

Discovery and Inspection of Electronically Stored Documents:

A Commentary on Practice Direction 3 of 2009 (Part II)

The first part of this article outlined the *raison d'être* for Practice Direction 3 of 2009 ("the eDiscovery PD") and discussed issues relating to the discovery of electronically stored documents. In this second part, issues relating to the giving of inspection of discoverable electronically stored documents will be examined; we will look into how the eDiscovery PD seeks to give effect to the right to take copies of discoverable electronic documents. We will also examine in detail, issues relating to forensic inspection of databases, electronic media and recording devices. The article will conclude with a discussion of the possibilities of cost-shifting orders within the inherent powers of the court.

PART II: INSPECTION

Under o 24, a party entitled to inspection may also take a copy of the document during inspection. The classical sequence contemplated under o 24 is for discovery to be followed by inspection. During inspection, the party inspecting a document may take a copy of it. There is, however, a common practice to ask for copies of discoverable documents before physical inspection, on the understanding that physical inspection may be requested at a later date. Oftentimes, the exchange of copies of discoverable documents may be in lieu of physical inspection as parties may not eventually request for inspection. Where physical inspection is carried out, the current practice is for inspection to be conducted at the office of the solicitors for the party giving discovery. Documents requested to be produced for inspection will be made available for physical inspection, typically in a meeting room. If copies have not already been given, the inspecting party may request for photocopies on an undertaking to reimburse reasonable photocopy charges.

This account of inspection and taking of copies is probably an uncontroversial summary of the practice of inspection. When considering inspection of electronically stored documents, a couple of assumptions are thrown into the spotlight:

1. Access to the electronic documents; and
2. How copies are provided.

Inspection of Electronically Stored Documents

Physical inspection of printed documents is typically carried out by ocular examination. The provision of a meeting room with tables and chairs, with adequate ventilation and lighting is probably all that is required. Documents stored on electronic media and recording devices cannot be examined without the interposition of a computer with the requisite software programs. This means that the party producing electronically stored documents needs to provide more than a meeting room.

First principles

In determining the extent of the obligations of the party producing a document for inspection, we must traverse the following legal premises.

Firstly, inspection is not limited to ocular examination. It has been held (in the context of inspection of documentary samples by experts) that apart from ocular examination, equipment may also be used to inspect documents: per Sundaresh Menon JC, in *UMCI Ltd v Tokio Marine & Fire Insurance Co (Singapore) Pte Ltd and Others*.¹

Secondly, the party producing a document for inspection has to provide the means necessary to enable examination in its original form by the party entitled to inspection. In *Grant and Another v Southwestern and County Properties Ltd and Another*, the court had to decide whether a tape recording was a document which was discoverable. In holding that a tape recording was a document for the purposes of discovery, Walton J observed:

... it seems to me that the simplest and most foolproof method of "inspection" in these cases is for the party giving discovery to play the tape to the party to whom discovery is being given, and for that party to make his own recording as it is played.²

This was again alluded to in *Derby & Co Ltd v Weldon (No 9)* where Vinelott J opined:

The question in this case is not, I think, whether the database is a document but as to the circumstances in which and the means by which a party seeking discovery is entitled to inspect and take copies of that document. In the simple case of a word processor, if I am right in my conclusion that the memory or database of the word processor is the original document, *the court must have power to permit the party seeking discovery to inspect the word processor's memory by reading from the console or screen or by taking hard copy in any case where there is a real doubt whether the printouts supplied comprise a complete and accurate copy of all relevant and non-privileged information stored on the word processor's memory.*³ (Emphasis mine).

The principle of law which was articulated by both Walton J and Vinelott J is that the party giving discovery has an obligation to provide the technical means necessary in order to give effect to the inspecting party's right of inspection. This required the provision of (at least) the requisite equipment eg, a tape player, in *Grant v Southwestern County Properties Ltd*, and a word processor in *Derby & Co Ltd v Weldon (No 9)*. Further, inspection is to be carried out in its original form. Hence, inspection was by playing the tape recording in *Grant v Southwestern County Properties Ltd*, as opposed to production of a transcript; and by reading off the console or screen in *Derby & Co Ltd v Weldon (No 9)* (and taking a hard copy if required). In the parlance of information technology, inspection of electronically stored documents is to be carried out in their native format.

Finally, the documents to be produced for inspection are typically identified by the party requesting inspection; the party producing the documents for inspection will remove them from their proverbial filing cabinet and place them in the designated meeting room. In the context of electronically stored documents, this translates into the provision of assistance in order to retrieve an electronic document from its storage location and to display it on screen for ocular examination.

These principles of law are articulated in paragraph 43F of the eDiscovery PD: the disclosing party has an obligation to provide reasonable means and assistance for inspection of discoverable electronic documents in their native format.

Reasonable means and assistance

What constitutes reasonable means and assistance depends very much on the nature of the electronic document that is to be inspected. For electronic documents stored on a hard disk in a personal computer or a network drive, reasonable means would include, for example, providing a personal computer with the requisite software and a network connection.

The eDiscovery PD also requires that the disclosing party provides reasonable assistance for inspection. While reasonable means may be taken to refer to the provision of technical equipment and software, reasonable assistance is intended to refer to technical or other assistance. For example, if the electronic document is an e-mail message or a file stored in an encrypted drive, reasonable assistance would include the provision of the access code (or password) that is necessary in order to access the relevant e-mail mailbox or the encrypted drive respectively.

Parties are encouraged to take a sensible approach in the provision of reasonable means and assistance. Taking a leaf from the current practice of producing only those documents for which inspection has been requested during the appointed time and place for inspection, a sensible approach would be for the party giving discovery to provide an operator to assist in the inspection. One can imagine that the party giving inspection would be reluctant to allow the inspecting party free rein of the computer (especially if it is connected to the network). The provision of an operator to provide assistance during inspection would allow the party giving discovery to retain control over the proceedings. The operator calls up each document that is to be inspected and displays it on screen, and he manipulates it on the request of the inspecting party - control of the computer remains with the party giving inspection. The benefit to the inspecting party is that he is able to view the contents of the discoverable document (including its metadata information, if relevant) without having to navigate and manipulate (sometimes) unfamiliar software. The provision of an operator may sometimes be inevitable. For instance, if the disclosing party asserts privilege over internally stored metadata information but not the text of a document, the operator can ensure that the privileged metadata information is not displayed during inspection. The modalities of inspection varies with the types of electronic documents, software programs and computer systems involved. This would be an area ripe for

discussion when parties meet to discuss e-discovery issues and should form part of the Agreed Electronic Discovery Protocol.

There may be occasions where the inspecting party appoints an expert to carry out inspection. Parties will have to negotiate and agree on the level of access the expert should be given to the computer and software, the network or other equipment during inspection; parties need also agree on the level of safeguards that is required. The template Agreed Electronic Discovery Protocol provides a default position for parties to negotiate from: viz inspections may be carried out with the assistance of a computer expert appointed by the inspecting party but the computer expert has to provide an undertaking of confidentiality before commencing inspection.

Provision of Electronic Copies of Discoverable Electronic Documents

The eDiscovery PD prefers the inspection of electronic documents in their native format; and if copies are requested, the supply of copies in their native format (in lieu of printed copies). The rationale is straightforward: electronic documents should be inspected and copies given with metadata information intact and unchanged. The only way to do so is to ensure that inspection and copies are given in their native format.

An exception is where a party claims privilege only over the internally stored metadata information⁴ but is prepared to disclose the other contents of the electronic document. In this scenario, the party giving discovery may supply copies of these electronic documents after removal of the metadata information over which he is asserting privilege. Such copies may either be in the native format or in a reasonably usable format. For example, if privilege is claimed over comments and prior edits which are tracked in a Microsoft (MS) Word document but not its text, the party giving copies may either remove these comments and prior edits and provide a copy in MS Word format, or he may provide a copy in Portable Document Format (PDF) (which is listed as a reasonably useable format in Appendix E Part 3).

In certain cases, the native format of discoverable electronic documents may be proprietary ie, owned by the party or requiring proprietary software, or legacy ie no longer supported, and provision of such documents in their native format may not be useful to the party entitled to copies. The eDiscovery PD sets out rules for determining a neutral and reasonably usable file format for copies to be supplied in, so that the party entitled to copies can make use of them. The party requesting copies may specify the file format in his request for copies. The party giving discovery may either agree to the proposed file format or he may counter-propose a reasonably usable file format. Appendix E Part 3 contains a list of reasonably usable file formats which has been selected on the basis that these are either open technical standards or established standards which are commonly used.

If parties are unable to agree, the default position is for provision of copies of electronic documents in their native format. However, if the native format is not reasonably usable for the party entitled to copies, an application may be made to court. The application has to specify the format ie, file format, including the file format version, and manner eg, CD ROM or DVD ROM, (see following paragraph) in which such electronic copies are to be provided.

One of the objectives of the eDiscovery PD is to promote the exchange of discoverable electronically stored documents in soft copy, in order that the twin benefits of digitisation - the ease of management and ability to run keyword searches - may be reaped by litigants when affidavits of evidence-in-chief are drafted and as parties prepare for trial. The eDiscovery PD thus prescribes that electronic copies should be supplied in one or more read-only optical discs eg, CD ROM or DVD ROM. Pursuant to paragraph 43E(4), each optical disc has to contain a further list of documents in an electronic text searchable and structured format which can function as a load file for the electronic documents contained in that optical disc. Parties may agree on the supply of copies in a different manner, eg, by Universal Serial Bus (USB) thumb drives, portable hard disks or even File Transfer Protocol ("FTP").

To prevent abuse, the eDiscovery PD makes it clear that if copies of discoverable documents have already been supplied in one format, the party giving discovery cannot be made to supply the same documents again in another format. For example, if parties had agreed that discoverable documents be exchanged in PDF and the exchange has already been carried out, the party entitled to copies cannot then ask for copies in native format. This is, of course, subject to parties' agreement otherwise and the powers of the court to revisit this issue where there have been sufficient changes in the circumstances.⁵ It will do well to bear this in mind before accepting copies of discoverable documents tendered.

Discovery and Inspections of Databases, Electronic Media and Recording Devices

As noted in Part 1 of this article, computer databases, electronic media and recording devices are treated as "documents" for the purposes of discovery. As documents, they may be discovered and inspected. The unique nature of these compound documents is that they are in effect "filing cabinets" which may contain a

preponderance of electronic documents (or information), some or the majority of which are either irrelevant or privileged. In understanding the issues relating to inspection of databases, electronic media and recording devices, the principle that discovery should not be an excuse to empty out the opposing party's filing cabinet is an underlying concern which has to be borne in mind.

As part of general discovery

As documents, disclosure of computer databases, electronic media and recording devices may be given as part of general discovery. Although it is difficult to imagine a situation where a party will voluntarily enumerate a database, electronic medium or recording device in his list of documents, it is nevertheless possible for the party giving discovery to do so. If discovery of the database, electronic medium or recording device has been given, the party entitled to inspection must include an inspection protocol with his request for inspection: paragraph 43F(5).

The more likely scenario which may arise is that parties, in discussing electronic discovery, may agree that relevant databases, electronic media or recording devices be included as part of the Agreed Electronic Discovery Protocol. In such cases, an inspection protocol should also be discussed as part of the Agreed Electronic Discovery Protocol to deal with inspection of the database, electronic medium or recording device referred to in a party's list of documents.

Specific discovery

An order for discovery and inspection of databases, electronic media and recording devices is intrusive and courts will approach such applications with especial care. The courts are more likely to order discovery of extracts of relevant information - "... at the initial stage of discovery disclosure must be made of the extent of relevant information recorded in a computer database..." per Vinelott J in *Derby & Co Ltd v Weldon (No 9)*⁶ - as opposed to discovery of the entire database, electronic medium or recording device.

Be that as it may, there will be infrequent situations where databases, electronic media or recording devices have to be discovered and inspected. One example is where the party entitled to discovery has some basis for believing that a document has been deleted but may be recovered from the hard disk. Another could be where the authenticity of disclosed documents is in issue and a forensic investigation of the hard disk has to be carried out.

An order for inspection of a database is discretionary. Vinelott J set out the court's cautious approach in *Derby & Co Ltd v Weldon (No 9)*:

It is clear in the light of the decision of Court of Appeal in *Dolling-Baker v Merrett* [1990] 1 WLR 1205 that the court has a discretion whether to order production and inspection and that the burden is on the party seeking inspection to satisfy the court that it is necessary for disposing fairly of the case or cause or matter or for saving costs. At that point the court will have to consider, if necessary in the light of expert evidence, what information is or can be made available, how far it is necessary for there to be inspection or copying of the original document (the database) or whether the provision of printouts or hard copy is sufficient, and what safeguards should be incorporated to avoid damage to the database and to minimise interference with everyday use if inspection is ordered.⁷ (Emphasis mine).

As observed by Belinda Ang J in *Alliance Management SA v Pendleton Lane P and Another and Another Suit*,⁸ at [18], there is a distinction between the court's power to order discovery of information in a recording device eg, hard disk drive, and its discretion to order production of the entire recording device for the purposes of inspection. As inspection of an entire database is far more intrusive than discovery and inspection of specified information contained therein, the judicial inquiry:

... is a far more intricate one involving judicial balancing of the competing interests of the parties; ie the requesting party's right to reasonable access to documents that are necessary to conduct his case without unduly burdening the other party in terms of time and expense and to prevent unauthorised "trawling" through the database.⁹

While the observations of Vinelott J were made with reference to a computer database and those by Belinda Ang J were made with reference to a recording device ie, a hard disk drive, they articulate both the balancing act which the court undertakes when making orders for discovery and inspection of databases, electronic media or recording devices and where the balance tends to be struck.

Safeguards required

Having in mind the courts' cautious approach and the need to prevent unauthorised trawling, safeguards are

required when discovery and inspection of databases, electronic media and storage devices are ordered. Safeguards have to be in place for two reasons. Firstly, it is to ensure that irrelevant and privileged material are excluded from inspection. This was one of the problems which was highlighted as early as 1990 in the decision of *Derby & Co Ltd v Weldon (No 9)*:

Even when the relevant material is on-line and capable of being shown on screen or print out, some means will have to be found of screening out irrelevant or privileged material. The party seeking discovery cannot be allowed simply to seat himself at his opponent's computer console and be provided with all necessary access keys.¹⁰

Secondly, it is to prevent unauthorised trawling through the database, recording medium or storage device. *Belinda Ang J held in Alliance Management SA v Pendleton Lane P and Another and Another Suit*:

A protocol has to be put in place to ensure that the requesting party only has access to inspect documents that are found to be necessary for the conduct of his case and is not allowed to trawl through the entire database on the guise of an inspection order.¹¹

Requests and applications for specific discovery and inspection

The eDiscovery PD establishes the practice for applications for inspection of databases, electronic media or recording devices. Discovery of the database, electronic medium or recording device to be inspected must first be given: paragraph 43F(1). If discovery of the database, electronic medium or recording device has been given eg, as part of general discovery, the party entitled to inspection may proceed to make a request for inspection. If discovery has not been given, the party seeking discovery and inspection may make an application to court. The summons may contain both a prayer for discovery of the database, electronic medium or recording device and a prayer for inspection: paragraph 43C(6).

Where a party seeks discovery of information residing in deleted files or file fragments which are recoverable through forensic techniques, the eDiscovery PD clarifies the practice: such discovery requests are in effect requests for discovery and inspection of the electronic medium or recording device on which forensic inspection will be conducted. This being the case, a request for discovery as well as a request for inspection by forensic examination of the electronic medium or recording have to be made: paragraph 43C(3) and 43F(4).

Finally, the eDiscovery PD requires that applications for inspection of discoverable databases, electronic media or recording devices should include an inspection protocol, which is intended to ensure that irrelevant and privileged information is not disclosed to the inspecting party and to prevent the inspecting party from trawling through the entire database, electronic medium or recording device: paragraph 43F(5).

Inspection protocol

The inspection protocol set forth in Appendix E Part 2 of the eDiscovery PD is intended to provide a starting point for parties to discuss and agree on a broader and more comprehensive protocol that is appropriately drafted to more adequately deal with the specifics of the case. It is the result of discussions with e-discovery practitioners and computer forensics investigators. The default inspection protocol may be adopted by the Court where an inspection protocol is not included as part of an application for inspection.

The methodology set forth in the inspection protocol contemplates the acquisition of an image of the computer database, electronic medium or recording device as the first step in the process of inspection: the Original Acquired Image ("the OAI"). Inspection is then carried out on a copy of the OAI, while the original OAI is sealed and given to the custody of the party producing the computer database, electronic medium or recording device for inspection. The inspection protocol proceeds to cater for two inspection scenarios. In the first, a reasonable search is conducted by the party entitled to inspection. In the other, a forensic examination is conducted by the party entitled to inspection in order to recover deleted files or file fragments.

Inspection by reasonable search. In a request for discovery by reasonable search, the search terms are specified by the party seeking discovery and the reasonable search is conducted by the party giving discovery, who is then able to review documents for the purpose of asserting privilege before the giving discovery of the remainder. In an inspection by reasonable search, the search is conducted by the party entitled to discovery and inspection - hence, the intrusive nature of this investigative tool. However, in contrast to inspection by forensic examination, inspection by reasonable search does not involve searching unallocated space or file slack.

Inspection by forensic examination. The inspection protocol contemplates that inspection by forensic

examination will involve the appointment of a joint computer expert to carry out the forensic examination. This is the mode of inspection which will be deployed if discovery is sought of information residing in deleted files or file fragments. Forensic examination is made possible due to the manner in which storage space is managed on hard disks and other mass storage devices eg, USB thumb drives. Storage space on hard disks are divided into sectors. Typically, average sized files will occupy multiple sectors. When files are deleted, the sectors which they previously occupied are marked as unallocated sectors (or space). The information in the deleted file is still available for recovery from such unallocated sectors until the unallocated sectors are completely overwritten. Sometimes, a new file occupies several sectors in full but only part of the final sector it requires. The information of the previously deleted file in that sector is only partially overwritten. Although the sector is now marked as allocated, the file slack (or slack space) ie, that left over space in the sector which is not occupied by the new file and on which parts of the old file still resides, may contain file fragments. Information in the deleted file fragments is still available for recovery from the file slack.

Without delving into a detailed discussion of the inspection protocol, an overview of the essential areas which are covered may be briefly outlined as follows:

1. Where a joint expert is appointed, provisions are made for an undertaking of confidentiality to be given by the joint expert to the court and all parties concerned in the inspection. The inspection protocol also provides for the joint expert's costs to be borne equally by the parties initially, subject to recovery by the winning party as disbursements during taxation after trial (or when the matter is concluded).
2. The inspection protocol caters for the scenario where a joint expert is appointed and he performs the acquisition of the OAI; it also caters for the scenario where no joint expert is appointed and the OAI is acquired by the producing party's expert under the supervision of all parties concerned in the inspection. A procedure is established to ensure that the OAI is properly secured and given to the custody of the party giving discovery. The OAI is to be produced to the court (or court-appointed expert) when so ordered.
3. When inspection by reasonable search is to be conducted, the procedure contemplates that parties have to agree on the search phrases before the reasonable search is conducted. The inspection protocol sets forth procedures for both the scenario where a joint expert is appointed as well as where reasonable searches are conducted without a joint expert but by party's experts. The overall approaches are similar. There is a set procedure for the party giving discovery to be given an opportunity to redact the search results by removing privileged documents, before the redacted search results and the documents referred to therein are released to the party entitled to inspection.
4. Where inspection by forensic examination is to be conducted, a joint expert should be appointed. The joint expert first works with the party entitled to inspection to conduct a search in order to identify deleted files or file fragments. The joint expert then works with the party giving discovery to identify which of the recovered files or file fragments are subject to privilege. The joint expert maintains a privilege log of the files he is requested to remove and has to produce this log to the court if ordered to do so. The redacted search results (with privileged files removed) and the documents referred to therein are released to the party entitled to inspection.

In the event that privileged documents are nevertheless inadvertently disclosed, the eDiscovery PD makes it clear that the general position under O 24, r 19 of the Rules of Court remains applicable: viz, use of inadvertently disclosed documents is subject to the Court's discretion.

Costs Shifting Orders

In the United States ("US"), case law and recent amendments to the Federal Rules of Civil Procedure have enshrined the courts' powers to make costs-shifting orders. Costs-shifting orders shift part of the costs of giving discovery and inspection to the party requesting discovery. This is a departure from the general common law position where the party giving discovery and inspection bears the costs of complying with the order initially, subject to:

1. the reimbursement of photocopy charges by the party requesting copies; and
2. (in the event that he is the winning party) the recovery of such costs as disbursements at the conclusion of the matter.

In the context of electronically stored documents, the scope of such requests can be significantly broader than similar requests for traditional documentary exhibits. Although the eDiscovery PD seeks to ameliorate such broad requests by requiring applications (and hence, requests) for reasonable searches to specify the scope of such searches, and by articulating the matters which the Court should have regard to in deciding such applications, sometimes a broad search may be necessary after all things have been considered. Costs shifting orders may be used as an additional tool to ensure that requests for e-discovery are proportionate to the value of the claim and

the issues in dispute. It provides the court with a middle ground where the party seeking discovery is ordered to bear the whole or part of the costs incurred in giving discovery when the court may not have otherwise ordered discovery if the costs had to be borne entirely by the party giving discovery.

Whereas costs shifting orders are entrenched in the US Federal Rules of Civil Procedure, costs shifting orders are fairly new concepts in the rest of the common law world. The Victorian Supreme Court's Practice Note No 1 of 2007 leaves open the possibility of costs-shifting orders;¹² while the United Kingdom and Australian federal practice directions are silent on this topic. Interestingly, this issue came before the New Zealand Court of Appeal in *Commerce Commission v Telecom Corporation of New Zealand Limited*.¹³ The case was an appeal from the High Court's order for discovery of a "test" sample of electronically stored documents and for costs of this to be shared 50-50 between appellant and respondents. The Court of Appeal recognised the court's inherent powers to make costs-shifting orders as a term or condition of an interlocutory order. However, the Court of Appeal declined to do so in that case as it found that the respondents had migrated their servers to a different platform after litigation was anticipated and in so doing, they had not sufficiently preserved the means of access to documents which were potentially relevant - they should have archived and maintained potentially relevant documents in an accessible form. As a result of their failure to do so, the respondents were ordered to bear the full costs of the discovery of the "test" sample of electronically stored documents.

Paragraph 43I of the eDiscovery PD makes clear that the Court has inherent powers to make such costs-shifting orders under O 92, rr 4 and 5 of the Rules of Court. It is expected that the principles upon which the court will make such costs shifting orders will be developed in subsequent cases. It bears highlighting that the general position under O 24, r 6(9) that the party seeking pre-action discovery or discovery against third parties is required to bear the costs of compliance with such order is not affected by paragraph 43I.

Conclusion

Electronic discovery is an area of law that is undergoing concurrent development in various jurisdictions internationally. The eDiscovery PD represents the Singapore Judiciary's first attempt to assimilate the best features of these global developments by adapting them for application within boundaries established by our existing principles of discovery law and procedure. Whether the eDiscovery PD has achieved its twin objectives of providing guidance for requests and applications for the discovery and inspection of electronically stored documents and at the same time encouraging the supply of copies of discoverable electronic documents in their native (and, where possible, text-searchable) formats remains to be proved by its application in future cases. As with any developing area of law, the only constant is change and the Courts can be expected to continue to keep abreast of international developments with an eye to fine-tuning the eDiscovery PD.

Yeong Zee Kin*

Senior Assistant Registrar, Supreme Court

Selected References

UK Civil Procedure Rules Part 31 and Practice Direction Part 31

US Federal Rules of Civil Procedure, Part V and Rule 502

Federal Court of Australia Practice Note 17 (1 July 2008)

Federal Court of Australia Practice Note 17 (20 April 2000)

Supreme Court of Victoria Practice Note No 1 of 2007 and accompanying Frequently Asked Questions

Supreme Court of Victoria Practice Note No 1 of 2002

The Sedona Conference Best Practices Commentary on the Use of Search and Information Retrieval Methods in E-Discovery

The Sedona Conference Commentary on Preservation, Management and Identification of Sources of Information that are Not Reasonably Accessible

Note

1 [2006] 4 SLR 95; [2006] SGHC 142, at [66].

2 [1975] 1 Ch 185, at p 198C-F.

3 [1991] 1 WLR 652, at p 658C-E.

4 See discussion of metadata information in Part 1 of this article.

5 Cf *RecordTV Pte Ltd v MediaCorp TV Singapore Pte Ltd and Others* [2009] SGHC 146, at [28] et seq, where an application for the striking out of part of the plaintiff's case which was initially disallowed before exchange of affidavits of evidence-in-chief was eventually allowed after, on the basis that there had been sufficient changes in the circumstances to warrant revisiting the issue.

6 *Supra*, note 3 at p 659D.

7 *Supra*, note 3 at p 659E.

8 [2007] 4 SLR 343; [2007] SGHC 133.

9 *Ibid*, at [19].

10 *Supra*, note 2 at p 658.

11 *Supra*, note 9.

12 Practice Note No 1 of 2007, Supreme Court of Victoria at para 6.7.3.2.

13 [2006] NZCA 252.

14 For a more detailed discussion of costs shifting orders, see Yeong Zee Kin, *Recent Developments in Electronic Discovery: Discovering electronic documents and discovering documents electronically* (2007) 19 SAcLJ 101, at pp 108-114.

* The views expressed in this article are the personal views of the author and should not be taken to represent the views of the Supreme Court.