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Motion for Refusing to Answer Questions at Examinations for Discovery: Factors to Consider

In civil litigation, party litigants must proceed to the question-answer process of an Examination for Discovery, during which time many questions will be asked of a party.

The issue of whether you "must" or "have to" answer a specific question very frequently arises. Specifically, plaintiffs often wonder whether a series of questions improperly inquires about personal / intimate matters or whether the questions are off-base from the subject matter of the lawsuit. For example, many of my clients initially wonder "why are they asking me about that, aren't we talking about how they caused this car accident?".

For plaintiff solicitors, the way to deal with these problems is to properly prepare your client for the Discovery. My practice is to spend significant time with my clients, weeks before the Discovery, preparing them for the Discovery.

A similar issue to keep in mind for plaintiffs is [which documents are to be produced prior to your Examination for Discovery](#), in keeping with your obligations under the Rules of Civil Procedure.

A Recent Illustration of This Issue

In *Donaldson Travel v. Murphy et al, 2014 ONSC 5, 2014 ONSC 5 (CanLII)*, the defendant sought primarily two refusals to be answered. This was a case of a former employee, a travel agent, resigning and then working for a competitor travel agency, with allegations that the former employee was using client contact lists and proprietary / confidential information from the former employer for her own benefit and the benefit of her new employer.

The first was to have the defendant produce parts of the computer system used by the new employer (who was also a defendant). The Court ruled that this information was properly under the control of the new employer and not the employee, so that the employee's refusal was properly given.



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The second was a series of questions asking the former employee to give her interpretation of specific, simple words in her employment contract with the plaintiff. The Court ruled that these questions were not relevant, given that the Court (and not the employee) would ultimately interpret the contract. Costs of the motion were awarded to the former employee.

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