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<p>CHOATE ON DISCOVERY, SECOND EDITION Cudmore Release No. 3, April 2024</p>

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 5 (Physical Examinations) features 32 new case digests covering topics related to the discovery process.

Case Law Highlights

- **Chapter 2: Examination for Discovery — Costs —** Employee commenced action for wrongful dismissal. Employee sought order requiring employer representative to give better answers to undertakings, answer questions refused, and re-attend examination for discovery at employer's expense. Employer brought cross-motion seeking the same relief of employee. Motions partially granted. Both deponents were to re-attend to answer follow-up questions, with costs of attendances reserved for trial judge. Concerning costs of motions, court strongly urged parties to confer and reduce the issues in dispute. While employee produced numerous letters evidencing his efforts to make further disclosure, employer did not. Employer deserved to pay significant costs. Employee awarded net partial indemnity costs for both motions, namely \$7,000, payable in 30 days: *Marwan Dalle v. Cisco Systems Canada Inc.*, 2023 CarswellOnt 16482, 2023 ONSC 6097.
- **Chapter 3: Discovery of Documents — Grounds for Resisting Production — Waiver of Privilege —** Plaintiff sought production of redacted/non-disclosed portions of an email produced by defendants, which in its original form contained a document attached which defendants claim is protected by solicitor-client privilege. The parties failed to describe the document and grounds for privilege as required of an affidavit of documents. Defendants ordered to immediately provide plaintiff with a description of the non-disclosed attachment allowing plaintiff to argue whether there is any privilege and whether it has been waived. Waiver of privilege is implied where the communication is "legitimately brought into issue in an action". Implied waiver is limited to situations where the relevance of the privileged evidence is high. The court must balance the principles of fairness and consistency against the importance of solicitor-client privilege: *Tar Heel Investments Inc. v. H.L. Staebler Ltd. et al.*, 2021 ONSC 6725, 2023 CarswellOnt 18376.

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