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Cudmore
Choate on Discovery,
Second Edition

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.

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 33 new case digests covering topics related to the discovery process.

Case Law Highlights

- **Chapter 2 — Examination for Discovery — Place of Examination — Outside the Jurisdiction —**
The plaintiff entered Canada on a visitor's visa. The visa expired and the plaintiff applied for a temporary residence visa. The plaintiff did not have a support system in Canada, struggled to

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communicate and had no material income and few assets. The plaintiff wanted to move back to Lithuania where her husband of 38 years and her two adult children lived. The plaintiff brought a motion for, among other things, an order that she be examined for discovery by video conference from Lithuania. The motion was granted. The defendant was unable to put forth evidence that examination for discovery of the plaintiff by video would be unjust or inconvenient: *Stankeviciene v. Jonusaitis*, 2018 CarswellOnt 20587, 2018 ONSC 7275 (Ont. S.C.J.).

- **Chapter 3 — Discovery of Documents — Who May Be Compelled to Produce — Others, Not Party to the Action** — The plaintiffs commenced a class action against a group of car companies for installing deceptive emissions measurement devices in diesel engine cars. The proceeding settled and the plaintiffs brought a class action against the engineering company which was the alleged co-conspirator. The plaintiffs sought pre-discovery production of three million documents from the group of car companies. The motion was dismissed. Under Rule 30.10(1) of the Ontario Rules of Civil Procedure, there was no merit to the plaintiff's motion. While it was accepted that some of the requested documents would undoubtedly be relevant and material, most had nothing to do with the engineering company's role in the alleged conspiracy. After having already seen the requested documents, class counsel failed to refine their request for relevant documents to the material issue in the present action and failed to make any attempt to obtain the documents by other means. At this point, there was no reason to evade the Rules that required the plaintiffs to undertake discovery of the parties before intruding on privacy and other rights of the non-parties: *Quenneville v. Robert Bosch GmbH*, 2018 CarswellOnt 19074, 2018 ONSC 6775 (Ont. S.C.J.).
- **Chapter 5 — Physical Examinations — Second Examinations** — In a motor vehicle accidents case, the pre-trial was scheduled for December 22, 2018 and the trial was set for April 8, 2019. In July and August 2018, the plaintiff served expert reports, including a report from the psychologist. The defendants arranged for an examination of the plaintiff by a psychiatrist but the plaintiff refused. The defendants sought leave to bring a motion and to compel the plaintiff to attend the assessment. Leave to bring a motion and motion was granted. The injuries allegedly suffered by the plaintiff included anxiety and depression. The plaintiff received psychological and rehabilitative treatments from a psychologist for a number of years following the accidents and the plaintiff was prescribed narcotic analgesics and anti-depressants. The examination requested was an appropriate answer to the psychologist's report served by the plaintiff. The parties were free to seek an alternate date for the pre-trial: *Ismail v. Ismail et al.*, 2018 CarswellOnt 18151, 2018 ONSC 6489 (Ont. S.C.J.).