The Rt Hon Dame Elizabeth Gloster[1]

The proliferation of electronically stored information in modern times poses numerous challenges for the conduct of civil litigation and arbitration. Unsurprisingly, most leading centres of international dispute resolution have recently turned their attention to these issues. In England and Wales, for example, the Disclosure Working Group (which I chaired) found that many of the existing rules were framed with paper disclosure in mind and were therefore unsuitable for dealing with electronic data. As a result, the Working Group recommended a suite of innovative proposals including a Disclosure Review Document to replace the existing electronic disclosure questionnaire. This will provide a framework for meaningful discussions between the parties about the processing and review of e-disclosure and the use of technology, where possible. Our proposals are due to be piloted from January 2019 in the Business and Property Courts.[2]

Likewise, there is renewed interest in the regulation of e-discovery or e-disclosure (as it is referred to in some jurisdictions – and there seems to be no practical difference between the two terms) in Australia, Canada, Singapore and elsewhere in the common law world. A book on comparative international e-discovery is therefore eminently topical and extremely welcome.

This volume brings together contributions from leading experts in technology and experienced legal practitioners. Some of its chapters examine e-discovery through the lens of technology. Others consider pragmatic issues such as data storage and outsourcing. The book also surveys the practice of e-discovery in a number of common law and civil law systems including Australia, Canada, France, Germany, Japan, Singapore, the United Kingdom and the United States.

One of the merits of this work is that it brings together inputs from a wide variety of fields such as technology, data protection, professional conduct and dispute resolution. On a topic like e-discovery, which lies at the intersection of these areas, the book's cross-disciplinary approach reveals useful insights. For instance, one

[1] Previously a Lady Justice of Appeal and Vice-President of the Court of Appeal of England and Wales, Civil Division. Chairman of the Disclosure Working Group responsible for the drafting of the new Disclosure Pilot Scheme

[2] https://www.judiciary.uk/wp-content/uploads/2018/07/press-annoucement-disclosure-pilot-approved-by-cprc.pdf https://www.judiciary.uk/wp-content/uploads/2018/07/draft-practice-direction.pdf

important issue addressed is that of proportionality of costs incurred in relation to e-discovery. The book examines proportionality against the backdrop of recent technological changes. It also considers proportionality in the context of methods of data transfer and the practice of outsourcing document reviews. Moreover, the book also provides a useful analysis of the potential implications of proportionality on practitioners' professional obligations. Thus, the reader is offered a well-rounded perspective on this important topic.

Another key feature of the work is its wide jurisdictional coverage. In this respect, the book offers a fresh perspective by comparing the approaches to e-discovery in common law and civil law systems. In contrast to the common law's 'cards on the table' approach, most civilian jurisdictions do not provide a general right to discovery. An appreciation of the distinction between these legal cultures is significant in itself, particularly for international arbitration practitioners. More importantly, though, this distinction has more immediate implications for international dispute resolution. Many civil law jurisdictions impose domestic regulations on transferring electronic data abroad. As the contributors to this volume point out, this puts civil law litigants who are involved in common law proceedings in the unfortunate position to having to choose between breaching their discovery obligations or incurring liability for breach of national law. I would, however, have welcomed a chapter on e-discovery in the field of international commercial arbitration.

In addition to recognising the key distinctions between various domestic approaches to e-discovery, the chapters in this volume also helpfully identify the areas of convergence. For instance, the dangers of unchecked e-discovery are widely recognised; so is the need to ensure that costs incurred in e-discovery are proportionate. Moreover, there is an emerging consensus that judges ought to display more flexibility and be more pro-active in order to mould the extent and type of e-discovery to suit the individual case.

In most jurisdictions, regulation of e-discovery is in an evolutionary phase. Through its multi-disciplinary and comparative approach this volume makes a meaningful contribution to that process. It also offers useful insights into practical problems that arise in relation to e-discovery in international dispute resolution. I am confident that the book will be a useful aid to the international practitioner and the policy-maker.

Elizabeth Gloster
One Essex Court, London
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