AN EVIDENCE CHEAT SHEET

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During the 1960s, I was a student at Aldershot High School in Burlington, Ontario. For tests and examinations, the teachers of the Mathematics Department allowed the students to use a one page (two-sided) summary of the course material. Most students spent an inordinate amount of time preparing their summary, and although we called it a "cheat sheet", we actually learned the mathematics. This article in the form of a chart attempts to share the learning experience for the law of evidence.

Objection	Exception
IRRELEVANT Evidence that is not logically probative of a fact requiring proof (a fact in issue) is inadmissible. To be probative, the evidence must increase or decrease the probability of the truth of the fact. *R. v. Morris*, [1983] 2 S.C.R. 190, 1 D.L.R. (4th) 385, 7 C.C.C. (3d) 97; *R. v. Cloutier*, [1979] 2 S.C.R. 709, 99 D.L.R. (3d) 577, 48 C.C.C. (2d) 1	
IMMATERIAL Evidence that does not address any issue arising from the pleadings or the indictment (a fact in issue) or the credibility of a witness (perception, memory, narration, or sincerity) is immaterial, and it is inadmissible because it is irrelevant. Sopkina, Lederman, Bryan, *The Law of Evidence in Canada*, 2nd ed., paras. 2.36 and 2.50	
AUTHENTICITY NOT ESTABLISHED A document or real evidence that has not been authenticated is inadmissible. A witness must verify that the item is the genuine thing that it appears to be. Especially in criminal proceedings, authentication may involve proof of possession of the item without alteration. *R v. Schwartz*, [1988] 2 S.C.R. 443, 55 D.L.R. (4th) 1, 45 C.C.C. (3d) 97	
CONTRAVENTION OF THE CHARTER OF RIGHTS AND FREEDOMS Evidence obtained in a manner that contravenes the Charter shall be excluded if it is established that having regard to all the circumstances, the admission of the evidence would bring the administration of justice into disrepute. *Canadian Charter of Rights and Freedoms*, s. 24(2); *R. v. Collins*, [1987] 1 S.C.R. 265, 38 D.L.R. (4th) 508, 33 C.C.C. (3d) 1; *R. v. Stillman*, [1997] 1 S.C.R. 607, 144 D.L.R. (4th) 193, 113 C.C.C. (3d) 321.	
PRIVILEGE AGAINST SELF-INCRIMINATION A witness who testifies in any proceeding has the right not to have any incriminating evidence used to incriminate that witness in any other proceedings, except a prosecution for perjury or for the giving of contradictory evidence. *Canadian Charter of Rights and Freedoms*, s. 13	

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PREJUDICIAL Evidence may be excluded if its probative value is overborne by its prejudicial effect, including the tendencies: to yield irrational conclusions; to confuse, mislead, or distract the trier of fact's attention from the main issues; to unduly occupy the trier of fact's time; and to surprise the opponent unfairly and to impair a fair trial. *R. v. Mohan*, [1994] 2 S.C.R. 9, 114 D.L.R. (4th) 419, 89 C.C.C. (3d) 402; *R. v. Seaboyer*, [1991] 2 S.C.R. 577, 83 D.L.R. (4th) 193, 66 C.C.C. (3d) 321; *R. v. Potvin*, [1989] 1 S.C.R. 525, 47 C.C.C. (3d) 289, 68 C.R. (3d) 193	
PREJUDICIAL DEMONSTRATIVE EVIDENCE Demonstrative evidence that has a prejudicial effect, sometimes described as an inflammatory effect, is not admissible where its probative value is overborne by its prejudicial effect. *R. v. MacDonald* (2000), 49 O.R. (3d) 417, 146 C.C.C. (3d) 525, 134 O.A.C. 167 (C.A.); *R. v. B. (L.); R. v. G. (M.A.)* (1997), 116 C.C.C. (3d) 481, 35 O.R. (3d) 35 *sub nom. R. v. B. (L.)*, 102 O.A.C. 104 (Ont. C.A.)	
OPINION Unless qualified as an expert or testifying about a matter of everyday human experience, a witness's opinion about the facts is inadmissible. The general rule is that a witness does not opine but testifies as to facts he or she perceived. *R. v. Graat*, [1982] 2 S.C.R. 819, 144 D.L.R. (3d) 267, 2 C.C.C. (3d) 365	
	OPINION OF EXPERT A witness that is qualified by education or experience to provide the trier of fact with an opinion that is outside the trier of fact's knowledge and experience may provide an opinion to assist the trier of fact to come to his or her own conclusion. Expert evidence that advances a novel scientific theory is subject to special scrutiny. *R. v. Mohan*, [1994] 1 S.C.R. 9, 114 D.L.R. (4th) 419, 89 C.C.C. (3d) 402; *R. v. Marquard*, [1993] 4 S.C.R. 223, 108 D.L.R. (4th) 47, 85 C.C.C. (3d) 193; *R. v. Abbey*, [1982] 2 S.C.R. 24, 138 D.L.R. (3d) 202, 68 C.C.C. (2d) 394
PRIOR CONSISTENT STATEMENT Evidence that the witness made an out-of-court statement consistent with his or her testimony in court is inadmissible as oath helping and as hearsay. But see the hearsay exceptions. *R. v. B. (F.F.)*, [1993] 1 S.C.R. 697, 79 C.C.C. (3d) 112, 120 N.S.R. (2d) 1; *R. v. Béland*, [1987] 2 S.C.R. 398, 43 D.L.R. (4th) 641, 36 C.C.C. (3d) 481; *R. v. Evans*, [1993] 2 S.C.R. 629, 104 D.L.R. (4th) 200, 82 C.C.C. (3d) 338	
	PAST RECOLLECTION REVIVED A prior written statement or any object may act as an *aide memoire* to revive a witness's memory. The revived testimony, not the memory reviving statement, is admissible evidence. The object need not be made contemporaneously with the events recollected, and it need not be made by the

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	witness. *R. v. Fliss*, [2002] 1 S.C.R. 535, 209 D.L.R. (4th) 347, 161 C.C.C. (3d) 225; *R. v. B. (K.G.)* (1998), 125 C.C.C. (3d) 61, 109 O.A.C. 138 (C.A.); *Henry v. Lee* (1814), 2 Chit. 124
	REBUTTAL OF ALLEGATION OF RECENT FABRICATION Evidence of a prior consistent statement is admissible to rebut an allegation that the witness's evidence is a recent fabrication. *R. v. Simpson*, [1988] 1 S.C.R. 3, 46 D.L.R. (4th) 466, 38 C.C.C. (3d) 481
	NARRATIVE OR RES GESTE Evidence of a prior consistent statement is admissible so far as necessary to provide context and to properly understand what truly happened and not as proof of its contents. *R. v. F. (J.E.)* (1993), 26 C.R. (4th) 220, 85 C.C.C. (3d) 457, 16 O.R. (3d) 1 *sub nom. R. v. Fair* (Ont. C.A.).
HEARSAY Evidence of an out-of-court statement repeated for the purpose of establishing the truth of the statement is inadmissible. The essential defining features of hearsay are: (1) the statement is adduced as proof of its contents; and (2) the opportunity for a contemporaneous cross-examination of the speaker is absent. *R. v. Khelawon*, [2006] 2 S.C.R. 787, 274 D.L.R. (4th) 385, 215 C.C.C. (3d) 161	
	NON-HEARSAY USE: EVIDENCE THAT THE STATEMENT WAS MADE If the evidence of an out-of-court statement is elicited as proof that the statement was made, it is proof of what was said but not proof of the truth of the statement. *R. v. O'Brien*, [1978] 1 S.C.R. 591, 76 D.L.R. (3d) 513, 35 C.C.C. (2d) 209; *R. v. Evans*, [1993] 1 S.C.R. 629, 104 D.L.R. (4th) 200, 82 C.C.C. (3d) 338
	NECESSARY AND RELIABLE Hearsay evidence is admissible if it meets the tests of necessity and reliability. The onus is on the person who seeks to adduce the evidence to establish necessity and reliability on a balance of probabilities. Evidence will be necessary where the declarant is unavailable to testify at trial and where evidence of a similar quality from another source is not obtainable. The criterion of reliability is usually met because either the statement came about in a way

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	that indicates trustworthiness or the circumstances permit the ultimate trier of fact to sufficiently assess the statement's trustworthiness. *R. v. Khelawon*, [2006] 2 S.C.R. 787, 274 D.L.R. (4th) 385, 215 C.C.C. (3d) 161; *R. v. Mapara*, [2005] 1 S.C.R. 358, 251 D.L.R. (4th) 385, 195 C.C.C. (3d) 225; *R. v. Starr*, [2000] S.C.R. 144, 190 D.L.R. (4th) 591, 147 C.C.C. (3d) 449; *R. v. B. (K.G.)*, [1993] 1 S.C.R. 740, 79 C.C.C. (3d) 257, 61 O.A.C. 1; *R. v. Smith*, [1992] 2 S.C.R. 915, 94 D.L.R. (4th) 590; *R. v. Khan*, [1990] 2 S.C.R. 531, 59 C.C.C. (3d) 92, 41 O.A.C. 353
	RES GESTAE Spontaneous and contemporaneous utterances that are a part of or made in the excitement of an event are admissible. *R. v. Fair* (1993), 16 O.R. (3d) 1, 85 C.C.C. (3d) 457, 26 C.R. (4th) 220 *sub nom. R. v. F. (J.E.)* (C.A.)
	STATEMENT OF PHYSICAL OR MENTAL STATE Evidence by a declarant of his or her state of physical or mental state is admissible. *Aveson v. Lord Kinnaird* (1805), 6 East 188, 102 E.R. 1258 (K.B.)
	ADMISSION Subject to the rule in criminal proceedings about confessions made to a person in authority, evidence of an out-of-court statement of a party is admissible. *R. v. Evans*, [1993] 2 S.C.R. 629, 104 D.L.R. (4th) 200, 82 C.C.C. (3d) 338
	CONFESSION In criminal proceedings, the out-of-court statement of the accused made to a person in authority is admissible as a confession only if the prosecutor proves beyond a reasonable doubt that the statement was made by the accused possessed of an operating mind and speaking voluntarily and freely. *R. v. Oickle*, [2000] 2 S.C.R. 3, 190 D.L.R. (4th) 257, 147 C.C.C. (3d) 321; *R. v. Ibrahim*, [1914] A.C. 599 (P.C.)
	PRIOR INCONSISTENT STATEMENT A prior inconsistent statement made out of court is admissible to impeach the cred-

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	ibility of a witness (perception, memory, narration, or sincerity), and where the tests of necessity and reliability are met, it is admissible for its substantive truth. Note: if the witness is a party, the prior inconsistent statement will be admissible as an admission. *R. v. B. (K.G.)*, [1993] 1 S.C.R. 740, 79 C.C.C. (3d) 257, 61 O.A.C. 1; *R. v. U. (F.J.)*, [1995] 3 S.C.R. 764, 128 D.L.R. (4th) 121, 101 C.C.C. (3d) 97. (See also "collateral evidence" and "leading questions")
	PAST RECOLLECTION RECORDED Where a witness has no recollection of an event or fact but has reliably recorded the event or fact contemporaneously to the occurrence, if acknowledged to have been accurate, the record is admissible for the truth of its contents. The record should be marked as an exhibit. Past recollection recorded is distinct from past recollection revived, see above, where the witness's memory is revived by an *aide memoire*. *R. v. Fliss*, [2002] 1 S.C.R. 535, 209 D.L.R. (4th) 347, 161 C.C.C. (3d) 225; *R. v. Meddoui* (1990), 2 C.R. (4th) 316, 61 C.C.C. (3d) 345, [1991] 2 W.W.R. 289 (Alta. C.A.)
	STATEMENT AGAINST INTEREST Evidence of an out-of-court statement of a declarant unavailable due to death or mental or physical condition is admissible if it is a statement against the declarant's immediate pecuniary, proprietary, or penal interest. *R. v. Demeter*, [1978] 1 S.C.R. 538, 75 D.L.R. (3d) 251, 34 C.C.C. (2d) 137
	BUSINESS RECORD A business record of a fact made in the ordinary course of business at the time of the time of the occurrence of the fact by a person obliged to record the information is admissible. *Ares v. Venner*, [1970] S.C.R. 608, 14 D.L.R. (3d) 4, 73 W.W.R. 347; Ontario *Evidence Act*, R.S.O. 1990, c. E.23, s. 35; *Canada Evidence Act*, R.S.C. 1985, c. C-5, s. 30
	MEDICAL RECORD Reports of a health practitioner are admissible in civil trials without oral testimony:

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	Ontario *Evidence Act*, R.S.O. 1990, c. E.23, s. 52. Subject to leave being granted, the party tendering the report files the report and does not call the witness, although the witness must be available for cross-examination if demanded. *Ferraro v. Lee*, [1974] 2 O.R. (2d) 417, 43 D.L.R. (3d) 161 (C.A.)
	PRIOR TESTIMONY Where the parties or their privies are the same and the issues are substantially the same, testimony in former proceedings is admissible. *R. v. Hawkins*, [1996] 3 S.C.R. 1043, 141 D.L.R. (4th) 193, 111 C.C.C. (3d) 129; *Walkerton (Town) v. Erdman* (1894), 23 S.C.R. 352
	ORAL HISTORY IN ABORIGINAL CLAIMS In proceedings involving aboriginal rights, oral history is admissible as an exception to the hearsay rule. *Mitchell v. M.N.R.*, [2001] 1 S.C.R. 911, 199 D.L.R. (4th) 385, [2001] 3 C.N.L.R. 122
COLLATERAL Evidence to impeach a witness by contradicting what he or she said during cross-examination about an immaterial matter is inadmissible. *A.G. v. Hitchcock* (1847), 1 Exch. 91	
	PRIOR INCONSISTENT STATEMENT Evidence that a witness made a prior inconsistent statement may be elicited on cross-examination and if denied may be independently proved to impeach the credibility of the witness (perception, memory, narration, or sincerity). The technique for substantive proof is then to rely on a hearsay exception, if available. *Canada Evidence Act*, R.S.C. 1985, c. C-5, ss. 10 (1), 11; Ontario *Evidence Act*, R.S.O. 1990, c. E.23, ss. 20, 21. Note: It is not necessary to impeach the witness if the prior inconsistent statement revives his or her memory and he or she adopts the statement: see D.S. Ferguson, *Ontario Courtroom Procedure* (2007), pp. 878-95. Note: The statement must be inconsistent; else it will run afoul of the rule against prior consistent statements. Note: If the witness does not admit the statement, it will be necessary in prove the

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	statement, usually during the case of the party cross-examining. The technique for impeachment is: (1) recommit the witness to the evidence in chief; (2) establish from the witness the circumstances of the prior inconsistent statement; (3) show the witness the prior statement, if it is in writing; and (4) identify or have the witness identify the prior inconsistent statement. Note: For civil cases, a certified transcript is taken as proven saving all just exceptions: Ontario *Evidence Act*, R.S.O. 1990, c. E.23, s. 48(1). Note: If the prior written statement goes only to credibility then it need not be marked as an exhibit, although there is discretion to mark it and to caution the jury about its limited use. (See also under "hearsay" and "leading questions")
	BIAS Evidence to establish a witness's bias toward or against a party may be elicited on cross-examination and, if denied, may be independently proved. *R. v. McDonald* (1959), 126 C.C.C. 1 (S.C.C.); *The Attorney-General v. Hitchcock* (1847), 1 Exch. 91
	PRIOR CRIMINAL CONVICTIONS OF WITNESS Evidence to establish that a witness has a criminal record may be elicited on cross-examination and if denied may be independently proved. *Canada Evidence Act*, R.S.C. 1985, c. C-5, s. 12.
	PRIOR CRIMINAL CONVICTIONS OF ACCUSED Subject to the court's discretion to exclude the evidence as unduly prejudicial, evidence to establish that an accused has a criminal record may be elicited on cross-examination and, if denied, may be independently proved. *R. v. Corbett*, [1984] 1 S.C.R. 670, 41 C.C.C. (3d) 385, [1988] 4 W.W.R. 481; *Canada Evidence Act*, R.S.C. 1985, c. C-5, s. 12
POST-TESTIMONY IMPEACHMENT (Rule from *Browne v. Dunn*) If a witness's credibility is going to be impeached, he or she should be given the opportunity during cross-examination to provide an explanation. Evidence elicited to contradict the evidence of a witness who was not given the opportunity to defend his or her account of the evidence is admissible but it is given less weight or its introduction is	

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grounds for recalling the witness or for striking a jury in a civil trial: D.S. Ferguson, *Ontario Courtroom Procedure* (2007), pp. 856-61. *Browne v. Dunn* (1893), 6 R. 67 (H.L.); *R. v. Palmer* (1979), 14 C.R. (3d) 22, 106 D.L.R. (3d) 212, [1980] 1 S.C.R. 759; *R. v. McNeill* (2000), 144 C.C.C. (3d) 551, 48 O.R. (3d) 212, 131 O.A.C. 346 (C.A.)	
	READING IN DISCOVERY EVIDENCE A party giving evidence need not be confronted with his or her admissions but should be confronted with prior inconsistent statements being used to impeach the party. Under Ontario's Rule 31.11, of the Rules of Civil Procedure, a party may read into evidence as part of his or her case any part of the examination for discovery of the adverse party whether or not the adverse party has already given evidence but the evidence given on examination for discovery may be used for impeachment in the same manner as any previous inconsistent statement. *International Corona Resources Ltd. v. Lac Minerals Ltd.* (1986), 8 C.P.C. (2d) 39 (Ont. H.C.J.)
DISCREDITING PARTY'S OWN WITNESS Although a party is entitled to lead evidence that contradicts the testimony of his or her witnesses about the events in issue, a party may not discredit his or her own witness by evidence of bad character. *Canada Evidence Act*, R.S.C. 1985, c. C-5, s. 9 (1); Ontario *Evidence Act*, R.S.O. 1990, c. E.23, s. 23.	
EVIDENCE OF THE ACCUSED'S BAD CHARACTER The Crown may not adduce evidence of the accused person's bad character, disposition, or propensity to criminal conduct. *R. v. Mohan*, [1994] 2 S.C.R. 9, 114 D.L.R. (4th) 419, 89 C.C.C. (3d) 402; *R. v. B. (F.F.)*, [1993] 1 S.C.R. 697, 79 C.C.C. (3d) 112, 120 N.S.R. (2d) 1; *D.P.P. v. Boardman*, [1975] A.C. 421 (H.L.)	
	PRIOR CRIMINAL CONVICTIONS Subject to the court's discretion to exclude the evidence as unduly prejudicial, evidence that an accused has a criminal record may be elicited on cross-examination and, if denied, may be independently proved. *R. v. Corbett*, [1984] 1 S.C.R. 670, 41 C.C.C. (3d) 385, [1988] 4 W.W.R. 481. If the accused adduces evidence of good character, the Crown may adduce evidence of previous convictions:*Criminal Code*, R.S.C. 1985, c. C-46, s. 666
	REBUTTAL OF EVIDENCE OF GOOD CHARACTER If the accused puts his or her character in

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	issue, the Crown may rebut the evidence with evidence of the accused person's general reputation. *R. v. Norman* (1993), 16 O.R. (3d) 295, 87 C.C.C. (3d) 153, 68 O.A.C. 22 (C.A.)
	PROBATIVE DISCREDIBLE ACTS **(Similar Fact Evidence)** Evidence of acts, possessions, or reputation that go beyond disposition but that are probative of whether or not the accused committed the offence are admissible. *R. v. Handy*, [2002] 2 S.C.R. 908, 213 D.L.R. (4th) 385, 164 C.C.C. (3d) 481; *R. v. B. (C.R.)*, [1990] 1 S.C.R. 717, 55 C.C.C. (3d) 1, [1990] 3 W.W.R. 385; *R. v. Arp* (1998), 166 D.L.R. (4th) 296, [1998] 3 S.C.R. 339, 129 C.C.C. (3d) 321; *R. v. Morris*, [1983] 2 S.C.R. 190, 1 D.L.R. (4th) 385, 7 C.C.C. (3d) 97; *Makin v. Attorney General for New South Wales*, [1984] A.C. 57 (P.C.)
	EVIDENCE OF A CO-ACCUSED A co-accused may adduce evidence or cross-examine on the disposition or propensity of a co-accused. *R. v. Crawford*, [1995] 1 S.C.R. 858, 96 C.C.C. (3d) 481, 81 O.A.C. 359; *R. v. Spied* (1985), 20 C.C.C. (3d) 534, 9 O.A.C. 237, 46 C.R. (3d) 22 (C.A.)
LAWYER AND CLIENT PRIVILEGE Lawyer and client privileged communications are inadmissible. To qualify for lawyer-and-client privilege, a communication must be: (1) between a client and his or her lawyer who must be acting in a professional capacity as a lawyer; (2) given in the context of obtaining legal advice; and (3) intended to be confidential. *Solosky v. Canada*, [1980] 1 S.C.R. 821, 105 D.L.R. (3d) 745, 50 C.C.C. (2d) 495; *Descôteaux v. Mierzwinski*, [1982] 1 S.C.R. 860, 141 D.L.R. (3d) 590, 70 C.C.C. (2d) 385; *General Accident Assurance Co. v. Chrusz*, (1999), 45 O.R. (3d) 321, 180 D.L.R. (4th) 241, 124 O.A.C. 356 (C.A.); *Greenough v. Gaskell* (1833), 1 My. & K. 98 (L.C.)	
	WAIVER A client may expressly or implicitly waive privilege. *Bell v. Smith*, [1968] S.C.R. 664, 68 D.L.R. (2d) 751; *Bentley v. Stone* (1999), 42 O.R. (3d) 149 (Gen. Div.)
	CRIME OR FRAUD If a client seeks guidance from a lawyer to facilitate committing a crime or a fraud, the communication is not privileged. *R. v. Cox and Railton* (1884), 14 Q.B.D. 153; *Descôteaux v. Mierzwinski*, [1982] 1 S.C.R.

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	860, 141 D.L.R. (3d) 590, 70 C.C.C. (2d) 385
	PUBLIC SAFETY Where public safety is involved and death of serious injury is imminent, the lawyer client privilege may be set aside. *Smith v. Jones* (1999), 132 C.C.C. (3d) 225, 169 D.L.R. (4th) 385, [1999] 1 S.C.R. 455
	INNOCENCE-AT-STAKE Subject to a threshold test and then a two-stage test, privileged communications may be disclosed to an accused person. To satisfy the threshold test, the accused must establish that the information sought is not available from any other source and that the accused is otherwise unable to raise a reasonable doubt as to his or her guilt. In the first stage of the innocence-at-risk test, the accused has to demonstrate an evidentiary basis to prove that a communication exists that could raise a reasonable doubt. Then, in the second stage of the test, the trial judge must examine the communication to determine whether, in fact, it is likely to raise a reasonable doubt as to guilt, in which case, the privilege must yield to the right to make full answer and defence. *R. v. McClure*, [2001] 1 S.C.R. 445, 195 D.L.R. (4th) 513, 151 C.C.C. (3d) 321; *R. v. Brown*, [2002] 2 S.C.R. 185, 210 D.L.R. (4th) 341
PRIVILEGED CONFIDENTIAL RELATIONSHIP (Case by Case Privilege) Privilege may arise on a case-by-case basis if the following criteria are satisfied: (1) the communication must originate in a confidence that it will not be disclosed; (2) the element of confidentiality must be essential to the full and satisfactory maintenance of the relationship between the parties; (3) the relationship must be one which should be sedulously fostered in the public good; and (4) if all these requirements are met, the court must consider whether the interests served by protecting the communication from disclosure outweigh the interest at getting at the truth and disposing correctly of the litigation. *M. (A.) v. Ryan*, [1997] 1 S.C.R. 157, 143 D.L.R. (4th) 1, [1997] 4 W.W.R. 1; *R. v. Gruenke*, [1991] 3 S.C.R. 263, 67 C.C.C. (3d) 289, [1991] 6 W.W.R. 673; *Slavutych v. Baker*, [1976] 1 S.C.R. 254, 55 D.L.R. (3d) 224, [1975] 4 W.W.R. 620	
LITIGATION PRIVILEGE Oral or written communication between a lawyer and a client or between a lawyer and a third party made exclusively or for the dominant purpose of the client's contemplated or pending litigation is privileged. *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 257, [2006] 2 S.C.R. 319, 51 C.P.R. (4th) 1; *General Accident Assurance Company v. Chrusz* (1999), 45 O.R. (3d) 321, 180 D.L.R. (4th) 241, 124 O.A.C. 356 (C.A.)	

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DEEMED UNDERTAKING Under Ontario's Rule 30.1 of the Rules of Civil Procedure, there is an implied undertaking not to use evidence of information obtained in the civil discovery process for any purpose collateral or ulterior to the lawsuit in which the discovery took place.	
PRIVILEGED WITHOUT PREJUDICE SETTLEMENT DISCUSSION A communication made for the purpose of settling a dispute by a party that expressly or implicitly intends that the communication be excluded from evidence if no settlement is achieved is privileged, unless the privilege is waived by both parties. P.M. Perell, "The Problems of Without Prejudice" (1992), 71 Can. Bar Rev. 223	
PRIVILEGED POLICE INFORMANT Unless required to show the innocence of the accused, the identity of a police informant is privileged. *R. v. Leipert* (1997), 112 C.C.C. (3d) 385, 143 D.L.R. (4th) 38, [1997] 1 S.C.R. 281.	
SPOUSAL INCOMPETENCY AND SPOUSAL PRIVILEGE A person has a testimonial privilege, which he or she can waive, not to disclose communications from his or her spouse made during their marriage. A spouse is an incompetent witness for the prosecution in criminal proceedings in which the other spouse is an accused, except where the charge involves the person, liberty, or health of the witness or certain specified offences. *R. v. C. (D.R.)* (2007), 280 D.L.R. (4th) 577, 220 C.C.C. (3d) 289, [2007] 8 W.W.R. 579 *sub nom. R. v. Couture*; *R. v. Hawkins*, [1996] 3 S.C.R. 1043, 141 D.L.R. (4th) 193, 111 C.C.C. (3d) 129; *R. v. Lloyd*, [1981] 2 S.C.R. 645, 131 D.L.R. (3d) 112, 64 C.C.C. (2d) 169. Ontario *Evidence Act*, R.S.O. 1990, c. E.23, s. 11; *Canada Evidence Act*, R.S.C. 1985, c. C-5, s. 4.	
PRIVILEGED STATE SECRETS State secrets are privileged. *Carey v. Ontario*, [1986] 2 S.C.R. 637, 35 D.L.R. (4th) 161, 30 C.C.C. (3d) 498.	
LEADING QUESTIONS During examination in chief, a witness may not be asked a question that suggests or assumes the answer of a disputed fact. The court, however, has a jurisdiction to relieve against the rule about leading questions in the interests of justice. A leading question is permissible: for formal or undisputed matters; for purposes of identifying persons or things; with permission in order to refresh a witness's memory; where the witness needs assistance because of handicap or because of the complexity of the subject-matter. *R. v. Coffin*, [1956] S.C.R. 191; *Maves v. Grand Trunk Pacific Railway Co.* (1913), 14 D.L.R. 70 (Alta. S.C.); Rule 53.01(4) of Ontario's Rules of Civil Procedure.	
	CALLING ADVERSE PARTY IN A CIVIL CASE Under Rule 53.07 of Ontario's Rules of Civil Procedure, a party may call and cross-examine an adverse party, in which case the adverse party is not also cross-examined by his or her own lawyer. Rules of Civil Procedure, Rule 53.07. *Whiten v. Pilot Insurance Co.* (1996), 132 D.L.R. (4th) 568, 27 O.R. (3d) 479, 47 C.P.C. (3d) 229 (Ont. Ct. (Gen. Div.)), appeal allowed on other grounds 42 O.R. (3d) 641, 170 D.L.R. (4th) 280, 117 O.A.C.

Objection	Exception
	201 (Ont. C.A.), appeal allowed and trial judgment reinstated, [2002] 1 S.C.R. 595, 209 D.L.R. (4th) 257, 156 O.A.C. 201,.
	HOSTILE WITNESS A party's own witness that has been declared hostile and unwilling to testify truthfully may be cross-examined and asked leading questions. *Boland v. Globe & Mail*, [1961] O.R. 712 (C.A.); *Reference re: R. v. Coffin* (1956), 23 C.R. 1 (S.C.C.); *Coses v. Coles* (1866), L.R. 1 P. 70.
	PRIOR INCONSISTENT STATEMENT OF OWN WITNESS Where a witness gives adverse, that is, harmful evidence in examination in chief, with leave of the court, he or she may be questioned about a prior inconsistent statement. *Canada Evidence Act*, R.S.C. 1985, c. C-5, s. 9; Ontario *Evidence Act*, R.S.O. 1990, c. E.23, s. 23. In a criminal case, where the witness has made a previous inconsistent statement made in, or reduced to, writing, or recorded on audiotape or videotape, a judge can grant leave for the witness to be cross-examined about the statement without declaring the witness adverse or hostile. *Canada Evidence Act*, R.S.C. 1985, c. C-5, s. 9(2); *R. v. Milgaard* (1971), 2 C.C.C. (2d) 206, [1972] 2 W.W.R. 266, 14 C.R.N.S. 34 (Sask. C.A.), leave to appeal to S.C.C. refused 4 C.C.C. (2d) 566*n*; *R. v. McInroy* (1978), 5 C.R. (3d) 125, 89 D.L.R. (3d) 609, [1979] 1 S.C.R. 588 (See also under "collateral" and "hearsay".)
ABUSIVE CROSS-EXAMINATION The court has inherent jurisdiction to prevent the abuse of a witness in cross-examination and to disallow vexatious questions. Rule 53.01(2) of Ontario's Rules of Civil Procedure; *Murray v. Haylow* (1927), 60 O.L.R. 629 (C.A.); *Brownwell v. Brownwell* (1909), 42 S.C.R. 368; *R. v. Snow* (2004), 73 O.R. (3d) 40, 190 C.C.C. (3d) 317 (C.A.)	
CROSS-EXAMINING ACCUSED ABOUT ANOTHER'S VERACITY It is improper to cross-examine an accused about the veracity of another witness or that witness's motivation to testify falsely. *R. v. S. (F.)* (2000), 144 C.C.C. (3d) 466, 47 O.R. (3d) 349, 130 O.A.C. 41 (C.A.); *R. v. F. (A.)* (1996), 30 O.R. (2d) 470, 93 O.A.C. 102*n*, 1 C.R. (5th) 382 (C.A.)	
IMPROPER RE-EXAMINATION During re-examination, the witness may not be questioned about matters not dealt with	

Objection	Exception
during the cross-examination. *R. v. McGovern* (1993), 82 C.C.C. (3d) 301, 51 W.A.C. 18, 88 Man. R. (2d) 18 (C.A.), leave to appeal to S.C.C. refused 84 C.C.C. (3d) vi	
IMPROPER REPLY EVIDENCE The Crown in criminal matters and the plaintiff in civil matters may not split its case. *R. v. Krause*, [1986] 2 S.C.R. 466, 33 D.L.R. (4th) 267, 29 C.C.C. (3d) 385; *R. v. Aalders*, [1993] S.C.R. 482, 103 D.L.R. (4th) 700, 82 C.C.C. (3d) 215	