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APPENDIX A: FOCUS GROUPS AND PARTICIPANTS

Preliminary Focus Group - November 22, 2001

<p>Master Calum MacLeod, Superior Court of Justice Ronald Slaght, Lenczner Slaght Prof. Garry Watson, Osgoode Hall Law School</p>	<p>Paul Perell, Weir Foulds LLP Richard Tinsley, Law Society of Upper Canada</p>
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Case Management Masters Focus Group - December 13, 2001

<p>Master Calum MacLeod, Superior Court of Justice Master Julian Polika, Superior Court of Justice Master Joan Haberman, Superior Court of Justice Master Jane Egan, Superior Court of Justice</p>	<p>Master Ronald Dash, Superior Court of Justice Master Carol Albert, Superior Court of Justice Master Thomas Hawkins, Superior Court of Justice</p>
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Bar Organizations Focus Group - January 17, 2002

<p>Sandra A. Forbes, Advocates Society John C. Holland, Advocates Society Luc Leclair, Association des juristes d'expression française (AJEFO) Margot Blight, AJEFO James Morton, Canadian & Ontario Bar Association Paul Ivanoff, Ontario Bar Association (OBA) Rhonda Shousterman, OBA Ken Movat, OBA Gail Goodman, OBA Catherine A Korte, OBA</p>	<p>Terry Marshall, County & District Law Presidents' Association (CDLPA) Robert Zochodne, CDLPA Peter Cronyn, County of Carleton Law Association (CCLA) David Zuber, Canadian Defence Lawyers Leilah Edroos, Canadian Defence Lawyers Diana Edmonds, Ontario Trial Lawyers Association (OTLA) John Johnson, OTLA Diana Miles, Law Society of Upper Canada Cindy Pinkus, Law Society of Upper Canada</p>
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Final Focus Group - April 15, 2003

<p>The Honourable Mr. Justice Robert A. Blair, Superior Court of Justice The Honourable Madam Justice Mary Lou Benotto, Superior Court of Justice The Honourable Madam Justice Eleanore A. Cronk, Court of Appeal Master Robert Beaudoin, Superior Court of Justice Master Calum MacLeod, Superior Court of Justice Mark Freiman, Deputy Attorney General Brian Brock, Dutton Brock Stephen Bale, Advocates' Society Tom Connolly, OTLA Richard M. Dakin, Metropolitan Toronto Lawyers Association Diana Edmonds, OTLA Stephen Firestone, Lackman Firestone Sandra A. Forbes, Advocates' Society</p>	<p>R. Gail Goodman, OBA Peter Griffin, Lenczner Slaght John Johnson, OTLA Diana Miles, Law Society of Upper Canada Janet E. Minor, Ministry of the Attorney General John Morris, Medico-Legal Society of Toronto Kenneth W. Movat, OBA Terry O'Sullivan, Lax O'Sullivan Scott LLP Barry Percival, Benson Percival Brown Paul Perell, Weir Foulds LLP Dan Reisler, Reisler Franklin LLP Stuart Rudner, OBA Rhonda S. Shousterman, OBA Bill Simpson, Tierney Stauffer Lori Sterling, Ministry of the Attorney General Prof. Garry D. Watson Robert Zochodne, CDLPA</p>
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Task Force on the Discovery Process in Ontario

Chair: Justice Colin Campbell, Superior Court of Justice

Associate Chair: Debra Paulseth, Assistant Deputy Attorney General, Court Services Division

Consultation Paper

Task Force Mandate

The Government of Ontario and the Superior Court of Justice, in co-operation with the bar, have appointed a Task Force to review all aspects of the discovery process in Ontario, identify problems with the existing process and make recommendations for reform. The Task Force will engage in province-wide consultation, conduct empirical research and consider the discovery processes in other jurisdictions. A final report is anticipated in late 2002.

The Task Force is comprised of two judicial representatives, two Ministry of the Attorney General representatives, and two bar representatives.

Comments & Suggestions Sought

This consultation paper describes some of the problems that have been identified in certain regions of the province, as well as reform options. The Task Force invites comments on these issues, and welcomes any other suggestions for improving the discovery process.

Please take the time to respond by May 6, 2002.

The views of judicial officials, lawyers and litigants from all parts of the province are very important to the Task Force.

You may send your response to Susan Charendoff, Project Director

- by e-mail c/o noreen.gordon@jus.gov.on.ca
- by fax to (416) 326-4666
- by mail to:

Susan Charendoff, Counsel
Civil/Family Policy & Programs Branch
Ministry of the Attorney General
720 Bay St, 6th Floor
Toronto, ON M5G 2K1

Background

In 1995, the Civil Justice Review identified problems with Ontario's discovery process; it proposed that consideration be given to methods for achieving a more efficient discovery process to reduce costs and delay in the resolution of civil proceedings, while preserving essential elements of disclosure principles. Since that time, other professional organizations, such as the Canadian Bar Association and the Ontario Advocates' Society have noted similar problems and have proposed reform options. To date, no comprehensive review of the discovery process in Ontario has been undertaken.

The Civil Justice Review acknowledged that the examination for discovery of any party adverse in interest is considered to be a critical feature in the conduct of litigation, and that the discovery and disclosure process performs an important function in preparing cases for trial or settlement. However, it questioned whether the process had become too cost-prohibitive and delay-engendering to continue in the present fashion. In particular, the Civil Justice Review noted the increase in time spent in relation to oral examinations (e.g. preparing witnesses, travelling to and from examinations, attendance at examinations and re-examinations, responding to undertakings, and reporting to clients.) It also noted the proliferation of motions relating to discovery, whether substantive or procedural in nature. These motions are time-consuming and expensive.

When the Rules of Civil Procedure were revised in 1985, the scope of pre-trial disclosure and discovery was broadened. The current rules allow: cross-examination of the person being examined (except as to credibility); discovery of evidence; cross-

examination on the affidavit of documents; discovery of the names and addresses of potential witnesses and persons having knowledge of the matters in issue; discovery of the findings, opinions and conclusions of experts retained by the party; and discovery of the existence and contents of any relevant insurance policy.

The theory behind this concept seemed very sound: the more complete the pre-trial disclosure, the more likely it was that settlements would occur.

The Civil Justice Review reported that this broadened scope of discovery is a source of concern. These revisions may have led to unnecessarily sweeping requests for information having little to do with the matters raised by the claims or defences of the parties, which may intentionally or unintentionally exhaust the financial resources of the opposing party.

In addition, the explosion of information sources and available data as a result of the growth in technology has led to an enormous increase in the material available for discovery purposes. This development, combined with the broadened discovery rules, has made it increasingly difficult to cope economically with the scope of discovery.

Current Discovery Rules

The rules are predominantly captured in Rules 30 to 35 of the *Rules of Civil Procedure*. Rule 30 requires parties to disclose all documents relating to any matter in issue in the action, whether or not privilege is claimed. Documents are defined broadly. The court has various powers to make orders where an Affidavit of Documents is incomplete or where privilege is improperly claimed. The duty to disclose documents is continuing and all parties must correct any inaccuracies by a supplementary affidavit.

Rule 31 permits written and oral examinations, but not both. In current practice, it appears that few litigants rely on written examinations, and that most rely on oral examinations.

A person examined for discovery must answer “any proper question relating to any matter in issue

in the action.” A party may also obtain disclosure of the names and addresses of witnesses, the existence and content of an insurance policy, and the findings, opinions and conclusions of an expert that relate to any matter in issue. The duty to disclose is a continuing one. At trial, any party may read into evidence any part of the examination of an adverse party, if otherwise admissible.

Rule 34 sets out the procedure for oral examinations. The examination is conducted under oath, and a transcript is to be prepared if requested by a party. Where a question is objected to, the objector must state on the record the reason for the objection. The question may be answered with the objector’s consent, but a court ruling must be obtained on motion before the evidence is used at the hearing. An examination may be adjourned by any party to seek directions where there is improper conduct. The court may impose cost sanctions where the right to examine is being abused by improper questions or interruptions, or is being conducted in bad faith or in an unreasonable manner.

Examinations by written questions are addressed in Rule 35. A party may serve a list of questions to be answered on the person to be examined and every other party. The written questions must be answered (or objected to) by way of affidavit within 15 days after service of the questions. Within 10 days of receiving the answers, the examining party may serve a further list of written questions that must be answered within 15 days.

The court may order that answers to questions be given, and may impose sanctions, including the dismissal of an action or striking out a defence, where a person refuses or fails to answer a proper question.

Under Rule 53, a party who intends to call an expert witness at trial must disclose the expert’s report within 90 days before commencement of the trial. A party who intends to call an expert witness in response must disclose the responding report within 60 days of the trial.

Issues for Consultation

1. What are the key objectives of documentary and oral discovery?

It is generally agreed that the primary goal of discovery is to ensure open and full disclosure prior to trial to facilitate settlement or to make the trial process more efficient and fair.

In your opinion, what are the key objectives of discovery?

Is this a key objective of discovery?	
a. To enable parties to assess strengths & weaknesses of each side's case prior to trial	<input type="checkbox"/> yes <input type="checkbox"/> no
b. To identify new avenues for discovery	<input type="checkbox"/> yes <input type="checkbox"/> no
c. To identify new litigation strategies not known prior to discovery	<input type="checkbox"/> yes <input type="checkbox"/> no
d. To identify parties to be added	<input type="checkbox"/> yes <input type="checkbox"/> no
e. To strengthen case (action or defence) in specific ways	<input type="checkbox"/> yes <input type="checkbox"/> no
f. To narrow issues for trial	<input type="checkbox"/> yes <input type="checkbox"/> no
g. To identify new damages	<input type="checkbox"/> yes <input type="checkbox"/> no
h. To identify new legal basis for claim or defence	<input type="checkbox"/> yes <input type="checkbox"/> no
i. To identify new documents that may affect outcome of proceedings	<input type="checkbox"/> yes <input type="checkbox"/> no
j. To facilitate settlement	<input type="checkbox"/> yes <input type="checkbox"/> no
k. To assist in bringing summary judgment motions	<input type="checkbox"/> yes <input type="checkbox"/> no
l. To dispense with the time and expense of proof at trial	<input type="checkbox"/> yes <input type="checkbox"/> no
m. To prepare client for trial	<input type="checkbox"/> yes <input type="checkbox"/> no
n. To assess credibility of person being examined as a witness	<input type="checkbox"/> yes <input type="checkbox"/> no
o. To obtain admissions	<input type="checkbox"/> yes <input type="checkbox"/> no
p. To get a recorded version of a witness' memory prior to trial, which may be used to impeach opponent or expert witnesses	<input type="checkbox"/> yes <input type="checkbox"/> no
q. To verify authenticity of documents	<input type="checkbox"/> yes <input type="checkbox"/> no
r. To confirm parties' continuing disclosure obligation	<input type="checkbox"/> yes <input type="checkbox"/> no

s. Are there any other objectives?

--

2. What are the key problems with discovery?

Civil justice studies and bar associations have identified perceived problems with the discovery process in parts of Ontario. In your experience, do the problems listed below have a significant impact on (1) increasing the cost of discovery to litigants and/or (2) increasing the number of delays or disputes in the discovery process?

Is this a key problem?	Does it have a significant impact on:	
	(1) Increasing cost of discovery to litigants	(2) Increasing delays or disputes in the discovery process
SCOPE OF DISCOVERY		
a. Scope of discovery is too broad	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
DISCLOSURE/PRODUCTION OF DOCUMENTS		
b. Vague requests for information & documents	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
c. Excessive requests for information & documents	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
d. Insufficient or incomplete disclosure/production	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
e. Excessive disclosure/production; production of irrelevant documents	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
f. Untimely disclosure/production; the withholding of material information until late in the process	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
g. Disorderly disclosure/production (e.g. documents not clearly identified or poorly organized)	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
h. Untimely production of expert reports	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
i. Disclosure occurred only after motion to compel	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
ORAL DISCOVERY		
j. Cost of oral discovery is disproportionate to value of claim	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
k. Difficulty/delay in scheduling examinations	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
l. Length of examinations	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
ATTITUDE/BEHAVIOUR OF OPPOSING COUNSEL		
m. Disrespectful/unprofessional attitude	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
n. Harassment/abuse of witnesses	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
o. Lawyer unprepared or incompetent	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
p. Lawyer inexperienced or inefficient	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
q. Lawyer unfamiliar with the specific issues in a case	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
r. Refusals based on privilege improperly claimed	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
s. Refusals based on relevance improperly claimed	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
t. Excessive discovery-related motions arising from abuses or lack of cooperation	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
u. Non-compliance with continuous obligation to disclose	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
v. Abuse of discovery process to intentionally delay case	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
ATTITUDE/BEHAVIOUR OF CLIENTS		
w. Contentious relationship among parties	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
x. Clients insisted on overly extensive discovery	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
y. Inadequate knowledge of case by client representatives at discovery	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>
z. Inappropriate attitude/ behaviour of other parties	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> <input type="checkbox"/>

3. What factors contribute to increased cost of discovery or delays in the discovery process?

Based on your experience, please indicate whether the following factors have (1) no impact, (2) a significant impact on increasing the cost of discovery to litigants and/or (3) a significant impact on increasing the number of delays or disputes in the discovery process.

What impact does this factor have?	(1) No Impact	(2) Significant increase in cost to litigants	(3) Significant increase in delays or disputes
a. Multiple parties	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Multiple lawyers representing different parties	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. All or part of discovery conducted by junior rather than lead counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Parties located outside county where action was commenced	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Lawyers located outside county where action was commenced	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Parallel or concurrent litigation (e.g. 3 rd party claims)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Need to audit financial statements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Need to obtain medical records	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Need to obtain records in possession of a third party	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j. Need for expert testimony or expert report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k. Case involves issues relating to confidential information (e.g. breach of fiduciary duty)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l. Large volume of discoverable documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m. Discovery of electronic documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n. Complex legal issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
o. Complex factual issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p. Disagreement regarding responsibility & cost of producing documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

q. Have you experienced any other problems with the discovery process?

r. In your experience, is the discovery process working? Why?

s. It has been said that there are more discovery problems in large urban centres than in smaller communities. Do you agree with this? If so, what reasons account for such differences?

4. What approaches to reform should be considered?

The following are approaches to discovery adopted in other jurisdictions and potential reform directions for Ontario. Please indicate what impact you think each option would have on the discovery process in Ontario.

What impact would each of the following reforms have in the discovery process?	(1) Positive impact	(2) No impact	(3) Negative impact
SCOPE OF DISCOVERY (ORAL & DOCUMENTARY)			
a. Narrow scope of discovery; narrower definition of relevance, e.g. “relevant & material”	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Bifurcated discovery (liability first, then other issues, such as punitive damages, future loss of income, bad faith claims)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Regulating access to documents of non-parties	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DOCUMENTARY DISCOVERY			
d. Mandatory production of “Schedule A” documents with pleadings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Require greater specificity in “Schedule B” about basis of privilege for each document	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Guidelines for orderly production (e.g. duty to label & catalogue documents)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Serious sanctions for untimely or disorderly production or production of excessive documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
WRITTEN DISCOVERY			
h. Mandatory early disclosure of certain aspects of claim with pleadings (e.g. list of witnesses & summary of their evidence; calculation of damages)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Standard disclosure protocols for certain case types (e.g. personal injury, employment)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Limit number of interrogatories	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j. Create standard interrogatories	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ORAL DISCOVERY			
k. Require parties to agree upon discovery plan (fixing dates & time needed) prior to discovery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l. Eliminate automatic right to oral discovery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m. Time limits on oral discovery, based on value of claim	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n. Permit oral discovery only after completion of written discovery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
o. Eliminate right to cross-examine at oral discovery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p. Have parties agree to list of undertakings & refusals at end of discovery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
q. Immediate rulings on discovery disputes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
r. Eliminate right to object to any question; trial judge to decide admissibility	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
s. Restrict objections on matters of privilege	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
t. Time limits on completion of undertakings & sanctions for failure to comply	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
u. Deem questions taken under advisement to be refusals if not answered within a fixed time period	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
v. Video record oral discovery to reduce transcript costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
w. Require lawyers with lead on file to attend discovery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SANCTIONS			
x. Tougher cost sanctions for unnecessary discovery-related motions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
y. Stricter enforcement of sanctions by judiciary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
z. Immediate contempt order for failing to comply with discovery-related orders	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

LAWYER CONDUCT			
aa. Civility code for lawyers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
bb. Stricter professional misconduct sanctions for improper behaviour during discovery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
cc. Explicit communication by lawyer to client of anticipated discovery costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LAWYER EDUCATION & TRAINING			
dd. Better training of lawyers - at law school	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- at bar admission course	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- through mentoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- through continuing legal education	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

ee. Do you have any comments on the above reform options?

ff. What else do you think can be done to reduce the time and cost of discovery?

gg. What else can be done to reduce disputes relating to refusals and undertakings?

hh. How can interrogatories and requests to admit be made more useful and effective?

5. Please assist the Task Force by answering the following questions.

Your answers to these questions will assist the Task Force in determining whether the experience with discovery varies in different parts of the province or in different types of legal practice.

1. Are you a: a. Lawyer b. Litigant c. Member of the judiciary

If you are a lawyer:

2. How many years have you been engaged in litigation: _____ years

3. What types of clients do you most often represent:

- a. Plaintiffs b. Defendants c. Both plaintiffs and defendants equally
d. Other (*specify*) _____

4. With what types of cases are you most often involved? Please check all that apply:

- | | | |
|--|---|--|
| a. <input type="checkbox"/> Collection | f. <input type="checkbox"/> Estates | k. <input type="checkbox"/> Trust / fiduciary duty |
| b. <input type="checkbox"/> Motor vehicle | g. <input type="checkbox"/> Bankruptcy | l. <input type="checkbox"/> Medical malpractice |
| c. <input type="checkbox"/> Real property | h. <input type="checkbox"/> Construction lien | m. <input type="checkbox"/> Other professional malpractice |
| d. <input type="checkbox"/> Contract /commercial | i. <input type="checkbox"/> Negligence | n. <input type="checkbox"/> Personal injury |
| e. <input type="checkbox"/> Wrongful dismissal | j. <input type="checkbox"/> Landlord/tenant | o. <input type="checkbox"/> Class action |
| | | p. <input type="checkbox"/> Other (specify):
_____ |

5. Would you describe your type of practice as:

- | | |
|--|--|
| a. <input type="checkbox"/> Sole Practitioner | b. <input type="checkbox"/> Private firm (under 5 lawyers) |
| c. <input type="checkbox"/> Private firm (5-30 lawyers) | d. <input type="checkbox"/> Private firm (over 30 lawyers) |
| e. <input type="checkbox"/> Government | f. <input type="checkbox"/> Legal staff of for-profit entity |
| g. <input type="checkbox"/> Legal staff of not-for-profit entity | |

6. In what court location or region do you conduct the majority of your practice? _____

If you are a member of the judiciary

7. What types of cases do you most often hear? Please check all that apply:

- | | | |
|--|---|--|
| a. <input type="checkbox"/> Collection | f. <input type="checkbox"/> Estates | k. <input type="checkbox"/> Trust / fiduciary duty |
| b. <input type="checkbox"/> Motor vehicle | g. <input type="checkbox"/> Bankruptcy | l. <input type="checkbox"/> Medical malpractice |
| c. <input type="checkbox"/> Real property | h. <input type="checkbox"/> Construction lien | m. <input type="checkbox"/> Other professional malpractice |
| d. <input type="checkbox"/> Contract /commercial | i. <input type="checkbox"/> Negligence | n. <input type="checkbox"/> Personal injury |
| e. <input type="checkbox"/> Wrongful dismissal | j. <input type="checkbox"/> Landlord/tenant | o. <input type="checkbox"/> Class action |
| | | p. <input type="checkbox"/> Other (specify): |

8. In what court location or region do you sit? _____

**Thank you for taking the time to respond to this consultation paper.
Your contribution is extremely valuable to the work of the Task Force.**

APPENDIX C: GROUPS INVITED TO RESPOND TO CONSULTATION PAPER

Judiciary

Chief Justice & Associate Chief Justice of Ontario
Chief Justice & Associate Chief Justice of the Superior Court of Justice
Superior Court Judges

Legal Organizations

Advocates Society
Association des juristes d'expression française de l'Ontario
Association of Law Officers of the Crown
Ministry of the Attorney General, Crown Law Office Civil
Law Society of Upper Canada
Lawyers' Professional Indemnity Company
Canadian Bar Association
Ontario Bar Association (Civil, ADR, Construction, Insurance, Labour Relations, Family, Young Lawyers)
Canadian Black Lawyers' Association
Canadian Defence Lawyers
County & District Law Presidents' Association and CDLPA Regions (East, Central East, Central South, South West, Central West, North West, North East, York)
County Law Associations (Algoma, Brant, Bruce, Carleton, Cochrane, Dufferin, Durham, Elgin, Essex, Frontenac, Grey, Haldimand, Hamilton, Hastings, Huron, Kenora, Kent, Lambton, Lanark, Leeds & Grenville, Lennox & Addington, Lincoln, Metropolitan Toronto, Middlesex, Muskoka, Nipissing, Norfolk, Northumberland, Oxford, Parry Sound, Peel, Perth, Peterborough, Prescott & Russell, Rainy River, Renfrew, Simcoe, Stormont, Dundas & Glengarry, Sudbury, Temiskaming, Thunder Bay, Victoria-Haliburton, Waterloo, Welland, Wellington, York)
Indigenous Bar Association of Canada
National Association Of Women And The Law
Ontario Crown Attorneys' Association
Ontario Trial Lawyer's Association
South Asian Lawyers' Association
Women's Law Association of Ontario
Women's Legal Education and Action Fund

Faculties of Law

Carleton University
University of Toronto
Queen's University
University of Ottawa
University of Western Ontario
University of Windsor Ontario
York University (Osgoode Hall)

Key Client Groups

Advocacy Resource Centre for the Handicapped
Canadian Medical Protective Association
Hospital Reciprocal Insurance Corporation
Medico-Legal Society
Canadian Bankers Association
Canadian Life & Health Insurance Association
Canadian Corporate Counsel Association
Council of Ontario Construction Association
Consumers' Association of Canada

APPENDIX D: LIST OF SUBMISSIONS

Associations

Medical-Legal Society (John J. Morris), June 24, 2002
Frontenac Law Association (J.M. Hickey), September 13, 2002
The Advocates Society (Sandra A. Forbes), October 9, 2002 and May 20, 2003
Aboriginal Legal Services of Toronto (Marian Jacko), September 11, 2002
Metropolitan Toronto Lawyers Association (James R. Howie), September 19, 2002
Ontario Bar Association (Virginia M. MacLean), September 20, 2002
Ontario Trial Lawyers' Association (Thom Connolly), January 24, 2003
County & District Law Presidents' Association (Terry Marshall, Rob Zochodne), June 17, 2002
Medical Malpractice Coverage Committee (Glen Wright), May 1, 2003

Lawyers/Judiciary

John Plank, The Personal Performance Group, May 14, 2002
Dermot P. Nolan, June 7, 2002
Jamie K. Trimble, Huges Amys LLP, June 7, 2002
Edward Masters, Burke-Robertson, May 30, 2002
Paul M. Iacono, Iacono Brown, May 1, 2002
Margaret A. Ross, Gowlings, April 5, 2002
Michael O'Hara, Carrel & Partners, April 12, 2002
Sean Dewart, Sack Goldblatt Mitchell, May 7, 2002
Paul M. Mann, September 30, 2002
Michael Carter, April 4, 2002
Daniel R. Mailer, Cram & Associates, November 5, 2002
James C. Morton, Steinberg, Morton Frymer, August 7, 2002
Thomas Heintzman, McCarthy Tétrault, August 13, 2001
Martin Felsky, Commonwealth Legal Inc., March 31, 2003
Justice Peter G. Fraser, Supreme Court of British Columbia, April 15, 2002

Other Individuals

Leland A. Bullock, March 18, 2002
Mary Field, October 7, 2002
J.M. (Matt) Dumais, September 9, 2002
Fred Barlow, September 8, 2002
Anthony Dunn, June 17, 2002
JoAnne Cyr-Walsh, October 28, 2002
John Merry, January 7, 2003
J.P. Robinson, First Canadian Property Investment Ltd., December 10, 2002
Dr. Robin R. Richards, October 28, 2002

APPENDIX E: MOTIONS DATA COLLECTION FORM

INSTRUCTIONS: The Discovery Review Task Force seeks data on motions activity. This form must be completed & submitted to the court registrar prior to the motion.

PART A is to be completed by the **Moving Party** (including moving parties on cross-motions). **PART B** is to be completed by the **Court**.

PART A: TO BE COMPLETED BY MOVING PARTY

COURT FILE NO.: _____

1. **Is one or more of the orders sought on this motion related to documentary, oral or written discovery, or cross-examination on an affidavit?** Yes No

IF YOU ANSWERED NO, PLEASE DO NOT ANSWER THE REMAINING QUESTIONS. THANK-YOU.

2. **Is this case a** (select ONE category only):

- a. Simplified Procedure action
- b. Case Managed action
- c. Other action
- d. Application

Please check the category or categories that best describe the type of case:

- a. Collection
- b. Motor vehicle
- c. Real property
- d. Contract / commercial
- e. Wrongful dismissal
- f. Estates
- g. Bankruptcy
- h. Construction lien
- i. Negligence
- j. Landlord/tenant
- k. Trust / fiduciary duty
- l. Medical malpractice
- m. Other professional malpractice
- n. Personal injury
- o. Class action:
- p. Other (specify):

3. **By what method is this motion being heard:**

- a. by appearance
- b. in writing
- c. by teleconference
- d. by case conference

4. **What type of order is being sought at this motion:**

i. Motions related to Documentary Discovery

- a. Order for particulars
- b. Order to compel disclosure or production of documents
- c. Order to inspect document for determining claim of privilege
- d. Order to produce affidavit of documents
- e. Order for production of documents from a non-party
- f. Order to cross-examine on affidavit of documents
- g. Order for service of a further and better affidavit of documents
- h. Other (*specify*): _____

ii. Motion related to Oral or Written Examination for Discovery

- a. Order to compel attendance at examination for discovery / to answer written questions
- b. Order for answers to undertakings (information held by party examined).....# _____ of undertakings
- c. Order for answers to undertakings (information held by 3rd party).....# _____ of undertakings
- d. Order for answers to refusals (based on privilege)# _____ of refusals
- e. Order for answers to refusals (based on relevancy).....# _____ of refusals
- f. Order for leave to examine a party more than once
- g. Order for leave to examine non-party
- h. Order to withhold information for divided discovery
- i. Other (*specify*): _____

iii. Motion related to Cross-Examination on an Affidavit (on an Application or Motion)

- a. Order to compel attendance at cross-examination
- b. Order for answers to undertakings (information held by party examined)# _____ of undertakings
- c. Order for answers to undertakings (information held by 3rd party).....# _____ of undertakings
- d. Order for answers to refusals (based on privilege).....# _____ of refusals
- e. Order for answers to refusals (based on relevancy).....# _____ of refusals
- f. Order for leave to cross-examine a deponent more than once

PART B: TO BE COMPLETED BY THE JUDGE OR MASTER

5. **Please indicate the disposition of the motion:**

- a. Order as asked
- b. Order refused
- c. Adjourned
- d. Other: Order Partially Granted Other disposition

6. **Please indicate the cost award, if any:**

- a. partial indemnity basis, pursuant to cost grid \$ _____
- b. substantial indemnity basis, pursuant to cost grid \$ _____
- c. other cost award \$ _____

7. **Please indicate the duration of the motion:** _____ day _____ hr _____ min

APPENDIX F: CASE SPECIFIC QUESTIONNAIRE

PART A - CASE INFORMATION

Court location: _____

Court file number: _____

Title of proceeding (*short title of case*): _____

Date claim/application issued: _____

dd mm yyyy

PART B - CONTACT INFORMATION

1. Name of person filling out this questionnaire (*please print*): _____
2. Role in case (*check one*): a. lawyer for plaintiff/applicant b. lawyer for defendant/respondent c. lawyer for 3rd party defendant
d. lawyer for 4th party defendant e. plaintiff f. defendant g. other (*specify*) _____
3. Preferred method of contact (*to clarify answers*):
a. E-mail: _____ b. Tel: (____) _____ - _____ c. Fax: (____) _____ - _____

PART C - NATURE OF CASE

4. Please indicate whether this case is:
a. Simplified procedure action b. Case managed action - fast track c. Case managed action - standard track
d. Other action e. Application
5. Please check the category or categories that best describes this type of case:
a. Collection g. Bankruptcy m. Other professional malpractice
b. Motor vehicle h. Construction lien n. Personal injury
c. Real property i. Negligence o. Class action:
d. Contract / commercial j. Landlord/tenant p. Other (*specify*):
e. Wrongful dismissal k. Trust / fiduciary duty
f. Estates l. Medical malpractice
6. Amount originally claimed in this case (*or best estimate*): \$ _____
7. Legal representation:

	Plaintiffs	Defendants
a. Number of separately represented parties in this case	<input type="text"/>	<input type="text"/>
b. Number of self-represented parties in this case	<input type="text"/>	<input type="text"/>

PART D - CASE ACTIVITIES

8. Have any of the following activities occurred:
a. Discovery commenced yes no b. Discovery completed yes no
9. If case has not been finally disposed, please indicate the next scheduled event:
a. No future events scheduled e. Motions related to documentary discovery
b. Examinations for discovery f. Motions related to oral/written discovery
c. Pretrial/Settlement conference g. Assignment court /Trial scheduling court
d. Trial h. Other (*specify*) _____
10. If case has been finally disposed, please indicate: a. Month _____ Year _____
b. Type of final disposition:
a. Default judgment b. Summary judgment c. Dismissed for delay d. Judgment obtained at trial
e. Partial default judgment f. Discontinued by plaintiff (not based on settlement terms) g. Settled
h. Other (*specify*) _____
c. Amount of judgment or settlement, excluding costs (*or best estimate*): \$ _____

**IF DISCOVERY HAS BEGUN OR IS COMPLETED, PLEASE COMPLETE PART E.
IF NOT, GO TO PART J.**

PART E - DISCOVERY ACTIVITIES

11. If DOCUMENTARY DISCOVERY has begun or is completed, please indicate:

a. Have you delivered your client's sworn affidavit of documents	<input type="checkbox"/> yes <input type="checkbox"/> no
b. How many documents were in your client's affidavit of documents	_____ documents
c. Did you make a demand for particulars (R. 25.10)	<input type="checkbox"/> yes <input type="checkbox"/> no

12. If ORAL/ WRITTEN DISCOVERY has begun, please indicate:

a. What type of discovery has been conducted	<input type="checkbox"/> yes <input type="checkbox"/> no
b. Did you discuss areas of inquiry with opposing counsel before commencing discovery	<input type="checkbox"/> yes <input type="checkbox"/> no
c. Did you make a Request to Admit (fact or authenticity of documents (R. 51.02))	<input type="checkbox"/> yes <input type="checkbox"/> no
d. If yes, did you make the request before or after discovery commenced	<input type="checkbox"/> before <input type="checkbox"/> after
e. Did you receive copies of all relevant documents from opposing parties before you commenced oral/written discovery of those parties	<input type="checkbox"/> yes <input type="checkbox"/> no
f. In what month/year did oral discovery begin	month_____ year _____
g. If completed (by all parties), in what month/year did it conclude	month_____ year _____
h. In total, how many parties were examined in this case	_____ parties
i. In total, how many non-parties (if any) were examined in this case	_____ non-parties
j. What is the total number of days and/or hours you spent in oral examination (as the examining lawyer, and representing your client being examined)	_____ days ____ hours
k. How long was the longest oral examination	_____ days ____ hours

From discovery transcripts, or by providing your best estimate, please indicate:

l. How many questions did you ask (of all parties) as the examining lawyer	_____ questions
m. Of those questions, how many undertakings were provided	_____ undertakings
n. Of those questions, how many refusals were provided	_____ refusals
o. How many questions were put to your client by all other parties	_____ questions
p. Of those questions, how many undertakings were provided	_____ undertakings
q. Of those questions, how many refusals were provided.	_____ refusals
r. Did you require a further examination / further interrogatories after answers to undertakings or refusals were provided	<input type="checkbox"/> yes <input type="checkbox"/> no

13. If there has been EXPERT DISCOVERY or MEDICAL EXAMS, please indicate whether there has been:

a. Medical examination of a party (physical or mental) (R. 33)	<input type="checkbox"/> yes <input type="checkbox"/> no
b. Production of medical report or document relating to a person to be examined (R. 33.04)	<input type="checkbox"/> yes <input type="checkbox"/> no
c. Production of medical report of examining health practitioner (R. 33.06)	<input type="checkbox"/> yes <input type="checkbox"/> no
d. Production of expert report	<input type="checkbox"/> yes <input type="checkbox"/> no

**IF THERE HAVE BEEN DISCOVERY-RELATED MOTIONS, PLEASE COMPLETE PART F.
IF NOT, GO TO PART G.**

PART F - MOTIONS ACTIVITY

- 14.** Total number of motions of all types brought in this case by all parties: _____
- 15.** Total number of discovery-related motions brought by all parties: _____
- 16.** Please check which of the following contested discovery-related motions you have brought and whether the motion was heard in writing, by appearance or by teleconference.

Which of the following orders were sought? <i>(Check all that apply)</i>	<u>Manner of hearing</u>				
	In writing	By appearance	By tele-conference		
DOCUMENTARY DISCOVERY MOTIONS					
a. <input type="checkbox"/> Order to produce affidavit of documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
b. <input type="checkbox"/> Order to compel disclosure or production of documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
c. <input type="checkbox"/> Order for production of documents from a non-party	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
d. <input type="checkbox"/> Order for service of a further & better affidavit of documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
e. <input type="checkbox"/> Order to inspect document for determining claim of privilege	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
f. <input type="checkbox"/> Order to cross-examine on affidavit of documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
g. <input type="checkbox"/> Order for particulars	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
ORAL / WRITTEN DISCOVERY MOTIONS					
h. <input type="checkbox"/> Order to compel attendance at examination for discovery/ to answer written questions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
i. <input type="checkbox"/> Order for leave to examine a party more than once	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
j. <input type="checkbox"/> Order for leave to examine non-party	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
k. <input type="checkbox"/> Order to withhold information for divided discovery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
MOTIONS FROM CROSS-EXAMINATIONS ON AN AFFIDAVIT (motion or application)					
l. <input type="checkbox"/> Order to compel attendance at cross-examination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
m. <input type="checkbox"/> Order for leave to examine a deponent more than once	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
n. <input type="checkbox"/> Order for leave to examine non-party	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
UNDERTAKING MOTIONS					
o. <input type="checkbox"/> Order for answers to undertakings (information held by party examined)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
p. <input type="checkbox"/> Order for answers to undertakings (information held by 3rd party)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
q. <input type="checkbox"/> Other (specify): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
17. For all motions related to <u>refusals or questions taken under advisement</u>, indicate how many questions were ordered to be answered. Please also indicate how each was heard:					
Order sought	Answers sought	Answers granted	<u>Manner of hearing</u>		
			In writing	By appearance	By tele-conference
a. Order for answers to questions taken under advisement	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Order for answers to refusals based on privilege	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Order for answers to refusals based on relevance	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PART G - OVERALL ASSESSMENT OF DISCOVERY PROCESS

18. In this case, please indicate whether or not each of the following problems were present. If so, did the problem have a significant impact on (1) increasing the cost of discovery (i.e. 20% or more) to litigants or (2) increasing the number of delays or disputes in the discovery process:

Was this problem present in this case? <i>(Check all that apply)</i>		If so, did it have a significant impact on any of the following?	
		(1) Increasing cost of discovery to litigants	(2) Increasing delays or disputes
SCOPE OF DISCOVERY			
a. Scope of discovery was too broad	☐ yes ☐ no	☐	☐
DISCLOSURE/PRODUCTION OF DOCUMENTS			
b. Vague requests for information & documents	☐ yes ☐ no	☐	☐
c. Excessive requests for information & documents	☐ yes ☐ no	☐	☐
d. Insufficient or incomplete disclosure/production	☐ yes ☐ no	☐	☐
e. Excessive disclosure/production; production of irrelevant documents	☐ yes ☐ no	☐	☐
f. Untimely disclosure/production; the withholding of material information until late in the process	☐ yes ☐ no	☐	☐
g. Untimely production of expert reports	☐ yes ☐ no	☐	☐
h. Disorderly disclosure/production (e.g. documents not clearly identified or poorly organized)	☐ yes ☐ no	☐	☐
i. Disclosure occurred only after motion to compel	☐ yes ☐ no	☐	☐
ORAL DISCOVERY			
j. Costs of oral discovery were disproportionate to value of claim	☐ yes ☐ no	☐	☐
k. Difficulty/ delay in scheduling examinations	☐ yes ☐ no	☐	☐
l. Length of examinations	☐ yes ☐ no	☐	☐
ATTITUDE/BEHAVIOUR OF OPPOSING COUNSEL			
m. Disrespectful/unprofessional attitude	☐ yes ☐ no	☐	☐
n. Harassment/abuse of witnesses	☐ yes ☐ no	☐	☐
o. Lawyer unprepared or incompetent	☐ yes ☐ no	☐	☐
p. Lawyer inexperienced or inefficient	☐ yes ☐ no	☐	☐
q. Lawyer unfamiliar with specific issues in this case			
r. Refusals based on privilege improperly claimed	☐ yes ☐ no	☐	☐
s. Refusals based on relevance improperly claimed	☐ yes ☐ no	☐	☐
t. Excessive discovery-related motions arising from abuses or lack of cooperation	☐ yes ☐ no	☐	☐
u. Non-compliance with continuous obligation to disclose	☐ yes ☐ no	☐	☐
v. Abuse of discovery process to intentionally delay case	☐ yes ☐ no	☐	☐
ATTITUDE/BEHAVIOUR OF CLIENTS			
w. Contentious relationship among parties	☐ yes ☐ no	☐	☐
x. Clients insisted on overly extensive discovery	☐ yes ☐ no	☐	☐
y. Client representatives at discovery had inadequate knowledge of case	☐ yes ☐ no	☐	☐
z. Inappropriate attitude/ behaviour of other parties	☐ yes ☐ no	☐	☐
OTHER PROBLEMS <i>(Specify):</i>		☐	☐

19. In this case, please indicate whether or not each of the following factors were present, and if so, whether the factor had a significant impact on (1) increasing the cost of discovery (i.e. by 20% or more) to litigants or (2) increasing the number of delays or disputes in the discovery process:

Was this factor present in this case? <i>(Check all that apply)</i>		Did it have a significant impact on:	
		(1) Increasing cost of discovery to litigants	(2) Increasing delays or disputes
a. Multiple parties	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/>	<input type="checkbox"/>
b. Multiple lawyers representing different parties	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/>	<input type="checkbox"/>
c. All or part of discovery conducted by junior, rather than lead counsel	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/>	<input type="checkbox"/>
d. Parties located outside county where action was commenced	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/>	<input type="checkbox"/>
e. Lawyers located outside county where action was commenced	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/>	<input type="checkbox"/>
f. Parallel or concurrent litigation (e.g. 3 rd party claims)	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/>	<input type="checkbox"/>
g. Need to audit financial statements	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/>	<input type="checkbox"/>
h. Need to obtain medical records	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/>	<input type="checkbox"/>
i. Need to obtain records in possession of a third party	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/>	<input type="checkbox"/>
j. Need for expert testimony or expert report	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/>	<input type="checkbox"/>
k. Case involved issues relating to confidential information (e.g. breach of fiduciary duty)	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/>	<input type="checkbox"/>
l. Large volume of discoverable documents	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/>	<input type="checkbox"/>
m. Discovery of electronic documents	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/>	<input type="checkbox"/>
n. Complex legal issues	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/>	<input type="checkbox"/>
o. Complex factual issues	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/>	<input type="checkbox"/>
p. Disagreement regarding responsibility & cost of producing documents	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/>	<input type="checkbox"/>
q. Other <i>(specify)</i> :		<input type="checkbox"/>	<input type="checkbox"/>

20. To what extent did the discovery process result in the following benefits in litigating this case:

Did the discovery process result in any benefits? <i>(Check all that apply)</i>	(1) No benefits	(2) Moderate benefits	(3) Major benefits
a. Identified new avenues for discovery not known prior to discovery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Identified new litigation strategies not known prior to discovery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Strengthened case (action or defence) in specific ways	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Identified parties to be added	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Reduced court time required if the matter proceeded to trial	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Prepared client for trial	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Obtained better understanding of other parties	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Identified new legal basis for claim	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Identified basis for impeaching opponent or expert witnesses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j. Identified new damages	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k. Identified new documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l. Led directly to settlement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m. Other <i>(specify)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

21. On the whole, did the discovery generated by all parties in this case amount to too much, too little or about the right amount of information needed for a fair resolution of this case:

- a. too much information b. too little information c. about the right amount of information

For case-managed actions only (Toronto and Ottawa):

22. a. Were any discovery-related issues dealt with at a case conference: yes no

b. If so, approximately how many discovery-related issues were dealt with at a case conference: _____

23. c. Were you satisfied with this method of dealing with these issues: yes no

24. If mandatory mediation occurred, when did it occur (check all that apply):

a. before or after documentary discovery was completed: i. before ii. after

b. before or after oral/written discovery was completed: i. before ii. after

25. If mandatory mediation occurred before oral/ written discovery, what benefit did the mediation have in expediting the oral/ written discovery process?

- a. No benefit b. Moderate benefits c. Major benefits

26. If mandatory mediation occurred after oral/ written discovery, would the mediation have benefited from the oral/written discovery process?

- a. No benefit b. Moderate benefits c. Major benefits

PART H - COST OF DISCOVERY

27. Please estimate the total amount billed or to be billed to your client for legal work done on the case to date:

- a. Under \$5,000 b. \$5,001-\$10,000 c. \$10,001-\$20,000 d. \$20,001-\$35,000 e. \$35,001-\$50,000 f. \$50,001-\$75,000 g. Over \$75,000

28. Approximately what percentage of the total amount billed or to be billed to your client to date is associated with discovery related activity (including discovery related motions): _____ %

29. Please rank the amount of costs that were associated with each type of discovery conducted in this case (1 being the most, to 3 being the least):

- | | | | | |
|---|----------------------------|----------------------------|----------------------------|------------------------------|
| a. Production of documents | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> | 3 <input type="checkbox"/> | n/a <input type="checkbox"/> |
| b. Preparing & attending oral examinations for discovery | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> | 3 <input type="checkbox"/> | n/a <input type="checkbox"/> |
| c. Preparing & responding to written examinations (interrogatories) | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> | 3 <input type="checkbox"/> | n/a <input type="checkbox"/> |
| d. Responding to Undertakings/Refusals | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> | 3 <input type="checkbox"/> | n/a <input type="checkbox"/> |

30. On the whole, was the cost of discovery too high, too low, or about right relative to your client's stake in this case:

- a. cost relatively too high b. cost relatively too low c. cost about right

31. Did the costs of discovery incurred by your client lead your client to do any of the following:

- a. discontinue or abandon the claim/defence
b. settle on less satisfactory terms than would have been achieved had the client continued with the litigation
c. Other _____

PART I - REFORM OPTIONS

32. The following are approaches to discovery adopted in other jurisdictions and potential reforms for Ontario. Please indicate what impact you think each reform option, if in force, would have had on this case:

What impact would each of the following reforms have had in this case? <i>(Check all that apply)</i>	(1) Negative impact	(2) No impact	(3) Positive impact
SCOPE OF DISCOVERY (ORAL & DOCUMENTARY)			
a. Narrow scope of discovery; narrower definition of relevance, e.g. “relevant & material”	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Bifurcated discovery (liability first, then other issues, such as punitive damages, future loss of income, bad faith claims)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Regulating access to documents of non-parties	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DOCUMENTARY DISCOVERY			
d. Mandatory production of “Schedule A” documents with pleadings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Greater specificity in “Schedule B” about basis of privilege for each document	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Guidelines for orderly production (e.g. duty to label & catalogue documents)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Serious sanctions for untimely or disorderly production or production of excessive documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
WRITTEN DISCOVERY			
h. Mandatory early disclosure of certain aspects of claim with pleadings (e.g. list of witnesses & summary of their evidence; calculation of damages)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Standard disclosure protocols for certain case types (e.g. personal injury, employment)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j. Limit number of interrogatories	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k. Create standard interrogatories (i.e. standard questions that must be answered)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ORAL DISCOVERY			
l. Require parties to agree upon discovery plan (fixing dates & time needed) prior to discovery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m. Eliminate automatic right to oral discovery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n. Time limits on oral discovery, based on value of claim	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
o. Permit oral discovery only after completion of written discovery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p. Eliminate right to cross-examine at oral discovery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
q. Have parties agree to list of undertakings & refusals at end of discovery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
r. Immediate rulings on discovery disputes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
s. Eliminate right to object to any question; trial judge to decide admissibility	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
t. Restrict objections on matters of privilege	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
u. Time limits on completion of undertakings & sanctions for failure to comply	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
v. Deem questions taken under advisement to be refusals if not answered within a fixed time period	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
w. Video record oral discovery to reduce transcript costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
x. Require lawyers with lead on file to attend discovery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SANCTIONS			
y. Tougher cost sanctions for unnecessary discovery-related motions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
z. Stricter enforcement of sanctions by judiciary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
aa. Immediate contempt order for failing to comply with discovery-related orders	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PART J – RESPONDENT (To be completed by lawyers)

The final questions will assist the Task Force in determining whether lawyers' experiences with discovery are common to all types of practices, or whether they vary.

33. How many years have you been practicing litigation: _____ years

34. What types of clients do you most often represent:

- a. Defendants
- b. Plaintiffs
- c. Both defendants and plaintiffs equally
- d. Other (*specify*) _____

35. With what types of cases are you most often involved. Please check all that apply:

- | | | |
|---|--|--|
| a. <input type="checkbox"/> Collection | g. <input type="checkbox"/> Bankruptcy | m. <input type="checkbox"/> Other professional malpractice |
| b. <input type="checkbox"/> Motor vehicle | h. <input type="checkbox"/> Construction lien | n. <input type="checkbox"/> Personal injury |
| c. <input type="checkbox"/> Real property | i. <input type="checkbox"/> Negligence | o. <input type="checkbox"/> Class actionOther (specify): |
| d. <input type="checkbox"/> Contract / commercial | j. <input type="checkbox"/> Landlord/tenant | p. <input type="checkbox"/> Other (specify): |
| e. <input type="checkbox"/> Wrongful dismissal | k. <input type="checkbox"/> Trust / fiduciary duty | |
| f. <input type="checkbox"/> Estates | l. <input type="checkbox"/> Medical malpractice | |

36. Would you describe your type of practice as:

- | | | |
|--|--|--|
| a. <input type="checkbox"/> Sole Practitioner | b. <input type="checkbox"/> Private firm (under 5 lawyers) | c. <input type="checkbox"/> Private firm (5-30 lawyers) |
| d. <input type="checkbox"/> Private firm (over 31 lawyers) | e. <input type="checkbox"/> Government | f. <input type="checkbox"/> Legal staff of for-profit entity |
| g. <input type="checkbox"/> Legal staff of not-for-profit entity | | |

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APPENDIX H: COMPARISON OF CANADIAN DISCOVERY RULES¹

Documentary Discovery

Jurisdiction	Scope & manner of disclosure	Timing of disclosure	Inspection & authenticity	Sanctions	Non-parties
Ontario (Rules of Civil Procedure)	<ul style="list-style-type: none"> - Every document relating to any matter in issue that is or has been in a party's possession, control, or power (30.02). - Duty to disclose insurance policy (30.02). - Disclosed by affidavit of documents (30.03). 	<ul style="list-style-type: none"> - Within 10 days after close of pleadings, party must serve affidavit of documents (30.03). 	<ul style="list-style-type: none"> - No automatic duty to produce, but duty to make documents available for inspection. Duty applies to non-privileged documents referred to in affidavit of documents & documents referred to in pleadings or an affidavit (30.04). - Court may order production of non-privileged documents for inspection & may inspect documents to determine validity of privilege claim (30.04). 	<ul style="list-style-type: none"> - A party who fails to disclose/produce document may not use it at trial (except with trial judge's leave), or court may make such order as is just (30.08). - If party fails to serve affidavit of documents or produce a document, court may revoke or suspend party's right to examination for discovery, dismiss action or strike the statement of defence, or make such other order as is just (30.08). 	<ul style="list-style-type: none"> - Court may order production of documents in the possession, control or power of a non-party (30.10).
Alberta (Alberta Rules of Court)	<ul style="list-style-type: none"> - Relevant & material records that are or were in a party's possession, custody, or power (187.1). - A question or record is relevant & material only if it could reasonably be expected to significantly help determine issues raised in pleadings, or to ascertain evidence that could reasonably be expected to significantly help determine issues (186.1). - Disclosed by affidavit of records (187, 187.1). 	<ul style="list-style-type: none"> - Plaintiff: within 90 days of service of 1st defence. - Each defendant: within 90 days of service of its statement of defence (187). - Court may not enlarge or abridge time to serve or file affidavit of records unless satisfied that case is complex, volume or location of records requires it, or there is other sufficient reason (187, 188.1, 548). - Time for delivering, amending or filing pleading, answer or other document may be enlarged on consent without leave (549). 	<ul style="list-style-type: none"> - Affidavit of records must state time when record may be inspected, being no later than 10 days after it is served (188). - In very long trial actions, case management judge may establish mechanism for production when number, nature or location of records makes production unduly expensive or cumbersome (189.1). - Party may inspect & copy records referred in another party's pleadings, particulars or affidavits by making a demand for production (193). - Records in affidavit of records deemed authentic unless disputed or court orders otherwise (192). 	<ul style="list-style-type: none"> - For failing to serve or file affidavit of records, court may order prescribed cost penalty or larger amount (190), strike pleadings or impose other sanctions, including cost penalty (190.1, 599.1). - Party who fails to disclose or produce a record may not use it in evidence unless court satisfied that party had sufficient cause for omission or non-production (197). - Where party acts or threatens to act in a manner that is vexatious, evasive, abusive, oppressive, improper or prolix, court may make several orders, including costs (& advance payment of costs), production of documents, schedules or time limits, inspection or production of documents held by non-parties, & supervision of further discovery (216.1). - Person who fails without adequate excuse to comply with a notice or order for production of documents is in civil contempt (703(1)). 	<ul style="list-style-type: none"> - Court may, with or without conditions, direct production of a record in the possession, custody or power of a non-party (209).
B.C. (Rules of Court)	<ul style="list-style-type: none"> - Once a party delivers demand for discovery of documents, responding party must deliver list of documents that are or have been in its possession or control relating 	<ul style="list-style-type: none"> - Party must comply with demand for discovery of documents within 21 days. (26(1)). 	<ul style="list-style-type: none"> - Party delivering list shall allow other party to inspect & copy listed documents, except those delivering party objects to producing. Delivering party list shall deliver 	<ul style="list-style-type: none"> - Where a person refuses or neglects to make discovery of or produce any document, court may dismiss proceeding or order it to continue as if no defence had been filed (2(5)). 	<ul style="list-style-type: none"> - Court may order production and inspection of document in the possession or

¹ Substantive provisions of rules are summarized for comparative purposes only, and should not be relied upon as the full text of the rule.

Jurisdiction	Scope & manner of disclosure	Timing of disclosure	Inspection & authenticity	Sanctions	Non-parties
	<p>to every matter in question (26(1)).</p> <ul style="list-style-type: none"> - Court may order a party to deliver an affidavit verifying the list of documents (26(3)). - A party may deliver a notice requiring another party to produce documents referred to in its pleadings or affidavits (26(8)). 		<p>notice stating where documents may be inspected & copied (26(7)).</p> <ul style="list-style-type: none"> - Party entitled to inspect documents may receive copies upon payment of delivery & reproduction costs (26(9)). 	<ul style="list-style-type: none"> - Any person guilty of an act or omission described in r. 2(5) is also guilty of contempt & subject to court's power to punish for contempt (56(4)). - Party who party fails to make discovery of or produce document for inspection may not use document in evidence or for examination or cross-examination, unless court orders otherwise (26(14)). 	<p>control of a non-party (26(11)).</p>
Manitoba (Court of Queen's Bench Rules)	<ul style="list-style-type: none"> - Every relevant document that is or has been in a party's possession, control or power. Document is relevant if it relates to any matter in issue. (30.01, 30.02). - Duty to disclose insurance policy (30.02). - Disclosed by affidavit of documents (30.03). 	<ul style="list-style-type: none"> - Within 10 days after close of pleadings, party must serve affidavit of documents (30.03). 	<ul style="list-style-type: none"> - Duty to make documents available for inspection if served with request to inspect. Duty applies to non-privileged documents referred to in affidavit of documents & documents referred to in pleadings or an affidavit (30.04). - Court may order production of non-privileged documents for inspection & may inspect documents to determine validity of privilege claim (30.04). 	<ul style="list-style-type: none"> - Party who fails to disclose or produce document for inspection may not use it at trial, except with trial judge's leave. If not favourable to party's case, court may make such order as is just (30.08). - If party fails to serve an affidavit of documents or produce a document, court may revoke or suspend the party's right to examination for discovery, dismiss the action or strike the statement of defence, or make such other order, including a contempt order, as is just (30.08). 	<ul style="list-style-type: none"> - Court may order production for inspection of documents in the possession, control or power of a non-party (30.10).
New Brunswick (Rules of Court)	<ul style="list-style-type: none"> - Every document that relates to a matter in issue & is or has been in a party's possession or control, or that a party believes to be in a non-party's possession, custody or control (31.02). - Disclosed by affidavit of documents (31.03). - Duty to disclose insurance policy by letter (31.02). 	<ul style="list-style-type: none"> - Party may serve notice requiring affidavit of documents. Responding party must file & serve affidavit of documents within 10 days (31.03). - Party must disclose insurance policy within 10 days after close of pleadings (31.02). 	<ul style="list-style-type: none"> - Duty to make documents available for inspection if served with request to inspect. Duty applies to non-privileged documents referred to in affidavit of documents & documents referred to in pleadings or an affidavit (31.04). - Court may order production of non-privileged documents for inspection & may inspect documents to determine validity of privilege claim (31.04). 	<ul style="list-style-type: none"> - Party who fails to disclose or produce a document for inspection may not use the document at trial, except with trial judge's leave (31.08). - If party fails to serve an affidavit of documents or produce a document for inspection, court may revoke or suspend the party's right to examination for discovery; dismiss the action or strike the statement of defence or impose such terms as to costs or otherwise as may be just (31.08). 	<ul style="list-style-type: none"> - Court may order production for inspection of documents in the possession or control of a non-party (31.11).
Nfld. & Labrador (Rules of Civil Procedure)	<ul style="list-style-type: none"> - Documents of which party has knowledge relating to every matter in question in the proceeding (32.01). - Disclosed by list of documents (32.01). - List of documents must state that a true copy of documents for which privilege is not claimed is attached, may be inspected, & will be produced at trial (32.01(4)) 	<ul style="list-style-type: none"> - Unless court orders otherwise, party must file & serve list of documents within 10 days after close of pleadings. Where there are no pleadings, party must file & serve list within 7 days after service of originating document. (32.01) 	<ul style="list-style-type: none"> - Subject to r. 32.01(4), party may serve notice to inspect any document referred to in pleadings, affidavit or list of documents (32.05) - Receiving party is deemed to admit that any document in list is an original or a true copy, unless it serves notice within 10 days of receiving list (32.04). 	<ul style="list-style-type: none"> - Party who fails to make discovery of or produce documents may have proceeding dismissed or defence struck (32.10). 	<ul style="list-style-type: none"> - Court may order production for inspection of documents in the possession, custody or control of a non-party (32.07).

Jurisdiction	Scope & manner of disclosure	Timing of disclosure	Inspection & authenticity	Sanctions	Non-parties
N.W.T. (Supreme Court Rules)	<ul style="list-style-type: none"> - Every document relating to any matter in issue that is or has been in a party's possession, control, or power (219). - Duty to disclose insurance policy (222). - Disclosed by statement as to documents (221). 	<ul style="list-style-type: none"> - Within 30 days after close of pleadings, party must file statement as to documents (221). 	<ul style="list-style-type: none"> - Statement as to documents must state day, time & place where documents may be inspected (221). - Party may give notice to other party to produce for inspection any document referred to in party's pleadings, affidavits, or statements as to documents (225). 	<ul style="list-style-type: none"> - Party may not put document in evidence that has not been disclosed or produced, unless court permits (230). - Party who fails to comply with notice or order for production or inspection may be held in contempt (233, 704). 	<ul style="list-style-type: none"> - Court may order production of documents in the possession of a non-party (231).
Nova Scotia (Civil Procedure Rules)	<ul style="list-style-type: none"> - Documents that are or have been in a party's possession, custody or control relating to every matter in question in the proceeding (20.01). - Disclosed by list of documents (20.01). - Unless court orders otherwise, list of documents must state that a true copy of a document for which privilege is not claimed is attached (20.01(4)). 	<ul style="list-style-type: none"> - Unless court orders otherwise, party must serve & file list of documents within 60 days after close of pleadings. Where there are no pleadings, party must file & serve list within 7 days after service of originating notice. (20.01). 	<ul style="list-style-type: none"> - Subject to r. 20.01(4), party may serve notice requiring other party to produce any document referred to in pleading, affidavit or list of documents for inspection & copying (20.04). - Unless denied in a notice served within 10 days after a party receives list of documents, receiving party is deemed to admit that any document listed is an original or true copy (20.03). 	<ul style="list-style-type: none"> - Party who fails to make discovery or produce any document where required is liable to be punished for contempt & to have proceeding dismissed or defence struck (20.09). - Where court finds a failure to make a reasonable effort to give full discovery, court may impose such terms or penalty as it thinks just (20.09). 	<ul style="list-style-type: none"> - Court may order production or inspection of documents in possession, custody or control of non-party only where necessary to dispose fairly of proceeding or to save costs, & is not injurious to public interest (20.06).
Nunavut	<ul style="list-style-type: none"> - NWT rules apply. <i>Nunavut Judicial System Implementation Act</i>, S.N.W.T. 1998, c.34, Sched. A., s. 59(2) 	<ul style="list-style-type: none"> - NWT rules apply. 	<ul style="list-style-type: none"> - NWT rules apply. 	<ul style="list-style-type: none"> - NWT rules apply. 	<ul style="list-style-type: none"> - NWT rules apply.
P.E.I. (Civil Procedure Rules)	<ul style="list-style-type: none"> - Every document relating to any matter in issue in an action that is or has been in a party's possession, control or power (30.02). - Duty to disclose insurance policy (30.02). - Disclosed by affidavit of documents (30.03). - True copies of non-privileged documents must be annexed to affidavit of documents, unless other party has produced or agreed to produce a true copy (30.03(4)). 	<ul style="list-style-type: none"> - Within 10 days after close of pleadings, party must serve affidavit of documents (30.03). 	<ul style="list-style-type: none"> - Duty to make documents available for inspection. Duty applies to non-privileged documents referred to in affidavit of documents & documents referred to in pleadings or an affidavit (30.04). - Court may order production of non-privileged documents for inspection & may inspect document to determine validity of privilege claim (30.04). 	<ul style="list-style-type: none"> - Party who fails to disclose or produce a document for inspection may not use the document at trial, except trial judge's leave. If document is not favourable to party's case, court may make such order as is just (30.08). - If party fails to serve an affidavit of documents or produce a document for inspection, court may revoke or suspend party's right to examination for discovery, dismiss the action or strike the statement of defence, or make such other order as is just (30.08). 	<ul style="list-style-type: none"> - Prothonotary or court may order production for inspection of documents in possession, control or power of non-party (30.10).
Quebec (Code of Civil Procedure)	<ul style="list-style-type: none"> - Party who intends to rely on exhibit must communicate it to other parties (331.1). If it is in support of a pleading, a notice or copy must be attached thereto (331.2). In proceedings introduced by motion, 	<ul style="list-style-type: none"> - Procedure & time limit for communicating exhibits may be agreed on by parties in a proceeding timetable or determined by court 	<ul style="list-style-type: none"> - After filing of defence, party may call on opposite party to admit genuineness or correctness of an exhibit by notice. Deemed admitted unless opposite party serves statement denying genuineness or 	<ul style="list-style-type: none"> - Where parties fail to comply with agreed timetable, sanctions include striking the allegations & dismissing the action or application (151.3). - If request for copy of exhibits not complied with within 10 days of receipt, party may 	<ul style="list-style-type: none"> - Court may order documents relating to issues between parties in possession of a third party to be

Jurisdiction	Scope & manner of disclosure	Timing of disclosure	Inspection & authenticity	Sanctions	Non-parties
	<p>exhibit is disclosed by notice of disclosure, but disclosure is not required if the exhibit is provided with pleading (331.2)</p> <ul style="list-style-type: none"> - Except where provided in a proceeding timetable, on inscribing a case for proof & hearing, a party who intends to rely on exhibit must communicate it to all parties. Other parties must do likewise within 30 days after inscription (331.4). 	<p>(331.3).</p> <ul style="list-style-type: none"> - If timetable does not set out procedure or time limit, party receiving notice of disclosure may request copy of exhibits, to be provided within 10 days after receipt (331.3). - If copy of exhibit cannot reasonably be provided, party in possession must give access by other means. If parties cannot agree, judge may be requested to determine procedure & time limit (331.5). 	<p>correctness within 10 days or time fixed by judge (403).</p>	<p>apply to court for satisfaction (331.3).</p> <ul style="list-style-type: none"> - Party who fails to communicate exhibit other than exhibit in support of pleading within time limit may file only with authorization of the court (331.4). - Unjustified refusal to admit exhibit may result in cost sanctions (403). 	<p>communicated (402).</p>
Sask. (Rules of Court)	<ul style="list-style-type: none"> - Documents that are or have been in party's possession or power relating to any matter in question in the action (212). - Disclosed by statement as to documents (212). 	<ul style="list-style-type: none"> - Within 10 days after statement of defence is filed, parties must serve statement as to documents (212). 	<ul style="list-style-type: none"> - Statement must state time, not later than 10 days from service, when documents may be inspected (212). - Party may give notice to other party to produce for inspection & copying non-privileged document referred to in party's pleadings, affidavits, or statement as to documents (213). - Court may inspect documents to determine validity of privilege claim (215). 	<ul style="list-style-type: none"> - If party does not make discovery as required or fails to produce documents for inspection, court may order production of documents or further or better production (215), permit cross-examination on statement as to documents (215), dismiss action or strike defence (217), or refuse to allow party to put document in evidence (218). - Party who fails to comply with order for discovery or inspection of documents is liable to committal (217). - Solicitor who fails to give notice of discovery order to his client is liable to committal (221). 	<ul style="list-style-type: none"> - Court may order production of documents in possession of non-party (236).
Yukon <i>Judicature Act</i> , s. 38	<ul style="list-style-type: none"> - BC Rules apply. 	<ul style="list-style-type: none"> - BC Rules apply. 	<ul style="list-style-type: none"> - BC Rules apply. 	<ul style="list-style-type: none"> - BC Rules apply. 	<ul style="list-style-type: none"> - BC Rules apply.

Oral and Written Discovery

Jurisdiction	Scope & limits on examination	Who may be examined	When exam may occur & method	Sanctions	Improper conduct
Ontario (Rules of Civil Procedure)	<ul style="list-style-type: none"> - Oral or written discovery, but not both, except with leave (31.02). - Duty to answer to best of knowledge, information & belief, any proper question relating to any matter in issue (31.06). - Party may obtain disclosure of: names & addresses of persons who might reasonably be expected to have knowledge of transactions or occurrences in issue (31.06); & of expert's name, address & findings, opinions & conclusions except where made or formed in preparation for contemplated or pending litigation & expert will not be called as witness (31.06). 	<ul style="list-style-type: none"> - Party adverse in interest may be examined once, except with leave (31.03). - May examine 1 officer, director or employee on behalf of corporate party (31.03). - If party is a partnership or sole proprietorship, each person who was a partner or sole proprietor at a material time may be examined (31.03). - Court may limit multiple examinations (31.03). - Court may grant leave to examine non-party (31.10). - 	<ul style="list-style-type: none"> - After statement of defence delivered or defendant noted in default, & unless parties agree otherwise, after service of affidavit of documents (31.04). - Party who first serves notice of examination or written questions may examine first, unless court orders otherwise (31.04). - Oral examination is before person assigned by an official examiner or reporting service (34.02). 	<ul style="list-style-type: none"> - Party who refuses or fails to furnish information requested, may not introduce it at trial, except with trial judge's leave (31.07). - Where person fails to attend examination, refuses to take oath or make affirmation, answer any proper question or produce a document as required, court may order re-examination at person's expense, dismiss action or strike defence, strike person's evidence or make such other order as is just (34.15). 	<ul style="list-style-type: none"> - Examination may be adjourned to move for directions or for an order terminating examination or limiting its scope where right to examine is abused (e.g. improper questions, interruptions or objections), is being conducted in bad faith, answers are evasive, unresponsive or unduly lengthy, there has been neglect or improper refusal to produce relevant documents (34.14). - Court may order person to personally & forthwith pay costs of motion, costs thrown away & costs of continuation of examination & make such other order as is just (34.14). - See Sanctions (34.15).
Alberta (Alberta Rules of Court)	<ul style="list-style-type: none"> - Oral discovery only (200(1)). Court may order written interrogatories (216.1). - Duty to answer only relevant & material questions (200(1.2)). 	<ul style="list-style-type: none"> - Party adverse in interest, 1 or more officers of a corporate party & 1 or more persons who are or were employed by the other party & appear to have knowledge of matters in issue (200(1)). - Member of a firm that is a party (201). - Court may limit number of employees who may be examined (200(2)). 	<ul style="list-style-type: none"> - Party may not conduct examination for discovery until it has filed & served affidavit of records, unless court orders otherwise (188.1(2), 189). - Discovery may take place once statement of defence has been delivered, time has expired or party has been noted in default (203). - Examination is before examiner or court reporter (203, 212). - Examiner's ruling or direction may be appealed to court (210). 	<ul style="list-style-type: none"> - Where party acts in vexatious, evasive, abusive, oppressive, improper or prolix manner, court may make several orders, including costs, different venue for examination, schedules or time limits, written interrogatories & supervision of further discovery (216.1). - Every person is in contempt who fails without adequate excuse to attend examination, or refuses to be sworn or to answer proper questions (703(1)). 	<ul style="list-style-type: none"> - Person taking examination may & if need be shall, make a special report to court touching the examination & conduct or absence of any person. Court may make such order as is requisite (216). - See Sanctions (216.1, 703(1))
B.C. (Rules of Court)	<ul style="list-style-type: none"> - Oral (27(1)(2)) or written discovery (29(1)). No restriction on using both. - Duty to answer any question within knowledge or means of knowledge regarding any non-privileged matter relating to a matter in question. Also compellable to give names & addresses of all persons who 	<ul style="list-style-type: none"> - Party adverse in interest, director, officer, employee, agent or external auditor of party, partner (27(3)(4)(7)). - Court may order examination of non-party who may have material evidence relating to a matter in question (28(1)). - Expert may not be examined under r. 28 unless party 	<ul style="list-style-type: none"> - After delivery of statement of defence or time has expired (27(13)), & any time up to 14 days before scheduled trial date (27(1)). - Interrogatories may be served after delivery of statement of defence or time has expired (29(3)). - Examination is before official 	<ul style="list-style-type: none"> - Where a person fails to attend examination for discovery, refuses to be sworn or to answer any question, or fails to answer interrogatories, court may dismiss proceeding or order it to continue as if no defence had been filed (2(5)). - Any person who is guilty of an act or omission described in r. 	<ul style="list-style-type: none"> - See Sanctions (2(5), 56(4)).

Jurisdiction	Scope & limits on examination	Who may be examined	When exam may occur & method	Sanctions	Improper conduct
	<p>might have knowledge relating to any matter in question (27(22)).</p> <ul style="list-style-type: none"> - Examination for discovery to be in the nature of a cross-examination & person examined may be re-examined (27(21)). - Written discovery allowed relating to a matter in question (29(1)). 	<p>cannot obtain facts & opinions on same subject by other means. (28(2)).</p>	<p>reporter (27(15)).</p>	<p>2(5) is also guilty of contempt of court & subject to court's power to punish contempt of court (56(4)).</p>	
Manitoba (Court of Queen's Bench Rules)	<ul style="list-style-type: none"> - Oral or written discovery or both (31.02). - Duty to answer to best of knowledge, information & belief any proper question relating to any matter in issue (31.06). - Party may obtain disclosure of names & addresses of persons who might reasonably be expected to have knowledge of transactions or occurrences in issue (31.06); & of expert's name, address & findings, opinions & conclusions, except where made or formed in preparation for contemplated or pending litigation & expert will not be called as witness (31.06). 	<ul style="list-style-type: none"> - Party adverse in interest may be examined once, except with leave (31.03). - May examine 1 officer, director or employee on behalf of corporate party (31.03). - If party is a partnership or sole proprietorship, each person who was a partner or sole proprietor at a material time, or who was in control or management of proprietorship, may be examined. - Court may limit multiple examinations (31.03) & grant leave to examine non-party (31.10). 	<ul style="list-style-type: none"> - After statement of defence filed & served or defendant noted in default, & unless parties agree otherwise, after service of affidavit of documents (31.04). - Party who first serves notice of examination or interrogatories examines first, unless court orders or parties agree otherwise (31.04). - Oral examination is before official examiner or master, or person agreed on by parties (34.02). 	<ul style="list-style-type: none"> - Party who refuses or fails to furnish information requested may not introduce it at trial, except with trial judge's leave (31.07). - Where person fails to attend examination, refuses to take oath or make affirmation, answer any proper question or produce a document as required, court may order re-examination at person's expense, dismiss action or strike defence, strike person's evidence or make such other order as is just (34.14). 	<ul style="list-style-type: none"> - See Sanctions (34.14).
New Brunswick (Rules of Court)	<ul style="list-style-type: none"> - Oral or written discovery, but not both except on consent or with leave (32.04). - Duty to answer to best of knowledge, information & belief, any proper question relating to an issue, unless ordered otherwise (32.06). - Duty to answer to best of knowledge, information & belief, any question concerning names and addresses of potential witnesses (32.06). - Party may obtain discovery of expert's findings, opinions & conclusions, except where made or formed in preparation for 	<ul style="list-style-type: none"> - Party adverse in interest may be examined once, except with leave (32.02). - May examine 1 officer, director, manager or employee on behalf of corporate party (32.02). - If party is a partnership or sole proprietorship, each person who was a partner or sole proprietor at a material time may be examined (32.02). - Court may limit number of persons to be examined (32.02). 	<ul style="list-style-type: none"> - After statement of defence filed & served or defendant noted in default, &, if served with notice requiring affidavit of documents, after affidavit of documents filed & served (32.03). - Examination is before court reporter (33.02). 	<ul style="list-style-type: none"> - Party who refuses to answer question, may not introduce information at trial, except with trial judge's leave (32.07). - Where person refuses or neglects to attend examination, refuses to be sworn or to answer a proper question, to produce a document as required, or to fulfill & undertaking, court may order re-attendance at the person's own expense, order production of document & re-attendance at person's own expense, dismiss claim or strike statement of defence, strike person's 	<ul style="list-style-type: none"> - Examination may be adjourned to apply to court for directions or for an order terminating or limiting the examination where right to examine is abused or obstructed by improper questions, interruptions or objections, is being conducted in bad faith, is excessive in length, answers are evasive, unresponsive or unduly prolix, there has been neglect or improper refusal to produce relevant documents (33.11). - Court may order person to personally & forthwith pay costs of motion, costs unnecessarily

Jurisdiction	Scope & limits on examination	Who may be examined	When exam may occur & method	Sanctions	Improper conduct
	<p>or formed in preparation for contemplated or pending litigation & expert will not be called as witness (32.06).</p> <p>-</p>	<p>- Court may grant leave to examine person who there is reason to believe has information relevant to a material issue (32.10).</p> <p>-</p>		<p>evidence, by warrant, have the person apprehended & brought to court, order person to be detained in custody & ordered to pay costs), or make such other order as may be just (33.12).</p>	<p>incurred & costs of continuation of the examination, or may make such other order as may be just (33.11).</p> <p>- See Sanctions (33.12).</p>
Nfld. & Labrador (Rules of Civil Procedure)	<p>- Oral (30.01) or written discovery (31.01). No restriction on using both.</p> <p>- Unless otherwise ordered, duty to answer any question within knowledge or means of knowledge regarding any non-privileged matter relevant to subject matter of proceeding, even if not within scope of pleadings (30.08, 31.02).</p>	<p>- Party may orally examine any person. Costs of examining more than 1 person, other than a party, to be borne by examining party, unless court orders otherwise (30.01).</p> <p>- Court may limit number of persons examined (30.01).</p> <p>- Party may serve interrogatories on an adverse party & any non-party (31.01).</p> <p>- No limit on number of interrogatories, unless court orders otherwise (31.02).</p>	<p>- Oral examination to take place prior to commencement of proceeding by court order, before close of pleadings by court order, or at any time after pleadings have closed without an order (30.02).</p> <p>- Interrogatories may be served after pleadings have closed, unless court orders otherwise (31.02).</p> <p>- Examination is before registrar or person appointed by registrar (30.03).</p> <p>- Examiner's ruling or direction may be appealed to court (30.11).</p>	<p>- Where person refuses or neglects to attend examination, refuses to be sworn, answer any question properly put to him or her, or produce a document as required, court may hold the person guilty of contempt, dismiss proceeding or strike the defence, or grant such other order as is just (30.14).</p>	<p>- Where examination is conducted in bad faith or in unreasonable manner, examiner may stop examination, limit its scope, or prescribe manner of taking the examination (30.15).</p> <p>- See Sanctions (30.14).</p>
N.W.T. (Supreme Court Rules)	<p>- Oral or written discovery, but not both except with leave (236).</p> <p>- Duty to answer to the best of knowledge, information & belief, any proper question relating to any matter in issue (251).</p> <p>- Party may obtain disclosure of names & addresses of persons who might reasonably be expected to have knowledge of transactions or occurrences in issue, unless court orders otherwise (251); and of expert's name, address & findings, opinions & conclusions, except where expert will not be called as a witness (252).</p> <p>- Party who was subject of surveillance may obtain disclosure of details of the surveillance (254).</p>	<p>- Party may examine any other party adverse in interest (235), & non-party with leave (270).</p> <p>- Party may be examined for discovery only once, except with leave (237).</p> <p>- Party may examine 1 officer, director or employee on behalf of a corporate party, unless leave is obtained or parties agree (238).</p> <p>- Where party is a partnership or sole proprietorship, sole proprietor or each person who was a partner at the material time may be examined (240).</p> <p>- Party noted in default may be examined (245).</p>	<p>- After delivery of statement of defence, & unless parties agree otherwise, delivery of statement as to documents (247).</p> <p>- Examination is before examiner, who may give directions regarding conduct of examination (249).</p> <p>- Duty to answer undertakings in timely manner (261).</p>	<p>- A person is in contempt who fails, without adequate excuse, to attend examination for discovery as required, refuses to be sworn or to answer proper questions (704).</p>	<p>- See Sanctions (704).</p>

Jurisdiction	Scope & limits on examination	Who may be examined	When exam may occur & method	Sanctions	Improper conduct
		- Court may limit multiple examinations (246).			
Nova Scotia (Civil Procedure Rules)	<ul style="list-style-type: none"> - Oral (18.01) or written discovery (19.01). No restriction on using both. - Unless otherwise ordered, duty to answer any question within knowledge or means of knowledge regarding any non-privileged matter relevant to the subject matter of the proceeding, even if not within scope of the pleadings (18.09, 19.02). 	<ul style="list-style-type: none"> - Party may orally examine any person. Costs of examining more than 1 person, other than a party, to be borne by examining party, unless court orders otherwise (18.01). - Court may limit number of persons to be examined (18.01). - Party may serve interrogatories on an adverse party & any person who is not a party (19.01). - No limit on number of interrogatories, unless court orders otherwise (19.02). 	<ul style="list-style-type: none"> - Oral examination to take place any time after close of pleadings, or where proceeding has not commenced, when court orders (18.02). - Interrogatories may be served after pleadings closed (19.02). - Examination is before prothonotary or designate, or before local judge or person or designate (18.04). Where examination is taken by official court reporter, not necessary for examiner to be present, reporter deemed to be examiner (18.07). - Examiner's ruling/direction may be appealed to court (18.12). 	<ul style="list-style-type: none"> - Where person fails to attend examination, refuses to be sworn, answer question or produce document as required, court may hold person guilty of contempt, dismiss the proceedings or strike the defence, or grant such other order as is just (18.15). 	<ul style="list-style-type: none"> - Where examination is conducted in bad faith, examiner may stop examination, limit its scope or manner & order party to pay costs (18.16). - Examiner may, & if need be shall, make special report to court on conduct or absence of any person & court may make such order as is just, including contempt order (18.13). - See Sanctions (18.15).
Nunavut	- NWT Rules apply. <i>Nunavut Judicial System Implementation Act</i> , S.N.W.T. 1998, c.34, Sched. A., s. 59(2).	- NWT Rules apply.	- NWT Rules apply.	- NWT Rules apply.	- NWT Rules apply.
P.E.I. (Civil Procedure Rules)	<ul style="list-style-type: none"> - Oral or written discovery, but not both, except with leave (31.02). - Duty to answer to best of knowledge, information & belief, any proper question relating to any matter in issue (31.06). - Party may obtain disclosure of names & addresses of persons who might reasonably be expected to have knowledge of transactions or occurrences in issue (31.06); & expert's name, address & findings, opinions & conclusions except where made or formed in preparation for contemplated or pending litigation & expert will not be called as witness (31.06). 	<ul style="list-style-type: none"> - Party adverse in interest may be examined once, except with leave (31.03). - May examine 1 officer, director or employee on behalf of corporate party (31.03). - If party is a partnership or sole proprietorship, each person who was a partner or sole proprietor at a material time may be examined (31.03). - Court may limit multiple examinations (31.03). - Prothonotary or court may grant leave to examine non-party (31.10). 	<ul style="list-style-type: none"> - After statement of defence delivered or defendant noted in default, & unless parties agree otherwise, after service of affidavit of documents (31.04). - Party who first serves notice of examination or written questions may examine first, unless court orders otherwise (31.04). - Oral examination is before prothonotary or person agreed on by parties (34.02). 	<ul style="list-style-type: none"> - Party who refuses or fails to furnish information requested may not introduce it at trial, except with trial judge's leave (31.07). - Where person fails to attend examination, refuses to take oath or make affirmation, answer any proper question or produce a document as required, court may order re-examination at person's expense, dismiss action or strike defence, strike person's evidence, or make such other order as is just (34.15). 	<ul style="list-style-type: none"> - Examination may be adjourned to move for directions or order terminating or limiting examination where right to examine is abused or interfered with by improper questions, interruptions or objections, examination is being conducted in bad faith, answers are evasive, unresponsive or unduly lengthy, there has been neglect or improper refusal to produce relevant documents (34.14). - Court may order person to personally & forthwith pay costs of motion, costs thrown away & costs of continuation of examination, & may make such other order as is just (34.14). - See Sanctions (34.15).

Jurisdiction	Scope & limits on examination	Who may be examined	When exam may occur & method	Sanctions	Improper conduct
Quebec (Code of Civil Procedure)	<ul style="list-style-type: none"> - Examination on discovery not permitted where amount or value of property claimed is less than \$25,000 (396.1). - Examinations on discovery, & in particular, number & length, may only be held in accordance with parties' agreement or as determined by court (396.2). - Oral discovery, or by order of the clerk (obtained on request), may have written discovery (406). - May examine orally upon all facts relating to issues between parties (397, 398). - May examine by interrogatories upon all articulated facts (405). 	<ul style="list-style-type: none"> - May examine party or his representative, agent, or employee, victim, any person involved in commission of the act that caused the injury, & any other person with court's permission (397, 398). - Defendant may not examine person twice without court's permission (398). - Parties may be examined by interrogatories (405, 406). 	<ul style="list-style-type: none"> - Defendant may summon to be examined before defence is filed (397). Any party may summon to be examined after defence is filed (398). - May examine by interrogatories after filing defence or filing inscription in case of default to appear or plead (405). - Before examination, parties may consent to submit foreseeable objections to a judge for determination (396.3) - Examined before court, judge or clerk (397, 398, 406). 	<ul style="list-style-type: none"> - Where parties fail to comply with timetable they have set, sanctions include striking the allegations & dismissing the action or application (151.3). - On application, court may terminate examination it considers to be excessive, vexatious or useless and may determine costs (396.4). 	<ul style="list-style-type: none"> - See Sanctions (151.3, 396.4).
Sask. (Rules of Court)	<ul style="list-style-type: none"> - No provision for written discovery. - Party may be orally examined on matters in issue in the action (222). 	<ul style="list-style-type: none"> - Party may be examined by any party adverse in interest (222). - If party is corporation, may examine 1 officer or servant (223). - Court may grant leave to examine non-parties (222A). 	<ul style="list-style-type: none"> - Examination may take place after statement of defence delivered, time expired or default of appearance noted (226). - Examination is before local registrar, or by consent before other local registrar, process issuer, official court reporter or special court reporter (227, 237). - If person objects to question, question & objection must be recorded by examiner & transmitted to local registrar. Validity of & costs occasioned by objection are in court's discretion (232). - Party may appeal to court from order of examiner (235). 	<ul style="list-style-type: none"> - If person refuses or neglects to attend examination, refuses to be sworn or answer a lawful question, or fails to answer question undertaken within a reasonable time shall be deemed guilty of contempt of court, proceedings may be taken forthwith to commit for contempt (231). - May also have action dismissed, or defence struck (231). 	<ul style="list-style-type: none"> - Examiner may, & if need be shall, make special report to court on conduct of examination (238). - See Sanctions (231).
Yukon (Judicature Act, s. 38)	<ul style="list-style-type: none"> - BC Rules apply. 	<ul style="list-style-type: none"> - BC Rules apply. 	<ul style="list-style-type: none"> - BC Rules apply. 	<ul style="list-style-type: none"> - BC Rules apply. 	<ul style="list-style-type: none"> - BC Rules apply

APPENDIX I: ONTARIO SANCTIONS & DISCOVERY ENFORCEMENT POWERS

Rule	Breach	Sanction / Discovery enforcement power
30.06	Where affidavit of documents is incomplete or privilege improperly claimed	Court may: <ul style="list-style-type: none"> - Order cross-examination on the affidavit of documents; - Order service of a further and better affidavit of documents; - Order production of a document, if not privileged; and - Inspect a document for the purpose of determining its relevance or validity of a claim of privilege.
30.08(1)	Where a party fails to disclose a document in an affidavit of documents, or produce it in compliance with the rules, an order of the court, or undertaking	<ul style="list-style-type: none"> - The party may not use the document at trial, if it is favourable to his or her case, except with leave of the trial judge. - The court may make such order as is just, if the document is not favourable to his or her case.
30.08(2)	Where a party fails to serve an affidavit of documents or produce a document for inspection in compliance with the rules or order of the court	Court may: <ul style="list-style-type: none"> - Revoke or suspend the party's right to initiate or continue an examination for discovery. - Dismiss the action, if the party is a plaintiff, or strike out the statement of defence, if the party is a defendant; and - Make such other order as is just.
30.09	Where a party has claimed privilege and does not abandon the claim by giving written notice within 10 days after the action is set down for trial	<ul style="list-style-type: none"> - The party may not use the document at trial, except to impeach the testimony of a witness, unless leave of the trial judge is obtained.
31.07(1)	Where a person refuses to answer a proper question or claims privilege, and fails to provide the information prior to 60 days before the start of the trial	<ul style="list-style-type: none"> - The party may not introduce the information at trial except with leave of the trial judge.
31.07(2)	Where person examined for discovery undertakes to answer a question but fails to do so prior to 60 days before the start of the trial	<ul style="list-style-type: none"> - The party may not introduce the information at trial except with leave of the trial judge.
31.09(1)	Where it is determined that a person examined for discovery has incorrectly or incompletely answered a question	<ul style="list-style-type: none"> - The party shall provide the correct information to the other parties as soon as possible.
31.09(3)	Where a party fails to comply with the duty to correct answers	<ul style="list-style-type: none"> - If the information is favourable to his or her case, the information may not be introduced at trial without leave of the trial judge. - If the information is not favourable to his or her case, the court may make such order as is just.
34.14(1)	Where there is an excess of improper questions or interference, or an examination is being conducted in bad faith, or the answers are evasive or unnecessary, or there has been improper refusal to produce relevant documents	<ul style="list-style-type: none"> - An examination may be adjourned by either the person being examined or a party for the purpose of moving for directions about the continuation of the examination, or for an order terminating or limiting its scope.
34.14(2)	Where the court finds that a person's conduct either required a motion under subrule (1) or a person improperly adjourned under subrule (1)	Court may: <ul style="list-style-type: none"> - Order the person to pay personally and forthwith the costs of the motion, any costs thrown away and the costs of any continuation of examination; - Fix the costs; and - Make such other order as is just.

Rule	Breach	Sanction / Discovery enforcement power
34.15(1)	Where a person fails to attend an examination, or at the examination refuses to take an oath or make an affirmation, or answer any proper question, or to produce a document that is required to be produced, or comply with an order under rule 34.14	Court may: <ul style="list-style-type: none"> - Where an objection to a question is held to be improper, order or permit the person examined to re-attend at their own expense and answer the question and any other proper questions arising from the answer; - Where the person is a party or a person is examined on behalf of a party, dismiss the party's proceeding or strike out the party's defence; - Strike out all or part of the person's evidence, including any affidavits; and - Make such other order as is just.
34.15(2)	Where a person does not comply with an order under subrule (1) or rule 34.14	Court may: <ul style="list-style-type: none"> - Make a contempt order against the person
35.04(2)	Where the person being examined by written questions refuses or fails to answer a proper question, or the answer is insufficient	Court may: <ul style="list-style-type: none"> - Order the person to answer or give a further answer either by affidavit or oral examination.
35.04(3)	Where the court determines that some or all answers to written questions are either evasive, unresponsive or otherwise unsatisfactory	Court may: <ul style="list-style-type: none"> - Order the person examined to submit to oral examination on such terms respecting costs and other matters as are just.
35.04(4)	Where a person refuses or fails to answer a proper question on written examination, or to produce a required document	Court may: <ul style="list-style-type: none"> - If the person is a party or acting on behalf of or in place of party, dismiss the party's action or strike out its defence; - Strike out all or part of the person's evidence; and - Make such other order as is just.
35.05	On a motion by the person being examined, or by any party	Court may: <ul style="list-style-type: none"> - Terminate the written examination or limit its scope where there is an excess of improper questions; or - Terminate the written examination where the examination is being conducted in bad faith, or in a manner so as to annoy, embarrass or oppress the person being examined
60.12	Where a party fails to comply with an interlocutory order	Court may, in addition to any other sanction provided by the rules: <ul style="list-style-type: none"> - Stay the party's proceeding; - Dismiss the party's proceeding or strike out the party's defence; or - Make such other order as is just.

APPENDIX J: COMPARISON OF EXPERT EVIDENCE RULES IN CANADIAN SUPERIOR COURTS¹

Jurisdiction	Time for delivery of expert reports	Number of expert witnesses permitted	Can expert be examined for discovery?	Must report include facts & documents on which opinion is based?	Is there provision for a court appointed expert?	Procedure for responding to court appointed expert
Ontario (Rules of Civil Procedure)	90 days before trial; responding report 60 days before trial; supplementary report 30 days before trial [R. 53.03].	3 experts in total per side [Evidence Act, s. 12].	No [R. 31.10(1)]. Exception if expert unable to testify at trial [R. 36.01].	No.	Yes. Court can appoint 1 or more experts on application or on its own initiative [R. 52.03(1)].	Parties may only cross-examine court appointed expert at trial [R. 52.03(10)].
Alberta (Alberta Rules of Court)	120 days before trial, along with a statement of the substance of report [R. 218.1(1)]; rebuttal report 60 days after service of initial report [R.218.12(1)].	No prescribed limit [s. 218(10)], except in “Very Long Trial Actions” each party is limited to 1 expert unless leave is obtained [s.218.4(1)].	No, unless it is a court appointed expert under R.218(1), which permits cross-examination of an expert before trial.	No.	Yes. Court can appoint 1 or more experts on application or on its own initiative [R. 218(1)].	Yes. Within 14 days of receiving court expert’s report a party may apply to cross-examine expert, before or at trial. [R. 218(6)].
B.C. (Supreme Court Civil Rules)	60 days before trial to be admissible at trial [R. 40A(2)], although Evidence Act requires expert reports to be served no less than 30 days prior to testifying [s. 11(1)] unless court grants leave to do otherwise [s. 11(2)].	No prescribed limit.	No. But expert employed in anticipation of litigation may be examined if party unable to obtain facts & opinions on same subject by other means [R. 28(2)]	Statement of opinion must set out facts & assumptions on which opinion is based [R. 40A(2)(3) & (5)].	Yes. Court can appoint 1 or more experts on application or on its own initiative [R. 32A].	Yes. Party may request expert’s appearance at trial for cross-examination [R. 32A(10)].
Manitoba (Court of Queen’s Bench Rules)	Must be included in pre-trial brief [R. 53.03(1)]. Pre-trial brief to be filed prior to obtaining date for pre-trial conference [R. 50.01(3)].	3 experts, unless leave obtained (Manitoba Evidence Act s. 25).	No, unless expert unavailable to testify at trial [R. 36.01].	No.	Yes. Court can appoint 1 or more experts on application or on its own initiative [52.03(1)].	Parties may only cross-examine court appointed expert at trial [52.03(8)].
New Brunswick (Rules of Court)	As soon as practicable & no later than the Motions Day at which the trial date is fixed [R. 52.01(1)].	3 experts, unless leave obtained (Evidence Act s. 23).	No.	No. But once report served, court, on motion may order documents & records on which report is based to be produced [R. 52.01(4)].	Yes [54.03].	Yes. Parties may cross-examine court appointed expert [54.03(7)] & call 1 expert to respond, or more, with leave [54.03(8)].

¹ This chart attempts to summarize the primary elements of the rules and statutory provisions for comparison purposes only. It should not be relied upon to reflect the full text of the rule.

Nfld & Labrador (Rules of Civil Procedure)	No time period prescribed.	No prescribed limit.	Yes. Rule permits “any person” to be examined on any non-privileged matter [30.01(1)] but no specific reference to experts.	No.	Yes [35.01. (1)].	Yes. Party may apply for leave to cross-examine court appointed expert before or at trial [35.03] & call 1 expert to respond, or more, with leave [35.05].
Nova Scotia (Civil Procedure Rules)	Served when Notice of Trial is filed; 30 days thereafter, responding report is to be served [31.08(1)].	Court may limit number of expert witnesses to be called at a trial [31.06].	Yes. Rule permits “any person” to be examined on any non-privileged matter [18.01(1)] but no specific reference to experts.	Yes. Report must set out facts on which opinion is based, and a summary of grounds for each opinion expressed [31.08(1)].	Yes [23.01(1)].	Yes. Party may apply for leave to cross-examine court appointed expert before or at trial [23.03(1)] & call 1 expert to respond, or more, with leave [23.05].
Sask. (Queen’s Bench Rules)	10 days prior to pre-trial conference [284D(1)]. Note expert can only testify at trial with leave [284D(2)].	5 experts, unless leave obtained (<i>Evidence Act</i> s. 48).	No [222A(1)].	No.	No.	No.
Quebec (Code of Civil Procedure)	Exhibits, defined to include expert reports, must be served within 30 days after a case is set for a hearing [331.4, 331.1].	No prescribed limit.	Provision for the examination of “any other person” with leave [397(4)].	No.	Yes [415].	Party may only request that expert’s report be rejected on the ground of irregularity or nullity [423]. No provision for cross-examination.
P.E.I. (Rules of Civil Procedure)	30 days after filing notice of trial [53.03(1)].	No prescribed limit.	Yes [31.06(3)].	No.	Yes [52.03].	Parties may cross-examine court appointed expert at trial [53.03(10)].

APPENDIX K: CHARACTERISTICS OF CASES SURVEYED IN CASE SPECIFIC QUESTIONNAIRE

Chart 1: Case Type

	Ottawa	Toronto	Thunder Bay	London	All locations
Collection	(9%)	(10%)	(6%)	(8%)	(9%)
Motor Vehicle	(13%)	(7%)	(14%)	(28%)	(13%)
Real property	(4%)	(6%)	(6%)	(4%)	(5%)
Contract Commercial	(13%)	(17%)	(7%)	(17%)	(14%)
Wrongful Dismissal	(17%)	(12%)	(4%)	(10%)	(12%)
Estates	(1%)	(1%)		(0%)	(1%)
Bankruptcy		(0%)	(0%)		(0%)
Construction lien	(6%)	(5%)	(3%)	(2%)	(5%)
Negligence	(12%)	(10%)	(17%)	(8%)	(12%)
Landlord tenant	(2%)	(2%)		(1%)	(2%)
Trust fiduciary duty	(2%)	(6%)	(4%)	(1%)	(4%)
Medical malpractice	(8%)	(10%)	(3%)	(3%)	(7%)
Other professional malpractice	(3%)	(7%)	(0%)	(2%)	(4%)
Personal injury	(14%)	(14%)	(24%)	(25%)	(18%)
Class action		(0%)			(0%)
Other	(19%)	(13%)	(34%)	(12%)	(18%)
Total # of respondents	(100%)	(100%)	(100%)	(100%)	(100%)

Chart 2: Number of Parties in Case

	Ottawa	Toronto	Thunder Bay	London	Total
Number of Parties in Case					
2	65.4%	61.9%	65.4%	73.3%	63.1%
3	17.5%	23.2%	19.6%	21.5%	22.3%
4	9.5%	6.8%	7.9%	2.6%	6.9%
5	3.9%	5.1%	3.3%	1.0%	4.7%
6 or more	3.8%	3.0%	3.7%	1.5%	3.1%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Chart 3: Disposition Status of Case

	Ottawa	Toronto	Thunder Bay	London	Total
Not Disposed	41.2%	26.1%	41.4%	36.0%	26.4%
Disposed	85.8%	73.9%	58.6%	64.0%	73.6%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Chart 4: Type of Disposition

	Ottawa	Toronto	Thunder Bay	London	All locations
Default Judgement	1.0%	1.5%	2.3%	0.0%	1.4%
Summary Judgement	2.4%	1.3%	1.6%	3.2%	1.6%
Dismissed of Delay	2.0%	0.9%	0.8%	1.6%	1.1%
Judgement obtained at trial	3.4%	2.2%	4.7%	0.8%	2.4%
Partial default judgement			0.8%		0.0%
Discontinued by Plaintiff not based on settlement terms	4.2%	2.2%	4.7%	6.4%	2.8%
Settled	84.1%	85.4%	79.8%	81.6%	84.8%
Other	3.0%	6.4%	5.4%	6.4%	5.9%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Chart 5: Time from Commencement to Disposition (months)

	Ottawa	Toronto	Thunder Bay	London	All locations
Percentile 25	7	12	13	12	11
Median	14	19	20	22	19
Percentile 75	21	28	26	34	28
Percentile 95	31	41	38	42	39
Mean	15	20	20	23	20
Valid N	N=215	N=1280	N=88	N=86	N=1669
Col Valid N %	100.0%	100.0%	100.0%	100.0%	100.0%

Chart 6: Next Scheduled Event (if case not disposed)

	Ottawa	Toronto	Thunder Bay	London	All locations
No future events scheduled	6.5%	25.6%	35.2%	31.9%	26.0%
Examinations for discovery	46.2%	22.9%	14.3%	11.1%	22.4%
Pretrial settlement conference	15.2%	12.1%	23.1%	19.4%	13.9%
Trial	12.3%	7.1%	6.6%	4.2%	7.1%
Motions related to discovery: documentary		3.6%		4.2%	3.1%
Motions related to discovery: oral/written		2.3%	2.2%	5.6%	2.4%
Assignment court/trial scheduling court		9.9%	2.2%	8.3%	8.5%
Other	19.9%	15.3%	16.5%	15.3%	15.7%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Chart 7: Amount of Claim

	Ottawa	Toronto	Thunder Bay	London	All locations
\$0 to \$6,000	2.3%	1.5%	1.4%	1.8%	1.6%
\$6,001 to \$50,000	19.2%	15.2%	18.9%	18.1%	16.0%
\$50,001 to \$100,000	25.0%	17.4%	19.6%	12.1%	18.0%
\$100,001 to \$500,000	32.2%	41.1%	28.0%	36.2%	39.3%
\$500,001 to \$1,000,000	14.2%	13.2%	11.9%	19.3%	13.5%
\$1,000,001 to \$5,000,000	6.5%	7.9%	17.5%	10.8%	8.4%
Over \$5,000,000	0.6%	3.7%	2.8%	1.8%	3.2%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Chart 8: Amount of Judgment or Settlement (excluding costs)

	Ottawa	Toronto	Thunder Bay	London	All locations
\$0 to \$6,000	9.7%	15.1%	16.9%	16.7%	14.6%
\$6,001 to \$50,000	46.6%	45.3%	40.3%	52.2%	45.6%
\$50,001 to \$100,000	20.5%	17.7%	19.5%	15.6%	18.0%
\$100,001 to \$500,000	19.9%	18.5%	19.5%	12.2%	18.4%
\$500,001 to \$1,000,000	3.4%	1.5%	2.6%	1.1%	1.8%
\$1,000,001 to \$5,000,000		1.0%	1.3%	2.2%	0.9%
Over \$5,000,000		0.8%			0.7%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Chart 9: Comparison of Cumulative Amount Claimed and Awarded (disposed cases)

	Cumulative Percentage	
	Amount Claimed	Amount Awarded
0 to \$6,000	2	13.8
0 to \$50,000	17.2	56.6
0 to \$100,000	36.9	76.9
0 to \$500,000	77.9	97.5
0 to \$1,000,000	91.2	98.8
0 to \$5,000,000	98	99.2
0 to over \$5,000,000	100.1	100

Chart 10: Comparison of Amounts Claimed and Awarded (disposed cases)

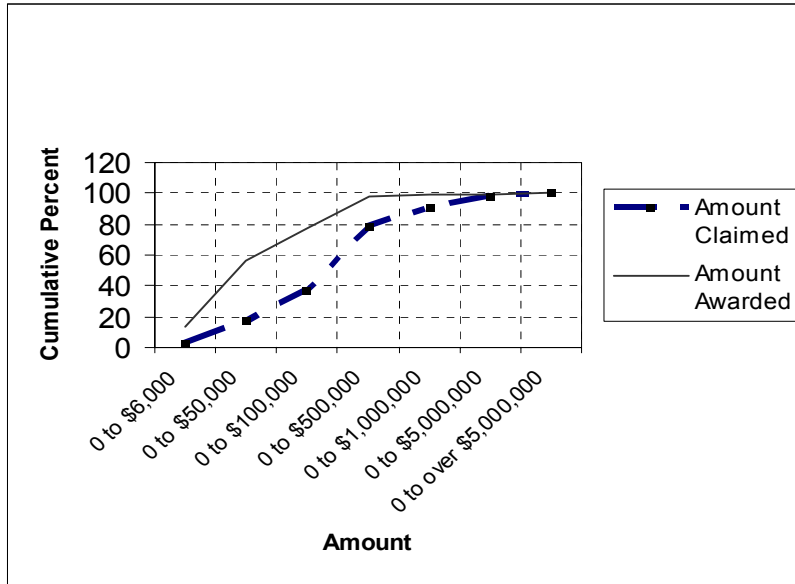


Chart 11: Discovery Process

	Discovery not commenced	Discovery commenced, but not complete	Discovery commenced and complete	Total
Ottawa	41.9%	27.1%	31.0%	100.0%
Toronto	35.8%	29.1%	35.2%	100.0%
Thunder Bay	39.6%	26.1%	34.3%	100.0%
London	27.8%	21.9%	50.2%	100.0%
Total	36.2%	28.3%	35.5%	100.0%

Chart 12: Discovery Process by Disposition Type

	Discovery not commenced	Discovery commenced, but not complete	Discovery commenced and complete	Total
Not Disposed	23.9%	42.8%	33.3%	100.0%
Disposition Status Unspecified	57.8%	31.7%	10.4%	100.0%
Default Judgement	62.3%	37.7%		100.0%
Summary Judgement	63.4%	30.8%	5.8%	100.0%
Dismissed of Delay	30.8%	65.6%	3.6%	100.0%
Judgement obtained at trial	26.2%	3.3%	70.5%	100.0%
Partial default judgement	100.0%			100.0%
Discontinued by Plaintiff not based on settlement terms	65.5%	32.0%	2.4%	100.0%
Settled	36.2%	22.3%	41.6%	100.0%
Other	57.9%	20.3%	21.8%	100.0%
Total	36.2%	28.3%	35.5%	100.0%

Chart 13: Occurrence of Different Types of Discovery Activities

	Ottawa	Toronto	Thunder Bay	London	All Locations
No discovery activity (as % of all cases)	42%	36%	40%	28%	36%
Documentary					
(as % of all cases)	58%	64%	60%	72%	64%
(as % of cases with discovery activity)	100%	100%	100%	100%	100%
Oral					
(as % of all cases)	35.8%	46.7%	45.2%	57.1%	46.1%
(as % of cases with discovery activity)	61.7%	72.7%	74.8%	79.1%	72.2%
Written					
(as % of all cases)	0.5%	0.6%	1.7%	1.5%	0.7%
(as % of cases with discovery activity)	0.8%	0.9%	2.9%	2.0%	1.1%
Medical examinations					
(as % of all cases)	13%	11%	5%	19%	11%
(as % cases with discovery activity)	21.7%	17%	8%	25.6%	17.4%
Production of expert or medical report					
(as % of all cases)	21%	23%	18%	31%	23%
(as % of cases with discovery activity)	36.6%	35.6%	30.4%	42.5%	35.8%
%	100.0%	100.0%	100.0%	100.0%	100.0%

APPENDIX L: KEY BENEFITS OF DISCOVERY

Respondents to the case specific questionnaire were asked to consider a list of 12 potential benefits of discovery and to indicate the extent to which any of these benefits were realized in their case.

Benefits realized in 80% to 90% of cases included:

- Strengthened the case in specific ways
- Obtained better understanding of the parties

These were followed by benefits achieved in 70% to 85% of cases:

- Prepared client for trial
- Reduced court time if matter proceeded to trial (Note: In Thunder Bay, this benefit was achieved in only 68% of cases, compared with 79% in Ottawa, 81% in Toronto and 78% in London.)

A number of benefits were realized in 50% to 65% of cases:

- Identified new documents
- Identified new basis for impeaching opponent or expert witness (Note: In Ottawa, this benefit was achieved in 67% of cases, as opposed to 53% in Toronto, 48% in Thunder Bay and 60% in London)
- Led directly to settlement (Note: In Ottawa, this benefit was achieved in 83% of cases, compared with 58% in Toronto and Thunder Bay and 63% in London.)

The following benefits were reported in 25% to 45% of cases:

- Identified new damages
- Identified new litigation strategies not known prior to discovery
- Identified new avenues for discovery, unknown prior to discovery

Respondents in fewer than 25% of cases noted the following benefits:

- Identified parties to be added
- Identified new legal basis for claim

APPENDIX M: MOST AND LEAST FREQUENT DISCOVERY PROBLEMS AND REFORMS

MOST FREQUENT DISCOVERY PROBLEMS (TOP 13)*

Present in 18-28% of cases

Present in 10-16% of cases

PROBLEM	Rank Overall	Ottawa	Toronto	Thunder Bay	London
Insufficient or incomplete disclosure/production	1 27%	1 28%	1 28%	1 23%	2 15%
Untimely disclosure/production; withholding material information until late in process	2 20%	4 15%	4 21%	4 21%	1 18%
Difficulty/delay in scheduling examinations	3 19%	3 17%	3 19%	3 21%	3 11%
Clients had contentious relationship	4 18%	2 19%	2 19%	2 19%	4 11%
Cost of oral discovery disproportionate to value of claim	5 15%	5 12%	5 17%	5 11%	6 8%
Disorderly disclosure/production	6 14%	6 12%	6 16%	7 9%	9 6%
Excessive requests for information & documents	7 11%	11 5%	11 13%	6 7%	7 8%
Improper refusals based on relevance	8 10%	7 12%	7 10%	9 3%	8 8%
Disclosure only after motion to compel**	9 10%	9 8%	8 11%	13 4%	10 4%
Excessive disclosure/production; production of irrelevant documents	10 9%	12 5%	12 10%	10 5%	11 4%
Vague requests for information & documents	11 7%	13 2%	13 7%	8 10%	12 3%
Untimely production of expert reports	12 7%	10 6%	10 7%	11 7%	5 10%
Inappropriate attitude/behaviour of other parties	13 3%	8 10%	9 2%	12 8%	13 2%

* 26 potential problems were canvassed in case specific questionnaire. For cases in which discovery had commenced, respondents were asked to indicate whether or not each problem was present. M problems were NOT present in most cases. Top 4 problems were present in 18%-28% of cases. Next 9 problems were present in 10%-16% of cases in at least 1 court location. Rest of problems were present in less than 10% of cases.

** Discovery-related motions occurred in 15% of all cases sampled in case specific questionnaire.

LEAST FREQUENT DISCOVERY PROBLEMS (BOTTOM 13)

Present in less than 10% of cases

PROBLEM	Overall %	Ottawa %	Toronto %	Thunder Bay %	London %
Scope of discovery too broad	8%	2%	9%	7%	6%
Opposing counsel inexperienced or inefficient	7%	8%	8%	4%	3%
Length of examinations	7%	6%	7%	6%	4%
Opposing counsel disrespectful or unprofessional	6%	9%	6%	4%	3%
Opposing counsel made improper refusals based on privilege	6%	5%	6%	5%	4%
Client representatives at discovery had inadequate knowledge of case	6%	5%	7%	4%	2%
Opposing counsel didn't comply with continuous obligation to disclose	5%	6%	4%	7%	7%
Opposing counsel abused discovery process to intentionally delay case	5%	2%	6%	5%	1%
Opposing counsel unprepared or incompetent	5%	3%	6%	3%	1%
Opposing counsel unfamiliar with specific issues in this case	5%	3%	5%	4%	3%
Opposing counsel harassed/abused witnesses	4%	2%	5%	3%	1%
Excessive discovery-related motions arising from abuses or lack of cooperation	4%	7%	4%	4%	2%
Clients insisted on overly extensive discovery	2%	2%	3%	2%	0%

DISCOVERY REFORMS WITH POSITIVE IMPACT*

Endorsed as positive by at least 40% of respondents

Endorsed as positive 30-39% of respondents

REFORM	Rank Overall %	Ottawa	Toronto	Thunder Bay	London
Deem questions taken under advisement to be refusals if not answered within fixed time	1 47.8%	4 42.4%	1 49.4%	3 46.7%	4 37.4%
Standard disclosure protocols for certain case types	2 45.3%	2 46.9%	3 45.6%	5 41.6%	1 43.2%
Stricter enforcement of sanctions by judiciary	3 44.9%	1 48.3%	2 45.7%	7 41.2%	5 34.4%
Time limits & sanctions on completing undertakings	4 44.3%	7 38.8%	4 44.6%	1 52.5%	3 40.2%
Tougher cost sanctions for unnecessary discovery-related motions	5 42.5%	6 38.8%	5 44.3%	6 41.3%	11 26.9%
Mandatory production of Schedule A documents with pleadings	6 39.7%	11 33.4%	7 39.6%	2 49.2%	2 40.5%
Serious sanctions for untimely, excessive or disorderly production of documents	7 38.5%	10 33.2%	6 39.8%	9 40.2%	10 29.4%
Guidelines for orderly production of documents	8 37.6%	9 33.2%	8 38.1%	4 42.2%	6 33.6%
Greater specificity in Schedule B about basis of privilege for each document	9 35.7%	8 39.2%	9 35.8%	11 35.9%	8 30.2%
Require parties to agree on discovery plan	10 35.3%	5 40.2%	10 35.9%	13 27.7%	9 29.5%
Immediate rulings on oral discovery disputes	11 33.6%	12 31.4%	11 35.9%	15 22.7%	13 19.7%
Mandatory early disclosure of certain aspects of claim with pleadings	12 33.1%	3 43.3%	12 31.2%	8 40.4%	7 34.4%
Have parties agree on list of undertakings & refusals at end of oral discovery	13 29.3%	13 30.7%	13 29.6%	12 35.8%	15 17.1%

* 27 potential reform options were canvassed in case specific questionnaire. For cases in which discovery had commenced, respondents were asked to indicate whether or not each reform would have had a POSITIVE, NEGATIVE or NO IMPACT on their case. Top 7 reforms were endorsed as positive by at least 40% of respondents in 2 or more court locations. Next 8 reforms were endorsed as positive by at least 30% of respondents. Bottom 5 reforms were seen as negative by at least 45% of respondents in 3 or more court locations. Next 8 reforms were seen as negative by at least 25% of respondents in 3 or more court locations.

DISCOVERY REFORMS WITH NEGATIVE IMPACT

Seen as negative by at least 45% of respondents

Seen as negative by at least 25% of respondents

REFORM	RANK Overall %	Ottawa	Toronto	Thunder Bay	London
Eliminate automatic right to oral discovery	1 72.9%	1 68.1%	1 73.4%	1 70.8%	1 75.8%
Eliminate right to cross-examine at oral discovery	2 60.6%	2 59.6%	2 61.2%	4 45.5%	2 69.4%
Permit oral discovery only after completion of written discovery	3 56%	5 42.1%	3 57.3%	2 52.5%	4 62.1%
Time limits on oral discovery based on value of claim	4 50.1%	3 47.1%	5 49.4%	3 47.5%	3 63.7%
Eliminate right to object to any question at oral discovery	5 48.1%	4 46.5%	4 48.8%	5 43%	5 47.1%
Restrict objections on matters of privilege at oral discovery	6 39.4%	10 27.3%	6 41.6%	7 28.8%	9 39%
Bifurcated discovery	7 36%	9 29.3%	7 37%	8 29.2%	7 44.8%
Create standard written interrogatories	8 32.8%	8 29.5%	8 34.7%	14 12.3%	10 35.6%
Limited number of written interrogatories	9 32.4%	7 29%	9 32.6%	9 25.5%	8 41.2%
Narrow scope of discovery	10 30%	6 29.7%	11 28.8%	11 21.5%	6 45.2%
Video oral discovery to reduce transcript costs	11 27.8%	13 20.2%	13 27.8%	6 30.6%	12 34.2%
Immediate contempt order for failing to comply with discovery-related orders	12 26.8%	16 16.3%	10 28.9%	10 24.1%	19 17.2%
Require lawyer with lead on file to attend oral discovery	13 25.5%	17 14.3%	12 28.3%	19 4.2%	14 26.4%

APPENDIX N
AFFIDAVIT OF DOCUMENT TEMPLATE & FIELD DESCRIPTIONS

Template

PROD NO	DATE	DOC TYPE	TITLE	AUTHOR	RECIPIENT	ATTACHMENT
1	2003-03-03	Letter	Discovery Task Force	Wortzman SB, Lerners LLP	Charendoff S, Min. of Attorney General	A
1.A	2003-03-03	Memo-randum	Affidavit of Documents Template	Wortzman SB, Lerners LLP	Sharma M, Min. of Attorney General	
2	2003-04-03	Letter	Affidavit of Documents Template	Sharma M, Min. of Attorney General	Wortzman SB, Lerners LLP Charendoff S, Min. of Attorney General	

Field Descriptions

Field Name	Field Description
PROD NO	<p>Tab number or assigned number for document listed in the affidavit of documents is assigned at the discovery stage.</p> <p>If each document page is sequentially numbered, production numbers may not be sequential as they can coincide with the first page of each separate document. If BEGDOC and ENDDOC fields are used, this field can also be used if a production number has been assigned.</p> <p>If additional productions are added to a list after production numbers are already assigned, the new productions could be numbered 3504.1 to keep the productions in chronological order.</p> <p>It is necessary to distinguish between the productions of the different parties involved. Accordingly, a prefix should be used. Eg.: production numbers for <i>IBM v. Microsoft and Bill Gates</i> could be IBM0214, Mic0004, and BG3790.</p>
DOC DATE	<p>If there is no date on the document, estimate a date, as is sometimes necessary when preparing an affidavit of documents. If a date is incomplete, either actual or estimated, use zeros to fill in missing information.</p> <p>Format: must be 8 digits, as follows: YYYY-MM-DD. Eg.: for May 23, 1978, enter as 1978-05-23; for month and year (May 1978), enter as 1978-05-00; for year only (1978), enter as 1978-00-00; and for documents without a date, enter as 0000-00-00.</p>
DOC TYPE	Eg.: letter, memorandum, report, testimony, etc. No more than one doc type should be used for each document.
TITLE	The title, as it appears on the document; usually following 'Re:' or 'Subject:'.
AUTHOR	<p>Authors are the person(s) and/or organization(s) responsible for the creation or origination of the document, such as the person delivering a speech or presentation, newspaper or magazine that publishes an article, payer of a cheque or invoice, both parties to a contract, all parties in an interview, etc.</p> <p>Format: last name_initial(s)_affiliation; Eg.: Catherine Zeta-Jones is entered as Zeta-Jones C; Scarlett O'Hara is entered as O'Hara S; Lara Flynn Boyle is entered as Flynn Boyle L.</p>
RECIPIENT	<p>Recipients are the person(s) and/or organization(s) to whom the document is sent or addressed., such as the payee of a cheque or invoice, person for whom a report or financial statement is prepared, etc.</p> <p>Format: see AUTHOR</p>
ATTACHMENT	A letter is assigned to each attachment of a document for production in the affidavit of documents. The other basic fields should also be entered for each attachment.

APPENDIX O: BEST PRACTICES

A - DISCOVERY PLANNING & SCHEDULING	Source
<p>1. Within 30 days after the close of pleadings, all parties should hold a discovery conference by telephone to discuss the most expeditious and cost effective means to complete the discovery process, with regard to:</p> <ol style="list-style-type: none"> a. Nature and complexity of the proceedings; b. Number of documents and potential witnesses involved; and c. Ease and expense of retrieving discoverable information. 	<p>Modified from US (Fed) discovery plan rule, and UK & Aus. proportionality tests. Other factors could include those under “complex case” definition in Ont. r. 77.09.1</p>
<p>2. No discovery (documentary, oral or written) should occur until counsel for all parties have had an opportunity to discuss the discovery process, and in particular:</p> <ol style="list-style-type: none"> a. Dates for exchanging sworn affidavits of documents and productions; b. An agreed format for producing affidavit of documents and productions (e.g. electronic format, scanning copies of non-electronic documents on CD); c. Use of staged production of documents, in cases where there are voluminous productions, to ensure that the most relevant documents are produced promptly and that full production follows but does not delay timing of oral discoveries; d. Use of a joint book of productions (or a single searchable database); e. In jurisdictions where mandatory mediation exists, the selection of a mediator and proposed dates for the mediation; f. Use of agreed statements of fact, requests to admit, or demands for particulars to better clarify issues or identify non-contentious issues prior to oral discoveries; g. Use of written interrogatories prior to oral discoveries, after oral discoveries to follow-up on answers to undertakings, or instead of oral discoveries where their use will reduce the time and cost of the discovery process; h. Dates, location & expected duration of examinations for discovery, or dates for exchange of written questions & answers; i. Estimated dates for setting the matter down for a trial; and j. Potential need for individual judicial management for complex cases. 	<p>Modified from US (Fed), UK Pre-action protocols, Tex., NY & Ariz., and ABA Court Delay Reduction Committee,¹ and suggestions from case management masters; Advocates’ Society, Principles of Civility for Advocates, paras 5 & 6²</p>
<p>3. After lawyers have completed a discussion of discovery issues, plaintiff’s counsel (or plaintiff, if unrepresented) should prepare a letter listing any agreements that were reached during the discussion and deliver it to all parties.</p>	<p>Consultations</p>
<p>4. Each lawyer should discuss with his or her client the anticipated costs of each stage of the discovery process before commencing that stage of discovery.</p>	<p>Consultation with Sudbury & Algoma Bar Associations</p>
<p>5. No party should commence a discovery-related motion until all lawyers have met and conferred in a good faith effort to resolve discovery disputes.</p>	<p>ABA CDRC, AS Principles of Civility, para 5</p>
<p>6. The court expects lawyers to grant other lawyers’ requests for reasonable extensions of time to comply with discovery obligations and other pre-trial matters, unless it is clearly inconsistent with the legitimate interests of the lawyer’s client. Opposing reasonable requests wastes resources and needlessly inconveniences the court. A lawyer should never request an extension of time merely for the purposes of delay.</p>	<p>American College of Trial Lawyers (ACTL) Code of Pre-Trial Conduct (s. 1(c))³</p>

¹ Court Delay Reduction Committee of the National Conference of State Trial Judges of the Judicial Division of the American Bar Association, "Discovery Guidelines Reducing Cost and Delay" (Spring 1997) The Judges' Journal 9 [hereinafter, ABA CDRC].

² The Advocates’ Society, Principles of Civility for Advocates. http://www.advsoc.on.ca/civility/principles_tex.htm [hereinafter, AS Principles of Civility].

³ American College of Trial Lawyers, Code of Pretrial Conduct. [hereinafter, ACTL Code]

B - DOCUMENTARY DISCOVERY	Source
<i>Affidavit of Documents</i>	
1. Before commencing or defending a proceeding, lawyers should explain to their clients in detail the necessity of making full disclosure of all relevant documents, and that the obligation to disclose is a continuing obligation.	B.C. Practice Checklist ⁴ ; Ont. Rules of Professional Conduct, r. 4.01(4)
2. Before preparing an affidavit of documents, each of the client's documents should be organized. Consider placing a unique serial number on each document before copying them, particularly in cases with voluminous documents. This allows tracking of documents throughout the litigation process & permits them to be returned to the client without destroying the integrity & order of the client's files. Separate relevant, irrelevant & privileged documents. Originals should remain unmarked & retained in a safe place for possible use as exhibits at trial.	BC Practice Checklist (6.4)
3. Affidavits of documents should be exchanged within prescribed time periods or such other time as ordered by the Court.	Consultations
4. Affidavits of documents should be completed and sworn by the party or an appropriate representative. The exchange of unsworn affidavits does not satisfy the requirements of the rules.	Consultations
5. Documents listed in schedules to affidavits of documents should be individually itemized with sufficient description to identify each document, subject to the need to protect privileged documents. Schedules should never use boilerplate language to describe a group or class of documents. Unless parties agree or the court orders, parties should not "bundle" documents together in the schedules.	Consultations; ACTL Code (s. 5(c) 3)
6. Lawyers should not assert privilege over documents simply to avoid producing relevant documents. If only part of a document is privileged, the part that is not privileged should be produced.	ACTL Code (s. 5(c) 2)
7. Schedules to the affidavit of documents should always be organized chronologically, or by issue (e.g. financial statements, medical reports, human resource documents, etc), or both issue & date, depending on the number and types of documents.	Consultations
8. Lawyers who prepare affidavits of documents through electronic software programs should make them available electronically to all opposing parties, where requested. In a case with voluminous documentation, lawyers should consult with opposing lawyers before preparing affidavits to agree on a consistent electronic software program that can be used by all parties.	Consultations
9. Once an opposing party's affidavit of documents is received, counsel should immediately provide a copy to his or her client to determine whether any relevant documents appear to be missing.	BC Practice Checklist
<i>Document Production</i>	
10. Before producing documents, counsel should consult with opposing parties regarding the most efficient & least costly manner of production. Lawyers should consider the benefits of: <ul style="list-style-type: none"> a. A joint book of productions; b. Use of consistent software applications to list documents; c. Potential cost savings of scanning documents & making them available electronically, as opposed to hard copies. 	Consultations

⁴ Law Society of British Columbia, "Practice Checklists Manual: Personal Injury Plaintiff's Interview or Examination for Discovery", http://www.lawsociety.bc.ca/library/checklist/body_checklist_table.html#Litigation [hereinafter, BC Practice Checklist]

B - DOCUMENTARY DISCOVERY (continued)	Source
<i>Electronic Discovery</i>	
<p>11. Lawyers should make clear to clients that the duty to disclose applies to all relevant electronic documents. At the outset, counsel should advise clients to take steps to preserve electronic evidence to ensure that spoliation does not occur. Types of electronic data that should be requested from a client include: hard drives; laptops; off-site computers or devices; files on network servers; phone mail message systems; personal organizers such as palm pilots; corporate electronic logs; data tapes; wireless devices such as cellular phones & pagers; zip disks; CD-ROM disks; and floppy disks.</p>	Susan Wortzman, “Electronic Discovery: A Silent Killer” ⁵
<p>12. It is prudent to write to opposing counsel to put them on notice that electronic documents, including all active, residual & back-up data may be relevant, and that they should begin taking all steps to preserve such information. The letter may suggest steps which could be taken to preserve electronic data, including:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Suspending the use of routine maintenance systems that overwrite data; <input type="checkbox"/> Refrain from installing new software on the relevant systems; <input type="checkbox"/> Refrain from recycling back-up tapes, and from deleting, modifying, overwriting, or defragmenting electronic files; and <input type="checkbox"/> Introducing steps or policies to preserve information on home computers and portable devices. 	Electronic Discovery; ABA Civil Discovery Standards ⁶
<p>13. To understand how opposing parties use & structure their electronic systems, consult with opposing counsel on the use of written questions to get such information. Written questions may be preferred, given that undertakings to these questions are usually given at oral examinations, and can best be answered in writing. Possible questions might include:</p> <ul style="list-style-type: none"> <input type="checkbox"/> What types of hardware does the company use, and where is it located? <input type="checkbox"/> What types of software are incorporated into the party’s system? <input type="checkbox"/> Is there a network? <input type="checkbox"/> Do any company employees use palm pilots, cell phones, pagers or other devices in connection with their employment? <input type="checkbox"/> What types of media are used to store information? <input type="checkbox"/> What types of media are recycled? <input type="checkbox"/> What is the back-up schedule? <input type="checkbox"/> Does the company have a policy regarding back-ups? <input type="checkbox"/> What is the schedule for rotation of back-up media? <input type="checkbox"/> Are all documents stored electronically? <input type="checkbox"/> Do some documents have limited password access? <input type="checkbox"/> Are any documents encrypted? <input type="checkbox"/> Are some documents deleted? <input type="checkbox"/> If so, when are documents identified for deletion and on what basis? <input type="checkbox"/> Who makes the decision to delete a document? <input type="checkbox"/> Is there a policy regarding deleting and ultimately destroying electronic information? <input type="checkbox"/> Is there a policy regarding the use of e-mail? <input type="checkbox"/> Is there a policy regarding document retention and storage? <input type="checkbox"/> Are all documents printed out in paper format? If not, what types of documents are not routinely printed out? 	Electronic Discovery

⁵ S. Wortzman, Electronic Discovery: A Silent Killer, presented at Legal Tech Conference (Toronto, November 14, 2002) [hereinafter, Electronic Discovery].

⁶ American Bar Association, Civil Discovery Standards (August 1999), www.abanet.org/litigation/taskforces/civil.pdf [hereinafter ABA Civil Discovery Standards].

C – EXAMINATION BY WRITTEN QUESTION AND ANSWER	Source
<i>When to Use Written Questions & Answers</i>	
<p>1. Lawyers should consider the use of written discovery in appropriate cases and where they are of the view that written questions & answers may result in:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Clearer, more succinct and informative answers than those given at oral discovery; <input type="checkbox"/> Additional time to consider and ask further questions; <input type="checkbox"/> Avoidance of scheduling delays associated with oral discovery and lengthy examinations <input type="checkbox"/> Avoidance of possible harassment and intimidation of an examined party; and <input type="checkbox"/> A more cost effective and efficient discovery process. 	Consultations; cross-jurisdictional research
<p>2. Before commencing discoveries, counsel should consider agreeing on the use of written questions and answers for some or all of the examinations if it will save costs and time for parties. Written discovery may be useful in the following situations:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Where cases rely heavily on documentary evidence or where there are only a few, non-controversial questions; <input type="checkbox"/> As a “follow-up” to answers to undertakings; <input type="checkbox"/> Where the questions deal with very technical or statistical matters that need to be compiled from various sources; <input type="checkbox"/> Where a corporate officer adopts the evidence of other employees who have been examined; <input type="checkbox"/> Where a corporate representative needs to obtain information from a number of employees; <input type="checkbox"/> Where it is inconvenient to have the witness attend; <input type="checkbox"/> To preserve evidence before trial; <input type="checkbox"/> Prior to oral discovery, to obtain basic information about a party’s position, or to obtain information from key witnesses or key documents. This may help to focus the oral examination. 	Alberta Law Reform Institute, Document Discovery and Examination for Discovery; suggestions from case management masters
<i>Content of Written Questions & Answers</i>	
<p>3. Lawyers should avoid “boilerplate” questions. They should carefully tailor questions to elicit information that is relevant to the issues in the case, or that is necessary to discover or understand those issues.</p>	ACTL Code (s. 5(b)1)
<p>4. Lawyers should avoid “boilerplate” answers. Answers should properly respond to the questions asked, unless otherwise objectionable. Lawyers should not interpret questions in a strained or unduly restrictive way in an effort to avoid responding to them or to conceal relevant, non-privileged information.</p>	ACTL Code (s. 5(a)3)
<p>5. Lawyers should not assert objections solely to avoid answering an appropriate question. If only part of a question is objectionable, the responding lawyer should object only to that part and answer the remainder of the question.</p>	ACTL Code (s. 5(b)2)

D - ORAL EXAMINATION FOR DISCOVERY	Source
<i>Scheduling Examinations for Discovery</i>	
1. Before delivering a notice of examination or scheduling an examination, motion, or other pre-trial event, counsel for all parties should consult and work together to reasonably accommodate the needs and reasonable requests of all witnesses and participating lawyers. Lawyers should strive to agree upon a mutually convenient time and place, seeking to minimize travel expense and to allow adequate time for preparation.	ACTL Code (s. 1(a)); AS Principles of Civility, para. 11
2. Examinations, motions and other pre-trial events should be scheduled early enough during the pre-trial phase to avoid the difficult scheduling problems that often result from last-minute requests.	ACTL Code (s. 1(a))
3. Where a lawyer needs to reschedule discovery or other pre-trial event, he or she should promptly explain the reason for the request. A lawyer who receives a reasonable rescheduling request should strive to accommodate it.	ACTL Code (s. 1(b)); AS Principles of Civility, para 13.
4. If discoveries are expected to be lengthy, lawyers should consider alternating roles as examining lawyer. This may permit discoveries to be dealt with on an issue-by-issue basis, which may promote settlement of some issues and can prevent resentments that build up over lengthy discoveries.	Suggestions from case management masters
<i>Preparation & Proper Questioning</i>	
5. Lawyers should always prepare in advance of the examination & ensure they are familiar with the facts of a case, to avoid unnecessarily prolonging discoveries.	Consultations
6. Lawyers should limit questions to those necessary to develop the claims or defences in the case, or to obtain relevant testimony.	ACTL Code (s. 5(e)1); AS Principles of Civility, para 25.
7. Lawyers should conduct themselves with decorum and should never verbally abuse or harass the witness or unnecessarily prolong the examination.	ACTL Code (s. 5(e)4); AS Principles of Civility, para 1, 23.
<i>Undertakings & Refusals</i>	
8. Objections at oral examination should be made in good faith and should be adequately explained and limited. Lawyers should not assert privilege as an objection solely to withhold or suppress non-privileged information or to limit or delay their response.	ACTL Code (s. 5(a) 4, 6); AS Principles of Civility, para 21.
9. At an oral examination, parties should complete a list of undertakings and refusals as they are being provided. The use of a dictaphone to simultaneously record undertakings and refusals as they are provided may be helpful. The list should be reduced to writing and delivered to the party providing the undertakings/refusals within 5 business days after the examination.	Suggestions from case management masters
10. All undertakings should be answered within the prescribed timeframe, or such other time as agreed to by the parties.	Consultations
11. Unless there are compelling reasons to deny a request for additional time to respond to an undertaking, an opposing lawyer should grant the request without necessitating court intervention. Compelling reasons to deny such a request exist only if the client's legitimate interests would be materially prejudiced by the proposed delay.	ACTL, Code (s. 5(a) 8)
12. When providing undertakings, lawyers should be cognizant of their professional responsibility to fulfill undertakings. Lawyers should not provide undertakings that they know they will not be able to fulfill or to fulfill in a timely manner.	Ont, Rules of Professional Conduct, r. 4.01(7)
13. Lawyers should carefully consider how an undertaking is phrased, or consider alternatives to providing undertakings, including providing written authorization from a client permitting the examining lawyer to obtain requested documents or agreeing to have a second representative of your client with direct knowledge of the matters in issue be examined.	Consultations

E - MOTIONS	Source
1. When a discovery dispute arises, opposing lawyers should attempt to resolve it by working cooperatively together. Lawyers should refrain from filing motions to compel or for sanctions unless they have genuinely tried, but failed to resolve the dispute through all reasonable avenues of compromise and resolution.	ACTL Code (s. 5(a)5, 6(a)); <i>Principles of Civility</i> , para 5.
2. A lawyer who has no valid objection to an opponent's proposed motion should immediately make that position known to opposing counsel. Such candour will permit the opposing party to file an unopposed or consent motion that will also save scarce court resources.	ACTL Code (s. 6(b)(c))
3. If the court makes an order at a motion, whether on consent or opposed, parties are required to comply with the order. Parties should expect to be penalized with costs if they fail to comply with an order.	Consultations
4. Where a discovery-related motion on refusals is brought, a lawyer must complete in detail a refusals chart grouping the refusals by issue, and provide sufficient opportunity for the opposing lawyer to complete details with respect to the reason for the refusal. The chart should be filed in advance of the motion.	Suggestions from case management masters

F - EXPERTS	Source
1. Counsel should turn their mind to obtaining required expert reports and opinions as soon as possible in the litigation process. Waiting until the eve of trial to obtain expert reports often results in postponing the trial date, delay in the resolution of the case, and scheduling difficulties for the court. A lawyer should never purposefully delay designating an expert witness or delivering an expert's report in an effort to postpone trial.	Medico-legal consultation; ACTL Code (s. 11(e)).
2. In retaining an expert witness, counsel should respect the integrity of the expert's professional practices and procedures. Counsel should provide the expert with information that is believed to be relevant and material to the subject matter of the expert's written report. Experts are often not able to provide expert reports within short time periods and should be provided with sufficient time to prepare the requested report.	Medico-legal consultation; ACTL Code (s. 11(b)(d))
3. To reduce costs and avoid the possibility of competing expert evidence, lawyers should discuss the possibility of retaining a single independent expert.	Consultations; UK Pre-action protocols
4. Expert reports should clearly set out: <ul style="list-style-type: none"> <input type="checkbox"/> The area of expertise of the expert, supported by the expert's credentials or C.V.; <input type="checkbox"/> The nature of the opinion being sought & specific issues it relates to; and <input type="checkbox"/> The factual assumptions on which the opinion is being given. 	
5. Where there are experts with contradictory reports, consider a possible meeting of the experts to ascertain the areas on which agreement can be reached, or to clarify the reasons why the reports differ.	Quebec Code of Civil Procedure.

G – OTHER TECHNIQUES	Source
<i>Requests to Admit & Agreed Statements of Fact</i>	
1. Lawyers should use requests to admit more frequently on non-contentious issues. Using an agreed statement of fact also helps reduce the amount of time spent at oral examinations on non-contentious issues, allowing parties to focus on the real matters at issue in a case.	Suggestions from case management masters