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INTELLECTUAL PROPERTY DISPUTES: RESOLUTIONS AND REMEDIES

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Publisher's Special Release Note 2021

The pages in this work were reissued in November 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 November 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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This publication is a one-stop reference for litigators and counsel advising on Intellectual Property disputes that focuses on remedies available to IP owners and stakeholders at all stages of possible dispute, from risk management, through mediation and ADR, and to all levels of litigation. This release features updates to the case law and commentary in Chapter 2 (Trademarks), and Chapter 11 (Examinations for Discovery).

Highlights

- **§ 2:1.50 Trademark Agent Privilege** — This section provides an overview of solicitor-client privilege and compares it to trademark agent privilege as set out in the *Trademarks Act*. It also highlights issues associated with trademark agent privilege.
§ 11:6.10 Discovery of Documents — Understandably, there is often a focus by parties on oral examination for discovery, but the production of documents is also an important component of the discovery process. Many of the considerations in respect of oral discovery, such as relevance and proportionality, apply equally to the discovery of documents. The Federal Court Rules set out the process for preparing and serving affidavits of documents. This section highlights the numerous issues that may arise in the preparing of such affidavits of documents.
§ 11:6.30 Confidentiality and Protective Orders — The Federal Court has drawn a distinction between Protective Orders (or agreements), which limit the disclosure of confidential information exchanged by parties in litigation and Confidentiality Orders, which address the filing of confidential information with the court pursuant to Rule 151 of the *Federal Court Rules*. This section provides an overview of the applicable test for confidentiality orders, and the factors that the court will consider when determining whether to grant a Confidentiality Order.
§ 11:6.50 Protective Orders — Motions on consent in intellectual property disputes were traditionally granted by the courts, but recently, the availability of such orders was put in question in various instances before the Federal Court. In *Canadian National Railway Company v. BNSF Railway Company*, 2020 FCA 45 (F.C.A.), however, the Federal Court of Appeal confirmed that protective orders remain pertinent and useful to intellectual property litigation. This section outlines the test for obtaining a Protective Order.

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