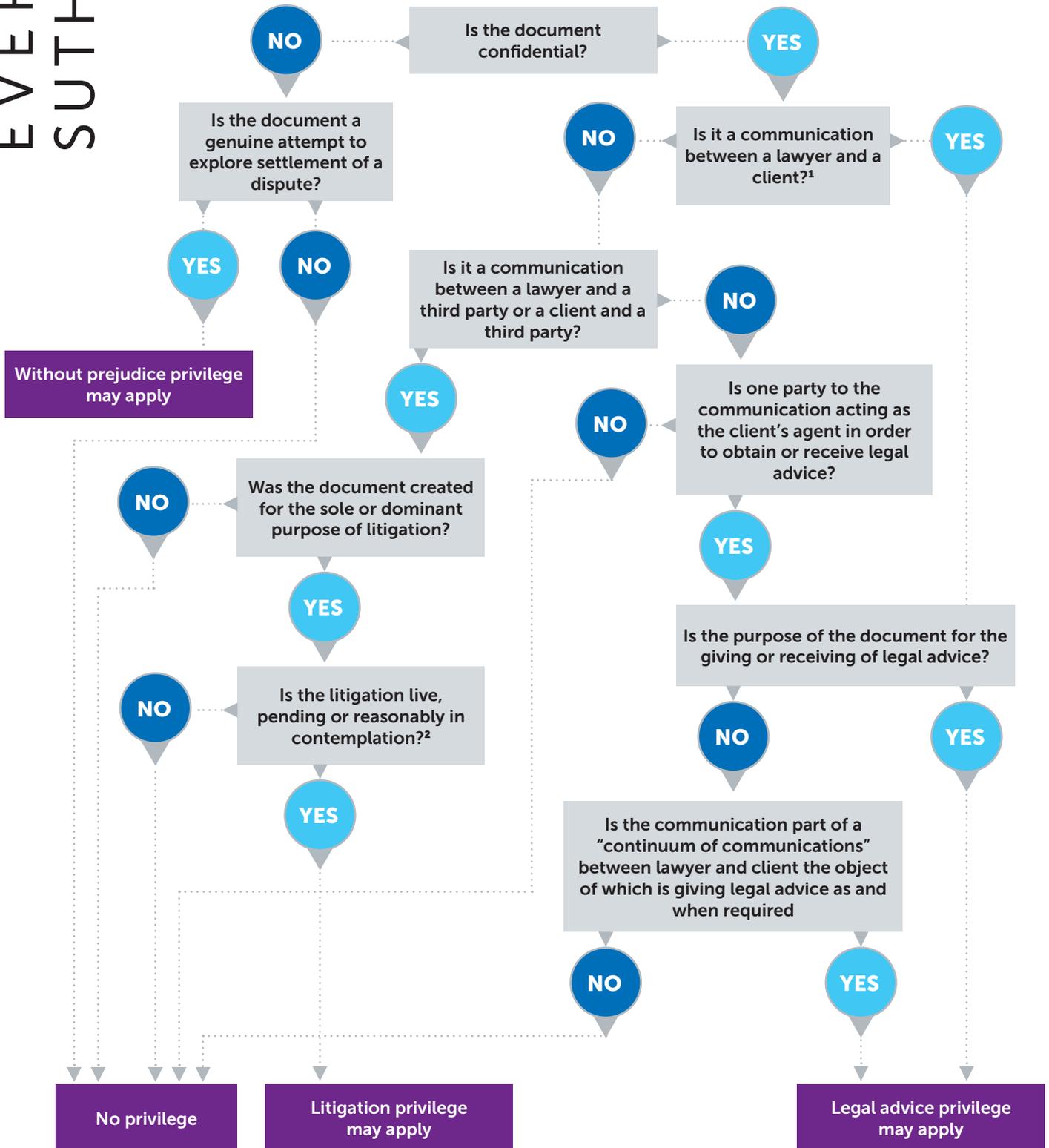


## Don't show your hand

At-a-glance guide to when privilege might apply



**Footnotes:**

<sup>1</sup> Be careful with your definition of "lawyer" and "client". Do not assume that every person within a business will be part of the client. Only the individuals who need and seek the legal advice are able to claim privilege relating to that advice – this can be a very narrow group.

<sup>2</sup> Where the "litigation" is an internal or regulatory investigation, or relates to a possible criminal prosecution pending the outcome of an internal or regulatory investigation, then for the purposes of litigation privilege, litigation may not be deemed to be reasonably in contemplation.

## **Top tips for preserving privilege when a dispute or the possibility of disclosure to a third party is in prospect:**

Do not assume that all communications with a lawyer or third party instructed in connection with your dispute will be privileged.

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Do not assume that all employees within the business will be legally defined as the 'client' for privilege purposes – communications with colleagues may have to be disclosed.

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Remember that both new and existing documents may be required to be disclosed in legal proceedings if they are relevant to the dispute.

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Do not put anything in writing that you would not want your opponent or the court to see.

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Avoid creating unnecessary documents or communications.

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Do not commission or produce reports unless absolutely necessary. If it is absolutely necessary, consider commissioning any such report via Eversheds Sutherland, to increase the likelihood of it attracting privilege.

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Do not copy documents indiscriminately, as this may result in loss of protection.

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Do not make manuscript notes on relevant documents or amend or alter them.

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Do not approach third parties for documents or copies relating to the matter or give instructions to any third parties without speaking to us first.

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Do not provide copies of documents to third parties without seeking advice from us first.

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### **Disclaimer:**

Privilege is an extremely complex area of law - this document should be used as a guide only, it is not intended as a substitute for proper legal advice.

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