

ONTARIO E-DISCOVERY IMPLEMENTATION COMMITTEE

MODEL DOCUMENT #11:

E-TRIAL CHECKLIST

Purpose of the document

This checklist provides a list of steps that may usefully be taken by parties and their counsel in preparing for and conducting an electronic trial. It is a companion document to Model Document #8: Annotated E-Discovery Checklist, which is a comprehensive checklist designed to address all of the steps to be taken with respect to the preservation, production and use of relevant documents in a litigation matter, with annotations throughout on how to minimize e-discovery costs.

For more information on electronic trials, see the companion document “What is an Electronic Trial?” prepared by the EIC

This checklist and all of the EIC’s model documents and other publications are available on the Ontario Bar Association's website at:

http://www.oba.org/En/publicaffairs_en/E-Discovery/model_precedents.aspx

Note regarding use of this document

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Feedback on EIC materials

The EIC welcomes comments on all of its model documents and other publications. Any comments or suggestions can be provided to Michele A. Wright at mwright4@toronto.ca.

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E-TRIAL CHECKLIST

1. **At the outset of the action**

- (a) Negotiate a discovery plan or discovery agreement with all parties that will facilitate and reduce the costs of an electronic trial in the event the matter proceeds to trial. Among other things, the discovery agreement should specify:
 - (i) that all parties will exchange documentary productions electronically;
 - (ii) that all paper documents will be scanned using optical character recognition (OCR) technology, to facilitate electronic searching;
 - (iii) that the parties agree to employ the same litigation support software;
 - (iv) that the parties will produce documentary productions using the same image format;
 - (v) that the parties agree to use the same fields for objective coding (author, recipient, date, etc.);
 - (vi) that the parties agree to use unique document identifiers that are mutually consistent and do not result in two documents having the same identifier; and
 - (vii) if appropriate, that the parties agree to use a common third party litigation support service provider.

For a model discovery plan or discovery agreement, see the Ontario E-Discovery Implementation Committee's Model Document #1: Discovery Agreement, Model Document #9A: Discovery Plan (Long Form) and Model Document #9B: Discovery Plan (Short Form), all of which may be found on the e-discovery page of the website of the Ontario Bar Association (www.oba.org). See also, at the same website, the EIC's Model Document #9: Checklist for Preparing a Discovery Plan and Sample Document #1: Letter Confirming Discovery Agreement.

2. **When requesting a trial date, or in connection with the pre-trial conference**

- (a) Seek client instructions with respect to conducting an e-trial.
- (b) Consult with all parties to confirm their agreement to conduct an e-trial.

- (c) Advise the court that the parties are requesting an e-trial, so that the court administration can ensure that an appropriate courtroom is selected, and that a judge and court staff are selected who are willing and able to conduct an electronic trial.

3. **In the lead-up to trial**

- (a) Counsel for each party should decide whether and to what extent to use the law firm's or the client's own hardware, or its own IT support staff, rather than leasing hardware from and paying for support services to a third party IT consultant.
- (b) Counsel should reach agreement on issues relating to the e-trial, including:
 - (i) liaising with the court to coordinate courtroom selection, access to the courtroom to install the necessary equipment, and related issues;
 - (ii) whether to use real time transcription and/or digital recording of evidence;
 - (iii) the choice of hardware to be used in the courtroom (e.g., whether to have monitors for the public gallery, what types of computers and monitors to use, whether some parties will supply their own hardware rather than renting it from a third party IT consultant, etc.);
 - (iv) the networking layout for the computers and monitors in the courtroom, including required connections to the real time transcript feed if applicable;
 - (v) the choice of litigation support software to be used for the e-trial;
 - (vi) training for the trial judge, court staff, and parties regarding the use of the litigation support software to be used in the e-trial;
 - (vii) preparation of the joint book of documents in electronic form (identification of documents, selection of coded fields, etc.);
 - (viii) the scope of the trial judge's access to the joint book of documents during the trial (i.e., should the trial judge be restricted to viewing exhibits only, or can the trial judge be connected to the full JBD);
 - (ix) the methodology by which counsel will present legal submissions using electronic means;
 - (x) the methodology by which parties will present read-ins electronically;
 - (xi) selection of a jointly retained IT consultant to implement the e-trial;

- (xii) the role of the jointly retained IT consultant, in assembling and managing the joint book of documents, servicing the trial judge's IT needs, servicing the parties' IT needs, being present or on call during trial days, etc.;
 - (xiii) estimating and allocating the costs of the jointly retained IT consultant and other e-trial costs, if applicable, such as the cost of real time transcription; and
 - (xiv) the authenticity of the documents within the joint book of documents.
- (c) Counsel should meet collectively with the jointly-retained IT consultant, to review these same topics and plan the e-trial.
 - (d) Counsel should coordinate with the relevant persons within court administration regarding courtroom selection, selection of court staff and the court reporter, access to the courtroom, and software training for the trial judge and court staff.

4. **Immediately before trial**

- (a) Attend in court to set up the required network of computers and monitors.
- (b) Hold a pre-trial meeting with the real time court reporter to ensure the appropriate operation of the real-time transcription.
- (c) Hold a pre-trial meeting with the trial judge and court staff to discuss:
 - (i) any final training requirements;
 - (ii) IT support requirements for the trial judge and court staff during the trial;
 - (iii) the role of the jointly retained IT consultant during the trial;
 - (iv) the structure of the joint book of documents and the anticipated method of displaying documents and marking exhibits;
 - (v) counsel's proposed method of making submissions using electronic aids;
 - (vi) the trial judge's preferred method of receiving written submissions (e.g., whether to supply hyper-linked copies of the submissions);
 - (vii) the proposed method of filing read-ins electronically; and
 - (viii) if applicable, the means by which parties, court staff and the trial judge may access the e-trial materials (transcripts, exhibits, written submissions, etc.) remotely through the internet.
- (d) Conduct a dry-run of the e-trial hardware and software once installed in the courtroom.