

# Index

## **ACCIDENTS, RECONSTRUCTION**

Generally, **12:25**

## **ACCOMPLICE**

Archetypal witness, **16:5**

Closing address—criminal trials, **18:99**

## **ACCUSED**

Evidence of good character, **11:56**

Failure to testify, **18:94**

Humanizing, **9:39, 10:34**

Preliminary inquiry, **6:32**

Preparing jurors for accused testimony,  
**9:41**

Taking the stand, **10:34, 10:35**

Testifying, **18:95**

## **ADMINISTRATIVE TRIBUNALS**

Advocacy, **20:15 to 20:24**

Client, **20:2**

Costs, **20:26**

Cross-examination, **20:22**

Direct examination, **20:21**

Disclosure pre-hearing, **20:6**

Examining witnesses

generally, **20:16**

corporate representatives, **20:20**

expert consultants, **20:18**

government employees, **20:19**

members of public, **20:17**

private citizens, **20:20**

Final argument, **20:24**

Hearing

generally, **20:7**

dealing with media, **20:14**

dealing with public, **20:13**

evidence, **20:11**

notice, **20:8**

parties and standing, **20:9**

procedure, **20:10**

taking a view, **20:12**

Issue assessment, **20:4**

Opening statement, **20:15**

Post-hearing, **20:25**

Pre-hearing appearances, **20:5**

## **ADMINISTRATIVE TRIBUNALS**

—Cont'd

Reply, **20:23**

Tribunal, **20:3**

## **ADMISSIONS**

Examination-in-chief, **11:47**

Obtaining, **6:14**

## **ADVERSE**

Defined, **11:5**

Eliciting favourable evidence, **15:2**

Witness, **2:9**

## **AFFIDAVIT OF DOCUMENTS**

Adversary, **5:105**

Claiming privilege, **5:33**

Content, **5:30**

Sufficiency, **5:34**

## **AFFIRMATION, TAKING EVIDENCE**

BY

Generally, **11:26**

## **ALIBI**

Disclosing as defence, **6:30**

Evidence, **18:98**

## **ANCIENT DOCUMENTS**

Generally, **11:40**

## **APPELLATE COURT**

Objections, **19:36**

Overturning trial court's finding, **1:1**

## **ARCHETYPAL WITNESS**

Accomplice, co-conspirator, or informer,  
**16:5**

Belligerent witness, **16:10**

Biased witness, **16:12**

Child witness, **16:18**

Coached witness, **16:17**

Defined, **16:1**

Elderly witness, **16:19**

Evasive witness, **16:9**

Forgetful witness, **16:8**

Honest witness, **16:2**

accurate, **16:3**

**ARCHETYPAL WITNESS—Cont'd**

- Honest witness, **16:2**—Cont'd
  - mistaken, **16:4**
- Mentally handicapped witness, **16:16**
- Perjurer, **16:13**
  - collateral matters, **16:14**
  - witness's evidence, **16:15**
- Police officers, **16:6, 16:7**
  - hostile witness, **16:7**
  - neutral or favourable witness, **16:6**
- Surprise witness, **16:21**
- Sympathetic witness, **16:20**
- Unintelligent witness, **16:16**
- Weak or yielding witness, **16:11**
- Witness with psychiatric illness, **16:22**

**AUDIO RECORDINGS**

- Generally, **12:32**

**BAIL HEARING**

- Generally, **1:51**

**BARRISTER**

- See Solicitor

**BIAS**

- Demonstration in cross-examination, **14:24**
- Expert, **17:12**
- Witness, **16:12**

**BIT-BY-BIT TECHNIQUE,  
CROSS-EXAMINATION**

- Generally, **13:18**

**BLACKBOARD**

- Closing address, **12:40, 18:86**
- Cross-examination, **12:39**
- Examination-in-chief, **12:38**
- Opening address, **12:37**

**BROWNE V. DUNN, RULE**

- Generally, **13:53**

**BUSINESS RECORDS**

- Common law rule, **11:38**
- Statutory provision, **11:39**

**CABINET SECRECY**

- Generally, **5:133**

**CHARACTER EVIDENCE**

- Bad character evidence, **11:57**
- Defined, **1:17**
- General good character, civil case, **11:60**

**CHARGE TO JURY**

- Generally, **7:50**

**CHART**

- Generally, **12:33, 12:34**
- Foundation, laying, **12:34**
- Law, **12:33**
- Summary, **12:45**

**CHARTER OF RIGHTS AND  
FREEDOMS**

- Preliminary inquiry, **6:28**
- Right to jury trial, **19:45**

**CHECKLIST**

- Generally, **1:20**
- Examination of opposing party, **5:89**
- Preparation for trial, **7:52 to 7:54**
- Qualification of expert, **17:8**

**CHILD WITNESS**

- Corroboration, **11:20**

**CIVILITY**

- Limits of zealous advocacy, **10:65**

**CLIENT**

- Background, **1:9**
- Co-operation, **1:24**
- Difficult or undesirable, screening out, **1:26**
- Examination of, **5:20**
- First contact, criminal case, **1:3**
- Initial contact, **1:2**
- Initial interview, **1:5**
- Mediation re
  - advice on process, **8:2**
  - pre-mediation meeting, **8:12**
  - preparing for, **8:13**
  - setting realistic expectations, **8:11**
- Obtaining co-operation, **1:24**
- Preparing for
  - cross-examination, **7:21**
  - examination for discovery, **5:88**
  - examination-in-chief, **7:20**
- Privilege, **5:136**
- Putting at ease, **1:6**
- Statements, **1:15**
- Warning to not discuss case, **1:25**
- Whether to call client to stand, **7:38**

**CLOSING ADDRESS**

- Accentuate detail, **18:51**

## INDEX

### CLOSING ADDRESS—Cont'd

- Anticipating opponent's closing address, **18:33**
- Assembling mosaic, **18:2**
- Attack, **18:44**
- Attacking opponent's witness, **18:73**
- Credibility, arguing, **18:72**
  - enhancing, **18:76**
  - expert witness, **18:75**
- Criminal trials, **18:89**
- Damages, **18:77**
- Demonstrative evidence, **18:85 to 18:88**
- Developing theme, **18:25**
- Educate jury to minimum level of proof, **18:47**
- Elements of success
  - generally, **18:7**
  - demonstrate justness of case, **18:12**
  - establish credibility, **18:13**
  - highlighting important evidence, **18:9**
  - linking law to evidence, **18:10**
  - refute contention of opponent, **18:11**
  - theory, **18:8**
- Emotional elements of case, **18:52**
- Establishing rapport with jury, **18:34**
- Exploiting the lie, **18:74**
- Facts, using to win, **18:3**
- Humanize client, **18:46**
- Inferences, arguing, **18:60**
- Judge's charge, building around, **18:42**
- Jury's questions, anticipate, **18:57**
- Language, **18:26**
- Length, **18:27**
- Neutralizing sympathetic argument, **18:53**
- Never minimize case, **18:30**
- Objectives, **18:6**
- Opening address
  - building on, **18:40**
  - making use of opponent's, **18:41**
- Opponent's failure to call evidence, **18:48**
- Outline
  - generally, **18:14**
  - argument, **18:18**
  - charge, **18:20**
  - corroboration, **18:19**
  - damages, **18:21**
  - final minutes, **18:22**
  - issue formulation, **18:16**
  - opening minutes, **18:15**
  - refutation, **18:17**

### CLOSING ADDRESS—Cont'd

- Phases
  - generally, **18:61 to 18:71**
  - argument, **18:67 to 18:69**
    - development, **18:69**
    - issue formulation, **18:67**
    - refutation, **18:68**
  - corroboration, **18:70**
  - final minutes, **18:71**
  - opening minutes
    - generally, **18:61**
    - basic principles, **18:63**
    - discussion of procedure, **18:65**
    - emphasizing jury's responsibility, **18:62**
    - neutralize trial judge's hostility, **18:66**
    - overcoming prejudices, **18:64**
- Preparation, **18:5**
- Prepare early, **18:4**
- Presentation, **18:24**
- Problems in case, **18:43**
- Procedural issues
  - generally, **19:42, 19:43**
  - amendment of pleading, **19:42**
  - re-opening of evidence, **19:43**
- Proving a negative, **18:54**
- Rehearsing, **18:28**
- Rhetorical questions, **18:32**
- Signal introduction of new topic, **18:31**
- Simplify case, **18:50**
- Tactics, **18:29 to 18:60**
- Trial judge alone
  - see Closing address—judge but no jury
- Use of notes, **18:23**
- Waiver, **18:29**

### CLOSING ADDRESS—CRIMINAL TRIALS

- Absence of motive, **18:101**
- Accomplice witness, **18:99**
- Accused does testify, **18:95**
- Accused's criminal record, **18:97**
- Accused's failure to testify, **18:94**
- Alibi evidence, **18:98**
- Doctrine of reasonable doubt, **18:90**
- Evidence of good character, **18:100**
- Indictment, **18:96**
- Informer, **18:99**
- Need for unanimity, **18:93**

**CLOSING ADDRESS—CRIMINAL TRIALS—Cont'd**

Presumption of innocence, **18:91**  
Similar fact evidence, **18:102**  
Suspicion and speculation, **18:92**  
Unsavory witness, **18:99**

**CLOSING ADDRESS—JUDGE BUT NO JURY**

Differences between judge and to jury, **18:104**  
Handling questions from bench, **18:109**  
Persuasion of, **18:106**  
Presentation, **18:105, 18:108**  
Simplification, **18:107**

**CLOSING ADDRESS—LAW**

Conduct of opposing counsel, **19:7**  
Credibility, **19:6**  
Discussing the law, **19:5**  
Failure to adduce a party or witness, **19:8**  
Improper remarks  
    generally, **19:19, 19:20, 19:30 to 19:32**  
    appeal to passion or prejudice, **19:25**  
    appeal to sympathy, **19:22**  
    consequences of verdict, **19:20**  
    definition, **19:19, 19:20**  
    financial position of parties, **19:28**  
    golden rule, **19:23**  
    insurance, **19:29**  
    irrelevant issues, **19:24**  
    prejudicing defence of corporation, **19:26**  
    prior criminal conviction, **19:27**  
    references to jurors by name, **19:16**  
    references to matters not in evidence, **19:19**  
    references to previous trials, **19:32**  
    references to similar cases, **19:31**  
    settlement negotiations, **19:30**  
Judicial notice, **19:9**  
Mistrial, **19:37**  
Objections  
    generally, **19:33 to 19:36**  
    appellate court, **19:36**  
    dealing with, **19:35**  
    making, **19:34**  
Order, **19:4**  
Post offence conduct, **19:11**  
Privilege, **19:3**  
Right to, **19:1**

**CLOSING ADDRESS—LAW—Cont'd**

Scope, **19:2**  
What may be read to jury, **19:10**

**COLLATERAL FACT RULE**

Generally, **13:49**

**COMMENCING THE CASE**

Assembling documents, **1:44**  
Bail hearing, **1:51**  
Class actions, **1:53**  
Conflict of interest, **1:36**  
Diary system, **1:54**  
Forum non conveniens, **1:10**  
Ground rules, **1:34**  
Initial interview with witnesses, **1:49**  
Initial meeting preparation, **1:4**  
Instructions, **1:35**  
Investigations, **1:43**  
Issue estoppel, **1:32**  
Legal research, **1:46**  
Limitation periods, **1:31**  
Not giving final assessment at outset, **1:28**  
Notices, **1:31**  
Obtaining directions, **1:29**  
Opening file, **1:38**  
Pleadings, **1:50**  
    reviewing, **1:23, 1:42**  
Preserving evidence, **1:39**  
Production of documents, **1:30**  
Retainer, **1:7**  
Retaining expert, **1:47**  
Rule on costs, **1:27**  
Sealing court files, **1:52**  
Theory of case, **1:33**

**COMMISSION EVIDENCE**

Generally, **7:24**

**COMMITTAL, TEST FOR**

Generally, **6:27**

**COMPELLABILITY**

Calling of witness by adversary, **11:65**  
Judges, **11:30**  
Jurors, **11:30**  
Lawyers, **11:30**  
Spouse, **11:27**

**COMPUTERIZED DATABASES INFORMATION**

Generally, **3:23**

## INDEX

### COMPUTERIZED RECORDS

Generally, **11:42**

### CONFIDENTIALITY, ORAL DISCOVERY OBJECTIONS

Generally, **5:134**

### CONFLICT OF INTEREST

Expert witness, **4:5**

Solicitor, **1:36**

### CONVERSATION

Face-to-face, **11:44**

Telephone, **11:43**

### CORONER'S INQUEST

Generally, **3:7**

### CORPORATIONS

Examination of, **5:110**

Prejudicing defence of, **19:26**

Representatives, **20:20**

### COSTS

Administrative tribunal, **20:26**

Electronic discovery, **5:57**

Expert witness, against, **4:54**

Rule, **1:27**

### CRIMINAL CONVICTION

Proving civil case, **11:66, 11:67**

Use in jury address, **19:27**

### CRIMINAL RECORD

Closing address, **18:97**

Cross-examination on, **14:26**

Examination-in-chief, **10:35**

### CROSS-EXAMINATION

Analogy, by, **15:21**

Answers given, **13:34**

Bit-by-bit technique, **13:18**

Concealing true objective, **15:19**

Controlling witness, **13:19**

Demeanour, **13:25**

Demonstrative evidence, **13:36**

Developing theme, **13:28**

Don'ts, **13:37**

Duty technique, **15:16**

Escalating to ultimate question, **15:20**

Expert witness

see Cross-examination—expert witness

Fairness technique, **15:17**

### CROSS-EXAMINATION—Cont'd

Impeachment

see Cross-examination—impeachment

Importance of strong closing, **13:30**

Initial consideration, **13:22**

Insignificant event, **15:15**

Knowing answer in advance, **13:17**

Law

see Cross-examination—law

Length, **13:27**

Limited role, **13:35**

Magnifying favourable evidence, **15:18**

Monitoring trier of fact, **13:29**

Objectives, **13:23**

Offensive

see Offensive cross-examination

Opening, **13:26**

Order and pace, **13:24**

Outline, **13:31**

Parallel testimony, **15:24**

“Perfect witness” technique, **15:22**

Preparation

see Preparation of cross-examination

Prior inconsistent statements, **13:32**

Restraint, **13:20**

Summary question, **15:23**

### CROSS-EXAMINATION—EXPERT WITNESS

Brief, **17:7**

Control of, **17:2**

Eliciting favourable evidence, **17:29**

Hypothetical question, **17:32**

Impeachment

generally, **17:10 to 17:28**

analysis of chain of logic used to reach  
conclusions, **17:22**

attacking, **17:11**

bias, **17:12**

collateral attack, **17:25**

different interpretation on facts, **17:24**

factual underpinnings of evidence,  
**17:23**

failure to abide by rules of professional  
conduct, **17:27**

failure to adhere to proper procedure,  
**17:18**

limits of cross-examination, **17:28**

other evidence, **17:17**

own writings, **17:20**

prior inconsistent statements, **17:26**

**CROSS-EXAMINATION—EXPERT WITNESS—Cont'd**

Impeachment—Cont'd  
 scientific literature, **17:19**  
 testimony given by expert in other cases, **17:21**  
 types  
   generally, **17:13**  
   captive expert, **17:16**  
   in-house expert, **17:14**  
   professional witness, **17:15**  
 Narrowing gap between experts, **17:31**  
 Panel of experts, **17:33**  
 Preparation, **17:6**  
   identification of, **17:4**  
   learning about, **17:5**  
 Qualifications, **17:8**  
   gaining acknowledgement, **17:9**  
 Simplifying evidence, **17:30**  
 Whether to cross-examine, **17:3**

**CROSS-EXAMINATION—IMPEACHMENT**

Boxing witness in, **14:31**  
 Collateral matters, **14:27**  
   mixing questions, **14:29**  
   use of specific facts, **14:29**  
 Confronting witness with inconsistent demonstrative evidence, **14:21**  
 Confronting witness with other witness evidence, **14:22**  
 Demonstrating bias, hostility, or pecuniary interest, **14:24**  
 Discreditable acts and corruption, **14:30**  
 Discrediting with other witness, **14:32**  
 Exposing over preparation, **14:35**  
 Exposing true character, **14:33**  
 Impeachment by omission, **14:20**  
 Linking together prior inconsistent statements, **14:19**  
 Maximize impact, **14:37**  
 Previous convictions, **14:26**  
 Probabilities, cross-examining on, **14:23**  
 Scientific evidence, inconsistent with testimony, **14:34**  
 Success of impeachment, **14:36**  
 Undercutting witness's evidence, **14:25**

**CROSS-EXAMINATION—LAW**

Collateral fact rule, **13:49**  
 Discovery transcript, **13:56**  
 Documents, **13:55**

**CROSS-EXAMINATION—LAW —Cont'd**

Hearsay rule, **13:53**  
 Interference by trial judge, **13:58**  
 Leading questions, right to ask, **13:41**  
 Limits, **13:40**  
 Multiple parties, **13:54**  
 Prior discreditable acts, **13:51**  
 Recalling witness, **13:57**  
 Right, **13:38**  
 Rule in *Browne v. Dunn*, **13:52**  
 Scope, **13:39**  
 Unresponsive witness, **13:42**  
 Use of prior inconsistent statements, **13:50**  
 Witnesses not to be cross-examined  
   generally, **13:43**  
   called by trial judge, **13:48**  
   error, **13:47**  
   friendly witness, **13:44**  
   production of document, **13:46**  
   tender, **13:45**

**CROWN**

Disclosure, **1:40**  
 Examination of, **5:113**  
 Privilege, **5:129**  
 Testing strength of case, **6:10, 6:20**

**CROWN PRIVILEGE**

See Privilege

**DAMAGES**

Argument for, **18:84**  
 Closing address, **18:21**  
 Defendant, **18:83**  
 Handling, **19:38**  
 Opening address, **9:20**  
   restrictions, **9:5**  
 Plaintiff  
   generally, **18:78**  
   non-pecuniary general damages, **18:81**  
   pecuniary general damages, **18:80**  
   punitive damages and aggravated damages, **18:82**  
   special damages, **18:79**

**DEEP POCKET SYNDROME**

Generally, **9:31**

**DEMONSTRATIVE EVIDENCE**

Closing address, **18:85 to 18:88, 19:39**  
 Cross-examination, **13:6**

## **DEMONSTRATIVE EVIDENCE**

### **—Cont'd**

- Defined, **12:2**
- Exhibits, **7:30**
- Expert testimony, **4:23**
- Impeachment, **14:21**
- Introduction of, **12:11**
- Law, **12:3**
- Logistics, **12:12**
- Objections
  - generally, **12:5**
  - cumulativeness, **12:9**
  - lack of adequate verification, **12:7**
  - lack of reflection in record, **12:10**
  - prejudice, **12:8**
  - relevance, **12:6**
- Opening address, **9:24**
- Purpose for admittance, **12:4**
- Use of, **12:1**

## **DIAGRAMS**

- Foundation, laying, **12:34**
- Law, **12:33**

## **DIRECTED VERDICT**

- Generally, **10:54 to 10:57**
- In civil case, **10:55**
- In criminal case-law, **10:56**

## **DISCLOSURE**

- Crown, **1:40**
- Duty of continuing disclosure, **5:37**
- Expert evidence, **5:10**
- Inadvertent, of privileged document, **5:39**
- Pre-hearing, **20:6**
- Preliminary inquiry, **6:3**

## **DISCOVERY, CIVIL CASE**

- Avenues of, **5:21**
- Discovery plan, **5:23**
- Examination of your client, **5:20**
- Importance, **5:1**
- Norwich order, **5:142**
- Objectives
  - generally, **5:3 to 5:19**
  - assessing opposing party, **5:14**
  - background of opposing party, **5:11**
  - committing opposing party to story, **5:6**
  - define and clarify issues, **5:16**
  - determining adversary's theory of case, **5:9**
  - disclosure of expert evidence, **5:10**

## **DISCOVERY, CIVIL CASE—Cont'd**

### **Objectives—Cont'd**

- eliminate surprises at trial, **5:3**
- ensuring proper party being sued, **5:18**
- evaluating case, **5:4**
- favourable evidence, **5:5**
- forcing resolution of case, **5:19**
- further investigation, **5:15**
- identity of potential witnesses, **5:8**
- preserving testimony, **5:17**
- setting up cross-examination, **5:7**
- uncovering weaknesses in case, **5:12**
- Pre-action, **5:142**
- Proportionality in discovery, **5:24**
- Purposes, **5:2**
- Types of, **5:22**

## **DISCOVERY BRIEF**

- Generally, **3:24**

## **DISCOVERY TRANSCRIPT**

- Cross-examination, **13:56**
- Transcripts brief, **7:14**

## **DOCUMENTS**

- Ancient, **11:40**
- Closing address, **18:87**
- Cross-examination, **13:55**
- Documents in possession rule, **11:71**
- Found in possession of party, **11:41**
- Harmful material, **7:29**
- Summary, **12:43**
- Types, **11:33**
- Use of prior inconsistent statements, **13:50**
- Witness called to produce, **13:46**

## **DOCUMENTS, DISCOVERY OF**

- Affidavit of documents
  - see Affidavit of documents
- Document, defined, **5:27**
- Duty as solicitor, **5:31**
- Duty of continuing disclosure, **5:37**
- Failure to disclose or produce, **5:38**
- Inadvertent disclosure, privileged, **5:39**
- Initiating, **5:28**
- Inspection, **5:35**
- Introduction, **5:26**
- Privilege, general, **5:32**
- Scope, **5:29**
- Use of documents produced, **5:36**



**DUTY TECHNIQUE, IMPEACHMENT**

Generally, **15:16**

**E-DISCOVERY**

Generally, **5:40 to 5:57**

**ELDERLY WITNESS,  
CROSS-EXAMINATION**

Generally, **16:19**

**ELECTRONIC DOCUMENTS**

Examination-in-chief, of, **11:45**

Identification

generally, **5:41 to 5:44**

definition, **5:43**

potential sources, **5:44**

proportionality, **5:42**

relevance, **5:41**

**ELECTRONIC EVIDENCE**

Collection

generally, **5:47 to 5:52**

deleted information, **5:51**

electronic devices, **5:48**

hidden data, “metadata,” **5:52**

privacy issues, **5:50**

request for production of electronically  
stored information, **5:49**

scope, **5:47**

Preservation of, **5:45**

spoliation and preservation, **5:46**

Production

generally, **5:54 to 5:57**

accessing electronic litigation support  
data, **5:56**

cost of electronic discovery, **5:57**

form of, **5:55**

privilege, **5:54**

Review of, **5:53**

**EVIDENCE**

Administrative tribunals, **20:11**

Alibi, **18:98**

Character

see Character evidence

Defusing harmful evidence, **10:24**

Demonstrative

see Demonstrative evidence

Expert, **17:23, 17:29**

Impeachment, **17:17**

Marshalling

see Marshalling evidence

**EVIDENCE—Cont’d**

Opinion

see Opinion evidence

Preserving, **1:39**

Real, **5:13**

Reply, **10:51**

Similar

see Similar fact evidence

Technical, **9:46**

**EVIDENTIARY RULINGS**

Generally, **7:50**

**EXAMINATION FOR DISCOVERY**

See Oral discovery

**EXAMINATION-IN-CHIEF**

Accused takes the stand, **10:34, 10:35**

criminal record, dealing with, **10:27**

humanizing accused, **10:34**

Closing address, relationship with, **10:10**

Contents

generally, **10:5**

ending, **10:9**

importance, **10:1**

introduction, **10:6**

narrative, **10:8**

set stage, **10:7**

Directed verdict, **10:54 to 10:57**

Disable verdict or non-suit, **10:54**

re-opening after motion for non-suit,  
**10:57**

Documents in possession rule, **11:71**

Formal proof, requirement

generally, **11:47 to 11:50**

admissions, **11:47**

judicial notice

generally, **11:48 to 11:50**

brandeis brief, **11:49**

law, **11:48**

procedure, **11:50**

Increasing impact of testimony, **10:20**

Oath helping, § **10.9A \* to 11.61**

Objections

generally, **10:58 to 10:64**

defined, **10:58**

making

generally, **10:60**

initiating objection, **10:61**

ruling, **10:63**

stating objection, **10:62**



## INDEX

### EXAMINATION-IN-CHIEF—Cont'd

- Objections—Cont'd
  - tactics, **10:64**
  - types, **10:59**
- Organization, **10:4**
- Preparation, **10:2**
- Question
  - form, **10:11**
  - framing of, **10:18 to 10:25**
  - leading questions, **10:12**
  - objectionable questions, **10:16**
  - transitional, **10:17**
- Refreshing witness memory
  - generally, **11:10**
  - establishing foundation, **11:14, 11:15**
    - past recollection recorded, **11:15**
    - present recollection revived, **11:14**
  - law, **11:11**
    - past recollection recorded, **11:12**
    - present recollection refreshed, **11:13**
- Tactics
  - see Tactics, examination-in-chief
- Techniques
  - generally, **10:18 to 10:25**
  - defusing harmful evidence, **10:24**
  - demeanour, **10:18**
  - do's and don'ts, **10:25**
  - encouraging witness, **10:22**
  - enhancing credibility of witness, **10:19**
  - ensuring completeness of record, **10:23**
  - highlighting vital testimony, **10:21**
- Voir dire, **11:2**
- Zealous advocacy
  - limits of, **10:65**

### EXHIBITS

- Complex exhibits, **7:31**
- Demonstrative evidence, **7:30**
- Foundation questions, **7:28**
- Handling, **7:27**
- Introducing, **11:46**
- Reviewing for harmful material, **7:29**
- Videotapes, **12:27**

### EXPERIMENTS

- Generally, **4:52**
- Demonstrations, **12:49, 12:50**
- Law, **12:49**
- Tactical considerations, **12:50**

### EXPERT WITNESS

- Assessment of need, **4:2**
- Awarding costs against, **4:54**
- Brief, **4:22**
- Court-appointed experts, **4:49**
- Creating use of, **4:51**
- Duty to the court, **4:15**
- Early retention, **4:4**
- Educating trier of fact, **4:47**
- Establishing expertise, **4:36**
- Experiments and test, **4:52**
- Finding an expert, **4:6**
- Function, **4:3**
- Hypothetical question
  - see Hypothetical question
- Immunity, **4:55**
- Initial involvement, **4:8**
- Initial meeting, **4:9**
- Number, **4:7**
- Panel of experts, **4:53**
- Preparing for cross-examination, **4:24**
- Preparing for discovery, **4:13**
- Preparing for trial
  - generally, **4:16**
  - analyze testimony objectively, **4:19**
  - courtroom procedure, **4:21**
  - examination-in-chief, **4:20**
  - expert's qualifications, **4:17**
  - report, **4:18**
- Privilege, **4:25**
- Qualifying, **4:37**
- Report, **4:11, 4:15**
- Requirement of another expert, **4:12**
- Retain best expert, **4:5**
- Review opposing expert's report, **4:14**
- Testimony and demonstrative evidence, **4:23**
- Timing of evidence, **4:50**
- Trial
  - generally, **4:26 to 4:40**
  - cross-examination, **4:26**
  - opinion evidence
    - see Opinion evidence

### EYEWITNESS TESTIMONY

- Generally, **2:12**

### FACTS WIN TRIALS

- Generally, **18:3**

**FAIRNESS TECHNIQUE**

Generally, **15:17**

**FILE**

Dealing court file, **1:52**  
Opening, **1:38**  
Organizing, **7:5**  
Preparing for trial, **7:11**

**FILMS**

Admissibility, **12:20**  
Compare to video, **12:22**  
Laying foundation, **12:21**

**FOUNDATIONS, LAYING**

Ancient documents, **11:40**  
Business records, **11:37**  
    common law rule, **11:38**  
    statutory provision, **11:39**  
Computerized records, **11:42**  
Conversations, **11:44**  
Documents, **11:33**  
Documents, possession of party, **11:41, 11:71**  
Electronic documents, **11:45**  
Letters, handwritten or signed documents, **11:34**  
    letter received by client, **11:35**  
    letter sent by client, **11:36**  
Telephone conversations, **11:43**

**FRIENDLY WITNESS**

Cross-examination, **13:44**  
Interviewing, **2:10**

**GOLDEN RULE**

Generally, **19:23**

**GOOD CHARACTER EVIDENCE, CRIMINAL CASE**

Generally, **11:56, 18:100**  
Evidence, character of victim, **11:58**  
Oath attacking evidence, **11:59**  
Opening address, criminal case, **9:40**

**HEARSAY**

Cross-examination, **13:53**  
Expert witness, **4:42**  
Hypothetical question, **4:42**  
Principled approach to hearsay rule, **11:70**

**HOSPITAL RECORDS**

Generally, **3:3**

**HOSTILE WITNESS**

Meaning of “adverse,” **11:5**  
Prior inconsistent statement, **11:6**  
Procedure, **11:7**  
Purpose of hostile witness rule, **11:8**  
Tactics, **11:9**

**HYPOTHETICAL QUESTION**

See also Expert witness  
Factual foundation, **4:43**  
Formulating of, **4:45**  
Framing of, **4:44**  
Hearsay, expert witness, **4:42**  
Ultimate issue rule, **4:46**  
When used, **4:41**

**IMMUNITY CLAIMS**

Generally, **5:131**

**INCIVILITY**

See Civility

**INDICTMENT, DEALING WITH**

Generally, **18:96**

**INFORMERS**

Closing address, criminal case, **18:99**  
Crown privilege, **5:132**  
Witness, **16:5**

**INQUEST**

Generally, **3:7**

**INSPECTION, DOCUMENTS OF**

Generally, **5:35**

**INSURANCE**

Adjuster, **3:15**  
Closing address, **19:29**  
Opening address, **9:8**

**INTERPRETER**

Law, **11:62**  
Swearing, **11:63**

**INTERROGATORIES**

Defined, **5:70**  
Discovery technique, **5:75**  
Further questions, **5:73**  
Law, **5:71**  
Procedure, **5:72**  
Use at trial, **5:74**

**INVESTIGATION OF CASE**

Conducting, **2:2**

## INDEX

### INVESTIGATION OF CASE—Cont'd

- Contents of statement, **2:14**
- Directing, **2:7**
- Form of statement, **2:13**
- Interviewing witnesses
  - generally, **2:8**
  - adverse witness, **2:9**
  - eyewitness, **2:12**
  - friendly witness, **2:10**
  - no evidence to offer, **2:11**
- Investigator's report and privilege, **2:15**
- Preservation of physical evidence, **2:6**
- Prompt investigation, **2:5**
- Purpose, **2:3**
- Report from, **2:15**
- Selection of, **2:4**

### ISSUE ESTOPPEL

- Generally, **1:32**

### JOINDER, IN CRIMINAL CASE

- Generally, **7:42**

### JUDGE

- See Trial judge.

### JUDICIAL NOTICE

- Generally, **11:48 to 11:50, 19:9**

### JUMPING AROUND TECHNIQUE

- Generally, **5:90**

### JURORS

- Calling by name, **19:16**
- Compellability, **11:30**
- Opening address, defence, **9:38**
- Preparing for accused's testimony, **9:41**

### JURY

- Calling jurors by name, **19:16**
- Can jury take notes, **19:12**
- Charge, **7:50**
- Charter right to jury trial, **19:45**
- Deliberations, **19:15**
- Discharge of juror, **19:18**
- Exhorting jury, **19:17**
- Questions by jury, **19:14**
- Reading back evidence, **19:13**
- Rectification of jury's verdict, **19:44**
- Striking jury notice, **7:37**

### LAYING FOUNDATION

- See Foundations, laying

### LEADING QUESTIONS

- Avoidance of, **10:15**
- Defined, **10:13**
- Prohibition against, **10:12**
- When permissible, **10:14**

### LEGAL BRIEF

- Generally, **7:47**

### LETTERS

- Generally, **11:34**

### LETTERS OF REQUEST

- Generally, **7:24**

### LIMITATION PERIODS

- Initial interview, **1:11**
- Notices, **1:31**

### MAPS

- Foundation, laying, **12:34**
- Law, **12:33**

### MARSHALLING EVIDENCE

- Computerized database information, **3:23**
- Defendant's documentation, **3:18**
- Discovery brief, **3:24**
- Government and other agencies
  - generally, **3:11**
  - insurance adjuster, **3:15**
  - media, **3:14**
  - other government agencies, **3:13**
  - police investigation, **3:12**
  - utility company and municipal records, **3:16**
  - weather reports, **3:17**
- Government and other institution records, **3:19**
- Incident reports, **3:20**
- Medical and scientific literature, **3:22**
- Medical information
  - generally, **3:2**
  - hospital records, **3:3**
  - medical report, **3:4**
  - prior medical records, **3:5**
- Parallel proceedings
  - generally, **3:6**
  - administrative proceedings, **3:8**
  - coroner's inquest, **3:7**
    - criminal or quasi-criminal prosecutions, **3:9**
  - other civil proceedings, **3:10**

**MARSHALLING EVIDENCE—Cont'd**  
Standards, safety codes, rules, and regulations, **3:21**

**MARY CARTER AGREEMENTS**

Generally, **1:27, 7:9**

**MEDIA**

Generally, **3:14**

Dealing with, **20:14**

**MEDIATION**

Anticipating problems, **8:32**

Breaking the deadlock

generally, **8:41 to 8:43**

alternative strategies, **8:42**

hypothetical question, the, **8:41**

recommendations to insurer or corporation, **8:43**

Brief

generally, **8:15 to 8:21**

expert reports in, **8:15**

extra copies of, **8:17**

late service of, **8:15**

making realistic demands, **8:21**

saving ammunition, **8:18**

Client

advice at outset, **8:2**

getting buy in to mediation and mediator, **8:6**

pre-mediation meeting with, **8:12**

preparing for, **8:13**

setting realistic expectations, **8:11**

Expense of, **8:9**

Failed mediation, use in trial preparation, **8:46**

Importance of, **8:1**

Lawyer-client problem, **8:34, 8:35**

damages claimed in excess of insurance policy, **8:34**

unrepresented party, **8:35**

Mediator

choosing, **8:3, 8:4, 8:10**

different approaches of, **8:7**

post-mediation discussions, involvement in, **8:45**

style, **8:5, 8:10**

use of roster, **8:8**

Memorandum

generally, **8:16**

demanding specific sums of money in, **8:20**

**MEDIATION—Cont'd**

Memorandum—Cont'd

extra copies of, **8:17**

length of, **8:19**

making realistic demands, **8:21**

Multiple mediations, **8:45**

Multiple parties

generally, **8:27**

defendants, **8:29**

defendants and accidents, **8:30**

plaintiffs separately represented, **8:28**

Opening offer, **8:31**

Opening statement

generally, **8:22**

credibility of lawyer, **8:26**

defence, **8:24**

plaintiff, **8:23**

use of technology, in, **8:25**

Preparing client for, **8:13**

Pre-trial conference, versus, **8:14**

Settlement agreement

confidentiality clauses, **8:37, 8:40**

disagreement over releases being mutual or not, **8:38**

indemnity clause, **8:39**

non-disparagement clauses, **8:37**

releases, **8:37**

Strategies for successful conclusion, **8:44**

**MEDIATOR**

Choosing, **8:3, 8:4, 8:10**

Different approaches of, **8:7**

Post-mediation discussions, involvement in, **8:45**

Style, **8:5, 8:10**

Use of roster, **8:8**

**MEDICAL EXAMINATION**

Location, **5:60**

Multiple examinations, **5:63**

Production of medical examination report, **5:66**

Production of medical records, **5:65**

Scope, **5:62**

Selection of examining doctor, **5:61**

Who may be present, **5:64**

**MEDICAL REPORT**

Generally, **3:4**

**MODELS**

Foundation, laying, **12:34**

## INDEX

### **MODELS—Cont'd**

Law, **12:33**

### **MOTIONS**

Generally, **7:48**

### **MOVIES**

See Video recordings.

### **MUNICIPAL RECORDS**

Generally, **3:16**

### **NARRATIVE SUMMARY**

Generally, **12:44**

### **NARRATIVE TECHNIQUE**

Generally, **5:91**

### **NON-PUBLICATION ORDER**

Generally, **6:31**

### **NOTICE**

Administrative tribunal, **20:8**

Limitation periods, **1:31**

Preparation for trial, **7:6**

### **OBJECTIONS**

Demonstrative evidence, **12:5**

Examination-in-chief, **9:48, 10:58**

Objectionable questions, **10:16**

Oral discovery, **5:116**

Selection of witnesses, **7:41**

### **OFFENSIVE CROSS-EXAMINATION**

Arguing case

generally, **15:8**

laying foundation, **15:12**

previewing, **15:9**

spotlighting evidence, **15:11**

Casting different interpretation on facts, **15:14**

Creating mood, **15:13**

Favourable evidence from adverse witness, **15:2**

accenting of, **15:3**

eliciting of, **15:4**

Forcing witness back to earlier position, **15:6**

Refreshing memory, **15:7**

### **OPENING ADDRESS**

Closing address, relationship with, **9:25**

Contents

generally, **9:12**

basis for liability, **9:18**

### **OPENING ADDRESS—Cont'd**

Contents—Cont'd

conclusion, **9:21**

damages, **9:20**

events, **9:16**

introduction, **9:13**

issues, **9:17**

parties and witnesses, **9:14**

setting stage, **9:15**

weaknesses and defence, **9:19**

Deferring opening, **9:29**

Demonstrative evidence, **9:24**

Importance, **9:1**

Manner of presentation, **9:22**

Minimizing and magnifying issues, **9:26**

Opening before trial judge without a jury, **9:50**

Order of, **9:2**

Outline, **9:11**

Persuasion without argument, **9:23**

Purpose of, **9:4**

Rehearsing, **9:27**

Restrictions

generally, **9:5**

directed verdict, **9:10**

inadmissible evidence, **9:9**

inflammatory remarks, **9:6**

mention of insurance, **9:8**

reference to damages, **9:7**

### **OPENING—DEFENCE (CIVIL CASE)**

Contents, **9:33**

Deep pocket syndrome, **9:31**

Overstating of case by plaintiff, **9:32**

Sympathy generated by plaintiff, **9:30**

### **OPENING—DEFENCE (CRIMINAL CASE)**

Character evidence, **9:40**

Defusing atmosphere in courtroom, **9:36**

Educating jury about fundamental safeguards, **9:37**

Humanizing accused, **9:39**

Laying foundation for defence, **9:42**

Making jurors feel important, **9:38**

Neutralizing weaknesses, **9:44**

Objective, **9:35**

Preparing jurors for accused's testimony, **9:41**

Reinforcing points in cross-examination, **9:43**

## OPINION EVIDENCE

- Expert witness
  - direction to exclude, **4:34**
  - exclusion of expert evidence, **4:30**
  - necessary qualifications, **4:31**
  - necessity of testimony, **4:29**
  - novel scientific theory, **4:32**
  - relevance, **4:28**
  - ultimate issue, **4:33**
- Non-expert witness, **11:64**
- Opposing Lawyer, dealing with difficult opposing lawyer, **5:113**
- Oral discovery, **5:78**

## ORAL DISCOVERY

- Closing, **5:106**
- Communications between solicitor and client during, § **5.6(ww)\* to 5.76**
- Concurrent criminal case, **5:139**
- Conducting of, **5:89**
  - jumping around technique, **5:90**
  - narrative technique, **5:91**
- Cross-examination at discovery, **5:93**
- Defined, **5:76**
- Difficult opposing lawyer, **5:114**
- Documents
  - generally, **5:101**
  - documents not in adversary's affidavit of documents, **5:105**
  - examining on, **5:104**
  - proving foundation, **5:103**
- Duty to give corrective information, **5:115**
- Examination, corporations, **5:110**
- Examination, Crown, **5:113**
- Examination, general, **5:79**
- Examination, multiple counsel, **5:141**
- Examination, person under disability, **5:111**
- Formulation of questions, **5:92**
- General, **5:76 to 5:141**
- Interlocutory proceedings, **5:145**
- Interpreter, use of, **5:112**
- Location of examination, **5:81**
- Non-parties, examination and production of documents, **5:143, 5:144**
  - action for discovery (equitable discovery), **5:144**
  - general principles, **5:143**
- Objections
  - generally, **5:116**
  - confidentiality, **5:134**

## ORAL DISCOVERY—Cont'd

- Objections—Cont'd
  - cross-examination, credibility, **5:117**
  - irrelevant questions, **5:118**
  - miscellaneous, **5:135**
  - opinion evidence, **5:122**
  - oppressive questions, **5:119**
  - privilege, Crown, **5:129**
    - Cabinet secrecy, **5:133**
    - informers, **5:132**
    - public interest, **5:130**
    - statutory provisions, **5:131**
  - privilege, husband and wife, **5:126**
  - privilege, litigation, **5:124**
  - privilege, settlement, **5:125**
  - privilege, solicitor-client, **5:123**
  - questions as to adultery, **5:127**
  - questions of law, **5:120**
  - settlement negotiations, **5:126**
  - tests and specimens, **5:121**
- Obligation, examined party, **5:108**
- Opinion evidence, **5:78**
- Order of examination, **5:83**
- Parallel proceedings, **5:86**
- Pre-action, **5:142**
- Preparation for examination of opposing party, **5:89**
- Preparing client for, **5:88**
- Privilege, common interest, **5:138**
- Privilege, solicitor-client, **5:136**
- Privilege, work product, **5:137**
- Re-examination, **5:107**
- Refusal, effect of, **5:101**
- Scope of, **5:77**
- Second examination, obtaining, **5:85**
- Tactics
  - generally, **5:94**
  - anchor witness, **5:96**
  - effect of counsel's answering, **5:99**
  - final question, **5:98**
  - make exhibits of documents, **5:97**
  - obtain detail, **5:95**
  - onus on witness, **5:98**
- Timing of examination, **5:82**
- Who may be examined, **5:80**
- Who may be present, **5:84**

## PARALLEL PROCEEDINGS

- Administrative proceedings, **3:8**
- Coroner's inquest, **3:7**

## INDEX

### **PARALLEL PROCEEDINGS—Cont'd**

- Criminal prosecutions, **3:9**
- Other civil proceedings, **3:10**
- Parallel proceedings, **5:86**
- Quasi-criminal prosecutions, **3:9**

### **PAST RECOLLECTION RECORDED**

- See Refreshing witness's memory

### **"PERFECT WITNESS" TECHNIQUE**

- Generally, **15:22**

### **PERSON UNDER DISABILITY, EXAMINATION**

- Generally, **5:111**

### **PHOTOGRAPHS**

- Different uses at trial, **12:14**
- Establishing foundation, **12:19**
- Law, **12:15**
  - prejudice, **12:18**
  - relevance, **12:16**
  - verification, **12:17**

### **PHYSICAL DISCOVERY**

- Generally, **5:58**

### **PIERRINGER AGREEMENT**

- Generally, **1:27, 7:9**

### **PLEADINGS**

- Amendment, **19:42**
- Reviewing, **1:42**
- Rules, **1:50**

### **POLICE INVESTIGATION**

- Generally, **3:12**

### **POLICE OFFICER**

- Hostile witness, **16:7**
- Neutral or favourable witness, **16:6**

### **PRELIMINARY INQUIRY**

- Brief, **6:5**
- Disclosure prior to, **6:3**
- Explanation to client, **6:7**
- Law
  - generally, **6:26**
  - accused, should he testify, **6:32**
  - Charter applicability, **6:28**
  - committal, test for, **6:27**
  - disclosing alibi, **6:30**
  - non-publication order, **6:31**
  - review, **6:29**

### **PRELIMINARY INQUIRY—Cont'd**

- Objectives
  - generally, **6:8 to 6:18**
  - creating inconsistencies, **6:16**
  - cross-examination at trial, **6:15**
  - discharge, **6:8**
  - narrowing issues, **6:18**
  - obtain detail, **6:17**
  - obtaining admissions, **6:14**
  - testing Crown's case, **6:10**
  - testing key prosecution witnesses, **6:11**
  - tool for discovery, **6:9**
  - tying down prosecution witnesses, **6:12**
- Planning, **6:6**
- Purpose of, **6:2**
- Reading in evidence at trial, **6:33**
- Use by prosecution
  - generally, **6:19**
  - assess witnesses, **6:23**
  - defence's case, **6:24**
  - device for settling cases, **6:25**
  - discovery evidence, possession of witnesses, **6:22**
  - further investigations, **6:21**
  - weaknesses in Crown's case, **6:20**

### **PREPARATION FOR TRIAL**

- Alternative systems, **7:15**
- Discovery brief, **7:14**
- Trial book, **7:13**
- Trial brief, **7:12**

### **PREPARATION OF CASE**

- See also Commencing the case
- Completion of discoveries, **7:3**
- Discovery process, **7:8**
- Jury, **7:10**
- Making offer, **7:9**
- Motions, **7:7**
- Notices, **7:6**
- Organizing file, **7:5**
- Reviewing pleadings, **7:2**
- Strategy
  - generally, **7:33 to 7:46**
  - brainstorming case, **7:40**
  - calling client, **7:36**
  - calling cumulative witnesses, **7:34**
  - change of venue, **7:45**
  - developing theme, **7:44**
  - election of jury, **7:37**
  - joinder, in criminal case, **7:42**



**PREPARATION OF CASE—Cont'd**

- Strategy—Cont'd
  - knowing opponent, 7:39
  - knowing trial judge, 7:38
  - objections, 7:41
  - order of witnesses, 7:35
  - selection of witnesses, 7:33
  - severance, in criminal case, 7:42
  - striking jury notice, 7:37
  - surveillance evidence, 7:46
- Updating facts, 7:4

**PREPARATION OF  
CROSS-EXAMINATION**

- Assistance of client, 13:3
- Assistance of expert, 13:12
- Building closing argument, 13:15
- Complete mastery of facts, 13:3
- Cross-examination brief, 13:13
- Demonstrative evidence, 13:6
- Investigation of key witness, 13:7
- Investigation reports, 13:5
- Obtain prior witness evidence, 13:9
- Review documents, 13:10
- Scientific reports, 13:11
- Tailor to theory of case, 13:14
- Tying witness down, 13:8
- Witness statements, 13:4

**PRESENT RECOLLECTION  
REFRESHED**

- See Refreshing witness's memory

**PREVIOUS ORAL INCONSISTENT  
STATEMENT**

- Made to third party and reduced to writing, 14:16
- Not reduced to writing, 14:18

**PRIOR CONSISTENT STATEMENT**

- Generally, 10:38

**PRIOR INCONSISTENT STATEMENT**

- See also Cross-examination—impeachment
- Complying with rules, 14:6
- Highlighting inconsistency, 14:12
- Identification of, 14:2
  - denial by witness, 14:11
  - made under oath, 14:10
- Reduced to writing, 14:13
  - employing previous statement, 14:15

**PRIOR INCONSISTENT STATEMENT  
—Cont'd**

- Reduced to writing, 14:13—Cont'd
  - proving where denial of making statement, 14:14
- Right to cross-examine on, 14:7
- Snaring witness, 14:3
  - anchoring witness to testimony, 14:4
  - impeachment, 14:5
- Types of, 14:8
- Using as substantive evidence, 14:9

**PRIVILEGE**

- Affidavit of documents, 5:33
- Closing address, 19:3
- Common interest, 5:138
- Crown
  - generally, 5:129
  - Cabinet secrecy, 5:133
  - informers, 5:132
  - public interest, 5:130
  - statutory provisions, 5:131
- Documentary, 5:32
- Electronic documents, 5:54
- Expert, 4:25
- Husband and wife, 5:126
- Inadvertent disclosure of document, 5:39
- Investigator's report, § 2.12\* to 2.15
- Self-incrimination, against, 11:72
- Solicitor-client, 5:123, 5:136
- Spousal, 11:29
- Waiver of, 9:49
- Work product, 5:137

**PROFESSIONAL, SUING**

- Generally, 18:58

**PROJECTORS**

- Generally, 12:31

**PROPERTY**

- Examination of, 5:67
- Preservation of, 5:69
- Testing of, 5:68

**PUBLIC INTEREST PRIVILEGE**

- Generally, 5:130

**REAL EVIDENCE**

- Generally, 5:13

**REBUTTAL EVIDENCE**

- Generally, 10:51

## INDEX

### RECORDS

- Business, **11:37**
- Computerized, **11:42**
- Directions from client required, **1:29**
- Documents in possession rule, **11:71**
- Ensuring completion, **10:23**
- Government, **3:19**
- Hospital, **3:3**
- Municipal, **3:16**

### RECROSS-EXAMINATION

- Generally, **10:41**

### RE-EXAMINATION

- Different strategies, **10:38**
- Do's and don'ts, **10:40**
- Law, **10:36**
- Recross-examination, **10:41**
- Techniques, **10:37**
- Whether to re-examine, **10:39**

### REFRESHING WITNESS'S MEMORY

- Cross-examination, **15:7**
- Examination-in-chief, **11:10**
- Legal principles, **11:11**
- Past recollection recorded
  - generally, **11:13**
  - establishing foundation, **11:15**
- Present recollection refreshed
  - generally, **11:12**
  - establishing foundation, **11:14**

### REPLY EVIDENCE

- Recalling witness, **10:53**
- Surrebuttal evidence, **10:52**

### RESEARCH

- Computerized databases, **3:23**
- Legal, **1:46**
- Medical and scientific literature, **3:22**
- Standards, safety codes, rules and regulations, **3:21**

### RETAINER

- Generally, **1:7**

### SCIENTIFIC TESTING

- Generally, **1:41**

### SELF-INCRIMINATION, PRIVILEGE

- Generally, **11:72**

### SETTLEMENT AGREEMENT

- Confidentiality clauses, **8:37, 8:40**

### SETTLEMENT AGREEMENT—Cont'd

- Disagreement over releases being mutual or not, **8:38**
- Indemnity clause, **8:39**
- Non-disparagement clauses, **8:37**
- Releases, **8:37**

### SIMILAR FACT EVIDENCE

- Civil cases, **11:53**
- Procedure, **11:54**
- Resisting admissibility, **11:55**
- Rule in criminal law, **11:52**

### SKETCHPAD

- See Blackboard, **12:36**

### SLIDES

- Generally, **12:31**

### SOCIAL MEDIA

- Acquiring evidence, **3:23**
- Preparing the client, **1:22**
- Production of social medial material, **5:27**

### SOLICITOR

- Closing address, establishing, **18:13**
- Communication with client during examination-in-chief, **5:109**
- Compellability, § **10.3(e)\* to 10.4(d)(i)**
- Conflict of interest, **1:36**
- Duty as to affidavit of documents, **5:31**
- Duty as to continuing disclosure, **5:37**
- Examination-in-chief, demeanour, **10:18**
- Jury, rapport with, **18:34**
- Opening address, presentation, **9:22**
- Privilege, **5:136**

### SOLICITOR-CLIENT PRIVILEGE

- See Privilege.

### SPOUSE

- Compellability, **11:28**
- Privilege, **11:29**

### STANDARD OF PROOF

- Civil case, **19:40**
- Criminal case, **19:41**

### SUBPOENA OF WITNESS

- Generally, **7:23**

### SUMMARIES

- Defined, **12:41**
- Different types
  - generally, **12:43 to 12:45**

**SUMMARIES—Cont'd**

- Different types—Cont'd
  - chart summary, **12:45**
  - presenting discovery in narrative summary, **12:44**
  - summary of complicated or lengthy documents, **12:43**
- Law, **12:46**
- Proving, **12:47**
- Tactical consideration, **12:48**
- Use of, **12:42**

**SUMMARY JUDGMENT MOTION OR SUMMARY TRIAL**

- Generally, **7:49**

**SUMMARY QUESTION**

- Generally, **15:23**

**SURREBUTTAL EVIDENCE**

- Generally, **10:52**

**SURVEILLANCE**

- Evidence, **5:30, 5:137, 7:46**
- Videos, **12:29**

**SYNOPSIS**

- Character evidence, **1:17**
- Checklist, **1:20**
- Client's background, **1:9**
- Damages, **1:14**
- Defences, **1:16**
- Forum non conveniens, **1:10**
- Issues, **1:19**
- Jurisdiction, **1:10**
- Limitation periods, **1:11**
- Outline of events, **1:12**
- Sentencing information, **1:18**
- Statements by client, **1:15**
- Witnesses, **1:13**

**TACTICS, EXAMINATION-IN-CHIEF**

- Anticipating legal issues, **10:33**
- Danger of cumulative witnesses, **10:28**
- Missing witness, **10:29**
- Never hold back any evidence, **10:26**
- Relationship with trial judge, **10:32**
- Selection of witnesses, **10:27**
- Whether to call a client, **10:31**
- Whether to call a defence, **10:30**

**TACTICS, TRIAL**

- Exclusion of witnesses, **9:45**
- Objections, **9:48**

**TACTICS, TRIAL—Cont'd**

- Overstating case, **9:47**
- Technical evidence, **9:46**
- Waiver of privilege, **9:49**

**TELEPHONE CONVERSATIONS**

- Generally, **11:43**

**TRANSCRIPTS**

- Civil trial transcripts in criminal trial, **11:69**
- Closing address, **18:88**
- Cross-examination, **13:56**
- Use of prior inconsistent statements, **13:50**

**TRIAL**

- Book, **7:13**
- Brief, **7:12**
- Charter right to jury, **19:45**
- Communicating with witnesses, **7:25**
- Documents in possession rule, **13:43**
- Expert witness, **4:36**
- Mistrials, **11:75, 19:37**
- Preparing for
  - see Preparation for trial
- Reading in evidence from preliminary inquiry, **6:33**
- Reference to previous trials, **19:32**
- Use of criminal conviction to prove case, **11:66, 11:67**
- Use of interpreter, **11:61**
- Use of written questions and answers, **5:74**

**TRIAL JUDGE**

- Amicus Curiae, **10:50.50**
- Calling witnesses, **10:43**
- Commenting on evidence in charge to jury, **10:46**
- Contempt power, **10:50**
- Dealing with unrepresented party, **10:50.30**
- In-chambers discussions with, **11:31**
- Interference with cross-examination, **13:58**
- Knowing, **7:38**
- Late-discovered evidence, **10:47**
- Order of witnesses, **10:45**
- Questioning witnesses, **10:44**
- Questions by jury, **10:49**
- Questions from bench, **18:109**

## INDEX

### **TRIAL JUDGE—Cont'd**

- Re-opening case, **10:48**
- Role and limits to the trial judge's power, **10:42**

### **ULTIMATE ISSUE**

- Expert evidence, **4:33**
- Rule, **4:46**

### **VIDEO RECORDINGS**

- Choosing between film and video, **12:22**
- Foundation laying, **12:21**
- Law, **12:20**
- Uses
  - generally, **12:23**
  - day-in-the-life presentation, **12:25**
  - experiments, **12:27**
  - overhead projectors and slides, **12:31**
  - preserving evidence, **12:24**
  - preserving witness's statement, **12:30**
  - reconstruction of accidents, crime scenes, **12:26**
  - surveillance videos, **12:29**
  - views, **12:28**

### **VIEWS**

- Administrative tribunal, **20:12**
- Defined, **12:52**
- Video recording, **12:28**

### **VOIR DIRE, GENERALLY**

- Generally, **11:2**

### **WEATHER REPORTS**

- Generally, **3:17**

### **WITNESSES**

- Assessment of, **7:18**
- Child, **11:17**
- Commission evidence, **7:24**
- Communicating during trial, **7:25**
- Hostile
  - see Hostile witness
- Immunity, **4:54**

### **WITNESSES—Cont'd**

- In-chambers discussions with judge, **11:31**
- Individual preparation, **7:19**
- Initial interview, **1:49**
- Judges, jurors and lawyers, **11:30**
- Letters of request, **7:24**
- Memorandum to, **7:17**
- Mental or intellectual impairment, **11:23**
  - law, **11:24**
  - procedure, **11:25**
- Not to be cross-examined
  - generally, **13:43**
  - called by trial judge, **13:48**
  - error, **13:47**
  - friendly witness, **13:44**
  - production of document, **13:46**
  - tender, **13:45**
- Preparation for cross-examination, **7:21**
- Preparation for examination-in-chief, **7:20**
- Preparation of, **7:16**
- Prior consistent statement, **11:74**
- Refreshing witness memory, **11:10**
- Scheduling of, **7:22**
- Spouse
  - generally, **11:27**
  - compellability, **11:28**
  - privilege, **11:29**
- Subpoena, **7:23**
- Unsavory character, **11:73**
- Use of prior inconsistent statements, **13:50**

### **WITNESS STATEMENT**

- Contents, **2:14**
- Cross-examination, **13:4**
- Form, **2:13**

### **WORK PRODUCT PRIVILEGE**

- See Privilege

### **X-RAYS AND OTHER DIAGNOSTIC TOOLS**

- Generally, **12:35**