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GUIDELINES ON
BENCHMARKING
OF **COSTS**

Discussion Paper

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For the Canadian Judicial Council

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FOREWORD

Information and documents relating to court proceedings are increasingly stored in digital format. Courts across Canada are working to facilitate the filing and sharing of information electronically. This reflects the growing importance of using technology as a means to foster an efficient administration of justice. Improved information technology can help reduce some of the costs associated with going to Court.

As reliance on digital documents increases, efforts must be made to ensure that all parties have equal access to affordable technologies. The proposed benchmarks and standards in this document are intended to assist in setting the costs that may be reasonably incurred in civil litigation matters where digital information is filed. In those circumstances where law firms may need to rely on commercial services, costs could include the retaining of external technical consultants. Such an expense would be protected if deemed necessary within published guidelines. Where a law firm has in-house equipment and staff to assist with e-discovery, they may be able to get some reimbursement for their client if they win a matter which had clear guidelines for the reasonableness of such costs incurred. By offering a predictive costing model, this document is intended to level the playing field among parties and to provide the court, law firms and their clients with a common understanding of these issues. These Guidelines are comprehensive and include services that may not always be required. In fact, the cost model spreadsheet provides an overview of all possible services on a complex case.

These guidelines have been prepared by the Canadian Judicial Council to assist courts. Judges retain discretion in making any cost orders in a particular matter. Use of these guidelines should assist both lawyers and judges in considering e-discovery as an affordable tool, particularly when pursued in proportion to the scope of the litigation.

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OVERVIEW

The introduction of technology into the practice of law continues to act as a catalyst for significant change in the way information is collected, managed and utilized in regard to the conduct of a matter in the civil courts. Some Canadian jurisdictions¹, from 2006 onwards, have introduced Practice Directions and the Canadian Judicial Council has published National Standards to be used by those jurisdictions that have not issued their own Practice Direction pertaining to exchange of electronic information between the parties and the court and the conduct of electronic trials using electronic documents including documents scanned from hard copy material and photographs. These Practice Directions/National Standards are focused on providing a level playing field between the parties to ensure that the technology used in such hearings is accessible and affordable to maximize the benefits of using the technology for both the parties and the courts.

Benchmarking isn't some fancy new business theory. A "benchmark" is a standard. It means the process by which a business systematically measures itself against a better performing business, and then adopts and adapts any functions or procedures shown to be more effective.

In this instance we are looking to benchmark the costs involved in civil litigation matters where technology is used to assist – particularly in those provinces' which have chosen to issue the Practice Direction for the use of technology in civil litigation matters or who are following the Sedona Canada Principles (pertaining to eDiscovery in civil litigation matters). Through generic guidelines this discussion paper will allow jurisdictions in Canada to customise their own set of bench marked costs for the use of technology in civil litigation matters.

While these Practice Directions/National Standards outline the basic type and format of the electronic information to be exchanged and supplied to the court they do not provide a guideline as to the indicative costs of such technology and that is the area where benchmarking will help to fill the gap. The only reference in the Practice Direction/National Standard to Costs is Clause 3 which states:

3. COSTS

- 3.1. *The reasonable costs incurred in complying with this Practice Direction, including the expenses of retaining or utilizing necessary external or in-house technical consultants, may be claimed as costs that were proper or reasonably necessary to conduct the proceeding within the meaning of Rule # xx.*
- 3.2.² *Where this Practice Direction applies and subject to any order of the Court, work which might reasonably have been undertaken in accordance with the Default Standard³ or an existing agreed Protocol or a Court ordered Protocol, but which is undertaken otherwise than in accordance with the Default Standard or an agreed or Court ordered Protocol, as the case may be, will generally not be treated as being costs that were proper or reasonably necessary to conduct the proceeding within the meaning of Rule #xx.*

¹ B.C., Alberta

² This means work carried out that is outside the scope of the Practice Note, Court Orders or agreed protocol will generally not be treated as costs that were proper and reasonable

³ The definition of the default standard is contained within the various Practice Notes and National Standard published on the CJC website at [http://www.cjc-ccm.gc.ca/cmslib/general/JTAC%20National%20Model%20Practic\(1\).pdf](http://www.cjc-ccm.gc.ca/cmslib/general/JTAC%20National%20Model%20Practic(1).pdf) and [http://www.cjc-ccm.gc.ca/cmslib/general/JTAC%20National%20Generic%20Proto\(1\).pdf](http://www.cjc-ccm.gc.ca/cmslib/general/JTAC%20National%20Generic%20Proto(1).pdf)

Parties that adopt, and comply with, the guidelines will generally have their costs protected as such expenditure will appear to be necessary to work within the published guidelines. However, there can be a disparity between what might be deemed a reasonable cost for the collection and management of electronic data and the actual costs incurred by the parties. Therein lies the current risk, that is, the cost a party incurs in the conduct of an electronic discovery task may later be deemed as inappropriate or that costs incurred by the client's law firm will not be retrievable.

For example, in some Provinces, under the current costs regime firms that contract out the work of processing electronic evidence can seek to recover the amount that they pay as a taxable disbursement while a firm performing the same functions in-house cannot readily claim for the performance of the same functions. A similar situation has existed in other international jurisdictions such as Australia and UK, and the introduction of cost guidelines and benchmarks has helped to level the playing field in relation to such costs.

Big companies have been benchmarking for years to improve their business. They use teams of people to think about all the different processes and how to do them better. Then they track each step of the process to uncover the underlying flaws. It calls for statistics gathering, in-depth analysis and action planning. With this information they compare themselves with World's Best Practice to pinpoint the areas to improve.

The reason we are looking at benchmarking costs in civil litigation matters is:

1. To provide a guide for the Courts to assess costs in a matter where technology has been used to assist with the litigation
2. To ensure that Law Firms which choose to do this type of work in house are still able to get money back for their client if they win a matter
3. To provide a guideline to firms and end clients alike as to how the Court might rule on such costs and provide a predictive costing model

It should be noted that the benchmarks have a "use by" date to some extent in that the continuing improvement in technologies and competitive pressures generally apply a downward trend relation to cost at the unit level (E.g. in 1995 it could cost \$2 per page to OCR a page now (2010) this is under 5 cents). However, they still act as a useful guide in regard to the average, if not maximum, cost of such services offered by the industry for such services.

During the consultations there were concerns that specialist software licenses are not and would not be recoverable under the benchmark however as advised above the benchmark is a guide only and if there is a valid argument as to why the cost should be allowed then there is nothing stopping this argument being run.

When it comes to technological tools, wise use of them should be rewarded. In our model, linear review by lawyers can result in recovery of all of those costs, but using a sophisticated analytical tool to exponentially reduce lawyer time might not bring cost recovery.

This model includes a sample table (Annex A) which outlines the tasks involved at each of the key steps (an example of this table completed for British Columbia is provided as a guide to other Provinces to enable them to customize this for themselves). This table once written was tested in British Columbia through a number of workshops with the legal profession and meetings with various members of the Judiciary. A spreadsheet model is also provided with the necessary elements and calculations in place, at Annex B. The costs used in this spreadsheet were collected for British Columbia (figures shown in RED) and once again these should be customized by replacing them with appropriate figures from the applicable Jurisdiction to reflect the local available costings.

The models provide a structure for the information to be collected and analyzed in the following way;

1. Analyze the litigation process using technology
2. Analyze where costs are already covered by a tariff
3. Compare it to costs available from commercial service providers

The key to benchmarking is obtaining good commercial financial information about how law firms charge out for these activities and how other service providers compare.

TYPICAL SERVICES MATRIX FOR CIVIL LITIGATION MATTERS BEING RUN ELECTRONICALLY

The following services represent the typical mix of tasks that may be required as part of disclosure to collect, process, manage and produce information in an electronic form.

The services have been summarized and ordered in a way that reflects the typical workflow and methodology that applies to electronic disclosure and eHearings.

Some services have not been placed in this list as they are not considered “standard” for every matter and in most cases are outsourced to providers thus they become a disbursement on the file such as management of foreign language documents where a translation is required or material that is required to be gathered forensically. Both of these activities have substantial costs which must be considered outside this benchmark.

Another such example that was brought up during the consultations was oral discovery which most firms appear to be still undertaking manually instead of electronically. This has been added to Annex A for consideration by each jurisdiction that considers implementing this benchmark.

Table 1

Electronic Task List (Summary)	
1	Document Preparation
2	Database Creation
3	Numbering (Electronic Bates)
4	Scanning
5	Objective Coding
6	Processing Electronic Files
7	Database Management
8	Determination of Production Set (Legal Analysis)
9	Project Management
10	Examination for Discovery
11	Common Trial Book Preparation
12	Hearing Preparation
13	Hearing
14	Appeal Preparation

BENCHMARK METHODOLOGY

To use this information to customize a benchmark for another jurisdiction in Canada the following steps would need to be followed;

1. Confirm and amend where necessary Annex A being the litigation process using technology
2. Analyze where costs are already covered by a tariff or scale for that Jurisdiction
3. Validate against costs available from commercial service providers

The topic areas described in Table 1 are exploded out to form a detailed list of specific tasks generally related to electronic discovery, (Shown in Annex A). This expanded list was validated with a representative panel of lawyers and consultants, both from within a number of the larger law firms and the service providers (please refer to Annex D for list of some of those participants). The tasks and items (listed in Annex A) were then circulated to a number of leading bureaux and legal technology service providers to obtain a listed cost for each of the tasks described, this was then used to validate the spreadsheet model – Annex B. The jurisdiction undertaking the review of costs will need to complete the “Recommended Approach” column in Annex A as appropriate.

The table following provides a sample – based on the British Columbia jurisdiction, of how each task can either be assigned to an existing tariff / scale fee (See Rule 14.1 of the Supreme Court of British Columbia Civil Rules

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/168_2009_02)

or mark with the detail of the way a new cost structure may be created.

Task	Category	Recommended Approach in British Columbia
Document Preparation		
1	Issue Litigation hold (Preservation Notice)	Covered in existing Scale
2	Confer and identify with clients regarding scope of documents retained	Covered in existing Scale Suggest an increase to the minimum 20 – And maximum 100 units
3	Gathering and Collecting Documents (this includes both electronic and paper documents always with a firm understanding on chain of custody issues and sampling) (Where electronic documents are kept electronic and in their native format)	Hardcopy covered in existing Scale Item – no change required. Introduce new item C (see attached proposed cost items sheet) for calculating electronic items.
4	Initial Review (overview) of Documents (this includes both calculating electronic items paper and electronic documents – using keyword searching and culling techniques)	
5	Unitization (logical determination of start and end) of document (hardcopy only)	Covered in existing Scale – no change required.
6	Identification of Host/Attachment relationship (hardcopy only)	
Database Creation		
7	Design Protocols (how information will populate database) (including numbering regime)	Introduce new item A (see attached proposed cost items sheet) for calculating database creation tasks
8	Meet and confer to agree protocols	
9	Database design and implementation	
Numbering		
10	Revisit design and agreed numbering regime	Introduce new item B (see attached proposed cost items sheet) to cover items not already covered in current tariff
11	Print out labels	
12	Affix labels to pages or documents or batestamp ⁴	
13	Quality Assurance of numbering	

⁴ “Batestamp” refers to the sequential number or code applied to each page of the document – this is a term used in the profession and relates back to the machine that used to affix such a number in a hardcopy production

Task	Category	Recommended Approach in British Columbia
Scanning (both in and out of Discovery tasks)		
14	Document preparation and reinstatement (document reconstruction)	Introduce new item B (see attached proposed cost items sheet) to cover items not already covered in current tariff
15	Scan and QA images <i>Include numbering QA here?</i> <i>Not included in per page rate:</i> <ul style="list-style-type: none"> • <i>Oversize documents</i> • <i>Bound documents</i> • <i>Non standard documents</i> • <i>Documents which cannot be fed through the scanner</i> • <i>Colour documents</i> 	
Objective Coding (what is on the face of a document)		
16	Revisit design and agreed protocols in accordance with relevant practice note	Introduce new item B (see attached proposed cost items sheet) to cover items not already covered in current tariff
17	Objective Coding fields in accordance with tariff protocol	
18	Quality Assurance of objective coding	
Processing electronic files		
19	Extract Files (for example decompress compressed files etc)	Introduce new item D (see attached proposed cost items sheet) to cover tasks 19, 21- 27
20	Pre Culling and Analysis of electronic data (to exclude system files, and other clearly non relevant file types)	
21	Automated indexing (Population of objective fields with meta data)	Introduce new item D (see attached proposed cost items sheet) to cover tasks 19, 21- 27
22	Automated records attachment relationship tasks 19, 21- 27 and email threading	
23	Automated numbering	
24	Automated deduplication of data and near deduplication ⁵ of both hardcopy and ESI	
25	Filtering (such as keyword searches, date range, concept search etc.)	
26	Required manipulation of data to conform with agreed protocol	
27	Conversion of efiles (rendering including OCR, tif, pdf)	

⁵ Insert definition of near deduplication here

Task	Category	Recommended Approach in British Columbia
Database Management		
28	Data Management including but not limited to: <ul style="list-style-type: none"> • Importing/Exporting data • Normalizing (<i>standardize</i>) of the data/clean up • User Management and Access 	Introduce new item A (see attached proposed cost items sheet) to calculate on a per document/item basis
Determination of Production Set (Legal Analysis)		
29	Write protocols for privilege, relevance, confidentiality and keyword search criteria	Covered in existing Scale – no change required
30	Code for the above	
31	QA the above coding	
32	Redacting of images	
33	QA of this process	
Project Management		
34	Legal Updates	Not recoverable – no change required
35	Client Updates	Covered in existing Scale – no change required
36	Team Management	Introduce new item A (see attached proposed cost items sheet) to calculate
37	Resourcing	
38	Reports	
39	Production (e.g. draft discovery lists and electronic exchange)	
40	Security issues	
41	Publish	Introduce new item E (see attached proposed cost items sheet) to calculate publishing on CD
42	IT Infrastructure Management	Not recoverable – no change required

Task	Category	Recommended Approach in British Columbia
Examination for Discovery		
43	Examination: 1. Organise Transcript 2. Feed (Realtime) 3. Administration (update and synchronize) 4. Management of Exhibit List and production	Not recoverable
Common Trial Book Preparation		
44	Tagging Documents	Covered in existing Scale
45	Reviewing/Culling	May need to increase minimum from 5 units to a minimum of 10 to a maximum of 100 units for matters being run electronically
46	Page numbering	
47	Linking any document to any document (including preparation of electronic version of opening statement or argument)	
48	Publish to: 1. CD 2. Hardcopy (per photocopy)	Introduce new item E (see attached proposed cost items sheet) to calculate publishing on CD
49	File and delivery to other side	Covered in existing Scale - no change required
Hearing Preparation		
50	In Court facilities	Disbursement
51	Court liaison	Not recoverable
Hearing		
52	Common Trial Book Administration	Covered in existing Scale
53	Linking any document to any document	May need to be changed to allow Legal Technology personnel or Law Clerks Attendance as well as the legal team
54	Transcript: 1. Organize 2. Feed (Realtime) 3. Administration (update and synchronize) 4. Witness List production 5. Exhibit List production 6. Preparation of closing	
55	Remote access	Recoverable for Vendors but not for in-house technology personnel
		Disbursement

Task	Category	Recommended Approach in British Columbia
Appeal Preparation		
56	Identify and Tag Documents in Common trial Book database (Exhibits and transcript for inclusion in the appeal book)	Court of Appeal out of scope for this benchmarking exercise
57	Linking relevant exhibits, transcripts and case law to the Factum electronically	
58	Production of Appeal Book	
59	Publish 1. CD 2. Hardcopy	
60	File and Serve	
61	Repeat the following steps: 1. Hearing preparation 2. Hearing	

The spreadsheet model found in electronic format at Annex B is used to calculate a cost median by ignoring the highest and lowest costs and determining the average of the remaining quotations. A series of spreadsheets used to produce the sample scale fee table is shown below as a sample of how any new scale items or guidelines may be published if required. The fees shown in the sample were determined by the application of a markup equal to 100%-150% on the median cost price. The items detailed in Annex A have been used to group together a number of related tasks into a single and easy to apply scale fee.

As with any benchmarking exercise there needs to be a sample matter set up to ensure the costings are being done against a defined model. Below are the parameters of the defined model used for this exercise:

<i>Pages</i>	200,000	
<i>Hard Documents</i>	50,000	based on 4 pages per document
<i>Gig – electronic documents including email</i>	150	
<i>Est. for No of Items (Electronic)</i>	300,000	based on 2000 items per gb
<i>No of Objective Fields</i>	10	
<i>No of Subjective Fields</i>	10	
<i>No of Objective Coders</i>	10	
<i>No of Subjective Coders</i>	30	
<i>No of days for Obj Coding</i>	14	
<i>No of days for Subj. Coding</i>	47	
<i>No of Documents in the Common Trial Book</i>	87500	

The following notes provide an explanation of the various items in the costs calculation spreadsheet. All sample figures in these spreadsheets are based on information from British Columbia.

SPACE AND FACILITIES SPREADSHEET

Space and Facility Requirements

	Per Annum Estimate
Space Rental (1500 Sq /ft @ \$55)	\$ 82,500.00
Utilities Costs (@ \$700 per month)	\$ 8,400.00
Other Costs (Maintenance etc – 20% of lease)	\$ 16,500.00
Total	\$ 107,400.00
Cost Per Available Day	\$ 447.50
Daily share (20% contribution - related work)	\$ 89.50
Direct share to specific work	\$ 358.00
RED	variables
BLUE	calculated

1. Insert local cost for lease of space and utilities estimates.
2. Other costs are calculated as a percentage of the lease

EQUIPMENT SPREADSHEET

Equipment Calculations

Resource	Capital Cost	Years to depreciate	Maintenance Cost (over life – 15%)	Funding Cost (9%)	TCO	Lifetime Availability (Hours)
Scanner	\$ 7,000.00	3	\$ 4,200.00	\$ 1,890.00	\$ 13,090.00	8640
Server + network + PC's	\$ 9,000.00	3	\$ 5,400.00	\$ 2,430.00	\$ 16,830.00	8640
Pages per hour scanned	800					
Cost per hour	\$ 1.52					

1. Insert Capital Cost or purchase price of item
2. Insert number of years to depreciate or write off cost
3. Maintenance cost is calculated (which is usually 20% PA of the capital cost)
4. Funding Cost which is calculated typically business loan interest rate per annum
5. TCO calculated from = total cost of ownership over the 3 year period
6. Availability of use – hours – based on available working days – calculated service life multiplied by working hours

LABOUR AND RESOURCE SPREADSHEET

LABOUR AND RESOURCE COSTS

Available days per year 240
Hours per day 12 (Shifts)

Resource	Rate Type	Rate	Cost Loading (margin)	Commercial Recovery ⁶ (before rounding)
Scanning Assistant	Hour	\$ 19.00	100%	\$ 38.00
Paralegal	Hour	\$ 32.00	100%	\$ 64.00
Technician	Hour	\$ 45.00	100%	\$ 90.00
Programmer	Hour	\$ 55.00	100%	\$ 110.00
DBA	Hour	\$ 65.00	100%	\$ 130.00
Project Manager	Hour	\$ 80.00	100%	\$ 160.00
Scanning Costs	Page	\$ 0.05	150%	\$ 0.125
Server	Hour	\$ 1.95	150%	\$ 4.87
Space	Hour	\$ 29.83	100%	\$ 59.67
Unitization	per page	\$ 0.03		
Attachment linking	per document	\$ 0.07		
Electronic Bates	per page	\$ 0.0010		
Hard copy (bates sticker/stamp)	per page	\$ 0.01		
eProcessing rate –	per GB	\$ 250.00		

The figures in this sheet are made up of labor costs, unit costs (direct quote) and costs calculated from the other worksheets where required.

1. The per hour rates for staff can be obtained from Law Firm HR Departments or from Legal Employment Specialist Firms.
2. The items in **BLUE** E.g. scanning costs, server and space are calculated from the linked sheets previously outlined.
3. Unitization, Attachment linking, Electronic Bates, hard copy (bates sticker/stamp) and eProcessing rate are obtained from the local suppliers of such services.

⁶ Application of a standard uplift of 2-3 times is typical when working out a commercial rate for the provision of these services

COST MODEL SPREADSHEET

Task Id	Category	Indicative Unit Cost	Notes
Document Preparation			
1	Issue Litigation hold (Preservation notice) ⁷	\$ 800.00	Based on 5 hours work – Project Manager
2	Confer and identify with clients regarding scope of documents retained	\$ 1,280.00	Based on 8 hours work – Project Manager
3	Gathering and Collecting Documents (this includes both electronic and paper documents always with a firm understanding on chain of custody issues and sampling) (where electronic documents are kept electronic and in their native format)	\$ 10,240.00	Based on 1 day per 10000 documents – paralegal rate
4	Initial Review (overview) of Documents (this includes both calculating electronic items paper and electronic documents – using keyword searching and culling techniques)	\$ 1,800.00	Technical rate @ 20 hours
5	Unitization (logical determination of start and end) of document (hardcopy only)	\$ 6,000.00	
6	Identification of Host/Attachment relationship (hardcopy only)	\$ 3,500.00	
Database Creation			
7	Design Protocols (how information will populate the database) (including numbering regime)	\$ 650.00	Based on 5 hours DBA
8	Meet and confer to agree protocols	\$ 480.00	3 hours Project Manager
9	Database design and implementation	\$ 520.00	4 hours DBA
Numbering			
10	Revisit design and agreed numbering regime	\$ 320.00	2 hours Project Manager
11	Print out labels	\$ 2,000.00	per label
12	Affix labels to pages or documents or batestamp		inc. above
13	Quality Assurance of numbering		inc. in above

⁷ “Issue Litigation Hold” is the first step in any litigation to ensure the integrity of the electronic data that may be subject to future discovery. This process protects information from deletion or modification

Task Id	Category	Indicative Unit Cost	Notes
Scanning (both in and out of Discovery tasks)			
14	Document preparation and reinstatement (document reconstruction)		
15	Scan and QA images Page Rate – and Items not included in per page rate: <ul style="list-style-type: none"> • <i>Oversize documents</i> • <i>Bound documents</i> • <i>Non standard documents</i> • <i>Documents which cannot be fed through the scanner</i> • <i>Colour documents</i> 	\$ 24,967.45	Single scan rate per page for standard pages
Objective Coding (what is on the face of a document)			
16	Revisit design and agreed protocols in accordance with relevant practice direction	\$ 480.00	Project Manager 3 hours
17	Objective Coding fields in accordance with tariff protocol	\$ 107,520.00	Coder rate – 10 coders /14 days
18	Quality Assurance of objective coding		built into rate
Processing electronic files			
19	Extract Files (for example decompress compressed files etc.)	\$ 37,500.00	eprocessing charge per GB
20	Pre Culling and Analysis of electronic data (to exclude system files, and other clearly non relevant file types)		
21	Automated indexing (population of objective fields with meta data)		
22	Automated records attachment relationship tasks 19, 21- 27 and email threading		
23	Automated numbering	\$ 300.00	electronic bates rate
24	Automated deduplication of data and near deduplication ⁸ of both hard copy and ESI		Part of the eprocessing charge
25	Filtering (such as keyword searches, date range, concept searches etc.)		part of the eprocessing charge

⁸ Insert near deduplication definition here

Task Id	Category	Indicative Unit Cost	Notes
26	Required manipulation of data to conform with agreed protocol		part of the eprocessing charge
27	Conversion of efiles (rendering including OCR, tiff, pdf)		part of the eprocessing charge
Database Management			
28	Data Management including but not limited to: <ul style="list-style-type: none"> • Importing/Exporting data • Normalizing (standardize) of the data/ clean up • User Management and Access 	\$ 9,000.00	100 hours at Technical rate
Determination of Production Set (Legal Analysis)			
29	Write protocols for privilege, relevance, confidentiality and keyword search criteria	\$ 1,600.00	10 hours at Project Management rate
30	Code ⁹ for the above	\$ 768,000.00	30 Subjective coders - 47 days
31	QA the above coding		
32	Redacting of images	\$ 19,200.00	based on 5% (2500) documents - at 100 docs per day
33	QA of this process		
Project Management			
34	Legal Updates	\$ 16,000.00	100 hours - Project Management
35	Client Updates		
36	Team Management		
37	Resourcing		
38	Reports		
39	Production (e.g. draft discovery lists and electronic exchange)		
40	Security issues		
41	Publish		
42	IT Infrastructure Management		

⁹ "Code" here refers to the process of subjective coding of the documents which may be produced.

Task Id	Category	Indicative Unit Cost	Notes
Examination for Discovery			
43 ¹⁰	Examination: 1. Organise Transcript 2. Feed (Realtime) 3. Administration (update and synchronize) 4. Management of Exhibit List and production	\$ 6,400.00	40 Hours Project Management
Common Trial Book Preparation			
44	Tagging Documents	\$ 19,200.00	Paralegal rate (5000 docs @ 200 per day)
45	Reviewing/Culling		
46	Page numbering		
47	Linking any document to any document (including preparation of electronic version of opening statement or argument)		
48	Publish to: 1. CD 2. Hardcopy (per photocopy)	\$ 90.00	Technical rate at 1 hour per CD
49	File and delivery to other side		
Hearing Preparation			
50	In Court facilities	\$ 1,800.00	Technical rate @ 20 hours
51	Court liaison		
Hearing			
52	Common Trial Book Administration		
53	Linking any document to any document		
54	Transcript: 1. Organise 2. Feed (Realtime) 3. Administration (update and synchronize) 4. Witness List production 5. Exhibit List production 6. Preparation of closing	\$ 900.00	Technical rate @ 10 hearing day
55	Remote access		

¹⁰ The cost on item 43 above is the estimate cost of provision, however it has been used to help calculate the "additional" cost not covered in the existing scale –where the costs would not be recoverable. The costs used in this table have been used to help identify a new scale cost item.

Task Id	Category	Indicative Unit Cost	Notes
Appeal Preparation			
56	Identify and Tag Documents in Common trial Book database (Exhibits and transcript for inclusion in the appeal book)		
57	Linking relevant exhibits, transcripts and case law to the Factum electronically	\$ 3,200.00	Paralegal rate @ 50 hours
58	Production of Appeal Book		
59	Publish 1. CD 2. Hardcopy		
60	File and Serve		
61	Repeat the following steps: 1. Hearing preparation 2. Hearing		
		\$ 1,043,747.45	Total Cost
		\$2.98	Per Document

PROPOSED COST ITEMS

The table below reflects the scale items selected for British Columbia as part of their review of costs. The final scale items recommended in each jurisdiction will depend on the existing items and how effectively they related to the electronic tasks. A blank copy of this document can be found at Annex C.

Proposed Cost Items		
ITEM	DESCRIPTION	CHARGE
A	Management of case information, including agreement of protocols, database design and administration, project management, quality assurance and system management - per document/item	\$3.00
B	Preparation of hard copy documents, scanning, numbering, database creation and objective coding - per document/item	\$10.00
C	Gathering and collecting documents (electronic only as hardcopy is already covered in current tariff 11b or 11c) including pre-culling and analysis of electronic data. Current tariff should be applied on a per gig basis e.g. Scale B - \$110.00 per gig or Scale C - \$170.00 per gig	\$110 or \$170
D	Processing of electronic files including extraction, conversion, automated indexing, automated record attachment of attachments, automated numbering and deduplication of data and any required manipulation of data to confirm with agreed protocol- per Gigabyte charge based on the scale used Eg. \$110 for Scale B, \$170 for Scale C	\$110 or \$170
E	Copy to compact disk - for the first compact disk for each copy of compact disk thereafter	\$300.00 \$15.00

ANNEX A

Detailed task listing and recommended Approach Matrix

The table following provides a comprehensive list of services that may be required to conduct a matter electronically. The task grouping, as displayed, also makes the job of analyzing and benchmarking the services as a set of related costs providing a benchmark result that is less dependent on individual cost components (E.g different suppliers may have different sub-sets of services to achieve the same outcome).

To build up the costing guidelines each task should be considered with reference to the jurisdictions existing costs scale and allowed charges. The “Recommended Approach” column should then be used to detail cost treatment, either using the existing cost scale or detail relating to how this item should be charged for in the cost guidelines.

This Annex has been slightly amended after the consultations with the Judiciary and Bar in the following jurisdictions:

- British Columbia (shown below in purple)
- Ontario (shown below in red)
- Nova Scotia (shown below in green)

Task	Category	Recommended Approach
Document Preparation		
1	Issue Litigation hold (Preservation notice) Mandatory mirror image required to be created (Rule 16)	
2	Confer and identify with clients regarding scope of documents retained (including custodian interviews and source identification)	
3	Gathering and Collecting Documents (this includes both electronic and paper documents always with a firm understanding on chain of custody issues and sampling) (where electronic documents are kept electronic and in their native format)	
4	Initial Review (overview) of Documents (this includes strategy on how this will be done both calculating electronic items, paper and electronic documents – using keyword searching and filtering/culling techniques)	
5	Unitization (logical determination of start and end) of document (hardcopy only)	
6	Identification of Host/Attachment relationship (hardcopy only)	

Task	Category	Recommended Approach
Database Creation		
7	Design preferred Protocols ¹¹ (how information will populate database) (including numbering regime) ¹²	
8	Meet and confer to agree protocols ¹³	
9	Database design and implementation	
Numbering^{14 15}		
10	Revisit design and agreed numbering regime	
11	Print out labels	
12	Affix labels to pages or documents or batestamp	
13	Quality Assurance of numbering	
Scanning (both in and out of Discovery tasks)		
14	Document preparation and reinstatement (document reconstruction)	
15	Scan and QA images <i>Page Rate – and Items not included in per page rate:</i> <ul style="list-style-type: none"> • Oversize documents • Bound documents • Non standard documents • Documents which cannot be fed through the scanner • Colour documents • OCR'd documents • Foreign Language document 	
Objective Coding (what is on the face of the document)		
16	Revisit design and agreed protocols in accordance with relevant practice note	
17	Objective Coding fields in accordance with protocol	
18	Quality Assurance of objective coding	

¹¹ In accordance with Practice Memorandum Protocol (soon to be released)

¹² Based on Discovery Plan Rules (Ontario only)

¹³ Based on Discovery Plan Rules (Ontario only)

¹⁴ The number section is not required at all for Ontario according to a general consensus of the Bar

¹⁵ The number section is not required at all for Nova Scotia according to a general consensus of the Bar

Task	Category	Recommended Approach
Processing electronic files		
19	Extract Files (for example decompress compressed files etc)	
20	Pre Culling and Analysis of electronic data (Early Case assessment) (to exclude system files, and other clearly non relevant file types - denisting)	
21	Automated Indexing	
22	Automated deduplication of data and near deduplication ¹⁶ of both hardcopy and ESI	
23	Filtering (such as keyword searches, date range, concept search etc.)	
24	Automated records attachment relationship tasks 19, 21- 27 and email threading	
25	Automated numbering	
26	Automated coding (Population of objective fields with meta data)	
27	Required manipulation of data to conform with agreed protocol	
28	Conversion of efiles (rendering including OCR, tif pdf)	
Database Management		
29	Data Management including but not limited to: <ul style="list-style-type: none"> • Importing/Exporting data • Normalizing (standardize) of the data/clean up • User Management and Access 	
Determination of Production Set (Legal Analysis)		
30	Write protocols for privilege, relevance, confidentiality and keyword search criteria	
31	Code for the above	
32	QA the above coding	
33	Redacting of images (including OCR)	
34	QA of this process	

¹⁶ Insert definition of near deduplication here

Task	Category	Recommended Approach
Project Management		
35	Legal Updates	
36	Client Updates	
37	Team Management	
38	Resourcing	
39	Reports	
40	Production (e.g. draft discovery lists and electronic exchange)	
41	Security issues	
42	Publish (Produce)	
43	IT Infrastructure Management	
Examination for Discovery		
44	<ul style="list-style-type: none"> • review the documents electronically, making notes regarding content, questions • mark documents electronically for asking questions of client in preparation for their discovery preparation of questions • tag the documents with issue tags, or relate to particular witnesses • prepare an export of documents for client/witnesses • meet with client and review documents, ask questions related to these documents and make electronic notes of answers attached to related document, and notes of questions to ask opposing party/witnesses also attached to document • In discovery, pull up subset of documents tagged for witness 	
45	Examination: <ol style="list-style-type: none"> 1. Organise Transcript 2. Feed (Realtime) 3. Administration (update and synchronize) 4. Management of Exhibit List and Production 5. Attendance by litigation support staff at Examination 	

Task	Category	Recommended Approach
Common Trial Book^{17 18} Preparation		
46	Meet and confer to agree Common Trial Book	
47	Tagging Documents	
48	Reviewing/Culling	
49	Page numbering	
50	Linking any document to any document (including preparation of electronic version of opening statement or argument)	
51	Publish to: 1. CD 2. Hardcopy (per photocopy)	
52	File and delivery to other side	
Hearing Preparation		
53	In Court facilities	
54	Court liaison	
Hearing		
55	Common Trial Book Administration	
56	Linking any document to any document	
57	Transcript: 1. Organise 2. Feed (Realtime) 3. Administration (update and synchronise) 4. Witness List production 5. Exhibit List production 6. Preparation of closing	
58	Remote access	

¹⁷ Joint book of documents in Ontario

¹⁸ Common book of Documents (Exhibits) in Nova Scotia

Task	Category	Recommended Approach
Appeal Preparation		
59	Identify and Tag Documents in Common trial Book database (Exhibits and transcript for inclusion in the appeal book)	
60	Linking relevant exhibits, transcripts and case law to the Factum electronically	
61	Production of Appeal Book	
62	Publish 1. CD 2. Hardcopy	
63	File and Serve	
64	Repeat the following steps: 1. Hearing preparation 2. Hearing	

ANNEX B

Sample Spreadsheet Model (provided as an electronic file) to ensure jurisdictions can customize the benchmark using the formulas and structure of this set of spreadsheets.

ANNEX C

Proposed Cost Items – SAMPLE ONLY – New Scale/Tariff Items

Item	Description	Benchmark Rate (Scale Fee)
A	Management of case information, including agreement of protocols, database design and administration, project management, quality assurance and system management – per document / item listed	
B	Preparation of hard copy documents, scanning, numbering, database creation and objective coding – per document / item listed	
C	Gathering and collecting electronic evidence including pre-culling and analysis of electronic data.	
D	Processing of electronic evidence including extraction, conversion, automated indexing, automated linking of attachments to records, automated numbering and deduplication of data and any required manipulation of data to confirm with agreed protocol.	
E	Copy / transfer of electronic evidence to electronic storage medium (compact disks, DVD's, FTP site, etc), for use by the opposing parties	

ANNEX D

Some Workshop Participants from British Columbia

Name	Title	Firm
Sandra Potter	Managing Director	Potter Farrelly & Associates
Bryan G. Baynham Q.C.	Partner	Harper Grey LLP
John P. Sullivan	Partner	Harper Grey LLP
Monique Sever	Paralegal	Harper Grey LLP
Lisa Evenson	Paralegal	Harper Grey LLP
Bill MacLeod	Partner	MacLeod & Company
Shayne Strukoff	Partner	Gowling LaFleur Henderson LLP
Lisa Rennie	Litigation Services Coordinator	Gowling LaFleur Henderson LLP
John Shewfelt	Partner	Miller Thomson LLP
David Mitchell	Partner	Miller Thomson LLP
Cindy Brandes	Litigation Support Coordinator	Miller Thomson LLP
Julia Lawn	Partner	Nathanson Schachter & Thompson LLP
Susan van Altena	Litigation Support Project Manager/ Paralegal	Nathanson Schachter & Thompson LLP
Mark Oulton	Associate	Hunter Litigation Chambers
Mark Fancourt-Smith	Associate	Fasken Martineau DuMoulin LLP
Megan Chorlton	Associate	Alexander Holburn Beaudin & Lang LLP
Ann Halkett	Paralegal/ Litigation Support Coordinator	Alexander Holburn Beaudin & Lang LLP
Michael Conde	National Litigation Support Manager	Borden Ladner Gervais LLP

