

13TH NATIONAL SYMPOSIUM ON TECH CRIME AND ELECTRONIC EVIDENCE

Online only

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Join top experts on critical and current issues involving the latest technologies, internet crimes and e-evidence.

- Latest tech search techniques in gathering digital evidence; Google dragnets, *Cloud* and more
- Getting your evidence introduced; confirming authentication, placing the accused at the keyboard
- Admissibility challenges you may face and how to meet them
- Tips and tactics for regulators conducting digital device searches; handling the evolution from a regulatory to a criminal case including solicitor client issues
- Practical approaches to the latest search and seizure cases, including overview of new issues
- Cross border digital evidence gathering and sharing

Program Chairs

Susheel Gupta
Senior Strategic Operations
Advisor – National Security,
Federal Policing National Security,
RCMP

Steven Johnston
Crown Prosecutor,
Specialized Prosecutions Branch,
Alberta Justice

Lynda Morgan
Addario Law Group LLP

Date and Time

September 14, 2020
9:00 a.m. – 4:30 p.m. EDT
Online only

Online Replay:
November 2, 2020

Keynote Address



Robert J. Currie

Professor of Law at the Schulich School of Law
Dalhousie University

Register today at:

[osgoodepd.ca/
techcrime](https://osgoodepd.ca/techcrime)

13TH NATIONAL SYMPOSIUM ON Tech Crime and Electronic Evidence

Criminals of all kinds; individuals, corporations and governments continue to take advantage of rapidly evolving, pervasive and invasive technologies providing a gold mine of opportunity, mobility and anonymity. If you are a lawyer, law enforcement professional, regulatory investigator, computer forensic specialist, or judge, it is critical that you are on top of these and the applicable law.

Now in its 13th year, this *OsgoodePD* national forum once again brings together a top faculty who will equip you with the knowledge and strategies you need to have a firm grounding in the current case law and to tackle the complex issues involved in the wild west of tech crime.

Topics Include

- Obtaining digital evidence across borders and update on reciprocal disclosure rules
- Impact of the new Digital Charter, General Data Protection Regulation and *Cloud Act* in the criminal context
- Dealing with solicitor client privilege claims
- Regulatory investigations; unique Section 8 *Charter* issues; crossing the bridge between an investigatory and criminal case
- How to find the unknown including “off book” text messages

Who Should Attend

Crown and defence lawyers, law enforcement and regulatory investigatory investigators, tech company legal advisors, computer forensic specialists, judges

Register today at:

osgoodepd.ca/techcrime

Agenda

8:15 a.m.

Registration Opens

9:00 a.m.

Welcome, Introduction and Overview

Susheel Gupta, Senior Strategic Operations Advisor – National Security, Federal Policing National Security, RCMP

9:15 a.m.

Effectively Investigating and Presenting Digital Evidence in Court

Kyam Shell-Schnitzer, Senior Manager, Financial Crime/Financial Advisory Services, Deloitte LLP

Michael Lacy, Partner – Criminal Law Group, Brauti Thorning Zibarras LLP

Katie Doherty, Crown Counsel, Crown Law Office – Criminal, Ministry of the Attorney General (Ontario)

Digital evidence is not infallible. This panel will give you tips and tactics to use when investigating, presenting and/or challenging the admissibility and authentication of this evidence.

- Evidence investigators should be looking for to confirm authentication of documents and to place the accused at the keyboard
- Effective use of the *Canada Evidence Act* provisions by the Crown
- Authentication of text messages; *R. v. C.B. 2019 ONCA 380*
- Defence tips on challenging the admissibility of electronic evidence
- How to deal with the practical issues in presenting a case electronically

10:30 a.m.

Refreshment Break

10:45 a.m.

Meeting the Unique Challenges Involving Digital Evidence in Regulatory Investigations

Fredrick Schumann, Stockwoods LLP

Michael Fawcett, Counsel, Crown Law Office – Criminal, Ministry of the Attorney General (Ontario)

Carlo Rossi, Senior Litigation Counsel, Ontario Securities Commission

Search and seizure powers available to regulatory investigators are often very different than those in the area of criminal investigations.

- When are criminal investigators and prosecutors allowed to use digital evidence obtained in a regulatory investigation?
- Privilege issues involved in digital device searches and how to deal with them as an investigator, prosecutor or defence lawyer; Is *Lavallee* [1990] 1 S.C.R. 852 the last word or are there alternatives? (*Solicitor Client Privilege of Things Seized, (Re)*, 2019 BCSC 91)
- Drill down on *Section 8* of the *Charter specific to a regulatory investigation*; Digital evidence and the *Jarvis* doctrine, *R. v. Mariani* 2019 ONCJ 128
- “Off book” text messages; How to find the unknown.

12:00 p.m.
Luncheon

12:20 p.m.

Keynote Speaker

Robert J. Currie, Professor of Law at the Schulich School of Law, Dalhousie University

“Cross-Border Gathering of Electronic Evidence: The Current State of Play”

1:00 p.m.

New and “Cool” Digital Evidence

Steven Johnston, Crown Prosecutor, Specialized Prosecutions Branch, Alberta Justice

Dave Cobey, M.M.Sc., LL.M., Technical Case Management Program, Technical Investigation Services, RCMP

Christine Mainville, Henein Hutchison LLP

New techniques present opportunities for investigators and counsel to improve their cases:

- Digital data dragnets

- Searching for evidence from and about witnesses who may have been missed, or appear after the original investigation
- Implications for Crown and defence relating to compelled disclosure of defence digital evidence
- Google Dragnets – what they are and how to use them
- Using Apps for data instead of phone numbers

2:00 p.m.

Search and Seizure PART 1: Practical Issues and Approaches

Andrew Hotke, Crown Counsel, Crown Law Office-Criminal, Ministry of the Attorney General (Ontario)

Clifford Smith, Electronic Evidence Unit – Coordinator, Competition Bureau, Canada

Kate Robertson, Markson Law

Searching for data is no longer just about the digital device on the desk.

- Options for obtaining evidence not “in the computer” including tips for drafting authorizations contemplating the use of the “available to” provisions in warrants
- The international exchange of technology information between investigations
- *R. v. Yu* 2019 ONCA 942 (*R. v. Brewster* 2016 ONSC 8038)
- Obtaining digital evidence on a budget
- Application of the *Cloud Act* in the Canadian context
- Extraterritoriality of Canadian court orders
- Review of the *Digital Charter*
- Gathering and sharing digital evidence across borders
- Update on reciprocal disclosure rules

2:45 p.m.

Refreshment Break

3:00 p.m.

Search and Seizure PART 2: Updates on the Law and Latest Cases

Lynda Morgan, Addario Law Group

Erin Dann, Embry Dann LLP

Jennifer Conroy, Head of Appeals Unit Public Prosecution Service of Canada

A Crown and Defence perspective on the latest decisions from the Courts of Appeal and the Supreme Court of Canada as well as discussion and debate about the practical application of these cases including:

- *R. v. Marakah*, [2017] 2 S.C.R. 608
- *R. v. Nurse*, 2019 ONCA 260
- *R. v. Reeves*, [2018] 3 S.C.R. 531
- *R. v. Mills*, 2019 SCC 22 Docket No. 37518
- *R. v. SH* 2019 ONCA 669
- *R. v. Ball*, 2019 BCCA 32
- *R. v. Durocher*, 2019 SKCA 97

4:30 p.m.

Closing Remarks and Program Concludes

Our participants say it best:

“A very topical program with excellent speakers. I not only learned about present law but what to watch for in the future.”

Law Enforcement Officer

“A valuable mix of legal and forensic issues and solutions. All sessions were great, and I learned a lot.”

Lawyer

“The entire day was extremely useful and I learned so much. This area of law changes so fast and is so complex that keeping current is essential.”

Crown Attorney

“Topics covered were relevant to current issues. Excellent faculty.”

Regulatory Investigator

Program Chairs

Susheel Gupta

Senior Strategic Operations Advisor – National Security,
Federal Policing National Security, RCMP

Steven Johnston

Crown Prosecutor, Specialized Prosecutions Branch, Alberta Justice

Lynda Morgan

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Keynote Speaker



Robert J. Currie

Professor of Law at the Schulich School of Law
Dalhousie University

Faculty Includes

Dave Cobey, M.M.Sc., LL.M.

Technical Case Management
Program, Technical Investigation
Services, RCMP

Jennifer Conroy, Head of Appeals
Unit, Public Prosecution Service of
Canada

Katie Doherty, Counsel, Crown Law
Office – Criminal, Ministry of the
Attorney General (Ontario)

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Kate Robertson, Markson Law

Carlo Rossi, Senior Litigation
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Fredrick Schumann, Stockwoods LLP

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Clifford Smith, Electronic Evidence
Unit – Coordinator, Competition
Bureau, Canada

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