the subscription for increases in capital is to be inferred. That such a contract may be implied seems obvious; an example is *Blyth v Fladgate* [1891] 1 Ch 337.”

Regard may also usefully be had to the nature of legal professional privilege at common law, since the Evidence Act provisions reflect the common law principles to a large extent. The underlying concepts were stated thus by Stephen, Mason and Murphy JJ in *Grant v Downs* [1976] HCA 63; (1976) 135 CLR 674:

“The rationale of this head of privilege, according to the traditional doctrine, is that it promotes the public interest because it assists and enhances the administration of justice by facilitating the representation of clients by legal advisers, the law being a complex and complicated discipline. This it does by keeping secret their communications, thereby inducing the client to retain the solicitor and seek his advice, and

encouraging the client to make a full and frank disclosure of the relevant circumstances to the solicitor. The existence of the privilege reflects, to the extent to which it is accorded, the paramountcy of this public interest over a more general public interest, that which requires that in the interests of a fair trial litigation should be conducted on the footing that all relevant documentary advice is available. As a head of privilege legal professional privilege is so firmly entrenched in the law that it is not to be exorcised by judicial discretion.”

To the same effect is the observation of McHugh J in *Carter v Managing Partner, Northmore Hale Davy & Leake* (1995) 183 CLR 121:

“By protecting the confidentiality of communications between lawyer and client, the doctrine protects the rights and privacy of persons including corporations by ensuring unreserved freedom of communication with professional lawyers who can advise them of their rights under the law and, where necessary, take action on behalf to defend or enforce those rights. The doctrine is a natural, if not necessary, corollary of the rule of law and a potent force for ensuring that equal protection under the law is a reality.”

“Client”, in its ordinary signification, must therefore be regarded as referring to a person who, in respect of some legal matter within the scope of professional services normally provided by lawyers, has, with the consent of a lawyer, come to stand in a relationship of trust and confidence to the lawyer entailing duties of the lawyer to promote the person’s interests, to protect the person’s rights and to respect the person’s confidences. The privilege exists so that a person may consult his legal adviser in the knowledge that confidentiality will prevail.⁵

The requirement for client confidentiality is also specified in the Solomon Islands *Legal Practitioners (Professional Conduct) Rules*.⁶ Rule 10 states:

Confidentiality

10. (1) A legal practitioner shall at all times strive to establish and maintain a relationship of trust and confidence with his client.
- (2) A legal practitioner shall impress upon his client that he cannot serve him adequately without knowing all facts that may be relevant to the client's case and that the client should not withhold information which the client might think is embarrassing or harmful to his interests.
- (3) A legal practitioner shall not, without the consent of his client, directly or indirectly—
 - (a) reveal the client's confidence;
 - (b) use the client's confidence in any way detrimental to the interests of that client; or

⁵ Ibid.

⁶ Section 21 of *Legal Practitioners Act* [Cap 16] allows for the Rules to be created.

- (c) lend or reveal the contents of the papers in any brief, advice or instructions to any person,

except to the extent—

- (i) required by law, rule of court or court order, provided that where there are reasonable grounds for questioning the validity of the law, rule or order he shall first take all reasonable steps to test the validity of the same; or
- (ii) necessary for replying to or defending any charge or complaint of criminal or unprofessional conduct or professional misconduct brought against him or his partners, associates or employees.

Sole Purpose Test

In *Baker v Campbell* the Australian High Court held that legal professional privilege protected communications between client and lawyer and was not confined to the protection of documents from disclosure in judicial or quasi-judicial proceedings.⁷ The ‘sole purpose’ test was laid down by the High Court in *Grant v Downs*.⁸

In the Solomon Islands, Chief Justice Palmer in *Idu v Attorney-General*, when considering a case involving prisoner conditions, describes the law in respect of legal professional privilege in the following way:

Legal professional **privilege** is a substantive principle of the common law, that a person is entitled to preserve the confidentiality of statements and other materials which have been made or brought into existence for the sole purpose of seeking or being furnished with legal advice by a lawyer, or for the sole purpose of preparing for existing or contemplated judicial or quasi-judicial proceedings³. It is commonly referred to as legal communications between solicitor and client.

The existence of this rule is fundamental to the effective operation of the accusatorial or adversary system itself. It furthers and promotes the administration of justice and effective adversary system. This rule or doctrine fosters openness/frankness and trust in the solicitor/client relationship and protects the information of each party to adjudication from disclosure to the other side. It has been said that the existence of this rule is crucial to the proper functioning of the common law system and any abolition would be detrimental to the existence of the accusatorial system. This was highlighted by Roskill L.J. in *Causton v. Mann Egerton (Johnsons) Ltd* [1974] 1 All E.R. 453:

*"So long as there is an adversary system, a party is entitled not to produce documents which are properly protected by **privilege** of it is not to his advantage to produce them and even though their*

⁷ [1983] HCA 39; (1983) 153 CLR 52.

⁸ [1976] HCA 63; (1976) 135 CLR 674.

*production might assist his adversary if his adversary or his solicitor were aware of their contents, or might lead the court to a different conclusion from that to which the court would come in ignorance of their existence."*⁹

In **Attorney-General (N.T.) v Maurice** [1986] HCA 80; (1986) 61 A.L.J.R. 92, Mason and Brennan JJ said:

*"The raison d'être of legal professional **privilege** is the furtherance of the administration of justice through the fostering of trust and candour in the relationship between lawyer and client."*

See also **Grant v Downs** in which the High Court of Australia said:

*"The rationale of this head of **privilege**, according to traditional doctrine, is that it promotes the public interest because it assists and enhances the administration of justice by facilitating the representation of clients by legal advisers, the law being a complex and complicated discipline. This it does by keeping secret their communication, thereby inducing the client to retain the solicitor and seek his advice, and encouraging the client to make a full and frank disclosure of the relevant circumstances to the solicitor."*¹⁰

In **Baker v Campbell** the High Court of Australia also emphasised the need to protect individual rights and privacy of the citizen from the demands and intrusion of the law and government. Per Deane J:

*"The general and substantive principle underlying legal professional **privilege** is of fundamental importance to the protection and preservation of the rights, dignity and equality of the ordinary citizen under the law in that it is a pre-condition of full and unreserved communication with his lawyer."*

Dawson J at page 445 said:

"If a client cannot seek advice from his legal adviser confident that he is not acting to his disadvantage in doing so then his lack of confidence is likely to be reflected in the instructions he gives, the advice he is given and ultimately in the legal process of which the advice forms part."

And at page 436-437, Deane J concludes his judgment as follows-

*"Without legal professional **privilege** there can be no assurance that those in need of independent legal advice to cope with the demands and intricacies of modern law will be able to obtain it without the risk of prejudice and damage by subsequent compulsory disclosure on the demand of any administrative officer with some general statutory authority to obtain information or seize documents."*¹¹

⁹ [2004] SBHC 63.

¹⁰ [1976] HCA 63; (1976) 135 CLR 674.

¹¹ [1983] HCA 39; (1983) 153 CLR 52.

See also **Berd. Lovelace** (1577) Cary 62, 21 ER 33, **Dennis v Codrington** (1580) Cary 100, 21 ER 53, **Greenough v Gaskell** (1833) 1 My & K 98, and **Anderson v Bank of British Columbia** (1876) 2 Ch. D 644.

In **A.M & S. Europe Ltd v Commissioner of European Communities** [1983] 3 WLR 17 at 54 it has been supported as a fundamental, constitutional or human right.

In **Regina v Secretary of State for the Home Department; Ex parte Leech** [1994] QB 198, ("**Leech's Case**") a decision of the English Court of Appeal, a similar situation arose over the examination of correspondence and legal professional privilege of prisoners. The prison rules (Rule 33(3)) are worded in very similar terms to our regulation 81(2), which allowed for the reading of all correspondence and stopping of letters that were objectionable or of inordinate length. The key issue was whether the Prison Rules allowed the prison to read confidential legal communications.

The Court of Appeal dealt with that issue by saying that the common law rule of legal professional privilege could not be abrogated by legislation without express abolition of the common law rule. Steyn LJ said:

"It will, we suggest be an even rarer case in which it could be held that a statute authorised by necessary implication the abolition of a limitation of so fundamental a right by subordinate legislation."

His Lordship also held that regulations that impede such right to be ultra vires:

"In Solovsky v The Queen (1979) 105 D.L.R. (3d), Dickson described the impact of a right to read a prisoner's correspondence as follows: "Nothing is more likely to have a "chilling" upon the frank and free exchange and disclosure of confidence, which should characterise the relationship between inmate and counsel, than knowledge that what has been written will be read by some third person, and perhaps used against the inmate at a later date". We respectfully agree. An unrestricted right to read correspondence passing between solicitor and a prisoner must create a considerable disincentive to a prisoner exercising his basic rights, and the right to stop letters on the ground of objectionability or prolixity means that access to a solicitor by the medium of correspondence can be denied altogether. In our view rule 33(3) is ultra vires so far as it purports to apply to correspondence between prisoners and their legal advisors."

A number of matters can be noted from **Leech's Case** above. First, that the rights to **privilege** between solicitor and client are rights connected to the civil rights of the prisoner in relation to correspondence. In **Leech's Case**, at page 7 Steyn LJ said:

"It is an axiom of our law that a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by necessary implications see Raymond v. Honey

[1983] 1 A.C. 1, 10, per Lord Wilberforce. The present case is concerned with civil rights in respect of correspondence."

The civil rights of prisoners in relation to correspondence is covered by legislation in section 52(1) of the Prisons Act. I quote:

"Every letter or document, except as may be prescribed, written in a prison by or on behalf of a prisoner shall be delivered to the Officer in Charge who shall before the letter or document is removed from the prison, clearly endorse or cause to be endorsed thereon -

(a) the name of the prison;

(b) a statement to the effect that its removal from the prison is authorised; and

(c) the signature or initials of the prison officer making the endorsement."

It is pertinent to point out that the enabling legislation says nothing about whether privileged communications between solicitor and client should be read or not. The subordinate legislation, regulation 81(2) however goes further than this and requires that every letter shall be read.

The second point to note is the general duty of solicitors to keep confidential all communications between them and their clients. This is a rule based on equity and binds others who knowingly receive the communication in breach of confidence. It means that any communications passing from lawyers to prisoners on matters pertaining to legal advice or any pending case of the prisoner should not be read by the Prison Authorities. Where that is done, they would become subject to the privilege requirements over such documents or correspondence.

The third point relates to the principle in law that every citizen has a right of unimpeded access to a court. See **Raymond v Honey** [1983] 1 A.C. 1, 13 in which Lord Wilberforce described it as a **"basic right"**. This right however is enshrined in our constitution as a fundamental right - see section 10 of the Constitution which guarantees the rights of a person to the protection of the law and the right to be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. This right includes the rights of prisoners to the due process of the law and the courts processes whether civil or criminal. Section 18 secures their rights to come to court for any allegations of breach of such rights. Directly linked and forming an inseparable part of the right to access to the courts is the unimpeded right of access of a prisoner to his solicitor for purposes of receiving legal advice and assistance in connection with civil legal proceedings in the courts - see section 10(8)-(10) of the Constitution. See also paragraphs 10(2)(d) and (e) of the Constitution for criminal trials. Any legislation therefore which seeks to take away or hinders the prisoners' rights to access to the courts and access to their lawyers could be unconstitutional.

Self Incrimination

Sections 146 and 147 of the *Act*, which provide protection against self incrimination, are considered in some detail in Chapter 5. Section 148 of the

Act provides the court with discretion where incrimination may result under foreign law. It states:

- 148.** (1) This section applies to any specific information –
- (a) that a person is (apart from this section) required to provide
 - (i) in the course of a proceeding; or
 - (ii) by a person exercising a statutory power or duty; or
 - (iii) by a police officer or other person holding a public office in the course of an investigation into a criminal offence or a possible criminal offence; or
 - (b) that would, if so provided, tend to incriminate the person under any foreign law for an offence punishable by –
 - (i) capital punishment; or
 - (ii) corporal punishment or imprisonment, or both.
- (2) A court may direct that the person cannot be required to provide the information if the court, after having regard to the likelihood of extradition and other relevant matters, thinks that it would be unreasonable to require the person to incriminate himself or herself by providing the information.
- (3) Subsection (2) does not enable the court to give a direction in respect of –
- (a) a body corporate; or
 - (b) any person other than the person required to provide the information (except by a legal adviser on behalf of a client who is so required); or
 - (c) an accused in a criminal proceeding when giving evidence about the matter for which an accused is being tried.

Section 149 of the *Act* requires the court to advise witnesses if there is the potential for them to incriminate themselves by their answers. It states:

- 149.** (1) If, in any court proceeding, it appears to the court that a party or witness may have grounds to claim a privilege against self-incrimination in respect of specific information required to be provided by that person, the court must be satisfied that the person is aware of the privilege and its effect.
- (2) A person who claims a privilege against self-incrimination in a court proceeding must offer sufficient evidence to enable the court to assess whether self-incrimination is reasonably likely if the person provides the required information.

Religious Confessions

Section 152 of the *Act* states:

152. (1) A person who is or was a member of the clergy of any church or religious denomination is entitled to refuse to divulge that a religious confession was made, or divulge the contents of a religious confession made to the person when a member of the clergy.
- (2) Subsection (1) does not apply if the communication involved in the religious confession was made for a criminal purpose.
- (3) This section applies even if a written law provides –
 - (a) that the rules of evidence do not apply or that a person or body is not bound by the rules of evidence; or
 - (b) that a person is not excused from answering any question or producing any document or other thing on the ground of privilege or any other ground.
- (4) In this section, ‘religious confession’ means a confession made by a person to a member of the clergy in the member’s professional capacity according to the ritual of the church or religious denomination concerned.

The section leaves to the clergy the decision whether or not to divulge confidential information relating to a confessional.

Religious ‘confession’ has been defined as:

The sorrow for the consequences of sin which divines call attrition, is distinct from the sorrow for the sin itself which they call contrition. This latter penitence naturally leads to confession and thence or thereby to reconciliation with God, which reconciliation the church pronounces by the sentence called “absolution.”¹²

The Western Australian Law Reform Commission commented on the deep feelings of some clerics about the need for confessions to be sacrosanct.

- 5.19 The confidentiality of ritualised communications between clerics and penitents in some religions is considered by the followers of such religions to be sacrosanct. A Catholic priest, for example, is under an absolute ethical or spiritual obligation not to reveal information obtained during a confession. The consequences for the priest who does reveal the information without the penitent’s consent may include his belief that he is cut off from his God, excommunication from his church or serious disciplinary proceedings. A cleric may also undergo great personal suffering should he break an obligation

¹² Phillimore’s *Ecclesiastical Law* 538 - see *Stroud’s Judicial Dictionary* 5th Ed Vol 1 (1986) 504.

of confidentiality which is at the basis of the cleric's fundamental religious beliefs.¹³

Parliamentary Privilege

Since the United Kingdom *Bill of Rights 1688* it is impermissible to call into question or examine what was done in parliament. Section 153 of the *Act* preserves this privilege. It states:

- 153.** This Act does not affect the law relating to the privileges of Parliament or a provincial assembly.

Informer Privilege

Section 155 of the *Act* allows for the protection of an informer. It states:

- 155.** (1) An informer has a privilege in respect of information that would disclose, or is likely to disclose, the informer's identity.
- (2) A person is an informer for the purposes of this section if the person
- (a) has supplied, gratuitously or for reward, information to an enforcement agency, or to a representative of an enforcement agency, concerning the possible or actual commission of an offence in circumstances in which the person has a reasonable expectation that his or her identity will not be disclosed; and
 - (b) is not called as a witness by the prosecution to give evidence relating to that information.
- (3) An informer may be a police officer working undercover.

Relinquishing Privilege

Section 156 of the *Act* allows a person with the right to privilege to relinquish it either expressly or impliedly. It states:

- 156.** (1) A person who has a privilege conferred under this Part may waive that privilege either expressly or impliedly.
- (2) A person who has a privilege waives the privilege if that person, or anyone with the authority of that person, voluntarily produces or discloses, or consents to the production or disclosure of, any significant part of the privileged communication, information, opinion, or document in circumstances that are inconsistent with a claim of confidentiality.
- (3) A person who has a privilege waives the privilege if the person –

¹³ WALRC 90, Final Report on Professional Privilege for Confidential Communications (1993).

- (a) acts so as to put the privileged communication, information, opinion, or document in issue in a proceeding; or
- (b) institutes a civil proceeding against a person who is in possession of the privileged communication, information, opinion, or document the effect of which is to put the privileged matter in issue in the proceeding.
- (4) A person who has a privilege in respect of a communication, information, opinion, or document that has been disclosed to another person does not waive the privilege if the disclosure occurred involuntarily or mistakenly or otherwise without the consent of the person who has the privilege.
- (5) The privilege conferred in relation to settlement negotiations may be waived only by all the persons who have that privilege.

Third Party Privilege

Section 157 of the *Act* allows privilege to be asserted against third parties. It states:

- 157.** (1) A person who jointly with some other person or persons has a privilege conferred under this Part in respect of a communication, information, opinion, or document –
- (a) is entitled to assert the privilege against third parties; and
 - (b) is not restricted from having access or seeking access to the privileged matter; and
 - (c) may, on the application of another holder of the privilege who wishes the privilege to be maintained, be ordered by a court not to disclose the privileged matter in a proceeding.
- (2) A person who jointly has a privilege conferred with some other person or persons may waive the privilege with the consent of the other privilege holders or by order of the court.
- (3) If a person is entitled to legal professional privilege in respect of a communication, information, opinion or document, the personal representative of the person or other successor in title to property of the person –
- (a) is entitled to assert the privilege against third parties; and
 - (b) is not restricted from having access or seeking access to the privileged matter.
- (4) However, subsection (3) applies only to the extent that a court is satisfied that the personal representative or other successor in title to property has a justifiable interest in the communication, information, opinion, or document.

- (5) A personal representative of a deceased person who has a privilege conferred by this Part in respect of a communication, information, opinion, or document and any other successor in title to property of a person who has such a privilege may, on the application of another holder of the privilege who wishes the privilege to be maintained, be ordered by a court not to disclose the privileged matter in a proceeding.

Disallowing Privilege

Section 158 of the *Act* allows the court to exercise a discretion to admit otherwise privileged information where it is necessary for an accused to mount an effective defence. This section may be most productively applied where the privilege is being claimed by an informer. Section 158 states:

- 158. (1) A court may disallow a claim of privilege conferred under this Part in respect of a communication or information if the court is of the view that evidence of the communication or information is necessary to enable an accused in a criminal proceeding to present an effective defence.
- (2) Any communication or information disclosed as the result of the disallowance of a claim of privilege under subsection (1) and any information derived from that disclosure cannot be used on that basis alone against the holder of the privilege in another proceeding.

Obligation of Court

Section 159 of the *Act* places an obligation on the court to make a witness or party aware of any claim of privilege or objection that could be taken to it. It states:

- 159. If it appears to the court that a witness or a party may have grounds for making a claim, application or objection under a provision of this Part, the court must satisfy itself that the witness or party is aware of the effect of that provision.

The court when determining whether to lift privilege, or grant it, needs to view the information that is privileged before making a ruling. Section 160 of the *Act* states:

- 160. If a question arises under this Part in relation to a document, the court may order that the document be produced to it and may inspect the document for the purpose of determining the question.

Section 161 of the *Act* states the obvious:

- 161. Evidence that, because of this Part, must not be adduced or given in a proceeding is not admissible in the proceeding.

Section 150 of the *Act* applies to a party in a civil proceeding who may incriminate themselves. Section 151 of the *Act* excludes a body corporate from claiming privilege against self incrimination, which reflects the common law position. Section 154 of the *Act* relates to civil proceedings and privilege in respect of communication.

Chapter 12 examines the rules of evidence as they apply to documentary evidence.