

THE DOCUMENT CONTROL TRIBUNE

Issue no. 20 - September 2019



**WORKING WITH
LAWYERS TO
AVOID DISPUTES**

**DOCUMENT CONTROL AS A
PROVIDER OF EVIDENCE**

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EDITORIAL

It has been a while since our last newsletter. We have been busy talking to a wide variety of professionals in various industries to bring even more value to the Document Control world.

In this issue of the Document Control Tribune, we focus on evidence in the context of disputes and litigation.

Disputes between client and contractor are not uncommon on projects.

Project environments are typically so complex indeed that it can be hard to keep up with everything that is going on.

However, whenever there is complexity, the first reflex of any organisation should be to make all expectations, objectives, rules and processes clear, so that all parties involved understand the part that they have to play.

The need for clear and robust contracts is essential.

The need for clear Document Control rules is critical.

Document Control plays a major role in producing pieces of evidence throughout the duration of a project. Document Control plays a vital role in keeping all this audit trail and all this evidence in good order.

Well-organised and easily retrievable evidence may seem like a distant dream to many. However, for those who work with proper Document Control, it is a day-to-day reality.





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THE POWER OF EVIDENCE AND HOW CONTROLLED DOCUMENTS CAN SAVE YOUR ORGANISATION

When a contractual relationship binds two organisations, there is a potential for disagreements, disputes or litigation, especially in activity sectors involving engineering, construction, operations and/ or maintenance of assets.

When it comes to disputes and legal battles between two organisations, evidence makes all the difference: what was contractually agreed, how was the contract worded and most importantly, what pieces of evidence can be provided by each party to back up their arguments, to prove that what they say is true and to avoid liability.

Document Control plays a major role in this area.

What can be considered as evidence?

The Cambridge dictionary defines evidence as “anything that helps to prove that something is or is not true”.

There are different types of evidence that can be used during a conflict or disagreement between two parties, including:

- Demonstrative evidence: representation of an object, for example photographs, videos, drawings, charts, simulations etc.
- Documentary evidence: any proof that can be presented in writing, for example contract, invoices, technical documents etc.
- Testimony: verbal evidence, given by a witness, for example, in court or in a deposition.

What is a strong piece of evidence?

A strong piece of evidence is one that cannot be argued with, or at least one that cannot be discredited.

If, for example, an organisation provides evidence of submittal of a document or of information, but the other party can con-

vince of the contrary, then the evidence is not strong enough.

Another example: a controlled transmittal sheet attached to any document sent to an external party, containing all metadata of the transmittal, signed by the sender and by the recipient is a much stronger piece evidence than an email alone, as the recipient can always claim that they never received that email.

How does Document Control help with evidence?

When an organisation enters a contractual relationship, it must analyse the ways in which disputes can arise and it must design solutions to prevent the development of such disputes.

However, in addition to prevention, each organisation must also design solutions to create strong records and to collect evidence in all aspects of its activity, just in case a dispute arises.

In essence, that is what Document Control does: Document Control activities help create records and evidence of activities in the context of a contract binding two organisations. The evidence created includes, but is not limited to:

- What rules were agreed for the management of documents;
- What documents are created;
- What documents are sent or received;
- Who made what comments on what documents;
- Who were documents sent to; who were documents received by;
- What were documents published for? What were documents used for?

A well-designed set of Document Control processes and practices allows to create and to produce evidence that can save an organisation.

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LESSONS LEARNT: WORKING WITHIN AN E-DISCOVERY TEAM



Belinda Stewart is an executive assistant who worked for two years within an e-discovery team.

She explains what the e-discovery process work is, and how Document Control can help in that process.

Can you tell us a bit about you?

I am an executive assistant with more than 20 years of working experience across oil and gas, not-for-profit, private equity, gaming and construction industries. I was born and bred in Malaysia and live in Darwin, Northern Australia with my husband. I am currently pursuing a degree in Business Law and enjoy reading, drawing and spending time with my family.

What is the e-discovery process?

E-discovery is short for electronic discovery. To put it simply, it refers to part of the litigation process in which each party obtains evidence from the other party by means of discovery of electronically stored information (ESI).

Typically, e-discovery involves the following steps (not necessarily in the following order):

- Identifying potential sources of ESI
- Collecting and preserving the ESI
- Processing the ESI into format suitable for review / analysis
- Reviewing and analysing ESI for relevance, privilege, context, key patterns, etc
- Delivering ESI to opposing party in appropriate forms / mechanism (this stage is known as "Production")

Can you describe your experience in that process? What role did you play?

I spent nearly two years embedded with

the legal team on a multibillion-dollar oil and gas project in the position as the Commercial Coordinator. My main responsibility was to curate electronically stored information for litigations and commercial disputes.

It was exciting and challenging in every sense of the word. When I commenced the role, I had no prior background in law or e-discovery, I had to learn everything from scratch and on the fly. Was I scared? Sure! But failing was not an option (not for me anyways)! I was determined to be the hardest worker in the room and what I lacked in knowledge, I made up for in effort and by observing, learning and putting what little knowledge I had to good use.

Can you describe your typical daily tasks? What was a typical day like?

Typical days and tasks varied depending on the matters at hand and comprised the following:

- Identifying or pursuing potential sources of electronically stored information (ESI)
- Interfacing with persons of interest (POI), data administrator, network engineers etc
- Distributing legal hold to preserve ESI
- Undertaking exit interviews with POI
- Collecting ESI - in person, via a proxy or remotely online
- Interfacing with data processing team – ensuring ESI is processed timely and accurately
- Providing onboarding training to new litigation team
- Providing onsite training and support with e-discovery software
- Assisting in reviewing and analysing ESI
- Ensuring ESI is produced timely and accurately

- Moderating communication between litigation team and data processing team
- Preparing and collating weekly e-discovery reports for legal team
- Participating in e-discovery kick-off meeting.

How do you think a good Document Control can help in the e-discovery work?

In my view, a good Document Control provides vital support in the e-discovery process. As the custodian and regulator of documents, data and information, Document Control is mandatory in providing a clear and concise range of documents from the start of a project to the end. Everything from evidence of approval / signatures, revision history, document status, transmittal history as well as metadata & properties.

What would be your recommendation for companies willing to protect their interests in that area?

In my view, regardless of the scale of the business, each organisation must establish a Document Control process / procedure to regulate the lifecycle of the document, data and information. The process should be bespoke and in line with the business needs. At the very least, the process must cover filing structures (electronic or otherwise), document naming convention, document template, information security/confidentiality and retention policy.

In a Project, it is absolutely essential for the Document Control process / procedure to be established in the first instance before any exchange of documents, data and information.

Each organisation must also keep abreast with the legal and regulatory obligations which the business must comply with in relation to data preservation. If in doubt, consider legal advice.

WORKING WITH LAWYERS TO AVOID DISPUTES

In times of disputes or litigation between two organisations, the people who really get exposed to the factors that cause conflicts are lawyers / solicitors / barristers / attorneys / adjudicators.

In a recent conference on the UK construction industry given by [Silver Shemmings Ash](#), a law firm based in London, solicitors were heard hammering two messages consistently:

- Develop robust contracts; and
- Keep records of your activity.

The first point, of course, is the scope of lawyers / solicitors. A seminar delivered by [Ryland Ash](#), the Managing Partner of [Silver Shemmings Ash](#), had the entire audience dumbfounded when they realised that the wording of a contract can sometimes lead to a judge ruling in favour of the party that 'is wrong' according to 'common-sense' criteria.

Having law professionals scrutinise and improve the contract of an organisation can mean the difference between an organisation:

- Receiving what it has paid for; and
- Paying for something that it has not received.

A simple example of a real-life case is a client who paid for a 2.3m deep swimming pool and got a 1.8m deep swimming pool instead. Due to the poor wording of the contract, the judge ruled in favour of the contractor.

Of course, such a poor wording of a contract can equally be harmful to a contractor.

The second point is the scope of Document Control, in collaboration with lawyers / solicitors. On any project involving construction, Document Control rules and processes must be part of the clauses that are included in any contract binding two organisations. This allows to establish an environment wherein:

- The rules are clear;
- Records of the activity are routinely created – which later can be used as evidence;
- Protocols are in place for the update of documents;
- Documents are sent to people who must receive them;
- Documents are reviewed and approved by people who must have their say;
- Documents are distributed and used for specific purposes;
- Project stakeholders have a clear view of what has been done and or what remains to be done.

Ultimately lawyers / solicitors and Document Controllers must work hand-in-hand to ensure that lessons on what causes disputes are systematically collected, integrated back into: (a) contracts, and (b) Document Control rules and processes, which, themselves, must be incorporated in contracts.

The practice of proper Document Control often positively influences engineering and construction practices by imposing protocols and by focusing on roles and responsibilities in shared processes.

Ultimately, when things go wrong on a contract, who stays late at the office to dig into documents for evidence? Lawyers and Document Controllers.

It may be a good idea to listen to their advice on how to prevent disputes in the first place.



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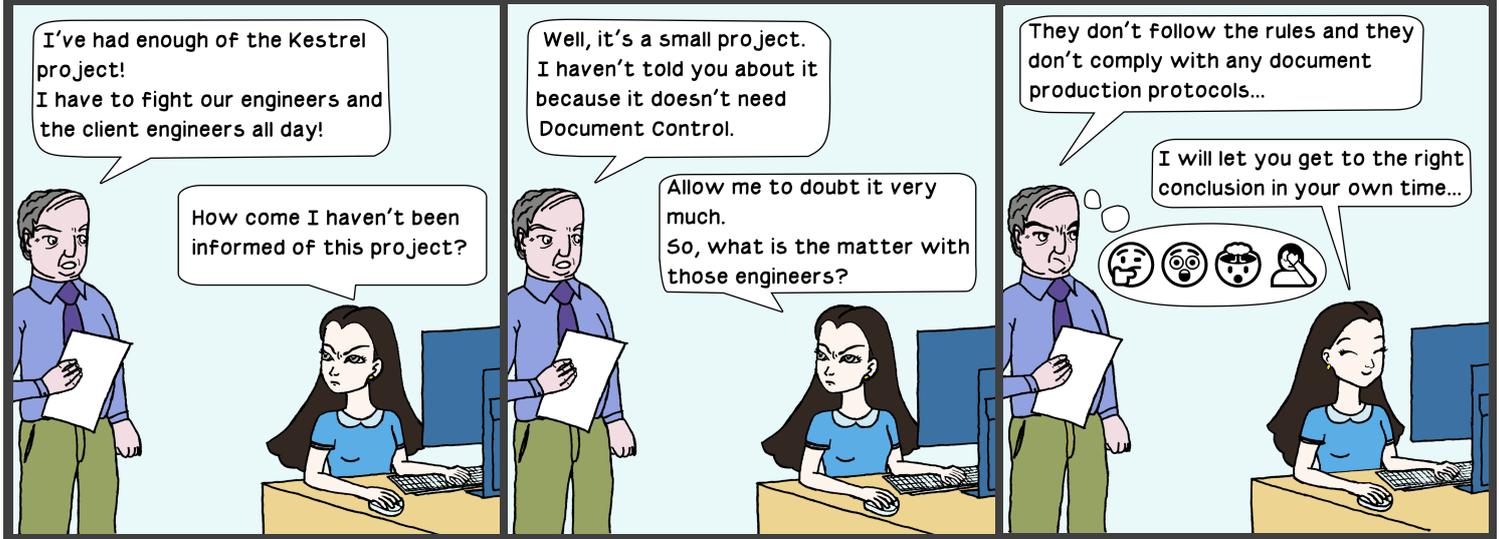


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THE PERSPECTIVE OF A COMPANY DIRECTOR ON DOCUMENT CONTROL



Luis Heng is the Managing Director of Consepsys Limited. His strong work ethics and his broad perspective make him a powerful advocate of the Consepsys TICCQS Document Control values around the world.

Meet **Luis**.

Can you tell us a bit about you?

I am the Managing Director of Consepsys, which I co-founded in 2010. I am also a management and leadership consultant. I spent the first part of my career as a Process Engineer in the Upstream Oil & Gas industry, before I ventured into Project Management, general management and, eventually, entrepreneurship. I am the father of a 17-year-old University student. Outside of work, I enjoy travelling, playing guitar and observing people to map out their behavioural patterns. I use this knowledge to help people and organisations. I am the author of the recently published book "[Avoiding or Overcoming Organisational Inertia](#)".

What has got you involved in managing a Document Control Consultancy?

I started my career on Oil & Gas production facilities, which are very hazardous environments. This gave me a strong drive for safety from the start. I

have paired this priority of safety with my lifetime passion for empirically observing people's behavioural patterns, and this has led to a life-long study of factors leading to inertia, disputes, incidents and accidents.

As an engineer, I have taken part in numerous technical audits and in accident investigations. This experience has revealed to me the frightening results of what happens when proper Document Control is not in place.

Eventually, all it took was my fateful and fortunate encounter with Julie Tchao – the world-leading expert in Document Control - to start formulating the vision that we can positively influence the world through Document Control.

Why is Document Control so important to you?

Safety is what initially created the connection between Document Control and me. I have been successful in preventing serious industrial accidents through the implementation of controlled protocols, in large part in the area of Document Control. I am a very pragmatic person and for me, the king of all questions is: "does an idea work in practice or does it not?" Proper Document Control has proven time and time again that it influences safety positively and significantly.

However, the importance of Document Control goes beyond the big and obvious, like explosions on Oil & Gas production facilities.

If I had to simplify the importance of Document Control, I would say that:

- It helps reduce risks of disputes, incidents and accidents;
- It enforces controlled processes, with a positive impact on overall rigour;

- It routinely creates records and an audit trail, which can be used as evidence;
- It provides evidence in case of disputes, incidents and accidents.

For a company director like me, Document Control is an indispensable element of my piece of mind – and it should be that of other organisation leaders too.

How useful is the evidence created by Document Controllers?

It makes all the difference. It is the difference between several weeks of painstaking search - with no guarantee of a satisfying outcome, and a successful 5-minute metadata exploitation exercise.

With no Document Control, investigating a dispute would entail mobilising many resources and spending weeks combing through thousands of emails and documents. On one of the disputes on which I was mobilised years ago as part of an expert witness team, we were 4 to 5 engineers working full-time for 2-3 weeks just to go through files of project correspondence, drawings, technical reports, documentation and print-outs of emails.

With proper Document Control, the above discovery process would have mobilised one person, and it would have entailed finding the documents at the heart of the dispute through their metadata, then finding the document transmittals linked to those documents through their metadata and finally, finding the comments (or the absence of comments) on those documents through metadata. All those records would be there to be found, well organised and easily retrievable, because that is what Document Control does. In practice, this takes only a few minutes per document.



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PORTRAIT OF A DOCUMENT CONTROLLER



TIFFANY LOOMIS

Documentation Supervisor
at Myriad Genetics, Utah, United States

Tiffany attended the Certified Document Controller and Certified Lead Document Controller courses in 2018 in Houston, Texas.

Can you tell us a bit about you?

My name is Tiffany Loomis. I am 35, married and the mother of 3 wonderful children. I was born and raised in Utah, USA. On the weekends, I enjoy spending time with my family. We love to hike and travel.

What is your current role?

I am the Documentation Supervisor to a team of 3 at Myriad Genetics, Inc. I also am the system administrator to our EDMS, which covers all 8 of our business units in some form.

Can you describe your professional experience?

I have 10 years of experience in working with or in Document Control.

I started out just submitting things to Document Control but quickly became frustrated because they were being sent back to me several times. So I took some time sitting with Document Control to find out what they were looking for and how their job fit in with mine.

Once I got that introduction to Document Control it was all I could do to learn more about Document Control so

I could get better. After a short time submitting things to Document Control I was asked to further my involvement with them to help submissions to them go more smoothly.

After that I was hooked on Document Control and have worked my way up to become a Supervisor. I have loved every minute of learning all that I can through this process. I have a bachelor's degree in Electronics and Communications Engineering Technology which helps a ton with the

“Both of the ConsepSys courses I attended helped me greatly to understand the sometimes complex but definitely necessary role of Document Control in so many different industries”

EDMS administration. Being the system administrator is something that is a newer responsibility for me.

It has been a challenging experience to learn how the system works to help with Document Control.

Which ConsepSys course did you attend and when?

Document Controller and Lead Document Controller Sept 2018 in Houston.

I also sat for both exams.

What did you think about the course? How did it help you in your current role and career development?

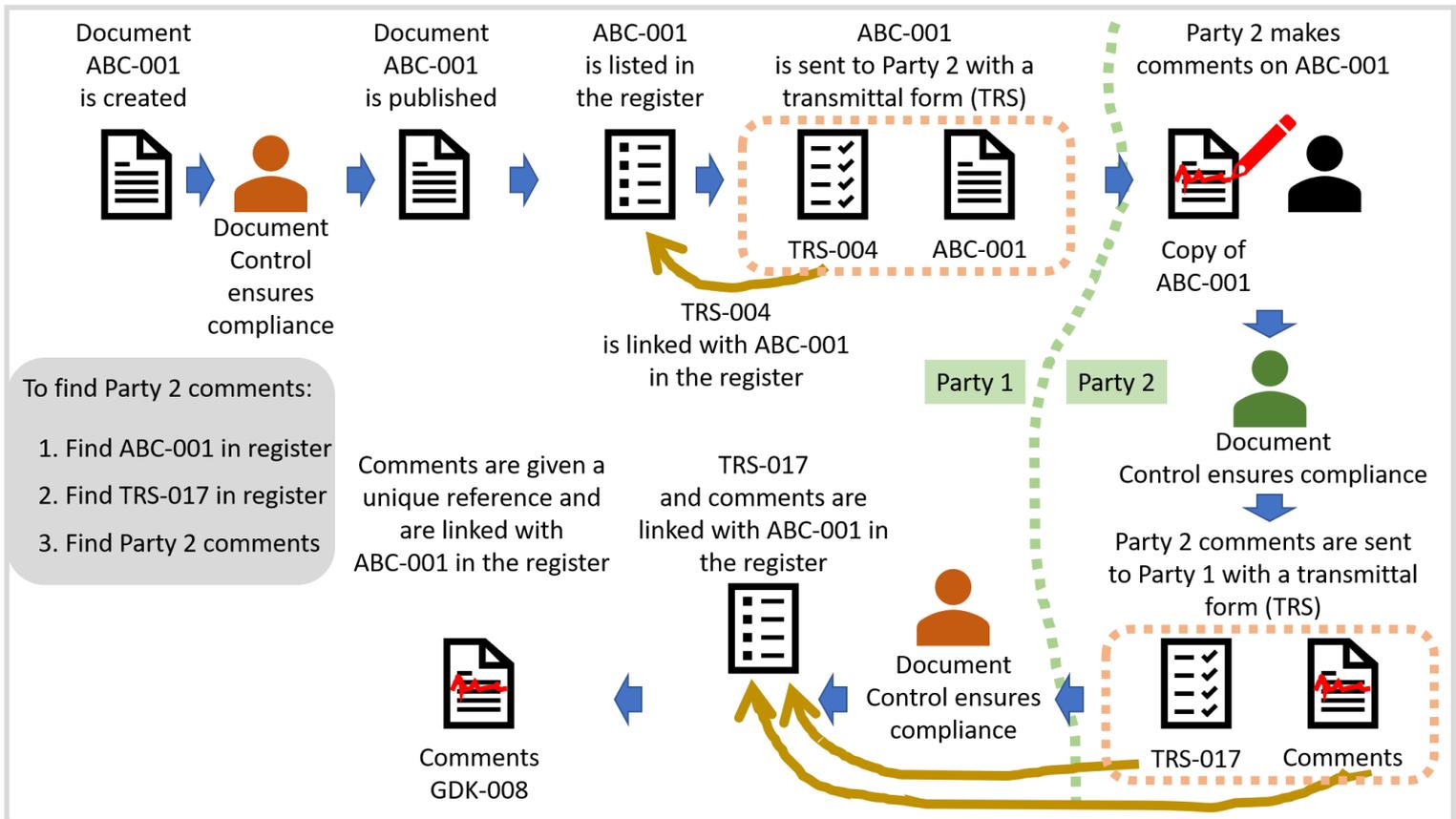
Both of the Courses I attended helped me greatly to understand the sometimes complex but definitely necessary role of Document Control in so many different industries. The knowledge that I gained has been applied several different times since I attended the

Course and has greatly benefitted myself and my growing team here at Myriad Genetics, Inc. I plan to use this knowledge to help my team grow.

If you attended one of our courses and would like to apply to be featured in one of our upcoming issues, drop us an email at:

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