Civil Advocacy Series: Getting at the Facts

Red Deer, Alberta

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Anton Piller Orders

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ANTON PILLER ORDERS

Practical Tips When Seeking an Anton Piller Order ................................................................. 3

PowerPoint – Getting at the Facts – What are the REAL Facts?
ANTON PILLER ORDERS

Anton Piller orders may be used when you have grounds to believe someone will destroy or alter evidence. They are obtained on an ex parte basis.


Failure to do so can result in the Anton Piller order being set aside.

The most recent case to thoroughly canvas Anton Piller orders is the Tiger Calcium decision.


The appeal in this case arose from the appeal of approximately six ex parte Anton Piller orders and a number of ex parte mareva injunctions and attachment orders. The orders were granted in the context of litigation initiated by a group of shareholders of Tiger Calcium against other shareholders of Tiger Calcium and third parties for breach of fiduciary obligations, interference with contractual relations and misuse of confidential information and other. A number of helpful points may be pulled from this decision:

- When seeking an Anton Piller order, restraint is required and without notice orders should not be approached on the basis that unreasonable terms can always be modified after the fact on a review application (para 49). In other words, keep the relief you are asking for limited to what is actually necessary.

- A party seeking an Anton Piller order should provide a bench brief in advance to the justice so that there is an opportunity to digest the material. This brief and oral submissions should outline the applicable legal tests, fairly highlight the relevant evidence, address possible defences, explain why the test is satisfied in request of each of the parties against whom the order is sought and articulate why the relief claimed is necessary and appropriate (para 50).

- A set aside application following an Anton Piller order should be done in accordance with Rule 9.15(1)(a), which provides that any type of set-aside, variance or discharge of a judgment or order that was made without notice must be decided by the Judge or Master who granted the original judgment or order, unless the Court orders otherwise.