

July 17, 2026

## The State of Document Dumping in BC after *Acciona*

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**Case Commented On:** *Acciona Wastewater Solutions LP v Greater Vancouver Sewerage and Drainage District*, [2025 BCSC 1256 \(CanLII\)](#).

The discovery process (or discovery) in civil litigation requires parties to disclose, produce, and question relevant evidence or documents related to the litigation’s live issues. Discovery can be an expensive process; therefore, its scope is often narrowed by the proportionality principle. Under the proportionality principle, discovery should be commensurate, or proportionate, to the nature, scope, and complexity of the litigation, as well as the relevance and importance of the disclosed documents to ensure the discovery cost remain at a reasonable level (see The Sedona Conference, “[The Sedona Canada Principles Addressing Electronic Discovery](#)” (2022) 23 Sedona Conf J 161 at 165) (the Sedona Principles).

Over the past two decades, however, due to the advent of electronically stored information (ESI), the volume of evidence subject to disclosure and production in the discovery process has increased drastically and, in many cases, can become unmanageable. Parties sometimes resort to “document dumping” – a disclosure of a high percentage of irrelevant documents – either in a good-faith attempt to fulfill seemingly onerous discovery obligations or, more problematically, as a litigation tactic.

Document dumping is, thus, becoming a growing challenge in discovery. Document dumping often slows down discovery, imposes exorbitant costs for innocent parties to sort through the documents, and adversely impacts the legal positions of parties. The main contention underlying document dumping discussed in this blog is whether a party fails to comply with its legal requirements by “document dumping,” or whether a high percentage of irrelevant documents should sometimes be allowed due to the sheer volume of ESI evidence available for discovery and the flexibility in the discovery obligations afforded by the proportionality principle.

This blog examines this question through a review of the BC Supreme Court’s (BCSC) decision in *Acciona Wastewater Solutions LP v Greater Vancouver Sewerage and Drainage District*, [2025 BCSC 1256 \(CanLII\)](#) (*Acciona*). It further identifies the gaps in assessing document dumping and provides recommendations for addressing these gaps.

### Overview of the BC Discovery Rules

In BC, the discovery process, including e-discovery (a form of discovery involving ESI evidence), is governed largely by Rule 7-1 of the *Supreme Court Civil Rules*, [BC Reg 168/2009](#) (the Rules).

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As reflected in the relevant jurisprudence, BC courts require the disclosure of documents to be “meaningful, reliable, and complete” (*Acciona* at para 76, citing *Bronson v Hewitt*, [2007 BCSC 1705 \(CanLII\)](#)). Furthermore, the disclosure of documents must be appropriate or proportionate to the circumstances of a particular case (*Acciona* at para 76).

Besides the Rules and the case law, BC courts have repeatedly referred to the Sedona Principles for e-discovery guidance, including on the preservation and production of electronic information using technology, proper planning, and ongoing collaboration (at para 79).

Document dumping, as discussed above, is the disclosure of a large number of irrelevant documents in the discovery process. A document dump is informally defined by the BCSC in *Acciona* at para 69:

A “document dump” is an abusive, old-school practice whereby a party discloses a large number of irrelevant and disorganized documents so as to inflict costs and confusion on the receiving party. Apart from imposing a significant time burden on the receiving party, a document dump can also be a way to try to hide damaging documents [...]

The BCSC adopted this description of “document dump” from *Manchanda v Thethi*, [2016 ONSC 3776 \(CanLII\)](#) (*Manchanda*), a 2016 Ontario Supreme Court decision.

## **The Case**

### ***Facts***

The Greater Vancouver Sewerage and Drainage District (GVS&DD) applied for an order under the Rules to compel Acciona Wastewater Solutions (Acciona) to amend its list of 3,903,780 documents to remove any documents that were irrelevant, duplicates, or near duplicates (*Acciona* at paras 1 and 42).

The BCSC (per Justice Elwood) noted that since the start, both parties agreed to use an electronic document exchange protocol (EDEP) to guide the identification and production of relevant documents with the help of technology-assisted review (“TAR”) processes, including TAR 1.0 and TAR 2.0 (at paras 2, 11-16). While both TAR 1.0 and TAR 2.0 use predictive coding to identify relevant documents within the provided TAR-eligible document set, TAR 2.0 is more advanced than TAR 1.0. TAR 1.0 uses a preset manual code from human reviewers to rank the documents; meanwhile, TAR 2.0 can continually learn as the human review progresses and re-rank the documents based on what it actively learns to measure the level of relevance of the documents (at paras 13-16). Despite that GVS&DD and Acciona followed similar methodology as laid out in the EDEP, GVS&DD used TAR 2.0 while Acciona used TAR 1.0 pursuant to the advice of their legal representatives (at paras 17-23).

The BCSC then provided details of EDEP, the document production methodology, including the development of search terms, document sets, and other review protocols agreed upon by both parties (at paras 24-55). The BCSC then outlined the document review efforts by Acciona and GVS&DD in specific steps (at paras 24-55).

At the end of the TAR review period, GVS&DD produced 224,367 documents which were narrowed down from approximately 8 million documents (at paras 43-44). Acciona produced 3,903,780 documents from a pool of approximately 16 million potentially relevant documents (at para 25).

Upon GVS&DD's TAR 2.0 review of Acciona's approximately 4 million produced documents, GVS&DD identified only 1,714,099 unique documents, so there were potentially a large number of irrelevant and duplicate documents (at paras 45-49). This was the basis for GVS&DD's argument that Acciona's production met the level of an impermissible "document dump" and, thus, obfuscated the discovery process and offloaded costs onto GVS&DD (at paras 2-4).

### *Issues*

The issues regarding document dumping raised by the BCSC from these facts were: (1) Should the overproduction be defined by the precision rate of the TAR models? (at para 58); (2) Did Acciona engage in an impermissible document dump? (at para 69); and (3) Has Acciona complied with its obligations under the Rules? (at para 76).

### *Analysis*

For the first issue, the BCSC reiterated that the compliance standard in Rule 7-1 (Discovery and Inspection of Documents) should not be based on untested and vague industry standards of TAR precision rates (at paras 58-67). The BCSC determined TAR precision rate to be a factor but not a metric to determine compliance. In reaching its conclusion, the BCSC cautioned that a high precision rate might incur disproportionate cost to the benefit gained and might cause litigants to exclude relevant documents (at para 67).

To set the ground for the analyses of Issues 2 and 3, the BCSC discussed the primary obligation under Rule 7-1(1): to "decipher which documents in its power, possession, and control are relevant." (at para 57). The BCSC opined that "there is no benchmark for how many irrelevant documents constitutes a "document dump" and that the disclosure obligation is subject to the principle of proportionality (at para 73). Further, the BCSC reaffirmed that production is not required to be perfect (at para 78). Even though the Court noted that the principle of proportionality should not be used to shield non-compliance with the legal requirements, it established that there should be *flexibility* with Rule 7-1 in cases involving a very large number of documents (at paras 80-85).

The BCSC opined that a document list has to be pervasively deficient, rendering the list to be not meaningful, reliable, or complete, or that the producing party must have a "dilatory and casual attitude to production of documents" to be found non-compliant (at paras 86-88).

The BCSC moved on to comment on the collaboration of both parties during the EDEP, their time and effort in carrying out the EDEP, how the different TAR models were chosen, and the different roles each party played in the construction project (at paras 89-97).

As a result, the BCSC concluded that Acciona's disclosure did not fall short under the Rules, and that GVS&DD did not prove that its request for Acciona to redo the disclosure by rerunning the documents through TAR 1.0 again was proportional (at paras 102-105).

The BCSC, therefore, dismissed the application and asked both parties to collaborate to determine additional search terms or other automated or semi-automated processes to reduce the number of irrelevant documents (at paras 106-108).

### **A Review of the State of Document Dumping Prior to *Acciona***

Prior to *Acciona*, the BCSC dealt with “document dumping” in eight civil litigation decisions discussing allegations of such in discovery: *Pro-Sys Consultants Ltd v Infineon Technologies AG*, [2011 BCSC 1128 \(CanLII\)](#) (*Pro-Sys*); *5277095 Manitoba Ltd v Morrison Creek Commons Limited Partnership*, [2018 BCSC 1798 \(CanLII\)](#) (*Morrison Creek*); *Reehal v Reehal*, [2020 BCSC 1635 \(CanLII\)](#) (*Reehal*); *Larkin v Johnson*, [2023 BCCA 116 \(CanLII\)](#) (*Larkin*); *Source Electrical Services Ltd v Freeport Construction Management Ltd*, [2021 BCSC 2278 \(CanLII\)](#) (*Source Electrical*); *Nijjar v Nijjar*, [2022 BCSC 327 \(CanLII\)](#) (*Nijjar 2022*); *Yen v Ghahramani*, [2024 BCSC 1053 \(CanLII\)](#) (*Yen*); and *Nijjar v Nijjar*, [2025 BCSC 1881 \(CanLII\)](#) (*Nijjar 2025*).

#### **“Document Dump” Confirmed**

BC courts confirmed the “document dump” or supported the allegations in six cases: *Reehal*, *Nijjar 2022*, *Nijjar 2025*, *Larkin*, *Source Electrical*, and *Morrison Creek*.

In *Reehal*, a family law case, the claimant asserted that the respondent's spreadsheet list of hundreds or thousands of financial transactions without categories, headings, or order was a “useless data dump”. This assertion was used to support the allegation of contempt of court committed by the respondent (*Reehal* at para 55). Even though the BCSC did not find that the respondent was in contempt of court (at para 68), the BCSC determined that the respondent breached the court order for document production as the alleged “data dump” of transactions of the family's companies did not satisfy the court order's requirements (at para 76).

In *Nijjar 2022*, the respondents characterized the list of documents of the applicant, Nick, comprised of 33,297 mostly irrelevant documents, as a “document dump”. The BCSC affirmed this characterization (*Nijjar 2022* at para 31). In *Nijjar 2025*, a decision that is related to *Nijjar 2022*, the court expressly called Nick's production of 36,000 pages of documents of random and irrelevant emails in *Nijjar 2022* as a “data dump” (*Nijjar 2025* at para 176). Together with other evidence of interference with documents and failure to disclose material documents, the BCSC drew an adverse inference against Nick for his conduct (at paras 173-180).

In *Larkin*, the appellants made a late filing of an affidavit with supplemental documents comprising several hundreds of pages of documents as new evidence (*Larkin* at paras 66-68). The BC Court of Appeal determined that this was a “document dump” in consideration of the procedural history, the volume, and the immateriality of these additional documents (at paras 66-68 and 83-85). As a result, the court denied the appellants' ground of appeal on the issue of suitability of these documents as new evidence (at para 86).

In *Source Electrical*, the BCSC found that the plaintiff's production of unorganized and voluminous labour documents, characterized by the defendant as a "document dump" (*Source Electrical* at para 16), was difficult to reconcile. Thus, the Court granted the defendant's request for interrogatories to compel the plaintiff to organize these documents (at para 29).

Lastly, in *Morrison Creek*, the plaintiffs alleged that the defendants' disclosed list of only "folder titles" was a "document dump" (*Morrison Creek* at para 58). The BCSC determined that this list was not a proper list of documents and was not compliant with the Rules (at paras 83-87). The BCSC ultimately struck the defendants' statement of defence for the lack of affidavit by the defendants in support of their position and the defendants' pattern of obfuscation and delay (at paras 88-89).

### ***No "Document Dump" Was Found***

In the remaining two cases, *Pro-Sys* and *Yen* the court found no "document dumping".

In *Pro-Sys*, a complex and lengthy litigation, the plaintiff alleged the defendants "data dumped" (*Pro-Sys* at para 23) as the disclosed information was difficult to read and somewhat deficient (at para 39). However, due to the outstanding decision from the Supreme Court of Canada for related matters, the BCSC did not conclude whether the disclosure was a "document dump". Instead, the BCSC found that it would not be efficient to duplicate the work (at paras 46-47) and, thus, it asked the defendants to provide further disclosure and correct the format of the disclosed information (at para 50)

In *Yen*, the BCSC found that the document disclosure of airG, one of the defendants, which comprised of hundreds of thousands of documents, was merely too fulsome to the point that it was accused of being a "document dump" (*Yen* at paras 9-11 and 28). The BCSC denied affirming this accusation because airG followed a meticulous technologically supported process to select the documents for disclosure through machine learning, counsel review, coding for relevance levels, and search terms (at para 11).

### **My Commentary on the State of Document Dumping in BC after *Acciona***

My review of these eight decisions and *Acciona* demonstrates that a finding of "document dumping" generally is unfavourable to the party that was alleged or confirmed to have "document-dumped". In the six cases that the courts affirmed "document dumping", the findings of "document dumping" were used to support an adverse interference, breach of court order, finding of contempt of court, or even striking of a statement of defence.

The review also unveils concrete rules and areas of uncertainty for "document dumping" allegations in BC. First, the review suggests that the Rules still govern the legal standard of e-discovery in BC. Second, BC courts look at the conduct of parties in assessing disclosure or production in accordance with the bad-faith conduct aspect in *Manchanda's* definition of a "document dump", i.e., the intention to inflict costs and create confusion on the receiving party. Third, proportionality plays a more important role in discovery involving ESI evidence which allows *flexibility* under the Rules. Fourth, other factors considered by BC courts include the judicial

history, the current stage of the litigation, and the ability to cure the deficiencies through collaboration.

On the other hand, uncertainty arises from the tension between proportionality and good-faith effort versus the legal requirement under the Rules. First, it might be a stretch to state that proportionality allows for a certain level of inaccuracy in e-discovery, but proportionality presumes some flexibility for the producing parties to produce a case-by-case level of irrelevant documents and still meet Rule 7-1's compliance standard. Second, it is uncertain whether good-faith effort will cure somewhat deficient disclosure as seen in *Acciona*. Lastly, it is also unclear whether bad-faith conduct could determinatively ascertain a "document dump". *Manchanda's* "document dump" definition is also non-conclusive on this question but puts a strong weight on bad-faith conduct for a finding of "document dump".

Given the increase in ESI evidence and "document dump" allegations in e-discovery and the adverse impact of "document dumping", BC courts should take steps to clarify the uncertainty stemming from the tension between the non-perfect standard of e-discovery, the legal requirement under the Rules, and the impact of good-faith effort and due process.

For parties to a civil litigation in BC, the review demonstrates that serious planning, good-faith effort, and collaboration in ensuring a cost-efficient, speedy, and just process could prevent a finding of "document dump" and save themselves from adverse judicial decisions. On the other hand, parties impaired by delay or cost burden due to an overproduction of ESI evidence by the opposing party can also gain an advantage through collaborative attempts, documentation, good-faith efforts, and proper proportionality assessment.

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This post may be cited as: Thao Nguyen, "The State of Document Dumping in BC after *Acciona*" (17 July 2026), online: ABlawg, [http://ablawg.ca/wp-content/uploads/2026/07/Blog\\_TN\\_DocumentDumping.pdf](http://ablawg.ca/wp-content/uploads/2026/07/Blog_TN_DocumentDumping.pdf)

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