



List of Documents 201

Desk Reference Manual

General Information

List of Documents 201 is the second in the trilogy of desk reference manuals to assist you in document production. Essentially, it will assist you in differentiating between what is producible, privileged or irrelevant. It will aid you with general principles regarding relevance, the necessary rules and substantive law governing solicitor-client privilege, waiver, disclosure, litigation privilege as well as assist you in understanding what a solicitor's brief is made up of. It will cover preparation of an affidavit verifying Part 4 documents as well as guide you on how to obtain documents from a third party's control and understand the difference between a *Halliday* and a *Jones* order. You will learn how to describe abstract documents and understand when a person may be excused from performance. It will also briefly explore electronic document production which is becoming more common throughout the court system.

Ultimately, this desk reference will guide you to a better understanding and ability to anticipate the various types of situations that can occur during document production. In particular, it will assist you in formulating whether a document is relevant or not, if it is privileged, under what category it falls and why. It will enhance your understanding regarding R. 7-1, 7-1(1), 7-1(3), 7-1(15), 7-1(16), and 7-1(18) and clarify what is meant by seeking further and better particulars as well as a few other aspects relating to document production.

Appendix A1 and A2 contains the Rules 7-1 and 7-2 respectively, and Appendix A3 contains information about the Supreme Court of BC's Electronic Evidence Project.

To assist you further, we have included a list of authorities which appear in Appendix B.

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Introduction

We are all aware of the requirements of R. 7-1 regarding production of relevant documents in that they must have been in a party's "possession or control" to be producible. And whether or not the documents can prove or disprove a material fact. In a sense, Rule 7-1 now provides for a two-tier disclosure process and that duty ultimately falls to counsel and not with the client. But what does this actually mean and where does one begin?

In most circumstances, clients generally review their files with the best of intention of providing their counsel with documents they believe are essential to their case. What this really means is they believe they have provided all the necessary documents they think will win their case. However, in the process, they may have failed to take into consideration documents such as receipts, bills, tax returns, notes of telephone conversations or even email correspondence, just to name a few, that may also be crucial to their case. This is understandable, as we all know clients tend to have a much narrower view of what should and should not be disclosed or produced than their counsel and of course, they want to win. That is why courts have placed the onerous burden on counsel to ensure full discovery of documents.

Fraser & Horn, *Conduct of Civil Litigation in B.C.*, para 10-1, at 276 (iss. 46 Apr/04) conveys the following regarding document production by a litigant:

It seems rarely to occur to a litigant that such things as cancelled cheques, receipts, birthday cards, telephone bills and the like might have a bearing on the case...Additionally, the litigant, owing no special duty of loyalty to the integrity of the judicial system, may be unenthusiastic about disclosing the existence of documents harmful to his case....

Ultimately, your responsibility is to review the voluminous bits and pieces of information provided and prepare a summary of the material, categorize each item into various categories of producible, privileged or irrelevant with the ultimate goal of producing a list of producible documents conforming to Rule 7-1 in Form 22. The pleadings ultimately govern whether or not a document falls within the scope of discovery and to understand this, you must first understand the principles behind the Rule. (*Maxam Opportunities Fund (International) Limited Partnership v 893353 Alberta Inc.* 2012 BCSC 553 at paragraph 8).

It is also important to note that if you fail to make discovery of, produce for inspection or copy a document as required under these rules, counsel may not put the document in evidence or use it for the purpose of examination or cross-examination.

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