Part 5 - Disclosure and Discovery

Rule 14 - Disclosure and Discovery in General

Meaning of “relevant” in Part 5

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.

Interpretation in Part 5

14.02 (1) In Part 5,

“actually possess” means to have physical control of a thing or the ability to take physical control of the thing by one’s self, through one’s employee, or, in the case of a corporation, through an officer, without the assistance or permission of another person;

"computer" means a device that can store, read, and present electronic information, whether or not it can also process data, such as a personal computer, personal digital assistant, or fax machine with memory;

"designated manager" means a person designated by a corporate party under Rule 14.14;

"document" means a document that is not electronic information, including a print version of electronic information and a non-digital sound recording, video recording, photograph, film, plan, chart, graph, or record;

"electronic information" means a digital record that is perceived with the assistance of a computer as a text, spreadsheet, image, sound, or other intelligible thing and it includes metadata associated with the record and a record produced by a computer processing data, and all of the following are examples of electronic information:

(i) an e-mail, including an attachment and the metadata in the header fields showing such information as the message's history and information about a blind copy,

(ii) a word processing file, including the metadata such as metadata showing creation date, modification date, access date, printing information, and the pre-edit data from earlier drafts,

(iii) a sound file including the metadata, such as the date of recording,

(iv) new information to be produced by a database capable of processing its data so as to produce the information;

"exactly copy" means to make an electronic copy of electronic information in such a way that the copy is a mirror image of the original in a computer, storage medium, or other source;

"sort" means to do all of the following:

(i) physically separate relevant, non-privileged documents from other documents and distinguish relevant, non-privileged electronic information from other electronic information,

(ii) separate or redact irrelevant or privileged information from a document or electronic information containing some information that is relevant and not privileged,

(iii) place the document or electronic information where it will be preserved for disclosure;

"storage medium" means a thing on which electronic information is stored other than a computer, such as a digital versatile disc, a backup tape, and a hard drive removed from a computer.

(2) A Rule in Part 5 that refers to a copy of, or copying, electronic information calls for a copy that is in a readily exchangeable format, unless the Rule refers to an exact copy, a judge directs what format is to be used, or the parties agree on a format.

Collateral use

14.03 (1) Nothing in Part 5 diminishes the application of the implied undertaking not to use information disclosed or discovered in a proceeding for a purpose outside the proceeding, without the permission of a judge.

(2) The implied undertaking extends to each of the following, unless a judge orders otherwise:

(a) documentation used in administering a test, such as test documents supplied to and completed by a psychologist;

(b) all notes and other records of an expert;

(c) anything disclosed or produced for a settlement conference.

Relationship between discovery and interrogatories

14.04 A party may only demand an answer to a question under Rule 19 - Interrogatories not already answered by the same witness under Rule 18 - Discovery, and a party may only ask a question at discovery not already answered by the same witness in answer to a demand under Rule 19 - Interrogatories.

Privilege

14.05 (1) Nothing in Part 5 requires a person to waive privilege or disclose privileged information.

(2) A provision in a Rule in Part 5 for disclosure of a relevant document, electronic information, or other thing means disclosure of a relevant document, electronic information, or other thing that is not privileged.

(3) A provision in a Rule in Part 5 that requires an answer to a question calling for relevant evidence, or information that reasonably could lead to relevant evidence, means relevant evidence that is not privileged, or information, not itself privileged, that could lead to relevant evidence that is not privileged.

(4) A judge may determine a claim for privilege, except the information and confidences referred to in sections 37 to 39 of the *Canada Evidence Act* are determined under that Act.

(5) A judge who is required to determine a claim for privilege may direct a person to deliver the thing claimed to be privileged to the judge in order that it may be dealt with under Rule 85.06, of Rule 85 - Access to Court Records.

Disclosure of privileged information by mistake

14.06 (1) Delivery by mistake of privileged information when making disclosure under Part 5 does not extinguish the privilege, unless the mistake results from one of the following:

(a) a system of records management that is ineffective, or otherwise unreasonable;

(b) inadequate security measures for protecting confidential information;

(c) carelessness in disclosure, such as disclosing masses of documents or electronic information without taking reasonable steps to review the documents or making a reasonable search of the electronic information in an attempt to identify privileged information.

(2) A party who makes disclosure under Part 5 must exercise care to avoid delivering privileged information.

(3) A party to whom disclosure is made and who discovers that the disclosure includes apparently privileged information must immediately notify the disclosing party and not do any of the things mentioned in Rule 14.06(7) until five days after the day the receiving party notifies the disclosing party.

(4) A party who learns, by receiving a notice under Rule 14.06(3) or otherwise, that the party delivered privileged information by mistake must, no more than five days after the day the party learns of the disclosure, notify the receiving party of the claim that privileged information was disclosed by mistake, or the privilege is waived.

(5) A party who claims privileged information was delivered by mistake may require the receiving party to do any of the following:

(a) return the document, if the information is in a physical document;

(b) delete the privileged information, if it was delivered in electronic form;

(c) return the storage medium, if the privileged information was delivered on a storage medium.

(6) Counsel who receives information claimed to be privileged and to have been delivered by mistake must not provide the information to anyone, including counsel's client, unless a judge determines the information is not privileged.

(7) A party who receives information claimed to be privileged and to have been delivered by mistake must not do any of the following, unless a judge determines the information is not privileged:

(a) review the information;

(b) keep a reproduction or record of the information;

(c) communicate the information to another person;

(d) ask a question based on the information in interrogatories, in discovery, on a hearing, or at a trial;

(e) repeat the information.

(8) A judge may make an order to protect a privilege in anything disclosed by mistake under Part 5.

Expense of disclosure

14.07 (1) The party who makes disclosure must pay for the disclosure, unless the parties agree or a judge orders otherwise.

(2) A judge may order another party to provide an indemnity to the disclosing party for an expense of disclosure, if all of the following apply:

(a) considering the disclosing party's means, the indemnity is clearly necessary to achieve proportionality within the meaning of Rule 14.08(3);

(b) the expense is not the result of a system of records management that is ineffective, or otherwise unreasonable;

(3) The order may require the disclosing party to do any of the following, if it is covered by the indemnity:

(a) acquire more information about the disclosing party's records management system, the location of the party's documents and electronic information, or how they are accessed, and report to the indemnifying party or the court;

(b) perform a search for relevant documents or electronic information, report on the results to the indemnifying party or the court, and produce a copy of any relevant document or electronic information the party finds;

(c) acquire and produce a copy of a relevant document or electronic information;

(d) take other steps that may assist the indemnifying party to receive disclosure.

(4) The provisions of an indemnity must be taken into account in the assessment of cost under Rule 14.08(3).

Presumption for full disclosure

14.08 (1) Making full disclosure of relevant documents, electronic information, and other things is presumed to be necessary for justice in a proceeding.

(2) Making full disclosure of documents or electronic information includes taking all reasonable steps to become knowledgeable of what relevant documents or electronic information exist and are in the control of the party, and to preserve the documents and electronic information.

(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.

(4) The party who seeks to rebut the presumption must fully disclose the party’s knowledge of what evidence is likely to be found or acquired if the disclosure obligation is not limited.

(5) The presumption for disclosure applies, unless it is rebutted, on a motion under Rule 14.12, Rule 15.07 of Rule 15 - Disclosure of Documents, Rules 16.03 or 16.14 of Rule 16 - Disclosure of Electronic Information, Rule 17.05 of Rule 17 - Disclosure of Other Things, or Rule 18.18 of Rule 18 - Discovery.

(6) In an application, a judge who determines whether the presumption has been rebutted must consider the nature of the application, whether it is chosen as a flexible alternative to an action, and its potential for a speedier determination of the issues in dispute, when assessing cost, burden, and delay.

Demand for production of undisclosed copy

14.09 **(1)** After the time for making disclosure under Rule 15 - Disclosure of Documents, or Rule 16 - Disclosure of Electronic Information, a party who is satisfied another party has not disclosed a relevant document or electronic information required to be disclosed may demand that the other party deliver a copy of the document or electronic information.

(2) A party to whom a demand for a copy of a document or electronic information is delivered must respond to the demand in one of the following ways no more than fifteen days after the day the demand is delivered:

(a) accept the demand, and deliver a copy of the document or electronic information;

(b) refuse the demand on the ground that the document or electronic information is privileged, irrelevant, or not in the control of the party;

(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.

(3) A judge may order a party who fails to respond to a demand for production to indemnify the other party for the expenses of obtaining an order for production.

Demand for production of, or access to, original

14.10 **(1)** After the parties have complied with Rule 15 - Disclosure of Documents, and Rule 16 - Disclosure of Electronic Information, a party may deliver to another party a demand for production for inspection of the original of a relevant document in the control of the other party, or for access to relevant electronic information in the control of the other party.

(2) The party who accepts a demand for production for inspection of an original document must do both of the following, unless a judge orders otherwise:

(a) not more than fifteen days after the day the demand is delivered, arrange a time, date, and place for the production;

(b) produce the document for inspection and permit the document to be copied at the arranged time, date, and place.

(3) The party who accepts a demand for access to electronic information must do each of the following, unless a judge orders otherwise:

(a) not more than fifteen days after the day the demand is delivered, offer reasonable terms under which the other party will have access to a computer or storage medium in the control of the disclosing party or to another source of electronic information the party accesses to the exclusion of another party;

(b) within the same time, arrange a convenient time and way for the other party to have access;

(c) provide access accordingly.

(4) The party who refuses a demand for access to electronic information must give reasons for the refusal, and the other party may make a motion for an order under Rule 14.12.

Demand for production at trial or hearing

14.11 (1) A party may, before the finish date in an action or the day of the hearing of an application, deliver to another party a demand that the party produce any of the following at the trial or hearing:

(a) the original of a relevant document, or an exact copy of relevant electronic information;

(b) a copy of a relevant document, or a copy of relevant electronic information accurately copied in a readily exchangeable format;

(c) a computer or storage medium containing relevant electronic information;

(d) another means for accessing a source of relevant electronic information the party accesses to the exclusion of the demanding party.

(2) The party to whom the demand for production is delivered and who has control of the document, information, computer, medium, or source must produce it or provide access to it at the trial or hearing, unless a judge orders otherwise.

Order for production

14.12 (1) A judge may order a person to deliver a copy of a relevant document or relevant electronic information to a party or at the trial or hearing of a proceeding.

(2) A judge may order a person to produce the original of a relevant document, or provide access to an original source of relevant electronic information, to a party or at the trial or hearing.

(3) A judge who orders a person to provide access to an original source of relevant electronic information may include in the order terms under which the access is to be exercised, including terms on any of the following:

(a) a requirement that a person assist the party in obtaining temporary access to the source;

(b) permission for a person to take temporary control of a computer, part of a computer, or a storage medium;

(c) appointment of an independent person to exercise the access;

(d) appointment of a lawyer to advise the independent person and supervise the access;

(e) payment of the independent person and the person's lawyer;

(f) protection of privileged information that may be found when the access is exercised;

(g) protection of the privacy of irrelevant information that may be found when the access is exercised;

(h) identification and disclosure of relevant information, or information that could lead to relevant information;

(i) reporting to the other party on relevant electronic information found during the access.

(4) A judge who is satisfied that the requirement is disproportionate under Rule 14.08 may limit a requirement to produce a copy of a document, to produce exactly copied electronic information, or to provide access to electronic information.

Order to process data

14.13 A judge may order a party to cause data on a computer or in a storage medium actually possessed by the party, or in a database accessed by the party to the exclusion of another party, to be processed so as to produce relevant electronic information.

Designated manager for discovery

14.14 **(1)** A corporate party to a defended action must designate a manager for discovery of the corporation and notify the other parties of the name of the designated manager no more than twenty days after the day pleadings close.

(2) A corporate party must designate a manager in a contested application no more than two days after either of the following:

(a) the day a notice of contest is delivered to the corporate party who is an applicant;

(b) the day the notice of contest is filed by the corporate party who is a respondent.

(3) A judge may designate a manager if the corporate party fails to do so.

(4) A judge may substitute a manager if a corporate party makes an unreasonable designation, such as designating a person who has no real connection with the party's claim, defence, or ground although such a person is available and able to act as manager.

(5) A designated manager must, before being discovered, become informed about relevant information available to the party.

Public archives and other public repository

14.15 Despite the provisions of Part 5, a party who controls a public archive, museum, or other place where the public has access to documents or electronic information is not obligated to search there for relevant documents or electronic information that are available to all parties.

Rule 15 - Disclosure of Documents

Scope of Rule 15

15.01 (1) This Rule provides for making disclosure of documents, not electronic information.

(2) A party must disclose documents in the control of the party, in accordance with this Rule.

Duty to make disclosure of documents

15.02 (1) A party to a defended action or a contested application must do each of the following:

(a) make diligent efforts to become informed about relevant documents the party has, or once had, control of;

(b) search for relevant documents the party actually possesses, sort the documents, and either disclose them or claim a document is privileged;

(c) acquire and disclose relevant documents the party controls but does not actually possess.

(2) The party must also disclose information about all of the following:

(a) a relevant document the party once controlled but no longer controls, such as a lost document or a document given away;

(b) a claim that a document in the control of the party is subject to a privilege in favour of the party or another person, to the extent it is possible to inform another party without infringing the privilege;

(c) a relevant document newly created, discovered, or acquired;

(d) a relevant document that has ceased to be privileged.

Disclosure in an action

15.03 (1) A party to a defended action must deliver to each other party an affidavit that fulfills the party's duty to make disclosure of documents no more than forty-five days after the day pleadings close.

(2) The affidavit must contain the standard heading, be entitled "Affidavit Disclosing Documents (Individual)" or "Affidavit Disclosing Documents (Corporate)", and be sworn or affirmed by an individual party, the litigation guardian of an individual party, or an officer or employee of a corporate party.

(3) The person making the affidavit must swear to or affirm all of the following:

(a) an attached certificate of advice or understanding about disclosure duties under this Rule 15, and Rule 16 - Disclosure of Electronic Information, is true;

(b) the person has thoroughly searched for, or supervised a thorough search for, relevant documents that are actually possessed by the party;

(c) the person has become informed about relevant documents in control of, but not actually possessed by, the party and has acquired the documents, or disclosed otherwise in the affidavit;

(d) an attached Schedule A lists all relevant, non-privileged documents that are actually possessed by the party;

(e) the person has arranged for delivery of copies of the listed documents in a printed booklet, or in a readily exchangeable electronic format, that is organized in a way that corresponds to Schedule A;

(f) an attached Schedule B provides the date of retention of counsel, claims privilege over communications with counsel unless the party waives the privilege, and provides information on all claims that a document, other than a communication with counsel, is privileged in favour of the party or another person;

(g) an attached Schedule C describes each relevant document in the party's control that has not yet been acquired by the party and provides the party's undertaking to acquire the document or the reasons for not doing so;

(h) an attached Schedule D accurately describes any document once, but no longer, in the control of the party;

(i) to the best of the person's knowledge, the party has never had control of a relevant document except as disclosed in the affidavit;

(j) disclosure of electronic information is the subject of another affidavit, an agreement, or directions of a judge.

(4) The certificate attached to the affidavit must be of one of the following kinds:

(a) if the person is represented by counsel, a certificate signed by counsel stating that counsel has advised the person providing the affidavit of the duties under Rule 14 - Disclosure and Discovery in General, this Rule 15, and Rule 16 - Disclosure of Electronic Information to search for, make diligent efforts to become informed about, acquire, sort, and disclose relevant documents and electronic information, and of the kinds of documents and electronic information that may be relevant in the proceeding;

(b) if the party is acting on their own, a certificate of the party that they have taken any assistance they require to understand the duties under Rule 14 - Disclosure and Discovery in General, this Rule 15, and Rule 16 - Disclosure of Electronic Information to search for, make diligent efforts to become informed about, acquire, sort, and disclose written documents and electronic information, and the party understands the duties.

(5) Each schedule attached to the affidavit must describe a document so it is easily identifiable from the description, and if copies of documents are to be delivered in an electronic format rather than a printed booklet, Schedule A must conform with Rule 16.09(3)(d).

(6) The affidavit disclosing documents may be in Form 15.03A for an individual party, or Form 15.03B for a corporate party.

Supplementary affidavit disclosing documents

15.04 A party who delivers an affidavit disclosing documents must, immediately on becoming aware of any of the following, deliver to each other party a supplementary affidavit disclosing documents:

(a) a relevant document in the actual possession of the party is not covered by the affidavit disclosing documents;

(b) a further relevant document is found or acquired;

(c) a relevant document claimed to be privileged is no longer claimed to be privileged.

Book or electronic copy of documents

15.05 **(1)** A party who delivers an affidavit disclosing documents, or a supplementary affidavit, must, at the same time, deliver to each other party a book of copies of all documents listed in Schedule A of the affidavit, or referred to in the supplementary affidavit.

(2) The documents must be provided in a sequence, and with identifying numbers or letters, so that they are easily matched with the list in the Schedule.

(3) A document that cannot be bound conveniently into a book, may be placed in a sleeve or delivered separately with a cross-reference in the booklet.

(4) Instead of a book, a party to a proceeding in which all parties have means for reading electronic information may scan the documents and deliver copies in a readily exchangeable electronic format.

(5) A party who delivers documents in an electronic format must comply with Rule 16.12, of Rule 16 - Disclosure of Electronic Information, as if the scanned documents were electronic information, and the party must provide in the party's affidavit of documents a Schedule "A" that conforms with Rule 16.09(3)(d).

Disclosure in an application

15.06 (1) A party to a contested application must deliver to each other party copies of all documents required to be disclosed under this Rule 15 and a list by which the documents can be identified and put in order.

(2) The copies must be delivered in a booklet, or in a readily exchangeable electronic format.

(3) A judge may give directions for delivery of a list identifying, or an affidavit disclosing, documents in an application.

Directions for disclosure

15.07 (1) A judge may give directions for disclosure of documents, and the directions prevail over this Rule 15.

(2) A judge may not give directions limiting disclosure or production of a relevant document, unless the presumption in Rule 14.08, of Rule 14 - Disclosure and Discovery in General, is rebutted.

Rule 16 - Disclosure of Electronic Information

Scope of Rule 16

16.01 **(1)** This Rule prescribes duties for preservation of relevant electronic information, which may be expanded or limited by agreement or order.

(2) This Rule also prescribes duties of disclosure of relevant electronic information and provides for fulfilling those duties in one of the following ways:

(a) first, an agreement made by the parties;

(b) second, to the extent that an agreement is not made, disclosure according to default Rules;

(c) third, if no agreement can be made and the default rules cannot be complied with, directions of a judge under Rule 16.14.

(3) A party must preserve and disclose electronic information in the control of the party, in accordance with this Rule.

Duty to preserve electronic information

16.02 **(1)** This Rule 16.02 provides for preservation of relevant electronic information after a proceeding is started, and it supplements the obligations established by law to preserve evidence before or after a proceeding is started.

(2) A party who becomes aware that a proceeding is to be defended or contested, must take measures to preserve relevant electronic information that is of one of the following kinds:

(a) it is readily identifiable in a computer, or on a storage medium, the party actually possesses;

(b) it is accessible by the party to the exclusion of another party, such as information in a database the party accesses by password on a computer the party does not actually possess.

(3) Electronic information that is within any of the following descriptions is readily identifiable:

(a) it was created, or regularly accessed, by a party during events related to a claim, defence, or ground, and if the information is still accessible;

(b) the party finds it while doing anything in connection with the proceeding, such as preparing the party's own case or defence;

(c) it is stored under a relevant name;

(d) it is capable of being found by performing thorough keyword searches.

(4) The party must exactly copy the relevant electronic information required to be preserved, unless the parties agree or a judge orders otherwise (see the definition of "exactly copy" in Rule 14.02, of Rule 14 - Disclosure and Discovery in General).

(5) Rules 16.02(1) to (4) do not require a party to freeze a database or file that changes significantly and rapidly in ordinary use, such as a file for inventory control.

(6) A party may demand that a party who controls a database preserve relevant information in the database, and the party who receives the demand must immediately do one of the following:

(a) preserve the information from being overwritten or otherwise altered;

(b) explain in writing why the party cannot comply with the demand.

(7) A party may make a motion for an order requiring another party to preserve information in a database or a file that changes significantly and rapidly in ordinary use.

(8) A judge may make an order for preservation of relevant electronic information, in accordance with Rule 42 - Preservation Order.

Duty to disclose electronic information

16.03 (1) A party to a defended action or a contested application must do each of the following:

(a) make diligent efforts to become informed about relevant electronic information the party controls, or once controlled;

(b) search for relevant electronic information the party can access to the exclusion of another party, sort the information, and either disclose it or claim it is privileged;

(c) acquire and disclose relevant electronic information the party controls but can access only through a custodian who is not an employee or an officer of the party.

(2) A party must also disclose all of the following about relevant electronic information:

(a) a description of a computer or storage medium that the party once actually possessed but no longer actually possesses and that may contain relevant electronic information;

(b) information about any deletion or destruction of relevant electronic information of which the party is aware;

(c) a claim that electronic information is subject to a privilege in favour of the party or another person, to the extent it is possible to inform another party without infringing the privilege.

(3) A party must disclose relevant electronic information that has ceased to be privileged or is newly created, discovered, or acquired.

Agreement about preservation

16.04 The parties may, by agreement, and a judge may, by directions under Rule 16.14, expand or limit a party's duty to preserve electronic information.

Agreement for disclosure

16.05 (1) Parties may make an agreement for disclosure of relevant electronic information, and a term of the agreement prevails over an inconsistent provision of Rule 15 - Disclosure of Documents, or this Rule 16.

(2) A judge may make an order to enforce a term in an agreement for disclosure of electronic information.

(3) Breach of a term in an agreement for disclosure of electronic information is the same as breach of a Rule for the purpose of Rule 88 - Abuse of Process.

Rules for disclosure in default of agreement

16.06 (1) A party to either of the following proceedings must make disclosure of relevant electronic information in accordance with the following default Rules, to the extent there is no agreement on a subject pertaining to the default Rules:

(a) a defended action, in accordance with Rules 16.07 to 16.11 and Rule 16.13;

(b) a contested application, in accordance with Rules 16.12 and 16.13.

(2) A party who does not have an agreement covering a subject provided for in the default Rules and determines they cannot fulfill a default duty, or cannot comply with an applicable default Rule, must immediately notify each other party of the inability and reason for it.

(3) All parties must negotiate in good faith for an agreement under Rule 16.05 as soon as possible after being notified of an inability to fulfill a default duty or comply with a default Rule.

(4) If agreement is not reached in a reasonable time, the party who cannot fulfill a default duty, or comply with an applicable default Rule, must apply for directions under Rule 16.14.

Time for disclosure in an action (default provision)

16.07 A party to a defended action must disclose relevant electronic information no more than forty-five days after the day pleadings close.

Sufficient search (default provision)

16.08 (1) A party who does all of the following performs a sufficient search for relevant electronic information:

(a) identifies computers and storage media the party actually possesses that are likely to contain relevant electronic information;

(b) identifies other sources that are likely to contain relevant electronic information, such as a source the party accesses to the exclusion of another party on computers the party does not actually possess;

(c) performs all reasonable searches, including thorough keyword searches, to find relevant electronic information in the computers, storage media, or other sources;

(d) identifies persons who hold, or are likely to hold, relevant electronic information the party controls;

(e) takes reasonable steps to acquire information from a person identified as holding information the party controls.

(2) A party performs a sufficient search without searching free space for file fragments, attempting to restore and search deleted files, or searching a backup file or tape containing only duplicate information.

Disclosure in an action (default provision)

16.09 **(1)** A party to a defended action must deliver to each other party an affidavit disclosing relevant electronic information that fulfills the party's duties to make disclosure in the time allowed by Rule 16.07.

(2) The affidavit must contain the standard heading, be entitled "Affidavit Disclosing Electronic Information (Individual)" or "Affidavit Disclosing Electronic Information (Corporation)", and be sworn or affirmed by an individual party, the litigation guardian of an individual party, or an officer or employee of a corporate party.

(3) The person making the affidavit must swear to, or affirm, all of the following:

(a) the information in an attached certificate of advice or understanding about disclosure duties under this Rule 16 and Rule 15 - Disclosure of Documents, is true;

(b) the person has searched, or has supervised a search, for relevant electronic information in computers and storage media the party actually possesses and in sources exclusively accessed by the party;

(c) the person has made diligent efforts to become informed about relevant electronic information that is in the control of, but not held by, the party and the person has acquired the information except as disclosed in the affidavits;

(d) an attached Schedule A is provided in print and in a readily exchangeable electronic format, describing each discrete item of electronic information according to identification number or letters, date of creation, type of communication or other information, author or author and organization, and recipient;

(e) the person has arranged for the electronic information referred to in Schedule A to be prepared in a readily exchangeable electronic format, organized in a way that corresponds with Schedule A, and delivered to each other party;

(f) an attached Schedule B provides the date of retention of counsel and claims privilege over communications with counsel, unless the party waives the privilege, and provides information on all claims that a communication, other than a communication with counsel, is privileged in favour of the party or another person;

(g) an attached Schedule C provides information about relevant electronic information in the party's control but which the party has not yet found or acquired, and an undertaking to act diligently to find or acquire the information;

(h) an attached Schedule D describes relevant electronic information once, but no longer, in the control of the party and provides details about how the party ceased to have control of it;

(i) to the best of the person's knowledge, the party has never had control of relevant electronic information except as disclosed in the affidavit;

(j) disclosure of documents is the subject of another affidavit.

(4) The certificate of advice or understanding attached to the affidavit must be the same as the certificate attached to an affidavit of documents.

(5) The affidavit may be in Form 16.09A for an individual party, or Form 16.09B for a corporate party.

Supplementary affidavit of electronic information in an action (default provision)

16.10 A party who delivers an affidavit disclosing electronic information must, immediately on becoming aware of any of the following, deliver to each other party a supplementary affidavit disclosing further electronic information:

(a) some relevant electronic information in the control of the party is not covered by the affidavit disclosing electronic information;

(b) further relevant electronic information is found or acquired;

(c) relevant electronic information claimed to be privileged is no longer claimed to be privileged.

Copy of electronic information in an action (default provision)

16.11 A party who delivers an affidavit, or supplemental affidavit, disclosing electronic information must, at the same time, deliver to each other party a copy of the electronic information referred to in Schedule A of the affidavit, or in the supplementary affidavit.

Making disclosure in an application (default provision)

16.12 (1) A party to an application who becomes aware that the application is contested must, as soon as possible, deliver to each other party copies of electronic information required to be disclosed by Rule 16.02.

(2) A party to an application who is requested by another party to provide a description of relevant electronic information must, as soon as possible, deliver a description to the requesting party that conforms with the requirements for Schedule A of an affidavit disclosing electronic information.

(3) The disclosing party must answer questions asked by another party that will inform the other party about any of the following subjects:

(a) a claim for privilege, to the extent information can be given without infringing the privilege;

(b) measures the disclosing party has taken to preserve, or acquire, relevant electronic information in the control of the party;

(c) details of the searches made by the disclosing party;

(d) details about a source of electronic information that may be used to produce new, relevant information;

(e) any information that could reasonably lead to the location and preservation of relevant electronic information that has not been acquired.

(4) The inquiring party may require that the questions and answers be put in writing, recorded, or asked and answered at a discovery.

(5) A party to an application must copy relevant electronic information immediately on becoming aware that the information has ceased to be privileged, is newly created, discovered, or acquired, or was not disclosed when it should have been disclosed, and deliver a copy to each other party.

Deletion or destruction of electronic information

16.13 (1) Deliberate or reckless deletion of relevant electronic information, expunging deleted information, or destruction of anything containing relevant electronic information after a proceeding is started may be dealt with under Rule 88 - Abuse of Process.

(2) Failure to comply with an order directing preservation of electronic information may be dealt with under Rule 89 - Contempt.

Directions for disclosure

16.14 (1) A judge may give directions for disclosure of relevant electronic information, and the directions prevail over other provisions in this Rule 16.

(2) The default Rules are not a guide for directions.

(3) A judge may limit preservation or disclosure in an action only to the extent the presumption in Rule 14.08, of Rule 14 - Disclosure and Discovery in General, is rebutted.

When loss of electronic information may be abuse

16.15 (1) A party who deliberately or recklessly does any of the following may be dealt with under Rule 88 - Abuse of Process:

(a) deletes relevant electronic information;

(b) expunges deleted, relevant, electronic information;

(c) destroys a thing that contains relevant electronic information.

(2) A party who acts in good faith and who loses relevant electronic information as a result of the routine operation of a computer or database does not commit an abuse of process.

Rule 17 - Disclosure of Other Things

Scope of Rule 17

17.01 **(1)** This Rule provides for disclosure and inspection of things other than documents and electronic information, including all of the following:

(a) land and fixtures, such as a building, structure, and fixed machinery;

(b) moveables, such as a machine, model, or sample;

(c) anything containing information that is not a document or electronic information.

(2) A person must disclose all relevant things in the control of the person, and a party may inspect a relevant thing, in accordance with this Rule.

When to disclose

17.02 A party to a defended action or contested application must make disclosure of a thing to which this Rule 17 applies at the following times, in the following circumstances:

(a) no more than forty-five days after the day pleadings close, when the evidence is in the control of the party at the beginning of the proceeding;

(b) immediately after the evidence comes into the control of the party, or ceases to be privileged, when either happens after the beginning of the proceeding;

(c) immediately on the party becoming aware that the party failed to disclose a thing that should have been disclosed.

How to make disclosure

17.03 The party must make the disclosure by delivering to the other party a written description of the thing, including all of the following:

(a) how it is relevant;

(b) where it is, and who has physical control of it;

(c) how and when it may be inspected.

Demand for inspection

17.04 **(1)** A party may deliver to another party a demand for inspection of a relevant thing in the control of the other party.

(2) A party to whom a demand for inspection is delivered must do either of the following no more than ten days after the day the demand is delivered:

(a) arrange a convenient time, date, and place for the inspection;

(b) refuse the demand and give grounds.

Order for inspection

17.05 **(1)** A judge may order a person to permit inspection of a thing, and the order may include terms to assist the inspection, including terms on any of the following subjects:

(a) permission to enter on lands and inspect the land, a fixture, or a movable;

(b) a time, date, and place for the inspection;

(c) an injunction or other order to secure the cooperation of a named or unnamed person;

(d) a requirement that a person deliver a thing to a person or place.

(2) An order for inspection may permit testing, taking a sample, or conducting an experiment.

(3) An order for inspection may include the statement, "Failure to obey this order may be punished as contempt of court."

Expert's report

17.06 A party who inspects a thing under a demand or order, and who obtains from an expert an agreement to prepare a report under Rule 55 - Expert Opinion, may involve the expert in the inspection, including performing, taking, or making a permitted test, sample, or experiment.

Rule 18 - Discovery

Scope of Rule 18

18.01 **(1)** This Rule allows a party to question a witness by discovery, unless the question was answered by the witness in response to interrogatories.

(2) Provisions about discovery in Rule 55 - Expert Opinion, and in Rule 57 - Action for Damages Under $100,000, prevail over this Rule.

(3) A party may discover a witness by agreement, under a discovery subpoena, or by order, in accordance with this Rule.

Duties of party in an action

18.02 **(1)** After pleadings close in a defended action, a party must do all of the following:

(a) in deciding whether a witness needs to be discovered, consider whether the discovery would promote the just, speedy, and inexpensive resolution of the proceeding;

(b) cooperate with each party to organize a required discovery so it is held quickly and conveniently;

(c) prepare, or direct officers or employees to prepare, for discovery of the party so that questions are answered with a refreshed memory;

(d) become informed before the discovery of all discoverable information reasonably accessible by the party so questions may be answered without delay;

(e) make best efforts to conduct discovery so as to further the just, speedy, and inexpensive resolution of the proceeding.

(2) A party may consider Rule 18.24(1) when determining whether a discovery would promote the just, speedy, and inexpensive resolution of a proceeding for the purpose of Rule 18.02(1)(a), 18.04(2)(b), and 18.05(2)(a)(ii).

Interview or discovery by agreement

18.03 **(1)** Nothing in these Rules prevents a party from interviewing a witness with the agreement of the witness and, if the witness is known to be represented on the subject of the interview, the permission of the witness' lawyer.

(2) A party may interview a witness who is not a party, or an employee or officer of a party, under oath or affirmation and record the interview or take a sworn or affirmed statement without affecting the admissibility of the witnesses' evidence.

(3) A party may discover an individual party or an employee or officer of a corporate party by agreement of the party seeking discovery and the party to be discovered.

(4) A party may discover a witness who is not a party with the agreement of the witness.

(5) A party who wishes to discover anyone under an agreement must make best efforts to schedule the discovery at a time and place convenient for each party.

Discovery subpoena in an action (party)

18.04 **(1)** A party to an action who provides required representations may obtain a discovery subpoena (party) to discover any of the following witnesses:

(a) an individual party;

(b) the designated manager and one other officer or employee of a corporate party;

(c) further officers and employees, if the party also provides required undertakings to pay expenses.

(2) A party requesting a discovery subpoena (party) directed to an individual party must provide both of the following representations to the court:

(a) that the party is in compliance with Rule 15 - Disclosure of Documents, and Rule 16 - Disclosure of Electronic Information;

(b) that the party believes the discovery would promote the just, speedy, and inexpensive resolution of the proceeding, including a concise statement of the grounds for the belief and an explanation of why a discovery subpoena is required instead of, or in addition to, an agreement.

(3) A party requesting a discovery subpoena (party) directed to a designated manager, or one other officer or employee of a corporate party, must provide all representations required for a subpoena directed to an individual party and a representation that the designated manager, or the other officer or employee, has not yet been discovered in the proceeding.

(4) A party requesting a discovery subpoena (party) directed to a further officer or employee must provide all of the following representations to the court and file the following undertaking:

(a) all representations required for a subpoena directed to an individual party;

(b) a representation that the designated manager and one other officer or employee have been discovered;

(c) an undertaking to pay the charges of the reporter to record and transcribe the discovery and the reasonable expenses of the witness to attend the discovery, including transportation, accommodation, and meals.

(5) The subpoena must contain the standard heading, be entitled "Discovery Subpoena (Party)", be issued by the prothonotary, and include all of the following:

(a) the name of the witness;

(b) if the witness is an individual party, the address for delivery designated by the witness, and, if the witness is an officer or employee of a corporate party, the address for delivery designated by the corporate party;

(c) requirements that the witness attend the discovery, answer questions properly asked by a party and bring, or provide access to, described documents, electronic information, or other things;

(d) the time, date, and place of the discovery;

(e) a warning that failure to obey the subpoena may be punished as contempt of court.

(6) A party who obtains a discovery subpoena (party) must deliver the original subpoena to the address for delivery of the individual party to be discovered or the party whose officer or employee is to be discovered no less than ten days before the day the discovery is to be held.

(7) The party who obtains the subpoena must notify each other party by delivering a copy of the subpoena to the other party no less than ten days before the day the discovery is to be held.

(8) A corporate party whose officer or employee is to be discovered under subpoena must do both of the following:

(a) deliver a copy of the discovery subpoena (party) to the officer or employee;

(b) take all reasonable steps to have the officer or employee attend the discovery.

(9) The subpoena may be in Form 18.04A.

(10) The undertakings and representations may be attached to, or printed on the back of, the subpoena and they may be in Form 18.04B.

Discovery subpoena in an action (non-party)

18.05 (1) A party to an action who provides required representations and undertakings may obtain a discovery subpoena directed to a witness who is not a party, an officer of a party, or an employee of a party.

(2) A party requesting a discovery subpoena directed to a non-party witness must provide both of the following representations to the court and file all of the following undertakings:

(a) representations that

(i) the party is in compliance with Rule 15 - Disclosure of Documents, and Rule 16 - Disclosure of Electronic Information,

(ii) the party believes the discovery would promote the just, speedy, and inexpensive resolution of the proceeding, including a concise statement of the grounds for the belief and an explanation of why a discovery subpoena is required instead of, or in addition to, an interview or a discovery by agreement;

(b) undertakings to pay

(i) all charges of the reporter to record and transcribe the discovery,

(ii) immediately on presentation of receipts or other evidence, the reasonable expenses of the witness to attend the discovery, including transportation, accommodation, and meals,

(iii) immediately on conclusion of the discovery, an attendance fee for the witness of thirty-five dollars per hour.

(3) A judge who is satisfied that it is necessary for a non-party witness to be represented by counsel at a discovery held under subpoena may order a party who obtains the discovery subpoena to pay for the attendance at the discovery of the witness' counsel.

(4) The subpoena must contain the standard heading, be entitled "Discovery Subpoena (Non-party)", be issued by the prothonotary, and include all of the following:

(a) the name of the witness and the community in which the witness resides;

(b) requirements that the witness attend the discovery, answer questions properly asked by a party, and bring, or provide access to, described documents, electronic information or other things;

(c) the time, date, and place of the discovery;

(d) a warning that failure to obey the subpoena may be punished as a contempt of court;

(e) notice that the witness may make a motion to revoke the subpoena no less than two days before the day the discovery is to be held;

(f) a statement of the witness' rights to be reimbursed expenses, be paid a witness fee, and have counsel present.

(5) The discovery subpoena (non-party) may be in Form 18.05A.

(6) The undertakings and representations may be attached to, or printed on the back of, the subpoena and they may be in Form 18.05B.

Notice of discovery of non-party in an action

18.06 A party entitled by agreement or subpoena to discover a non-party must do each of the following no less than ten days before the day the discovery is to be held:

(a) if the discovery is by subpoena, deliver the original of the discovery subpoena (non-party) to the witness personally;

(b) if the discovery is by agreement, deliver written confirmation of the agreement to the residence or business address of the witness, which confirmation must include the time, date, and place of the discovery, the names of the parties entitled to question the witness, the names of each counsel, and a record of the arrangements for reimbursing the witness' expenses and attendance fee;

(c) notify each other party by delivering a copy of the confirmation or subpoena.

Waiving a discovery subpoena in an action

18.07 A party who obtains a discovery subpoena in an action may waive compliance with the subpoena by delivering a notice to all parties, and to a non-party witness under subpoena to the discovery, immediately on deciding to waive the discovery.

Revoking a discovery subpoena in an action

18.08 **(1)** A judge may revoke a discovery subpoena that results from, or would lead to, an abuse of process in an action.

(2) A judge may revoke a discovery subpoena (party) issued in an action to an officer or employee of a corporate party, if both of the following apply:

(a) two of the corporate party's employees or officers have already been discovered;

(b) the further discovery would not promote the just, speedy, and inexpensive resolution of the proceeding.

(3) A judge may revoke a discovery subpoena (non-party) that would lead to a discovery that does not promote the just, speedy, and inexpensive resolution of an action.

Discovery in an application

18.09 A party to an application may discover another party, an officer or employee of another party, or a non-party witness by agreement of all parties and any non-party witness, or under a discovery subpoena (application).

Approval and directions

18.10 **(1)** A party may make a motion for an order approving the issuance of a discovery subpoena (application) after the notice of application is filed.

(2) An order approving the issuance of a discovery subpoena (application) may provide for any of the following:

(a) a method for delivery of the subpoena to the witness and any respondent who is within time for filing a notice of contest but has not yet designated an address for delivery of documents;

(b) payment of the expenses of recording and transcribing the examination;

(c) reimbursement of a non-party witness' transportation, accommodation, and meals and payment of an attendance fee;

(d) the obligation of a corporate party to produce a witness who is an officer or employee of a corporate party;

(e) a right to make a motion to revoke the subpoena;

(f) any other terms governing the discovery.

(3) A judge who approves the issuing of a discovery subpoena in an application may require the party who obtains the subpoena to file an undertaking to indemnify the witness for the expenses of attending the discovery and to pay witness fees.

(4) A judge may impose on parties to an application duties to cooperate in the organization of discovery, prepare for discovery, or become informed before discovery.

(5) A judge may require a corporate party to designate a manager who must become informed for the purpose of discovery in an application.

Discovery subpoena for discovery approved in application

18.11 **(1)** The prothonotary may only issue a discovery subpoena in an application with the permission of a judge.

(2) The subpoena must contain the standard heading, be entitled "Discovery Subpoena (Application)", be issued by the prothonotary, and include all of the following:

(a) the name of the witness and the designated address of a party witness or the name of the community in which a non-party witness resides;

(b) requirements that the witness attend the discovery, answer questions properly asked by a party, and bring, or provide access to, described documents, electronic information, or other things;

(c) the time, date, and place of the discovery;

(d) a warning that failure to obey the subpoena may be punished as a contempt of court.

(3) The discovery subpoena (application) may be in Form 18.11.

Discovery by order

18.12 **(1)** A judge may order a witness or a custodian of a document, electronic information, or other thing to submit to discovery.

(2) A judge may order discovery before a proceeding has started in one of the following circumstances:

(a) the party who moves for the discovery wishes to start a proceeding but is prevented from doing so immediately, and evidence needs to be preserved;

(b) a proceeding is likely to be started against the party who moves for the discovery, and evidence needs to be preserved;

(c) a court outside Nova Scotia requests assistance.

(3) A judge may order a discovery during a proceeding if both of the following apply:

(a) the person to be discovered is in a place outside Nova Scotia, and a discovery subpoena cannot be enforced, but an order would be enforced or obeyed;

(b) the proceeding cannot be determined justly without the discovery.

(4) Discovery may be held after a proceeding has concluded in accordance with Rule 79 - Enforcement by Execution Order.

Scope of discovery

18.13 **(1)** A witness at a discovery must answer every question that asks for relevant evidence or information that is likely to lead to relevant evidence.

(2) A witness at a discovery must produce, or provide access to, a document, electronic information, or other thing in the witness' control that is relevant or provides information that is likely to lead to relevant evidence.

(3) A witness who cannot comply with Rule 18.13(2) may be required to make production, or provide access, after the discovery or at a time, date, and place to which the discovery is adjourned under Rule 18.18.

(4) A party who withholds privileged information but decides to waive the privilege must disclose the information to each party and submit to discovery if required by another party.

(5) An expert retained by a party is not subject to discovery, except as permitted under Rule 55 - Expert Opinion.

Place of discovery

18.14 (1) A discovery may be held at any place in or outside the province.

(2) A judge may request the assistance of a court or another authority outside the province for holding a discovery and securing the attendance of a witness at a discovery.

(3) A party proposing to examine a non-party witness must endeavor to agree with the witness and the other parties on a place for discovery.

(4) A judge may designate a place for a discovery to be held.

(5) A discovery subpoena must name either the agreed place, the place designated by a judge, or a place that is convenient for the witness.

Recording discovery

18.15 (1) A discovery must be recorded in a way suitable for accurate transcription.

(2) The parties and the witness may agree, or a judge may order, that a discovery be recorded audio-visually.

Conduct of discovery

18.16 (1) A party at a discovery must abide by both of the following rules for conduct of discovery, unless the parties agree or a judge directs otherwise:

(a) the party who obtains a discovery subpoena or who first requests a discovery held by agreement has conduct of the discovery, including directing the order in which the parties will question the witness;

(b) the order in which discoveries will be held when more than one witness is present for discovery at the same time may be determined by the party who requests any of the discoveries or obtains any subpoena, and whose name appears first in the heading.

(2) Each party is entitled to attend a discovery.

(3) A court reporter, or a person competent to log and record testimony, must accurately record the communications at the discovery, mark exhibits, and log questioning of witnesses, exhibits produced, undertakings made, adjournments, and the conclusion.

(4) For the purpose of Section 64 of the *Evidence Act,* Section 26 of the *Interpretation Act,* and Section 49 of the *Judicature Act,* the court reporter may administer oaths and affirmations at the discovery.

(5) Translation or interpretation must be in accordance with Rule 48 - Translation, Interpretation, and Assistance.

(6) A party who undertakes to do anything in the course of a discovery must perform the undertaking no more than sixty days after the day the undertaking is made, unless the parties agree or a judge directs otherwise.

Objections to questions at discovery

18.17 **(1)** Making no objection to a question, or making an objection but giving an answer, at a discovery is not an admission that the subject of the question, or the answer, is admissible.

(2) Withdrawing a question is not an admission that the subject of the question is inadmissible.

(3) The only person who may object to a question is the person who is being questioned, a person who claims privilege over the information to be given in answer to the question, or a party whose officer or employee is being questioned.

(4) A person who is represented by counsel must make an objection through counsel.

(5) A party who objects to a question must do both of the following:

(a) state why the party contends the subject of the question is irrelevant, will not lead to relevant evidence, or is privileged;

(b) provide a description of any series of questions, or of any subject for examination, to which the objection would generally apply.

(6) The party questioning must respond to an objection in one of the followings ways:

(a) withdraw the question;

(b) continue with the discovery, if that is possible, and reserve the question, line of questions, or subject for ruling by a judge;

(c) adjourn the discovery, if there is no reasonable alternative, and bring a motion for a ruling on the objection as soon as is practical.

(7) A judge may determine an objection to a question, or a line of questions, made at discovery.

(8) A judge may order resumption of the discovery, and provide any directions for its further conduct.

Production or access after discovery or at adjournment

18.18 **(1)** A party may require a witness who is examined at a discovery to produce, or provide access to, a document, electronic information, or other thing referred to by the witness but not brought to, or accessible at, the discovery, unless one of the following applies:

(a) the document, information, or thing is not in the control of the witness;

(b) it is not relevant and is not likely to lead to relevant evidence;

(c) it is privileged.

(2) A judge may order a witness who fails to comply with a requirement for production or access to make production or provide access, and the judge may order the witness to indemnify the party who seeks the order for the expense of obtaining the production or access.

(3) A party who requires production or access before the party completes examination of a witness at discovery may adjourn the discovery.

(4) A judge may relieve a party or a non-party witness from a requirement to produce, or provide access, at discovery examination if the party or witness rebuts the presumption for disclosure in accordance with Rule 14.08, of Rule 14 - Disclosure and Discovery in General.

Error in discovery answer

18.19 **(1)** A party who becomes aware that they, or their employee or officer, gave an erroneous or incomplete answer at discovery must immediately notify each other party of the error or incompleteness and, unless the parties agree or a judge orders otherwise, provide the correct and complete information in a written statement signed by the person who gave the answer.

(2) A corporate party whose designated manager gives erroneous testimony on discovery that the party does not have relevant information, or does not control a relevant document, electronic information, or other thing may not present the evidence that would have been disclosed at discovery if the error had not been made, unless the party does one of the following:

(a) corrects the error no less than one day before either the finish date in an action or the day of the hearing of an application;

(b) obtains the agreement of each other party, or the permission of the presiding judge, to present the evidence.

(3) A judge who gives permission to present evidence must consider ordering the corporate party to indemnify another party for expenses resulting from the error.

Use of discovery

18.20 (1) Answers given by a witness at discovery may be used to impeach the witness at trial, or on the hearing of an application or motion.

(2) Evidence given by an individual party, or a designated manager, at discovery may be used for any purpose by an adverse party.

(3) Evidence given by an officer or employee of a corporate party who is not a designated manager may be used for any purpose by an adverse party, except answers outside the witnesses' scope of authority are not admissions by the corporate party.

(4) Evidence given by a witness at a discovery may be used by any party against any party who had notice of the discovery, if it is necessary to provide the evidence through the discovery transcript.

(5) The following are examples of cases in which it is necessary to provide evidence through a discovery transcript:

(a) the witness cannot testify;

(b) the witness is too ill or infirm to attend court, and commission evidence is not available or is inappropriate;

(c) the court cannot compel the witness to attend the trial or hearing, and commission evidence is not available or is inappropriate.

(6) A party who establishes all of the following may use evidence given by a witness at discovery against a party who did not have notice of the discovery:

(a) it is necessary to provide the evidence through the discovery transcript;

(b) the answers are sufficiently reliable, although the party against whom they are offered had no opportunity to cross-examine the witness;

(c) it was through no fault of the party offering the evidence that the party against whom it is offered did not receive notice of the discovery.

(7) A party who uses evidence given at discovery makes the person who gave the evidence a witness for that party only when the evidence is used as provided in Rules 18.20(4) and (6).

Proof of discovery questions and answers

18.21 **(1)** A transcript with the certificate and purported signature of a certified court transcriber is presumed to have been certified by a certified court transcriber and to be an accurate record of the discovery, unless the contrary is proved.

(2) A party may tender an excerpt from a discovery transcript by agreement or by showing the judge the transcript and satisfying the judge that the proposed excerpt is covered by the certified court transcriber's certificate.

(3) After authenticity is agreed or established, excerpted questions and answers may be made part of the record by reading questions and answers into the record, tendering excerpts from the transcript as an exhibit, or any means directed by the judge.

(4) The judge may permit a party to use excerpts from an audio recording or an audio-visual recording of a discovery if the corresponding excerpts from the discovery transcript are made part of the record.

Failure to attend or refusal to answer

18.22 A witness who fails to attend under a discovery subpoena or order, refuses to answer a question properly put at a discovery, or refuses to produce or provide access to a document, electronic information, or other thing required by a subpoena or order may be punished under Rule 89 - Contempt.

Supervision of discovery by judge

18.23 **(1)** A party who believes that a discovery is being conducted abusively may undertake to bring a motion to terminate or limit the discovery as soon as is practical, and adjourn the discovery to do so.

(2) A judge may terminate or limit a discovery that is conducted abusively.

(3) The following are examples of conduct that may be abusive:

(a) asking a question or demanding production for a purpose ulterior to the preparation or advancement of a case;

(b) questioning a witness in a manner calculated to annoy, embarrass or oppress the witness;

(c) asking the same question repeatedly although it has been fully answered;

(d) persistently asking questions that are clearly not relevant;

(e) continuing to seek an answer to a question to which a party has clearly objected.

Examples of just, speedy, and inexpensive discovery

18.24 (1) The following are examples of circumstances in which, depending on the circumstances as a whole, holding a discovery would promote the just, speedy and inexpensive resolution of a proceeding:

(a) a non-party witness has information properly obtained by discovery and there are no other reasonable means for obtaining the information, such as conducting an interview;

(b) a designated manager was ill-informed on discovery and discovery of other corporate officers or employees is necessary to obtain information the designated manager should have provided;

(c) a party gave undertakings at a previous discovery that have not been fulfilled as promised and, as a last resort, the information is sought through further discovery;

(d) because of illness, the court will not be able to compel a witness to attend trial or to answer questions, and commission evidence is inappropriate without discovery.

(2) The examples in Rule 18.24(1) are to assist both of the following:

(a) a party who determines whether a discovery would promote the just, speedy and inexpensive resolution of a proceeding, for the purpose of Rules 18.02(1)(a), 18.04(2)(b), or 18.05(2)(a)(ii);

(b) a judge who hears a motion to revoke a discovery subpoena under Rules 18.08(2) or 18.08(3).

Rule 19 - Interrogatories

Scope of Rule 19

19.01 (1) This Rule allows a party to question a person in writing, unless the question was answered by the witness on discovery.

(2) A party may demand answers in writing from any person and the person must provide the answers, in accordance with this Rule.

Demand for answers

19.02 (1) A party may deliver a demand for answers if the party is satisfied that obtaining the answers in that manner will promote the just, speedy, and inexpensive resolution of the proceeding.

(2) A party who decides to deliver a demand for answers must make best efforts to prepare clearly and plainly stated questions in a number and manner that promotes the just, speedy, and inexpensive resolution of the question.

Questions that may be asked

19.03 A demand for answers must demand answers that are not privileged and are relevant or provide information that is likely to lead to relevant information.

Time for demand

19.04 (1) A demand for answers from an individual party or designated manager may be delivered anytime after the day pleadings close in an action or the day a notice of contest is filed in an application.

(2) A demand for answers from an officer or employee of a corporate party other than the designated manager, or from a non-party, may only be made after the party making the demand has finished discovery of parties.

Contents of demand

19.05 (1) The demand for answers must contain the standard heading, be entitled “Interrogatories”, be dated and signed, and include all of the following:

(a) a statement that the party making the demand is satisfied that obtaining the answers in that manner will promote the just, speedy, and inexpensive resolution of the proceeding;

(b) the name of the person required to answer the questions;

(c) a demand that the person provide a response no more than twenty days after the day the demand is delivered;

(d) questions listed by number, each one of which asks only one question, simply and concisely;

(e) a statement that the person must not fail to respond to the demand;

(f) a statement that the person may refuse to answer a question that calls for privileged information, or information that is irrelevant and will not lead to relevant information;

(g) a statement that the person may make a motion to a judge to excuse the person from answering a question;

(h) a warning that a judge may award costs against the person, if the judge orders the person to answer a question;

(i) a requirement that the person deliver the response to the party making the demand and deliver copies to each other party, at the party's address for delivery.

(2) The demand for answers may be in Form 19.05.

Who must respond

19.06 A person whose answers are demanded must answer the questions, except any of the following persons may answer for another person if the answering person first obtains all information that is known by or available to the other person:

(a) a litigation guardian, for a party who is a child or person with a disability;

(b) a parent or guardian, for a child who is not a party or a person who is unable to manage their affairs and is not a party;

(c) a designated manager, for an officer or employee of a corporate party.

Response

19.07 (1) A person to whom a demand for answers is delivered must deliver a response to each party no more than twenty days after the day the demand is delivered.

(2) The person must answer each question, unless the question is of one of the following kinds:

(a) the question calls for information that is irrelevant and will not lead to relevant evidence;

(b) it calls for privileged information;

(c) the question was fully answered on discovery;

(d) taken alone, or in combination with related questions, it is expressed with such complexity or elaboration that the person should not have to answer it.

(3) The response must contain the standard heading, be entitled "Response to Interrogatories", be sworn or affirmed by the person answering the questions, and provide a reference to each question and either of the following:

(a) the answer to the question;

(b) a refusal to answer the question and the reason for the refusal.

(4) The response may be in Form 19.07.

Enforcement and discretion to excuse

19.08 **(1)** A judge may order a person to answer a question in a demand, or excuse a person from answering a question, absolutely or on conditions.

(2) A judge may order a person who fails to respond to a demand or unreasonably refuses to answer a question to indemnify the party who made the demand for the expense of obtaining an answer.

Error in answer to interrogatory

19.09 A party who discovers that they, or their employee or officer, gave an erroneous or incomplete response to a demand for answers must immediately notify each other party of the error or incompleteness and, unless the parties agree or a judge orders otherwise, provide the correct and complete information in a new response to interrogatories.

Use of answer

19.10 A response may be used at trial, on an application, or on a motion, in the same way evidence given at discovery may be used under Rule 18.20, of Rule 18 - Discovery.

Rule 20 - Admission

Scope of Rule 20

20.01 (1) This Rule provides a process for obtaining an admission during a proceeding.

(2) This Rule does not affect the rules of evidence concerning admissions.

Making admission

20.02 (1) A party may admit to any material fact.

(2) The admission may be made in pleadings, by other writing, orally, at a discovery, or by formal admission under this Rule.

(3) A party may withdraw an admission made during a proceeding, if the parties agree or a judge permits.

Requesting admission

20.03 (1) A party may, at anytime before the finish date in an action or the day of the hearing of an application, request another party to admit a relevant fact, in accordance with this Rule 20, and do one of the following:

(a) rely on the admission, if it is expressly given;

(b) obtain the admission under Rule 20.05, if it is not expressly denied;

(c) take advantage of the cost consequences in Rule 20.06, if the admission is unreasonably denied.

(2) The request for an admission must contain the standard heading, be entitled "Request for Admission", be dated and signed, and include all of the following information:

(a) the name of the party requested to make an admission;

(b) a statement that the party requests an admission, followed by a statement of the fact requested to be admitted;

(c) a statement that the party to whom the request is addressed must respond to the request no more than fifteen days after the day the request is delivered to the party or the admission will be taken to have been made.

(3) A request for admission may be made in Form 20.03.

Response to request for admission

20.04 (1) A party to whom a request for admission is delivered must provide a response no more than fifteen days after the day the request is delivered.

(2) The response must contain the standard heading, be entitled "Response to Request for Admission", be signed by the party requested to make an admission or their counsel, and include both of the following:

(a) the facts the party admits as requested;

(b) requested admissions the party does not admit, and the reasons for the refusal.

(3) A response to request for admission may be in Form 20.04.

Presumed admission

20.05 A party who does not expressly admit or deny a requested admission by delivering a response no more than fifteen days after the day the request is delivered is taken to have made the admission.

Costs on unreasonable refusal

20.06 A judge may order a party who unreasonably refuses to admit a requested admission to indemnify the party who made the request for the expense of proving the material fact.

Judgment on admission of fact

20.07 An admission may be proved at trial or hearing, and on a motion to which the admission is relevant.

Rule 21 - Medical Examination and Testing

Scope of Rule 21

21.01 A judge may order a medical examination or test, in accordance with this Rule.

Medical examination

21.02 **(1)** A party who, by a claim, defence, or ground, puts in issue the party's own physical or mental condition may be ordered to submit to a physical or mental examination by a medical practitioner.

(2) The party who puts their own physical or mental condition in issue has the burden to satisfy the judge that the party should not be examined.

(3) A party who puts in issue the physical or mental condition of another party may make a motion for an order that the other party submit to a physical or mental examination by a medical practitioner, and the party must satisfy the judge on all of the following:

(a) the party has, by a claim, defence, or ground, put in issue the other party's physical or mental condition;

(b) the claim, defence, or ground putting the other party's condition in issue is supported by evidence;

(c) the examination may result in evidence that proves or disproves the claim, defence, or ground.

(4) A party being examined under an order must co-operate in the examination, including giving answers to questions asked by the practitioner as part of the examination.

(5) An order for a medical examination must include a description of the purpose of the examination and a requirement that the party to be examined attend for the examination, including the name of the practitioner and either the time, date, and place of the appointment or a method to determine a time, date, and place for the examination.

(6) The order may contain any other necessary provisions, including any of the following requirements:

(a) the party to be examined undergo a test and deliver evidence of the results to the practitioner before the examination;

(b) a person deliver relevant documents to the practitioner before the examination;

(c) the practitioner, by a deadline, deliver an expert's report to the party who obtains the order;

(d) the party receiving the report, by a deadline, deliver a copy to each other party.

Number of medical examinations

21.03 A judge may order more than one examination of the same party if different physical or mental conditions in issue pertain to different medical specialities, the same condition clearly calls for opinions from different specialists, or justice will be served by permitting an additional examination.

Who may attend an examination

21.04 Only the party, the examining practitioner, the practitioner's medical assistants, and one qualified medical practitioner appointed by the party as an observer may attend the examination, unless the parties agree or a judge orders otherwise.

Medical report

21.05 (1) A practitioner who completes an examination must deliver an expert's report, conforming with Rule 55 - Expert Opinion, to the party who obtains the order.

(2) The party who obtains the order must immediately deliver the report to all other parties.

Medical test

21.06 (1) A judge who is satisfied on both of the following may order a party to undergo a test recognized by medical science, to provide a sample or permit a sample to be taken from the party's body for use in a test recognized by medical science, or to both undergo a test and provide a sample:

(a) compliance with the order will likely lead to relevant evidence;

(b) the value of the evidence outweighs the inconvenience or embarrassment that would be caused to the person giving the sample or undergoing the test.

(2) An order for a medical test must include a requirement that the party undergo the test, provide the sample, or permit the sample to be taken, and include all of the following information:

(a) the name and address of the person to whom, or the address of the place at which, the party must report;

(b) a method by which the time and place for taking or providing the sample, or administering the test, is to be determined.

(3) The party is entitled to have one person accompany the party, as an observer, when the sample is provided or taken, or the test is administered.

(4) The order may contain any other provisions, including any of the following requirements:

(a) a person deliver relevant documents for the use of the person testing a sample or administering a test;

(b) a person administering a test, or taking a sample, exclude persons except as permitted in the order;

(c) by a deadline, the person administering the test or taking the sample, or another person involved with the testing, deliver a report of the results of the test to the party who obtained the order;

(d) the party receiving the report, by a deadline, deliver a copy to each other party.

(5) A party who intends to prove the results of a test as an expert opinion must deliver an expert's report in compliance with Rule 55 - Expert Opinion.

Information and reports

21.07 A party may provide any information, including information disclosed in the proceeding, to a medical practitioner examining a party, or a person testing a party or taking a sample.

Cost of medical examination and test

21.08 (1) The party who obtains an order for an examination or test must pay all of the following expenses:

(a) professional and technical charges, except the charges of a person attending as an observer for the party being examined;

(b) reasonable costs of the party being examined or tested to attend the examination or test, or to provide a sample;

(c) wages lost by the party as a result of attending an examination or test, or providing a sample.