

**Deloitte  
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# THE SHIFTING SCALES IN CRIMINAL AND ADMINISTRATIVE STANDARDS OF PROOF

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# Forensic Investigations

*Is there a doctor in the house??*

*Forensics – the collection of evidence such that it is suitable for use in court*





## Overview

### ➤ *High Level*

- **Not Intended as Legal Advice**
- **Won't Deal with Charter issues**
- **Won't Deal with Specific Cases**

### ➤ *Criminal Standard*

### ➤ *Civil / Administrative Standard*

### ➤ *Coexistence of Criminal and Civil Standards*

### ➤ *Why Do You Need To Know*



## Criminal Standard

- *Highest Standard of Proof*
- *Proof beyond reasonable doubt*
- *True penal consequence attracts criminal standard*
- *“Reasonable Doubt” is difficult to quantify*
- *Less than absolute certainty*
- *More than probable guilt*





## Civil / Administrative Standard

- *Less onerous standard*
- *More than a simple balance of probability*
- *Within disciplinary scheme*
  - **More remedial in nature**
  - **Concept of RAGS re performance issues**
    - Remedial Advise, Guidance & Supervision
- *Language shifts*
  - **“Charge” may be an “allegation”**
  - **“Convicted” may be “allegation established”**



## Civil / Administrative Standard (cont'd)

- *Becomes more complex with “sliding scale”*
  - As penalty becomes more severe, requirements become more stringent
  - A moving target
  - Totality of circumstances and seriousness of allegation(s) determine appropriate standard





## Coexistence of Standards

- *Criminal and administrative processes may parallel one another*
- *May arise from same set of facts*
- *Wigglesworth – 1987 SCC decision*
- *A procedure attracts criminal standard if:*
  - *Accused in jeopardy of loss of freedom or equally severe penalty*
  - *It's aim is maintenance of public order*
  - *It is not merely regulating an enterprise*
  - *The penal consequence is intended to address a wrong done to society at large*



## Why Do You Need To Know?

- *Important to appreciate the standards required*
- *Assist you in the administration of your own mandate to act fairly and impartially*
- *Provides you with more flexibility to carry out your tasks*
- *Provides additional credibility in discussion of standards*
- *Provides additional credibility in discussions with counsel and police officials*





**THANK YOU FOR YOUR TIME!!**

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