

E-Discovery ???

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**COMMONWEALTH
LEGAL**

By:

**Stéphane Bourbonnière
Consultant and Business
Development – CL Juridique**



E-Discovery – Key Steps

- Planning
- Collection
- Data Preparation
- Review
- Production



Planning

- Choose your partners
- Preservation
 - Understand the Data Universe
 - Document Retention Policy and Practice
 - Documents Management System Structure
 - Readiness to Produce Documents
 - Interrogatories and Depositions
 - Risk of Spoliation



Planning (Cont.)

- Anticipate Scope of Discovery
 - Determine the criteria for Privilege and Relevancy
 - Determine the potential quantity of electronic data involved
 - Identify potential time and /or custodian slices
 - Review and negotiate the scope of discovery requests
- Research Opposition and Develop Offensive Strategy



Case introduction

Montreal-based Moneywell International is the target of a class-action lawsuit relating to its allegedly defective thermostats. The "exploding" thermostats in question are the following models:

Model 101, 102, 109, 111, 141 (designed and sold 1998-2000)

Model GY77-09a (designed and sold 1999-2001)

Iceberg 103 (designed and sold 2002-2004)

Iceberg 104 (designed and sold 2003-2004)

Tempest 360, 381, 412 (designed and sold 2004-current)

Tempête 360, 382, 412b (designed and sold 2004-current)



Case introduction (cont.)

The thermostats were designed and tested by teams of 8 engineers, most of which operated out of Denver Colorado, but some of whom worked in Vancouver and Montreal. Testing is done in a special controlled environment using custom software that tracks minute temperature changes. All test data is recorded in this proprietary system.


In 1999, to prepare for Y2K, Moneywell completely upgraded its network and desktop operating systems and backup hardware and software. In 2003, the company switched from Lotus Notes to Microsoft Exchange for enterprise e-mail. Moneywell's IT infrastructure, including backup and business continuity, is outsourced to DGI, a large IT services company.

Your client has forwarded you a Notice of class action. How do you respond?



Questions & answers from the Planning meeting

- Is there an DRP and a DMS in place?
 - Yes there is a DRP and we are using DM5.
- How does it affect the location of the data
 - User can't save outside of the DMS and the server is located in Montreal.
- It is true for e-mail as well?
 - Yes. User are keeping the e-mail either on the exchange server or in the DM5
 - They cannot create a PST file on their Computer
- What about Backups?
 - All servers are located in Montreal and the backup schedule is 2 monthly full backup and 30 days incremental



Questions & answers from the Planning meeting (cont.)

- What is your archiving policy?
 - 6 month policy
- What about your e-mails outside of your DMS still residing on your exchange servers?
 - Each user has a 1 gig of space which they manage themselves.

ETC...



Results of the planning meeting

- List of 12 custodians (2 has left)
- All data resides in Montréal
 - 2 exchanges servers (12 gig of data)
 - 3 files servers (1DMS and 2 for the Testing application)
 - Date range is 1998 to current
 - 108 backup tapes (all in good conditions)
 - File types are mostly .doc, .xls, .pdf, .pst



Collection

- Develop a collection plan
- Identify key contacts at your client sites
- List all custodians and the location of their data
- Identify sources of data (paper, active, archival, forensic)
- Decide who executes the collection
 - Can you collect the data yourself?
 - Risk of data collection by employees
 - The importance of Chain of Custody
 - Common Data Collection Questions
- Understand what you have – Early on



Data Preparation

- Data Culling
 - Operation and Program File Culling
 - Data Range Culling
 - File Type Culling
 - Duplicates
 - Boolean Keyword Search
 - Concept Search Filtering
- Metadata
- E-Mails



Review of Documents

- Safeguard of Data
- Ways to Reduce Search and Review Time
- Combine Electronic and Hard Copy
- E-Mail Chains
- Concept Searching
- Efficiency of the Tool
- Privilege and Relevancy
- What to avoid...



Production

- Producing the Right Documents
- Producing Electronically