

Relevance and Proportionality in the Rules of Civil Procedure in Canadian Jurisdictions (November 2010)

<i>Jurisdiction</i>	<i>Rule: General Principles or Interpretation Section</i>	<i>Rule: Relevance</i>	<i>Rule: Proportionality</i>
<i>Federal</i> ¹	Rule 3: These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits.	Rule 222(2) For the purposes of rules 223 to 232 and 295, a document of a party is relevant if the party intends to rely on it or if the document tends to adversely affect the party's case or to support another party's case.	Rule 230. On motion, the Court may relieve a party from production for inspection of any document, having regard to a) the issues in the case and the order in which they are likely to be resolved; and b) whether it would be unduly onerous to require the person to produce the document.
<i>Tax</i> ²	Rule 4. (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every proceeding on its merits.	Partial Disclosure: Rule 81. (1) A party shall, within thirty days following the closing of the pleadings, file and serve on every other party a list of the documents of which the party has knowledge at that time that might be used in evidence, a) to establish or to assist in establishing any allegation of fact in any pleading filed by that party, or b) to rebut or to assist in rebutting any allegation of fact in any pleading filed by any other party. Full Disclosure: Rule 82. (1) The parties may agree or, in the absence of agreement, either party may apply to the Court for an order directing that each party shall file and serve on each other party a list of all the documents that are or have been in that party's possession, control or power relevant to any matter in question between or among them in the appeal.	Rule 79. Nothing in sections 78 to 91 shall be taken as preventing parties to an appeal from agreeing to dispense with or limit the discovery of documents that they would otherwise be required to make to each other. Rule 93(8). Where a party is entitled to examine for discovery, a) more than one person under this section, or b) multiple parties who are in the same interest, but the Court is satisfied that multiple examinations would be oppressive, vexatious or unnecessary, the Court may impose such limits on the right of discovery as are just.

¹ Federal Courts Rules, online at <http://laws.justice.gc.ca/en/F-7/SOR-98-106/index.html>

² Tax Court of Canada Rules (General Procedure), online at <http://laws.justice.gc.ca/en/showtdm/cr/SOR-90-688a>

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<i>Jurisdiction</i>	<i>Rule: General Principles or Interpretation Section</i>	<i>Rule: Relevance</i>	<i>Rule: Proportionality</i>
<i>British Columbia</i> ³	<p>1-3(1) The object of these rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits.</p> <p>1-3(2) Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to</p> <p>(a) the amount involved in the proceeding, (b) the importance of the issues in dispute, and (c) the complexity of the proceeding.</p>	<p>7-1(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,</p> <p>(a) prepare a list of documents in Form 22 that lists</p> <p style="margin-left: 20px;">i. all documents that are or have been in the party's possession or control and that could, if available, be used by any party of record at trial to prove or disprove a material fact, and</p> <p style="margin-left: 20px;">ii. all other documents to which the party intends to refer at trial, and</p> <p>(b) serve the list on all parties of record.</p>	<p>7-1(14) On an application under subrule (13) or otherwise, the court may</p> <p>a) order that a party be excused from compliance with subrule (1), (3), (6), (15) or (16) or with a demand under subrule (10) or (11), either generally or in respect of one or more documents or classes of documents</p>
<i>Alberta</i> ⁴	<p>1.2(1) The purpose of these rules is to provide a means by which claims can be fairly and justly resolved in or by a court process in a timely and cost effective way.</p> <p>(2) In particular, the rules are intended</p> <p>a) to identify the real issues in dispute, b) to facilitate the quickest means of resolving a claim at the least expense, c) to encourage the parties to resolve the claim themselves, by</p>	<p>5.1(1) Within the context of rule 1.2, the purpose of this Part is:</p> <p>a) to obtain evidence that will be relied on in the action, b) to narrow and define the issues between parties, c) to encourage early disclosure of facts and records, d) to facilitate evaluation of the parties' positions and, if possible, resolution of issues in dispute, and e) to discourage conduct that unnecessarily or improperly delays proceedings or unnecessarily increases the cost of them.</p>	<p>5.3(1) The court may modify or waive any right or power under a rule in this Part or make any order warranted in the circumstances if</p> <p>(a) a person acts or threatens to act in a manner that is vexatious, evasive, abusive, oppressive, improper or tediously lengthy, or</p> <p>(b) the expense, delay, danger or difficulty in complying with a rule would be grossly disproportionate to the likely benefit.</p>

³ Rules available at: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/168_2009_00

⁴ Alberta Rules of Court (new November 2010), available at <http://www.albertacourts.ab.ca/Home/Spotlight/tabid/310/Default.aspx>

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<i>Jurisdiction</i>	<i>Rule: General Principles or Interpretation Section</i>	<i>Rule: Relevance</i>	<i>Rule: Proportionality</i>
	<p>agreement, with or without assistance, as early in the process as practicable,</p> <p>d) to oblige the parties to communicate honestly, openly and in a timely way, and</p> <p>e) to provide an effective, efficient and credible system of remedies and sanctions to enforce these rules and orders and judgments.</p>	<p>5.2(1) For the purposes of this Part, a question, record or information is relevant and material only if the answer to the question, or if the record or information, could reasonably be expected</p> <p>(a) to significantly help determine one or more of the issues raised in the pleadings, or</p> <p>(b) to ascertain evidence that could reasonably be expected to significantly help determine one or more of the issues raised in the pleadings.</p>	
<i>Saskatchewan</i> ⁵	None.	<p>212(1) Parties to an action shall, within ten days after a statement of defence has been filed, and without notice, serve on each opposite party a statement as to the documents which are or have been in his possession or power relating to any matter in question in the action.</p> <p>213(1) Every party to a cause or matter shall be entitled at any time, by notice in writing, to give notice to any other party in whose pleadings, affidavits, or statement as to documents reference is made to any document, to produce such document for the inspection of the party giving such notice or of his solicitor and to permit him or them to take copies thereof.</p>	<p>478(1) The simplified procedure shall be used in an action where the plaintiff's claim is exclusively for:</p> <p>(a) an amount of \$50,000 or less, exclusive of interest and costs;</p> <p>(b) real or personal property the fair market value of which at the date of commencement of the action is \$50,000 or less; or</p> <p>(c) both an amount of money and real or personal property the total value of which at</p> <p>(d) the date of commencement of the action is \$50,000 or less, exclusive of interest and</p> <p>(e) costs, having regard to the fair market value of the property at that date.</p> <p>But see:</p>

⁵ The Queen's Bench Rules, Saskatchewan, online at <http://www.qp.gov.sk.ca/documents/English/Rules/qbrules.pdf>

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			<p>484(1) An affidavit of documents and witnesses shall be in Form 484, and shall:</p> <p>(a) disclose to the full extent of the party's knowledge, information and belief, all documents relating to any matter in issue in the action that are or have been in the party's possession, control or power; and</p> <p>(b) include a list of the names and addresses of persons who might reasonably be expected to have knowledge of transactions or occurrences in issue in the action.</p> <p>NB. Court of Queen's Bench of Saskatchewan Practice Directive No. 6, E-Discovery Guidelines, published in April 2010.⁶</p>
<i>Manitoba</i> ⁷	Rule 1.04(1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.	Rule 30.01(1)(c) a relevant document is one which relates to any matter in issue in an action .	
<i>Ontario</i> ⁸	Rule 1.04 s1.1 Proportionality "In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the	Rule 30.02 (1) Every document relevant to any matter in issue in an action that is or has been in the possession, control or power of a party to the action shall be disclosed as provided in rules	Rule 29.2.03 In making a determination as to whether a party or other person must answer a question or produce a document, the court shall consider whether,

⁶ Court of Queen's Bench of Saskatchewan Practice Directive No. 6 (page 488) <http://www.qp.gov.sk.ca/documents/English/Rules/practice.pdf>

⁷ Court of Queen's Bench Rules, online at <http://web2.gov.mb.ca/laws/rules/qbr1e.php>

⁸ Rules of Civil Procedure, effective January 2010. Available at http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_900194_e.htm

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	issues, and to the amount involved, in the proceeding.”	30.03 to 30.10, whether or not privilege is claimed in respect of the document.	a)...time b)...expense c)...undue prejudice d)...unduly interfere e)...available from another source
<i>Quebec</i> ⁹	Section 4.1 of CCP: Subject to the rules of procedure and the time limits prescribed by this Code, the parties to a proceeding have control of their case and must refrain from acting with the intent of causing prejudice to another person or behaving in an excessive or unreasonable manner, contrary to the requirements of good faith. The court sees to the orderly progress of the proceeding and intervenes to ensure proper management of the case.		Section 4.2 of CCP: In any proceeding, the parties must ensure that the proceedings they choose are proportionate, in terms of the costs and time required, to the nature and ultimate purpose of the action or application and to the complexity of the dispute; the same applies to proceedings authorized or ordered by the judge.
<i>New Brunswick</i> ¹⁰	Rule 10.03(2) These rules shall be liberally construed to secure the just, least expensive and most expeditious determination of every proceeding on its merits.	Rule 31.02(1) Every document which relates to a matter in issue in an action and which is or has been in the possession or control of a party or which the party believes to be in the possession, custody or control of some person not a party, shall be disclosed as provided in this rule, whether or not privilege is claimed in respect of that document.	

⁹ Code of Civil Procedure, online at <http://www.canlii.org/en/qc/laws/stat/rsq-c-c-25/latest/rsq-c-c-25.html>

¹⁰ Rules of Court, N.B. Reg. 82-73, available at <http://www.ijcan.com/en/nb/laws/regu/nb-reg-82-73/latest/nb-reg-82-73.html>

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<i>Nova Scotia</i> ¹¹	Rule 1.01 These Rules are for the just, speedy, and inexpensive determination of every proceeding.	Rule 14.01 (1) In this Part, “relevant” and “relevancy” have the same meaning as at the trial of an action or on the hearing of an application and, for greater clarity, both of the following apply on a determination of relevancy under this Part: (a) a judge who determines the relevancy of a document, electronic information, or other thing sought to be disclosed or produced must make the determination by assessing whether a judge presiding at the trial or hearing of the proceeding would find the document, electronic information, or other thing relevant or irrelevant; (b) a judge who determines the relevancy of information called for by a question asked in accordance with this Part 5 must make the determination by assessing whether a judge presiding at the trial or hearing of the proceeding would find the information relevant or irrelevant. (2) A determination of relevancy or irrelevancy under this Part is not binding at the trial of an action, or on the hearing of an application.	Rule 14.08(3) A party who proposes that a judge modify an obligation to make disclosure must rebut the presumption for disclosure by establishing that the modification is necessary to make cost, burden, and delay proportionate to both of the following: (a) the likely probative value of evidence that may be found or acquired if the obligation is not limited; (b) the importance of the issues in the proceeding to the parties. Rule 14.09(2)(c) make a motion to limit the party’s obligation to produce the document or electronic information, and seek to rebut the presumption in favour of disclosure by establishing that compliance with the demand is disproportionate under Rule 14.08.
<i>PEI</i> ¹²	Rule 1.04(1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.	Rule 30.02(1) Every document relating to any matter in issue in an action that is or has been in the possession, control or power of a party to the action shall be disclosed as provided in Rules 30.03 to 30.10, whether or not privilege is	<i>N.B.</i> the Supreme Court of P.E.I. adopted the <i>Ontario Rules of Civil Procedure</i> in 1990. Ontario amendments coming into effect in January 2010 may therefore be available to litigants in PEI.

¹¹ Nova Scotia Annotated Civil Procedure Rules, available at <http://nslaw.nsbs.org/nslaw/>

¹² Prince Edward Island: Supreme Court Annotated Rules of Civil Procedure, online at <http://www.gov.pe.ca/courts/supreme/rules/index.php3>

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		claimed in respect of the document.	
<i>Nfld Labrador</i> ¹³	None	Rule 32.01. (1) Unless the Court otherwise orders, a party to a proceeding shall, within ten days after the close of the pleadings between an opposing party and the party, or within seven days after the service of the originating document where there are no pleadings, file and serve on the opposing party a list in Form 32.01A of the documents of which the party has knowledge at that time relating to every matter in question in the proceeding and file in the Registry the list without a copy of any document being attached thereto.	
<i>Yukon</i> ¹⁴	<p>Rule 1(6) The object of these rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits and to ensure that the amount of time and process involved in resolving the proceeding, and the expenses incurred by the parties in resolving the proceeding, are proportionate to the court's assessment of</p> <p>(a) the dollar amount involved in the proceeding,</p> <p>(b) the importance of the issues in dispute to the jurisprudence of Yukon and to the public interest,</p>	<p>Rule 25(3) Every document relating to any matter in issue in an action that is or has been in the possession, control or power of a party to the action shall be disclosed as provided in this rule whether or not privilege is claimed in respect of the document.</p>	<p>Rule 25(16) The court may, on application, order that a party be excused from compliance with this rule, either generally or in respect of one or more documents or classes of documents.</p>

¹³ Rules of the Supreme Court, online at <http://www.assembly.nl.ca/legislation/sr/regulations/Rc86rules.htm>

¹⁴ Rules of Court, online at <http://www.yukoncourts.ca/courts/supreme/ykrulesforms.html>

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	and (c) the complexity of the proceeding.		
<i>Nunavut</i>	Follows the Rules of the Supreme Court of the Northwest Territories		
<i>NWT</i> ¹⁵	Rule 3 The object of these rules is to secure the just, speedy and inexpensive determination of every proceeding.	Rule 219 Every document relating to any matter in issue in an action that is or has been in the possession, control or power of a party to the action shall be disclosed as provided in this Part, whether or not privilege is claimed in respect of the document.	

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¹⁵ Rules of the Supreme Court of the Northwest Territories, online at http://www.justice.gov.nt.ca/pdf/REGS/JUDICATURE/Rules_Supr_Crt_NWT_Pt_1.pdf