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CHOATE ON DISCOVERY, SECOND EDITION Cudmore Release No. 10, November 2025
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This book provides practitioners with both a procedural and analytical framework for the discovery process, covering such areas as oral examination, documentary discovery and medical examinations, as well as less commonly used discovery tools such as interrogatories and inspection of property. Features include the discovery rules for all Canadian common law jurisdictions, Table of Concordance linking the discovery rules from all jurisdictions to facilitate use of case law, thematic organization so that knowledge of discovery rule number is not required by researchers, and case law summaries that are clear and concise, covering the meaningful judgments and orders that interpret the Discovery rules.

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What's New in this Update:

This release, which updates the case law in Chapter 2 (Examination for Discovery), Chapter 3 (Discovery of Documents), and Chapter 5 (Physical Examinations) features 26 new case digests covering topics related to the discovery process.

Case Law Highlights:

- **Chapter 2—Examination for Discovery—Who May Be Examined—Persons Who Are Not Parties—Bankrupt—** Bankrupt worked for two years before filing for bankruptcy and received employment insurance for past two years. Bankrupt's former spouse was employed by bankrupt's former employer as project accountant with salary of \$300,000. Creditors' theory of case was that financial affairs of bankrupt and his former spouse were intertwined, such that salary of former spouse might represent funds earned by bankrupt. Trustee brought motion to compel representative from bankrupt's former employer and spouse's current employer to be examined respecting bankrupt. Motion dismissed. Creditors failed to establish former employer reasonably had knowledge of bankrupt's affairs or his dealings or property. Record did not reasonably support theory that income paid by employer to bankrupt's former spouse represented income earned by bankrupt: *Re Naghshbandi*, 2024 CarswellOnt 7819 2024 ONSC 2975 (Ont. S.C.J.).
- **Chapter 2—Examination for Discovery—The Relevancy of Questions on the Examination—Range of Relevancy Broader than at Trial—** Action arose following car accident. Defendant brought motion to compel plaintiff to answer two refused questions from examination for discovery. Defendant sought: (1) particulars of the statement plaintiff provided to insurance company following the accident, and (2) to advise when plaintiff gave this statement. Motion dismissed. Transcript did not reflect rationale for the refusals. Defendant asked that these questions be answered, as any statement would contain information about the accident when plaintiff's memory was fresh. Plaintiff produced the complete accident benefits file received from his insurer in connection with this action, and no statement from plaintiff was included in the file. Plaintiff's counsel did not argue that the statement or its contents were privileged but relied on jurisprudence for the proposition that the statement and its contents need not to be disclosed as defendant was able to obtain the information through other means, i.e., asking questions of plaintiff during the examination. There was nothing in defendant's materials to suggest plaintiff had a memory issue. In court's view, the

questions were being asked for the sole purpose of finding out what plaintiff told his insurer, not for the purpose of eliciting information relevant to material issues. Questions need not be answered: *Campbell v. Patel*, 2024 CarswellOnt 7822, 2024 ONSC 2996 (Ont. S.C.J.).