Information Governance in a Digital World

Managing Information and Organizational Risk

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INFORMATION GOVERNANCE   e-DISCOVERY   TECHNOLOGY STRATEGIES

Agenda

- Why Do We Need Information Governance?

- Canadian Case Law: What are the Courts saying about IG

- IG Best Practices: The intersection of law and records management

- Litigation Readiness: Strong IG is the foundation for e-discovery

- Emerging technologies for IG and e-discovery

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Why Information Governance?
The Data Explosion - Are you ready for it?

- More data was created in the past two years than in the entire previous history of the human race

- Data is growing faster than ever before and by the year 2020, about 1.7 megabytes of new information will be created every second for every human being on the planet

- By 2020 our accumulated digital universe of data will grow from 4.4 zettabyets today to around 44 zettabytes, or 44 *trillion* gigabytes

Source: *Big Data: 20 Mind-Boggling Facts Everyone Must Read*, Forbes (online edition), September 30, 2015

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Why Information Governance?
The Data Explosion - Are you ready for it?

- Within five years there will be over 50 billion smart connected devices in the world, all developed to collect, analyze and share data

- By 2020 more than 1/3 of the data produced will live in or pass through the cloud

Information Governance The Business Case

- Information is a corporate asset and a corporate responsibility

- Improved accessibility and reliability of business records saves time and cost

- Loss of data = loss of reputation

- Reduced storage and other costs due to volume reduction

Information Governance
The Legal Case

- Regulatory compliance

- Litigation readiness

- Cost

- Spoliation claims

- Freedom of information/access to information requests

- Privacy law compliance

- Inadvertent disclosure of confidential or trade secret information

What Are The Courts Saying?

- Policies are expressly endorsed by The Sedona Canada Principles, the U.S. Amended Federal Court Rules, The Sedona Principles, and the judiciary:

- "Companies without a protocol for managing electronically stored information are in big trouble for a number of reasons. It will cost them a fortune to respond to e-discovery requests; they're going to have a tough time finding what they need and it will be difficult for them to raise the proportionality argument when they have no idea what's involved in retrieving the information."

  (Master Calum McLeod, National Post, July 7, 2010)

Canadian Case Law

- Court expects "commercial prudence" in document management in *36332 B.C.* Ltd. v. *Imperial Oil Ltd*. 2002 BCSC 587 (CanLII) 2002-04-23 at paragraph 47

- In *Moezzam Saeed Alvi* v. *YM Inc*., the court held that "a properly run company should have a document retention policy requiring retention of files for a reasonable period extending beyond the limitation period for civil cause of action in contract or tort and the limitation period for a reassessment under the *Income Tax Act*." 2003 CanLII 15159 (ON S.C.) at paragraph 48

- *In Savoy v. The Queen, 2011 TCC 35* the appeal was allowed, in part because the CRA destroyed records that may have helped the taxpayer to challenge the assessment.

Canadian Case Law

- Canadian courts have elected to draw adverse inferences where litigants have failed to produce relevant records. *Fareed* v. *Wood*, 2005 22134 (Ont. S.C.)

- Conversely, they have chosen not to draw such inferences where relevant documents have been destroyed upon the expiry of their standard retention period. *Stevens* v. *Toronto Police Services Board*, 2003 CanLII 25453 (ON S.C.)

- Limited retention policy may also have adverse impact upon a party that fails to retain documents that might be relevant to litigation. See for example: *Siemens Canada Limited v. Sapient Canada* Inc., 2014 ONSC 2314.

Case Law

- Courts are skeptical about the state's ability to protect information, and have used concerns about potential breach to limit collection of information.

"It is not tenable to reason that since only the police will be in possession of this information any sensitive information will never see the light of day. One needs only read a daily newspaper to be aware of the fact that governments and large corporations, are frequently "hacked" resulting in confidential information being stolen and sometimes posted on-line."

Justice Sproat in *R. v . Rogers Communications* 2016 ONSC 70

Designing and Implementing an IG Strategy

- Obtaining organizational buy-in:
  - C-Suite
  - Legal
  - IT
  - Risk
  - Security
  - Privacy
  - Records Management

- The impact of organizational culture: each organization must develop unique policies to align with its own culture

- Policies and procedures must integrate well with existing corporate culture and infrastructure

- Overcoming implementation issues from training to audit

IG Deliverables

- State of the Union update – Report
- IG policies and procedures
- Legal hold
- Classification Plan
- Email and Instant Messaging protocols
- Data Map
- Technology Recommendations

Report

Developing IG Technical Solutions

- Don't treat IG as a technology solution only
- Determine the organizations technical requirements
- Engage stakeholders
- Examine available software solutions
- Tender RFP's, evaluate options
- Conduct a Proof of Concept
- Build buy-in

Legally Defensible Disposition

- Hoarders – Why does everyone want to keep everything?

- How to end the "Keep everything" era

- Cleaning up ROT

- The pros and cons of disposition

- The "legally defensible" assess

and sign-off

Data Type Challenges

Legacy vs. Active Data
Structured vs. Unstructured Data

- Where to start?

- Why segregate approaches between data types

- Understanding structured vs. unstructured data

IG and Litigation Readiness

- The intersection of the IG strategy and litigation readiness planning

- How to leverage IG to improve litigation readiness

- Overlap in IG and L.R. tools

- Quantifying the IG ROI

Emerging Technology for IG and E-Discovery

- Emerging Technologies both cause and solve problems
- Technologies that complicate:
  - Apps
  - Cloud
  - Social
  - Audio and Video
  - IOT

Emerging Technology for IG and E-Discovery

- Tools to govern and manage information:
  - Analytics
  - Predictive coding
  - Auto-redactions
  - Auto-classification
  - Auto-taxonomy
- Expect much more automation

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Questions

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