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## **Litigating Economically**

# **Using Knowledge Management to Litigate Economically**

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# **Using Knowledge Management to Litigate Economically**

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## **Using Knowledge Management to Litigate Economically<sup>1</sup>**

Litigation lawyers in Ontario face a number of challenges that are both caused – and potentially overcome – by technology.<sup>2</sup> The sheer volume of information in the form of digitized and digitally-borne documents challenges us in the need on how to best organize and manage documents. Related to this is the need to control information overload while at the same time balancing the need to stay current with legal developments. When these challenges are combined with the pressure to reduce litigation costs at the same as delivering high quality services, what is one to do? In this paper, I suggest that best practices in knowledge management can address these challenges to allow litigators to reduce costs and increase their effectiveness. As I have previously written,<sup>3</sup> the discipline of knowledge management continues to evolve and the actual knowledge management principles or tools that can be applied to litigation matters will vary depending on the size, culture and technology-infrastructure at your firm. In fact, it is this very evolving nature of knowledge management that provides flexibility to apply those best practices – 8 of which are discussed below -- that make the most sense for your practice to litigate more economically.

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<sup>1</sup> This paper adapts and updates an earlier paper by me on litigation knowledge management called “Effective Litigation Knowledge Management” presented at the 18 November 2008 Insight ALM Canadian Law & Technology Forum in Toronto). A copy of that 2008 paper is available on my website at [www.legalresearchandwriting.ca/images/lit-KM.pdf](http://www.legalresearchandwriting.ca/images/lit-KM.pdf).

<sup>2</sup> No mention will be made on the abysmal state of the lack of a centralized, online court dockets system in Ontario. For more on that topic, see Ted Tjaden, “Accessing Canadian Court Dockets” (Blog post, SLAW.ca: [www.slaw.ca/2010/12/01/accessing-canadian-court-dockets/](http://www.slaw.ca/2010/12/01/accessing-canadian-court-dockets/) (1 December 2010).

<sup>3</sup> See Ted Tjaden, “The 7 Faces of Legal Knowledge Management” presented at LawTech Canada: Exploring New Frontiers in Technology Solutions (16 November 2009, Toronto, Insight). Available online: [www.legalresearchandwriting.ca/images/7faces.PDF](http://www.legalresearchandwriting.ca/images/7faces.PDF).

**A. Challenges for Ontario Litigators:**

There are any numbers of challenges facing Ontario litigators:

1) **Volume of information:**

The volume of documents to be discovered in most lawsuits can involve thousands – if not millions – of print and digitally-borne documents, depending on the size of the claim and the number of parties in the lawsuit. Added to this is an increasing barrage of email as the main form of communication and an ever-growing body of case law and changing legislative text when conducting legal research. For the most part, this increase in the volume of information has been caused by technology and it is to technology we can look to help control and filter this volume of information.<sup>4</sup>

2) **Pressure to reduce costs:**

The high cost of litigation in Ontario has been well-documented.<sup>5</sup> With the recent recession, we have started to see a “client revolution”<sup>6</sup> that has motivated law firms to meet client demand for more cost-effective legal services, including the increasing use of alternative fee arrangements that include fixed or capped fees on litigation files. For

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<sup>4</sup> For more on combating information overload, see Ted Tjaden, “Innovator, Fool, I Dream: Deploying Effective Knowledge Management Principles to Combat Information Overload in Law Firms” (Knowledge Leadership Forum, New York, 27 April 2007). Available online: [www.legalresearchandwriting.ca/images/innovator-fool.pdf](http://www.legalresearchandwriting.ca/images/innovator-fool.pdf).

<sup>5</sup> For a recent example, see “Winkler Lectures Bar about Access to Justice” *Law Times* (2 April 2010) documenting the comments of Ontario’s chief justice that rising costs and a lack of access to justice will create a “meltdown in the courts.”

<sup>6</sup> Eversheds LLP, “Law Firm of the 21st Century: The Clients’ Revolution” (22 March 2010). Available online by request at [www.eversheds.com](http://www.eversheds.com).

litigators who are used to charging by the hour, alternative fee arrangements pose a challenge for litigators to improve their internal work processes to become more efficient and better manage the litigation process.

3) **Priorities of litigation lawyers:** Although many litigation lawyers are tech-savvy and are increasingly using laptops in court for note-taking, document management and presenting demonstrative evidence, many litigation lawyers may naturally focus their attention and skills on oral and written advocacy, cross examination technique and settlement strategies. They therefore reasonably regard technology as something that only supports such work. As a result, the interest level of litigators in technology projects and harvesting litigation knowledge content may be quite variable, a challenge faced across all practice departments in all law firms.

4) **Need for high quality work product:** Litigators are of course no different than other lawyers as creators of knowledge every day in their daily work. They are also no different in wanting to be able to access high quality precedents and research to shorten the time it takes to get information and answer the client's questions. Certain litigation forms and pleadings are relatively standardized and can be re-used or adapted in future circumstances (e.g., a motion for an interlocutory injunction). Other situations are much more highly fact-specific. Likewise, litigation-based legal research can also be re-used and updated, especially for common legal issues. Regardless, easy access to pleadings and research, whether from internal or external sources, is essential. However, the sheer volume of this information, in addition to the challenges of organizing the information to make it accessible, pose a number of challenges, some of which can be addressed with knowledge management solutions.

**B. The KM Promise:**

For litigators seeking to be more effective and cost-efficient in their work, knowledge management as a discipline offers a number of best practices and tools to improve services to clients, reduce risks of error, and make litigation more effective. Set out below are 8 of these law-related knowledge management best practices that lawyers should consider adopting to litigate more economically.

1) **Document management:** No matter the size of the firm, an online, matter-centric document management system (DMS) is the backbone of any law firm knowledge management program<sup>7</sup> (in addition to being a key component of risk and file management to ensure proper control over your client’s information). These systems allow “tagging” of documents by document class (e.g., litigation documents) or by profiling client matter folders to inherit these classes. When documents are tagged, it then becomes easier to search across the entire DMS for documents of a certain class (e.g., CLASS = Litigation & Description = statement of claim & Full-text = “breach of fiduciary duty”). Increasingly, law firms are adding “smart” enterprise search engines – such as Interwoven Universal Search, Recommind, or Microsoft Fast – to improve precision and recall. For litigation files, the DMS also operates as a structured way to organize documents by the various stages of a lawsuit to improve the speed by which documents can be browsed.

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<sup>7</sup> Some of the major DMS’s used by North American law firms include Autonomy (Interwoven) Worksite, OpenText DocsOpen, EMC Documentum, and Microsoft SharePoint.



Over time, the documents on your DMS tagged as “litigation documents” become an excellent content source for harvesting litigation.

2) **Precedents:** To litigate economically, it is critical to develop sources of litigation precedents for pleadings, motions, facta and other court documents and forms. For **internal sources of precedents**, harvesting your litigation client files on your DMS and copying them into a separate “precedent” database on your DMS is a good start. Within your precedent database, it is simple enough on your DMS to organize litigation precedents by folder by type of precedent (e.g., pleadings, motions, facta). Depending on the nature of your litigation practice, another strategy is to organize your precedents by type of motion (e.g., summary judgment, injunctions, security for costs), or topically (e.g., motor vehicle accidents, employment litigation, class actions). For **external sources of precedents**, there are a number of commercial litigation precedent services available:

1. **Litigator** (Westlaw Canada): includes samples of court-filed pleadings and facta, along with various commentary such as Holmsted & Watson.
2. **Litigation Library** (LexisNexis Quicklaw): includes various litigation-related treatises, along with court forms such as Williston & Rolls Court Forms.
3. **O’Brien’s Forms and Precedents Online**:<sup>8</sup> includes various sample pleadings.
4. **Bullen & Leake and Jacob’s Precedents of Pleadings**<sup>9</sup> (in print and on Westlaw Canada).

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<sup>8</sup> O’Brien’s Forms and Precedents Online – see: [www.obriensforms.com](http://www.obriensforms.com).

5. **Print sources:** There are pleadings precedents available in various legal treatises. For example, Klar’s *Remedies in Tort*<sup>10</sup> has lots of samples of statements of claims for most tort actions).
  6. **Law Society of British Columbia online litigation checklists:**<sup>11</sup> The Law Society of British Columbia has a number of freely available checklists covering such topics as foreclosure procedure, general litigation procedure, personal injury plaintiff’s interview or examination for discovery, collections procedure, collections examination in aid of execution, and builders lien procedures.
  7. ***Dispositions Without Trial*** (2d ed):<sup>12</sup> This books lists out in an Appendix the legal elements and causes of action and defences for most tort and contract claims. Citations to supporting case law are provided.
- 3) **Training / mentoring:** One of the more important techniques to harvest “implicit” knowledge – the experiences and expertise of other litigation lawyers – is to attend CLE seminars to learn better ways of conducting litigation. For lawyers who work with others in a firm, having regular in-house practice group meetings to discuss new cases or the handling of a particular issue is also an important way to learn from experience. Likewise, for junior lawyers, the opportunity to junior to a more senior lawyer is another excellent way to learn how to be a better litigation lawyer. Learning best practices in litigation through training or mentoring is therefore a good way to

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<sup>9</sup> William Blair et al, eds, *Bullen & Leake and Jacob’s Precedents of Pleadings*, 17th ed, loose-leaf (London: Sweet & Maxwell, 2011).

<sup>10</sup> Lewis Klar et al, eds. *Remedies in Tort*, loose-leaf (Toronto: Carswell, 1987).

<sup>11</sup> Law Society of British Columbia, “Practice Support: Checklist Manual.” Available online: [www.lawsociety.bc.ca/practice\\_support/checklists/table.html](http://www.lawsociety.bc.ca/practice_support/checklists/table.html).

<sup>12</sup> Robert van Kessel, *Dispositions without Trial*, 2d ed (Markham, ON: LexisNexis Butterworths, 2007).

ensure you gaining knowledge from others and then applying this knowledge to litigate more economically.

4) **Current awareness of the law:** There are very simple, inexpensive ways for litigation lawyers to leverage technology to stay aware of current developments in substantive law and civil procedure. I use Newsgator for Outlook as my RSS reader which has feeds come into a custom Outlook folder that I can quickly review. Among other feeds, I subscribe to the following RSS feeds (addresses are set out in the Bibliography):

1. Ontario Courts
2. Supreme Court of Canada (mailing lists)
3. CanLII RSS feeds (saved searches)
4. SLAW.ca
5. Osgoode Hall Law School: The Court
6. FMC: Ontario Rules of Civil Procedure
7. McCarthy LLP: Canadian Appeals Monitor
8. LSUC: CPD Feed
9. Financial Post: Legal Post
10. Lawyer's Weekly
11. Law Times
12. Canadian Lawyer

In addition, my Custom Google Search of Canadian Law Firms, Blogs and Law Journal Websites<sup>13</sup> is a simple way to search for Canadian law firm bulletins, blog posts and selected journal articles by keyword in Google.

5) **Legal research:** Since it is not possible to know all of the law, there will invariably be a need to conduct legal research as a part of any litigation matter. To

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<sup>13</sup> Ted Tjaden, Custom Google Search of Canadian Law Firms, Blogs and Law Journal Websites. Available online: [www.legalresearchandwriting.ca/google.htm](http://www.legalresearchandwriting.ca/google.htm).

litigate economically, it therefore helps to know the basics of legal research and the leading litigation resources. Attached at the end of this paper is an excerpt on litigation research resources from Chapter 8 (“Legal Research by Topic”) of my legal research book<sup>14</sup> (to me, the single most valuable resource for any litigator in Ontario is the multi-volume loose-leaf *Holmsted and Watson: Ontario Civil Procedure*, also available on Litigator on Westlaw Canada). For litigation lawyers in solo or small firm practices, it can be very cost-effective to leverage the print and online resources from your local County or District Court House law library.<sup>15</sup> CanLII of course continues to add content and other value-added features.<sup>16</sup> For those litigation lawyers who lack the time or skill to conduct legal research, there is always the option to contract out legal research to one of the several research lawyers who advertise in the *Ontario Reports* or to an outsourcing firm such as Taran Virtual Associates (TVA).<sup>17</sup> Alternatively, Westlaw Canada has recently announced its Legal Memorandum database<sup>18</sup> that offers thousands of legal research memos, organized by topic.

6) **Process improvement / process mapping / checklists:** One of the most effective ways to conduct cost-effective litigation is to look at your workflow processes from the opening of a litigation matter to its closing after the litigation has ended, something known as legal process improvement – doing things better. For almost every

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<sup>14</sup> Ted Tjaden, *Legal Research and Writing*, 3d (Toronto, ON: Irwin Law, 2010).

<sup>15</sup> For more information about the services and resources available from the various Ontario County and District Court House Law Libraries, see Library.co at [www.libraryco.ca](http://www.libraryco.ca).

<sup>16</sup> In February 2012, CanLII announced that it had added its millionth case to its database – see: Canadian Legal Information Institute, “One Million Legal Judgments now Freely Available in a Searchable Canadian Database” (17 February 2012), available online: [canlii.org/en/blog/index.php?/archives/64-One-million-cases.html](http://canlii.org/en/blog/index.php?/archives/64-One-million-cases.html).

<sup>17</sup> Taran Virtual Associates (TVA), Home page: [virtualassociates.ca](http://virtualassociates.ca).

<sup>18</sup> See Westlaw Canada, “Legal Memorandum,” available online: [www.westlawcanada.com/westlaw-products/litigator/legal-memoranda/](http://www.westlawcanada.com/westlaw-products/litigator/legal-memoranda/).

litigation matter, there will be hundreds of steps that must be taken (e.g., conflict checks, court filings, production of documents, witness examinations, and so on). One of the litigation firms leading the field in this area is Seyfarth Shaw who have process-mapped a large number of their litigation matters to identify how the process could be improved – can any steps in the process be eliminated or combined? Can any steps be outsourced or delegated to a more junior person? What steps can the client undertake on their own? What documents are needed at each stage of the process? Process mapping will invariably result in improving or streamlining the workflow, thereby reducing costs to both the law firm and client.

As part of any process-mapping, it is useful to develop checklists for each step of the lawsuit, annotated with links to relevant precedents, forms and research, something which will save time and also reduce costs to both the firm and the client.

7) **Project Management:** However, improving the process for the various steps in a lawsuit is insufficient if you are otherwise not bringing some discipline to how you manage that process. One of the key ways that law firm knowledge management is evolving is more formally incorporating project management principles.

To reduce costs in litigation matters, it may help to think of project management in four phases, especially where alternative fees – such as fixed fee quotes – may be involved:<sup>19</sup>

1. **Scope of the retainer/budget:** Litigation lawyers can learn from professionals in other industries such as engineers or IT consultants who spend

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<sup>19</sup> See Ted Tjaden, “Legal Project Management for Law Librarians: Are You on Board?” (March 2011) 16 AALL Spectrum 14.

a lot of time up front discussing with the client the scope of the “project”: what work will be included? What work will *not* be included? What are the steps or phases to the project? How will it be staffed? What is the expected timeline? What are the costs? What are the risks of the project being delayed?

By going into detail more than usually with the client with these points at the beginning of the retainer will help set client expectations and provide a clear(er) roadmap of how the lawsuit will proceed.

2. **Staffing and managing the work:** To be cost-effective, litigation lawyers will generally need to appropriately staff their matters, leveraging junior lawyers, law clerks, and assistants as much as is prudently possible. If one has processed-mapped the particular lawsuit in advance, appropriately staffing the matter will be made easier, thereby making it easier to find cost-savings.
3. **Monitoring the work:** Project management also entails monitoring the project as it progresses to ensure the timeline is being followed, to identify deviations from scope, and to track progress to budget to ensure the project is on time and on budget.
4. **After-action review:** When matters are completed, most lawyers (and clients) generally want to move on to new business. However, project management best practices suggest there is value in reviewing the matter – often with the client – to learn what went right, what went wrong, and how the matter could have been done better. As part of this review, it is useful to harvest any precedents and research and to modify the process-map and checklists, as needed.

By adopting a project management discipline to litigation matters, you will become more efficient and cost-effective, saving money for you and your clients.

8) **Technology:** In addition to the previous technologies already discussed above, there are a number of other technologies that can help reduce litigation costs (see the bibliography for more detailed lists of various technology providers):<sup>20</sup>

**a) Case management software:** There are an endless number of software solutions for lawyers to manage lawsuits. This software can save costs by helping to automate the processing and creation of litigation documents and the monitoring of cases and fees.

**b) e-Discovery solutions:** As e-Discovery becomes more common in Ontario litigation, lawyers are experimenting with various technologies to help review and tag litigation documents for relevancy and privilege. Although Summation seems to be the most commonly-used litigation document review software in Toronto, many firms are experimenting with “smart search” e-Discovery products such as Clearwell or Recomind that use concept searching to move beyond literal, keyword searching to instead use content categorization and predictive coding of documents in a matter to seconds, a process that is much more accurate and cost-effective than reviews done in person.

**c) Extranets / client collaboration:** There are any number of secure “cloud” solutions such as Firmex that can allow litigation lawyers to share documents,

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<sup>20</sup> Also see Canadian Lawyer: *The Software & Technology Guide* (April 2009). Available online: [www.canadianlawyermag.com/April-2009-Software-Technology-Product-Guide.html](http://www.canadianlawyermag.com/April-2009-Software-Technology-Product-Guide.html).

evidence, and testimony online with clients or experts. Alternatively, to the extent that document review is being outsourced, these secure, online shared environments allow for the easy exchange of documents.

**d) Document assembly:** There are also a large number of document assembly providers whose software can reduce the cost of preparing litigation documents at the same time as ensuring consistency and avoiding typographical errors. In an ideal situation, litigation lawyers can incorporate this document assembly software into their case-mapped workflow, tied into their internal precedent system.

**e) Trial presentation software:** Although it is still likely sometime before every courtroom in Ontario will be truly digital, litigation lawyers, witnesses, and the judge can benefit from the use of technology to quickly access exhibits and other evidence, thereby reducing costs at the same time as increasing effectiveness.

## **Conclusions**

While knowledge management may not be able to directly remove the delays currently faced in Ontario courts, it can help reduce costs and make your processes more efficient, all at the same time as ensuring high-quality legal services with predictable expenses. Depending on the nature of your practice and the size of the firm you work in, the 8 knowledge management best practice / tools discussed in this paper should make litigation more economical.



## Bibliography

### Resources on Law Firm Knowledge Management

#### Books

Battersby, Karen. *Know How in the Legal Profession*. Edited by Caroline Poynton. London: Ark Group, 2006.

Parsons, Matthew. *Effective Knowledge Management for Law Firms*. Oxford, UK: Oxford University Press, 2004.

Rusanow, Gretta. *Knowledge Management and the Smarter Lawyer*. New York: ALM Publishing, 2003.

#### Articles

Ted Tjaden, “**The Evolution of Law-Related Knowledge Management in North America – Opportunities for Law Librarians**” (May 2010). Available online: [www.legalresearchandwriting.ca/images/KM-quad.pdf](http://www.legalresearchandwriting.ca/images/KM-quad.pdf).

\_\_\_\_\_, “**The 7 Faces of Legal Knowledge Management**” (November 2009). Available online: [www.legalresearchandwriting.ca/images/7faces.pdf](http://www.legalresearchandwriting.ca/images/7faces.pdf).

\_\_\_\_\_, “**Effective Litigation Knowledge Management**” (November 2008). Available online: <http://www.legalresearchandwriting.ca/images/lit-KM.pdf>.

\_\_\_\_\_, “**Moving Beyond Technology: Assessing Your Firm’s Focus on a KM Culture**” (May 2007). Available online: [www.legalresearchandwriting.ca/images/KM-culture.pdf](http://www.legalresearchandwriting.ca/images/KM-culture.pdf).

\_\_\_\_\_, “**Innovator, Fool, I Dream: Deploying Effective Knowledge Management Principles to Combat Information Overload in Law Firms**” (April 2010). Available online: [www.legalresearchandwriting.ca/images/innovator-fool.pdf](http://www.legalresearchandwriting.ca/images/innovator-fool.pdf).

### KM Blogs:

- **3 Geeks and a Law Blog:**  
*www.geeklawblog.com*
- **Above and Beyond KM:**  
*www.legalresearchandwriting.ca/knowledge-management.htm*
- **Connie Crosby:**  
*conniecrosby.blogspot.com*
- **Dennis Kennedy Blog:**  
*denniskennedy.com/blog/*
- **ILTA KM Blog:**  
*km.iltanet.org*
- **LawyerKM Blog:**  
*lawyerkm.com*
- **SLAW:**  
*www.slaw.ca*
- **Strategic Law Librarian:**  
*strategiclibrarian.com*
- **Strategic Legal Technology:**  
*prismlegal.com/wordpress/*
- **Thoughtful Legal Management:**  
*thoughtfullaw.com*

### Resources on Legal Project Management and Alternative Fee Arrangements

Boake, Barbara J. & Rick Kathuria. *Project Management for Lawyers*. Peoria IL: Ark Group, 2011.

Dyson, Sally. *Budgeting and Negotiating Fees with Clients: A Lawyer's Guide*. Peoria, IL: Ark Group, 2011.

Gawande, Atul. *The Checklist Manifesto: How to Get Things Right*. New York: Metropolitan Books, 2010.

Hassett, Jim. *The Legal Project Management Quick Reference Guide: Tools and Templates to Increase Efficiency*. 2d ed. Boston, MA: LegalBizDev, 2011.

\_\_\_\_\_. *The LegalBizDev Survey of Alternative Fees* (2010). Available online for purchase, <http://www.legalbizdev.com/survey/>.

Lamb, Patrick J. *Alternative Fee Arrangements: Value Fees and the Changing Legal Market*. London, UK: Ark Group, 2010.

Levy, Stephen B. *Legal Project Management: Control Costs, Meet Schedules, Manage Risks, and Maintain Sanity*. Seattle, WA: DayPack Books, 2009.

Project Management Institute. *A Guide to the Project Management Body of Knowledge (PMBOK Guide)*. 4th ed. Newtown Square, PA: Project Management Institute, 2008.

Susskind, Richard. *End of Lawyers? Rethinking the Nature of Legal Services*. Oxford: Oxford University Press, 2008.

## Resources on Litigation Case Management & eDiscovery Technology

### Litigation Case Management Literature

Bilinsky, David. “**25 Benefits of Case Management in 40 Minutes.**” Available online: [www.lawsociety.bc.ca/practice\\_support/articles/CaseMgmt.html](http://www.lawsociety.bc.ca/practice_support/articles/CaseMgmt.html) (April 2002).

Felsky, Martin. “**Principles of Litigation Management**” from SLAW (blog), available online: [www.slw.ca/2008/07/31/principles-of-litigation-management](http://www.slw.ca/2008/07/31/principles-of-litigation-management) (31 July 2008).

\_\_\_\_\_. “**Software Products: What’s Out There and What do They Do?**” in *Electronic Evidence in the Litigation Process* (Toronto, ON: Osgoode Hall Law School, York University, Professional Development Program, Continuing Legal Education, 2005).

Granger, BT. “**Using Litigation Support Software in the Courtroom.**” Available online: [www.practicepro.ca/practice/PDF/UsingLitigationSupportSoftwareinCourtroom.pdf](http://www.practicepro.ca/practice/PDF/UsingLitigationSupportSoftwareinCourtroom.pdf) (2005).

Kennedy, Dennis & Tom Mighell. *The Lawyer's Guide to Collaboration Tools and Technologies: Smart Ways to Work Together*. Chicago, IL: American Bar Association Law Practice Management Section, 2008.

Pollak, Niamh. “**The Authentication and Admissibility of Electronic Evidence**” (July 2007) 8 Internet & E-Com L Can 43-47.

Roitblat, Herbert L “**Technology and E-commerce Litigation**” (Aug. 2005) 3 Com Litigation Rev 42-47.

Shaw, Duncan W. “**The Management of Civil Litigation**” (July 1999) 57 Advocate (Van) 557-561.

### **Selected E-Discovery Literature**

Buckley, Timothy & David Outerbridge. “**Litigation Hold Letters and Making/Responding to E-discovery Requests: Show Me How (and Give Me Precedents)**” in *Electronic Discovery and the Sedona Canada Principles: Best Practices for Dealing with Electronic Information* (Toronto, ON: Continuing Legal Education, Ontario Bar Association: Advocates' Society: Law Society of Upper Canada, 2007).

Burke, Todd J et al. *E-discovery in Canada* (Markham, ON: LexisNexis Canada, 2008).

Cameron, Alex. “**Electronic Discovery: Knowing What to Preserve and Preserving it Properly – Parts I and II**” (Oct 2007) 17 Can Corp Counsel 17-22.

\_\_\_\_\_. “**Electronic Discovery: Anticipating Litigation? Knowing What to Preserve and How to Preserve it Properly – Part III**” (Nov 2007) 17 Can Corp Counsel 33-36.

Campbell, Colin L & Dan Pinnington. *Electronic Discovery and the Sedona Canada Principles: Best Practices for Dealing with Electronic Information* (Toronto, ON: Ontario Bar Association. Continuing Legal Education, 2007).

Crerar, David & Ryan Purita. “**No Hiding Place in Cyberspace: Electronic Discovery from Non-parties**” (Nov 2006) 64 Advocate (Van) 781-98.

Huang, Rebecca. “**E-discovery: Should the Discovery Costs be Shifted to the Requesting Party?**” (Dec 2007) 33 Adv Q 419-36.

Jaar, Dominic & Wendy Cole, “**Tips and Tricks for Storage and Recovery of E-documents**” in *The Canadian Institute’s 2nd Annual Conference on E-document Management & Discovery* (Toronto, ON: Canadian Institute, 2007).

Leck, Brian, Kevin Lo & Susan Wortzman. “**Litigation Risk and E-discovery: Understanding the Risks and Avoiding the Quicksand**” in *General Counsel Compliance and Controls Conference: Regulatory Compliance and Governance, Protocols and Controls, Risk Management Strategies* (Toronto, ON: Insight Information, 2007).

Legault, Jean-François. “**Electronically Stored Information: A Reality Check**” on SLAW (Blog), available online: [www.slaw.ca/2008/09/22/electronically-stored-information-a-reality-check/](http://www.slaw.ca/2008/09/22/electronically-stored-information-a-reality-check/) (22 September 2008).

MacLeod, Calum. “**E-discovery: Lessons from the Case Law**” in *Electronic Discovery and the Sedona Canada Principles: Best Practices for Dealing with Electronic Information* (Toronto, ON: Continuing Legal Education, Ontario Bar Association: Advocates’ Society: Law Society of Upper Canada, 2007).

Nickle, Susan E. “**Preservation Education: Your Obligations Regarding the Safekeeping of Electronic Data when Litigation is Pending**” in *The Canadian Institute’s 2nd Annual Conference on E-document Management & Discovery* (Toronto, ON: Canadian Institute, 2007).

Ripa, Kevin J. “**Determining When You Need a Forensic Expert and What Type of Expert you Need**” in *The Canadian Institute’s 2nd Annual Conference on E-document Management & Discovery* (Toronto, ON: Canadian Institute, 2007).

Smith, Glenn & Todd Burke. “**Readying Yourself for the E-discovery Explosion: Studying the Latest Canadian Judicial Developments**” in *The Canadian Institute’s Conference on E-document Management & Discovery* (Toronto, ON: Canadian Institute, 2006).

Wortzmann, Susan. “**Spoliation, Litigation Holds and Preservation Orders: The New E-discovery Guidelines**” in *Electronic Discovery and the New ED Guidelines: A Roadmap for Dealing with Electronic Information* (Toronto, ON: Continuing Legal Education, Ontario Bar Association: Advocates’ Society, 2005).

Wortzman, Susan. “**E-discovery: The Beginner’s Guide**” in *The Twelve-Minute Civil Litigator* (Toronto, ON: Continuing Legal Education, Law Society of Upper Canada, 2005).

## **Selected Vendors of Litigation Management Software and E-Discovery**

The following is a selected list of vendors who have products that support litigation or case management. The list is by no means exhaustive and I do not intend to feature or favour any particular vendor (and if I have missed a particular vendor, it was through inadvertence on my part). Readers are encouraged to conduct their own investigations of the suitability of any particular product or vendor.

### **Litigation and Case Management Software Vendors**

- AbacusLaw: *www.abacuslaw.com*
- Advantage Computer Systems: *www.advantagelaw.com*
- Amicus Attorney: *www.amicusattorney.com*
- CaseMap: *www.casesoft.com*
- CaseTrack: *www.case-track.com*
- Concordance (LexisNexis): *law.lexisnexis.com/concordance*
- FIOS: *fiosinc.com*
- IPRO: *iprotech.com*
- LawBase: *www.lawbase.com*
- LawTrac: *lawtrac.com*
- Legal Files: *www.legalfiles.com*
- LegalEdge: *www.legaledge.com*
- Mitrates: *www.mitrates.com*
- PracticeMaster: *-www.tabs3.com*
- Recommind: *www.recommind.com/ediscovery.html*
- Serengeti Tracker: *www.serengetilaw.com*
- Summation: *www.summation.com*
- Time Matters: *www.timematters.com*
- Total Search *law.lexisnexis.com/total-search*
- West KM: *west.thomson.com/products/services/westkm/default.aspx*

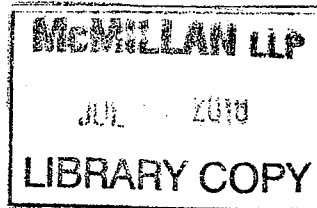
## RSS Feeds/Blogs and Sites for Litigation Current Awareness

- **Ontario Courts:**  
*www.ontariocourts.ca/coa/en/rss/*
- **Supreme Court of Canada (mailing lists):**  
*scc.lexum.org/en/subscribe.html*
- **CanLII RSS feeds (saved searches):**  
*www.canlii.org/en/rss.html*
- **SLAW.ca:**  
*www.slaw.ca/subscribe/#rss*
- **Osgoode Hall Law School: The Court:**  
*www.thecourt.ca/feed/*
- **FMC: Ontario Rules of Civil Procedure:**  
*www.ontariorulesofcivilprocedure.com*
- **McCarthy LLP: Canadian Appeals Monitor:**  
*www.canadianappeals.com*
- **LSUC – CPD Feed:**  
*feeds.feedburner.com/lruc-cle*
- **Financial Post – Legal Post:**  
*business.financialpost.com/category/legal-post/feed/*
- **The Lawyer’s Weekly:**  
*www.lexisnexis.ca/updates/whatsnewtlw.xml*
- **Law Times:**  
*lawtimesnews.com*
- **Canadian Lawyer:**  
*www.canadianlawyermag.com/legalfeeds/*
- **Other litigation blogs from Lawblogs.ca:**  
*www.lawblogs.ca/category/substantive/civil-litigation/*
- **Ted Tjaden: Custom Google Search of Canadian Law Firms/Blogs:**  
*www.legalresearchandwriting.ca/google.htm*

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# LEGAL RESEARCH AND WRITING

THIRD EDITION



**TED TJADEN**

National Director of Knowledge Management  
McMillan LLP



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