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ISBN-10: 1-55093-734-0  
ISBN-13: 978-1-55093-734-3

# Briefing Your Witness for Questioning

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Legal Education  
Society of Alberta

For: *Questioning*  
Edmonton, Alberta – November 6, 2019  
Calgary, Alberta – November 12, 2019

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## INTRODUCTION

In his book, *The Art of Discovery*, Robert White described a client's reaction to the Questioning (discovery) process:

“A particularly bewildering aspect of litigation for most clients is discovery. That should not surprise any lawyer. We know that most people have learned what little they know about litigation from motion picture and television dramas. In these, ambushes, surprise attacks, concealed information and other devious devices are the glorified norm. No one should blame people for concluding that there must be a substantial element of truth to the impressions they have gained because, after all, they have no reason to suppose otherwise. When a client, whether a private individual or the vice-president of a large corporation, who has no knowledge other than folklore, then attends at his counsel's office and is told that what he must do is show all his documents to the other side, there is often a major crisis of confidence.”

The Art of Discovery, Robert B. White  
1990 Canada Law Book, Page 61

Mr. White attributed a client's misunderstanding and mistrust of the Questioning process to two factors:

- (a) The client does not want to disclose his/her case to the opposing side preferring instead, ambush and surprise; and,
- (b) The client may not perceive that the law requires Questioning and thus suspects you may be a “push-over” for agreeing to participate in the Questioning.

This paper will review ways that lawyers can educate their clients on the Questioning process to address any misunderstandings and mistrust. The paper will also review steps that can be taken to make your client a better witness at Questioning.

## OBJECTIVES

As noted previously, the briefing process has two objectives: to educate your client on the Questioning process and to guide your client on ways to becoming a better witness.

### Fear of the Unknown

As noted earlier in the quote from Robert White's *The Art of Discovery*, most witnesses will find the prospects of Questioning bewildering and stressful. The first objective of proper preparation for your witness is to alleviate the fear of the unknown. You will need to educate your client on what Questioning is and what it is not. You will need to ensure your client understands that he/she will not