RESEARCH SUPPORT

Research Assistance
Call 1-800-387-5164, option 3, or email us at researchsupport.legaltaxcanada@tr.com for help from our research specialists with any research issues you may experience. Monday - Friday (except holidays) 8:30 a.m. to 5 p.m. EST.

Technical Support
Call 1-800-387-5164, option 2, or email us at techsupport.legaltaxcanada@tr.com for help with any technical issues you may experience. Monday - Friday (except holidays) 8:30 a.m. to 5 p.m. EST.

"Congratulations PBSC on your commitment to access to justice. I am so proud of our 10 year partnership with PBSC. This partnership has allowed us to support the improvement of access to justice for vulnerable populations and individuals across Canada while helping law students develop their legal skills and contributing to the strengthening of the legal profession."

Neil Sternthal
Managing Director, Global Large Law & Canada
Thomson Reuters
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Dear PBSC Volunteer,

Thank you for volunteering for Pro Bono Students Canada (“PBSC”)! We are delighted to welcome you to our national, student-led access to justice movement.

Since 1996, PBSC has been providing free legal services to individuals and communities facing barriers to justice in Canada, including Indigenous communities, refugees and newcomers, LGBTQ2S communities, and families in crisis, to name a few. Operating in 22 law schools from coast to coast, we partner with courts, community organizations and law firms to offer innovative, high-impact placements in all areas of the law. We are proud to expose thousands of law students to the value of pro bono service every year, helping to create a culture of public service in the legal profession.

PBSC is committed to providing you with a meaningful and educational volunteer experience. In order to get your placement off to the right start, we want to make sure that you receive the very best training available. The training offered by PBSC’s National Legal Research Partner, WestlawNext Canada, is an integral part of our overall training program, and a unique opportunity available only to PBSC volunteers. The PBSC-WestlawNext Canada training program and resource materials cover not only Westlaw, but other legal research tools that will be relevant to your PBSC placement and beyond. By providing specialized training for law students across the country, WestlawNext Canada is making a very real contribution to the advancement of access to justice.

We are eager to receive your feedback. I invite you to email me directly with any comments or suggestions you may have about the training program, at brittany.twiss@probonostudents.ca. If you require additional, specialized, or more advanced training support as part of your PBSC placement, please email allan.akizuki@thomsonreuters.com. For more information about PBSC generally, visit www.probonostudents.ca.

Finally, please take a minute to connect with us on social media. We can be found at @PBSCNational on Facebook, Twitter and Instagram and regularly post updates and news relevant to our volunteers, including up-to-the-minute information on Canadian law schools and students, pro bono and access to justice, and events taking place in your community. Good luck with your PBSC placement, and thank you for your support.

Sincerely,

Brittany Twiss, National Director, Pro Bono Students Canada
Acknowledgment of Contributors

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- Nancy Li, Law Student, Schulich School of Law at Dalhousie University
- Susan Barker, Digital Services and Reference Librarian, University of Toronto Bora Laskin Law Library, University of Toronto Faculty of Law
- Josée Provost, National Coordinator for Academic Training, Thomson Reuters

Scope of Research Handbook

This handbook is intended to illustrate one general approach to researching a legal issue. It concentrates on the process of identifying potentially relevant sources of commentary and law and the way in which one must learn to think about where they might be found. It is divided into 2 parts: Part A introduces the PBSC Research Checklist approach to tackling a research assignment, and Part B exemplifies the application of the checklist to a specific scenario. A sample legal memorandum of the research scenario is presented in the conclusion.
Part A – PBSC Research Checklist

Let’s start this checklist by saying: don’t be intimidated by the research process. The steps set out in the checklist reflect the ideal scenario in which you have every resource at your fingertips and a handy librarian to help you out when you are stuck. But, as we know, life is not always like that. You may not have access to any texts; you may have only been given 15 minutes to find the leading case on a particular topic; or you may just not be able to find a direct answer to your question.

Whatever your situation, you can still make use of this checklist. You may have to skip a step or two depending on the resources at hand but as long as you have been systematic in your research and have made detailed notes on where you looked and what you have found, you will be able to justify your research findings.

It is particularly important to keep detailed notes where you have been unable to locate any relevant authorities as these notes will show that you have looked at the available resources and done your research thoroughly as possible in your particular circumstances.

**Step 1: Plan Before You Start**

- Look at the problem and identify the facts and legal and other issues to be examined.
- When beginning your research start with the general and move toward the specific.
- Locate the broad concepts in texts and other sources of commentary and then move to the specifics when you have a clear understanding of the issues at hand.
- Don’t forget, research is an iterative process. You will need to repeat the steps a few times as new information appears in order to ensure your research is complete.
- Ask your librarian to assist you in planning your research. A librarian can help you to identify where information might be located and to formulate your search strategy.

*Notes: In addition to conducting legal research, your research may involve looking at social science or public policy sources. The courts are increasingly accepting social science evidence as persuasive. This evidence may include “government reports, law reform commission reports, social science studies, or statistics. These ... sources can provide insight into the social purposes ... context... and institutional framework in which legislation is intended to operate” (McCormack, Papadopoulos and Cotter, p. 205)*

*One example is the Morgentaler case ([1988] 1 SCR 30) in which the court referred to evidence from Statistics Canada (Basic Facts on Therapeutic Abortions), Law Reform Commissions, Joint Committee Minutes, Government Reports – so keep in mind that you may need to do research other than legal research when looking at public policy issues.*
Step 2: Always Start with Secondary Sources

Secondary sources are not the law; only primary sources have binding authority in the courts, but secondary sources may have persuasive authority. Commentary explains and describes the law and points to primary sources. It includes texts, articles, encyclopedias, legal dictionaries, words and phrases, wikis, blogs, and law firm newsletters. Tools to help you locate the law and commentary include case law digests, citators, and journal indexes.

Other secondary sources include texts, loose-leaf services, Law Reform Commission Reports, continuing legal education materials, and government reports. These sources are the best starting point because they are written by experts and provide a broad academic or practical overview of the subject. To locate these sources, search your library catalogue or better still refer to published bibliographies which identify the best resources available.

Examples of alternative secondary sources:
- Eaton and Lemay, Essential Sources of Canadian Law. 2009. Irwin
- Practice specific collections on WestlawNext Canada and Lexis Advance Quicklaw

Notes: Once you have read through a couple of texts, you will have an idea of the concepts, keywords and terms that you will need to explore and to build on your understanding of the topic. To streamline your research, make note of the terms to be researched as well as the primary sources you might want to look at. One caveat – texts are not always current – to keep your research up to date you must check current sources of information.

Blogs, wikis and law firm newsletters are useful for finding background information on very current issues, cases that are on the go or issues that are in the news. Search for blogs on the Canadian Law Blogs List, www.lawblogs.ca or for law firm newsletters at Fee Fie Foe Firm Canada, www.fefeefirm.com/ca. Be aware that these sources may be less authoritative. Always check the authorship to ensure that the information is coming from a reliable source: an academic institution or a law firm for example.

Notes: What about Google or other search engines?
Generally, it is not a good idea to base your research on Google; you will get too many false hits of questionable authority.
There are two instances when you might want to use Google:
1) for preliminary searching (when you know absolutely nothing) – a quick search may provide you with background information or vocabulary, or
2) for very specific searching – when you know exactly what you are looking for, a particular website or document for example.
Build on your knowledge by checking an encyclopedia. These are written by subject experts, and provide a more specific overview of most of the legal topics relevant to Canadian Law. Each paragraph describes a particular point of law and provides references and links to relevant cases and legislation. Encyclopedias have multiple points of access, including indexes, tables of cases and tables of legislation.

Examples of legal encyclopedias:
- Canadian Encyclopedic Digest (WestlawNext Canada)
- Halsbury’s Laws of Canada (Lexis Advance Quicklaw)
- Both are available in print and online and are updated regularly. On the online version the updates are consolidated into the text but in the print version you will have to check the hard copy supplements.

Legal terminology is very specific and so you should not take it for granted that you know the meaning of a term or expression. Further, you will need to know if a term or expression has been defined by the court in a particular way. To locate these definitions, you will need a legal dictionary. These resources also point to primary sources of law when appropriate.

Examples of legal dictionaries:
- Words and Phrases Judicially Defined (in print or on WestlawNext Canada)
- Canadian Legal Words and Phrases (Lexis Advance Quicklaw)

It is always a good idea to see if there are any journal articles on your topic. These are generally written by legal scholars and usually cover current or developing or controversial issues. They usually provide references to primary and other useful secondary resources and they may have persuasive influence in court.

Start your research using a journal index. Indexes speed up the research process by providing references to the article’s author, title, and citation as well as to abstracts and subject headings, the latter of which you can use to locate other articles on the same issue. Indexes are more comprehensive than full text databases.
Examples of journal indexes:
- Index to Canadian Legal Literature
- Index to Foreign Legal Periodicals
- Index to Legal Periodicals and Books
- Index to Legal Periodicals Related to Law
- LegalTrac
- Criminal Justice Abstracts
- HeinOnline Law Journal Library Search
- Social Science Index
- Social Science Research Network (for very current legal and social science research)

Full text databases are convenient when you know what article you are looking for or if you are searching for specific situations rather than broad legal concepts.

Examples of full text databases:
- HeinOnline
- Articles and Newsletters (WestlawNext Canada)
- World Journals (WestlawNext Canada)
- All Canadian Legal Journals (Lexis Advance Quicklaw)

Notes: Researchers are often reluctant to search indexes as they think everything is available in the full text journal databases. But, in reality, they are likely to miss something if they limit their search to these databases only. As an example, the Index to Canadian Legal Literature indexes approximately 200 legal resources, while the Articles and Newsletters database on WestlawNext Canada only includes the contents of approximately 50 law reports and journals and the All Canadian Legal Journals database on Lexis Advance Quicklaw includes only the contents of approximately 30 law journals. Using a journal index, however, might be a two-step process as once you have located the index entry you will then need to locate the full text of the article.

Newspapers are great for factual information and for examining the social and political context of current issues. Your library will subscribe to a number of newspaper databases. Check with your librarian for assistance.

Case law digests are summaries of cases organized by subject. These summaries enable researchers to quickly read about the cases. Each case is also assigned one or more subject headings which allow researchers to locate additional material on their topic very easily.

Examples of case law digests:
- The Canadian Abridgment (in print and on WestlawNext Canada)
- The Canada Digest (Lexis Advance Quicklaw)

When researching parliamentary material, remember: ask for help – the librarian is your best friend. Parliamentary debates are an excellent source for locating the context or intent behind a particular piece of legislation. Current debates and government committee reports are available from the government websites. You may need to go to the law or government documents library for assistance in locating older material.
Step 3: Primary Resources – Case Law and Legislation

Primary sources of law in the common law system are case law and legislation. If you have done your research properly, at this point you will probably have a list of citations to the primary sources of law that govern the issue that you are researching and you should be able to go directly to those sources.

Case law consists of the written record of a judge’s reasons for judgment. Cases can be reported, i.e., published in a commercial printed reporter, or unreported. Most recent cases are available electronically and easy to locate if you have the citation or the name of the case. For older cases you may need to locate the print reporters which are available in most law libraries. Search the full databases when you are looking to match broad concepts and/or specific fact situations.

Sources for Case Law
- WestlawNext Canada
- Lexis Advance Quicklaw
- CanLII (a free source)

Notes: Cases will have either authoritative or persuasive value depending on the court level and jurisdiction. Cases from the Supreme Court are binding for all jurisdictions in Canada; cases from lower courts are only binding in their originating jurisdiction although they may have persuasive value in other jurisdictions. Older cases that are still good law should be included in your findings.

Most cases are identified by abbreviated citations – to find out what an abbreviation means check out the Cardiff Index to Legal Abbreviations, http://www.legalabbrevs.cardiff.ac.uk/

Legislation research is complex. You will need to locate legislation as it was on the date of the matter being researched. Don’t forget, you can ask your librarian for help. For current matters you will need to locate statutes that are still in force. It is relatively easy to locate current consolidated legislation, and their related regulations, on the various government websites. The Bora Laskin Law Library has compiled links to all these websites on their Internet Sources of Current Canadian Legislation and Parliamentary Material webpage (https://library.law.utoronto.ca/<front>/current-canadian-legislation).

Sources of current consolidated legislation:
- WestlawNext Canada
- Lexis Advance Quicklaw
- CanLII

Notes: Legislation located in commercial databases or on CanLII is not considered to be official and cannot be presented to court. Legislation located from the websites of the various jurisdictions is generally (with the exception of those from the Ontario, Quebec and the Federal Governments) not considered to be official either. So it is likely that you will have to refer to the print versions if going to court.
Step 4: Note-Up Case Law, Statutes and Regulations

Noting-up a case is checking to see if a case has been appealed to a higher court and how it was treated by that court. Noting-up a case also includes checking how other cases have considered that case. This step, in essence, helps you locate other cases on the same subject matter. The number of times a case has been cited determines whether it is a leading case.

Sources for noting up case law:
- KeyCite Canada (WestlawNext Canada)
- QuickCITE Case Citations (Lexis Advance Quicklaw)
- On CanLII – with limited coverage
- Canadian Case Citations (in print)

Noting-up statutes and regulations is checking how the courts have treated or considered a particular statute or regulation.

Sources for noting up legislation:
- KeyCite Canada (WestlawNext Canada)
- QuickCITE Statute Citations (Lexis Advance Quicklaw) (does not note up regulations)
- On CanLII – with limited coverage
- Canadian Statute Citation in print
- Canadian Regulations Judicially Considered in print

Step 5: Additional Authorities

To ensure you haven’t missed anything, consult additional secondary sources (librarians, government department websites, associations and Google) as well as additional primary sources (other provinces/territories and international jurisdictions). And don’t forget to check again with your law librarians, just in case.
PBSC Flow Chart of Research Strategies

**STEP 1** Planning

- Understand the assignment
  - Facts
  - Legal and other issues
- Chart a plan of action
  - Write initial thoughts
  - Go from broad to specific
- Ask a Librarian for assistance
  - Finding resources
  - Formulating search strategies
- Keep track of every step

**STEP 2** Secondary Sources

- Types
  - Textbooks & Loose-leaf Services
  - Encyclopedias and Reference Materials
  - Annotations
  - Conferences
  - Journal articles
  - Law firm newsletters, authoritative legal blogs and wikis
- Access Points
  - Electronic indices, e.g. I.C.L.L., HeinOnline, Legaltrac
  - Online databases: WestlawNext® Canada, QL/Lexis

Don’t Miss Anything!

Check with Experts!
Be certain!

STEP 3 Primary Sources

- Statutes, Regulations and Rules
- Access Points
- Finding Cases
- Access Points

Cover the bases!

STEP 4 Noting Up

- Case law
- Statutes and Regulations
- Citators

How to be sure!

STEP 5 Additional Authorities

- Secondary
- Primary

Logged in.
Part B – Research Scenario

PBSC Hypothetical Scenario – Admissibility Requirements with Respect to Social Media Evidence

Mr. Smith is involved in a motor vehicle accident. He issues a claim for damages against the party who caused the accident, Mr. Jones.

At trial, counsel for Mr. Jones seeks to introduce Facebook photographs and Twitter messages posted on Mr. Smith's accounts, for the purposes of refuting Mr. Smith's alleged damages.

Counsel for Mr. Smith opposes the introduction of such evidence on the basis that it is not relevant.

The court is then faced with the task of determining whether the proposed social media evidence (or, electronic documents) should or should not be admitted.
Research Process

Step 1: Plan Before You Start

(a) Understand the Assignment

When receiving instructions for a new assignment, take a few minutes immediately after the meeting to write down the instructions, your plan of action and any initial thoughts. Like anything else, every time you begin working on an assignment, re-read the instructions. This goes a long way to avoiding submitting a work product that completely misses the point.

It is important to know and understand the facts that give rise to an issue that is to be researched, if the issue is to be correctly framed and effectively researched.

Sample Research Question:
You have been asked to provide a general research memo on the admissibility requirements with respect to electronic evidence, and specifically social media evidence, in the context of civil litigation proceedings such as a claim for damages.

(b) Chart a Plan of Action & Write Down Initial Thoughts

The keys to effective legal research are knowledge of the sources available and how to use them, and perhaps most importantly but more difficult to acquire, knowledge of which sources are most effective in relation to a particular problem so that the available time for researching a problem can be best used.

If possible, it also helps to start the research right away to get a general idea of how difficult or time-consuming the assignment will be.

<table>
<thead>
<tr>
<th>Areas of Law:</th>
<th>Evidence, internet law, civil practice &amp; procedure, damages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Search Terms:</td>
<td>Social media, electronic evidence, Facebook, admissibility</td>
</tr>
<tr>
<td>Legislation:</td>
<td>Canada Evidence Act, Rules of Civil Procedure</td>
</tr>
<tr>
<td>Case Law:</td>
<td>Cases dealing with electronic evidence and social media</td>
</tr>
<tr>
<td>Textbooks:</td>
<td>Underwood &amp; Penner on Electronic Evidence in Canada;</td>
</tr>
<tr>
<td></td>
<td>Sopinka, Lederman &amp; Bryant on The Law of Evidence</td>
</tr>
</tbody>
</table>

(c) Ask Your Librarian for Assistance

Librarians can save you a tremendous amount of time at the beginning of your research by directing you to important and key resources, providing keywords and effective search strategies.
(d) Keep Track of Every Step

Keep track of every step taken in your research, including the chapters read in any texts or any annotated statutes, as well as the search methods used. Indicate whether the source was really read or just skimmed.

For electronic searches, the database, search terms and documents viewed are captured automatically by WestlawNext Canada and Lexis Advance Quicklaw. In WestlawNext Canada, the History of your searches and documents viewed is saved for 1 year. In Lexis Advance Quicklaw searches are saved for 90 days.

For updating cases or statutes, indicate the sources used and the results. This will make the “Sources Consulted” or “Research Undertaken” sections of the memo easy to write and allow you to answer any questions about your research. This is particularly important where you have been unable to locate any relevant authorities or any authorities beyond those of which the assigning lawyer or organization is already aware.

Keeping track of your research will also serve to assure the client or the lawyer that negative research results are not the consequence of a lack of effort on your part.
Step 2: Secondary Sources

Secondary sources provide citations to primary sources and explain the law.

(a) Textbooks and Loose-leaf Services

Textbooks (bound books) and loose-leaf services (books in binder format that are continually updated) are excellent starting points. For example:

Textbooks:
- Sopinka, Lederman & Bryant, The Law of Evidence
- Underwood & Penner, Electronic Evidence in Canada

When using a textbook or looseleaf service you may not find something exactly on point – you will however have a broad overview of the law and may have located some key terms and concepts that will help you frame or limit your question.
(b) Encyclopedias

Rather than commentary, Encyclopedias provide a concise “black letter” statement of the law. These entries are useful as they provide footnoted references to the most important primary sources of law on that topic (cases and legislation) as well as links to those sources when available.

Encyclopedias:
- Canadian Encyclopedic Digest (WestlawNext Canada)
- Halsbury’s Laws of Canada (Lexis Advance Quicklaw)

Search the CED (Canadian Encyclopedic Digest) (WestlawNext Canada).
You may use the Browse function, expanding titles until you select a title of interest or use the Search Field of the CED as shown here (use broader search terms to narrower search terms). Enter search terms: evidence and “social media”.

§21 The common law has recognized a number of documents as admissible evidence, regardless of the form, written, printed, inscribed or otherwise recorded. It does not make a difference if the information needs to be deciphered using an instrument, tool or machine.

§22 Many types of recorded information have been admitted into evidence including computer records.

§23 Where records are generated by the computer itself, without any human interference, this type of computer-generated evidence is not hearsay and therefore is admissible as real evidence without the need for the statutory or the common law exception to the hearsay rule.
Search Commentary (Lexis Advance Quicklaw)
You may do a similar search using Lexis Advance Quicklaw by browsing under the Secondary Sources for “Halsbury's Laws of Canada”. Enter search terms: evidence AND "social media".
(c) Indexes and Journals

Examples:
- Index to Canadian Legal Literature (WestlawNext Canada or Lexis Advance Quicklaw)
  - Indexes should be consulted as they are more comprehensive than full text databases.
- Articles and Newsletters (WestlawNext Canada)
- Journals & Commentary (Lexis Advance Quicklaw)
- LegalTrac
- HeinOnline

Search Indexes (WestlawNext Canada)
Start by searching the Index to Canadian Legal Literature, which covers the contents of Canadian Journals, Reviews, as well as treatises. Enter search terms evidence AND "social media".

In some cases, the results will provide a link to the full text of the article, because they are part of the WestlawNext Canada resources; in others, you will need to note the reference citation and check in your library catalogue or confirm access by asking the librarian.

One really good search strategy is, when you find an article that is on point, verify the subject headings, and click the applicable link to help you locate additional material on the same topic.
Search Indexes (Lexis Advance Quicklaw)

You may do a similar search on Lexis Advance Quicklaw’s the “Index to Canadian Legal Literature – Journals and Texts”. Enter search term: terms: evidence AND “social media”.

You can also search full text journal databases by keyword. Full Text Journal databases, while not as comprehensive as journal indexes, have the advantage of being easier to search by keyword. This is useful if you are looking for a narrow topic or specific situation rather than a broad general topic.

Search Journal Articles (WestlawNext Canada and Lexis Advance Quicklaw)

The search templates for the full text article databases on WestlawNext Canada (Articles and Newsletters) and Lexis Advance Quicklaw (All Canadian Legal Journals) are similar to that of the Indexes. Just key in your terms and/or concepts and view the results.
Search Journal Articles (HeinOnline)

Enter search terms “evidence” and “social media” in text and “Canada” in country.

HeinOnline includes both US and Canadian Journals and provides electronic access to many journals going back to their inception and so is very useful for historical research. It also provides PDF versions of each article, thus replicating the exact look of the print version.

Because you are searching full text, you may locate more resources than you would if you were searching an index but the results may be less relevant to your research, so you will need to take care.
Step 3A: Primary Resources – Case Law

Having begun our research with Secondary Sources, we now have an excellent start at understanding the issues and the law, as well as a good chance we have uncovered direct links to the applicable primary sources of legislation or case law.

Types of Primary Sources:
- Cases: interpret and apply Statutes/Regulations.
- Statutes: state the law and delegate authority to enact regulations.
- Regulations: enact rules to enforce statutes.
- Rules: rules regulating the practice and procedure for a specific court

a) Case Law Digests

The value of a digest is in its subject classification. Each case is assigned one or more subject headings so you can easily and efficiently locate all cases that touch on like or similar points of law. Each digest provides a brief synopsis of the case and its disposition as well as a link to the full text of the case if available. You can read through the digest quickly to see if it is appropriate to include in your research.

Locating Case Law Digests (WestlawNext Canada)
Start with the Canadian Abridgment Digests (CAD). When searching you may use the Browse function, expanding titles until you select a title of interest (this allows you to go from the main issue of law to more and more specific sub-issues), or, conduct a search.

b) Full Text Case Law Searching

To start searching for cases, you will likely have located the leading cases through your secondary research and either linked to them or searched for them by citation. But if you need to look further for analogous fact situations or general concepts, you can search full text databases. Primary Case Law can be searched on WestlawNext Canada, Lexis Advance Quicklaw or CanLII.
Locating Full Text Case Law (WestlawNext Canada)

Start by selecting “Cases and Decisions” under Primary Sources. Enter search terms: evidence AND ‘social media’.

Refine your search by using the multiple filters on the left of the Result List.

Change the sort order using the Sort By drop down menu at the top of the Result List.
You may do a similar search with Lexis Advance Quicklaw. In Content Type, select Cases. Search for evidence AND "social media".
Locating Full Text Case Law (CanLII)

A third option is CanLII, a free website that provides access to Case Law and Legislation. While lacking some of the value-added features of the commercial databases, it is still a great starting place for research, especially if you do not have access to a commercial database.

You may do a similar search on CanLII. Select the “Document text” search box and search for terms evidence and “social media”.


Human Rights Tribunal of Ontario — Ontario

social media plan — outline — subsidy — website — work

[...][21] The applicant put into evidence a copy of a social media plan, which he said was drafted sometime before December 16th. [...]. I have also reviewed the 8 page social media plan that he submitted into evidence. [...]. A review of the 8 page social media plan that the applicant put into evidence suggests that the applicant could produce such a document without knowing detailed information about the respondent’s business. [...]

2. *R v Paxton*, 2016 ABCA 361 (CanLII) — 2016-11-16

Court of Appeal — Alberta

social media — evidence — sexual assault — brain injury — memory

[...]. The late disclosure by the Crown of some social media content, or, b. the possible disappearance of some social media content before the Crown captured it? [...]. a. late disclosure by the Crown of some social media content; or, b. the possible disappearance of some social media content before the Crown captured it? [...]. A particular aspect of the credibility challenge to DL’s evidence arises from the argument that his memory, and evidence, was affected by what he read and said on Facebook and other social media about relevant events, prior to testifying at trial. [...]


Supreme Court of British Columbia — British Columbia

social media platforms — photographs — dance — videos — dancing

[...][9] Like most of her peers, Ms. Wilder maintains a wide variety of social media accounts. [...]. While the evidence of this application supports that the claim will not
c) Administrative Tribunal Case Law

While cases from Administrative Tribunals do not have precedential value in the courts, they may however still be useful to pro bono researchers preparing for a hearing before a tribunal to see how issues have been previously decided.

Locating Tribunal Cases (WestlawNext Canada)

In WestlawNext Canada, tribunal cases are included in the search for case law. To limit results to tribunal decisions only, use the “Boards and Tribunals” filter under the Court Level heading in the left column. To select specific tribunals, click the + sign for the desired jurisdiction under the Jurisdiction/Court heading.

Locating Tribunal Cases (Lexis Advance Quicklaw)

In Lexis Advance Quicklaw, select Boards & Tribunals under Jurisdiction.
Locating Tribunal Cases (CanLII)

*In CanLII, select the Jurisdiction and then link to Boards and Tribunals.*
Step 3B: Primary Resources – Legislation

As noted previously, if your secondary source research has been successful you should have a citation to the relevant section of the legislation and can locate it directly.

Statutes state broad principles while regulations provide the practical details that make those statutes work. The easiest place to locate legislation for all jurisdictions is CanLII (www.canlii.org) or on the relevant government websites. One can also find legislation on WestlawNext Canada and Lexis Advance Quicklaw.

a) Statutes

You will find the most recent current consolidations of the statutes on these sites; however, you must be aware that they are only considered official in a few jurisdictions and you may need to refer to the print versions.

Locating Statutes (CanLII)

*Search for “Canada Evidence Act” in Canada (Federal).*
b) Regulations

Don’t forget you may need to look at regulations as well. Like statutes, regulations are a form of legislation (subsidiary or delegated) and have the force of law. Regulations are enacted by the executive boards that the parliament or legislature has authorized, and cannot be made outside the purview of the enabling legislation.

As with statutes, the easiest place to locate regulations for all jurisdictions is CanLII or on the relevant government websites under the name of the enabling statutes.
Locating Regulations (CanLII)

*Click on the Regulations tab of an act.*

Alternatively, select the Jurisdiction and view Regulations alphabetically.
Step 4: Note-Up Case Law, Statutes and Regulations

The purpose of “noting-up” both primary and secondary sources is to validate primary authorities. It also helps you find additional authorities. Finally, “noting-up” helps you track the history in the courts.

The term “note-up” originally referred to the practice of literally writing in the updated information regarding the case in the margins of the printed casebook. Later on, publishing companies actually issued “sticky notes” that were added in the margins. If you visit your law library’s older collections, you will see these quaint notes. Noting up of both Cases and Legislation is done electronically today.

a) Cases

We note-up to follow a case’s history and make sure it is still good law and also to see how other cases have considered the case. There are three sources available for noting up cases:

Noting-Up (WestlawNext Canada)

Key Cite (WestlawNext Canada) uses colourful flags to denote treatment as follows.

**Cases**

- A red flag warns that the case may not be good law, indicating that the decision has been reversed, or has not been followed within the same jurisdiction or by the Supreme Court of Canada.
- A yellow flag warns that the decision has some negative history or treatment, but has not been reversed or overruled. A yellow flag is also displayed if a treatment has been recently added, and has not yet been editorially analyzed.
- A blue H indicates that the decision has some history.
- A green C indicates that the decision has no history, but there are treating cases or other citing references to the decision.

When viewing a case, the History tab provides a case’s appellate history and the Citing References tab provides the cases and secondary sources that have cited that case.
Most Negative Treatment: Distinguished
Most Recent Distinguished: Memfield v. Canada (Attorney General) | 2017 ONSC 1333, 2017 CarswellOnt 2627, 278

2015 ONCA 110
Ontario Court of Appeal

Inamarella v. Corbett


Andrea Inamarella and Giuseppina Inamarella, Plaintiffs (Appellants) and Stephen L.
Corbett and St. Lawrence Cement Inc., Defendants (Respondents)

John Larin, P. Lavoine, C.W. Hourigan J.A.

Heard: June 26, 2014
Judgment: February 17, 2015

S.C.J.)

Counsel: David A. Zuber, Joseph Villeneuve, for Appellants
Martin P. Forget, for Respondents

Subject: Civil Practice and Procedure; Insurance; Torts

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Citing References (33)

1. Distinguished in:
   - 38
   - ...
Noting-Up (Lexis Advance Quicklaw)

QuickCITE (Quicklaw) uses colourful signals to denote treatment as follows:

**Negative Treatment Icon**

The case has negative history (judicial review allowed, reconsideration allowed, reversed, quashed, or varied by a higher court) or negative treatments (not followed or questioned by a subsequent court).

**Cautionary Treatment Icon**

The case has been distinguished by a subsequent court.

**Positive Treatment Icon**

The case has positive history (affirmed, judicial review denied, or leave to appeal refused by a higher court) or positive treatments (followed or followed in a minority opinion of a subsequent court).

**Neutral History or Treatment Icon**

The case has neutral treatments (mentioned, explained, cited, or cited in a dissenting opinion) or the case has history (abandoned, abated, leave to appeal granted, reconsideration denied, related proceeding, same case, or supplementary reasons by a subsequent court), but the citing court does not comment on the case.

This symbol is also attached to cases that have been added to Quicklaw within the past 3 business days, but have not yet been assigned a QuickCITE treatment.

**Citator Information Icon**

The case has no known history or treatments. Click this link to view more information on this citation.

Note up with the QuickCITE link to obtain the cases that have considered that case.
Noting-Up (CanLII)

CanLII has recently added the RefLex database of case and legal citations.

*From the home screen, in the Noteup: field, enter the case name or citation.*

b) Legislation

We note up legislation to find cases that have considered a particular section of a statute or regulation. There are three sources available for noting up legislation:
- KeyCite (WestlawNext Canada)
- QuickCITE (Lexis Advance Quicklaw) (statutes only)
- RefLex database of legal citations (CanLII)

Step 5: Additional Authorities

To ensure you haven’t missed anything, consult additional secondary sources (librarians, government department websites, associations and Google) as well as additional primary sources (other provinces/territories and international jurisdictions). And don’t forget to check again with your law librarians, just in case.
Conclusion

Key Takeaways: 5 Research Tips

(1) It’s ok (and important) to ask questions.
(2) Always update and note-up.
(3) Remember the 10 to 15 minute rule: When you have searched for more than 10 to 15 minutes with no success, consult your librarian who will be able to help you reformulate your search strategy or terms, or who will be able to assist you by confirming that indeed there is nothing there.
(4) Keep track of your research. Review the history function in WestlawNext Canada. Use Folders.
(5) Efficiency is essential. Because virtually all legal writing is subject to time constraints of greater or lesser severity, it will never be perfect.

Writing the Legal Memorandum

It is essential to strive for a legal analysis that is not only thorough, accurate and correct, but also an analysis that is sufficiently clear and conveys advice intelligibly to its target audience. Clarity will not be achieved by trying to imitate Lord Denning’s style. Instead, it requires going through the mental exercise of approaching what has been written from a layman’s perspective and trying to translate it into terms which can be understood.

There are a couple of elements that are important:

(1) Objectivity & Certainty

Writing for academic purposes is usually directed at supporting a particular thesis. In contrast, research memos should generally be objective; where there are arguments or authorities in favour of different views or interpretations, these should all be analyzed in the memo before a conclusion is reached and expressed as to the preferable answer.

(2) Organization & Presentation

There are no rules that the memo must follow. The use of headings, however, are helpful to organize the argument into logical sections. Summarizing the facts, issues and conclusions at the beginning of the memo are usually helpful in providing the reader with a map of where the memo is going and in clarifying, even for the author, precisely what the memo is saying. The longer the memo, the more important is such a summary in order to assist the reader in following the analysis. If possible, it is helpful to organize a plan of the memo prior to commencing to draft it.
Sample Memorandum

Memorandum of Law

View Memorandum Summary - MemoPoLSumm 9975

Classification:
Evidence—Admissibility—Relevance—Miscellaneous
Evidence—Real evidence—Electronic
Evidence—Documentary evidence—Admission of documents—Miscellaneous

Author:
Dale A. Rosenberg, B.A. (Hons), J.D.

Jurisdiction: Federal; Ontario; Quebec; British Columbia

Date of Research: April 12, 2013

Updated Date: October 5, 2017

Legal Issue:
What are the admissibility requirements with respect to electronic evidence, and specifically social media evidence, in the context of civil litigation proceedings?

Fact Scenario:
Person X is involved in a motor vehicle accident. He issues a claim for damages against the party who caused the accident, Person Y. At trial, counsel for Person Y seeks to introduce Facebook photographs and Twitter messages posted on Person X’s accounts, for the purposes of refuting Person X’s alleged damages. Counsel for Person X opposes the introduction of such evidence on the basis that it is not relevant. The court is then faced with the task of determining whether the proposed social media evidence (or, electronic documents) should or should not be admitted.

Other Key Words:
admissibility, authentication, best evidence rule, documentary evidence, E-Discovery, electronic document, electronic evidence, electronic record, electronically stored information (ESI), Facebook, hearsay, internet, real evidence, relevance, social media

Cases Cited:


CONCLUSION:
Social media data (i.e. instant messages, personal information, digital photographs, etc.) stored on websites such as Facebook or Twitter are considered to be electronic documents, and by extension, constitute electronic evidence if admitted by the court. As social media data is manually inputted onto the website by the subject user, Canadian courts consider such evidence to be documentary evidence rather than real evidence. The fundamental rule with respect to the admissibility of documentary evidence, and accordingly social media evidence, is as follows: all documents are considered admissible provided they are i) relevant, and ii) do not contravene any applicable exclusionary principles—namely, the best evidence rule, authentication and hearsay.

When determining the admissibility of social media evidence, Canadian jurisprudence has placed a stronger emphasis on assessing the issue of relevance rather than on assessing whether such evidence meets the requirements set forth by the exclusionary principles. This is, in part, due to technological advancement which has significantly diminished the role of the exclusionary principles (i.e. best evidence rule), and in part, due to legislative initiatives which have provided greater clarity with respect to how the exclusionary principles may be satisfied specifically within the context of electronic documents—most notably, the Uniform Electronic Evidence Act, 1999 ("UEEA").

ANALYSIS:
Scope
This article primarily focuses on the admissibility of electronic evidence, and specifically social media evidence, in civil litigation proceedings. Federal legislation, provincial legislation as well as various judicial decisions will be examined in detail.
It should be noted that this article acts as a non-exhaustive reference point and it is therefore recommended that the reader consult alternative texts which may be available.

Electronic Evidence: Social Media

The Canada Evidence Act generally (CEA) primarily applies to and governs the law of evidence with respect to criminal proceedings. Companion provincial legislation, for example the Ontario Evidence Act generally (OEA), apply to and govern the law of evidence pertaining to civil matters. Although various differences between evidentiary requirements flow from the CEA generally, versus provincial legislation, as well as between criminal versus civil jurisprudence, there exists a relatively streamlined approach specifically with respect to electronic evidence. In 1999 the UEEA, adopted by the Uniform Law Conference of Canada, proposed uniform legislative provisions addressing, in part, admissibility requirements pertaining to electronic evidence. The federal government subsequently amended the CEA generally, to include near identical provisions (with moderate variations) found in the UEEA, as did the majority of provincial governments. See:

Ontario, s. 34.1; N.S., ss. 23A to 23H; Saskatchewan, ss. 54-59, note 38 above. Electronic provisions are also found in other provincial and territorial Evidence Acts: B.C., R.S.B.C. 1996, c. 124, ss. 41.1-41.4; Alberta, R.S.A. 2000, c. A-18, ss. 41.1-41.8; Manitoba, C.C.S.M., c. E150, s. 51.1-51.8; New Brunswick, R.S.N.B. 1973, c. E-11, ss. 47.1-47.2; NWT/Nu, R.S.N.W.T. 1988, c. E-8, s. 37.1. In two jurisdictions, there is a stand-alone Electronic Evidence Act: P.E.I., R.S.P.E.I. 1988, c. E-4.3; and the Yukon, R.S.Y. 2002, c. 67. Newfoundland and Labrador is the only common-law jurisdiction which has not implemented the uniform electronic evidence provisions. [Thompson, Rollie, The Ten Evidence “Rules” That Every Family Law Lawyer Needs to Know, 35 CFLQ 285, Canadian Family Law Quarterly, 2016 at p. 8, Footnote 43.]

Criminal and civil proceedings have since applied a mirrored approach with respect to the admissibility of electronic evidence.

The recent text of Sopinka, Lederman & Bryant, The Law of Evidence, Fourth Edition, adds as follows:


The following sections will help illustrate.

Admissibility

Electronic Record

Pursuant to s. 1 of the UEEA (s. 31.8, CEA and s. 34.1, OEA), an electronic record (synonymously referred to herein as 31.8“electronic document” and/or electronically stored information (“ESI”)) is defined as: “data that is recorded or stored on any medium in or by a computer system or other similar device, that can be read or perceived by a person or a computer system or other similar device.” Social media data (i.e. postings of instant messages, personal information, digital photographs, etc.) stored on a website, such as Facebook, are therefore considered electronic documents.

Documentary Evidence

In addition to oral evidence, there exists real evidence and documentary evidence. Real evidence is physical evidence introduced at trial whereby the party “seeking to admit the evidence is not relying on the contents to prove their truth, but is only seeking to prove the existence of the data or its possession in the hands of a third party.” Conversely, documentary evidence is physical evidence introduced at trial for the very purpose of relying on its contents, or substance, to corroborate the submitting party’s contentions. For the purposes herein:

A record that is created by a computer system whose function it is to capture information ... would be introduced as real evidence ... Because the information that is captured (the date, time and duration of the call, for example) is recorded automatically without being filtered through a human observer, the condition for real ESI evidence is satisfied ... It is also important to note that the information recorded is itself not an out-of-court statement by a human declarant, but rather it consists of objective information that is captured and recorded by an automated process ... On the other hand, if a record is created by a human sitting at a computer keyboard and entering data, the ESI embodied in the record could not be
tendered as real evidence if it is offered for the truth of its contents ... The record would be documentary evidence, and subject to the same limitations as would apply to a conventional document ... It is not real evidence.

Accordingly, the manual act of inputting photographs, instant messages, personal information, etc. onto a social media website thereby renders social media evidence as documentary evidence rather than real evidence. Such electronic documents, as noted, are subject to the same rules of evidence as those applied to conventional documentary evidence: “there has recently been an increase in use, as evidence, of content contained in social networking sites. Canadian courts have shown increasing comfort with using both photographs and posted text as a means of proving or disproving relevant facts, often with little or no attention to their electronic nature ... [Lawyers] and courts are mostly assimilating electronic evidence to documentary evidence”.

The fundamental rule with respect to the admissibility of documentary evidence is as follows: all documents are considered admissible provided they are i) relevant, and ii) do not contravene any applicable exclusionary rules—namely, the best evidence rule, authentication and hearsay.

Relevance Admissibility at Trial
The test for relevancy, put simply, is: Does the subject document contain a sufficient nexus with a material matter at issue, and if so, does the probative value of the document outweigh the prejudicial effect it may have on the adverse party should the document be admitted into evidence? If answered in the affirmative, the document will be considered relevant.

As an example, in Kourtesis v. Joris, Kourtesis (“Plaintiff”) commenced an action for damages sustained in a motor vehicle accident which involved Joris (“Defendant”). The Plaintiff, among other items, claimed general damages for loss of enjoyment and life—specifically, the Plaintiff alleged that she was no longer able to engage in one of her favourite activities, that being dancing, in the same way and with the same frequency as she did before the subject accident. At trial, the Defendant’s counsel discovered four photographs stored on the Plaintiff’s Facebook account which illustrated the Plaintiff dancing at a St. Patrick’s Day celebration in the preceding months. The Defendant consequently sought, in part, “an order compelling examination of the plaintiff as an adverse witness on the photos obtained or obtainable from the internet site ... In the alternative, the defendant seeks an order that the plaintiff be recalled as a witness ... for examination upon the photographs”.

E.R. Browne J. ruled:

Access to other relevant photos and/or website profile was requested ... Plaintiff’s counsel argues that the photos are prejudicial. In a sense, they are; they are arguably contrary to the plaintiff’s evidence ... [However] the photos before me are highly relevant ... If introduced in such a way that the plaintiff could not tell her story, it would be unfair. The example that I put to counsel was along the following lines, that she might give as part of her testimony upon the photographs, that she went to a party, that she had a good time, that she danced, that thereafter she was bedridden for days ... I agree that the photos by themselves have minimal probative value but they do relate to a material issue, namely assessing damages for enjoyment of life. In this particular case, the photos have a probative value outweighing potential prejudice ... In fairness, balance is in favour of the photos being introduced, subject to technicalities dealing with admissibility.

Thus as the subject photographs, or social media documents, i) sufficiently connected to a material issue at trial (i.e. loss of enjoyment of life, dancing), and ii) demonstrated probative value (i.e. illustrated dancing) which outweighed potential prejudicial effect (i.e. Plaintiff could still contend that she was ‘bedridden’ afterward, etc.), said photographs were consequently found to be relevant.

Consistent with Kourtesis supra, in the subsequent decision of Leduc v. Roman D.M. Brown J., in obiter, stated:

That a person’s Facebook profile may contain documents relevant to the issues in an action is beyond controversy. Photographs of parties posted to their Facebook profiles have been admitted as evidence relevant to demonstrating a party’s ability to engage in sports and other recreational activities where the plaintiff has put his enjoyment of life or ability to work in issue: Cikojevic v. Timm, 2008 BCSC 74 (B.C. Master), para. 47; R. (C.M.) v. R. (O.D.), 2008 NBQB 253 (N.B. Q.B.), paras. 54 and 61; Kourtesis v. Joris, [2007] O.J. No. 2677 (Ont. S.C.J.), paras. 72 to 75; Goodridge (Litigation Guardian of) v. King (2007), 161 A.C.W.S. (3d) 984 (Ont. S.C.J.) [2007 CarswellOnt 7637 (Ont. S.C.J.)], para. 128. In one case the discovery of photographs of a party posted on a MySpace webpage formed the basis for a request to produce additional photographs not posted on the site: Weber v. Dyck, [2007] O.J. No. 2384 (Ont. Master).

For further cases exemplifying the court’s acceptance of Facebook evidence as relevant, see also: Jesmer v. Delormier, Groves v. Cargojet Holdings Ltd., Dovigi v. Razi and Rossi v. Spanier.

In contrast to Kourtesis supra, in Mayenburg v. Lu Ms. Mayenburg (“Mayenburg”) commenced an action for damages sustained in a motor vehicle accident with the defendant, Mr. Lu (“Lu”). At issue before the court, in part, was Lu’s contention that Mayenburg was not credible with respect to her alleged cervical spine injuries. Lu consequently sought to introduce
photographs from Mayenburg’s Facebook profile page as well as photos which were found on the Facebook profile pages of Mayenburg’s friends. In determining admissibility, E.M. Myers J. ruled:

The defendants sought to introduce 273 photographs which they obtained from Facebook “walls” of Ms. Mayenburg’s friends. The bulk of these photos showed no more than Ms. Mayenburg enjoying herself with her friends, for example having a drink in a bar or pub. I ruled inadmissible any photos which did not show Ms. Mayenburg doing a specific activity which she said she had difficulty performing, since they had no probative value. This left a subset of approximately 69 photographs. These showed Ms. Mayenburg doing things such as hiking, dancing, or bending. However, even these photos do not serve to undercuts Ms. Mayenburg’s credibility, because she did not say that she could not do these activities or did not enjoy them. Rather, she said she would feel the consequences afterwards. In effect, the defendants sought to set up a straw person who said that she could not enjoy life at all subsequent to the accident. That was not the evidence of Ms. Mayenburg.18

In sum, the subject photographs pertaining to Mayenburg’s engagement in social activities were deemed not relevant because they lacked sufficient substance, or probative value, in relation to Mayenburg’s alleged damages. The court further rejected the photographs pertaining to exercise-related activities because they did not relate to a material issue at trial—that is, Ms. Mayenburg had not alleged she was unable to participate in exercise-related activities all together, but rather, that her recovery period after having completed such activities proved too difficult to bear.

Finally, albeit a criminal decision, the principles set forth in H R. v. L. (R.)19 provide worthy instruction with respect to admissibility of social media evidence, which may be applied in a civil context. H R. v. L. (R.), supra, involved an alleged sexual assault. At trial, the accused sought to have five pages from the complainant’s (“N.B.”) Facebook account, inclusive of messages and photographs, admitted as evidence in an attempt to demonstrate N.B.’s affinity for sexual activity and rebellion. Eberhard J., in part, ruled:

Exh. A5... appears to be an exchange between the complainant and her boyfriend... The subject appears to be an exchange of endearments in which N.B. writes... “How I wish you could see and believe how crazy I am f... [copy incomplete] and to know there is nothing I wouldn’t do or say for you.” The defence submits this evidence supports the defence theory that N.B. was anxious to leave the restrictions of her foster home to have more freedom with her boyfriend... This sentence is inextricably embedded in a flow of endearment that references sexual activity, ambiguous as to whether it refers to conduct or longing. Without the context the statement of relevance to the theory is impossible to assess... [In addition,] the potential for misuse of the evidence to infer that N.B. by reason of sexual activity, at age 14, demonstrates she is a bad girl who less worthy of belief... I find that splicing off the sentence put forward to support the theory expressed, is not necessary... [The] prejudice of taking a line out of its context outweighs the probative value.20

Exh. A4... appears to be a quote of lyrics from a love song with the line “Can’t live without you” followed by a heart... This page is not probative of anything. It will not be admitted as no relevance is demonstrated... It contains a number of potentially relevant statements:

My bedroom is not messy... I just chose to lay my clothes out on the floor so I can see them better”; “When you turn your lights off downstairs than run upstairs so nobody kills you, Umm, believe it or not, I actually can hear you talking about me”; “‘did you clean your room?. “Yea” ‘okay imago check’” no wait im not finished!

I find, the long passage is mostly just patent silliness. Of the potential lines forming an infinitesimal portion of the whole that could be relevant, I find the references to cleaning the room add nothing to the admission of the complainant that there was escalating dispute about this issue.21

As the probative value of Exh A5 was lost given the incompleteness of N.B.’s statement therein, combined with the potential prejudicial effect of mischaracterizing N.B., if admitted, the court consequently rejected Exh A5 as not relevant. Exh A4 and Exh A1-3 were further deemed not relevant, given the insufficient nexus between the subject quotations and the material issues before the court.

For additional examples referring to the court’s rejection of Facebook evidence due to issues of relevancy, see Guthrie v. Narayan22 and Dukin v. Roth23. Production of Electronic Evidence: E-Discovery

Despite the above, the preponderance of case law surrounding social media evidence has largely focused on the production of such evidence during the discovery stage of a claim (i.e. exchanging of affidavits of documents, provision of document copies,
engaging in examinations for discovery, continuing disclosure obligations, etc.) rather than on the admissibility of such evidence for the purposes of trial. The production of electronic documents at the discovery stage is commonly referred to as “E-Discovery”.

Of note, the production of social media evidence is not necessarily determinative of the admissibility of social media evidence. For example, pursuant to R. 30.01 of the Ontario Rules of Civil Procedure24 (“Rules”), 30.01(1)(a) “document” is defined as including “a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account, and data and information in electronic form”. Pursuant to R. 30.02 of the Rules, “every document relevant to any matter in issue in an action that is or has been in the possession, control or power of a party to the action shall be disclosed”. In essence then, any document (inclusive of social media) that is relevant to ‘any matter’ in issue to which a party has possession, control or power over, must be produced (subject to claims of privilege, see R. 30.03–30.10) for the opposing party to inspect the documents and/or cross-examine the examinee as to the contents of the documents. However, pursuant to R. 30.05 of the Rules, the production of electronic documents, either voluntarily or by court order, shall “not be taken as ... admissibility”25 at trial, nor should they be “considered an admission of relevancy”26 at trial.

Nonetheless, a review of case law pertaining to the E-Discovery stage of social media evidence can overlap with the principles of admissibility in certain circumstances, and thus may act as a useful tool, albeit indirectly, in assessing the court’s consideration of social media evidence.

For example, in Kent v. Laverdiere, 2009 CarswellOnt 1986 (Ont. S.C.J.) the plaintiffs commenced a proceeding against the defendant for damages flowing from injuries sustained as a consequence of the latter’s alleged negligence. The defendant sought access to thousands of Facebook photographs posted on the plaintiffs’ Facebook accounts. The plaintiffs declined. The defendant, in turn, brought a motion requesting that the plaintiffs produce a supplementary affidavit of documents listing the above-noted Facebook photographs. Master Haberman, in dismissing the motion, provided the following noteworthy commentary: “[W]hile Facebook and MySpace may be relatively recent additions to some of our lives, photographs of plaintiffs, both before and after accidents, have long been around, and it is photographs that defendants are generally after in personal injury actions when they ask for Facebook pages. The fact that these photos are now mounted on a site that can be viewed by certain pre-determined individuals where a plaintiff maintains a private Facebook account does not make these photos any more relevant than they were before the existence of Facebook or, arguably, more public.” [Ibid. at para 12.].

As a further example, in Stewart v. Kempster27, Ms. Stewart (“Stewart”) commenced proceedings against Mr. and Mrs. Kempster (“Kempsters”) for damages sustained in a motor vehicle accident wherein Stewart alleged to have suffered, in part, loss of enjoyment of life and loss of amenities. After discoveries, the Kempsters brought a motion seeking relief for the production of vacation photographs stored on Stewart’s Facebook account. In defence of the motion Stewart’s friend, who had access to Stewart’s Facebook login, filed an affidavit on Stewart’s behalf attesting that

the photographs of the plaintiff include images captured during a 2008 trip to Vancouver to visit her daughter, a 2010 trip to Mexico, and a Canada Day block party barbeque in 2011. She is seen posing in various locations in Vancouver. She does not appear in any of the images in which she is tagged on the vacation to Mexico ... Paragraph 18 of the affidavit states the following: “There exist no photographs of the plaintiff taking part in any athletic activity beyond sight-seeing. She is variously depicted standing, sitting, or leaning.” Paragraph 18 states: “There exist no photographs of the collision, the scene of the collision, or photographs relating to the impact of the injuries which the plaintiff sustained in the collision on her Facebook profile.”

In addition to the subject photographs, Stewart’s Facebook account contained a “Timeline” which referenced her activities and interests. With respect to the issue of relevancy, T.A. Heeney R.S.J. ruled:

In order to succeed on this motion, the defendants must satisfy the court, based on “evidence”, that a relevant document has been omitted from the plaintiff’s Affidavit of Documents. The defendants submit that all vacation photographs are relevant because the plaintiff has put her enjoyment of life and participation in social and recreational activities in issue ... The evidence before me on this motion, confirmed by my review of the photographs, indicates that the plaintiff is variously depicted standing, sitting or leaning. She is doing nothing more physically demanding than sightseeing, an activity which she freely admits being able to do ... I am not persuaded that the photographs in question have any real relevance to the issues in this case. I quite agree that if there were photographs that showed the plaintiff water skiing or rock climbing, they would be relevant to demonstrate the extent of her physical limitations following the accident. The photographs in question, though, say nothing about the physical limitations that she has testified she is suffering from. An injured person and a perfectly healthy person are equally capable of sitting by a pool in Mexico with a pina colada in hand. A photograph of such an activity has no probative value ... The defendants have not persuaded me, on evidence, that any relevant documents exist on the plaintiff’s Facebook account which were not disclosed ... The motion is, therefore, dismissed28.

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Similar to Mayenburg, supra, the subject photographs in Stewart, supra, neither corroborated nor shed doubt on the physical limitations claimed by Stewart as a result of the subject motor vehicle accident. The court consequently deemed the photographs as not relevant for the purposes of production as they were void of probative value.

Frangione v. Vandongen, 2010 CarswellOnt 5639 (Ont. S.C.J.) provides a contrasting example to Kent

It is now beyond controversy that a person’s Facebook profile may contain documents relevant to the issues in an action. Brown J. in Leduc, supra, at paragraph 23, cited numerous cases in which photographs of parties posted to their Facebook profiles were admitted as evidence relevant to demonstrating a party’s ability to engage in sports and other recreational activities where the plaintiff put enjoyment of life or ability to work in issue ... It is also good law that a court can infer from the nature of the Facebook service the likely existence of relevant documents on a limited-access Facebook profile ... The Facebook productions made to date by the plaintiff are admittedly relevant to the issues in this action. Thus I can safely infer having reviewed the photographs of the plaintiff interacting with presumably friends at a wedding and other public places, as well as his communications with friends, that it is likely his privately-accessed Facebook site contains similar relevant documents. Although it is possible that the contents of his Facebook site may be used by the defendant to impeach the plaintiff’s credibility, I am satisfied based on my review of the plaintiff’s productions to date that its primary use will be to assess his damages for loss of enjoyment of life and his ability to work. [Ibid. at paras 34, 35 & 36].

For the reasons above, the plaintiff shall ... produce all material contained on his Facebook website including any postings, correspondence and photographs up to and including the date this order is made.[Ibid. at para 41.]

For further examples pertaining to E-discovery of social media evidence and issues of relevancy, see also Wice v. Dominion of Canada General Insurance Co. supra, Rakosi v. State Farm Mutual Automobile Insurance Co. supra, Fric v. Gershman supra, Casco v. Greenhalgh supra and Merpaw v. Hyde supra.

Moreover, albeit a decision largely dealing with the production of surveillance footage, the recent Ontario Court of Appeal decision of Iannarella v. Corbett is also noteworthy as issues surrounding E-discovery and the admissibility of electronic evidence are discussed.

Exclusionary Principles

When assessing the admissibility of social media evidence, the courts generally place a stronger emphasis on determining the issue of relevancy (shown above) rather than on whether the subject documents satisfy the exclusionary principles. This is, in part, due to technological advancement which has significantly diminished the role of the exclusionary principles (i.e. best evidence rule), and in part, due to the aforementioned legislative initiatives which have provided greater clarity with respect to how the exclusionary principles may be satisfied specifically within the context of electronic documents.

Best Evidence Rule & Reliability

The best evidence rule states, “where a fact or event is to be proved by means of a document or other recording, the “original” of such document or recording must be used.”

However with the proliferation of technological advancement (i.e. printing systems, facsimile machines, photocopying devices, etc.), the best evidence rule has largely become inapplicable:

 [...] the rules of evidence should reflect the practices of modern society. In R. V. Governor of Pentonville Prison, ex Parte Osman, Lloyd L.J. said:

... this court would be more than happy to say goodbye to the best evidence rule. We accept that it served an important purpose in the days of parchment and quill pens. But since the invention of carbon paper and, still more, the photocopier and the telefacsimile machine, that purpose has largely gone. Where there is an allegation of forgery the court will obviously attach little, if any, weight to anything other than the original; so also if the copy produced in court is illegible. But to maintain a general exclusionary rule for these limited purposes is, in our view, hardly justifiable.

The modern common law, statutory provisions, rules of practice and modern technology, have rendered the rule obsolete in most cases and the question is one of weight and not admissibility.

For example, in ITV Technologies Inc. v. WIC Television Ltd. supra, the Plaintiff (“ITV”) submitted electronic evidence in the form of “print-outs from on-line dictionaries and library searches” (“Internet Print-Outs”). The Defendant (“WIC”) objected to the admissibility of the Internet Print-Outs, arguing that they were neither the ‘original’ documents or certified documents,
and thus should be excluded pursuant to the best evidence rule. Tremblay-Lamer J. ruled:

“It is true that certified copies were not produced and the traditional best evidence rule could be applied to exclude the admission of such copies. However, the fact that modern technology has enabled copies to be accurately made has diminished the importance of the best evidence rule ... I find that the copies of magazines, dictionaries and other material of the same sort are admissible”.

The jurisprudential approach, as found in ITV Technologies Inc., supra, has been further supplemented by the federal and provincial adoption of the UEEA provisions into legislation. For example, pursuant to s. 4 of the UEEA (s. 31.2, CEA and 34.1(5), OEA), in “any legal proceeding, the best evidence rule is satisfied in respect of an electronic record on proof of the integrity of the electronic records system in or by which the data was recorded or preserved”. Referred to as the ‘system integrity test’, or ‘reliability test’, the best evidence rule therefore now “concerns the reliability of copies, duplicates, and other substitutes for an original record”41. Reliability depends largely on whether the information in a document was accurately recorded, and whether its contents were accurately maintained. If these elements cannot be established, then the document may be inadmissible for being unreliable. As an example, in ITV Technologies Inc., supra, with respect to the accuracy of the Internet Print-Outs, Tremblay-Lamer J. noted:

There was the initial concern that the documents being retrieved on the Internet at trial would not be an accurate representation of how they appeared at the relevant time period. Given that web sites are continually changing and evolving, a web site which appears on the Internet today would not necessarily look the same as it did for example, in 1997. In order to look into the past, both parties relied on the web site www.archive.org, which contains a digital library of Internet web sites. By using the Way Back Machine, the parties were able to access the web sites as they had existed at the relevant time period. I am satisfied that this web site is reliable, and that the Court could rely on its digital library for an accurate representation of the web sites at the relevant time period43.

Finally, pursuant to ss. 5 & 6 of the UEEA (s. 31.3, CEA and s. 34.1(7)), the legislature has inserted provisions whereby, in the absence of evidence to the contrary, an electronic document is presumed to be reliable, or of integrity, if: i) the computer system was operating properly at all times and/or lack of proper operation did not provide reasonable grounds to doubt integrity (see Lakeridge Health Corp. v. O.P.S.E.U.44), ii) the electronic documents were recorded or stored by a party other than the party seeking to introduce it, or iii) the electronic documents were recorded and stored in the ordinary course of business by a non-party who is not controlled by the party seeking to introduce the evidence. As an example of item ii), in R. v. L. (R.), supra,

the defence called another former foster child who happened to be in the hall under an order excluding witnesses, to explain how Facebook works. She explained that the profile page on Facebook can only be changed by the account holder, unless someone else “signs on” as the account holder with her password ... I find that the pages are presumptively N. B.’s and that as a form of record of N.’s statements Facebook or other social media may be admissible if otherwise proper45.

In sum, the best evidence rule appears to represent a minor impediment, if any, with respect to admissibility of social media evidence

**Authentication**

There are two primary methods for satisfying one’s burden of authentication: “admissions and witness. If an admission is obtained from the opposing party respecting a document’s authenticity, then no evidence needs to be called at trial to authenticate the document. Alternatively, witnesses can be called to prove the authenticity of a document”. Pursuant to s. 3 of the UEEA (31.1, CEA and 34.1(4), OEA) “the person seeking to introduce an electronic record has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be”.

The UEEA’s above-noted provisions concerning the integrity of electronic documents have largely addressed the principle of authentication. Moreover, as social media evidence is primarily, if not exclusively, stored on the internet, the court and/or counsel are therefore quite easily able to access the subject social media website(s) and/or alternative tools (i.e. www.archive.org, etc.) in order to ensure the subject document(s) is indeed ‘authentic’.

Despite the above, however, there has been minimal case law addressing the authentication of social media (or, electronic) documents. It therefore remains to be seen how the courts will ultimately apply the exclusionary principle in such circumstances. That said, the relatively recent criminal decision of R. v. Andalib-Goortani46 provides some insight. In Andalib-Goortani, supra, a police officer was charged with assault with a weapon. The prosecution sought to introduce a photograph taken at the protest and anonymously uploaded to www.g20justice.com. Trotter J. deemed the photograph to be inadmissible on the basis that it could not be authenticated.

Professor David M. Tanovich, in his article R. v. Andalib-Goortani: Authentication & The Internet48, provides the following
commentary:

Authentication is yet another example of threshold or reasonable reliability which the Supreme Court of Canada recognized in *Mitchell v. Minister of National Revenue* [(2001)] 1 S.C.R. 911 (S.C.C.) and, most recently, in *R. v. Hart* [2014 SCC 52, 12 C.R. (7th) 221 (S.C.C.)] as a building block of admissibility. Threshold reliability in this context refers to the integrity of the evidence and that it is an accurate representation of some past or ongoing event or conversation. Relevant considerations include whether the evidence has been altered or manipulated in a fundamental way or with an intention to mislead. In *Andalib-Goortani*, Justice Trotter ... concluded that the G20 photograph was inadmissible because the Crown had failed to establish “that the image has not been tampered with or altered in some material way”[para 34] ... Justice Trotter was concerned that

there is a lingering concern that [the photo] has been manipulated in other ways, ways that are intended to distort the true state of affairs that the image purports to capture. Neither expert could say that the image has not been altered in this manner. Ms. Peloquin [Crown’s expert] said that it would take considerable skill for someone to alter an image and elude forensic testing. Mr. Musters [Defence’s expert] suggested that it would take less skill to pull off such a feat, especially with the widely available Photoshop software [para 32].

Presumably, a party will always be able to find an expert to say that material downloaded to the internet “could be” manipulated without easy detection or that they cannot say for certain that it was not. Arguably, that is a question of weight and ultimate reliability. In this case, the Crown’s expert ... concluded that “[i]t is the writer’s opinion that there are no clear indications of manipulation in the suspect image ... around the persons of interest or otherwise. The images show no artifacts that can be as a result of being added or manipulated with an image-editing program”[para 12]. Moreover, the complainant did testify at the preliminary inquiry that the photograph was an accurate representation of her memory of the assault, including her memory of the height and facial hair of the officer who struck her. Normally, this kind of evidence has been sufficient to authenticate a video or photograph [See *R. v. Schaffner* (1988), 44 C.C.C. (3d) 507 (N.S. C.A.) at 510.] ... Another lingering issue not raised in the case is whether authentication was governed by the common law and/or by sections 31.1 and 31.2 of the Canada Evidence Act which impose authentication and best evidence thresholds for electronic evidence. Do these provisions apply to material uploaded to the internet such as the photograph in this case, social media evidence, or only to information created and stored electronically such as e-mails or business records. Section 31.8 of the Canada Evidence Act defines an electronic document as “data that is recorded or stored on any medium in or by a computer system or other similar device and that can be read or perceived by a person or a computer system or other similar device. It includes a display, printout or other output of that data.” In *R. v. Soh* [2014 NBQB 20 (N.B. Q.B.)], the issue was the admissibility of screen shots of Facebook conversations between the complainant and allegedly the accused obtained from the complainant’s computer. As for the application of section 31.8, the trial judge held:

In my opinion, based on the definition quoted above, “electronic document” refers to any document in electronic format, which includes emails, all computer files, metadata connected to these files, browsing history, content posted online on Web forums such as Twitter and Facebook, text messages, online chatting, etc., as well as any hard copy of this data. Given that the Act contains provisions which apply specifically to electronic documents, namely sections 31.1 to 31.8, it would be surprising if these provisions did not apply to a Facebook conversation [para 21].

It would seem that since the purpose of the Canada Evidence Act provisions is to provide a shortcut for authentication by focusing on the reliability of the electronic documents system rather than on the evidence itself, its application is limited to cases where one of the parties can point to the computer system from which the evidence was generated and stored. And so, evidence that could be obtained from the internet by anyone, such as screen shots of websites or chat rooms, YouTube videos or photos, as in this case, would arguably not fall under the Canada Evidence Act regime because their source could not be determined. Their admissibility would have to be determined by the common law authentication regime. Hopefully the Ontario Court of Appeal will have an opportunity to address some of these issues should the Crown decide to appeal. The police officer involved in this case was acquitted, as there was no other evidence of identification.

B.A. Allen J., in the relatively recent decision of *R. v. Clarke*, 2016 CarswellOnt 11522 (Ont. S.C.J.), referred to Professor Tanovich’s above-noted passage, with approval, specifically with respect to authentication and the possibility of manipulation as discussed in relation to *Andalib-Goortani*

At the admissibility hearing, defence counsel raised the argument that because of the “possibility” for errors and manipulation or alterations to the information, the veracity and accuracy of the information are in question. I made the observation that the potential for manipulation of computerized records is a reality in today’s electronic world and noted that if such records were excluded because of “a mere possibility” for manipulation, none of this type of evidence would ever come before the courts. I adopted the observations of Professor David Paciocco, as he then was, that with today’s modern electronic advancements it would be completely unrealistic to refuse electronic documents and records even in a
case with fears about manipulation. Paciocco commented: [“]The point is that fear of what is new cannot be allowed to
impede the incorporation of newer technologies. After all, law is a practical discipline and it functions in the real world.
It would be unrealistic to reject electronic documents and emails, notwithstanding realistic fears of ease of manipulation.
[David. M. Paciocco, “Proof and Progress: Coping with the Law of Evidence in a Technological Age”, (2013) 11
Canadian Journal of Law and Technology, 181, at 183[”] I hold that it is left for the trier of fact at trial to determine
their weight with the possibility of manipulation being one among other considerations for the trial court to keep in mind
[Ibid. at paras 52, 53 & 54].

The Court in C R. v. Bernard, 2016 CarswellNS 1162 (N.S. S.C.) has provided even further commentary regarding
authentication, ultimately adding to the above. The accused was charged with second degree murder. The Crown, as part of its
evidence, sought to have Facebook messages sent and received by the accused, saved on his cell phone, admitted into evidence.
The accused testified that he had “no memory of anything during the crucial time period. He specifically denied any memory
of being on Facebook or posting to Facebook on the evening of” the alleged offence.[Ibid. at para 42]. Gogan J., in addressing
authenticity, stated:

... in C R v. M. (K.), 2016 NWTSC 36 (N.W.T. S.C.)... printouts of Facebook messages between the accused and a witness
were admitted over Defence objections to authenticity. The Court in that case found that the Crown had satisfied the
burden under s.31 of the Canada Evidence Act on the basis that there was ample evidence that supported a finding that the
printout was what it purported to be. There are other cases which have admitted Facebook messages into evidence
without specific analysis of compliance with the relevant portions of the Canada Evidence Act. In those cases however,
there appears to be ample evidence supporting the authenticity, integrity and identity. (See for example: C R. v.
MacDonald, 2016 ABPC 142 (Alta. Prov. Ct.) and C R. v. M. (J.S.), 2015 NSSC 312 (N.S. S.C.) and for a contrasting
result, R v. Nardi, 2012 BCPC 318 (B.C. Prov. Ct.). The evidence in those cases included evidence from one party to
a Facebook conversation or expert evidence which discharged the requirements of the Canada Evidence Act ... In order
to have this evidence admitted, there must be compliance both with s.31 of the Canada Evidence Act and the customary
rules for admission of documentary evidence ... The ... Crown ... must prove authenticity by evidence capable of supporting
a finding that the electronic document is that which it purports to be ... In this case, the Crown made no attempt to prove
the integrity of the electronic documents system in which the evidence was recorded or stored. Moreover, in keeping with
s.31.2(2), I am not satisfied on the evidence that the photograph is essentially a printout of the Facebook wall of the
accused or, if it was, that the information had been acted on, relied on or used as contemplated by that section of the Act.
[Ibid. at paras 48, 49, 51 & 52].

For further discussion pertaining to authentication, see also: Jones, Brock, Re-Thinking The Authentication of Social Media
Evidence, found in Digital Evidence Primer for Criminal and Regulatory Lawyers (L.S.U.C.—C.P.D.), at Tab 2, September 30,
2015.

At the time of writing, as aforementioned, further case law is warranted in order to conclude on the issue of authentication and
social media evidence—especially in the context of civil proceedings.

Hearsay
The term “hearsay” connotes:

out-of-court statements that are brought up in an attempt to prove the truth of the matter asserted by the person making the
statements ... [A] document may be held to be inadmissible on the grounds of hearsay, based on the principle that the
original author of the document should be called to testify. Electronic documents, like paper documents, are equally subject
to rules regarding hearsay ... There is also a common law hearsay rule under which hearsay evidence may be admissible
if the standards of necessity and reliability are met. This common law test was established in R v. Khan, [1990] 2

The link between the admissibility of social media evidence and hearsay has yet to be decisively ruled upon at the time of
writing. Perhaps the most pertinent decision to date is Landry c. Provigo Québec inc. (Maxi & Cie)55, wherein Madame
Landry (“Landry”) filed a complaint to the Commission de la santé et de la sécurité du travail [Workplace Health and Safety
Commission] and later appealed to the Commission des lésions professionnelles [Commission on workplace injuries] (“CLP”)
for psychological harassment which allegedly resulted from comments posted by fellow employees on their Facebook profile
pages. Landry’s employer (“Provigo”) sought to have the Facebook pages, which were submitted by Landry, deemed
inadmissible due to hearsay.

Landry conversely argued that this evidence did not constitute hearsay
since the employer was free to contact the individuals concerned and to summon them as witnesses. According to the CLP, based on an Act to Establish a Legal Framework for Information Technology (IT Act), Facebook is a technology-based document having an equivalent legal value to documents on paper or on any other medium. The employee had produced as evidence only the Facebook pages of her colleagues featuring comments about her ... [The] CLP concluded that the reliability of Facebook pages is sufficiently guaranteed and that the employer has the opportunity to summon the authors of the comments to appear at the hearing. Therefore, Facebook evidence [could not] be dismissed as being hearsay.

While it would appear the court in C Landry, supra, deemed the subject Facebook evidence as admissible based on its reliability and on the ability of counsel to cross-examine the persons who made the subject statements, C Landry, supra, should nonetheless be read with temporary caution—that is, further judicial consideration is warranted in order to best discern the civil court’s application of the hearsay rule in the context of social media evidence.

C R. v. Mondor is also worth mentioning as it provides some additional instruction (albeit indirectly). In, the Crown sought to introduce electronic purchase orders/invoices into evidence. Mara Greene J., of the Ontario Court of Justice, engaged in a noteworthy summary of electronic evidence [see paras 16–18], and concluded:

... where the electronically stored information is effectively data inputted by a human the hearsay rules still apply. In the case at bar, the information on the purchase orders/invoices that the Crown wants to rely on for their truth is the information inputted by the purchaser ... and the information inputted by the employee ... who inputted whether or not the purchase order was delivered. This, in my view ... would amount to documentary evidence, thereby requiring a means to admit the hearsay evidence.

Mara Greene J. then addressed the exclusionary principles, inclusive of hearsay, and ultimately ordered that the electronic documents at issue should not be admitted. John D. Gregory, General Counsel in the Justice Policy Development Branch of the Ministry of the Attorney General (Ontario), provides the following commentary with respect to Mara Greene J.’s conclusions:

The court looked to ss. 31.1-8 of the Canada Evidence Act on authentication of electronic records (i.e. the provisions that implement the Uniform Act federally), and held that the prosecution had complied completely. However, the evidence presented, though authentic and though satisfying the best evidence rule, was still hearsay, and without meeting the business records exemption described separately in ss. 30 of the Act, the evidence was not admissible. In other words, hearsay was not an e-evidence issue but demanded a standard media-neutral hearsay analysis. Sections 31.1-8 do not and are not intended to provide an exception to the hearsay rule.

As a further example, in R. v. Soh [2014 CarswellNB 70 (N.B.Q.B.)], Justice Lavigne had some serious concerns about whether [Facebook] posts could be admitted unless there was some assurance that the person ostensibly writing the posts was in fact the person writing them. On the specific evidence before her, she was satisfied that the accused was the person who had made the posts. As to whether they were hearsay, she determined that they were. The only issue was whether they fell into any hearsay exception, and further, if they did, whether they should nonetheless be excluded, using the principled approach set out by the majority of the Supreme Court of Canada R. v. Mapara [2005 CarswellBC 963, 1 SCR 358.]. Justice Lavigne held that the Facebook posts should be admitted, because they were an admission by the accused, and therefore an exception to the hearsay rule. Rulings in family cases are somewhat inconsistent. In Currie v. Maudsley [2011 CarswellOnt 6705 (Ont. S.C.J.)], Justice Mitrow held, without much discussion, that Facebook posts and e-mails were “inadmissible hearsay”. This is in contrast to Justice Minnema’s decision in [Young v. Young, 2013 CarswellOnt 9741 (Ont. S.C.J.)], in which Facebook posts were admitted as evidence. In Kvaale v. Kvaale [2010 CarswellAlta 2889 (Alta. Q.B.)], Veit, J., held that Facebook posts made by the couple’s daughter were inadmissible hearsay. [Maur, Mary-Jo, Social Media Issues in Family Law, (L.S.U.C.—C.P.D., 10th Annual Family Law Summit, 2016) at Tab 10, April 12, 2016 at pp.10 - 5 & 10 - 6.]


RESEARCH REFERENCES:
RELEVANT LEGISLATION & POLICY GUIDELINES


Canada Evidence Act generally, (R.S.C. 1985, c. C-5.).
Ontario Evidence Act generally, (R.S.O. 1990, c. E.23.).

RECENT CASE LAW

**Groves v. Cargojet Holdings Ltd.**, 2011 CarswellNat 3422 (Can. Arb.).
**ITV Technologies Inc. v. WIC Television Ltd.**, 2003 CarswellNat 2744 (F.C.).
**Lakeridge Health Corp. v. O.P.S.E.U.**, 2012 CarswellOnt 3426 (Ont. Arb.).
**Landry c. Provigo Québec inc. (Maxi & Cie)**, 2011 CarswellQue 8888 (C.L.P. Qué.).


Footnotes


9. Ibid. at paras 10 & 11.

10. Ibid. at paras 11, 17, 18, 22 & 23.


12. Ibid. at para 23.


2014 CarswellOnt 14464 (Ont. S.C.J.).


_Ibid._ at paras 39–41.

H 2012 CarswellOnt 6303 (Ont. S.C.J.).


_Ibid._ at paras 10–14.


_Ibid._ at R. 30.05.

Ibid. at R. 30.05.

C 2012 CarswellOnt 16567 (Ont. S.C.J.).

_Ibid._ at paras 5 & 6.

_Ibid._ at paras 12, 14, 15 & 33.

H 2009 CarswellOnt 4076 (Ont. S.C.J.).

2012 CarswellOnt 7066 (F.S.C.O. App.).


2014 CarswellOnt 2543 (Ont. S.C.J.).

H 2015 CarswellOnt 2375 (Ont. S.C.J.).


Ibid. at para 20.

Ibid. at paras 22 & 23.

Supra note 36 at p. 142.

David Wotherspoon and Alex Cameron, *Electronic Evidence and E-Discovery*, (General Editor: Sunny Handa, April 2010) at p.144.

Supra note 38 at para 15.

Supra note 19 at paras 2 & 3.

Supra note 5 at s. 7-50.1.

Supra note 13 at para 2 & 3.


2014 CarswellOnt 3565 (Ont. C.J.).

Ibid. at para 19.
