

Publisher's Note

2019 — Release 3

Previous release was 2019-2

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Segal

Disclosure & Production in Criminal Cases

This release features updates to the case law and commentary in the following chapters: 1 (Introduction), 2 (Principles), 3 (Exceptions to Disclosure), 4 (The Crown), 5 (Defence Counsel), 6 (Police), 7 (Remedies for Breach), and 8 (Production of Confidential Third Party Records).

Case Highlights

- **Defence Counsel — Seeking Review at Earliest Opportunity** — The defence sought disclosure close to the commencement of trial, but offered no explanation for making its motion so late. Ontario's Superior Court of Justice found the defence not to have acted diligently, in light the requirement for disclosure motions to be heard 60 days in advance of the trial, pursuant to para. 2.4(1)(b) of the *Criminal Rules of the Ontario Court of Justice: R. v. Jalili*, 2018 ONSC 6408, 2018 CarswellOnt 18237 (Ont. S.C.J.).
- **Production of Confidential Third Party Records — General Procedure: Post-O'Connor — Second Step: Review and Balancing** — The memories of the alleged abuse by the defendant, from when the complainant had been a teenager until she attained 33 years of age, had reportedly been suppressed, and records of diagnosis or treatment of this condition were minimal. The

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Superior Court of Justice held that information reported to health care providers relevant and probative of trial issues were ordered to be shared with the defence, including: the complainant's 2015 reporting of the suppressed memory and her recall thereof; her reports of alleged abuse; and her alleged anxiety about testifying: *R. v. Gordon*, 2018 ONSC 6159, 2018 CarswellOnt 18065 (Ont. S.C.J.).