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INTELLECTUAL PROPERTY DISPUTES: RESOLUTIONS AND REMEDIES

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This publication is a one-stop reference for litigators and counsel, whether intellectual property specialists or not, advising and representing parties in disputes over Intellectual Property. It covers every aspect of a dispute including the many subject areas of Intellectual Property and the various options and remedies available to resolve a dispute from risk management to ADR to all stages of litigation. This release features updates to Chapters 5, Trade-secrets and Confidential Information; 11, Examinations for Discovery; and 17, Injunctions — Interlocutory and Permanent.

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Highlights

- **Chapter 5, Trade-secrets and Confidential Information** — This chapter on Trade-secrets and Confidential Information has been updated for 2026 to include the most recent legal developments in these areas across the Canadian legal landscape. In particular, the chapter includes a number of recent decisions concerning restrictive covenants, such as non-competition clauses. Also featured are some interesting cases in which Courts have applied the test for breach of confidential information and the test for a fiduciary relationship. The chapter goes on to highlight developments in the law regarding remedies, including interlocutory and permanent injunctions which are particularly common in cases concerning confidential information.
- **Chapter 11, Examinations for Discovery** — This chapter provides relevant information for readers at any stage — learning about discovery for the first time, preparing to conduct first oral examinations for discovery, or seeking to refresh memories on key concepts. The chapter provides an overview of the discovery process, including a discussion of the relevant Rules, the Guidelines for Complex Proceedings and Proceedings under the *PM(NOC) Regulations* in the Federal Court, and foundational case law, alongside a detailed discussion of the propriety of specific types of questions that are typically disputed in each of trademark, patent and copyright cases. Documentary production, confidentiality and protective orders, and privilege are addressed, with case law included. Updates to the chapter include discussion of amendments made to the Guidelines, and new cases relating to the implied undertaking rule, and proper questions in copyright cases and when there has been no election between damages and an accounting of profits.
- **Chapter 17, Injunctions — Interlocutory and Permanent** — This update concerns recent case law on the availability of permanent and interlocutory injunctions in intellectual property matters. The Federal Court of Appeal recently rendered an important decision in the patent context confirming that permanent injunctions are rarely denied to a successful patentee if infringement is found. This decision may be considered a course correction as the lower court decision suggested it would have been acceptable to deny an injunction when a patent was close to expiry. In addition, an interesting decision out of Quebec directly compared the common law test for an interlocutory injunction to the Quebec civil law test and highlighted how different outcomes may be possible in different provincial jurisdictions.

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