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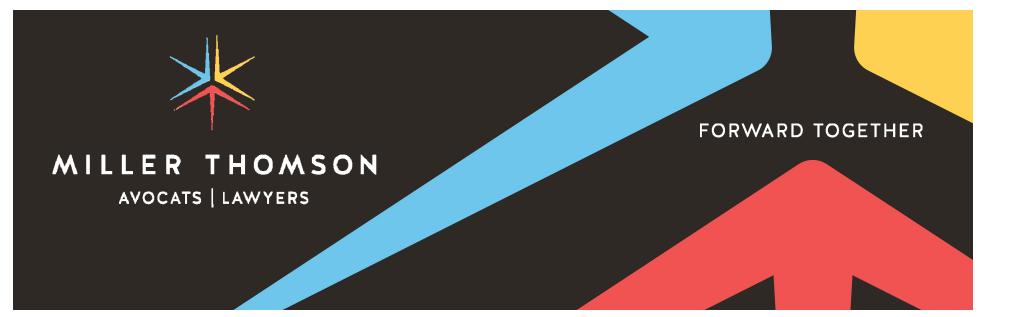
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Coffee Talk A Health Industry Seminar Series





Have You Been Called as a Witness? The Good, the Bad and the Expert Witness

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OVERVIEW

- 1. Types of Proceedings
- 2. Witnesses Hospital is Not a Party
 - Types of Witnesses (Expert vs. Fact)
 - Types of Examinations (Chief vs. Cross)
- 3. Witnesses Hospital is a Party
 - Examination for Discovery
- 4. Managing Risk



1. TYPES OF PROCEEDINGS

- 1. Civil proceeding
- 2. Criminal proceeding
- 3. Administrative tribunal



Civil Proceeding

- 1. Dispute between private parties where plaintiff seeks monetary award
- 2. Many causes of action:
 - Negligence (malpractice)
 - Contract dispute
 - Wrongful dismissal
- 3. Standard of proof is "balance of probabilities"



Criminal Proceeding

- 1. Action brought on behalf of the Queen/the State in the public interest
- 2. Relates only to crimes under the Criminal Code
- 3. No monetary awards
- 4. Standard of proof is "beyond a reasonable doubt"



Administrative Tribunals

- 1. Established and granted regulatory powers by specific legislation
- 2. Panel of "lay people" with specialized expertise
- 3. Quasi-judicial



Administrative Tribunals -Examples

- 1. Professional Disciplinary Committees
- 2. Consent and Capacity Board
- 3. Human Rights Tribunal of Ontario
- 4. Coroner's Inquest
- 5. Health Professions Appeal & Review Board
- 6. Employment Boards



2. WITNESSES – HOSPITAL IS NOT A PARTY

 The Hospital is not named as a defendant, but its staff or employees may still be called as witnesses



2(a) Types of Witnesses

- 1. Fact witness
- 2. Expert witness



Fact Witness

- 1. Testify with regards to relevant factual information, not opinions
- 2. Anyone can be compelled to act as a fact witness



Expert Witness

- Individuals with specialized knowledge of a particular topic, beyond that of a lay person
- 2. Testify for their opinion
- 3. Must be impartial



2(b) Types of Examinations

- 1. Examination-in-Chief
- 2. Cross-Examination



Examining a Fact Witness

- 1. Examination-in-Chief
 - Explain the factual background and the specific knowledge that the witness has
- 2. Cross-Examination
 - Attempt to discredit the witness or find gaps in their knowledge of the facts



Examining an Expert Witness

- 1. Examination-in-Chief
 - Qualify the witness as an expert
 - Explain expert opinions or conclusions and the basis for them
- 2. Cross-Examination
 - Discredit the witness' qualification as an expert
 - Discredit the witness' conclusions



3 WITNESSES – HOSPITAL IS A PARTY

1. The Hospital or its employee(s) may be named as a defendant in an action



Examination for Discovery

- 1. Occurs before trial
- 2. All named parties must be examined under oath
- 3. Transcript becomes evidence at trial
- 4. Purpose:
 - To learn all the facts (no surprises)
 - To secure admissions



Examination for Discovery

- 1. Hospital as a defendant
 - Corporate representative must attend
- 2. Nurse as a defendant
 - Manage risk by ensuring comprehensive charting



4. MANAGING RISK

- Have a process in place for employees to notify Hospital if they are summonsed or subpoenaed to be a fact witness or approached to be an expert witness
- 2. Ensure witnesses are properly prepared
- 3. Have policies and procedures to ensure comprehensive charting, documenting and record keeping

QUESTIONS?

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Thank you!

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