

Best Practices in E-Document Management in Big Litigation Files

Lac-Mégantic case study

November 18, 2015

Presentation outline

1. Rules of procedure on document discovery
2. Litigation Hold Memos/Letters
3. Document transfer
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5. E-Document review and management
6. The Lac-Mégantic case study
7. Quebec's Business Concerns Records Act
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Rules of procedure on document discovery



ONTARIO

- ***Rules of Civil Procedure, RRO 1990, Reg. 194, Rule 30:***
 - A party to an action shall serve on every other party an affidavit of documents disclosing to the full extent of the party's knowledge, information and belief all documents relevant to any matter in issue in the action that are or have been in the party's possession, control or power.
 - Privilege can be claimed with respect to a document upon production for inspection
 - Failure to do so can be sanctioned by prohibition to use document, dismissal of claim, striking of pleading, costs, etc.



QUEBEC

- ***Code of Civil Procedure, Art. 397, 398, 402***
 - Request-based system
 - Notion of relevance (Art 2857 CCQ)
 - *Glegg v. Smith & Nephew Inc.*, [2005] 1 SCR 724 – large and liberal approach
 - Documentary evidence (Art 2860 and 2862 CCQ)
- As of January 1, 2016 - ***New Code of Civil Procedure, Art 20:***
 - The parties are duty-bound to co-operate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and make sure that relevant evidence is preserved.
 - Objections taken under reserve, except privilege (Art 228 NCCP)

Litigation Hold Memos/Letters

Best practices



- If you do not have a **document preservation policy**
- When?
 - As soon as notice of litigation is received
- To who?
 - All individuals involved in the litigation or just management, depending on company size
 - Management's responsibility to pass the information on to employees under their supervision
- Keep it simple and short
- No "legalese"

Litigation Hold Memos/Letters

Content



- PRIVILEGED AND CONFIDENTIAL
- Nature and scope of litigation
- Consequences of failing to preserve documents
- Duty to preserve documents
- Preservation time period (open ended)
- Description and definition of « document »
- Name of contact person
- Additional instructions (privileged communications)

Document transfer

Best practices

- Transfer in original electronic format
- Preserve document integrity
- Facilitate indexing using OCR
- Retrieve e-mail boxes
- Issue of archived attachments
- Avoid piece-meal transfers
- Involve your IT specialists
- Ensure all sources are checked
- Translate as required
- Secure data transfer – avoid e-mails



Database and hosting services

Best practices



- Dentons endorsed iPro Eclipse
- Web-based solutions
- Register client users
- Document tagging, sorting, search, review, annotation
- iPro Eclipse Demo

iPro Eclipse Demo

Documents view

The screenshot displays the iPro Eclipse web application interface for the 'Documents' view. The browser address bar shows the URL <https://dentoneclipse.commonwealthlegal.com/eclipseabap>. The application header includes the 'eclipse' logo and the user 'isabelle.picard@dentons.com'.

The interface is divided into several panels:

- Case View:** Contains 'Case Details' and 'Documents' sections. The 'Documents' section shows a list of 18 documents under the 'TEST DUMMY CASE'.
- Documents Panel:** A table with columns: 'Begin Doc', 'End Doc', 'Production Begin Bates', and 'Production End Bates'. Document 1 is selected.
- RECORD Panel:** A table with columns: 'Field' and 'Value'. It displays metadata for the selected document, including 'Begin Doc', 'End Doc', 'Production Begin Bates', 'Production End Bates', 'Doc Date', 'Doc Type', 'Doc Title', 'Author Name', 'Recipient Names', 'CC Names', 'BCC Names', 'Source', 'Reviewer Comments', and 'Reviewed By'.
- Tags Panel:** A tree view showing document tags such as 'Key Document', 'Relevance', 'Duplicate', and 'Privilege'.
- Document Details Panel:** A large area for viewing document details, currently showing a message: 'Please click on the button below to view the document.' with a 'View' button.

The bottom of the interface features a 'RELATIONSHIPS' section with a 'Family' dropdown and a table with columns 'Begin Doc' and 'Relevance'. The bottom status bar shows the date '13/11/2015' and time '13:20'.

iPro Eclipse Demo

Coding Forms

TEST DUMMY CASE | Case Administration | isabelle.picard@dentons.com

Case View | Case Administration

Case Details
Documents
Batches
Advanced Search
Analytics
Reports
Case Administration

Case Details
Case Permissions
Coding Forms
Index Management
Keyword Management
Permission Templates
Persistent Highlighting
Pick Lists
Production Sets
Production Shield
Redaction Categories
Relationships
Review Pass Management
Tag Palette
TAR Project Setup

Coding Form

Name: General Coding ☐ Enable Auto Save is disabled due to coding form rules being applied

Fields

Available Fields

- Allegro DocumentID
- App End Date
- App End Time
- App Start Date
- App Start Time
- AttachIDs
- Attachref
- Attachseq
- Author / Lawyer
- Author SMTP Address
- BCC SMTP Addresses
- Begin Attach

Selected Fields

- Begin Doc
- End Doc
- Production Begin Bates 1
- Production End Bates 1
- Doc Date
- Doctype
- Doc Title
- Author Name
- Recipient Names
- CC Names
- BCC Names
- Source

Tags

Rules

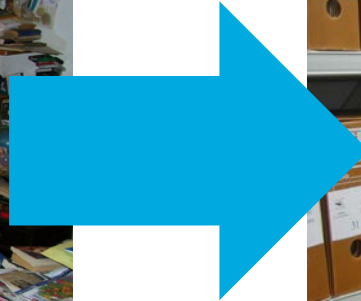
Permissions Add/Remove Groups

Export to CSV Total Items: 10

Save Cancel

E-Document review and management

Best practices



E-Document review and management

Best practices



- Build an efficient review team
 - Reviewers vs Managers (set privileges)
- Identify the issues
- Understand the issues
- Create document “tags” structure
 - Too many is like too few
- Determine relevant time periods
- List keywords or key individuals
- Set a review schedule and priorities
- Other lessons learned from large arbitration matters

E-Document review and management

Best practices



An efficient document review team and strategy can **save** significant **time and fees** in large or complex litigation matters lapsing over many months or years.

Do not underestimate the **value** in the up-front investment!



The Lac-Mégantic case study

Quebec's largest multi-defendant litigation

- July 6, 2013: Crude oil train derailment in Lac-Mégantic, Québec
 - Downtown core destroyed
 - Hundreds of millions in damages
 - 47 deaths



The Lac-Mégantic case study

Quebec's largest multi-defendant litigation

- August 5, 2013: Class action instituted before the Quebec Superior Court
 - 50 defendants
 - 30 law firms
- August 8, 2013: Initial CCAA Order, stay of proceedings
- Cross-border insolvency protocol (US Chapter 15 and CCAA)
- Parallel criminal proceedings against MMA employees

The Lac-Mégantic case study

Quebec's largest multi-defendant litigation

- Dentons represented D&O's of MMA and holding companies
- Litigation team included 9 lawyers:
 - 5 in Chicago, 4 in Montreal / 6 partners, 3 associates
- Class action alleged overall poor safety culture, poor safety stats, inadequate safety policies, lack of staff training, etc.
- Thousands of documents seized by the *Sûreté du Québec* = Colossal document review
- Segregation of US and Quebec documents database

Business Concerns Records Act

Discovery blocking statute

- Quebec statute blocking document discovery ordered by a foreign jurisdiction
- No legislative plans for repeal, despite recommendations from various Bar associations

1. In this Act, the following words mean:

- (a) “document”: any account, balance sheet, statement of receipts and expenditure, profit and loss statement, statement of assets and liabilities, inventory, report and any other writing or material forming part of the records or archives of a business concern;
- (b) “concern”: any business concern in Québec;
- (c) “requirement”: any demand, direction, order, subpoena or summons.

Business Concerns Records Act

Discovery blocking statute

- 2. [...] No person shall, pursuant to or under any requirement issued by any legislative, judicial or administrative authority outside Québec, remove or cause to be removed, or send or cause to be sent, from any place in Québec to a place outside Québec, any document or résumé or digest of any document relating to any [business] concern.
- Section 3 – **Exceptions:**
 - (a) to a principal, head office, affiliated legal person or firm, agency or branch situated outside Québec, in the ordinary course of their business;
 - (b) by or on behalf of a natural or legal person, a partnership or an association that is not a legal person carrying on business in Québec, to a territory subject to another political jurisdiction in which the sale of the securities of such person, partnership or association has been authorized;
 - (c) broker, security issuer or salesman within the meaning of the [Securities Act](#) (chapter V-1.1), to a territory subject to another political jurisdiction in which any such person, partnership or association has been registered or is otherwise authorized to carry on business as broker, security issuer or salesman, as the case may be;
 - (d) whenever such removal or sending is authorized by any law of Québec or of the Parliament of Canada, in accordance with their respective jurisdictions.

Business Concerns Records Act

Discovery blocking statute

- What the Supreme Court of Canada thinks of it:
 - *Hunt v T&N PLC*, (1993) 4 SCR 289
 - Constitutionally inapplicable between Canadian provinces
 - *Obiter* on international comity, at page 327:

The whole purpose of a blocking statute is to impede successful litigation or prosecution in other jurisdictions by refusing recognition and compliance with orders issued there. Everybody realizes that the whole point of blocking statutes is not to keep documents in the province, but rather to prevent compliance, and so the success of litigation outside the province that that province finds objectionable. This is no doubt part of sovereign right, but it certainly runs counter to comity. In the political realm it leads to strict retaliatory laws and power struggles. And it discourages international commerce and efficient allocation and conduct of litigation. It has similar effects on the interprovincial level, effects that offend against the basic structure of the Canadian federation.

Business Concerns Records Act

Discovery blocking statute

- No constitutional challenge as regards international comity
- The Ontario equivalent – *Business Records Protection Act*
- Very limited case law on the issue both in Ontario and Quebec
- The example of *Aker Biomarine AS v Neptune Technologies & Bioresources Inc.*, 2013 QCCS 4841
 - Patent litigation in the US. Letter of request from the US District Court of Columbia. Denied by the Superior Court of Quebec.
- Should foreign jurisdictions reciprocate?

Thank you

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