Litigation in the Digital and Electronic World

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INTRODUCTION

The prevalence of electronic records presents challenges and opportunities in litigation. Litigants remain obliged to prepare an affidavit of records that includes all relevant and material records. As more work and communications are done electronically, lawyers and clients must dedicate more effort and attention to meeting this obligation. For example, I am aware of recent Canadian cases in which millions of records were collected for processing and hundreds of thousands of records were produced.

But the storage of records in electronic format also enables more sophisticated techniques of organization and retrieval. This paper addresses some of the practical challenges and opportunities presented by electronically-stored information (“ESI”) in the litigation context, and presents suggestions for: ensuring that records are properly located and disclosed; managing the receipt of records from opposing parties; and organizing the large number of records typically produced in bigger litigation files.

MANAGING E-DISCOVERY: PRODUCTION OF RECORDS

The following graphic presents the general stages of electronic discovery:

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1 The author expresses his appreciation for the help of Aaron Rankin and Patrick Keogh in preparing this article.

2 Alberta Rules of Court, Alta Reg 124/2010, Alberta Rules of Court, r 5.5(1), 5.6(1) (the “Rules”). This paper omits a detailed discussion of e-discovery law concerning e-discovery.