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TII Quick Guide To: Case Law - Electronic Evidence

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

LIST OF SIGNIFICANT CASE LAW IN CANADA

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
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
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
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
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
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



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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
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/en/info/sedonacanada/2008principles_en.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
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	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 defendant's 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



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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, need a new warrant to search for evidence of another 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	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)
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
2014	R v Spencer, 2014 SCC 43 - Discusses expectations of privacy; any request by police to an internet service provider is considered 'a search'



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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	AJU v GSU, 2015 ABQB 6 (CanLII) - Provides current views on the admission of illegally gained electronic evidence in family law cases



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