

CANADIAN DISCOVERY RULES

- Definition of Document
- Affidavit/List of Records/Documents
- Deeming provisions regarding authenticity, sent, received, etc., if any.
- Other provisions of possible interest

British Columbia – Rules of Court

- **“document”** has an extended meaning and includes a photograph, film, recording of sound, any record of a permanent or semi-permanent character and any information recorded or stored by means of any device.
- A party to an action may deliver to any other party a demand for discovery of the documents which are or have been in the party's possession or control relating to any matter in question in the action, and the other party shall comply with the demand within 21 days by delivering a list of the documents that are or have been in the party's possession or control relating to every matter in question in the action.
- The court may order a party to deliver an affidavit verifying a list of documents.
- A party who has delivered a list of documents to any other party shall allow the other party to inspect and copy the listed documents that are within the delivering party's possession or control, except those which the delivering party objects to producing, and, when the delivering party delivers the list, that party shall also deliver a notice stating a place where the documents may be inspected and copied during normal business hours.
- At any time a party may deliver a notice to any other party, in whose pleadings or affidavits reference is made to a document, requiring the other party to produce that document and, within 2 days, the other party shall deliver a notice stating a place where the document may be inspected and copied during normal business hours or stating that he or she objects to producing the document and the grounds of the objection.
- Where, after a list of documents has been delivered under this rule, it comes to the attention of the party delivering it that the list was inaccurate or incomplete, or a document relating to a matter in question in the action comes into the party's possession or control, the party shall deliver forthwith a supplementary list specifying the inaccuracy or document.

Alberta – Rules of Court

- **“Record”** includes the physical representation or record of any information, data or other thing that is or is capable of being represented or reproduced visually or by sound, or both.
- General Rule – party to file affidavit of records within 90 days. A party is not entitled to conduct an examination for discovery until that party has filed and served an affidavit of records, or is otherwise permitted to commence examination by order of the Court.

- In respect of those records to which there is no objection to production, there must be endorsed on the affidavit of records a notice stating the time when the record may be inspected, being no later than 10 days after the day the affidavit is served, and the place at which the record may be inspected, which, unless otherwise ordered, is to be the address for service of the party making the affidavit.
- Deemed admissions: A party on whose behalf an affidavit of records is made, and a party on whom an affidavit of records is served, are both deemed to admit that the records specified or referred to in the affidavit are authentic, and if a copy of a letter, memorandum or other message purports or appears to have been sent, the original was sent and received by the addressee. The recipient of an affidavit of records is not deemed to make the admission if, within 30 days of receipt of the affidavit, the recipient serves notice on the party serving the affidavit that the fact in question is disputed and that it must be proven at trial.
- A party is entitled to inspect any record referred to in the pleadings, particulars or affidavits of any other party and in that party's possession, custody or power, by making a demand for production, and to take copies of the record when so produced.
- The party upon whom the demand for production is made must, within 3 days of receiving it, deliver to the party making the demand a notice stating a reasonable time, within 3 days from the delivery of that notice, at which the records may be inspected at their lawyer's office, or, in the case of records in constant use, at the place they are usually kept.
- A party omitting to mention any record in their affidavit of records, or a party not producing any record in compliance with a valid demand made under the rules, may not afterwards use the record in evidence, unless the Court is satisfied that the party had sufficient cause for the omission or non-production.
- If, after a party has filed an affidavit of records, the party discovers, creates or comes into possession, custody or power of a relevant and material record not previously disclosed, the party must immediately give notice of it to all other parties, and must, on request, supply the other parties with a copy of it, but in any case the Court may permit the record to be given in evidence upon such terms as to costs or otherwise as may be just.

Saskatchewan – Rules of Court

- **“document”** includes information recorded or stored by means of any device and includes an audio recording, video recording, computer disc, film, photograph, chart, graph, map, plan, survey, book of account or machine readable information.
- Parties to an action shall, within ten days after a statement of defence has been filed, and without notice, serve on each opposite party a statement as to the documents which are or have been in his possession or power relating to any matter in question in the action.
- A statement as to documents shall have endorsed thereon a notice stating the time when, (which shall not be later than ten days from the date of serving such statement), and the place where (which, unless otherwise ordered, shall be the address for service of the party making the statement), such documents, or such as he does not object to produce, may be inspected provided that bank books or other books of account, or books in constant use for the purpose of any trade or business, may be produced at their usual place of custody.

- A statement as to documents shall not be filed with the court unless otherwise ordered.
- Every party to a cause or matter shall be entitled at any time, by notice in writing, to give notice to any other party in whose pleadings, affidavits, or statement as to documents reference is made to any document, to produce such document for the inspection of the party giving such notice or of his solicitor and to permit him or them to take copies thereof.
- The party to whom notice under subrule (1) to produce documents is given shall, within two days after service of that notice, deliver to the party giving the notice a Notice to Inspect Documents stating a time, within three days from the delivery thereof, at which the documents or any of them that he or she does not object to produce may be inspected at his or her address for service. Bankers' books or other books of account or books in constant use for the purpose of any trade or business may be produced at their usual place of custody.
- On assessment of costs no allowance is to be made for any notice to produce or for inspection unless it is shown to the assessment officer that there was good and sufficient reason for giving that notice or making that inspection.
- If any party makes discovery of any document under any of the provisions herein contained he shall not thereby be deemed to admit the relevancy or admissibility of such document.

Manitoba – Court of Queen's Bench Rules

- **“document”** includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means of any device;
- Every relevant document in an action that is or has been in the possession, control or power of a party to the action shall be disclosed as provided in this Rule, whether or not privilege is claimed in respect of the document. Every relevant document that is not privileged and that is in the possession, control or power of a party to an action shall be produced for inspection if requested, as provided in this Rule.
- The disclosure or production of a document for inspection shall not be taken as an admission of its admissibility.
- A party to an action shall, within 10 days after the close of pleadings, serve on every other party an affidavit of documents disclosing to the full extent of the party's knowledge, information and belief all relevant documents that are or have been in the party's possession, control or power; and the affidavit shall sufficiently identify the documents.
- Where the party is represented by a lawyer, the lawyer shall certify on the affidavit that he or she has explained to the deponent the necessity of making full disclosure of all relevant documents in issue in the action. An affidavit of documents shall not be filed unless it is relevant to an issue on a pending motion or at trial.
- A party on whom a request to inspect documents is served shall forthwith inform the party making the request of a date within 10 days after the service of the request and of a time between 9:30 a.m. and 4:30 p.m. when the documents may be inspected at the office of the lawyer of the party served, or at some other convenient place, and shall at the time and place named make the documents available for inspection.

- All documents listed in a party's affidavit of documents that are not privileged and all documents previously produced for inspection by the party shall, without notice, subpoena or order, be taken to and produced at, the examination for discovery of the party or of a person on behalf of or in addition to the party; and the trial of the action; unless the parties agree or the court otherwise orders.
- Where the court is satisfied by any evidence that a relevant document in a party's possession, control or power may have been omitted from or inadequately described in the party's affidavit of documents, or that a claim of privilege may have been improperly made, the court may, order cross-examination on the affidavit of documents; order service of a further and better affidavit of documents; order the disclosure or production for inspection of the document, or a part of the document, if it is not privileged; and inspect the document for the purpose of determining its relevance or the validity of a claim of privilege.
- Where a party, after executing an affidavit of documents, comes into possession or control of or obtains power over a relevant document the party shall forthwith serve a supplementary affidavit disclosing the document and stating whether or not privilege is claimed for it.
- Where a party, after executing an affidavit of documents, discovers that the affidavit is inaccurate or incomplete, the party shall forthwith serve a supplementary affidavit disclosing and correcting any inaccuracy or disclosing any additional document required to complete the affidavit of documents and stating whether or not privilege is claimed for it.

Ontario – Rules of Civil Procedure

- **“document”** includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account, and data and information in electronic form
- A party to an action shall, within ten days after the close of pleadings, serve on every other party an affidavit of documents disclosing to the full extent of the party's knowledge, information and belief all documents relating to any matter in issue in the action that are or have been in the party's possession, control or power.
- The affidavit shall list and describe, in separate schedules, all documents relating to any matter in issue in the action, that are in the party's possession, control or power and that the party does not object to producing; that are or were in the party's possession, control or power and for which the party claims privilege, and the grounds for the claim; and that were formerly in the party's possession, control or power, but are no longer in the party's possession, control or power, whether or not privilege is claimed for them, together with a statement of when and how the party lost possession or control of or power over them and their present location. The affidavit shall also contain a statement that the party has never had in the party's possession, control or power any document relating to any matter in issue in the action other than those listed in the affidavit.
- Where the party is represented by a lawyer, the lawyer shall certify on the affidavit that he or she has explained to the deponent, the necessity of making full disclosure of all documents relating to any matter in issue in the action; and what kinds of documents are likely to be relevant to the allegations made in the pleadings.
- The disclosure or production of a document for inspection shall not be taken as an admission of its relevance or admissibility.

- A party who serves on another party a request to inspect documents is entitled to inspect any document that is not privileged and that is referred to in the other party's affidavit of documents as being in that party's possession, control or power.
- A party on whom a request to inspect documents is served shall forthwith inform the party making the request of a date within five days after the service of the request to inspect documents and of a time between 9:30 a.m. and 4:30 p.m. when the documents may be inspected at the office of the solicitor of the party served, or at some other convenient place, and shall at the time and place named make the documents available for inspection.

Quebec – Code of Civil Procedure

- In proceedings introduced pursuant to article 110, exhibits must be disclosed to the other parties by means of a notice of disclosure.
- A party that intends to use real evidence at the hearing must give the other parties access to the evidence in accordance with the provisions of this Section, with the necessary modifications. If the defence is to be in writing, the parties must file their exhibits at the latest 15 days before the date of the proof and hearing. If the defence is to be oral, the parties must file their exhibits at the latest three days before the date of the hearing.
- If, owing to the circumstances, a copy of an exhibit cannot reasonably be provided to a party having requested such a copy, the party in possession of the exhibit must give access thereto by other means. If the parties cannot agree, a judge may be requested to determine a communication procedure and, if appropriate, a time limit.
- If, after defence filed, it appears from the record that a document relating to the issues between the parties is in the possession of a third party, he may, upon summons authorized by the court, be ordered to give communication of it to the parties, unless he shows cause why he should not do so. The court may also, at any time after defence filed, order a party or a third person having in his possession any real evidence relating to the issues between the parties to exhibit it, preserve it or submit it to an expert's appraisal on such conditions, at such time and place and in such manner as it deems expedient.
- After the filing of the defence, a party may, by notice in writing, call upon the opposite party to admit the genuineness or correctness of an exhibit. A copy of the exhibit must be attached to the notice, except where the exhibit has already been communicated or in the case of real evidence; in the case of real evidence, the exhibit shall be put at the disposal of the opposite party. The genuineness or correctness of the exhibit is deemed admitted unless, within 10 days or such time as the judge may fix, the party called upon to admit its genuineness or correctness serves on the other party a sworn statement denying that the exhibit is genuine or correct, or specifying the reasons why he cannot so admit. However, if the ends of justice so require, the court may, before judgment is rendered, relieve the party of his default. The unjustified refusal to admit the genuineness or correctness of an exhibit may result in a condemnation to the costs resulting therefrom.

Nova Scotia – Civil Procedure Rules

- “document” includes a sound recording, photograph, film, plan, chart, graph, and any information generated, recorded or stored by means of any device, including, but not limited to, computers and digital media.

- Unless the court otherwise orders, a party to a proceeding shall, within sixty (60) days after the close of the pleadings between an opposing party and himself, or within seven (7) days after the service of the originating notice where there are no pleadings, serve on the opposing party a list of the documents that are or have been in his possession, custody or control relating to every matter in question in the proceeding and file with the prothonotary the list without a copy of any document being attached thereto.
- Unless it is denied in a notice served within ten (10) days after a party receives a list of documents or in a pleading or when the court otherwise orders, a party receiving a list of documents shall be deemed to admit that any document listed therein as being in the possession, custody or control of the party serving the list for which privilege is not claimed, and which is described in the list, as an original document, is such a document and was printed, written, signed or executed as it purports respectively to have been, and as a copy, is a true copy.
- Nothing in paragraph (1) shall be deemed to prejudice the right of a party to object to the admissibility in evidence of any document.
- A party may at any time serve a notice on any other party in whose pleading, affidavit or list of documents reference is made to any document, requiring him to produce the document for inspection or further inspection and to permit him to make a copy thereof.
- The other party shall, within four (4) days of the receipt of the notice in paragraph (1), serve on the first party a notice stating a time within seven (7) days after the service thereof at which any document, that he does not object to produce, may be inspected at the place specified in the notice and a copy made thereof, and if he objects to produce any document, he shall state the grounds of his objection.
- Where it appears that there has been a failure on the part of a party or his solicitor or, in the case of the Crown or a body corporate, or an officer thereof, to make a reasonable effort to give full discovery of all documents that relate to any matter in a proceeding, the court may impose on the party, solicitor, or officer such terms or penalty as it thinks just.

New Brunswick – Rules of Court

- **“document”** includes a film, photograph, video tape, chart, graph, map, plan, survey, book of account, recording of sound, and information recorded or stored by means of any device.
- A party may serve on any other party a Notice Requiring Affidavit of Documents. Within 10 days after receipt of a Notice Requiring Affidavit of Documents a party shall file and serve on every other party an Affidavit of Documents.
- The solicitor for a party making an Affidavit of Documents shall endorse it with a certificate that he has explained to the deponent the necessity of making a full disclosure of all relevant documents and that he has no knowledge of any other document which should have been disclosed.
- A party is entitled, at any time, to request inspection of any document in the possession or control of any other party. A party who wishes to inspect a document shall serve on the other party a Request to Inspect Documents. A party upon whom a Request to Inspect Documents is served shall forthwith serve on the party making such request, a notice stating a time between 9:30 a.m. and 4:30 p.m. and a date within 5 days from the service of the Request to Inspect Documents on

which the documents may be inspected at the office of his solicitor or some other convenient place, and shall make the documents available for inspection at that time and place.

- The disclosure, or the production for inspection, of a document is not an admission of its admissibility.
- A party may request any other party to admit the authenticity of the original or a copy of a document, or the dispatch or receipt of a document, by serving on him at least 20 days before trial a Request to Admit Documents. A party upon whom a Request to Admit Documents is served shall be deemed to admit as requested unless, within 10 days thereafter, he serves Notice of Refusal to Admit Documents. Where the authenticity, dispatch or receipt of a document is admitted or deemed to be admitted by a party, he may not put the admissions in issue, without leave of the court.

Prince Edward Island –Rules of Court

- **“document”** includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means of any device.
- A party to an action shall, within ten days after the close of pleadings, serve on every other party an affidavit of documents disclosing to the full extent of the party's knowledge, information and belief all documents relating to any matter in issue in the action that are or have been in the party's possession, control or power.
- True copies of all documents which are not privileged and are listed in a party's affidavit of documents shall be annexed to the affidavit of documents, unless another party has previously produced or agreed to produce a true copy of the document in the party's affidavit of documents.
- Where the party is represented by a solicitor, the solicitor shall certify on the affidavit that he or she has explained to the deponent the necessity of making full disclosure of all documents relating to any matter in issue in the action.
- An affidavit of documents shall not be filed unless it is relevant to an issue on a pending motion or at trial.
- A party who serves on another party a request to inspect documents is entitled to inspect any document that is not privileged and that is referred to in the other party's affidavit of documents as being in his or her possession, control or power.
- A party on whom a request to inspect documents is served shall forthwith inform the party making the request of a date within five days after the service of the request to inspect documents and of a time between 9:30 a.m. and 4:30 p.m. when the documents may be inspected at the office of the solicitor of the party served, or at some other convenient place, and shall at the time and place named make the documents available for inspection.
- The disclosure or production of a document for inspection shall not be taken as an admission of its relevance or admissibility.

Newfoundland and Labrador – Rules of Civil Procedure

- **“document”** includes a sound recording, photograph, film, plan, chart, graph and a record of any kind;
- Unless the Court otherwise orders, a party to a proceeding shall, within ten days after the close of the pleadings between an opposing party and the party, or within seven days after the service of the originating document where there are no pleadings, file and serve on the opposing party a list of the documents of which the party has knowledge at that time relating to every matter in question in the proceeding and file in the Registry the list without a copy of any document being attached thereto.
- Unless it is denied in a notice served within ten days after a party receives a list of documents or in a pleading or when the Court otherwise orders, a party receiving a list of documents shall be deemed to admit that any document listed therein as being in the possession, custody or control of the party serving the list for which privilege is not claimed, and which is described in the list as an original document, is such a document and was printed, written, signed or executed as it purports respectively to have been, and as a copy, is a true copy. Nothing in this rule shall be deemed to prejudice the right of a party to object to the admissibility in evidence of any document.
- A party may at any time serve a notice on any other party in whose pleading, affidavit or list of documents reference is made to any document, requiring the other party to produce the document for inspection or further inspection and to permit that party to make a copy thereof. The other party shall, within four days of the receipt of the notice, serve on the first party a notice stating a time within seven days after the service thereof at which any document, that the other party does not object to produce, may be inspected at the place specified in the notice and a copy made thereof, and if the other party objects to produce any document, the other party shall state the grounds of the other party's objection.

Northwest Territories – Supreme Court Rules

- **“document”** includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means of any device.
- A party to an action shall, within 30 days after the close of pleadings, file a statement as to the documents that are or have been in the party's possession, control or power and that relate to any matter in issue in the action.
- The statement shall be signed by the solicitor of the person making discovery or, where the party appears personally, by the party making discovery.
- A party to a proceeding may at any time, by written notice, give notice to any other party to produce for inspection any document referred to in the party's pleadings, affidavits or statements as to documents. A party served with a notice shall, within five days after the day the notice is served, give to the party requiring production written notice in Form 14 of the day and time when, and place where, the documents may be inspected. The day for inspection set out in a notice to inspect shall be no later than 15 days after the day the notice to produce documents is served, unless otherwise agreed to by the parties.

- The disclosure or production of a document for inspection shall not be taken as an admission of its relevance or admissibility.
- Without prejudice to the right of a party to object to the admission in evidence of any document, a party on whom a statement as to documents is served shall, unless the Court otherwise orders, be deemed to admit that a document described in the statement as an original document was printed, written, signed or executed as it purports to have been; a document described in the statement as a copy is a true copy; and
- where a document purports to be a copy of a letter, the original letter was dispatched to the addressee and received.
- A party on whom a statement as to documents is served may, within 30 days after the day the statement was served, serve on the party whose statement it is a notice stating that the authenticity or receipt or dispatch of a document specified in the statement is not admitted and it must be proved at the trial.

Nunavut – Supreme Court Rules

- Use the Northwest Territories Supreme Court Rules.

Yukon Territory– Rules of Court

- The Yukon Territory Supreme Court follows the Rules of the Supreme Court of British Columbia.

Federal Court Rules

- **“document”** includes an audio recording, video recording, film, photograph, chart, graph, map, plan, survey, book of account, computer diskette and any other device on which information is recorded or stored.
- Every party shall serve an affidavit of documents on every other party within 30 days after the close of pleadings.
- The deponent of an affidavit of documents shall, before making the affidavit, become informed by making reasonable inquiries of any present or former officer, servant, agent or employee of the party, including any who are outside Canada, who might reasonably be expected to have knowledge relating to any matter in question in the action.
- The solicitor of record for a party shall explain to the deponent of an affidavit of documents the necessity of making full disclosure under rule 223 and the possible consequences of failing to do so; and certify on the affidavit of documents or on a document attached to it that those explanations have been given.
- The disclosure of a document or its production for inspection does not constitute an admission of its authenticity or admissibility in the action.