

## **Prepping the Law Firm for E-Discovery**

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The question of whether to turn your mind to e-discovery is becoming increasingly less optional.

A new Rule of Civil Procedure is on the horizon (launching on Jan. 1, 2010) that requires counsel to have regard to the Sedona Canada Principles, which reflect legal principles and best practices. Although this is aimed at clients' matters, it's important that law firms get their own houses in order in case of a claim against the firm. The time and cost involved in setting up appropriate systems within the firm can then become experiential capital for your clients.

[David Outerbridge](#), chairman of the Ontario e-discovery implementation committee (OEIC), believes the new Rule will cause more lawyers to turn their minds to e-discovery requirements. "Technically the Rules as they stand require discovery and production of 'documents' which are defined to include electronic documents. This specific directive will focus people's attention, particularly on the requirement that parties enter into a discovery plan. Another Rule amendment provides that parties can't get discovery relief until they have consulted e-discovery principles and made a discovery plan."

The first steps for a firm that wants to be proactive involve more time than money. "Law firms that haven't been doing e-discovery need to learn more about the process," advises David. "They should start by reading the Sedona principles and Rule amendments and other material. A number of concepts may not be first nature to law firms, such as the requirement to meet and confer in advance at a discovery conference."

When designing the firm's plan, policies, and precedents, the litigators may wish to refer to the eight model e-discovery precedents recently published by the OEIC. "The precedents are designed to give a helping hand whether you use them as a direct precedent or food for thought," says David. "For example, the sample discovery agreement could serve as a discovery plan. The discovery memo can be sent by a lawyer to a client advising what's required for preserving and collecting e documents. There is also an extensive education checklist that teaches lawyers what to keep in mind from start to finish, how to undertake each step and how keep costs down at the various stages."

After this self-education process, firms will probably want to consider some software to help them tackle the daunting task of collecting, preserving, and copying the documentation. Most software vendors will meet with law firms free of charge, and the process of assessing their products is expertise that can be offered to clients when they consider their own software purchases.

Examples of software that anyone can buy are Summation, Ringtail, and Concordance. There is also proprietary software with very specific functionality developed by firms like Ernst & Young, KPMG LLP, and H&A Forensic Accounting. They offer features such as a built in translation program and highlighting functions.

David's final advice is that every firm should have a designated person to keep up to speed on software options and case law. "Someone needs to know the questions to ask."