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# Conducting Questioning for Discovery

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**CONDUCTING QUESTIONING FOR DISCOVERY**

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In 2014 the Supreme Court of Canada observed that the full trial has become largely illusory because ordinary Canadians cannot afford to access the adjudication of civil disputes. While the Court recognized the importance of a fair and just process to adjudicate such disputes, it observed that any fair and just process would also be illusory unless it was proportionate, timely and affordable.<sup>1</sup>

The tension between the truth-seeking function of the civil justice system and accessibility to that system is relevant to all pre-trial processes, including questioning, and the following comments on preparing for and conducting questioning should be viewed with that in mind. It is counsel's obligation to conduct an effective and efficient questioning while ensuring that you cover all of the necessary elements of the case.

The purpose of this discussion is to provide you with a very basic and high-level overview of some of the considerations to keep in mind when preparing for and conducting a questioning for discovery.<sup>2</sup>

### **REMINDE YOURSELF WHY YOU ARE DOING THIS**

A useful starting point any time you are preparing for questioning for discovery is to remind yourself of the basic purposes of questioning. Doing so enables you to consider whether any or all of the purposes are applicable to the type of case you are dealing with and the witness or witnesses you will be questioning,

Lawyers asked about the purposes of questioning might well respond with some or all of these purposes:

1. To allow you the opportunity to learn the case to be met and to learn how the other party will approach your case;
2. To obtain admissions with respect to your case or defence;
3. To narrow the issues to be dealt with at trial;
4. To commit a witness to a particular story or version of events;

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<sup>1</sup> *Hryniak v Mauldin*, 2014 SCC 7.

<sup>2</sup> References for conducting questioning that you may wish to consult and which were consulted for the purpose of this discussion include Jean E. Cote, *Systematic Advocacy: Planning to Win* (Edmonton: Juriliber, 2017); Robert B. White, *The Art of Discovery*, (Canada Law Book 1990) and Lee Stuesser, *An Advocacy Primer* 4<sup>th</sup> ed (Toronto Carswell, 2015).