

*Specifically focused on public sector concerns!*

# E-discovery and Litigation Readiness for the Public Sector

## Our Faculty

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ALBERTA JUSTICE AND ATTORNEY GENERAL

### WHO SHOULD ATTEND THIS EVENT

- Records and Information Management Professionals
- IT Managers and CIOs
- In-House Counsel to Government Departments and Agencies
- Government Litigation Staff
- External Counsel

#### From

- Federal Government Departments
- Provincial and Territorial Ministries
- Municipal and Regional Governments
- Crown Corporations

**May 17 and 18, 2011**

**Lord Elgin Downtown Ottawa Hotel  
OTTAWA, ONTARIO**

***E-discovery can mean HUGE costs and administrative burdens for departments that aren't fully prepared. Get the best approaches to ensure you don't fall victim to an e-discovery nightmare!***

- ✓ Learn preparation secrets to help you minimize costs when hit with an e-discovery order.
- ✓ Understand how to get records, legal, and IT departments working together: hear from a professional who has worked in all three!
- ✓ Get up to date on the latest developments in e-discovery in Canada, with a specific focus on the needs of the public sector!
- ✓ Learn what works—and what doesn't—from real-life case studies.
- ✓ Hear from some of Canada's leading minds in the area of e-discovery. They'll cut through to the issues that matter to you.
- ✓ Take advantage of innovative approaches—designed for the realities of record-keeping in the public sector—that will save you time and money and keep you on the court's good side.
- ✓ Learn what the courts are looking for and what they expect, especially when dealing with parties that are seen to have “deep pockets.”
- ✓ Identify strategies you can use to sell litigation readiness to senior management.

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# E-discovery and Litigation Readiness for the Public Sector

May 17 and 18, 2011 • Lord Elgin Downtown Ottawa Hotel • Ottawa, Ontario

## DAY ONE PROGRAM AGENDA: TUESDAY, MAY 17, 2011

**7:30 – 8:30 Registration and Continental Breakfast**

**8:30 – 8:40**

### Welcome and Opening Remarks from the Chair

*Edward Tompkins, Principal Consultant, Government Consulting Services, Public Works and Government Services Canada*

**8:40 – 9:30**

### E-discovery in Canada Today: What's Changed, and What Do You Need to Prepare For?

*Peg Duncan, Independent Consultant, IT and E-discovery; formerly Director, Business Opportunities and Emerging Technologies, Justice Canada; Founding Member and Member of Editorial Board, Sedona Canada*

- Rules on e-discovery: what has changed?
- E-discovery: key provisions and applications to date
- Applying the new relevance test
- Rules of proportionality: strategic considerations
- Guidelines and strategies for an effective discovery process
- E-evidence practice guidelines
- Negotiating the process and negotiating the inclusions and exclusions
- Determining where to draw the line: the business case scenario

**9:30 – 10:20**

### What Makes E-discovery Different in the Government?

*Crystal O'Donnell, Manager - Canada, Potter Farrelly & Associates*

- Balancing privilege, confidentiality, and privacy considerations
- Access to information and freedom of information requirements
- Archiving requirements vs. e-discovery best practices for record destruction
- Litigation vs. inquiries and commissions
- Determining realistic timetables
- Proportionality in government

**10:20 – 10:40**

**Networking Break**



**10:40 – 11:30**

### Locating and Limiting Relevant Electronic Information: A Focused Approach to Identifying Key Custodians

*Edward Tompkins, Principal Consultant, and Greg Murphy, Principal Consultant, Government Consulting Services, Public Works and Government Services Canada (PWGSC)*

- Strategies to control and contain the scope of electronically stored information that has to be recalled
  - creating historical timelines and other reports to help focus the call letter and provide an overview of the litigation matter
  - conducting preliminary searches for relevant paper records in HQ, regional offices, and archives
  - using results of paper identification to identify key custodians of electronic information
- Assisting litigators in responding to Sedona Canada's "meet and confer" requirement
- Ensuring only relevant paper and electronic documents are collected and added to the litigation database
- Reducing the high downstream cost of legal review of documents by ensuring only relevant information is initially captured

*Greg Murphy and Edward Tompkins are principal consultants with PWGSC's Government Consulting Services (GCS), the federal government's in-house management consulting service. They were instrumental in developing a new*

*line of business within GCS, Litigation Services, to assist federal departments and litigators involved in large document litigations.*

**11:30 – 12:20**

### Getting Your Policy in Place and Testing It: What You Need to Consider

*Diane Crouse, Director, Information Management Division, Treasury Board Secretariat*

- What does an e-discovery policy need to cover?
- Whom to involve in developing your policy
- Key issues to consider
- Testing: don't wait until you're facing a real discovery order
- What you need to consider in the testing process

**12:20 – 1:30**

**Luncheon**

**1:30 – 2:20**

### HRSDC's E-discovery Preparation

*James Gray, Counsel, Human Resources and Skills Development Canada*

- Strategic approaches
- Working collaboratively
- Testing and revising
- Lessons learned

**CASE STUDY**

**2:20 – 2:40**

**Networking Break**



**2:40 – 3:30**

### Getting High-Level Buy-in: Making the Business Case for E-discovery Readiness

*Edwina Podemski, Counsel, Alberta Justice and Attorney General; Member, Sedona Canada*

To introduce an effective litigation management program for e-records, you need properly trained people, advanced technology, and an organizational-level culture shift. However, the costs of not having an effective system can be even higher.

- Developing a strategic plan for proactive records management
- Moving from an ad hoc basis to a holistic approach
- Leveraging dedicated resources

**3:30 – 4:20**

### Ensuring a Good Working Relationship between Records, IT, and Legal

*Lewis Eisen, Manager, Records Services, Industry Canada*

This session will explore the challenges IM, IT, and legal professionals face when trying to work together. Topics covered include:

- Achieving a common vocabulary
- Strengths and limitations of each group
- Areas of overlap and conflict
- Organizational barriers to co-operation
- Integrated planning

*Lewis Eisen has been working with information management technology for 25 years. He is a former practising lawyer, a former IT systems manager, and currently the Manager of Records Services in the Information Management Branch at Industry Canada. He has written four editions of The Canadian Lawyer's Internet Guide, as well as numerous articles on law and technology. He has taught courses on law, computers, and information management, and is a frequent speaker at conferences across the country.*

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## DAY TWO PROGRAM AGENDA: WEDNESDAY, MAY 18, 2011

7:30 – 8:30

Continental Breakfast

8:30 – 8:40

### Opening Remarks from the Chair

*Edward Tompkins, Principal Consultant, Government Consulting Services, Public Works and Government Services Canada*

8:40 – 9:25

### You've Got a Litigation Hold in Hand: Now What?

*Jean-Sebastien Rochon, Counsel, Health Canada Legal Services Representative, Records Management, Health Canada*

- How to determine the scope of a litigation hold
- What decisions you have to make
- Determining what the scope needs to be
- What restrictions can you reasonably bring to the hold?
- Determining what you can legitimately delete or destroy
- Understanding the cost implications
- What counsel should do when they receive a litigation hold
- What the department should do when it receives a litigation hold

9:25 – 10:10

### How Do You Know You've Found Enough? Balancing Risk and Cost

*Duncan Fraser, General Counsel, Civil Litigation Section, Justice Canada*

- Cost and risk tradeoffs of various search strategies
- Reducing the waste in discovery
- Dealing with different silos, all of which have different records management strategies
- Reorganization, restructurings, and reassignments: figuring out where historical records have wound up
- Importance of open and frank communication with opposing counsel
- Importance of looking for the richest and juiciest information first

10:10 – 10:30

Networking Break



10:30 – 11:15

PANEL DISCUSSION

### View from the Bench: What Do the Courts Consider Reasonable?

*Master Calum Macleod, Ontario Superior Court of Justice*  
*Peg Duncan, Independent Consultant, IT and E-discovery, formerly Director, Business Opportunities and Emerging Technologies, Justice Canada; Founding Member and Member of Editorial Board, Sedona Canada*

*Duncan Fraser, General Counsel, Civil Litigation Section, Justice Canada*

- Expectations of organizations seen as having “deep pockets”

11:15 – 12:00

### Special Considerations for Big Cases

*Todd Burke, Partner, Gowlings*

- Project management
- Budgeting
- Expert management
- Communications and crisis management
- Document management
- Resource management and coordination

12:00 – 1:15

Luncheon

1:15 – 2:00

### E-discovery Readiness in an Era of Fiscal Austerity

*Michel Gailloux, President, Michel Gailloux Consulting Services Inc.; former Director of Information Management, Canadian Food Inspection Agency*

- Electronic discovery reference model
- Information universe
- Sedona Canada principles
- *The Sedona Canada Commentary on Proportionality in Electronic Disclosure & Discovery*
- Finding relevant information at low costs
- E-discovery software tools
- Litigation and investigation readiness: strategy and planning

*Michel Gailloux's area of expertise is information management, litigation readiness and electronic discovery planning and execution. He has been a member of various Government of Canada information management advisory committees, such as the Information Management Community of Practice and the IM Litigation Readiness Working Group. The work of Mr. Gailloux on electronic discovery has been recognized nationally, and he received the 2008 Government of Canada Information Management Community Recognition Award.*

2:00 – 2:20

Networking Break



2:20 – 3:10

### Using Records as Documentary Evidence

*Graham Underwood, Counsel, Legal Services Branch, BC Ministry of Attorney General; co-author of Electronic Evidence in Canada (Carswell Canada)*

- Characterization and classification of electronic records
- How the nature of the information contained in a record affects its admissibility
- Distinction between “documentary electronic records” and “real electronic records”
- Authenticating electronic records
- Establishing the reliability of electronic records
- Admissibility at trial of electronic records
- Using information from the Internet as evidence

3:10 – 4:00

### Digital Records Forensics: Conducting a Gap Analysis

*Jean-François Legault, Senior Manager, Forensic and Dispute Services, Analytic and Forensic Technology, Samson Bélair/Deloitte & Touche LLP*

- Dealing with digital evidence
- Determining and maintaining authenticity over time of digital records

*Jean-François Legault specializes in computer forensic investigations, investigatory data analytics as well as the prevention and detection of technology based. He has assisted clients in various industry sectors with the identification, preservation, preparation and review of electronic evidence in relation to fraud investigations, civil litigation, arbitration and regulatory compliance reviews.*



### CONFERENCE ACCREDITATION:

This program can be applied towards 9 of the 12 hours of annual Continuing Professional Development (CPD) required by the Law Society of Upper Canada. Please note that these CPD hours are not accredited for the New Member Requirement.

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## THREE KEY BENEFITS OF ATTENDING THIS EVENT

- 1) Learn the secrets of controlling the costs of e-discovery
- 2) Identify what you need to do now to prepare your department: make sure your policies are up to date and ready!
- 3) Get advice specific to the realities of record-keeping in the public sector

**LOCATION:** *E-discovery and Litigation Readiness for the Public Sector* will be held at the **Lord Elgin Hotel**, 100 Elgin Street, Ottawa, Ontario, K1P 5K8. Telephone: 1-800-267-4298 Website: www.lordelginhotel.ca

**YOUR REGISTRATION INCLUDES:** Registration fees include all course materials, continental breakfast, lunch, and refreshments. **Parking and accommodation are not included.**

**SPONSORSHIP & EXHIBITION:** If you would like to increase your visibility with IT, document, and content management professionals, you need to be at *E-discovery and Litigation Readiness for the Public Sector*. A limited number of sponsorship options are available. For more information contact 1.800.474.4829, ext. 244, or sponsorship@infonex.ca.



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### CANCELLATION POLICY:

Substitutions may be made at any time. If you are unable to attend, please make cancellations in writing and fax to 1-800-558-6520 **no later than May 3, 2011**. A credit voucher will be issued to you for the full amount, redeemable against any other INFONEX course and which is valid for twelve months (one year) from the date of issue. If you prefer, you may request a refund of fees paid, less a 15% administration fee.

Registrants who cancel after **May 3, 2011**, will not be eligible to receive any credits or refunds and are liable for the entire registration fee.

Confirmed registrants who do not cancel **by May 3, 2011**, and fail to attend will be liable for the entire registration fee.