

## E-discovery best practices take hold in Canadian courtrooms, companies

New guidelines regarding electronic documents in court are starting to take hold in Canadian legal circles, according to law experts. But it could be some time before the Sedona Canada Principles Addressing Electronic Discovery become truly standard.

Since the final version was published in January, uptake by the legal community has been favourable, according to Susan Wertzman, founder of Wertzman Nickle Professional Corp., a Toronto firm providing e-discovery advice to lawyers and companies. The Nova Scotia rules of procedure now refer to the principles, she said, and new rules are coming into force in Ontario. Wertzman chaired the original committee that drafted the principles over two years.

The name of the guidelines comes from the Sedona Conference, a non-profit U.S. legal think tank, which drafted a set of Sedona Principles for electronic discovery in 2003. The Sedona Canada Principles were this country's answer to the U.S. guidelines, which the U.S. legal system reportedly embraced.

"We're thrilled with the response we've had and the reaction to the Sedona Canada Principles, although it possibly hasn't been as widely adopted as we'd like because we're a bit slower in getting to the stage of dealing with e-discovery in Canada," Wertzman said. "But it's really early days for us and for all lawyers across the country in dealing with these issues."

Gathering electronic data in a form recognized by the law system has the potential to save companies considerable time and money. That was one of the driving factors behind the Sedona Canada Principles.

"(The principles) help organizations, corporations, associations and government deal with the massive volume of electronic information," said Dominic Jaar, CEO of Ledjit Consulting Inc., a Montreal-based e-discovery management firm. He served on the principles' editorial and steering committees. "If you go into a network and start identifying what might be relevant, you're going to end up with terabytes worth of data that are going to take years and cost millions of dollars (to review)... So we need to use certain technologies to call that volume down to a manageable size in order to have it viewed by lawyers, the opposing party and the judge."

Bringing the principles to Canada was a challenge, but a necessary step in helping streamline the legal policies around e-discovery. Not only was there no such policy in place, but Canada has two legal systems – civil law in Quebec and common law in the rest of the country. What's more, the principles had to be adapted specifically for each province because of unique provincial standards governing e-discovery.

"You can just think of a class action where there are parts of it in B.C., Ontario and Quebec," Wertzman said. "If each province has different governing standards for e-discovery, it becomes more difficult."

But the issue of e-discovery has plenty of relevance to organizations that aren't just concerned about being legally accountable for their electronic data. The practice also offers financial and organizational benefits.

"In a small business environment, archiving is becoming more of an attractive solution in terms of complementing the backup-type strategies they may already have in place," said Paul Wood, a U.K.-based senior analyst at MessageLabs Ltd., a provider of services to protect, control, encrypt and archive electronic

communications. "If there's a disaster in, say, the data centre, they can recover and establish the connectivity for the servers very quickly.... It becomes more of a cost-effective solution when they can outsource that kind of technology."

For IT managers, e-discovery is an important consideration if they want to make sure their organizations are compliant with electronic data standards, Jaar said.

"Before I had my own firm, I was in-house counsel for Bell Canada.... I learned fairly quickly that IT folks were focusing on technology and they were not necessarily interested, for the most part, in the information, and that's where the challenge is," he said.

Jaar suggests IT professionals get involved with the organization's legal department and groups that oversee records management, audit and compliance. Together, representatives from those groups would be able to form an assembly, and conduct a "litigation readiness assessment," reviewing how departments manage data.

"Look at how they manage their information and do sort of a drill," Jaar advised. "Try to identify: 'Are we quickly and efficiently able to put our hands on relevant information if we need it?'"

It's about "putting your house in order and making sure you can get access to information efficiently," Jaar said.

With a recent Osterman Research report projecting that e-mail volumes will grow by 68 per cent by 2012 and 988 exabytes of data are being added every year to the digital landscape, managing electronic data is a forward-thinking exercise. Otherwise finding information can be a challenge. Large organizations "have this massive volume of electronic information and the real challenge is how do you, in a cost-effective way, find relevant electronic evidence for your particular case," Wortzman said.