

Publisher's Note

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What's New in this Update

This release features valuable updates to the Selected Legal Literature tab, and updates to case law and commentary in Chapters 5 (Discovery in the Civil Case: The First Salvo in the Campaign), 7 (The Art of Preparation), 8 (Opening Address: The Forgotten Art), 9 (The Examination-in-Chief: The Techniques), 10 (Examination-in-Chief: Specific Problems), 12 (Cross-Examination: Preparation, its Fundamental Rules, and the Law), 17 (The Closing Address: Assembling the Mosaic) and 18 (The Closing Address: The Law).

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Highlights

- **Discovery in the Civil Case: The First Salvo in the Campaign — Examination of Non-Parties and Production of Documents I the Possession of Non-Parties — General Principles** — In British Columbia, the legal landscape is somewhat different. Rule 7-5(1) Supreme Court Civil Rules, provides discretion to the court to order the examination a non-party who may have material evidence relating to a matter in question in the action. See for example *Jackson v. Info-Chip Communications Ltd.*, where the application to examine a non-party was granted. The witness was likely to have factual information that was very relevant to the material facts at issue and as such, the plaintiff was entitled to canvass that evidence. Any evidence given by at the examination would not be evidence against the defendant corporation, nor would it be evidence in the proceeding, unless it was used on cross-examination. The evidence would be used to assist in the pre-trial preparation of the plaintiff to determine whether the witness should be subpoenaed to give evidence on his behalf at trial. The evidence would be used to assist in the pre-trial preparation of the plaintiff to determine whether the witness should be subpoenaed to give evidence on his behalf at trial. You should know that if you decide to utilize this rule and obtain an order, the examining party must pay reasonable lawyer's costs of the witness relating to the application and the examination. *Jackson v. Info-Chip Communications Ltd.*, 2018 BCSC 207, 2018 CarswellBC 358, 14 C.P.C. (8th) 265 (B.C. S.C.) at para. 24.
- **Discovery in the Civil Case: The First Salvo in the Campaign — Oral Discovery — Examination of Person Under Disability** — Under Rule 31.03(5) the court retains a discretion to deny or modify the examination of a minor if it is of the view that such an adjustment is needed to protect the interests of the child. In considering the examination for discovery of children, the court has an obligation to protect children and ensure that damage is not caused by the examination which cannot be repaired. The court should prevent the damage from occurring in the first place. In short, a balancing process must take place, calibrating the interest of the defendant to properly defend itself and the interests of the child. In *M.S. v. The York District Area School Board* the court accepted a social worker's opinion that A might regress if questioned directly by defence counsel. The defendants were directed to submit their questions in writing. A was required to answer the questions in the presence of a representative from the law firm representing her so there some assurance that the answers provided were A.'s own answers. The mother was permitted to be present to provide passive support. The defendants were permitted to submit follow-up questions, if required. *M.S. v. The York District Area School*

Board, 2018 ONSC 2004, 2018 CarswellOnt 4908, [2018] O.J. No. 1660 (Ont. S.C.J.) at paras. 3 and 16-19.