


E-DISCOVERY: REVIEW

David Wotherspoon
dwotherspoon@van.fasken.com



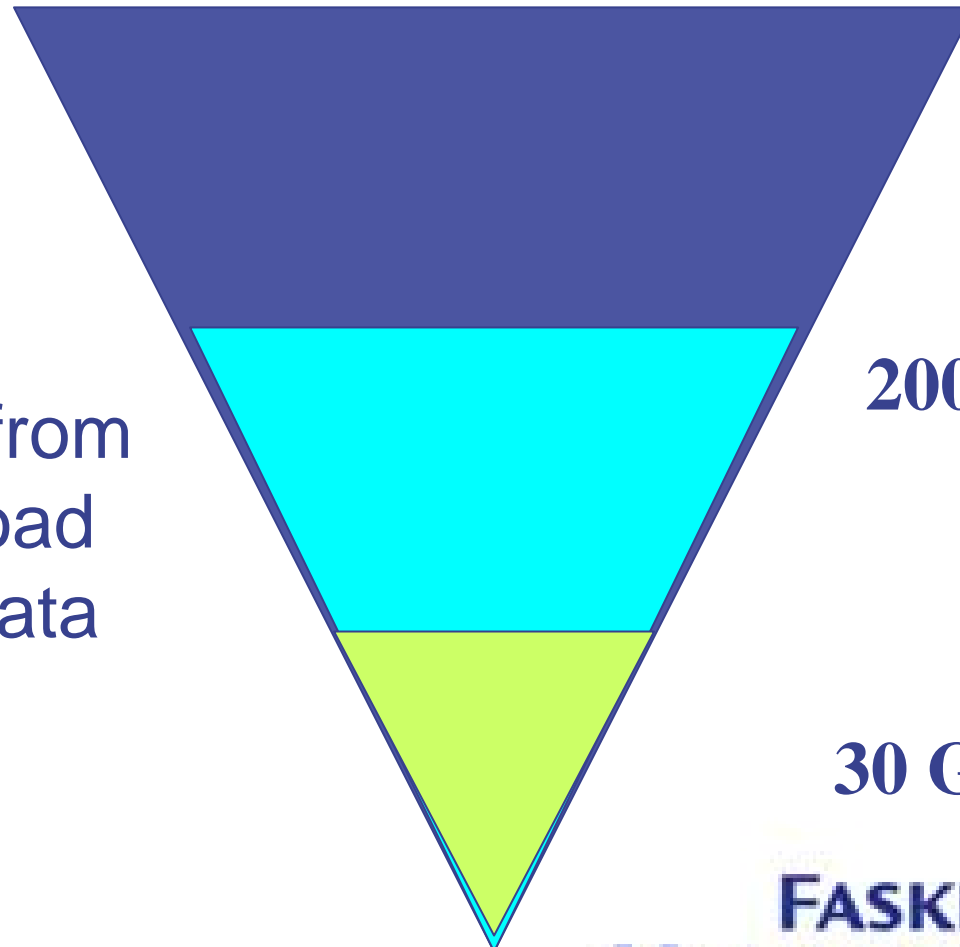
“We’re flooded with information, but that doesn’t mean we have the tools that let us use the information effectively”

Bill Gates

THE "N" CASE

500 GB

- © Funnelling down from information overload to meaningful e-data



200 GB

30 GB



THE “N” CASE BACKGROUND

- ④ Producing party
- ④ 500 GB of e-data from daily operations currently on server



500 GB e-data



THE “N” CASE INITIAL MEETING

- ④ As a first step:
 - third party e-discovery consultant
 - initial meeting with client’s IT department, litigation team, and third party consultant



THE “N” CASE

FIRST LEVEL REVIEW

- ④ Strategy brainstorming
- ④ Apply forensic indexing
- ④ Key-word search terms to indexed server → 200 GB result
- ④ 200 GB further reviewed
- ④ Results of further review copied into NEW folders



200 GB



THE “N” CASE SECOND LEVEL REVIEW

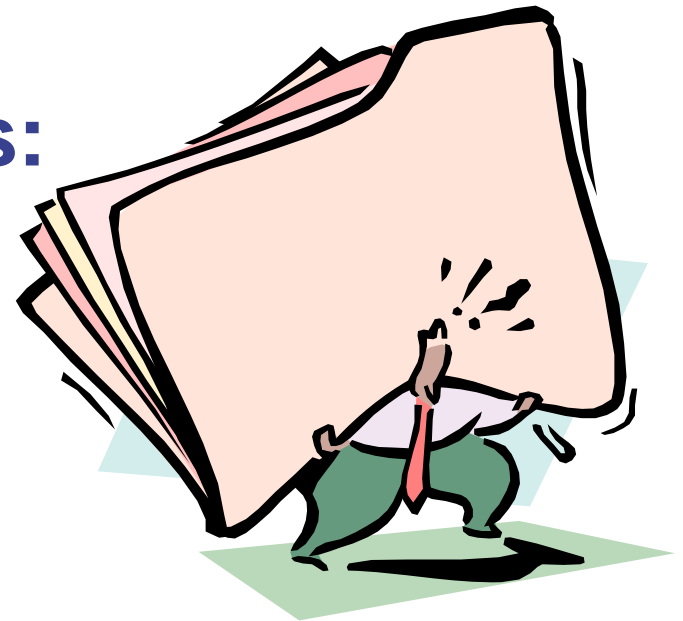


30 GB

- ⑥ 30 GB of e-data from the refined search
- ⑥ 30 GB copied, translated and uploaded into search tool software
- ⑥ Second level review of uploaded e-data

THE REVIEW PROCESS

- ⑥ **STRIKE a responsible balance**
 - ⑥ Proportionality
- ⑥ **Important considerations:**
 - ⑥ Excessive review time
 - ⑥ Costly conversion fees
 - ⑥ Overproduction
 - ⑥ Information overload
 - ⑥ Information underload





OVERVIEW

1. GUIDELINES / PROTOCOLS
2. E-DISCOVERY STAGES
3. FIRST LEVEL REVIEW
4. SECOND LEVEL REVIEW
5. RECAP



1. GUIDELINES / PROTOCOLS

- ④ **Growing need for standards and protocol:**
 - ④ U.S. Sedona Principles
 - ④ Ontario Bar Association Discovery Task Force Report
 - ④ BC Practice Direction



CANADIAN GUIDELINE FOR REVIEW

- “A party may satisfy its obligation to review electronic documents and data in good faith by using electronic tools and processes such as data sampling, searching or the use of selection criteria to identify the electronic documents and data that are most likely to contain relevant information.”

Canadian Draft Sedona Principles



2. E-DISCOVERY STAGES

E-DISCOVERY STAGES:

1. Identification / Location
2. Preservation
3. **Review**
4. Production

- ⦿ **Review** occurs at multiple stages
- ⦿ **First Level**: identification / location
- ⦿ **Second Level**: relevance / privilege



FIRST LEVEL REVIEW

④ Selection Criteria:

- ④ types and forms (marginal discovery utility)
- ④ key users
- ④ key-word search terms
- ④ key data types
- ④ key data processing systems



FIRST LEVEL REVIEW cont'd

- ④ **Data Sampling**
- ④ **Record Culling Procedures / Techniques:**
 - ④ date range culling
 - ④ key-word search term culling
 - ④ non-document & non-user file culling
 - ④ de-duplication culling



FIRST LEVEL REVIEW cont'd

EXTRACTION & INDEXING

- ④ third party contractor
- ④ objective coding (name, bates coding)

SOFTWARE PROGRAM

- ④ uploading using software to assist in the second level manual review



SECOND LEVEL REVIEW

- ④ **Manual and Electronic Review** conducted at second screening for relevance and privilege
- ④ **Review Time** depends on the amount of data that is produced
- ④ **Privileged Documents and Data** excluded and listed on separate index



SUCCESSFUL REVIEW TIPS

- ④ **To achieve a successful review of electronic documentation**
 - need to PLAN
 - need to COOPERATE
 - need to COMPROMISE