

Paper isn't Good Enough Anymore

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Paper isn't good enough anymore

- **Collecting** paper is not good enough
- **Printing** e-mails is not good enough
- **Reviewing** paper is not good enough
- **Producing** paper is not good enough

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Collecting paper isn't good enough

- Rules and case law define “document” or “record” broadly
- Your clients may print only 10-15% of their electronic documents
- Paper is formal – e-mail is a goldmine of casual communication
 - *CIBC World Markets v. Genuity Capital Markets* 2005 CanLII 3944 (On. S.C.)
- Ignoring preservation of evidence could lead to serious sanctions
 - *As a tort - Spasic v. Imperial Tobacco Ltd. (2000)*, 49 O.R. (3d) 699 (Ont. C.A.)
 - *As a negative inference Logan v. Harper*, 2003 CanLII 15592 (ON S.C.)

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Printing emails isn't good enough

- Electronic files and databases are “documents” too
 - *Cholakis v. Cholakis et al.*, 2005 MBQB 105 (CanLII)
 - *Northwest Mettech Corp. v. Metcon Services Ltd.*, 1996 CanLII 1056 (BC S.C.)
- Printed e-mails are not accurate copies and do not preserve original message
- Printing e-mails is slower and more costly than copying them electronically

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Reviewing paper isn't good enough

- Volumes of paper are too large to deal with
- Paper handling and cross-referencing is far too slow and subject to error and loss
- Paper cannot be de-duplicated, near-duplicated or sorted
- *Air Canada v. WestJet* 2006 CanLII 14966

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Producing paper isn't good enough

- Courts are concerned about authenticity, cost and delay
 - *Sycor Technology Inc. v. Kiaer*, 2005 CanLII 46736 (ON S. C.)
- Discovery must be meaningful
 - *Wilson v. Servier Canada Inc.*, 2002 CanLII 3615 (ON S. C.)
 - *Solid Waste Reclamation Inc. v. Philip Enterprises Inc.* (1991), 2 O.R. (3d) 481 (Gen. Div.).
 - Task Force E-Discovery Guidelines, Principle 11 (Commentary)
- Parties are demanding and getting searchable productions
 - *Walter Construction v. Catalyst*, 2003 BCSC 1582

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