

ONTARIO E-DISCOVERY IMPLEMENTATION COMMITTEE

MODEL DOCUMENT #10:
PROPORTIONALITY CHART
(DOCUMENT PRODUCTION)

Purpose of the Proportionality Chart

This proportionality chart is designed to be used by a party bringing a motion for production of documents.¹

The Ontario *Rules of Civil Procedure* emphasize the importance of proportionality in connection with all documentary production issues. In applying the Rules, the court is required to make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding (rule 1.04(1.1)). Parties are required to agree, prior to engaging in discovery, upon a discovery plan that is proportionate to the circumstances of the case, having regard to the factors listed in Rule 29.1.03(3) and *The Sedona Canada Principles Addressing Electronic Discovery* (the “*Sedona Canada Principles*”). The court, in determining whether to order a party or other person to produce a document, must consider the list of proportionality factors set out in Rule 29.2.03(1) and (2).

In cases where the parties cannot agree on the scope of documentary production, the party seeking production will be required to satisfy the court that the order sought is proportionate. This proportionality chart is intended to facilitate the argument of a production motion, by collecting in one easy-to-use chart all of the proportionality factors listed in the *Rules of Civil Procedure*. It is intended that each party would complete a copy of the chart, or that the moving party would prepare the chart, to which the responding party would add its submissions on each point.

Format of the proportionality chart

The first page of the chart provides general background information about the case – including the type of claim, the relief sought, and the overall importance and complexity of the issues.

The second page of the chart is structured similarly to the chart used on motions to compel answers to undertakings, and is intended to serve a similar facilitative function, with the moving party completing a portion of the chart and the responding party completing the remainder. The

¹ The word “document” is used in this Model Document in its broadest sense, as meaning “information recorded in any form, including electronically stored information”. The word “document” is used interchangeably with the word “record”.

first column is the moving party's explanation of the nature and scope of the documentary productions at issue. The second column explains the precise preservation or production steps being requested by the moving party. The third column is the moving party's explanation of the relevance of the documents, by reference to the legal issues in the case, the pleadings, and any relevant evidence. The fourth column is for the moving party's analysis of the application of the proportionality factors identified by the Rules and refers to the applicable *Sedona Canada Principles* and case law authority. The fifth column is to be completed by the responding party, explaining its position on the relevance and proportionality issues. The last column is for identifying the outcome of each production dispute, whether by order or agreement.

Although this proportionality chart is designed to be used on a motion for production of documents, a modified version of the chart could be used to argue a motion to compel answers to discovery questions or to seek other discovery relief.

The list of issues for consideration under each column in the chart (the shaded portion in Part II of the proportionality chart) is meant to assist the parties in preparing the chart and the court in analyzing the chart. It can be modified if appropriate. Note: While the headings for each column of the chart will repeat on each successive page in the Word version of the chart, the shaded list of issues does not repeat.

Note regarding use of this document

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Feedback on EIC materials

The EIC welcomes comments on all of its model documents and other publications. Any comments or suggestions can be provided to Michele A. Wright at mwright4@toronto.ca.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

[PLAINTIFF(s)]

Plaintiff(s)

-and-

[DEFENDANT(s)]

Defendant(s)

**PROPORTIONALITY CHART
(Document Production)**

PART I—OVERVIEW OF THE ACTION

**1. Legal
Classification of the
Claim:¹**

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**2. Relief Sought in
Statement of
Claim:²**

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**3. Relief Sought in
any Counterclaim,
Crossclaim and/or
Third Party
Claim:³**

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4. Legal Issues For Determination at Trial:

Use numbered paragraphs. Include specific references to pleadings.

For each party, identify:

Name of Party:

Causes of Action/Defences (*list individually*):

Legal Issues Raised by Each Cause of Action or Defence:

Heads of Damages Claimed:

5. General Statement regarding the Relative Importance and Complexity of the Issues⁴

For each party, identify:

Name of Party:

Position on importance and complexity of the issues:

6. Applicable Procedural Regime:

- Commercial List
- Construction Lien Act*
- Class Proceedings Act, 1992*
- Estates List
- Simplified Procedure (Rule 76)
- Civil Case Management (Rule 77)
- Superior Court of Justice - ordinary regime

(Date)

(Name, address, telephone and fax number and e-mail address of the party filing the chart)

TO: *(Name, address, telephone and fax number and e-mail address of the other parties)*

PART II—PROPORTIONALITY CHART (DOCUMENT PRODUCTION)⁵

Document Request	Preservation ⁶ / Production ⁷	Relevance ⁸	Proportionality Factors	Responding Position	Agreement/ Disposition
1. Document Type(s) ⁹ 2. Custodian(s) – if known 3. Date Range 4. Paper and/or Electronic Originals	1. Applicable Terms from Discovery Plan ¹⁰ 2. Preservation Only? 3. Preservation and/or Production of Metadata? 4. Phased Production/Staging? 5. Production Format (image or native file) 6. Can Electronic Originals Be Imaged/Copied/Read Outside of Their Native Environment? 7. Do Electronic Originals Need to Be Inspected/Accessed?	1. Legal Issue ¹¹ 2. Paragraph(s) in the Pleadings ¹² 3. Other Documents/Evidence Demonstrating Relevance ¹³	1. Importance and Complexity of the Legal Issue ¹⁴ 2. Dollar amount involved ¹⁵ 3. Time Estimate ¹⁶ 4. Cost Estimate ¹⁷ 5. Undue Prejudice? ¹⁸ 6. Effect on Orderly Progress of the Action? ¹⁹ 7. Readily Available from Alternate Sources? ²⁰ 8. Excessive Volume? ²¹ 9. Who Bears of the Cost (Cost Shifting/Cost Sharing) ²² 10. Reciprocity? (if applicable) ²³ 11. Other Information ²⁴ 12. Identify specific <i>Sedona Canada Principle(s)</i> ²⁵ 13. Cite specific case law		
1.					
2.					
3.					
4.					
5.					

ENDNOTES

- 1 See types of claims as set out in paragraph 4 of Form 14F
- 2 Sub-Rule 15.06(9)
- 3 Sub-Rule 15.06(9)
- 4 Sub-Rule 29.1.03(3)(a)
- 5 Organize Document Requests where possible e.g. by issue, by document request, etc.. The columns are meant to identify the following: Document Request = What; Preservation/Production = How & When; Relevance, Proportionality Factors & The *Sedona Canada Principles*/Caselaw = Why/Why Not
- 6 *The Sedona Canada Principles* – Principle 4 - Comment 4.c. sub-heading *Preservation*
- 7 *The Sedona Canada Principles* – Principle 8
- 8 Sub-Rules 29.1.03(3)(a), Sub-Rule 29.1.03(4) and 30.02(1)
- 9 Identify the specific document type listed in Sub-Rule 30.01(1) and/or the electronic document type (e.g. spreadsheet, word processing document, slide show, image) and/or the data type
- 10 Sub-Rule 29.1.03(3)
- 11 Sub-Rule 29.1.03(3)(a)
- 12 Sub-Rule 29.1.03(3)(a)
- 13 Where applicable, the parties should identify documents that support or rebut a need for the production of additional or related documents.
- 14 Sub-Rule 29.1.03(3)(a)
- 15 Sub-Rule 1.04(1.1)
- 16 Sub-Rule 29.2.03(1)(a). Where appropriate, time and cost estimates, as well as other proportionality factors, should be demonstrated by evidence.
- 17 Sub-Rules 29.1.03(a) and 29.2.03(1)(b).
- 18 Sub-Rule 29.2.03(1)(c)
- 19 Sub-Rule 29.2.03(1)(d)
- 20 Sub-Rule 29.2.03(1)(e)
- 21 Sub-Rule 29.2.02(2)

- 22 *The Sedona Canada Principles* – Principle 12
- 23 The party making the request should be prepared to reciprocate.
- 24 Sub-Rule 29.1.03(3)(e)
- 25 Rule 29.1.03(4) – see http://www.thesedonaconference.org/dltForm?did=canada_pincpls_FINAL_108.pdf