

# WEAPONS IN CHAMBERS

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Dos and Don'ts of Chambers

Feedback from a Master

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# AM I IN THE RIGHT COURTROOM?

- Notice to the Profession and Public
  - December 8, 2016
    - 59 types of applications listed
    - Also under *Builders' Lien Act, Civil Enforcement Act, Condominium Property Act, Law of Property Act, Maintenance Enforcement Act, Land Titles Act and Residential Tenancies Act* (excluding appeals from RTDRS)

# DO NOT BRING TO THE MASTER

- Anything excepted pursuant to s 9 of the *Court of Queen's Bench Act*
- Anything with respect to a Justice - their list, their orders, trials etc.

# DESK APPLICATIONS

- See Rule 6.9(1)(c) and Civil Practice Note
- No submissions, documents only (if some explanation is necessary, bring to Chambers)
- Typical applications: service related and consent orders

# ELECTRONIC APPLICATIONS

## Rule 6.10

- In discretion of the Court, even if parties agree
- Processes for Ft. McMurray, Grande Prairie, Peace River, Wetaskiwin and St. Paul

# APPEARING IN MORNING CHAMBERS

- Without Notice at 9:30 am
- List at 10:00 am, usually 2 Masters splitting the list
- Consequences of not being on time (and checking in)
- Decorum
  - Attire
  - Cell phones
  - Conversations in gallery
  - Address the Court – not your opponent

# WITHOUT NOTICE APPLICATIONS

## Rule 6.4

- Exception to general rule that service is required
- Note disclosure obligation (everything relevant)
- Undertake to file affidavit: Rule 6.11(2)
- Consent Judgments or Orders (advise that all interested parties have consented or explain why not)
- Advise if this is to be commencement document

# TEMPLATES AND FORMS

- Visit Court of Queen's Bench website
- Advise Court: using template and any variation is underlined; or why not using template
- Schedule A to Rules of Court

BUT DO NOT BE A SLAVE TO THE TEMPLATES AND FORMS



# A LESSON ON USE OF BOILERPLATE AND OBLIGATION TO DISCLOSE

- *Canadian Imperial Bank of Commerce v Strihavka*, 2019 ABQB 835

# DOS AND DON'TS ON CONTESTED APPLICATION

- General rule – Master has not read anything
- Be mindful of 20 minute rule – speak to opposing counsel BEFORE you get to court
- NO surprise applications for adjournments (be mindful of Rules 6.6)
- Avoid the “blame game”
- Bring extras of all relevant documents (as it may take 2-3 weeks for a document to get on the Court file)
- Bring relevant rule, legislation and cases (enough for court and other parties); properly highlighted
- Exchange cases before Court

(cont'd)

- Concede that which you should (it does not help if you argue clearly losing arguments)
- Do not get caught up in squabbles; do not identify with your client. Do not use intemperate language or pejorative language
- When can you interrupt opposing counsel?
- Use of rebuttal
- No sur-rebuttal without leave (no “ping pong”)
- Advise Court if any submissions are not supported by sworn evidence
- Remember Rule 6.11 and 5 day notice

# SPECIAL APPLICATIONS

## Note Filing Deadlines in Edmonton under Pilot Project

- Date booked is “triggering date”
- Applicant must file application, brief and authorities within 2 weeks of triggering date
- Respondent must file brief and authorities within 4 weeks of triggering date.
- Rebuttal Briefs
- Assume the Master has read Briefs
- Do not repeat your own Brief, but address arguments in opponent’s brief (get to the weakness of your case)
- Provide entire case materials if it is on point or factually analogous; otherwise just highlight principles.

# COSTS

- Be prepared to speak to costs win, lose or draw

# DEALING WITH SELF REPRESENTED LITIGANTS

- Discuss case outside the courtroom
- Obligation of complete disclosure

# THINGS NOT TO BE TAKEN FOR GRANTED

- Test on Rule 3.26 application (extend time for service) and need for affidavit
- Test on Rule 3.45 application to serve Third Party after six months
- Note Rule 3.65 requirement that Court must specify a time for filing and service of amended pleading (forgotten on consent orders)
- Serving by publishing in newspaper is last resort and must provide evidence that respondent/defendant is in circulation area.
- Order deeming good service, consider effective date of service allowing time to defend

QUESTIONS?