

Publisher's Note

2018 — Release 5

Previous release was 2018-4

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Salhany

Criminal Trial Handbook

This release features updates to the commentary and case law in Chapters 1 (Pre-Trial Review), 2 (Pre-Arrest Matters), 6 (Role of the Judge), 9 (Kinds of Evidence), 10 (Excluded Evidence), 11 (Order of Proof) and 15 (Sentencing).

Highlights

- **Pre-Trial Review – Pre-Trial Conference – Suggested Areas of Discussion – Full and Complete Disclosure by the Crown** – The Supreme Court of Canada applied a two-fold test for determining whether breathalyzers' maintenance records were first party records under the *Stinchcombe* regime or third party records under the *O'Connor* regime - since the maintenance records were neither (a) information in the possession or control of the prosecuting Crown, nor (b) information those in possession or control should have supplied to the prosecuting Crown as fruits of the investigation, the Supreme Court held them to be third party records: *Gubbins*, 2018 CarswellAlta 2404 (S.C.C.).

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- **Role of the Judge – [New!] Protection of Language Rights** – The Supreme Court of Canada affirmed that language rights are substantive, rather than procedural, rights that courts must uphold with minimal undue interference; that language rights must be interpreted purposively in all cases; and that language rights are distinct from the principles of fundamental justice. Consequently, a lawyer’s failure to object to the violation of a party’s language rights neither excuses the court from doing likewise nor constitutes a waiver of those rights: *Mazraani v. Industrial Alliance Insurance and Financial Services Inc.*, 2018 CarswellNat 6702 (S.C.C.).