



ACC'S CLO THINKTANK SERIES 2007

**Corporate Business Information Management : E-Discovery
& Beyond**

Hosted by J-P. Bisnaire, CLO of Manulife Financial Corporation

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10:00 a.m. – 2:00 p.m.

Four Seasons Hotel- Toronto, Ontario

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Participants' Briefing Materials

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SUMMARY/OUTLINE OF DISCUSSION TOPICS

Corporate Business Information Management: E-Discovery and Beyond

The following outline is intended to provide a short overview of some of the issues at the heart of this discussion topic. There may be other issues we've not identified or perspectives on the identified issues that are not adequately represented in the outline: you should feel free to raise these additional thoughts, as you like. *The outline is merely intended as a starting point to help you identify discussion topics and tee up your conversation.*

A. Organizational Issues/ Functional Responsibilities- Who is accountable for records management within the organization and how do various functional groups handle records management issues?

- 1. Law Department & Records Management:** Is the law department on point for setting and implementing records management policies? Is there a separate corporate records manager who reports organizationally through the law department? If there is a non-law department office responsible for records management policy and practices, what is the organizational relationship between that function and the law department? What are the pros and cons of having an organizational reporting nexus between the law department and these groups? Who takes the lead in communicating and implementing practices involving document preservation for litigation? What role does the law department play in developing and implementing policies, communications, and training relating to records management?
- 2. Centralized Records Management Function:** Do you have a centralized records management function? How many and what kinds of professionals are included within this group, and who does the functional lead report to? Has there been a change in reporting structure in the last several years, and what was the rationale for the change? Does your company's organizational structure include having records 'ombuds' or embedded records specialists within various business and/or geographic units? How does the records management function interact with the other key functional groups within the organization (such as IT, legal, compliance, tax, privacy professionals, security, business groups, etc.)? What value does having a centralized records management function offer? What is the scope of this group's responsibilities?
- 3. Information Technology Function:** What role does the IT function play in records management? Are there dedicated specialists within the IT group on point for technology and processes to support records management? What are the key challenges for the IT function in supporting and implementing your company's records management function? How does the law department work with the IT function to implement records management, retention, litigation-related preservation, and destruction? Are there advantages/disadvantages for having the IT group as the lead functional group on point for records management?

4. **Security:** Does your company have a separate security function that has a role in records management? What is the scope of this role? How has it changed (if at all) in recent years?
5. **Privacy and Data Protection:** Does your organization have a Chief Privacy Officer or equivalent position? What is the organizational reporting relationship between this position and the law department? What role does this individual play in records management? Has the role increased in recent years, and if so what are the greatest challenges? How have privacy and data protection considerations impacted design of your company's records management practices?
6. **Board's Role and Impact:** What role does the Board play in setting and approving corporate records management practices? Do company records management policies apply to the Board? Have you developed guidelines, policies, or training for the Board on corporate records management practices and the Board's handling of its own records and communications/information? What role does the law department play? Do you advise the Board on their use of corporate information and their communication practices about corporate issues with non-corporate employees, etc.? What are your key challenges and ideas for best practices in communicating and implementing records management policies and programs as they relate to the Board?

B. Records & Information Management Policies

1. **Developing a Records Management Policy/Policies:** Does your organization have a written records management policy? Did you develop it in-house or with outside assistance? What was the process for developing this policy? Did you create a cross-functional multi-disciplinary team? Which skill sets and constituencies proved key to your efforts? What was the role of the law department? How long did it take? What were the greatest challenges in developing the policy? And now in implementing it?
2. **Single or Multiple Policy/Policies; Global Considerations:** Does your company employ a single, global policy that applies to a broad range of business records and documents, or are there several policies for managing various types of business information (e.g., email policies, internet use policies, blogging policies, blackberry/palm use policies, financial records policies, etc...) or various groups of businesses within your corporate family? For global companies with different jurisdictional requirements, how do you work to harmonize the various requirements? What are the greatest challenges? Ideas on best practices?
3. **Scope of Coverage:** Do records policies and responsibilities apply to all employees? Do they also apply to contractors or third parties (e.g., vendors, suppliers, service providers, etc.)? Do they apply to the Board? Do you have separate policies for the law department? Do you require those who are covered by the policy to formally acknowledge that they've reviewed and will follow the policy? Do you require a periodic attestation of compliance? Do these requirements vary depending upon jurisdiction or employment status? How do these policies address use of personal or home computers, portable drives, offsite paper files (as in those in the telecommuting employee's garage), text messaging on phones or palm devices, voice mail, etc..?

4. **Communications:** How do you communicate your company's corporate records management and electronic communications policies? Do you have a Corporate Code of Conduct that incorporates or references these policies? Are the policies made available in hard copy or electronic format? Is it part of every employee's orientation process? Is it part of ongoing educational/career development sessions? Who is on point for developing communications strategies on awareness of the policies? How do you communicate changes to the policies or the need for special preservation practices?
5. **Defining Corporate Business Records:** What information is created in your corporation and how can it best be organized to serve corporate purposes? If the key to records management is having a good sense of the status quo: What are the different types of business information (minutes, contracts, RFPs, patents, audit reports, investigation reports, emails, etc.) created within your corporation? In what forms or media types (paper, databases, archives, hard drives, voicemail, CAD drawings, etc.) do they exist? Where can they physically be found and how are they tracked? How did you identify the scope of business records to be covered by your company's policies and practices? Did this process change business practices?
6. **Inventory and Classification:** Do you have/need a mechanism to classify information as an official business record? What are the particular attributes of each business record (original, copy, trade secret, legally privileged, read-only, hidden file, system file, etc.)? How do you track or wipe metadata from documents, if at all? Do you have an inventory of all of the corporation's data repositories? Does the corporation have a "Data Map" to outline the company's IT systems, the business information they contain and the volumes of data? Are there key record groups that are essential to the proper functioning of the organization? Any other "high risk" records? Which systems are used to create which types of records?
7. **Security/ Business Continuity/Disaster Recovery:** What kinds of policies and practices are implemented to help ensure the security and integrity of business records over time (are they are susceptible to manipulation)? Have you included provisions on business continuity/disaster recovery measures or developed separate policies on how to maintain and preserve critical business information? What are some of the key challenges or best practices you've seen in this area?
8. **Other considerations in developing policies?**

Links to Ressources:

Business Records rule- Section 35 of the Ontario Evidence Act

(http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90e23_e.htm#BK44)

ACC Leading Practices Profile on Records & Information Management

(<http://www.acca.com/resource/v5896>)

ACC InfoPAK on Records Retention

(<http://www.acca.com/infopaks/rcrdsretention/recretent06.html>)

C. Creating Business Information; Issues and Considerations - What information is created in your corporation and how can it best be organized to serve corporate purposes? What types of issues give you greatest pause when it comes to creating business records, and what steps do you take to help minimize risks? Below is a list of some of the types of business records you may deal with on a daily, and possibly increasing, basis together with questions for consideration. It's not a complete list; just some thoughts to help stimulate discussion on areas we know are of interest to CLOs.

- 1. Email:** Does your company have a policy with regard to use of email? Is it part of a broader records management policy or a separate policy? What are the pros and cons of having a separate policy? What are the key provisions of the policy? How do you enforce it? What types of training do you provide to employees with regard to the creation and use of email? What security practices do you implement with regard to emails? Do you monitor employee emails? How do you set and manage email retention practices? Is there a need to try to limit email use or is that futile/counterproductive to doing business?
- 2. Minutes -- Board and Committee:** Do you wear the dual hat of Corporate Secretary for your company and are you responsible for preparing Board minutes? What do you view as the pros and cons of having the CLO also perform the role of Corporate Secretary? What guidelines do you follow in creating minutes? Do you create minutes for the full-Board sessions as well as Executive Sessions or Board Committee meetings? Are your minutes short summaries of actions taken or detailed records of conversations and issues considered? How do you determine the right balance on what to include/exclude in the Board minutes? Do you chair or participate as a secretary for a Board Committee or other corporate business committee (such as a compliance committee, disclosure committee, reputational risk committee, etc.)? Do you create minutes of meetings for these committees? What guidelines do you follow in creating these minutes? If you are not responsible for preparing these minutes, what guidelines do you/does the law department provide to the individual(s) responsible for creating these minutes? What are the key challenges you face?
- 3. Intranets:** Do you have a corporate intranet? Does the law department have an intranet? Do you have a policy or policy provisions with regard to creating or posting information on the intranet and use of the intranet? What are the key provisions? What are the key challenges?
- 4. Internal Investigation Reports:** Do you generally create reports of internal investigations? Does the law department play a leading role on the investigation team and with regard to report development? Why or why not? Is privilege protection an issue? Do you create parallel reports: factual (discoverable/produce-able) and privileged? Does the law department provide guidance to other groups (e.g., internal audit, compliance, etc.) on how to prepare reports of factual investigations? Have you experienced an increase in requests from auditors, prosecutors, and/or regulators for internal investigation reports or their results and does this cause anxiety in your department or management? What types of strategies have you implemented to help preserve privilege or other protections when disseminating reports to outsiders?

- 5. Financial Disclosure Documents:** If your organization has a Disclosure Committee, are you a member of the committee? Do you (or another senior lawyer or other individual serving as secretary or chair for the committee) create minutes of these meetings (regularly scheduled and/or ad hoc)? What guidelines do you follow in creating these minutes? What guidelines or policy considerations have you implemented with regard to draft disclosure statements? How do you communicate these policies or guidelines to committee members?
- 6. Internal Controls Records; Certifications:** Special consideration needs to be given to creating and maintaining documents in the context of corporate governance. Does your records management system allow you to retrieve financial documents, board minutes, etc. for production to certain parties upon request? In your company, which leaders participate in providing written certifications in support of financial disclosures? Do you as CLO provide a written certification, and what (if any) reservations/limitations does your certification include? What are the pros and cons of having the CLO provide a written certification? What criteria and practices has your company implemented with regard to creating written certifications in support of financial disclosures or other internal controls processes?
- 7. Reports of Concerns:** Does your company outsource (in whole or in part) intake of reports of concerns? What types of guidelines has your company developed for intake of these reports and creating and maintaining documents of these reports? If you use an outside vendor, what types of practices have you implemented to help ensure compliance with these guidelines and practices?
- 8. Press Releases; Public Statements:** What role do you as CLO perform (or your law department) with regard to review and approval of press releases and public statements? Does the law department review all press releases and public statements or only those that meet certain criteria (and, if the latter, what criteria)? What types of guidelines has the law department developed for professionals in the public relations or government relations groups on how to prepare these documents?
- 9. Controlling leaks of confidential information:** In the aftermath of the recent Hewlett-Packard scandal, has your company implemented new or revised policies on investigating and censoring leaks of corporate information by employees or board members?
- 10. Non-disclosure agreements:** What is your company's policy and practice re employee non-disclosure agreements? Do these agreements extend into your law department and regulate lawyers, or are other policies/practices in place to ensure their compliance with confidentiality / conflicts standards. Does your company actively police the practices of recently department/former employees who are now working for other companies in your sector? How much can you reasonably expect to protect and what practices would you like to see better employed in this regard?
- 11. Blogging:** Does your company have a policy on blogging? What are the key provisions of the policy? Do you have a corporate blog? Why or why not? If your company has one, does the company's records management policy apply to it? Do you think that in-house lawyers should participate in blogs? Are there individuals on point for monitoring external and internal blogs (either for information retrieval or for inappropriate statements/disclosures)?

- 12. Knowledge/Expertise databases:** Does your company promote or house knowledge management databases or other resources? Do your in-house and outside counsel share expertise in retrievable formats to avoid re-inventing the wheel and to promote avoiding previous mistakes? Do your managers or other managers in the company promote “forms” or other kinds of contract databases that create standards and document deviations from standards? Are there problems or pitfalls to knowledge sharing that impact your document creation and retention processes?
- 13. Intelligence/information gathering:** Does your company actively “mine” for information relevant to your business from other sources? If so, how is this connected (or not) to your company’s information management processes? Is this kind of business intelligence (at a level of corporate function) a necessity, a good idea or a problem?
- 14. Text messaging; blackberry/treo/palm use:** Does your company have a policy on these types of communications? Does it apply to employees using company-issued equipment or to all employees? Does it apply to Directors? What are some of the key features of the policy?
- 15. Practices:** What types of practices has your organization implemented with regard to creating business documents that you would consider to be leading or best practices? What types of practices have you seen other organizations implement that you would consider to be leading or best practices? What types of practices or responses have you seen or heard of that you consider problematic?

Links to Ressources:

Ogilvy Top Ten Training Tips on E-Communications and Records Management

<http://www.acc.com/protected/clo/recomrecordsmanagetop10.pdf>

Ogilvy Article on Email Retention: Striking the Right Balance

<http://www.acc.com/protected/clo/strikingrightbalance.pdf>

Ogilvy Powerpoint on The Dangers of Electronic Communications

<http://www.acc.com/protected/clo/dngrsofeleccom.pdf>

-CC InfoPAK on Email and the Internet

<http://www.acca.com/resource/v6263>

Ogilvy Article on Weblogs and Workplace

<http://www.acc.com/protected/clo/weblogarticle.pdf>

ACC Top Ten Tips on Blogging

<http://www.acca.com/protected/reference/tech/blogtopten.pdf>

ACC Article on Ins and Outs of Intranets

<http://acc.com/resource/index.php?key=6825>

ACC Article on International Use of US corporate Intranets

<http://acc.com/resource/v4868>

ACC Program on Best Practices Using Intranets

<http://acc.com/resource/v4683>

ACC Leading Practices Profile on Knowledge Management

<http://acc.com/resource/v5897>

ACC Article on Data Centers

<http://www.acc.com/resource/v8046>

D. Information Management & Retention – How do you manage the life-cycle of each business record to ensure accessibility when necessary and destruction when and if appropriate?

A corporation generally retains documents and records for three primary reasons: for internal use, review and analysis to carry out its business; for responding to legislative, governmental and regulatory requirements; and for defending itself in response to claims by third parties. Are your policies focused on the first use, or the defensive issues inherent in the latter two? Are the first use and the last two mandates compatible? Can policies designed to facilitate one use also serve the purposes of the other?

- 1. Retention Schedules:** What considerations determine the retention schedule? How homogenous must records be to be treated as a group? Have industry-specific best practices developed? How did you identify records types and retention schedules? Was this an internal initiative or did you receive outside help? How does your corporation balance the costs associated with retaining documents with the anticipated costs associated with being unable to access them? What are the sound business reasons for document destruction, and how can you ensure destruction that minimizes business risk?
- 2. Systems to Support Retention Schedules for Electronic Documents and Email:** How do you use technology to enforce retention schedules? Are there auto-delete cycles in effect for email or other electronic documents? Do individuals receive notifications of the need to take action to avoid auto-deletion? Do auto deletion cycles simply encourage “copies” to be made and filed in an attempt to avoid deletion of the primary file (and thus a false belief by management that documents have been purged)? If your company uses these or similar features, were these programs developed in-house or do you utilize an outside service provider or purchase software to support these practices? How does the law department interface with IT to preserve documents and ‘pull’ them from auto-deletion? How do these systems and practices extend to electronic documents and information that is not part of the company network (e.g., Palms, personal computers, cell phones, etc..)?
- 3. Systems to Support Retention Schedules for Hard Copy Documents and Business Documents not on the Company Network:** What types of systems or processes does your company implement to support retention schedules for these documents? Do employees receive reminders of retention schedules? Does your company have pre-set days for document retention compliance? Is this an internally managed initiative or does your company use an outside service provider? What types of practices does your company implement with regard to business records maintained by an off-site service records management service? What about with regard to outside counsel or other legal service providers?
- 4. Communications and Training:** How does the company communicate its records management policies (code of conduct, intranet, orientation, periodic training, compliance certification statements, etc..)? What types of training does your company provide on compliance with its records management policies? Is it a combination of web-based training and in-person sessions? If your company uses web-based training, is the module an off-the-shelf training program that you’ve ‘tweaked’ or is it fully customized? What was the process for selecting the appropriate training mechanisms?

5. **Preservation Practices:** What processes and practices do you implement to preserve documents/information that are required by law to be preserved (e.g., tax or securities items)? What processes and practices do you implement to preserve documents/information germane to current, pending, or anticipated litigation (litigation holds)? What about in the context of an internal investigation or whistle-blower situation? What role does the law department play? Who are the other key players in ensuring compliance with preservation requirements? Do you document the process followed to preserve documents/information, or require certifications? How do you avoid the nightmare of documents you thought were being preserved but were actually destroyed or otherwise buried?
6. **Law Department Knowledge Management Systems and Practices:** Does your law department have a knowledge management system? Was it developed in-house or with outside assistance? Did you develop the technology in-house or buy and tweak or semi-customize outside software? What process did you follow to select the system? What types of knowledge or information do you retain within the system? Do you have a professional within the law department on point to manage creation, content, quality, and life cycle of the knowledge within the system? Does everyone within the law department have access to the system? Are there 'external-facing' components that allow business clients, outside counsel or legal service providers or other vendors to access all or some of the information? What efficiencies have you gained in creating and using this system? Do you have access to your primary law firms' knowledge management systems and vice versa? Have your law firms created client web-pages for you to help facilitate knowledge and matter management? What best practices have you identified in this area? Do shared knowledge management systems without outside counsel include other components (such as fee/bill tracking on a real-time basis, or technology sharing capacities)?
7. **Law Department Matter Management Systems and Practices:** Does your law department use a matter management system? Was it developed in-house or with outside assistance? What are its features and functions? What have you excluded from coverage and why? Are outside counsel required to enter case information into this system? What security measures have you implemented to help ensure integrity of the information and limit access? Have you identified any best practices with regard to matter management systems? What are the greatest challenges?

Links to Resources:

Department of Justice Canada- Guidelines for the Discovery of Electronic Documents in Ontario
<http://www.commonwealthlegal.com/pdf/E-DiscoveryGuidelinesOct2005.pdf>

ACC Article on e-data and Discovery

<http://www.acc.com/resource/v8043>

ACC Article on new eDiscovery Disclosure Requirements

<http://www.acc.com/resource/v8045>

ACC Article on Monitoring Litigation Holds in the Corporate World

<http://www.acc.com/resource/v8053>

ACC Top Ten tips on dealing with new FRCP on e-Discovery

<http://www.acc.com/protected/reference/tech/ediscovery.pdf>

E. Electronic Discovery – How do you effectively manage litigation risk while ensuring ongoing operations do not suffer?

There are four primary stages of any production exercise: locate, preserve, review, produce. The corporation's overall records management strategy and records retention policy will determine the efficiency with which the "locate" and "preserve" tasks are accomplished and need to be integrated with a litigation/investigation response strategy.

- 1. Duty to Preserve:** When is the duty to preserve triggered? When should you reasonably anticipate an investigation or litigation with sufficient certainty to suggest that a litigation hold requirement be instituted? If you are developing privileged documents related to the matter, is that the appropriate trigger or "evidence" that you thought the issue might have sufficient litigation potential? To what information does the duty of preservation extend? How do you build a "retention/litigation hold" into your retention policy? Who needs to get it? How can the CLO most effectively manage litigation holds and preservation orders? What is a reasonable time frame or turn-around? Do you (and, if so, how) document your preservation steps?
- 2. Litigation Response Team:** When litigation is pending, what services are best accomplished in-house and which services should be outsourced? Who should be part of the litigation response team? For e-discovery, do you use an e-discovery vendor? How do you select and instruct an e-Discovery vendor? What practices have you implemented within your law department and organization that you consider to be best practices?
- 3. Relevance Parameters:** What practices have you implemented to set relevance parameters to narrow the scope of documents to be preserved? What data must be searched? Is meta-data relevant to your case or not? Should you make "scrubbing" techniques required in general retention policies or only for documents germane or responsive to the litigation setting?
- 4. Business Records Rule Considerations:** Do your electronic records meet the test required by the "business records rule" in the Canadian evidence statutes?

F. Privacy and Data Protection Considerations – How do you integrate personal information management into a corporate records management program?

Every corporation collects and maintains personal information such as employee information. Depending on the nature of your business, your corporation might collect sensitive financial information, family history information, customer or supplier information, contacts databases, prospecting or potential client/customer information, and more. In addition, your company's business may involve receiving personal information from customers or other third parties which may trigger additional privacy and data protection considerations.

Ten principles are regularly identified as meriting consideration when dealing with personal information management: Accountability, Identifying Purposes, Consent, Limiting Collection, Limiting Use, Disclosure and Retention, Accuracy, Safeguards, Openness, Individual Access, Challenging Compliance (These are based on the "Fair Information Practices" set out in the

- 1. Personal Information Management Practices:** What privacy legislation impacts your business? Are you part of an industry association that has developed a voluntary privacy code? Does your organization have personal information management practices and policies respecting the ten principles? Do you make them readily available to individuals on request (Principle 8: "Openness")? Are they integrated into the overall document management policy? *PIPEDA* does not contain provisions to allow an organization to disclose personal information (such as may be on customer lists or employee lists) to prospective purchasers or business partners without the consent of the individual affected. How do you address this in the context of due diligence for a prospective transaction? What issues or challenges do you face with regard to transfer of information to affiliated or subsidiary corporate entities? What practices have you implemented to address these challenges? If your company runs an internet site as an integral part of its business, what protections against 'phishing' do you implement?
- 2. Global Considerations:** Do you have regular, trans-border flows of personal information? Do you anticipate "irregular" flows of personal information cross-border? What types of security does your company implement to address personal data in transit? What types of practices or procedures has your company implemented to transfer information among corporate subsidiaries across jurisdictions with different data protection requirements? How do you harmonize the requirements of various jurisdictions and set workable practices? If you have a global law department, how (if at all) has this impacted your ability to implement a global professional assessment/development program? Do you have a global corporate employee directory that includes home address and phone number contact information?
- 3. Programs for Reporting Concerns :** Do you have a whistleblowing policy that makes transparent corrupt conduct or improper handling of information yet balances privacy concerns? Can individuals blow the whistle anonymously? Is reporting of concerns required or encouraged? Are there different requirements for different parts of the world or is there a single corporate policy that would apply? What if an employee blows the whistle and discloses personal information in a way that breaches the information privacy principles? Does the employee sufficiently disconnect himself from the organization by the act of whistleblowing to insulate the organization from liability for privacy violations?

Links to Ressources:

ACC Leading Practices Profile on Privacy & Data Protection

<http://www.acc.com/resource/v6679>

Report to the Minister of Public Safety and Emergency Preparedness Canada on Phishing

http://www.usdoj.gov/opa/report_on_phishing.pdf

G. Privilege Considerations

- 1. Creating and Maintaining Documents:** What types of practical steps does your law department take to help preserve privilege protections when creating and maintaining documents? How selectively or broadly do you wish to assert confidentiality generally, and privileges in specific? Do you have a pre-disposition to produce (“cooperate”) or to protect (lawyer-generated files? Do you train in-house lawyers on steps to take to preserve privilege? How do you train business clients on who holds the privilege (e.g., the organization) and what types of communications and records may be privileged and protected (e.g., do they know that simply copying a lawyer on an email doesn’t make the communications privileged)? If you have a global law department and a law department intranet, do you implement different practices/restrict access to certain shared system drives, etc.. to preserve privilege for those portions of the law department located in jurisdictions that don’t recognize attorney-client privilege for in-house lawyers? Do you have a presumption of differing standards of privilege protection for documents or advice generated by in-house counsel, as opposed to documents and advice generated by outside counsel? How do in-house counsel’s concurrent business responsibilities affect their ability to provide privileged and protected advise? Can the privilege survive for advice given by lawyers for one entity to clients across the corporate family (in subs or affiliates, for instance)?
- 2. CLO as signatory, scribe, provider of sub-certifications:** Do you sign documents or agreements in your capacity as CLO or senior executive for the company? What issues do you face when you both execute and provide legal advice on or relating to a document? How does this impact your role? If you are creating minutes in your role as corporate secretary or committee chair, how does this impact the availability of privilege protections for the document? What is your view on the CLO’s ability to provide a certification or a sub-certification and also provide legal guidance relating to issues covered by the certification?
- 3. Legal Advice - oral or written:** Has there been a shift in the way that in-house lawyers provide legal advice? Is more advice being provided verbally instead of in writing due to privilege considerations? How do you think this impacts the role of in-house counsel and the ability to provide meaningful legal advice on complex issues? Does your law department have policies or guidelines (written or unwritten) on ways for providing legal advice in sensitive situations?
- 4. Inadvertent Disclosures:** When will inadvertent disclosures result in waiver of privilege? What kinds of “claw-back” concerns do you have re privileged material produced in massive discovery responses? What steps can be taken to minimize the chance that inadvertent disclosure will result in a waiver of privilege? Are claw-back agreements an effective tool in Canada?
- 5. Auditor Requests for Information:** Are internal and/or outside auditors requesting access to privileged information? Have you experienced an increase in these requests? What practices have you implemented in response to these requests? How do you protect documents produced to your auditor from being producible in litigation? How can you assert something akin to a doctrine of “limited waiver” for privileged documents voluntarily produced to an auditor for the conduct of an audit and the examination of financial statements? Can you use labeling of documents and instructions to auditors to



maintain privilege over the documents? Can you avoid the problem by seeking to provide the information needed without producing source documents, or are source documents the new holy grail for accountants worried about professional liability for leaving stones unturned?

Links to Resources:

ACC White Paper on Pragmatic Practices for Protecting Privilege

<http://www.acc.com/public/attyclientpriv/pragpract.pdf>

ACC Qwest Amicus Brief

<http://www.acca.com/public/amicus/qwest.pdf>