

Cheat Sheet: Canadian Case Law

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Knowledge of case law is a necessity for those who practice online investigations. The following list does not represent every case law that is applicable to online investigators, but does list significant legal cases that have had an impact on the presentation of electronic evidence in civil and criminal cases. There are likely other cases of significance across Canada that are not yet available online for review.

SIGNIFICANT CANADIAN CASE LAW & EVENTS RELATED TO ONLINE INVESTIGATIONS

1974	Vent Cerf and Bob Kahn design the first ' Transmission Control Program ' (TCP) Creation of the key to a successful Internet structure, allowing the eventual development of the Web
1978	First spam email message from Digital Equipment Corporation (DEC) sent to every address on the ARPANET
1983	R v. Terrence, 1983 4CCC 3D 193 SCC (CanLII) Identifies that a person is not guilty of a crime if they have knowledge of a crime but no control of the situation
1984	Invention of domain names, with the ARAPNET expanding to over 1,000 computer hosts
1985	Canada Evidence Act, Section 31 (updated 06 Dec 2014) https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-5/latest/rsc-1985-c-c-5.html#sec31_smooth Provides definitions for electronic documents and admissibility in courts of law
1991	The first graphical user interface (GUI) developed in 1990, with the first recognized webpage launched in Aug 1991
1992	The earliest known use of the term ' Internet ' in a court case is from the USA, dated 01 Jan 1992
1994	Prism Hospital Software Inc. v. Hospital Medical Records Institute, 1994 CanLII 1308 (BC SC) Electronic files are admissible documents in a court of law
1994	MTV Networks v. Curry, 867 F Supp 202 SDNY1994 First ruling on domain ownership, related to mtv.com , between MTV and former video host A. Curry, in favour of MTV

1996	'Cyberspace and the Law of The Horse' , F.H. Easterbrook (1996): <i>"The Internet is a unique legal space because of its anonymity and multijurisdictionality . . . makes control by government in cyberspace impossible. The nature of the space makes behavior there unregulable."</i>
1996	US Congress, Economic Espionage Act (EEA) 1996 Criminalizes the misappropriation of corporate trade secrets
1996	Northwest Mettech Corp. v. Metcon Services Ltd., 1996 CanLII 1738 (BC SC) Copies of electronic files are admissible documents in a court of law
1996	WIPO Copyright Treaty (WCT), 1996 (Worldwide) International agreement dealing with the protection of works and rights of the authors in a digital environment
1998	Internet Corporation for Assigned Names and Numbers (ICANN) created on 18 Sep 1998 to coordinate the worldwide registration and deconfliction of IP addresses and domain names (DNS) ; initially a US entity, it is now global as of Oct 2016
1999	Uniform Electronic Evidence Act http://www.ulcc.ca/en/older-uniform-acts/electronic-evidence/1924-electronic-evidence-act This act defines online content and sets the standards for online evidence collection
2000	Personal Information Protection and Electronic Documents Act https://www.canlii.org/en/ca/laws/stat/sc-2000-c-5/latest/sc-2000-c-5.html This act defines privacy in the handling online documents
2000	Kremen v. Cohen, 99 F Supp 2d 1168 1172 ND Cal 2000 Related to the first illegal conversion of a domain from one registrant to another, recognizes a domain as property
2002	iLan Systems Inc v. Netscout Serv. Level Corp, 183 FSupp 2d 328, 329, 334 D, Mass 2002 The user manifests assent by clicking 'I Agree' (clickwrap), thereby creating an enforceable agreement to limit liability
2002	First version of the Mozilla Firefox browser released on 23 Sep 2002, using open-source code; it is one of the worlds most popular and accepted programs created through FLOSS (Free and Libre Open Source Software)
2003	Tupper (Guardian ad litem of) v. Holding, 2003 BCSC 153 (CanLII) Photographs are recognized as documents, with the plaintiff ordered to produce relevant vacation photos
2003	Logan v. Harper, 2003 CanLII 15592 (ON SC) Court decision that paper copies of every electronic document is not required



TII Cheat Sheet: Canadian Case Law

2003	ITV Technologies Inc. v. WIC Television Ltd., 2003 FC 1056 (CanLII) Court case with the first use of a live Internet connection in a court of law
2003	Loblaw Companies Ltd. v. Aliant Telecom Inc., 2003 NBQB 215 (CanLII) The service provider Yahoo was required to produce the identity of a person using their system
2003	R v. Chualna, 2003 BCCA 650 (CanLII) Crown must prove the suspect actually had control over the illegal data in a computer system
2004	R v. Tessling, 2004 SCC 67 (CanLII) FLIR images lack the sufficient level of detail to be ruled as invading privacy, so no judicial authorization required
2005	K.P.I.N. v. K.N.N., 2005 BCSC 1259 (CanLII) Identified privacy concerns and that electronic information and documents are included in civil Anton Pillar orders
2006	Tom Cruise v Network Operations Center and Alberta Hot Rods, WIPO APD #D2006-0560 Trademarked organizations and persons able to take control of domains registered by other persons (cybersquatters)
2007	R. v. Innes, 2007 ABPC 237 (CanLII) Online chat logs and records (aka IRC or Internet Relay Chat) were used as evidence in a criminal prosecution
2007	Goodridge v. King, 2007 CanLII 51161 (ON SC) This case involved the use of Facebook photos as evidence in a civil case
2007	Weber v. Dyck, 2007 CanLII 22348 (ON SC) Defendant's request for online photos denied, as they did not mention this at the EFD (Evidence For Discovery)
2007	R. v. Giles, 2007 BCSC 1147 (CanLII) 164 emails stored on a memory chip of a Blackberry mobile device were used as evidence in a trafficking case
2008	The Sedona Canada Principles https://www.canlii.org/w/canlii/2008CanLIIDocs1.pdf Provides guidelines for discovery, preservation, presentation, relevant, and privacy of electronic documents
2008	Kinloch v. Edmonds, 2008 BCSC 1684 (CanLII) Online photos of the plaintiff were gained by police defendants by uncertain means and were deemed as inadmissible



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2008	Knight v. Barrett, 2008 NBQB 8 (CanLII) Submitters of online materials as evidence must identify how they gained the materials they wish to submit
2009	R. v. Todorovic, 2009 CanLII 40313 (ON SC) Instant messages from Facebook and mobile device text messages were used in a criminal prosecution case
2009	Start of the conflict over social networking squatters , with only 7 of the top 100 global brands registered on Twitter https://www.techdirt.com/articles/20090109/1548133348.shtml
2009	Schuster v. Royal & Sun Alliance Insurance Company of Canada, 2009 CanLII 58971 (ON SC) Requests for Ex Parte access to a Facebook account needs evidence to indicate the plaintiff would destroy evidence
2009	Leduc v. Roman, 2009 CanLII 6838 (ON SC) Relevant material cannot be hidden by self-set privacy controls and defendants cannot request 'fishing' expeditions
2010	R. v. Harris, 2010 PESC 32 (CanLII) Sets out guidance for using collateral information to determine who accessed and used a particular Facebook account
2010	R. v. Morelli, [2010] 1 SCR 253, 2010 SCC 8 (CanLII) Reviews the rights to privacy of citizens from unreasonable search and seizure of computers and mobile devices; crown must demonstrate that a suspect had knowledge of illegal material on a system under the suspect's control
2010	R. v. Panko, 2010 ONCA 660 (CanLII) The defence of 'a hacker must have put it there' was not supported by evidence of a hacker putting it on the computer
2011	Dosanjh v. Leblanc, 2011 BCSC 1660 (CanLII) Outlines how a request for the plaintiff's social networking account information was assessed as a fishing expedition
2011	Warman v. Wilkins-Fournier, 2011 ONSC 3023 (CanLII) Outlines the case for proving online libel and the standards for requesting user information from service providers
2011	Byram v Byram, 2011 NBQB 80 Former spouse posted images of car and person online, used to prove stalking charges

2011	R v Jones, 2011 ONCA 632 If evidence of another offence is found on a computer, one must obtain a new warrant in order to search for evidence of the new offence
2011	Crookes v. Newton, [2011] 3 SCR 269, 2011 SCC 47 (CanLII) Hyperlinks are analogous to footnotes, referring to where material is, not repeating or publishing it
2012	ICANN runs out of available IPv4 addresses worldwide; on 20 Jun 2011 approves the end of the restriction on generic top-level domain names, and allows for the use of non-Latin characters in domain names (i.e., Cyrillic, Arabic, Chinese); new domain names available for a \$185,000 processing fee https://www.theregister.co.uk/2012/01/11/icann_gtld
2012	Attorney General of Canada on Behalf of the United States of America v. Lane, 2012 ONSC 5404 (CanLII) Dynamic entry to preserve e-evidence is not a valid excuse for gratuitous damage by law enforcement
2012	A.B. v. Bragg Communications Inc., [2012] 2 SCR 567, 2012 SCC 46 (CanLII) Defines the issue of cyberbullying, the rights of victims, and obtaining account information from service providers
2012	R. v. Chiang, 2012 BCCA 85 (CanLII) Outlines the reasonable instances where LEA can use online sting operations
2012	Stewart v. Kempster, 2012 ONSC 7236 (CanLII) Judge assesses that having 139 friends meets privacy expectations as it excludes over one billion others
2012	Lukawecki c. Bayly, 2012 QCCQ 7898 (CanLII) Outlines the case for proving online libel where a victim is unaware of the libel, and the interpretation of evidence
2012	Natyshak v. Henriksen, 2012 ONSC 5709 (CanLII) The email address for an absent respondent is equal to a mailing address as a form of contact
2012	R. v. Cole, 2012 SCC 53 (CanLII) Employees provided with computers have an expectation of privacy regarding computer contents and metadata
2012	CG (Re), 2012 CanLII 19235 (ON CCB) Excessive emails constitutes criminal harassment, i.e., 51 messages to the same person over 10.5 hours



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2013	R v Vu, 2013 SCC 60 A computer is not just an electric filing cabinet, warrants must specifically identify that a sought computer is there
2013	Creation by ICANN of the Trademark Clearinghouse , providing existing trademark entities and persons with a method of protection from infringement and cybersquatting in new domain names (i.e., Sunrise 30 day notice)
2014	R v Spencer, 2014 SCC 43 Discusses expectations of privacy; any request by police to an internet service provider is considered 'a search'
2014	R v Fearon, 2014 SCC 77 Police can search a cell phone incidental to arrest if they meet four criteria: accused is lawfully arrested; search is done promptly; the search focused on recent relevant items; police must make a detailed record of actions
2014	R. v. Buss, 2014 BCPC 16 (CanLII) Border searches of cell phone and computers, including provision of passwords, does not violate charter
2014	R v Nde Soh, 2014 NBQB 20 (CanLII) Outlines the current standards and interpretations for accepting electronic evidence from social media websites
2014	R. v. Mann, 2014 BCCA 231 (CanLII) Full content searches of mobile devices now require a warrant
2014	Invista Canada Company v Kingston Independent Nylon Workers Union, 2014 CanLII 22521 (ON LA) Retention of inappropriate emails prohibited by policy on company systems is grounds for termination
2015	ICANN approves the new Canadian domain ".sucks", accused of extortion through high pricing of trademark domains https://www.theregister.co.uk/2015/06/15/canada_to_icann_take_off_you_hoser
2015	AJU v GSU, 2015 ABQB 6 (CanLII) Provides current views on the admission of illegally gained electronic evidence in family law cases
2016	Amalgamated Transit Union Local 113 v. Toronto Transit Commission, Dec 2016 The employer has a duty to protect employees from harassment in the workplace, outside the workplace, and online



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2016	R v. Craig, 2016 BCCA 154 (CanLII) A person has an expectation of privacy in their own emails and also an expectation in the emails they send to other people's accounts, where those accounts are limited to a single user and controlled by a password; requires warrant
2017	R v. Jarvis, 2017 ONCA 778 (CanLII) Provides a review on the current standards for 'a reasonable expectation of privacy'
2019	Williams v. Sekhon, 2019 BCSC 1511 (CanLII) Provides an overview of privacy in investigations, in relation to the use of cyber, surveillance and interview techniques
2019	R. v. Chau, 2019 BCPC 201 (CanLII) Provides an overview of the privacy rights regarding cameras in a common area of a residential building
2019	Saskatchewan Polytechnic v. Saskatchewan Polytechnic Faculty Association, 2019 SKLA 92506 (CanLII) Highly detailed review of an investigation and related electronic devices, demonstrating higher demand for exactness

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