

Rule 5.3 - 2014: No. 2 Summer *Benchers' Bulletin*

Lawyers' contacts with witnesses or potential witnesses are governed by rule 5.3 of the BC Code, which provides:

5.3 Subject to the rules on communication with a represented party set out in rules 7.2-4 to 7.2-8, a lawyer may seek information from any potential witness, whether under subpoena or not, but the lawyer must disclose the lawyer's interest and take care not to subvert or suppress any evidence or procure the witness to stay out of the way.

In the opinion of the Ethics Committee a lawyer must notify an opposing party's counsel when the lawyer is proposing to contact an opposing party's expert. Such notification promotes discussion between counsel about the permissible scope of such a contact at law, including the applicability of solicitor-client privilege. Failing agreement between counsel, either counsel may determine to take formal steps to resolve any issues.

Formal examination of an opposing party's expert witness is governed by the Supreme Court Civil Rules: see especially Rules 7-5 (2) and 11-7.