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CHOATE ON DISCOVERY, SECOND EDITION

Cudmore

Release No. 2, March 2024

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 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 4 (Interrogatories) features 36 new case digests covering topics related to the discovery process.

Case Law Highlights

- **Chapter 2 — Examination for Discovery — Remedies and Objections to Answering** — Inventors assigned their patent rights to plaintiffs and parties were involved in litigation with respect to patents. Defendants examined inventors under Rule 237(4) of *Federal Court Rules*. Plaintiffs' solicitors of record attended examinations of inventors and objected to questions. Inventors were all located outside court's jurisdiction and met with plaintiffs' solicitors to prepare for their examination for discovery. Defendants brought motion to compel answers to questions refused. Motion partly granted. Some questions were required to be answered while others were not. Plaintiffs were requested to use reasonable efforts to contact inventors to prevail upon them to answer questions required. Ability to object during examination for discovery was provided to "person" and was to be interpreted contextually to include "party" even when that party was not being examined. It was permissible and contemplated by Rules that plaintiffs' solicitor could attend examination for discovery of non-party inventor and make objections on record even if solicitor did not act for non-party witness being examined. Party's solicitor attending examination for discovery could object to question on grounds set out in Rule 242 and objection could be made on behalf of party rather than of witness. Court could not compel plaintiffs to provide answers sought from non-party and non-corporate representative inventor: *Boehringer Ingelheim (Canada) Ltd. v. Sandoz Canada Inc.*, 2023 CarswellNat 3196, 2023 FC 1175.
- **Chapter 3 — Discovery of Documents — Grounds for Resisting Production** — Plaintiff suffered fall on defendant's premises and commenced tort action. Defendant claimed it had CCTV footage of incident but was withholding it for impeaching witness. Plaintiff brought motion to disclose footage. Motion dismissed. Defendant had right to withhold video evidence from production and not list it in affidavit disclosing documents under Rule 94.09 of *Nova Scotia Civil Procedure Rules* for sole purpose of impeachment, subject to restrictions. Defendant conceded that footage was document defined by Rule 14.02, that it constituted relevant evidence, and that it was not subject to claim for litigation privilege:

Grover v. MacQuarrie's Drugs Limited, 2023 CarswellNS 890, 2023 NSSC 289.

- **Chapter 4 — Interrogatories — Disadvantages of Interrogatories** — Self-represented plaintiff, who was journalist and photographer, commenced action alleging copyright infringement for use of photographs against number of defendants. Plaintiff brought motion seeking leave to conduct oral examinations of defendant A and D, who was representative of defendant TC. Motion dismissed. Plaintiff appealed. Appeal dismissed. By electing to serve A and D with written examination questions, plaintiff was not entitled to oral examination. If there were questions that A and D did not answer properly or refused to answer, plaintiff should bring motion compel answers to those questions: *Johnson v. Canadian Tennis Association*, 2023 CarswellNat 2171, 2023 CarswellNat 2172.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages