

LEGAL PROFESSIONAL PRIVILEGE

18 February 1988

The Principle:

A client cannot be compelled, and a legal adviser will not be allowed without the express consent of his client, to disclose—either in court proceedings or by extra-judicial compulsion—oral or documentary communications passing between them in confidence, if made for the sole purpose of either:

- a. enabling the client to obtain legal advice, or
- b. pursuing litigation which is actually taking place or contemplated.

And in the case of litigation, the same protection is provided to communications passing between the legal adviser or client and third parties.

This doctrine applies unless:

- a. privilege has been waived,
- b. the communication was made in furtherance of a crime or fraud, in some cases of impropriety, or for an illegal purpose,
- c. the communication would assist an accused to establish his innocence, or
- d. legislation otherwise provides.

The N. C. A. Act:

Section 30(2)(c) provides that a person appearing as a witness at a hearing before the Authority “shall not, without reasonable excuse . . . refuse or fail to produce a document or thing that he was required to produce under the Act.”

Section 30(3) provides that a legal practitioner is entitled to refuse to comply with the requirement unless the person to whom or by whom the communication was made agrees to the legal practitioner’s complying with the requirement but where the legal practitioner refuses, he can be required to furnish the name and address of the person to whom or by whom the communication was made.