

Publisher's Note
2019 — Release 1
Previous release was 2018–11

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Gordon D. Cudmore
Civil Evidence Handbook

The Civil Evidence Handbook is a succinct reference to evidentiary matters. It includes the Evidence Acts from all common law provinces as well as the Canada Evidence Act and a concordance to these Acts. The topics covered are: Admissibility • Relevance • Burden of Proof • Presumption • Judicial Notice • Competence and Compellability • Pleadings • Interpreters • Examination-in-Chief • Impeaching Your Own Witness • Cross-Examination • Re-Examination • Reply Evidence • Experts (Opinion Evidence) • Parole Evidence Rule • Hearsay • Exceptions to the Hearsay Rule • Demonstrative Evidence.

In this release the author has substantially revised and updated the following chapters: Chapter 10 (Impeaching Your Own Witness); Chapter 12 (Re-Examination); and Chapter 13 (Reply or Rebuttal Evidence).

- **Impeaching Your Own Witness – Statutory Provisions and Rules of Court – Generally – Federal** – The Court rejected the contention that cross-examination under s. 9(1) of Crown witnesses is limited to situations in which the inconsistent evidence is unexpected and/or there is some real likelihood that cross-examination will cause the witness to adopt the earlier inconsistent statement. The Crown is not precluded from cross-examining and adverse witness where the Crown knows that the witness will give evidence inconsistent with prior statements, or because there was no real prospect that the witness would adopt their earlier statements: *R. v. Figliola*, 2018 ONCA 578, 2018 CarswellOnt 10035, 141 O.R. (3d) 662, 363 C.C.C. (3d) 94 (Ont. C.A.)

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- **Impeaching Your Own Witness – Statutory Provisions and Rules of Court – British Columbia** – Plaintiffs examined two prior employees of defendants for discovery and wanted to read in portions of their evidence and call them for cross-examination. Plaintiffs’ motion was granted. Rule 12-5(46) (47) and (48) of Supreme Court Civil Rules are a complete code for what happens when a party proposes to read in the discovery evidence of a prior employee of a party adverse in interest and then cross-examine them. Evidence of the employees could be used by plaintiffs against any defendants because they were parties adverse in interest and plaintiffs would tender discovery transcripts on 14 days’ notice. As such, under R. 12-5(48), any party could require the prior employees to attend for cross-examination by any party. The rules provided a convenient way to require prior employees produced on discovery to attend trial as witnesses without having to have them declared hostile: *Waterway Houseboats Ltd. v. British Columbia*, 2018 BCSC 657, 2018 CarswellBC 983, 11 B.C.L.R. (6th) 386, 20 C.P.C. (8th) 305 (B.C. S.C.).