

Index

ADMISSIBILITY

- See also ELECTRONIC TRIALS
- Authentication, **7:24**
 - Internet, e-mails and instant messages, **7:25**
- Best evidence rule, **7:26**
 - ULCC Act re, **7:26**
- Hearsay
 - generally, **7:27**
 - business records exception, **7:28**
 - common law exception, **7:29**
 - Internet and, **7:30**
- Nova Scotia Civil Procedure Rules, **7:23**
- Provincial rules, **7:23**
- Statutory provisions re, **7:23**
- Uniform Electronic Evidence Act, **7:23, 7:26**

ALBERTA

- See E-DISCOVERY GUIDELINES AND RULES; ELECTRONIC DOCUMENTS

BLACKBERRIES

- Generally, **2:66**

BRITISH COLUMBIA

- See E-DISCOVERY GUIDELINES AND RULES; ELECTRONIC DOCUMENTS; ELECTRONIC TRIALS; PRESERVATION AND COLLECTION, preservation failures

CIVIL PROCEDURE, RULES OF

- See ADMISSIBILITY; E-DISCOVERY GUIDELINES AND RULES; ELECTRONIC DOCU-

CIVIL PROCEDURE, RULES OF

—Cont'd

- MENTS; PRODUCTION OF ELECTRONIC DOCUMENTS, format

CLOUD, THE

- Generally, **3:7**
- Cloud Computing, **3:70**
- Online Storage Lockers, **2:78**

COLLECTION

- See PRESERVATION AND COLLECTION

COMPUTERS

- See also INTERNET
- Generally
 - see ELECTRONIC INFORMATION, CREATION AND STORAGE
- Location of records in, **3:68**
- Programs, **7:14**

CONFIDENTIALITY

- See also PRIVILEGE
- Confidentiality review, **6:63**
- Protection of (Principle 9), **4:34**

COSTS

- Allocation, **7:10**
- Ontario Guidelines re, **4:44, 4:56**
- Sanctions, **5:32**
- Sedona Canada Principles re, **4:36, 4:37, 4:56**
- Sedona Principles re, **4:11, 4:23, 4:24, 4:53**
- Shifting, **4:56**

COURT

- Production, intervention, **7:11 to 7:22**

COURT—Cont'd

Review of culling strategies, **6:28**

COURT ORDERS

See PRESERVATION AND COLLECTION

COURTROOM

Electronic trials
see ELECTRONIC TRIALS

COURT SANCTIONS

Generally, **1:8**
Preservation failures, for
see PRESERVATION AND COLLECTION
Principles re
see SEDONA CANADA PRINCIPLES; SEDONA PRINCIPLES

DATA

Active data as primary source for production (Principle 8), **4:18**
Culling
see PROCESSING
ELECTRONIC DOCUMENTS
Databases, **7:15**
Electronic
see ELECTRONIC DATA, ORGANIZATION AND TYPES
Management system, migrating data from, **5:18**
Online data depository, **6:37**
Preparation
see PROCESSING
ELECTRONIC DOCUMENTS
Sampling, **6:30**
Types of, **5:11**

DATA CULLING

See PROCESSING ELECTRONIC DOCUMENTS

DIGITAL

See ELECTRONIC INFORMATION, CREATION AND STORAGE

DISCOVERY

E-discovery
see E-DISCOVERY
Educative function, **1:4**
Ethics requirement, **1:4**
Oral, **1:4**
Regulating, **1:6**
Right to, **1:4**
Rules
see DISCOVERY RULES
Sedona Canada Principles, **1:4, 1:5**

DISCOVERY RULES

Affidavit of documents, **4:6**
Application to electronic documents, **4:2**
Canada vs. U.S. discovery rules, **4:8**
Document, defined, **4:3**
Failure to produce/disclose document, **4:7**
Production of documents, **4:5**
Scope of documentary discovery, **4:4**

DISPOSAL OF INFORMATION

Generally
see RECORDS MANAGEMENT POLICIES, elements of
Preservation failures
see PRESERVATION AND COLLECTION, preservation failures; SEDONA CANADA PRINCIPLES; SEDONA PRINCIPLES

DOCUMENT

See also ELECTRONIC DOCUMENTS
Defined, **1:3, 2:2**
Described, **2:2**

DOCUMENT—Cont'd

Electronic data and information as, **1:3**
 Expansive concept, as, **1:3**
 Historical overview, **2:2**

E-DISCOVERY

Canadian approach to, **1:6**
 Challenges of, **1:6**
 Guidelines
 see E-DISCOVERY
 GUIDELINES AND
 RULES
 Ontario Guidelines best-practices
 approach, **1:6**
 Rules
 see E-DISCOVERY
 GUIDELINES AND
 RULES
 Sedona Canada Principles and, **1:6**
 Understanding and shaping, **1:9**
 U.S. approach to, **1:6, 4:8**

**E-DISCOVERY GUIDELINES
AND RULES**

Application of, challenges re
 generally, **4:52**
 Alberta, in, **4:9**
 Alberta Practice Note, **4:47, 4:55, 4:56**
 Application of, challenges re
 generally, **4:52 to 4:56**
 cooperation requirement, **4:54**
 cost shifting, **4:56**
 form of production, **4:55**
 proportionality rule, **4:53**
 British Columbia, in, **4:9**
 B.C. Practice Direction, **4:46, 4:55, 4:56**
 Future developments, **4:57**
 Guidelines for the Discovery of
 Electronic Documents in
 Ontario
 see ONTARIO GUIDELINES
 Manitoba Practice Directions:
 Guidelines Regarding

**E-DISCOVERY GUIDELINES
AND RULES—Cont'd**

Discovery of Electronic Docu-
 ments and for the Use of
 Technology in Civil Litigation,
 4:50
 National Model Practice Direction
 for the Use of Technology in
 Civil Litigation, draft, **4:48, 4:55**
 Nova Scotia Rules, **4:9, 4:51**
 Saskatchewan Practice Directive,
 4:49
 Sedona Canada Principles
 generally, **4:9**
 specific
 see SEDONA CANADA
 PRINCIPLES
 Sedona Principles
 generally, **4:9**
 specific
 see SEDONA PRINCIPLES
 U.S. Federal Rules, **4:9**

E-DISCOVERY PLAN

See PRESERVATION AND COL-
 LECTION, client's electronic
 documents, of

**ELECTRONIC DATA,
ORGANIZATION AND
TYPES**

Audio, **2:127**
 Data
 active data, **2:108**
 archived data, **2:110**
 backup data, **2:112**
 categories of, **2:107 to 2:115**
 embedded data, **2:111**
 hidden data, **2:111**
 legacy data, **2:115**
 raw data, **2:109**
 replicant data, **2:114**
 residual/deleted data, **2:113**
 types of, **2:106 to 2:115**
 Database, **2:122**

**ELECTRONIC DATA,
ORGANIZATION AND
TYPES—Cont'd**

E-mail, **2:121**

Files

allocated space, **2:104**

audio/video file format, **2:105**

defined, **2:101 to 2:105**

directories, **2:103**

File Allocation Table (FAT),
2:102

file extension, **2:105**

file name, **2:105**

file systems, **2:102**

free space, **2:104**

slack space, **2:104**

Global positioning system (GPS),
2:129

Graphics, **2:125**

Hash values, **2:117**

Metadata, **2:116**

Multimedia, **2:128**

Secure data

generally, **2:119, 2:120**

decryption, **2:120**

encryption, **2:120**

file permission systems, **2:119**

Security systems, **2:130**

Spreadsheet, **2:123**

Surveillance equipment, **2:131**

Swap files, **2:118**

Video, **2:126**

Word processing, **2:124**

ELECTRONIC DOCUMENTS

Admissibility at trial

see ADMISSIBILITY

Australia Federal Court Rules, **2:14**

Canada Evidence Act definition,
2:11

Characteristics of, special

generally, **2:15 to 2:24**

changeable content, **2:21**

dispersion, **2:22**

environmental dependence, **2:19**

**ELECTRONIC DOCUMENTS
—Cont'd**

Characteristics of, special—Cont'd

intangibility, **2:16**

persistence and durability, **2:18**

portability, **2:24**

searchability, **2:23**

varied content, **2:20**

volume, **2:17**

Character of, **1:5**

Creation and storage

see ELECTRONIC INFORMATION,
CREATION AND
STORAGE

Discovery guidelines

see E-DISCOVERY
GUIDELINES

Evidentiary issues

see ADMISSIBILITY

Expertise requirement, **1:5**

Federal Court Rules, **2:10**

Guidelines for the Discovery of
Electronic Documents in
Ontario, **1:5**

Management of

see MANAGEMENT OF
ELECTRONIC DOCUMENTS;
RECORDS
MANAGEMENT POLICIES

Metadata within, **1:5**

Organization and types

see ELECTRONIC DATA,
ORGANIZATION AND
TYPES

Paper documents vs., **1:5**

Preservation and collection

see PRESERVATION AND
COLLECTION

Privilege and, **1:7**

Processing

see PROCESSING
ELECTRONIC DOCUMENTS

ELECTRONIC DOCUMENTS —Cont'd

Production

see **PRODUCTION OF
ELECTRONIC DOCU-
MENTS**

Provincial definitions

Alberta Rules of Court, **2:8**
British Columbia Supreme Court
Rules, **2:4**
Manitoba Court of Queen's
Bench Rules, **2:6**
New Brunswick Court of
Queen's Bench Rules, **2:7**
Nova Scotia Civil Procedure
Rules, **2:9**
Ontario Rules of Civil Procedure,
2:3
Prince Edward Island Rules of
Civil Procedure, **2:3**
Saskatchewan Queen's Bench
Rules, **2:5**

Reviewing

see **REVIEW OF ELECTRONIC
DOCUMENTS**

Rules of practice and, 1:5

United Kingdom Civil Procedure
Rules, **2:13**

U.S.

Federal Rules of Civil Procedure,
2:12
Federal Rules of Evidence, **2:12**

ELECTRONIC EVIDENCE

See **ADMISSIBILITY;
ELECTRONIC TRIALS**

ELECTRONIC INFORMATION, CREATION AND STORAGE

BlackBerries, **2:66**

PIN-to-PIN communication, **2:66**

Computers

applications, **2:30**
bits and bytes, **2:27**
central processing unit, **2:32**
described, **2:26**

ELECTRONIC INFORMATION, CREATION AND STORAGE

—Cont'd

Computers—Cont'd

hard drive
generally, **2:39, 2:40**
clusters, **2:40**
tracks and sectors, **2:39**
hardware, **2:32**
memory
generally, **2:29, 2:33**
coordination of, **2:38**
hard disk, **2:37**
primary, **2:34 to 2:36**
RAM, **2:35**
ROM, **2:34**
secondary, **2:37**
virtual, **2:36**

operating system, **2:29**

personal computer, described,
2:26

programs and algorithms, **2:28**

storage

see **media storage, forms of;
memory**

utility software, **2:31**

Digital cameras, **2:73**

Digital media players, **2:70**

Internet

see **INTERNET**

Internet service providers, **2:85**

IPads, **2:71**

IPods, **2:70**

Media storage, forms of

generally, **2:41 to 2:85**
archived information, **2:56**
backup tapes, **2:56**
blu-ray disc, **2:45**
cloud computing and online stor-
age lockers, **2:78**
compact discs, **2:43**
digital video disks, **2:44**
3DxPoint, **2:50**
fax machines, **2:62**

**ELECTRONIC INFORMATION,
CREATION AND STORAGE**

—Cont'd

- Media storage, forms of—Cont'd
 - flash memory
 - generally, **2:46**
 - compact flash memory, **2:47**
 - secure digital memory cards, **2:48**
 - universal serial bus keys, **2:49**
 - floppy disks, **2:42**
 - home computers, **2:58**
 - laptop computers, **2:59**
 - online storage lockers, **2:78**
 - photocopiers, **2:65**
 - portable drives, **2:51**
 - printers, **2:63**
 - 3D Scanners and Printers, **2:64**
 - scanners, **2:61**
 - workstations, **2:60**
 - ZIP
 - generally, **2:52**
 - data compression format, **2:53**
 - storage media, **2:54**
- Networks
 - generally, **2:74 to 2:81**
 - Peer-to-Peer technology (P2P)
 - generally, **2:76 to 2:81**
 - BitTorrent, **2:77**
 - Blockchain, **2:80**
 - Cryptocurrency, **2:81**
 - described, **2:76**
 - instant messaging, **2:78**
 - servers, **2:75**
- Personal digital assistants, **2:66**
- Service providers, **2:85**
- Smartwatches, **2:72**
- Storage
 - see media storage, forms of
- Tablet devices, **2:71**
- Telephones
 - generally, **2:67, 2:68**
 - land lines, **2:67**
 - mobile phones, **2:68**

**ELECTRONIC INFORMATION,
CREATION AND STORAGE**

—Cont'd

- Voice over Internet Protocol (VoIP), **2:69**
- Wireless technology
 - generally, **2:82 to 2:84**
 - Bluetooth, **2:82**
 - infrared communication, **2:84**
 - Wi-Fi, **2:83**

ELECTRONIC STORAGE

- Generally, **1:3**

ELECTRONIC TRIALS

- Generally, **7:31 to 7:35**
- B.C. Practice Direction and, **7:32, 7:33**
- Court approval, **7:33**
- Courtroom logistics, **7:34**
- Electronic transcripts, **7:37**
- Exhibits, displaying and maintaining the record, **7:36**
- Future developments, **7:39**
- Internet, use of, **7:38**
- Negotiation with opposing counsel, **7:32**
- Ontario Practice Directions, and, **7:1.50**
- Ontario Rules of Civil Procedure, **7:1.50**
- Organization and efficiency, **7:35**
- Role of, **7:31 to 7:35**
- Technology in courtroom, **7:36 to 7:38**

E-MAIL

- Disposal of, **3:88**
- Generally, **2:121**
- Lists, **2:96**
- Management of
 - see RECORDS MANAGEMENT POLICIES, elements of
- Production of, **7:16**

**FEDERAL RULES OF CIVIL
PROCEDURE**

Generally, **1:6**
Amendments to, **1:6**
Electronic documents and, **2:12**
Format provisions, **7:2**
Preservation failures, sanctions,
5:34 to 5:48

FILES

Generally
 see ELECTRONIC DATA,
 ORGANIZATION AND
 TYPES
Swap files, **2:118**
System files, **6:21**

FILTERING

Generally, **6:17 to 6:21**

FORMAT

Audio/video file format, **2:105**
Data compression format, **2:53**
Federal Rules of Civil Procedure re,
7:2
Production, re
 see PRODUCTION OF
 ELECTRONIC DOCU-
 MENTS
Review, re
 see REVIEW OF ELECTRONIC
 DOCUMENTS

**GLOBAL POSITIONING
SYSTEM (GSP)**

Generally, **2:129**

INFORMATION

See DISPOSAL OF INFORMA-
TION; ELECTRONIC
INFORMATION, CREATION
AND STORAGE; MANAGE-
MENT OF ELECTRONIC
DOCUMENTS; PRODUC-
TION OF ELECTRONIC
DOCUMENTS; RECORDS
MANAGEMENT POLICIES

INTERNET

See also ELECTRONIC INFOR-
MATION, CREATION AND
STORAGE
Admissibility issues, **7:25, 7:30**
Blogs, **2:92**
Cache, **2:89**
Chat rooms, **2:92**
Communication modes, **2:86**
Cookies, **2:90**
Described, **2:86**
Domain names, **2:88**
Electronic trials, **7:38**
E-mail lists, **2:96**
Extranets, **2:98**
Firewalls, **2:91**
Functioning of, **2:87**
Intranets, **2:99**
LISTSERV, **2:96**
Newsgroups, **2:95**
Portals, **2:100**
Service providers, **2:85**
Social networking websites, **2:97,**
7:19
Spyware, **2:93**
Web browsers, **2:88**
Web servers, **2:88**
Wiki, **2:94**

LITIGATION

Anticipation of, preservation
 principles, **4:28, 5:3**
Multi-jurisdictional, **4:35**
Records management and
 see RECORDS MANAGE-
 MENT POLICIES

LITIGATION HOLD

Generally, **5:8, 5:21, 5:23**

**LITIGATION SUPPORT
SYSTEMS/SOFTWARE**

Generally, **1:7, 6:36, 7:18**

**MANAGEMENT OF
ELECTRONIC DOCUMENTS**

Court sanctions re, **1:8**

**MANAGEMENT OF
ELECTRONIC DOCUMENTS**

—Cont'd

Document retention policies, **1:8**
 Future trends/issues, **3:104**
 Generally, **3:1 to 3:7**
 Importance of, **1:8**
 Information collection and creation,
 generally, **3:2**
 Information disposal, **3:6**
 Information organization, **3:4**
 Information production, **3:5**
 Information retention, generally, **3:3**
 Internal policies and practices, need
 for, **1:8**
 Obligations of counsel, **1:8**
 Ontario Guidelines best practices,
 1:8
 Policies
 see RECORDS MANAGE-
 MENT POLICIES
 Preservation and collection, **1:8**

MANITOBA

See E. DISCOVERY
 GUIDELINES AND RULES

MEDIA

Digital media players, **2:70**
 Multimedia, **2:128**
 Updating, **3:69**

MEDIA STORAGE

See ELECTRONIC INFORMA-
 TION, CREATION AND
 STORAGE

METADATA

Generally, **1:5, 2:116, 5:13, 6:6**

NETWORKS

See ELECTRONIC INFORMA-
 TION, CREATION AND
 STORAGE

NOVA SCOTIA

See ADMISSIBILITY;
 E-DISCOVERY

NOVA SCOTIA—Cont'd

GUIDELINES AND RULES;
 ELECTRONIC DOCU-
 MENTS; PRESERVATION
 AND COLLECTION

ONTARIO GUIDELINES

Generally, **1:5, 4:9, 4:38 to 4:45**
 Application challenges
 see E-DISCOVERY
 GUIDELINES AND
 RULES
 Best practices approach, **1:6, 1:8**
 Costs (Principle 13), **4:44, 4:56**
 Data culling, **6:11**
 Devices, production of, **7:22**
 Discovery of electronic documents
 (Principles 1-4), **4:39, 4:53**
 Format, **7:7**
 Litigation hold letters, **5:23**
 Ongoing refinement, need for, **4:45**
 Pre-discovery discussions between
 counsel (Principles 8-10),
 4:41, 4:54
 Preparation of electronic documents
 (Principles 5-7), **4:40**
 Privilege (Principle 12), **1:7, 4:43,**
 6:57, 6:58
 Production of electronic documents
 (Principle 11), **4:42, 4:55, 7:9**
 Scope of e-discovery obligations
 (Principles 8-10), **4:41**

PLATFORM

See REVIEW OF ELECTRONIC
 DOCUMENTS

**PRESERVATION AND
COLLECTION**

Client's electronic documents, of
 generally, **5:2 to 5:21**
 chain of custody, preserving, **5:19**
 collection methods, common
 generally, **5:14**
 backup tape restoration, **5:17**
 data management system,
 migrating data from, **5:18**

PRESERVATION AND

COLLECTION—Cont'd

Client's electronic documents, of
 —Cont'd
 collection methods, common
 —Cont'd
 forensic file copying, **5:16**
 forensic imaging, **5:15**
 contemplation/reasonable
 anticipation of litigation as
 trigger, **5:3**
 documents, scope of
 generally, **5:9**
 deleted documents, **5:12**
 metadata, **5:13**
 Nova Scotia Rules, **5:9**
 Ontario Rules, **5:9**
 overinclusiveness, **5:9**
 proportionality principle, **5:10**
 types of data, **5:11**
 e-discovery plan, development
 with client
 generally, **5:4**
 client's computer systems,
 determining nature of, **5:7**
 e-discovery process, explanation
 of, **5:6**
 initial planning meeting, **5:5**
 expert assistance, hiring of, **5:20**
 litigation hold
 implementation, **5:8**
 lifting, **5:21**
 Nova Scotia Rules, **5:9**
 Ontario Rules, **5:9**
 Sedona Conference Commentary
 on Legal Holds, **5:8**
 time obligation arises, **5:3**
 Future developments, **5:49**
 Opponent's electronic documents,
 of
 generally, **5:22 to 5:27**
 cooperation among counsel and
 parties, **5:24**
 court order, obtaining documents
 through
 generally, **5:25 to 5:27**

PRESERVATION AND

COLLECTION—Cont'd

Opponent's electronic documents,
 of—Cont'd
 court order, obtaining documents
 through—Cont'd
 Anton Piller orders, **5:26**
 e-document preservation order,
 5:25
 Norwich orders, **5:27**
 e-discovery strategy, develop-
 ment of, **5:22**
 litigation hold letters
 generally, **5:23**
 Ontario E-Discovery
 Guidelines re, **5:23**
 Preservation failures, sanctions for
 generally, **5:28 to 5:48**
 B.C. Rules re, **5:29**
 Canadian case law
 generally, **5:30 to 5:33**
 costs sanctions, **5:32**
 dismissal of action/striking of
 statement of defence,
 5:31
 evidentiary presumption/
 adverse inference, **5:30**
 exclusion of evidence, **5:32**
 spoliation, tort of, **5:33**
 spoliation presumption, **5:30**
 Nova Scotia Rules re, **5:29**
 Ontario Rules re, **5:29**
 paper vs. electronic documents,
 destruction of, **5:28 to 5:48**
 rules and principles re, **5:29**
 Sedona Canada Principles re,
 5:29
 spoliation, causes of, **5:28 to**
 5:48
 spoliation, tort of, **5:33**
 spoliation presumption, **5:30**
 U.S. experience
 generally, **5:34 to 5:48**
 authority to impose sanctions
 and remedies
 generally, **5:35**

PRESERVATION AND

COLLECTION—Cont'd

- Preservation failures, sanctions for—Cont'd
 - U.S. experience—Cont'd
 - authority to impose sanctions and remedies—Cont'd
 - dismissal/default judgment, **5:41**
 - dismissal/default judgment under new Rule 37(e), **5:42**
 - exclusion of evidence, **5:45**
 - Federal Rules of Civil Procedure provision, **5:34 to 5:48**
 - Guidelines for State Trial Courts regarding
 - Discovery of Electronically-Stored Information, **5:34 to 5:48**
 - jurisprudence prior to new Rule 37(e), **5:41**
 - monetary sanctions, **5:46**
 - notice, **5:44**
 - remedies, other, **5:43**
 - Rule 37(e) vs. Rule 37(b)(2) and inherent power, **5:37**
 - “safe harbour” rule, **5:34 to 5:48**
 - Sedona Principle 14, **5:34 to 5:48**
 - spoliation inference
 - generally, **5:38**
 - adverse inference under new Rule 37(e), **5:40**
 - jurisprudence prior to new Rule 37(e), **5:39**
 - threshold requirements of Rule 37(e), **5:36**
 - tort of spoliation, **5:48**
 - waiver/piercing privilege, **5:47**
- Spoliation
 - see preservation failures, sanctions for

PRIVILEGE

- See also CONFIDENTIALITY
- Non-waiver order, **1:7**
- Ontario Guidelines re, **1:7, 4:43, 6:57, 6:58**
- Privilege review
 - see REVIEW OF ELECTRONIC DOCUMENTS
- Sedona Principles, **4:13, 4:20**
- Waiver/piercing privilege, **5:47**

PROCESSING ELECTRONIC DOCUMENTS

- See also REVIEW OF ELECTRONIC DOCUMENTS
- Activities involved, **6:2**
- Data culling
 - generally, **6:10 to 6:29**
 - court review of culling strategies, **6:28**
- de-duplication
 - generally, **6:12 to 6:16**
 - clarity, importance of, **6:16**
 - near de-duplication, **6:15**
 - process of, **6:13**
 - re-population, **6:16**
 - vertical and horizontal, **6:14**
- filtering criteria, standard
 - generally, **6:17 to 6:21**
 - custodian, **6:18**
 - date range, **6:19**
 - file type, **6:20**
 - system files, **6:21**
- negotiation of culling criteria
 - with opposing party, **6:28**
- Ontario Guidelines re, **6:11**
- principles and guidelines re, **6:11**
- search terms, use of
 - generally, **6:22 to 6:27**
 - advanced search techniques, **6:27**
 - concept searching, **6:27**
 - keyword searching
 - generally, **6:23**

PROCESSING ELECTRONIC DOCUMENTS—Cont'd

- Data culling—Cont'd
 - search terms, use of—Cont'd
 - keyword searching—Cont'd
 - list of search terms, development of, **6:25**
 - search limitations, **6:26**
 - types of queries, **6:24**
- Data preparation
 - generally, **6:3 to 6:9**
 - backup tapes, restoration of, **6:4**
 - compressed files, **6:8**
 - file inventory, **6:5**
 - foreign language documents, **6:9**
 - metadata extraction, **6:6**
 - parent-child relationships, preservation of, **6:7**
 - password-protected files, **6:8**
- Data sampling, **6:30**
- Objective of, **6:2**

PRODUCTION OF ELECTRONIC DOCUMENTS

- Cost allocation, **7:10**
- Court intervention, **7:11 to 7:22**
- Devices, production of
 - generally, **7:20 to 7:22**
 - backup tapes, **7:22**
 - hard drives, **7:21**
 - Ontario Guidelines, **7:22**
- Format
 - generally, **7:2 to 7:8**
 - B.C. Practice Direction, **7:2, 7:8**
 - choice of
 - generally, **7:3**
 - guiding principles, **7:7**
 - native file, **7:6**
 - paper, **7:4**
 - TIFF/PDF image, **7:5**
 - document: consultation and cooperation, **7:2**
 - document lists, **7:8**
 - Federal Rules of Civil Procedure provisions re, **7:2**

PRODUCTION OF ELECTRONIC DOCUMENTS—Cont'd

- Format—Cont'd
 - functionality issues, **7:2**
 - guidelines and rules re, **7:2, 7:7**
 - issues re, **7:2**
 - National Generic Protocol, **7:8**
 - Ontario Guidelines, **7:7**
 - Ontario Practice Directions, **7:1.50**
 - Ontario Rules of Civil Procedure, **7:1.50**
- Information, production of
 - generally, **7:13 to 7:19**
 - computer programs, **7:14**
 - databases, **7:15**
 - deleted/spoiled data, rules and guidelines re, **7:17**
 - electronic litigation support database/software, **7:18**
 - e-mail, **7:16**
 - native format, **7:13**
- Scope
 - generally, **7:9**
 - Ontario Guidelines, **7:9**
 - Sedona Canada Principles re, **7:9**

PROPORTIONALITY

- Generally, **4:53**
- Preservation and collection, **5:10**
- Sedona Canada Principles, **4:27, 4:53**
- Sedona Principles, **4:11, 4:53**

PROTOCOLS

- Generally
 - see REVIEW OF ELECTRONIC DOCUMENTS
- National Generic Protocol, **7:8**
- Voice over Internet Protocol (VoIP), **2:69**

RECORDS MANAGEMENT POLICIES

- Benchmark, **3:43**
- Closed files, **3:15**

RECORDS MANAGEMENT

POLICIES—Cont'd

- Communications and, **3:37**
- Compatibility with other systems, **3:36**
- Contracts and, **3:25**
- Corporate governance and accountability, **3:18**
- Crisis management, **3:41**
- Deletion, trend away from, **3:16**
- Disaster recovery, **3:41**
- Elements of
 - generally, **3:45 to 3:101**
 - activities and divisions, **3:54**
 - annual records review, **3:77**
 - archiving of records, **3:78**
 - accessing archives, **3:79**
 - binding effect, **3:57**
 - collection and creation, **3:46**
 - definitions, **3:55**
 - disposal of information
 - generally, **3:50, 3:83 to 3:97**
 - accounting/finance/payroll records, **3:84**
 - agreements, **3:85**
 - compliance records, **3:87**
 - e-mail, **3:88**
 - environmental matters, **3:89**
 - government filings and supporting documents, **3:96**
 - human resources/employment records, **3:90**
 - intellectual property, **3:92**
 - organization/corporate records, **3:86**
 - pension plan records, **3:91**
 - personal information, **3:94**
 - real property matters, **3:93**
 - safety, **3:95**
 - taxation records, **3:97**
 - effective date and amendment dates, **3:52**
 - e-mail management
 - generally, **3:72 to 3:76**
 - centralized archiving, **3:73**

RECORDS MANAGEMENT

POLICIES—Cont'd

- Elements of—Cont'd
 - e-mail management—Cont'd
 - retrieval systems, **3:74**
 - review and disposal, **3:75**
 - rolling period, **3:73**
 - texts, **3:76**
 - employee relations, **3:57**
 - encryption of documents, **3:101**
 - former employees/companies, **3:80**
 - goals, **3:56**
 - information access requests, **3:82**
 - jurisdictional application, **3:53**
 - legal holds, **3:81**
 - locations of records
 - generally, **3:66 to 3:71**
 - accessible vs. inaccessible, **3:67**
 - bring your own device, **3:71**
 - general rule, **3:66**
 - personal devices/computers, **3:68**
 - updating of media, **3:69**
 - organization, **3:48**
 - personnel
 - generally, **3:60 to 3:62**
 - electronic data supervisor, **3:61**
 - information technology department, **3:62**
 - records managers, **3:60**
 - preservation, **3:81**
 - privacy, **3:59**
 - production, **3:49**
 - questions/concerns, **3:58**
 - records and categories of records
 - generally, **3:63 to 3:65**
 - official records, **3:64**
 - transitory records, **3:65**
 - records retention schedule, **3:51**
 - retention, **3:47 , 3:100**
 - theft/loss of documents
 - generally, **3:98 to 3:100**
 - external risks, **3:98**

RECORDS MANAGEMENT POLICIES—Cont'd

Elements of—Cont'd
 theft/loss of documents—Cont'd
 internal risks, **3:99**
 training, **3:57**
 transborder document retention
 issues, **3:100**
 Evidentiary standards, **3:27**
 Exit strategies, **3:40**
 Financial matters, **3:35**
 Future trends/issues, **3:104**
 Inactive records, **3:15**
 Income Tax Act and, **3:17 to 3:24**
 Indemnities/releases/consents, **3:34**
 Industry standards, **3:27**
 Information technology staff, **3:62,**
 3:103, 3:104
 Insurance and, **3:26**
 Integration
 communications policy and, **3:30**
 computer use policy, **3:31**
 disclosure policy and, **3:29**
 Integration with Code of Conduct
 on Systems Use Policy, **3:32**
 Integration with Computer Use
 Policy, **3:31**
 Intellectual property protection and,
 3:33
 Internal consistency, **3:28 to 3:32**
 Internal/external structures and,
 3:14
 Interpretation, **3:28 to 3:32**
 Jurisdictional variations, **3:22**
 Legal department, **3:102**
 Limitations statutes, **3:20**
 Litigation and, **3:11**
 Litigation-related rules, **3:21**
 Need and scope considerations,
 3:13
 Objectives of, **3:8**
 Policy nature of, **3:13**
 Political issues, **3:38**
 Privacy and access to information,
 3:19

RECORDS MANAGEMENT POLICIES—Cont'd

Records retention schedule, **3:9,**
 3:51
 Reputational risk, **3:38**
 Risk allocation documentation, **3:34**
 Risk management and, **3:12**
 Sedona Principles and, **3:27**
 Statutory regulation and, **3:17 to**
 3:24
 Systems and cost management, **3:10**
 Timelines and expectations, manag-
 ing, **3:42**
 Tracking, **3:14**
 Trade secrets and, **3:33**
 Transactional preparedness, **3:39**
 U.S. requirements, **3:23**
 Vision, **3:44**

REVIEW OF ELECTRONIC DOCUMENTS

Analysis of documents
 generally, **6:45 to 6:53**
 benefits to review process and
 case assessment, **6:54**
 document organization, **6:36**
 pitfalls, **6:55**
 searching and grouping tools, use
 of
 generally, **6:46 to 6:53**
 clustering, **6:50**
 concept and context searching,
 6:48
 e-mail threading, **6:49**
 guided navigation, **6:51**
 keyword searching, **6:47**
 technology assisted review and
 predictive coding, **6:53**
 visualization, **6:52**
 Confidentiality review, **6:63**
 Format and platform, choice of
 generally, **6:33 to 6:39**
 audio/video/graphical informa-
 tion, **6:39**
 cloud-based data depository, **6:37**

REVIEW OF ELECTRONIC DOCUMENTS—Cont'd

- Format and platform, choice of
 - Cont'd
 - image format, **6:35**
 - integration of paper and electronic documents, **6:38**
 - litigation support systems, **6:36**
 - native format, **6:34**
- Future developments, **6:65**
- Objectives, **6:32**
- Opposing party's documents, review of, **6:64**
- Privilege review
 - generally, **6:56 to 6:62**
 - disclosure of privileged information, law re
 - generally, **6:59**
 - Canada, in, **6:58, 6:59**
 - U.S., in, **6:60**
 - Ontario Guidelines re, **6:57, 6:58**
 - principles and guidelines re, **6:57**
 - redaction, **6:62**
 - search terms, use of, **6:61**
 - Sedona Canada Principles re, **6:57**
 - Sedona Principles re, **6:57**
 - U.S. Federal Rules of Evidence re, **6:60**
- Protocols and methodologies
 - generally, **6:40 to 6:44**
 - coding rules, **6:41**
 - consistency issue, **6:43**
 - deficient knowledge transfer issue, **6:43**
 - iterative process, need for, **6:44**
 - manual review, need for, **6:44**
 - quality control issue, **6:43**
 - review assignments, **6:42**
 - review team, training of, **6:41**

SASKATCHEWAN

- See E-DISCOVERY GUIDELINES AND RULES

SEARCHING

- See REVIEW OF ELECTRONIC DOCUMENTS, analysis of documents

SEARCH TERMS

- See PROCESSING ELECTRONIC DOCUMENTS, data culling

SEDONA CANADA PRINCIPLES

- Generally, **4:25 to 4:37**
- Anticipation of litigation, reasonable steps re preservation (Principle 3), **4:28**
- Application challenges
 - see E-DISCOVERY GUIDELINES AND RULES
- Confidentiality, trade secrets, etc., protection of (Principle 9), **4:34**
- Cost and burden of production (Principle 5), **4:30, 4:53**
- Costs of preserving, collecting, etc. stored information (Principle 12), **4:37, 4:56**
- Court sanctions re violation of preservation obligations (Principle 11), **4:36**
- Deleted, etc., stored information (Principle 6), **4:31**
- Discovery, generally, **1:4 to 1:6**
- Early and ongoing meeting of parties (Principle 4), **4:29, 4:54**
- Electronically stored information is discoverable (Principle 1), **4:26**
- Format re production, agreement re (Principle 8), **4:33, 4:55**
- Multi-jurisdictional litigation, conflicting discovery rules (Principle 10), **4:35**
- Preservation failures, **5:29**
- Privilege review, production, scope of, **6:57, 7:9**
- Proportionate steps to circumstances of case (Principle 2), **4:27, 4:53**

SEDONA CANADA PRINCIPLES—Cont'd

Tools and processes re production (Principle 7), **4:32**

SEDONA PRINCIPLES

Active data as primary source for production (Principle 8), **4:18**

Application challenges

see E-DISCOVERY
GUIDELINES AND
RULES

Costs of retrieving stored information (Principle 13), **4:23, 4:56**

Court sanctions re violation of preservation obligations (Principle 14), **4:24, 5:34 to 5:48**

Deleted, etc., stored information (Principle 9), **4:19**

Early meeting of parties (Principle 3)

generally, **4:13, 4:54**

expert witness issues, **4:13**

privilege issues, **4:13**

Form/forms of production (Principle 12), **4:22, 4:55**

Identification of relevant stored information, tools and techniques (Principle 11), **4:21**

Preservation of documents (Principle 1), **4:11**

Privileges and objections (Principle 10), **4:13, 4:20, 6:57**

Proportionality re costs and burdens (Principle 2), **4:11, 4:53**

Records management policies, **3:27**

Requesting parties, burden re inadequate preservation and production (Principle 7), **4:17, 4:53**
discovery of non-parties, **4:17**

Requests for production, clarity re (Principle 4), **4:14, 4:53**

SEDONA PRINCIPLES—Cont'd

Responding parties, evaluation of preservation and production by (Principle 6), **4:16**

Retention and preservation of documents, reasonable efforts (Principle 5), **4:15**

SPOILIATION

See PRESERVATION AND COLLECTION, preservation failures, sanctions for

STORAGE

See ELECTRONIC INFORMATION, CREATION AND STORAGE

TECHNOLOGY

Effects of, **1:7**

Efficiency vs. glut, **1:7**

Litigation software, access to, **1:7**

TELEPHONES

See ELECTRONIC INFORMATION, CREATION AND STORAGE

TRIAL

See ADMISSIBILITY;
ELECTRONIC TRIALS

WEB

See INTERNET

WIRELESS TECHNOLOGY

See ELECTRONIC INFORMATION, CREATION AND STORAGE

WRITING, LAW AND

Generally, **1:2**

WRITTEN DOCUMENTS

See DOCUMENT