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THE ART AND SCIENCE OF ADVOCACY

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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 Chapter 1 (Commencing the Case); Chapter 5 (Discovering the Civil Case: The First Salvo in the Campaign); Chapter 8 (Mediation Advocacy: The New Battleground), Chapter 10 (The Examination-in-Chief: The Techniques); Chapter 11 (Examination-in-Chief: Specific Problems); Chapter 13 (Cross-Examination: Preparation, Its Fundamental Rules, and the Law); Chapter 14 (Cross-Examination: Impeachment); Chapter 18 (The Closing Address: Assembling the Mosaic) and Chapter 19 (The Closing Address: the Law).

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Highlights:

- **Commencing the Case—General—The Synopsis—Statements Made by the Client**—In *R. v. Pearson*, 2024 ABCA 245, 2024 CarswellAlta 1768 (Alta. C.A.) at paras. 49 and 63 the Court held that where a Mr. Big operation is used, the effect of the Mr. Big strategy on a less involved co-accused should be considered within the safeguards of the Hart principles. This includes the onus on the Crown to provide the best evidentiary records possible. Speculative conjecture relating to weighing the reliability and prejudicial effect on a balance of possibility should not be permissible. The theoretical possibility that one co-accused pressured the other co-accused which may have resulted in an unreliable confession should not have been considered. As well, even if there was a lie by a police officer about the presence of a witness, such a lie would not shock the community and result in abuse of process excluding the accused’s confession (at para. 83).
- **Examination-in-Chief: Specific Problems—Character Evidence—Evidence of Bad Character**—See *R. v. Amin*, 2024 CarswellOnt 4537, 2024 ONCA 237, 435 C.C.C. (3d) 528, 94 C.R. (7th) 332 (Ont. C.A.), where the deceased was brutally killed in her apartment, in sexualized killing. A forensic pathologist determined that mechanical asphyxia was the cause of her death. Undercover officers befriended the accused, attempting to induce him to make incriminating statements. The accused advised the undercover officer how to kill his girlfriend and evade detection. The accused revealed he had committed violent acts in past and was willing to do so again. The accused appeared to admit that he was a “masked man” in security footage in the deceased’s apartment building; the accused stated he had been in the building with four other men, but he did not admit to the killing and denied being in the deceased’s apartment. The accused was convicted of first degree murder. The accused contended that the trial judge should not have admitted the accused’s “murder advice”, and should have warned the jury about the dangers of misusing that advice and other statements. The accused appealed, and his appeal was allowed; a new trial was ordered. Safeguards governing the admission, and use of evidence broke down in this case. The “murder advice” risked causing the jury to convict the accused because the accused appeared to be a bad person who sought to partner with a criminal, and advised him how to kill and evade detection. The trial judge should not have admitted this highly prejudicial evidence to prove the accused’s identity because it was not very similar to how the deceased was killed. The judge also should have, but did not, warn the jury that it could not misuse the murder advice and other incriminating statements to convict the accused for being a bad person. The errors created a real risk that the jury wrongfully convicted the accused because he appeared to be a bad person, and not because the Crown proved that he murdered the deceased.