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CHOATE ON DISCOVERY, SECOND EDITION

Cudmore

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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 updates the case law in Chapter 2 (Examination for Discovery), and Chapter 3 (Discovery of Documents).

Case Law Highlights:

- **Chapter 2—Examination for Discovery—Who May Be Examined—**Court was forced to deal with threshold issue before addressing merits of the applications. Can beneficiaries of an estate examine or otherwise compel evidence from a co-executor where evidence on the points in issue has already been put forward by the other co-executor? Generally, decisions of executors must be unanimous. Beneficiaries failed to provide any cases illustrating a right to examine other executors (or trustees) where one executor (or trustee) had provided evidence on behalf of an estate (or trust). Beneficiaries further failed to explain how any shortfall disclosure or production could not be explored and remedied by cross-examining the co-executor who had already submitted evidence. Application dismissed; co-executor was not directed to submit to questioning or provide affidavit on any of the three upcoming applications: *Widney Estate (Re)*, 2025 CarswellAlta 1165, 2025 ABKB 311 (Alta. K.B.).
- **Chapter 3—Discovery of Documents—Time for Production—**Plaintiff applied for production of documents under Rules 5-11, 5-12, and 5-14 of the *King's Bench Rules*. Defendants objected to production on the basis that they were referenced in his pleadings, and he had not yet filed an affidavit of documents. Defendant argued that application was premature, tantamount to a fishing expedition, and contrary to Rule 13-8(1)(c), which states that every pleading must contain only a summary statement of the material facts which the party pleading relies on for their claim or defence, but not the evidence by which the facts are to be proved. While court agreed that many of the documents requested would likely come out later in the litigation (i.e., when pleadings are closed, after affidavits of documents are exchanged and questionings are completed), to order production of the documents at this early stage was inappropriate and contrary to the intentions of the Rules: *Q Group Restaurants Corp. v. Pineda*, 2025 CarswellSask 432, 2025 SKKB 174 (Sask. K.B.).