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THE ART AND SCIENCE OF ADVOCACY John A. Olah Release No. 1, February 2022
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Publisher's Special Release Note 2021

The pages in this work were reissued in August 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the August 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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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 7 (The Art of Preparation); Chapter 10 (Examination-in-Chief: Specific Problems); and Chapter 18 (The closing Address: Assembling the Mosaic).

Highlights

- **The Art of Preparation—Witnesses—Commission Evidence and Letters of Request**—International legal assistance rests on comity of nations. Courts of one jurisdiction will give effect to the laws and decisions of another jurisdiction not as a matter of obligation but rather out of mutual deference and respect. A foreign request, generally, is given full force and effect unless doing so would be contrary to the public policy of the jurisdiction to which the request is directed. This relief is discretionary. It will depend on the facts and circumstances of each case. Comity and the natural desire to assist foreign courts in the pursuit of justice must be balanced against the possible infringement of Canadian sovereignty. The Canadian Court must analyze whether comity requires the court to determine the impact of the proposed order on Canadian sovereignty and whether justice requires that the letter of request be enforced and the evidence requested be produced. *Actava TV, Inc. v. Matvil Corp.*, 2021 ONCA 105, 2021 CarswellOnt 1914, 62 C.P.C. (8th) 1, 457 D.L.R. (4th) 138 (Ont. C.A.), at para. 89, leave to appeal refused 2021 CarswellOnt 10935, 2021 CarswellOnt 10934 (S.C.C.).
- **Examination-in-Chief: Specific Problems—Foundations—Business Records**—We have seen that today that text messaging has become one of the most popular means of communicating. But there are certain evidentiary issues with these communications which you will have to overcome to introduce this type of evidence. Because text messaging is easy to create and manipulate text message that is as to the source of the message and the timing of the messages, the courts will closely scrutinize this type of evidence before admitting the document. It will be important to link the message to a cell phone number and link that cell number to the sender as well as to show that the cell phone was in the possession of the sender at the material time. *R. v. Aslami*, 2021 ONCA 249, 2021 CarswellOnt 5561, 155 O.R. (3d) 401 (Ont. C.A.).

ProView Developments

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