

APPENDIX M: MOST AND LEAST FREQUENT DISCOVERY PROBLEMS AND REFORMS

MOST FREQUENT DISCOVERY PROBLEMS (TOP 13)*

Present in 18-28% of cases

Present in 10-16% of cases

PROBLEM	Rank Overall	Ottawa	Toronto	Thunder Bay	London
Insufficient or incomplete disclosure/production	1 27%	1 28%	1 28%	1 23%	2 15%
Untimely disclosure/production; withholding material information until late in process	2 20%	4 15%	4 21%	4 21%	1 18%
Difficulty/delay in scheduling examinations	3 19%	3 17%	3 19%	3 21%	3 11%
Clients had contentious relationship	4 18%	2 19%	2 19%	2 19%	4 11%
Cost of oral discovery disproportionate to value of claim	5 15%	5 12%	5 17%	5 11%	6 8%
Disorderly disclosure/production	6 14%	6 12%	6 16%	7 9%	9 6%
Excessive requests for information & documents	7 11%	11 5%	11 13%	6 7%	7 8%
Improper refusals based on relevance	8 10%	7 12%	7 10%	9 3%	8 8%
Disclosure only after motion to compel**	9 10%	9 8%	8 11%	13 4%	10 4%
Excessive disclosure/production; production of irrelevant documents	10 9%	12 5%	12 10%	10 5%	11 4%
Vague requests for information & documents	11 7%	13 2%	13 7%	8 10%	12 3%
Untimely production of expert reports	12 7%	10 6%	10 7%	11 7%	5 10%
Inappropriate attitude/behaviour of other parties	13 3%	8 10%	9 2%	12 8%	13 2%

* 26 potential problems were canvassed in case specific questionnaire. For cases in which discovery had commenced, respondents were asked to indicate whether or not each problem was present. M problems were NOT present in most cases. Top 4 problems were present in 18%-28% of cases. Next 9 problems were present in 10%-16% of cases in at least 1 court location. Rest of problems were present in less than 10% of cases.

** Discovery-related motions occurred in 15% of all cases sampled in case specific questionnaire.

LEAST FREQUENT DISCOVERY PROBLEMS (BOTTOM 13)

Present in less than 10% of cases

PROBLEM	Overall %	Ottawa %	Toronto %	Thunder Bay %	London %
Scope of discovery too broad	8%	2%	9%	7%	6%
Opposing counsel inexperienced or inefficient	7%	8%	8%	4%	3%
Length of examinations	7%	6%	7%	6%	4%
Opposing counsel disrespectful or unprofessional	6%	9%	6%	4%	3%
Opposing counsel made improper refusals based on privilege	6%	5%	6%	5%	4%
Client representatives at discovery had inadequate knowledge of case	6%	5%	7%	4%	2%
Opposing counsel didn't comply with continuous obligation to disclose	5%	6%	4%	7%	7%
Opposing counsel abused discovery process to intentionally delay case	5%	2%	6%	5%	1%
Opposing counsel unprepared or incompetent	5%	3%	6%	3%	1%
Opposing counsel unfamiliar with specific issues in this case	5%	3%	5%	4%	3%
Opposing counsel harassed/abused witnesses	4%	2%	5%	3%	1%
Excessive discovery-related motions arising from abuses or lack of cooperation	4%	7%	4%	4%	2%
Clients insisted on overly extensive discovery	2%	2%	3%	2%	0%

DISCOVERY REFORMS WITH POSITIVE IMPACT*

- Endorsed as positive by at least 40% of respondents
 Endorsed as positive 30-39% of respondents

REFORM	Rank Overall %	Ottawa	Toronto	Thunder Bay	London
Deem questions taken under advisement to be refusals if not answered within fixed time	1 47.8%	4 42.4%	1 49.4%	3 46.7%	4 37.4%
Standard disclosure protocols for certain case types	2 45.3%	2 46.9%	3 45.6%	5 41.6%	1 43.2%
Stricter enforcement of sanctions by judiciary	3 44.9%	1 48.3%	2 45.7%	7 41.2%	5 34.4%
Time limits & sanctions on completing undertakings	4 44.3%	7 38.8%	4 44.6%	1 52.5%	3 40.2%
Tougher cost sanctions for unnecessary discovery-related motions	5 42.5%	6 38.8%	5 44.3%	6 41.3%	11 26.9%
Mandatory production of Schedule A documents with pleadings	6 39.7%	11 33.4%	7 39.6%	2 49.2%	2 40.5%
Serious sanctions for untimely, excessive or disorderly production of documents	7 38.5%	10 33.2%	6 39.8%	9 40.2%	10 29.4%
Guidelines for orderly production of documents	8 37.6%	9 33.2%	8 38.1%	4 42.2%	6 33.6%
Greater specificity in Schedule B about basis of privilege for each document	9 35.7%	8 39.2%	9 35.8%	11 35.9%	8 30.2%
Require parties to agree on discovery plan	10 35.3%	5 40.2%	10 35.9%	13 27.7%	9 29.5%
Immediate rulings on oral discovery disputes	11 33.6%	12 31.4%	11 35.9%	15 22.7%	13 19.7%
Mandatory early disclosure of certain aspects of claim with pleadings	12 33.1%	3 43.3%	12 31.2%	8 40.4%	7 34.4%
Have parties agree on list of undertakings & refusals at end of oral discovery	13 29.3%	13 30.7%	13 29.6%	12 35.8%	15 17.1%

* 27 potential reform options were canvassed in case specific questionnaire. For cases in which discovery had commenced, respondents were asked to indicate whether or not each reform would have had a POSITIVE, NEGATIVE or NO IMPACT on their case. Top 7 reforms were endorsed as positive by at least 40% of respondents in 2 or more court locations. Next 8 reforms were endorsed as positive by at least 30% of respondents. Bottom 5 reforms were seen as negative by at least 45% of respondents in 3 or more court locations. Next 8 reforms were seen as negative by at least 25% of respondents in 3 or more court locations.

DISCOVERY REFORMS WITH NEGATIVE IMPACT

Seen as negative by at least 45% of respondents

Seen as negative by at least 25% of respondents

REFORM	RANK Overall %	Ottawa	Toronto	Thunder Bay	London
Eliminate automatic right to oral discovery	1 72.9%	1 68.1%	1 73.4%	1 70.8%	1 75.8%
Eliminate right to cross-examine at oral discovery	2 60.6%	2 59.6%	2 61.2%	4 45.5%	2 69.4%
Permit oral discovery only after completion of written discovery	3 56%	5 42.1%	3 57.3%	2 52.5%	4 62.1%
Time limits on oral discovery based on value of claim	4 50.1%	3 47.1%	5 49.4%	3 47.5%	3 63.7%
Eliminate right to object to any question at oral discovery	5 48.1%	4 46.5%	4 48.8%	5 43%	5 47.1%
Restrict objections on matters of privilege at oral discovery	6 39.4%	10 27.3%	6 41.6%	7 28.8%	9 39%
Bifurcated discovery	7 36%	9 29.3%	7 37%	8 29.2%	7 44.8%
Create standard written interrogatories	8 32.8%	8 29.5%	8 34.7%	14 12.3%	10 35.6%
Limited number of written interrogatories	9 32.4%	7 29%	9 32.6%	9 25.5%	8 41.2%
Narrow scope of discovery	10 30%	6 29.7%	11 28.8%	11 21.5%	6 45.2%
Video oral discovery to reduce transcript costs	11 27.8%	13 20.2%	13 27.8%	6 30.6%	12 34.2%
Immediate contempt order for failing to comply with discovery-related orders	12 26.8%	16 16.3%	10 28.9%	10 24.1%	19 17.2%
Require lawyer with lead on file to attend oral discovery	13 25.5%	17 14.3%	12 28.3%	19 4.2%	14 26.4%