



# The Law of Electronic Discovery

## New Book Unplugs Cyberspace

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*Electronic Documents: Records Management, e-Discovery and Trial* is an excellent book. Released in early 2010 by Canada Law Book, this 500+ page, loose-leaf text is almost certain to become the leading Canadian reference source for lawyers and litigants regarding electronic documents and the law of electronic discovery. The book is a sophisticated, interesting and comprehensive treatment of current Canadian law and best practices in this rapidly developing area.

*Electronic Documents* is a multi-author work written by 10 Toronto litigators and commercial lawyers, and edited by three litigation partners at Weir Foulds LLP: Bryan Finlay, Marie-Andrée Vermette and Michael Statham. Notwithstanding the multiple contributors, the book reads as a single, well-synthesized volume, with helpful cross-references throughout.

One of the most refreshing features of *Electronic Documents* is its thoughtful consideration of the place of e-discovery within its wider legal and historical context. The book's authors recognize that the present "e-discovery moment" is simply one stage (an important stage) in the long and ongoing evolution of civil procedure in Canada, and globally. As the authors explain in the opening pages, the book draws on "experience and history, precedent and legislation, and market and social forces to understand how the combination of these factors has resulted in what [Oliver Wendell] Holmes would have termed a 'new product'" in the form of e-discovery. The authors advocate a pragmatic and optimistic approach to electronic documents – accepting the reality and tackling the challenges of electronic records management and e-discovery, while also appreciating their benefits and subtleties.

*Electronic Documents* is organized into seven chapters, consisting of an introductory theoretical overview, followed by six lengthy substantive chapters that explain and analyze all phases of the life cycle of electronically stored information in connection with litigation.

Chapter two provides a very good and very detailed explanation, in terms that are easily understood by lawyers, of the technology of electronic documents. This chapter covers the nature of electronically stored information, legal definitions of an electronic "document", the manner in which electronic data are stored on computers, the different types of storage media, and the basic functioning of the Internet. Chapter 3 reviews the importance of an effective records management policy and the links between such policies and litigation risk management.

Chapter four is a detailed review of the legal framework that currently governs e-discovery in Canada. This chapter covers not only applicable *Rules of Civil Procedure* (including

recent changes to those rules in several provinces), but also the leading e-discovery guidelines in both Canada and the United States (i.e., the Sedona Principles in the U.S., and the Sedona Canada Principles and the Ontario Guidelines in Canada), and the leading case law in both jurisdictions. The book's reasonably detailed review and comparison of U.S. and Canadian e-discovery law in this and subsequent chapters is a welcome feature.

Chapters five - seven explain with greater particularity the e-discovery law and best practices governing specific stages of the civil litigation process. Chapter five covers the preservation and collection of electronically stored information, fo-

*"Intelligent, thorough and useful book"*

ocusing on the key issues of litigation holds, spoliation of evidence, and ensuring compliance with e-discovery obligations by opposing parties. Chapter six addresses the processing and review of electronic documents, exploring the different techniques that a party may wish to use in order to minimize e-discovery costs and time, while maximizing effectiveness in locating relevant documents. This chapter also reviews available software options for culling irrelevant documents through innovative search techniques that can significantly reduce the need for review of individual documents by lawyers. Finally, Chapter seven explores the requirements for producing electronic documents, ensuring their admissibility, and conducting an e-trial.

*Electronic Documents* is an intelligent, thorough and useful book. Its pages address, in one form or another, all of the issues that a litigator or litigant requires in a text on this topic: the law and the technology, records management and e-discovery, Canadian and U.S. perspectives, the rules and the best practices, all reviewed from both a theoretical and practical perspective. The book's authors have succeeded in providing their Canadian legal audience with what will be widely viewed as the pre-eminent book of its kind in this country.

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more on the E-Revolution, see pages 32, 33