

Ignore eDiscovery at your peril

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The proliferation of electronic documents makes electronic discovery imperative for the legal and corporate world, and mishandling such documents could spell danger for the success of your case.



This was the overarching sentiment shared during the [virtual launch](#) on 30 March 2021 of Africa's first legal text on eDiscovery, entitled [A Guide to eDiscovery in South Africa](#).

Hosted by publisher of the new title, LexisNexis South Africa, the session featured insights from legal experts including renowned Judge Jody Kollapen, co-author Terry Harrison, who is currently Africa's only independent eDiscovery Consultant, and Sumantha Reddy, Content Manager at LexisNexis.

In his keynote address, Judge Kollapen, who wrote the foreword in the new book and considers himself "no fundi of technology", interrogated the far reaching and positive impact of technology and innovation on society and the practice of law.

He said, "Just as technology has brought us the possibility of eDiscovery, so too has it brought remarkable changes in our world. Technology has been largely a force for good, but equally there is a downside that comes with it. It touches on deep and complex issues about who we are, what kind of footprint we will leave behind, the ethical standards that we wish to live by and how to make sense of the bewilderment of this wonderful world we live in, while retaining some sense of control and choice in what we do. In many areas one sees this perpetual conflict and ethical challenges presented by technology in terms of issues around privacy, human dignity and human conduct. The challenge is how we manage these."

eDiscovery and access to justice

Judge Kollapen said it would be simplistic to see the new eDiscovery publication as just a tool for better and more effective discovery.

“It is important to locate this legal text within its proper context legally, socially and politically. In the context of our country, few of us going back to 1994 would have ever imagined that lawyers and litigation would play such a central role in the trajectory of our society. There is hardly an issue that is determined in our society without some input from the courts, judges and lawyers,” he said.

“Yet 27 years into our democracy, for so many millions of people, access to justice remains merely a promise. Getting legal representation and a case into court, being able to vindicate one’s rights and to seek to right a wrong, to call into action the promise of the law, is simply a bridge too far. For many of them the exceptionality of our Constitution is of little comfort when in truth and reality they live largely outside of the Constitution and its promise and benefits. This publication around eDiscovery as a process that is committed to greater productivity and access to justice, must be located within that broader context,” he added.

Risks of ignoring eDiscovery

Discovery, if not dealt with properly can be costly and time consuming especially in matters involving complexity of documents and it is here that eDiscovery makes a significant difference.

Harrison said that some of the risks and dangers faced if eDiscovery is not adopted effectively, include missed documents that could have won or lost a case, increased litigation costs that then impact on jobs for attorneys and advocates, lengthy litigation periods, as well as weakened access to justice.

“Statistics tell us that more than 97% of all business documents are now created electronically. It’s the evolution of how business is done now that makes eDiscovery essential. eDiscovery does not change the basic principles of discovery in any way, shape or form. Standard discovery is about conducting a reasonable search for documents in our possession or control and to expose these to the other side. There is nothing in eDiscovery that changes that principle at all. It is an evolution, rather than a revolution. It’s the methods of communication and document creation that have changed, not the rules.”

Embracing technology

Co-author, Advocate Ismail Hussain SC, who could not attend the launch due to court duties, writes in the book, “Smart lawyers who learn the rules and use technology correctly can rest assured they will be prepared for litigation in the 21st Century.”

LexisNexis CEO and Chairperson of the Board, Videsha Proothveerajh, said the Fourth Industrial Revolution and the fusion of the physical, digital and biological worlds has brought a lot of opportunity for the legal sector, as much as it is delivering disruption and some anxiety within the sector.

“eDiscovery will have a great effect in terms of the amount of time required to process cases. This creates a space for more productivity and for legal professionals to do what they do best. As LexisNexis we see technology as an enabler and we’re very proud when we’re able to bring to the forefront solutions that help our customers and legal professionals to focus on what they do best, which is advancing the rule of law.”

Sumantha Reddy, who was instrumental in getting the book produced and onto shelves, said when she first started researching the topic, she was surprised at how little information there was in South Africa.

“This just shows that this title will provide much needed guidance for our market. Lawyers cannot afford to be tech averse. In fact, it may be unethical if they do not utilise technology in order to best serve their clients and justice. eDiscovery should be viewed as part of a lawyer’s ethical duty to provide competent representation,” she said.

[A Guide to eDiscovery in South Africa](https://bit.ly/3q6sNDe) (ISBN 9780639012629) is now available from the LexisNexis online bookstore. Get it at: <https://bit.ly/3q6sNDe>.

Missed the virtual book launch? Watch it on the LexisNexis YouTube channel at: <https://www.youtube.com/watch?v=08WZrcB6juo&t=16s>.

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