

## PART 5: DISCLOSURE OF INFORMATION

***What this Part is about:*** This Part describes the information and documents that the parties must disclose to each other and when and how the parties may question each other about the dispute. The Part requires the parties to share information relevant to any matter in issue in the action, in order to clearly identify:

- what is in dispute; and
- what evidence is available about the dispute.

This information helps minimize surprises during court proceedings and avoids delay later in the litigation, assists the parties in evaluating their own and the other party's case, and facilitates resolution of the dispute or elements of it.

This Part also contains rules for the evidence of experts and rules for medical examinations and reports.

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## PART 5: DISCLOSURE OF INFORMATION

### DIVISION 1

#### Purpose of Part

##### Purpose of this Part

5-1(1) Within the context of rule 1-3, the purpose of this Part is:

- (a) to obtain evidence that will be relied on in an action;
- (b) to narrow and define the issues between parties;
- (c) to encourage early disclosure of facts and documents;
- (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.

(2) The Court may give directions or make any orders necessary to achieve the purpose of this Part.

#### Information Note

This Part does not apply to actions started by an originating application unless the parties otherwise agree or the Court otherwise orders. See rule 3-51.

### DIVISION 2

#### How Information is Disclosed

##### *Subdivision 1*

##### *Introductory Matters*

##### Disclosure not admission of relevancy

5-2 The disclosure or production of a document pursuant to this Division alone is not to be considered as an agreement or acknowledgement that the document is admissible or relevant to any matter in issue.

**Modification or waiver of this Part**

**5-3(1)** The Court may modify or waive any right or power pursuant to a rule in this Part or make any order warranted in the circumstances if:

- (a) a person acts or threatens to act in a manner that is vexatious, evasive, abusive, oppressive, improper or tediously lengthy; or
- (b) the expense, delay, danger or difficulty in complying with a rule would be grossly disproportionate to the likely benefit.

(2) In addition to making a procedural order, the Court may do any one or more of the following:

- (a) make a costs award pursuant to Part 11 or require an advance payment against costs payable, or both;
- (b) order future questioning to be conducted before a judge or person designated by the Court;
- (c) make any other order respecting an action or an application or proceeding the Court considers necessary in the circumstances.

**Information Note**

A procedural order may include any order described in rule 1-5 or an order pursuant to any other rule respecting practice or procedure.

**Confidentiality and use of information**

**5-4(1)** Subject to subrule (2), the information and documents described in subrule (3) must be treated as confidential and may only be used by the recipient of the information or documents for the purpose of carrying on the action in which the information or documents were provided or disclosed unless:

- (a) the Court otherwise orders;
- (b) the parties otherwise agree; or
- (c) it is otherwise required or permitted by law.

(2) If, in the course of carrying on the action in which the information or documents described in subrule (3) were provided or disclosed, the recipient of the information or documents finds it necessary to file the document with the Court or make reference to the information or documents in materials filed with the Court on an application not determinative of the merits of the action, the information or documents or any reference to the information or documents must be sealed in a form satisfactory to the local registrar or a judge when filed, unless:

- (a) the Court otherwise orders; or
- (b) the parties otherwise agree.

- (3) For the purposes of this rule, the information and documents are the following:
- (a) information provided or disclosed by one party to another in an affidavit served pursuant to this Division;
  - (b) information provided or disclosed by one party to another in a document referred to in an affidavit served pursuant to this Division;
  - (c) information recorded in a transcript of questioning made or in answers to written questions given pursuant to this Division.

***Subdivision 2***  
***Disclosing and Identifying Documents***  
***Relevant to Any Matter in Issue***

**When an affidavit of documents must be served**

**5-5(1)** Every party shall serve an affidavit of documents on each of the other parties in accordance with the period specified in subrule (2), (3) or (4).

(2) The plaintiff shall serve an affidavit of documents on each of the other parties within 30 days after the date that the last statement of defence is filed.

(3) The defendant shall serve an affidavit of documents on each of the other parties within 30 days after the date the defendant is served with the plaintiff's affidavit of documents.

(4) A third party defendant who has filed a statement of defence shall, within 30 days after that filing, serve an affidavit of documents on each of the other parties.

(5) Unless the Court orders otherwise, an affidavit of documents must not be filed with the Court.

(6) Unless the Court orders otherwise, this rule does not apply to family law proceedings.

**Information Note**

An affidavit of documents must not be filed unless it is needed for the purpose of an application or at trial.

**Form and content of affidavit of documents**

**5-6(1)** An affidavit of documents must:

- (a) be in Form 5-6; and
  - (b) disclose all documents relevant to any matter in issue in the action.
- (2) The affidavit of documents must also:
- (a) specify which of the documents are in the possession, custody or control of the party on whose behalf the affidavit is made;
  - (b) specify which of those documents, if any, the party objects to produce and the grounds for the objection;

- (c) for those documents for which there is no objection to produce, contain a notice stating:
- (i) the time when the documents may be inspected, which must be within 10 days after the affidavit is served; and
  - (ii) the place where the documents may be inspected, which must be:
    - (A) the address for service of the party serving the affidavit;
    - (B) a place agreed on by the parties or ordered by the Court; or
    - (C) if the documents are in constant use, the place where they are usually kept;
- (d) specify which documents relevant to any matter in issue the party previously had in the party's possession, custody or control and:
- (i) the time when, and the manner in which, those documents ceased to be in the party's possession, custody or control; and
  - (ii) the present location of the documents, if known; and
- (e) specify that the party does not have and has never had any other document relevant to any matter in issue in the party's possession, custody or control.
- (3) If a party does not have and has never had any documents relevant to any matter in issue in the party's possession, custody or control, the affidavit must say so.

#### **Information Note**

Electronic documents are included in the definition of "document". Please see Practice Directive CIV-PD No.1 entitled "E-discovery guidelines". Practice Directives may be viewed online at <[http://www. publications.gov.sk.ca/details.cfm?p=69850](http://www.publications.gov.sk.ca/details.cfm?p=69850)>.

The Court may give directions to facilitate disclosure and examination of documents that may be costly or lengthy. See subrule 5-1(2) and rule 1-5.

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#### **Electronic documents**

**5-7** Notwithstanding any other provisions of this Part, the Practice Directive on E-Discovery in force from time to time applies to the disclosure, discovery and inspection of electronic documents.

#### **Listing documents**

**5-8(1)** Each document in an affidavit of documents must:

- (a) be numbered in a convenient order; and
- (b) be briefly described.

- (2) A group of documents may be bundled and listed once pursuant to subrule (1) if:
  - (a) the documents are all of the same nature; and
  - (b) the bundle is described in sufficient detail to enable another party to understand what it contains.
- (3) For each document, or bundle of documents, that a party objects to produce, the affidavit of documents must identify the grounds for the objection.

**Who makes an affidavit of documents**

- 5-9(1)** Subject to subrule (2), an affidavit of documents must be sworn or affirmed by:
- (a) the party;
  - (b) if the party is a corporation, by a member of the corporation's senior management; or
  - (c) if a litigation representative is appointed for a party, by the party's litigation representative.
- (2) A suitable person, other than the lawyer of record of the party, may swear or affirm the affidavit of documents if:
- (a) it is inconvenient for the party, the member of the corporation's senior management or the litigation representative to do so; and
  - (b) the parties agree or the Court so orders.
- (3) If the party is represented by a lawyer, the lawyer shall certify on the affidavit of documents that the lawyer has explained to the person swearing or affirming the affidavit:
- (a) the necessity of making full disclosure of all documents relevant to any matter in issue in the action; and
  - (b) what kinds of documents are likely to be relevant to the allegations made in the pleadings.

**Subsequent disclosure of documents**

- 5-10(1)** If, after a party has served an affidavit of documents on another party, the first party finds, creates or obtains possession, custody or control of a document relevant to any matter in issue not previously disclosed, the first party shall:
- (a) immediately give notice of it to each of the other parties;
  - (b) on written request and on payment of reasonable copying expenses, supply each of the other parties with a copy of it; and
  - (c) not later than 10 days before the date scheduled for pre-trial conference, serve a supplementary affidavit of documents on each of the other parties.
- (2) A supplementary affidavit of documents must not be filed with the Court unless the Court orders otherwise.

**Notice to produce documents**

**5-11(1)** Every party is entitled at any time to give notice in writing to any other party in whose pleadings, affidavits or affidavit of documents reference is made to any document:

- (a) to produce that document for inspection by the party giving the notice or for inspection by the party's lawyer; and
  - (b) to permit the party or the party's lawyer to make copies of the document.
- (2) A notice to produce documents mentioned in subrule (1) must be in Form 5-11A.
- (3) The party to whom a notice to produce documents pursuant to subrule (1) is given shall, within 2 days after service of that notice, serve on the party giving the notice a notice to inspect documents in Form 5-11B stating:
- (a) a time at which the documents that the party giving the notice to inspect documents does not object to produce may be inspected; and
  - (b) the place at which the documents may be inspected, which must be one of the following:
    - (i) that party's address for service;
    - (ii) a place agreed to by the parties; or
    - (iii) a place ordered by the Court.
- (4) For the purposes of clause (3)(a), the time at which documents may be inspected must be within 3 days after the service of the notice to produce documents.
- (5) Notwithstanding clause (3)(b), bankers' books or other books of account or books in constant use for the purpose of any trade or business may be produced at their usual place of custody.
- (6) On assessment of costs, no allowance is to be made for any notice to produce or for inspection unless it is shown to the assessment officer that there was good and sufficient reason for giving that notice or making that inspection.
- (7) If a notice to inspect documents has been given, the party giving the notice shall:
- (a) at the time and place stated in the notice:
    - (i) produce for inspection by the party requiring the documents all those documents that are in the possession, custody or control of the party giving the notice and which that party does not object to produce; and
    - (ii) permit the party requiring the documents to inspect the documents and to make copies of them; or
  - (b) on payment of the proper fees, deliver to the party requiring the documents copies of all the documents that the party may require.

**Default in disclosure or production**

**5-12(1)** A party desiring production of documents may apply to the Court for an order mentioned in subrule (2) if any party:

- (a) has neglected, refused or objected to serve an affidavit of documents in accordance with this subdivision;
- (b) has served an affidavit of documents that is not satisfactory to a party entitled to be served with that affidavit;
- (c) has made a claim of privilege with respect to documents referred to in an affidavit of documents;
- (d) having been served with a notice to produce documents pursuant to rule 5-11, has neglected or refused to produce any document mentioned in that notice;
- (e) has neglected to give notice to inspect documents or, having given that notice, has neglected or refused:
  - (i) to produce the documents for inspection;
  - (ii) to permit the lawyer for the other party to make copies of the documents; or
  - (iii) to furnish the lawyer for the other party with copies of those documents on payment of the proper fees; or
- (f) has offered production at a place elsewhere than the address for service unless these rules provide for another place.

(2) In the circumstances mentioned in subrule (1), the Court may make any of the following orders:

- (a) an order requiring the other party to produce documents;
- (b) an order for further or better production of documents;
- (c) an order for inspection;
- (d) an order determining whether documents with respect to which privilege is claimed are in fact privileged.

(3) In an order made pursuant to subrule (2), the Court may make an order for production or inspection of documents in any manner that the Court thinks just.

(4) If on an application pursuant to subrule (1) any privilege is claimed for any document, the Court may:

- (a) inspect the document for the purpose of deciding the validity of the claim for privilege; and
- (b) consider all relevant evidence that may be adduced tending to establish or destroy the claim for privilege.

(5) On any application pursuant to subrule (1), the Court may permit cross-examination under oath or affirmation of a party on the original or any supplementary affidavit of documents.

(6) If an order is made determining that any documents with respect to which privilege is claimed are in fact privileged, the documents must be returned to the party claiming privilege.

**Verified copies**

**5-13(1)** If a party applies to inspect any business books, the Court may, instead of ordering inspection of the original books, order a copy of any entries in the original books to be furnished and proved by the affidavit of a person who has verified the copy by comparing them with the original entries.

- (2) An affidavit mentioned in subrule (1) must state:
  - (a) whether or not there are in the original book any erasures, interlineations or alterations; and
  - (b) if there are erasures, interlineations or alterations, what they are.
- (3) Notwithstanding that a copy of entries has been supplied in accordance with this rule, the Court may order inspection of the business book from which the copy was made.

**Non-compliance with notice or order for disclosure or inspection**

**5-14(1)** In this rule, “**party in non-compliance**” means a party who neglects or refuses:

- (a) to serve an affidavit of documents in accordance with this subdivision;
  - (b) to produce for inspection any document for which notice to produce documents for inspection has been given; or
  - (c) to comply with any order for production or inspection pursuant to rule 5-12.
- (2) A party in non-compliance is liable:
    - (a) if the party is a plaintiff, to have the party’s action dismissed; or
    - (b) if the party is a defendant, to have the party’s defence, if any, struck out and to be placed in the same position as if the party had not defended.
  - (3) In addition to any other order or sanction that may be imposed, the Court may award double costs of the application pursuant to this rule against a party in non-compliance.

**Obtaining documents from others**

**5-15(1)** On application, and after notice of the application is personally served on the person affected by it, the Court may order the production of a document from a person who is not a party at a date, time and specified place if:

- (a) the document is in the possession, custody or control of that person;
  - (b) there is reason to believe that the document is relevant to any matter in issue; and
  - (c) the person who has possession, custody or control of the document might be required to produce it at trial.
- (2) In addition to an order pursuant to subrule (1), the Court may give directions respecting the preparation of a certified copy of a document that may be used for all purposes instead of the original, saving all just exceptions.
  - (3) The person producing a document pursuant to this rule is entitled to receive the same conduct money that the person would be entitled to receive if he or she were questioned pursuant to Subdivision 3.

(4) Subject to subrule (5), the costs of an application must be borne by the party making the application.

(5) If the Court is satisfied that, by reason of the production of the document, there has been a saving of expenses, the Court may award the whole or part of those costs to the party making the application.

**Admissions of authenticity of documents**

**5-16(1)** In this rule, “**authentic**” includes the fact that:

(a) a document that is said to be an original was printed, written, signed or executed as it purports to have been; and

(b) a document that is said to be a copy is a true copy of the original.

(2) Subject to subrules (3), (4) and (5), a party who makes an affidavit of documents or on whose behalf an affidavit of documents is served and a party on whom an affidavit of documents is served are both presumed to admit that:

(a) a document specified or referred to in the affidavit is authentic; and

(b) if a document purports or appears to have been transmitted, the original was sent by the sender and was received by the addressee.

(3) Subrule (2):

(a) does not apply if the maker or the recipient of the affidavit objects in accordance with subrule (4);

(b) does not prejudice the right of a party to object to the admission of a document in evidence; and

(c) does not constitute an agreement or acknowledgment that the document is relevant to any matter in issue.

(4) The maker or recipient of an affidavit of documents is not presumed to make the admission mentioned in subrule (2) if, within 1 month after the date the documents are produced, the maker or recipient serves notice on the other party that the authenticity or transmittal of a document, as the case may be, is disputed and that it must be proved at trial.

(5) This rule does not apply to a document whose authenticity, receipt or transmission has been denied by a party in the party’s pleadings.

**Information Note**

A party who invokes subrule (4) unreasonably may be ordered to pay costs pursuant to subrule 11-1(4).

**Undisclosed documents not to be used without permission**

**5-17(1)** This rule applies to a party who:

- (a) does not disclose a document relevant to any matter in issue in an affidavit of documents referred to in rule 5-6;
  - (b) does not disclose as required by rule 5-10 a document relevant to any matter in issue that is found, created or obtained; or
  - (c) does not produce a document relevant to any matter in issue in accordance with a valid request to do so under rule 5-11.
- (2) A party described in subrule (1) shall not use in evidence a document that has not been disclosed in the action unless:
- (a) the parties otherwise agree; or
  - (b) the Court otherwise orders on the basis that there was a sufficient reason for the failure to disclose.

***Subdivision 3******Questions to Discover Documents and Information Relevant to Any Matter in Issue*****People who can be questioned**

**5-18(1)** Subject to Part 15, any party to an action or issue may:

- (a) without order, be questioned before the trial about information relevant to any matter in issue by any party adverse in interest; and
  - (b) be compelled to attend and testify in the same manner, on the same terms with respect to conduct money and otherwise and subject to the same rules of examination as a witness except as otherwise provided in this Division.
- (2) A person for whose immediate benefit an action is brought or defended must be regarded as a party for the purpose of questioning.
- (3) If an action is brought by an assignee of a chose in action, the assignor may, without order, be questioned.

**Information Note**

For class actions, refer to sections 19 and 20 of *The Class Actions Act* regarding who can be questioned and the sanctions for refusing to submit to questioning.

**Questioning one who is or has been an officer or employee of a corporation**

**5-19(1)** In the case of a corporation, anyone who is or has been an officer or employee of the corporation may:

- (a) without order, be questioned before the trial by any party adverse in interest to the corporation; and
- (b) be compelled to attend and testify in the same manner as a witness.

- (2) After questioning anyone who is or has been an officer or employee of a corporation, a party may not question any other person who is or has been an officer or employee of the corporation without an order of the Court.
- (3) The questioning of a person who is an employee of a corporation, or who has been an officer or employee of a corporation, must not be used in evidence.
- (4) The questioning of a person who is an officer of the corporation must only be used as evidence against the corporation if permitted in accordance with subrules (5) to (7).
- (5) Any party desiring to question an officer of a corporation for the purpose of using the questioning as evidence may apply to the Court to designate the proper person to be so questioned.
- (6) On an application pursuant to subrule (5) and after making any inquiries that the Court considers fit, the Court shall designate the proper person to be questioned, and the questioning of the person designated may be used as evidence against the corporation, saving all just exceptions.
- (7) If the parties agree on the proper person to be questioned, the Court is not required to make any designation pursuant to subrule (6), and the questioning of that person may be used as evidence against the corporation, saving all just exceptions.

**When non-parties may be questioned**

- 5-20(1)** The Court may grant leave to question any person who may have information relevant to any matter in issue in the action, other than an expert engaged by or on behalf of a party in preparation for contemplated or pending litigation.
- (2) The Court may grant leave pursuant to subrule (1) on any terms respecting costs and other matters that the Court considers just.
  - (3) An order pursuant to subrule (1) must not be made unless the Court is satisfied that:
    - (a) the applicant has been unable to obtain the information from other persons whom the applicant is entitled to question or from the person the applicant seeks to question;
    - (b) it would be unfair to require the applicant to proceed to trial without having the opportunity of questioning the person; and
    - (c) the questioning will not:
      - (i) unduly delay the commencement of the trial of the action;
      - (ii) entail unreasonable expense for other parties; or
      - (iii) result in unfairness to the person the applicant seeks to question.
  - (4) Any party who attended or was represented on the questioning is entitled to a copy of the transcript or affidavit in answer, as the case may be, on payment of the appropriate fee, unless the Court orders otherwise.
  - (5) The questioning party is not entitled to recover the costs of the questioning from another party.
  - (6) The evidence of a person questioned pursuant to this rule must not be read into evidence at trial pursuant to rule 5-34.

**Costs of questioning**

**5-21** If, in the opinion of the Court, questioning has been held unreasonably, vexatiously or at unnecessary length, the party at fault shall bear the costs occasioned by the questioning.

**When questioning is to take place**

**5-22(1)** Unless the parties otherwise agree, or the Court in exceptional circumstances otherwise orders, a party may not question a party or person pursuant to this Division unless the questioning party has served an affidavit of documents on the party adverse in interest.

- (2) Subject to subrule (1), the questioning of a person is to take place as follows:
- (a) in the case of questioning by the plaintiff, at any time after:
    - (i) the statement of defence of the party to be questioned has been served on the plaintiff; or
    - (ii) the time for serving the statement of defence has expired;
  - (b) in the case of questioning by a defendant, at any time after the defendant has served a statement of defence.

**Appointment for questioning a person who resides in Saskatchewan**

**5-23(1)** If a party is entitled to question a person who resides in Saskatchewan:

- (a) the questioning may be held by consent before a court transcriber;
- (b) the party may procure an appointment for questioning from the local registrar of the judicial centre at which the proceeding is commenced or the judicial centre to which the proceeding has been transferred; or
- (c) the Court may order the questioning to be held before any person and at any place.

(1.1) The appointment for questioning must:

- (a) be in Form 5-23; and
- (b) fix the time and place for the questioning.

(2) A party liable to questioning, or a person who is an officer or employee of a corporation and liable to questioning, who resides in Saskatchewan shall attend for questioning:

- (a) in accordance with the consent pursuant to clause (1)(a); or
- (b) if:
  - (i) not less than 10 days before the day appointed for the questioning, service of a copy of the appointment for questioning pursuant to clause (1)(b) or of the order for questioning pursuant to clause (1)(c), as the case may be, has been made on the party's lawyer, if any, or on the corporation's lawyer, as the case may be; and
  - (ii) proper conduct money has been paid or tendered to the lawyer.

- (3) The lawyer mentioned in clause (2)(b) shall:
- (a) immediately communicate the consent, appointment or order to the person required to attend for questioning; and
  - (b) not apply the conduct money mentioned in subclause (2)(b)(ii) towards any debt due to the lawyer, or any other person, or pay the money other than to the person required to attend for questioning for his or her conduct money.
- (4) The conduct money mentioned in subclause (2)(b)(ii) is not subject to attachment, garnishment, seizure or other similar legal process.
- (5) Notwithstanding anything in this rule, the person to be questioned may be served personally with a subpoena requiring his or her attendance at the time and place consented to, appointed or ordered for the questioning.
- (6) If a subpoena is served pursuant to subrule (5):
- (a) the conduct money mentioned in subclause (2)(b)(ii) must be paid to the person required to attend for questioning at the time of service; and
  - (b) a copy of the subpoena must be served on the person's lawyer, if any, or on the lawyer of the corporation of which the person to be questioned is or has been an officer or employee, as the case may be, at least 48 hours before the time fixed for the questioning.

#### Information Note

Rules regarding subpoenas are found in Division 3 of Part 9.

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#### Questioning a person who resides outside Saskatchewan

- 5-24(1)** A party liable to questioning, or a person who is an officer or employee of a corporation and liable to questioning, who is not in Saskatchewan may, by order of the Court, be questioned before any person and at any place that the Court may order.
- (2) A copy of the order for questioning under subrule (1) must be served:
- (a) on the person to be questioned; and
  - (b) subject to subrule (3), on the agent of the lawyer of the party to be questioned or of the corporation, as the case may be, at least 48 hours before the time fixed for the questioning.
- (3) If no agent of the lawyer of the party to be questioned or of the corporation has been appointed, service of the order for questioning is not required.

**Preparation for questioning**

**5-25** Unless the Court otherwise orders, a person to be questioned pursuant to this Division:

- (a) shall inform himself or herself of documents relevant to any matter in issue and of information relevant to any matter in issue before questioning pursuant to this Division;
- (b) shall bring to the questioning any documents likely to be required with respect to which there is no claim of privilege;
- (c) shall give appropriate evidence of the documents relevant to any matter in issue and of information relevant to any matter in issue; and
- (d) is compellable to give the names and addresses of all persons who reasonably might be expected to have knowledge relevant to any matter in issue in the action.

**Explanatory questioning and re-questioning**

**5-26(1)** Any person questioned may:

- (a) be further questioned on his or her own behalf, or on behalf of the corporation of which he or she is or was an officer or employee, in relation to any matter respecting which he or she has been so questioned; and
  - (b) be re-questioned.
- (2) Any explanatory questioning and re-questioning must be proceeded with immediately after questioning by the other party.

**Objections by witness**

**5-27(1)** If a person being questioned objects to any question or questions put to him or her, the court transcriber shall take down:

- (a) the question or questions so put; and
  - (b) the objection of the witness to the question or questions.
- (2) The questioning party shall file the questions and objections mentioned in subrule (1) with the local registrar in whose office the proceedings are pending.
- (3) On application, the Court shall decide the validity of any objections.

**Information Note**

See rule 5-36 regarding possible sanctions for failure to answer any lawful question.

**Questioning under oath or affirmation**

**5-28(1)** A person being questioned must be sworn or affirmed before the person is questioned.

(2) The oath or affirmation must be administered by a judge, local registrar or court transcriber.

Amended. Gaz. 13 Oct. 2023.

**Transcript of oral questioning**

**5-29(1)** Unless otherwise ordered or agreed:

(a) the questioning must be taken by a court transcriber;

(b) the questioning must be taken down by question and answer either in shorthand or recorded in a recording device in the presence of a court transcriber; and

(c) the deposition so taken must be transcribed or be caused to be transcribed by the court transcriber.

(2) The court transcriber shall certify the transcription mentioned in clause (1)(c) to be a correct transcription of the questions and answers so taken or dictated.

(3) A copy of the deposition taken and certified in accordance with this rule must be received in evidence saving all just exceptions.

(4) The deposition taken in accordance with this rule:

(a) must be sealed and filed by the court transcriber in the office of the local registrar of the Court in which the proceedings are being carried on; and

(b) must not be inspected by anyone without an order of the Court.

(5) Copies of the deposition taken in accordance with this rule may be delivered directly to any of the parties who require those copies or their lawyers.

(6) For the information of the assessment officer, the court transcriber taking the questioning shall note on every deposition the length and time occupied by the questioning.

Amended. Gaz. 13 Nov. 2015; Amended. Gaz. 13 Oct. 2023.

**Exhibits on questioning to be marked and produced at trial**

**5-30(1)** The questioning party may direct that any exhibit marked on a questioning need not be filed with the court transcriber.

(2) If a direction is made pursuant to subrule (1) respecting an exhibit, the exhibit must be available to be produced at the trial of the action without notice.

Amended. Gaz. 13 Oct. 2023.

**Continuing duty to disclose**

**5-31(1)** A person who is or has been the subject of questioning shall, by affidavit, correct an answer if:

- (a) the answer was incorrect or misleading; or
- (b) an answer becomes incorrect or misleading as a result of new information.

(2) The correcting affidavit must be made and served on each of the other parties as soon as is practicable after the person realizes that the answer was or has become incorrect or misleading.

**Written questions**

**5-32(1)** A party may serve written questions in Form 5-32 on any other party, or on any person who is or has been an officer or employee of any other party that is a corporation, within the period that is:

- (a) at least 30 days before the date consented, appointed or ordered for the questioning of the other party or officer or employee; and
- (b) not less than 60 days before the date scheduled for a pre-trial conference.

(2) The number of written questions to be served pursuant to subrule (1) must not exceed 25 unless the parties otherwise agree.

(3) A person to whom written questions are directed shall serve an answer by affidavit to the written questions within 21 days.

(4) If a person objects to answering a written question on the grounds of privilege or on the grounds that it is not relevant to any matter in issue in the action, the person may make the objection in an affidavit in answer.

(5) If a person to whom written questions have been directed answers any of them insufficiently, the Court may require the person to make a further answer either by affidavit or on oral questioning.

(6) If a party objects to a written question on the grounds that it will not further the purpose and intention of these rules:

- (a) the party may apply to the Court to strike out the written question; and
- (b) the Court shall take into account any offer by the party to make admissions, to produce documents or to give oral discovery.

(7) A person who has given an answer to a written question shall, by affidavit, correct an answer if the person later learns that the answer is incorrect or misleading.

(8) The correcting affidavit mentioned in subrule (7) must be made and served on the other party as soon as is practicable after the person realizes that the answer was or has become incorrect or misleading.

- (9) Any affidavit in answer to written questions:
- (a) must be sealed and filed by the questioning party in the office of the local registrar of the Court in which the proceedings are being carried on; and
  - (b) must not be inspected by anyone without an order of the Court.
- (10) Copies of the affidavit in answer to written questions may be delivered directly to any of the parties who require those copies or their lawyers.
- (11) This rule does not apply to family law proceedings.

**Undertakings**

**5-33(1)** A person answering questions shall undertake to inform himself or herself and provide an answer, or produce a document, within a reasonable time if, during questioning, the person:

- (a) does not know the answer to a question but would have known the answer if the person had reasonably informed himself or herself; or
  - (b) has under the person's control a document relevant to any matter in issue that is not privileged.
- (2) After the undertaking has been discharged, the person who gave the undertaking may be questioned on the answer given or document provided.

**Use of transcript and answers to written questions**

**5-34(1)** Subject to all just exceptions, a party, in support of an application or proceeding or at trial, may use in evidence:

- (a) any part of the transcript of questioning or affidavit in answer to written questions of the opposite party without putting in the whole transcript or affidavit; and
  - (b) subject to subrules 5-19(5) to (7), any part of the transcript or affidavit of a designated officer of a corporation that is adverse in interest.
- (2) If only part of the transcript of questioning or affidavit in answer to written questions of the opposite party is put in evidence pursuant to subrule (1), the opposite party may apply to the judge to consider certain designated parts of the transcript or affidavit that may explain those portions of the transcript or affidavit that are put in evidence.
- (3) On an application pursuant to subrule (2), if the judge is of the opinion that any other part is so connected with the part put in evidence that the last mentioned part ought not to be used without that other part, the judge shall direct that other part to be put in evidence by way of explanation but not as part of the evidence of the party putting in the portions of the transcript or affidavit in the first instance.

**Information Note**

Rule 9-16, in the limited circumstances described in that rule, permits transcript evidence pursuant to this Part to be admitted as evidence.

**Special report of court transcriber**

**5-35(1)** If requested, the court transcriber shall make a special report to the Court in which the proceedings are pending that deals with:

- (a) the questioning; and
- (b) the conduct or absence of any person in relation to the questioning.

(2) The special report mentioned in subrule (1) is admissible in evidence as proof, in the absence of evidence to the contrary, of the truth of the matters contained within the special report.

New. Gaz. 13 Oct. 2023.

**Penalties for refusal or neglect to answer**

**5-36(1)** This rule applies to a person who:

- (a) refuses or neglects to attend at the time and place consented to, appointed or ordered for their questioning;
- (b) refuses to be sworn or to take an affirmation;
- (c) refuses to answer any lawful question put to him or her by any party entitled to do so or by the party's lawyer; or
- (d) having undertaken at the questioning to answer at a later date any lawful question put to him or her, fails to do so within a reasonable time after the questioning.

(2) A person described in subrule (1) is liable:

- (a) if the person is a plaintiff, to have his or her action dismissed; or
- (b) if the person is a defendant, to have his or her defence, if any, struck out and to be placed in the same position as if he or she had not defended.

(3) If a person described in subrule (1) is an officer or employee of a corporation, the corporation is liable:

- (a) if the corporation is a plaintiff, to have its action dismissed; and
- (b) if the corporation is a defendant, to have its defence, if any, struck out and to be placed in the same position as if it had not defended.

(4) The party questioning a person described in subrule (1) may apply to the Court for an order pursuant to subrule (2) or (3).

**Information Note**

See rule 5-27 regarding the questioning party filing any objections to questions made by a witness with the Court.

### DIVISION 3

#### Experts and Expert Reports

**Duty of expert witness**

**5-37(1)** In giving an opinion to the Court, an expert appointed pursuant to this Division by one or more parties or by the Court has a duty to assist the Court and is not an advocate for any party.

(2) The expert's duty to assist the Court requires the expert to provide evidence in relation to the proceeding as follows:

- (a) to provide opinion evidence that is objective and non-partisan;
- (b) to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and
- (c) to provide any additional assistance that the Court may reasonably require to determine a matter in issue.

(3) If an expert is appointed pursuant to this Division by one or more parties or by the Court, the expert shall, in any report the expert prepares pursuant to this Division, certify that the expert:

- (a) is aware of the duty mentioned in subrules (1) and (2);
- (b) has made the report in conformity with that duty; and
- (c) will, if called on to give oral or written testimony, give that testimony in conformity with that duty.

**Appointment of joint experts**

**5-38(1)** If 2 or more parties who are adverse in interest wish to jointly appoint an expert, the following must be settled before the expert is appointed:

- (a) the identity of the expert;
- (b) the issue in the action that the expert opinion evidence may help to resolve;
- (c) any facts or assumptions of fact agreed to by the parties;
- (d) for each party, any assumptions of fact not included pursuant to clause (c) that the party wishes the expert to consider;
- (e) the questions to be considered by the expert;
- (f) when the report must be prepared by the expert and given to the parties;
- (g) responsibility for fees and expenses payable to the expert.

(2) If the parties agree on the matters mentioned in subrule (1), they and the expert shall enter into an agreement that reflects the terms agreed on.

- (3) The agreement mentioned in subrule (2):
- (a) shall be signed by each party to the agreement; and
  - (b) shall be signed by the expert to signify that the expert:
    - (i) has been made aware of the content of this Division; and
    - (ii) consents to the appointment reflected in the agreement.
- (4) A copy of the agreement mentioned in subrule (2) must be served, promptly after signing, on every party who is not a party to the agreement.
- (5) Unless the Court otherwise orders on an application mentioned in subrule (6), if an agreement is made pursuant to this rule for a joint expert to give expert opinion evidence on an issue, the joint expert is the only expert who, in relation to the parties to the agreement, may give expert opinion evidence in the action on the issue.
- (6) A party wishing to apply pursuant to subrule (5) for leave to tender the evidence of an additional expert at trial shall, within 21 days after receipt of the joint expert's report, serve notice of the application on all parties.
- (7) On an application mentioned in subrule (5), the Court may grant leave for the evidence of an additional expert to be tendered at trial if the Court is satisfied that the evidence of that additional expert is necessary to ensure a fair trial.
- (8) Each party, including each of the appointing parties, has the right to cross-examine at trial a joint expert appointed pursuant to this rule.
- (9) Nothing in this rule prevents parties who are not adverse in interest from appointing a common expert.

**Service of expert report**

**5-39(1)** An expert's report must:

- (a) contain, at a minimum, the following information or any modification agreed on by the parties:
    - (i) the expert's name, address and qualifications;
    - (ii) the information and assumptions on which the expert's opinion is based; and
    - (iii) a summary of the expert's opinion; and
  - (b) be served as required by rule 5-40.
- (2) An expert's report must be accompanied by a statement of the party tendering the expert, or that party's lawyer, in Form 5-39 identifying the area of expertise in which the expert is tendered to offer an opinion.

**Timing of exchange of expert reports**

**5-40(1)** If a party intends to use the evidence of an expert at trial, the expert's report must be served as described in subrule (2).

- (2) Unless the Court otherwise orders, expert reports must be served as follows:
- (a) a party who intends to use the evidence of an expert at trial shall serve on each of the other parties the report of that party's expert not less than 90 days before the date scheduled for a pre-trial conference; and
  - (b) the other party or parties who intend to use the evidence of an expert at trial in rebuttal shall serve their expert's rebuttal report, if any, not less than 30 days before the date scheduled for a pre-trial conference.
- (3) If the parties have filed a written agreement pursuant to subrule 4-13(4) that a productive pre-trial conference is possible without expert reports, expert reports must be served as follows:
- (a) a party who intends to use the evidence of an expert at trial must serve on each of the other parties the report of that party's expert not less than 90 days before the date scheduled for trial; and
  - (b) the other party or parties who intend to use the evidence of an expert at trial in rebuttal must serve their expert's rebuttal report, if any, not less than 60 days before the date scheduled for trial.
- (4) Unless the Court otherwise orders, expert evidence must not be presented at trial unless subrule (2) or (3) has been complied with.
- (5) A party is not entitled to any assessed costs or disbursements related to the evidence of an expert unless the party complies with subrule (2) or (3).

#### Information Note

No party may call more than 5 expert witnesses without leave of the Court: *Canada Evidence Act*, section 7; *The Evidence Act*, subsection 21(1). Leave for more than 5 experts must be sought before any expert for that party testifies: *The Evidence Act*, subsection 21(2).

Amended. Gaz. 25 Apr. 2025.

#### Objection to expert's report

- 5-41(1)** A party who receives an expert's report shall notify the party serving the report of:
- (a) any objection to the expert's qualifications, or the admissibility of the expert's report, that the party receiving the report intends to raise at trial; and
  - (b) the reasons for the objection.
- (2) No objection to the admissibility of an expert's report is permitted at trial unless:
- (a) notice of the objection is served on the other party within 40 days after receipt of the expert report or 20 days before the date of the scheduled pre-trial conference, whichever date is earlier; or
  - (b) the Court permits the objection to be made.

Amended. Gaz. 15 Jly. 2016.

**Questioning experts before trial**

**5-42(1)** An expert may be questioned by any party adverse in interest to the party proposing to call the expert witness at trial if:

- (a) the parties agree; or
  - (b) in exceptional circumstances, the Court so directs.
- (2) The questioning must be limited to the expert's qualifications or the expert's report.
- (3) The questioning must take place not later than 30 days before the date fixed for trial.
- (4) The Court may impose conditions about questioning with respect to all or any of the following:
- (a) limiting the length of questioning;
  - (b) specifying the place where the questioning is to take place;
  - (c) directing payment of costs incurred;
  - (d) any other matter concerning the questioning.
- (5) Evidence of an expert under this rule may not be used as evidence of the proper person to be questioned pursuant to subrule 5-19(5).

**Continuing obligation on expert**

**5-43** If, after an expert's report has been provided by one party to another, the expert changes his or her opinion on a matter in the report, the change of opinion must be:

- (a) disclosed by the expert in writing; and
- (b) immediately served on each of the other parties.

**Use of expert's report at trial without expert**

**5-44(1)** A party serving an expert's report may, at the same time, also serve notice of intention to have the report entered as evidence without calling the expert as a witness.

(2) If a party serves a notice of intention pursuant to subrule (1), no objection may be made at trial to entering the expert's report as evidence unless, within 2 months after service of the notice pursuant to subrule (1), another party does either or both of the following:

- (a) serves on the party serving the notice of intention a statement setting out all or parts of the report to which that other party objects to being entered as evidence pursuant to this rule and giving reasons for the objection;
  - (b) serves on the party serving the notice of intention a request that the expert attend the trial for cross-examination.
- (3) Agreeing to have the expert's report entered as evidence without calling the expert as a witness, either explicitly or by allowing subrule (2) to operate without objection, is not an admission of the truth or correctness of the expert's report.

**Expert's attendance at trial**

**5-45(1)** A party who agrees to have all of an expert's report entered in evidence at trial, either explicitly or by allowing subrule 5-44(2) to operate without objection, may, at the same time as responding to the notice of intention, serve a request that the expert be in attendance at trial for cross-examination.

(2) The expert whose entire report is to be entered at trial shall not give oral evidence at trial unless:

- (a) a request that the expert attend for cross-examination has been served; or
- (b) the Court permits.

(3) The party who requests an expert's attendance for cross-examination shall pay the costs of the expert's attendance unless the Court is satisfied that the cross-examination is of sufficient assistance to warrant a different order about who is to pay those costs.

(4) If the party proposing to enter the expert's report receives a request to produce the expert for cross-examination, the party proposing to enter the report may re-examine the expert at trial following cross-examination.

**Appraisal report in evidence**

**5-46(1)** Subject to subrule (4), in all proceedings to which these rules apply an appraisal report is admissible in evidence.

(2) A party intending to submit an appraisal report in evidence must, not less than 30 days before the date scheduled for a pre-trial conference, provide to every other party to the action:

- (a) a copy of the appraisal report; and
- (b) a summary of the qualifications of the person making the report.

(3) A party who has been provided with a copy of an appraisal report and who intends to require the author of the report to attend at trial to be cross-examined on the report shall give notice to the other party of that intention within 30 days after the trial date has been scheduled.

(4) Unless the Court otherwise orders, an appraisal report must not be admitted in evidence unless subrule (2) has been complied with.

**Information Note**

For more detail on the use of appraisal reports, refer to section 6-11 of *The King's Bench Act*.

**DIVISION 4**  
**Medical Examinations and Reports**

**Medical report in evidence**

**5-47(1)** A party intending to submit in evidence a professional report as permitted by section 22 of *The Evidence Act* shall provide to every other party to the action a copy of the report:

- (a) not less than 30 days before the date scheduled for a pre-trial conference; or
- (b) if the parties have filed a written agreement pursuant to subrule 4-13(4) that a productive pre-trial conference is possible without those reports, not less than 90 days before the date scheduled for trial.

(2) A party who has been provided with a copy of a professional report and who intends to require the author of the report to attend at trial to be cross-examined on the report shall give notice to the other party of that intention:

- (a) at least 30 days before the date scheduled for trial; or
- (b) if the parties have filed a written agreement pursuant to subrule 4-13(4) that a productive pre-trial conference is possible without those reports, not less than 60 days before the date scheduled for trial.

(3) A professional report must not be admitted in evidence, except with leave of the trial judge, unless subrule (1) has been complied with.

**Information Note**

Section 22 of *The Evidence Act* states the following:

**22(1)** With leave of the Court, a professional report purporting to be signed by a physician, chiropractor, dentist, psychologist, physical therapist or occupational therapist authorized pursuant to a statute to practise in any part of Canada is admissible in evidence in any proceeding without proof of the person's signature, qualifications or authority to practise.

(2) If a member of a profession mentioned in subsection (1) has been required to give evidence orally in a proceeding and the Court is of the opinion that the evidence could have been produced as effectively by a professional report in writing, the Court may order the party that required the attendance of the professional practitioner to pay costs in any amount that the Court considers appropriate.

**Rules 5-39 to 5-45 not to apply to restricted professional report**

**5-48** Rules 5-39 to 5-45 do not apply to a professional report that is restricted to the treatment provided by the author of the report and that does not offer an opinion on medical causation or future prognosis.

**Examination of party by medical practitioner**

**5-49** In an action brought to recover damages or other compensation with respect to bodily injuries sustained by any person, a judge may order the injured person to be examined by one or more duly qualified medical practitioners who are not being called by a party as witnesses at the trial of the action.

**Information Note**

See section 6-12 of *The King's Bench Act* for more information involving examinations by medical practitioners.

