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CHOATE ON DISCOVERY, SECOND EDITION

Cudmore

Release No. 9, October 2026

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 3 (Discovery of Documents), and Chapter 4 (Interrogatories).

Case Law Highlights:

- **Chapter 3—Discovery Of Documents—Who may be Compelled to Produce—Others, Not Party to the Action—**Case involved defamation and harassment against Andrea Petzold and John Doe. Judgment was granted against Andrea Petzold for $70,000. Plaintiff looked to continue action against yet to be named John Doe. Court had granted order regarding internet providers and others that might assist in identifying John Doe. Bluesky, PBLLC was ordered to release copies of direct messages which it held under "@theobius.bsky.social". Bluesky refused. Plaintiff applied under Rule 5.13 of the Alberta Rules of Court. It was difficult to reconcile Bluesky operating in various jurisdictions with an expectation that only its home privacy laws should govern all interactions in all places. Application granted. Court reminded that material produced was subject to implied undertaking: *Terrigno v. Petzold*, 2025 CarswellAlta 492, 2025 ABKB 127 (Alta. K.B.).
- **Chapter 3—Discovery of Documents—Privileged Matter—Introduction—**Plaintiff was in two car accidents. He settled one action. Defendants in other action sought settlement documents with respect to first, settled action. Plaintiff resisted on grounds of settlement privileged. Application allowed. Application reversed on appeal – subject documents were not to be produced until a determination of indivisibility had been determined at trial. Settlement documents lacked requirements under Rule 5.2 of the Alberta Rules of Court and considering the lack of an applicable exemption that outweighed the public interest in encouraging settlement at this stage, the settlement documents remained privileged: *Mo'Allim v. Gallant*, 2025 CarswellAlta 932, 2025 ABKB 225 (Alta. K.B.), affirmed 2026 CarswellAlta 1523, 2026 ABCA 201 (Alta. C.A.).