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From the activities of a number of conference organizers, a great deal of attention is focused on the rules relating to electronic disclosure or discovery in civil proceedings. This is mainly because large organizations, when contemplating legal action, are required to search through vast swathes of electronic documents across different products and storage media (laptops, PDAs, mobile telephones, the networked computers physically located in offices) to obtain all the relevant evidence to initiate their case, and to provide to the other side in due course if the local procedural rules require the exchange of evidence. For this reason, practice directions continue to be developed across the world, especially in the 'common law' countries. In Canada, the 'Sedona Canada Principles Addressing Electronic Discovery' have been developed and are being used; in Ireland, the Law Reform Commission of Ireland has issued a Consultation Paper on Documentary and Digital Evidence (December 2009) (LRC CP-57 2009); in New Zealand, the Rules Committee issued a Consultation Paper on proposals for reform of the law of discovery (2009); in Singapore, Appendix E 'Discovery and Inspection of Electronic Documents' of the Supreme Court Practice Directions became effective on 1 October 2009, providing an opt-in framework for parties that wish to request or apply for discovery and inspection of electronically stored documents; in the United States of America, changes to the Federal Rules of Civil Procedure were made in 2006; in England and Wales, the Senior Master's e-disclosure working party, chaired by Senior Master Whitaker, submitted a draft practice direction to the Civil Procedure Rule Committee that will be brought into effect in October 2010. Finally, in a wider context, the South African Law Reform Commission published 'Issue Paper 27, Project 126: Review of the Law of Evidence (Electronic Evidence in Criminal and Civil Proceedings: Admissibility and Related Issues)' in March 2010, with a view to amended relevant legislation.

But still something is missing.

It is the education of lawyers and students of law in particular.

In England, Lord Justice Jackson discussed electronic disclosure in his 'Review of Civil Litigation Costs: Final Report' (December 2009) on costs relating to civil litigation. Recommendation 4.1(i) can be said to have universal relevance:

> 'E-disclosure as a topic should form a substantial part of (a) CPD for solicitors and barristers who will have to deal with e-disclosure in practice and (b) the training of judges who will have to deal with e-disclosure on the bench.'

But educating lawyers about electronic disclosure or discovery is only part of the picture. The electronic environment has caused lawyers to reconsider the nature of the work they do and how they do it, but a great deal of education is necessary for lawyers in particular to take action to educate themselves in electronic evidence. In England and Wales, the system of justice is dependent on the assistance given by advocates to the court, and advocates are required to bring relevant authorities to the attention of the court. The members of the Court of Appeal in the case of *Copeland v Smith* [2000] 1 WLR 1371 had occasion to address this issue when it became apparent that a relevant authority had not been brought to the attention of the court, which meant it was assumed the judge could rule on a matter in the absence of any authority. Research carried out by both instructing solicitors and counsel failed to uncover a relevant authority. This was commented upon by Buxton LJ at 1372-1373:

> 'I cannot draw back from expressing my very great concern that the judge was permitted by those professional advocates to approach the matter as if it were free from authority when there was a recently reported case in this court directly on the point, which

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> was reported not in some obscure quarter but in the official law reports. It is, of course, not only extremely discourteous to the judge not to inform him properly about the law, but it has also been extremely wasteful of time and money in this case .... I have, I fear, to say that the advocates who appeared below did not discharge their duty properly to the court in that they apparently failed to be aware of the existence of that authority.'

In his judgment, Brooke LJ made a number of observations respecting the introduction of the new Civil Procedure Rules, then addressed the point made by Buxton LJ, at 1375-1376:

> 'In these circumstances it is quite essential for advocates who hold themselves out as competent to practice in a particular field to bring and keep themselves up to date with recent authority in their field. By "recent authority" I am not necessarily referring to authority which is only to be found in specialist reports, but authority which has been reported in the general law reports. If a solicitors' firm or barristers' chambers only take one set of the general reports, for instance the Weekly Law Reports as opposed to the All England Law Reports, or the All England Law Reports as opposed to the Weekly Law Reports, they should at any rate have systems in place which enable them to keep themselves up to date with cases which have been considered worthy of reporting in the other series. If this is not done, judges may be getting the answer wrong through the default of the advocates appearing before them.'

Not only is it not in the interests of the system of justice that a relevant authority is missed, but it cannot be in the interests of the client to miss a relevant authority (or authorities or an up-date to legislation, for which see *R v Chambers* [2008] EWCA Crim 2467) when making submissions on their behalf before a court. There is a serious point to the comments made by the members of the Court of Appeal in the context of electronic evidence. The comments made by Brooke LJ inferred that the advocate (under whatever jurisdiction they practice) that holds themselves out to practice in a particular field ought to be aware of recent authorities in that field. However, evidence in electronic format covers all areas of law, and this means that every lawyer *across the globe* should make themselves aware of the nature and complexities of electronic evidence, including information from new sources that cover electronic evidence in depth. Electronic evidence is not a specialist area of legal practice, if ever it really was.

Those responsible in universities and for professional vocational training should take note. It cannot be right that lawyers qualifying in 2010 no nothing about electronic evidence, yet are expected to advise and represent clients – the vast majority of which will have a problem that includes electronic evidence. It is negligent to fail to ensure would-be lawyers are properly qualified for the work they will be required to do once they are qualified.