

Dispute Resolution

eDiscovery – Technology Assisted Review Update

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Technology Assisted Review, a critical tool in large scale litigation, particularly in the eDiscovery process has now been judicially endorsed for the first time by the Irish Commercial Court.

IBRC v Quinn

IBRC has been involved in protracted and extensive litigation with the Quinn family. In recent proceedings the issue of the use of Technology Assisted Review to streamline and expedite the discovery process was considered by the Commercial Court.

IBRC proposed a 10 stage Technology Assisted Review protocol which would involve a combination of computer and manual review of documents in order to determine relevance.

The Quinn family opposed the use of Technology Assisted Review on a number of grounds and in particular on the basis that it did not comply with the requirements of the Rules of the Superior Courts which deal with the obligation to make discovery.

Savings in costs and time

IBRC identified approximately 680,000 potentially relevant documents and gave evidence that a traditional manual review of these would take 10 experienced reviewers 9 months to review at a cost of approximately €2million.

IBRC's expert went on to say that based on their Technology Assisted Review protocol less than 10% of the 680,000 potentially relevant documents should require manual review.

The Quinn family's expert was of the view that a manual review should take 10 reviewers 113 days at a cost of €220,000. She was of the view that even with the use of Technology Assisted Review, in excess of 20% of the documents would require manual review.

Mr. Justice Fullam was ultimately satisfied that in this particular case, the Technology Assisted Review protocol proposed would result in a substantial reduction in time and costs.

Accuracy of Technology Assisted Review

It was accepted that no method of review is 100% accurate and with a manual review there will be human errors.

IBRC introduced a number of studies and expert evidence which supported the view that Technology Assisted Review is at least as accurate and probably more accurate than a manual review.

In endorsing Technology Assisted Review in this case, Fullam J. said that even if one were to assume that it is only as accurate as a manual review, it would still be quicker and cheaper to implement than manual review.

Approval of Technology Assisted Review

The court held that any Technology Assisted Review process must include appropriate checks and balances which render each stage capable of independent verification. Fullam J. was satisfied that the IBRC protocol met this standard in this case.

What does this mean for eDiscovery?

In appropriate cases we are likely to see increased use of Technology Assisted Review though there are still no generally accepted industry standards for its use in Ireland.

It is likely that when Technology Assisted Review comes before the Court again there will be a focus on the specific checks and balances proposed to ensure its transparency. These checks and balances will be subject to much expert comment.

Unless and until a standard is agreed there is likely to be the need for further judicial intervention in this developing area.

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