# **INDEX**

ADDRESSING PERSONS IN COURTROOM, 62

**ADMISSIONS AT DISCOVERY, 74** 

**AFFIDAVITS**, 47-9

**AFFIRMATION**. See OATH OR AFFIRMATION

AIDS TO MEMORY RECALL

child witnesses, 107-8

**BOOK OF EXHIBITS**, 45

CANADA EVIDENCE ACT

with respect to child witnesses, 94-7

CASE LAW, UNFAVOURABLE

duty to adduce, 120-22

#### **CHILD WITNESSES**

aids to memory recall, 107 child psychology considerations, 93 competence to give evidence, 94-101 courtroom visit, 112 determination of whether to call, 110 hearsay statements by, 101-2 honesty and, 109 interviewing of, 109-12 legal framework, 94-104 manner of giving evidence, 101-4 memory capacity, 105-6, 110 oath or affirmation requirement, 94-101 potential trauma to, 104, 108 preparation, 110-2 suggestibility of, 106-7

## **CLIENT MEMO**

re preparation for discovery, 76

#### **COMMUNICATING WITH WITNESSES**

during proceedings, 46, 123-4

**COMPETENCY**, 93-4

**COURTESY TO WITNESS**, 14, 122

#### **CRIMINAL CASE**

unfavourable facts, 14-15

## CROSS-EXAMINATION, PREPARATION FOR

cautions given to witnesses, 52-3
dispelling myth about, 51
expert witness, 92
first-time witnesses —
 anticipation of attack, 55-6
 detail, 55
 nerves, 55
physical and mental, 56
trick questions, 54
veteran witnesses —
 over-confidence of, 57
previous instruction received by, 56
reviewing earlier cases witness involved in, 56

# **DISCOVERY**. See ELECTRONIC DISCOVERY, EXAMINATION FOR DISCOVERY, PREPARATION FOR

#### **DOCUMENTS**

electronic documents and e-mail, 24-5 eliciting through interviews, 16, 23-4 reviewing for purposes of examination-in-chief, 46

## **ELECTRONIC DISCOVERY**, 24-5

### **EVIDENCE**, 3

basic knowledge witnesses should have, 59
Canada Evidence Act —
with respect to child witnesses, 94-101
child witnesses, of —
competence, 96-7
corroboration, 95
outside courtroom, 101, 105
unsworn, 95
conflicts in, 46
discussion of by witness, 62
documents. See DOCUMENTS

#### **EVIDENCE** — continued

duty to adduce, 120-2 expert witness and report, 90-1 methods of briefing witness re, 60 reviewing order of with witness, 46-7 tampering with, 117 unfavourable, 38 duty to adduce, 120-2

## EX PARTE PROCEEDINGS

duty to adduce unfavourable evidence, 120-1

## **EXAMINATION FOR DISCOVERY, PREPARATION FOR**

admissions, 74 client memo, use of, 76 sample, 129-31 contrasted to trial testimony preparation, 73-4 expert witness, 86-7 explaining the process to witness, 72-3 "friendly" examiner, 75 importance of, 71-2 intervention during, 76 lawyer's directions, 76 questions, style of, 74-5 reviewing the pleadings, 75 transcript reviewing for errors, 76 use of, 72-3 witness's performance at, 73

## **EXAMINATION-IN-CHIEF, PREPARATION FOR**

expert witness, 90-1 identifying "strong points", 57 lawyer's preparation, 40-7 major witness, 40 preparation of, 44 minor witness, 39 objective of, 38-9 rehearsal, 46-7 review process, 45 order of evidence, 46 simulated, 41

#### **EXPERT WITNESSES**

admissibility, 83-4

```
EXPERT WITNESSES — continued
cross-examination, preparation for, 93
discovery of, 82-3
duty of, 79-83, 87-8
educational qualifications, 85-6
examination for discovery, liability for, 92
examination-in-chief, 90-1
experience, 85-6
facts, role relative to, 86-7
hypothetical questions, 91-2
language, 90
privilege and, 82-3
professional witness, 86-7
qualifications, 83-6
resumé, 86
retainer -
  believability, 79
  qualifications, 83-6
  relations between, 79
role of, 77-9
testimony vs. report, 90
written report, preparation of, 87-90
FACTS
discovery of through witness interviews, 14-15
expert witness, role relative to, 86-7
favourable and unfavourable, 14-15
significance to cross-examination, 51, 55
witnesses -
  respect for, 44-5
  role in search for, 8, 60-1
HEARSAY EVIDENCE
child witnesses, by —
  tests of necessity and reliability, 101-2
defined, 65
expert witnesses, by, 78
rule against, 64-5
ways to avoid, 65
HYPOTHETICAL QUESTIONS AND EXPERT WITNESSES, 91-2
INTERNET SEARCHES, 19
INTERPRETERS, 63-4
```

```
INTERVIEW QUESTIONS
atmosphere for, 27-8
form, 28-30
method, 27
sequence, 30-3
T-Funnel pattern, 31-33
types, 28-9
INTERVIEWS
child witnesses, 110-2
courtesy during, 16
documentary evidence, 16
environment for, 21-2
general principles, 10-14
"hypothesis model" technique, 23-4
importance of early interviews, 13
initial approach, 18
obligation to conduct, 116
purpose of, 10, 14-8
  discovery of facts, 14-15
questions. See INTERVIEW QUESTIONS
"rough spots", 25-6
signed statements —
  form, 33-4
  purposes of, 33
structure of -
  chronology, 23-5
  opening, 23
  overview, 23
  summary, 26
JUDGE
perception of witnesses, 43-4
questions from, 64
JURORS
as triers of fact, 3, 5-6
LAWYER
communication with witnesses during and after testimony, 123-4
legal relationship to prospective witness, 18
```

obligations to prospective witness, 19 preparation for examination-in-chief, 40-1

relationship with witness, 17-8

## LEADING QUESTION

during cross-examination, 52-3 during interview, 28-30

#### MEMORY, 7-8

child witnesses, 105-9 interviewing early, importance of, 13 signed statements, importance of, 33-5

## **NEGLIGENCE**

failure to interview witnesses, 116

## **OATH OR AFFIRMATION**, 62

child witnesses, competence of, 94-101

## **OBJECTIONS TO QUESTIONS**, 69

#### **ONUS OF PROOF**

civil case, 4

## **OPINIONS OF EXPERT WITNESSES**, 79

## ORDER TO EXCLUDE WITNESSES, 62

communication with excluded witness, 123-4

**PERJURY**, 62, 118, 119-120

## PLEADINGS, REVIEWING ON DISCOVERY, 75

**PRIVILEGE**, 18, 65-8

PROBABILITY, 1, 11-2

### PROFESSIONAL MISCONDUCT

failure to interview witnesses, 116

**RE-EXAMINATION**, 57-8

#### RESEARCH

child witnesses, 106-7

SETTLEMENT, 73

#### **SEXUAL OFFENCES**

evidence of child witnesses, 101-2

## **SOLICITOR-CLIENT PRIVILEGE**, 18

## **STRATEGY**

in cross-examination preparation, 57-8 order of calling witnesses, 43-4

#### **SUGGESTIBILITY**

child witnesses, of, 106-7 language, 119

#### **TAMPERING WITH EVIDENCE**, 117

#### TRANSCRIPT

reviewing for errors, 76 use of in examination for discovery, 72

#### TRIAL PROCEDURE

addressing persons in the courtroom, 62 basic knowledge witness should have, 59 discussion of evidence by witnesses, 61 hearsay —

hearsay —
defined, 64-5
rule against, 64-5
ways to avoid, 73
methods of briefing witnesses re, 60-1
oath or affirmation, 62
objections to questions, 69
order to exclude witnesses, 61
purposes in instructing witness re, 59-60
questions from the judge, 64

## TRIERS OF FACT

assessment of witnesses, 4-5 weighing and assessing evidence, 98

#### **VIDEOTAPE**

child witnesses, use for, 101 interviewing child witnesses, use for, 106-7 on trial procedure and evidence, 60

## WITNESS PREPARATION, 1-8

ethical limits on, 116-9 in context of the case, 6, 11-13 professional responsibility, 106-24 purpose, 7-8 "the tableau", 6, 38

#### WITNESS STATEMENTS, 47-8

#### WITNESSES

anxiety suffered by, 41 approaching in order to interview, 116 assessing performance of, 16-17

```
WITNESSES — continued
assessing performance of — continued
  simulated examinations, 17
character of, 23
child. See CHILD WITNESSES
communication with, 123-4
competency, 93-4
courtesy toward, 14, 122
credibility, 4-6, 16
discussion of evidence by, 61
duty not to inconvenience, 122
early impressions, 17
examination for discover —
  performance at, 73
expert. See EXPERT WITNESSES
grounds for finding unreliable, 3-4
investigating, 19
major —
  fee payable, 40
  preparation of, 44
  when not your client, 40
minor, 39
order of calling, 40
order to exclude, 61
presenting —
  ethical considerations, 119-22
prospective —
  how much to tell, 19
  investigating, 19-20
  legal relationship to, 18
  obligations to, 21
regular contact with, 42
relationship to lawyer, 17-8, 41-2
role —
  answering questions, 60-1
  search for facts, 5-6, 60
religious attire, 61
strengths —
  evidence, 43
  personal traits, 43
weaknesses —
  evidence, 42-3
  personal traits, 42
whether to call, 38
```

## WRITTEN MEMORANDA

examination for discovery, on, 129-31 testifying in court, on, 125-7 trial procedure and evidence, on, 60

## WRITTEN REPORT OF EXPERT WITNESS, 79

as evidence in chief, whether to file, 90-1 consequences of filing, 87 contents, 88-9 letter of instruction, 88 preparation of, 87-90