

PAUL BRADY & CO. SOLICITORS

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Privilege in Irish Law

There are a number of different types of privilege and this article seeks to give a brief outline of some of these, focusing on those in a legal context and to help our clients understand the subject.

1. Legal Professional Privilege

This is a right conferred by law to protect communications containing legal advice a solicitor and their client from being disclosed to any other parties. This is not to be confused with solicitor/client confidentiality, which is a professional duty of the solicitor not to communicate any information disclosed by a client to a third party, but not a legal right.

To attract legal professional privilege, a communication must be:

- i. confidential;
- ii. made within a professional legal relationship between solicitor and client;
- iii. be made for the purpose of giving or receiving legal advice.

A client's solicitor has a duty to inform their client that they can claim privilege whereupon the solicitor can assert privilege, unless instructed to waive it by their client.

Legal Professional Privilege, once asserted, means a client's solicitor has a legal duty not to disclose those legally privileged communications to anyone, an individual, a body corporate, a court, a prosecutor, a litigant, nobody. Likewise any oral communication that is legally privileged cannot be required.

Legal Professional Privilege applies in the same way to both criminal and civil litigation.

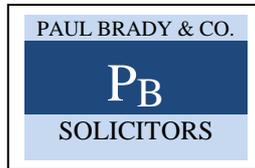
There are two main types of legal professional privilege in Ireland:

Legal Advice Privilege

This covers confidential communications between the client and solicitor, made for the dominant purpose of obtaining or giving legal advice. Legal advice privilege does not extend to communications with third parties.

Litigation Privilege

This must be in contemplation of litigation for privilege to attach. This can include communications between the solicitor and client, solicitor and third parties, or client and third parties in contemplation of litigation. It is important to note that with litigation privilege, the communication does not have to include the client's solicitor.



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To claim litigation privilege the litigation must either be in progress or there must be a reasonable prospect that it will happen. Litigation privilege will continue to exist even where the claim for which purpose the communication was produced is not pursued or where the dispute is resolved without production of the communication or document.

Exceptions:

- i. Communications made for a fraudulent or criminal activity (regardless of whether the solicitors knows of the purpose or not);
- ii. Conduct that is detrimental to the administration of justice;
- iii. where privilege is waived (expressly or impliedly, deliberately or inadvertently) – it cannot be reasserted;
- iv. communications between a solicitor and client concerning persons who have a joint interest with the client in the subject matter of the communications;
- v. communications between a corporate client and its in-house counsel in certain instances.

2. Private Privilege

Every individual has a privilege against self-incrimination, meaning you can refuse to answer questions or hand over documents that may implicate you in criminal proceedings.

3. Public Interest Privilege

This is a privilege claimed by the State. In limited circumstances, the State can refuse to disclose information in order to protect the public interest.

For more information or discussion on any of the above points, please contact us per the details below, to arrange a consultation.

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