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THE ART AND SCIENCE OF ADVOCACY

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Release No. 1, January 2026

The service provides a comprehensive Canadian approach to pre-trial and trial advocacy for both civil and criminal law practitioners alike. It combines authoritative commentary, practical checklists and concise extracts from real-life cases in an easy-to-use how-to format. All aspects of the litigation process are covered from the first client interview to the final jury address, complete with helpful strategy suggestions. Written by an experienced advocate, it features winning techniques for dealing successfully with: trial preparation, discovery and preliminary inquiries, expert witnesses, opening and closing addresses, cross-examination, demonstrative evidence, and procedures before administrative tribunals.

What's New in this Update:

This release features valuable updates to the case law and commentary in Chapters 10 (The Examination-in-Chief: The Techniques), 11 (Examination-in-Chief: Specific Problems), and 13 (Cross-Examination: Preparation, It's Fundamental Rules, and the Law).

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Highlights:

- **Examination-in-Chief: Specific Problems—Foundations—Email and Text Messages**—In some cases, depending on the nature of the evidence contained in the text message, in a criminal case, there may have to be a *voir dire* to determine the admissibility of the text message or string of text messages. For example, where the email contains evidence of the accused's prior disreputable conduct or contains a prior consistent statement by the complainant in a sexual assault case: *R. v. A. (R.)*, 2024 CarswellOnt 14165, 2024 ONCA 696, or discusses the complainant's sexual activity again in a sexual assault case, a *voir dire* should be held: *R. v. Kinamore* 2025 CarswellBC 1705, 2025 CarswellBC 1704, 2025 CSC 19, 2025 SCC 19, 448 C.C.C. (3d) 427, 503 D.L.R. (4th) 385 (S.C.C.).
- **Cross-Examination: Preparation, Its Fundamental Rules, and the Law—The Law—Use of Prior Consistent Statements**—In *R. v. A. (R.)* where the issue was the admissibility of the complainant's text message for the truth of its contents sent allegedly shortly after the alleged act of sexual interference The Court of Appeal pointed out prior consistent statement would not be ordinarily admissible for the truth of its contents. The admissibility of the prior consistent statement cannot be assessed by a simple mechanical reference to time. Rather it must be viewed in the context of all the circumstances surrounding the utterance at the time, including those which militate against the possibility of concoction or distortion. As the only evidence came from the complainant as to spontaneity, the trial judge had to turn her mind to whether there was a risk of "bootstrapping". When the only source of evidence of a startling event which leads to a spontaneous utterance comes from the declarant, there must an assessment whether the circumstances of the utterance do not give rise to a risk of fabrication is extremely important. The absence of such an assessment will give rise to an error of law: *R. v. A. (R.)*, 2024 CarswellOnt 14165, 2024 ONCA 696.