

## *The Sedona Canada Commentary on Cost Containment in Electronic Disclosure and Discovery: Best Practices*

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This Commentary offers practical guidance in building a defensible yet cost-effective process for identifying, preserving, collecting, processing, analyzing, reviewing, and producing electronically stored information, not only in the mega cases that have attracted so much attention, but as importantly in the more-typically sized cases where costs must be kept in proportion to what is at stake.

The Commentary proposes the following best practices and approaches to contain the costs of discovery across the spectrum of litigation files:

1. At the pleading stage, focus on what information is needed to resolve the dispute.
2. Dialogue with opposing counsel from the beginning.
3. Narrow the scope of collection.
4. Use the Rules.
5. Adopt “best practices” around lawyer review.
6. Think of the Discovery Plan as an Action Plan.
7. Use automated tools where appropriate for the job.
8. Know when to call for help from e-discovery consultants.
9. Improve document retention/destruction practices.

The use of the proposed approaches in typical discovery situations illustrates their application. The Commentary stresses that expensive and sophisticated tools are less critical than cooperation, communication and common sense, and only necessary where warranted by, for example, the volume of the information. The first four practices in particular should help focus discovery to what is essential.

The body of the commentary proposes actions that would be appropriate for the majority of litigation files, regardless of their size. The appendices delve more deeply into project management and information management, and include a table comparing pleading rules across all jurisdictions in Canada.

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