



Fleury, Comery LLP  
Barristers & Solicitors

## EXAMINATION FOR DISCOVERY

Each side to a law suit has the right to take the discovery deposition of the opposing party. This memorandum is intended as a quick orientation to the process in anticipation of your own attendance for discovery by the opposing party.

### PROCEDURE

The opposing party has served on us an appointment which requires you to appear at a specified time and place and give your testimony, under oath, which testimony is taken down by a court reporter and typed out for future use in the lawsuit.

### RULES OF EVIDENCE

The basic rule of evidence is that questions asked must be relevant to the case. Most of the evidentiary objections available at trial are not available on discovery. I attend with you to ensure that the opposing counsel's questions are relevant, but basically you do the talking in answer to his questions.

### PURPOSE OF DISCOVERY

Opposing counsel wants to find out what our case is, and hopefully obtain admissions which will assist his case. Opposing counsel also takes this opportunity to meet you and gain an impression of your strengths and weaknesses as a witness at trial. It is important that you make a good impression upon opposing counsel and his client and you should appear at discovery dressed as you would expect to dress if you were actually going to court to appear before a jury.

### PREPARATION

If your action is a personal injury action, you should come prepared to describe in a very clear and unambiguous way all of your injuries from head to toe, all of your symptoms, and the length of time which your symptoms and injuries lasted. In addition you should have all the facts and figures with respect to your time lost from work, the amount of wages lost, your Doctors' bills, your hospital bills and all other monetary damages. For this purpose you should review very carefully any medical reports which I have sent you.

### YOUR ANSWERS

The main thing is to listen carefully to the question asked. The opposing counsel is entitled to a full and reasonable answer to each of his questions. He is not entitled to anything more, and extra "explanations", "comments", or "opinions" are to be avoided.

### HOW TO ACT WHILE GIVING EVIDENCE

1. Tell the Truth.
2. Never lose your temper.
3. Speak slowly and clearly.
4. If you don't understand the question, ask that it be explained.

5. Answer all questions directly, giving concise answers to the questions, and STOP TALKING.

6. Stick to the facts and testify to only that which you personally know.

7. Do not magnify your **losses**. Do not exaggerate.

8. Testify only to "basic facts" and do not attempt to give opinions.....unless you have good reason for knowing such matters.

9. If you don't know, admit it. Some witnesses think they should have an answer for every question asked. You cannot know all of the facts and you do yourself a disservice if you attempt to testify to facts with which you are not acquainted. It is **IMPERATIVE** that you be **HONEST** and **STRAIGHTFORWARD** in your testimony.

10. It is not our purpose to give the opposing party any more information than we have to. This is no time to convince the other side of the value of your case. We will do that at another time.

11. Don't guess or estimate time, speed, or distance unless you are sure that the estimate is correct, and then make certain that when you answer that you state that this is your estimate.

12. Many cases are lost because the witness tries to hide something. Tell the whole truth on these depositions.

13. If we object to a question, stop talking and we will instruct you after we object to either answer the question or not to answer it.

14. After the depositions are over, do not discuss anything in the presence of the opposing lawyers or the reporter.

15. Perhaps the most important aspect of your lawsuit is YOU and the appearance you make. If you give the appearance of earnestness, fairness, and honesty, and if in giving your discovery deposition you keep in mind the suggestions herein made, you will be taking a great stride toward successful and satisfactory completion of the litigation in which you are involved. **WHAT YOU DO** at the deposition can help you or hurt you depending upon your attitude, truthfulness, and appearance.

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**Edward R. Fleury, Q.C. ♦ William F. Comery, Q.C. (1930-2008) ♦ Gregory E. McConnell, M.A., LL.B.  
Stephen P. Fleury, B.Sc., LL.B. ♦ Peter J. Sialtsis, B.B.A., B.A., LL.B. ♦ Daniel S. Savoie, Hon. B.A., LL.B.**

215 Morrish Road, Suite 104, Scarborough, Ontario, M1C 1E9  
Telephone (416) 282-5754 Telecopier (416) 282-9906 E-mail [thefirm@fleurcom.on.ca](mailto:thefirm@fleurcom.on.ca)