

Publisher's Note

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Previous release was 2017-2

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Graham Underwood and Jonathan Penner Electronic Evidence in Canada

Electronic Evidence in Canada contains a broad examination of electronically-stored information (“ESI”) from its creation to its admission into evidence in civil and criminal proceedings. The book discusses the nature and characteristics of ESI and how these influence admissibility at trial. It then covers the retention and destruction of electronic records, the obligations to preserve and produce ESI for litigation, spoliation, and the admissibility of ESI at trial. The last part of the work considers specific modalities of admissibility of ESI, whether as real, documentary, or demonstrative evidence, and includes a discussion of the admissibility of metadata, ESI from the Internet, computer-generated re-creations, and other issues unique to ESI

In this release, the authors discuss recent case law and update the commentary to Chapters 1 (The Nature of ESI), 5 (The Obligation to Disclose ESI), 6 (Managing the Production of ESI), 7 (Managing the Production of ESI in Criminal Proceedings), 8 (Spoliation), 11 (Admissibility of ESI Generally), 12 (Admissibility of ESI as Real Evidence), 13 (Admissibility of ESI as Documentary Evidence), 14 (Admissibility of ESI as Demonstrative evidence) and 15 (Working with ESI at trial).

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Update Highlights:

- **The Obligation to Disclose ESI — The Criminal Context — Scope of the Obligation to Disclose** — In this chapter the authors review the effect of the increase in police reliance on technology. This has resulted in an increase in ESI materials which an accused could seek to have disclosed. Recent case law is reviewing the limits on an accused's disclosure requests. It should be noted that the authors also review the limits to be placed on disclosure of ESI in the civil litigation context.
- **Managing the Production of ESI — Process — Transfer Media** — The section on Process in this chapter provides an outline of the steps that should be followed in the process of disclosing and producing ESI. A new part on Transfer Media has been added to this section. The authors note that there are now many ways to transfer electronic documents and they review and discuss these media.
- **Admissibility of ESI Generally — Authenticity and Reliability of ESI as Part of Logical Relevance — Proof of Authenticity** — The authors review several recent cases and note the different ways ESI can be presented in court.
- **Admissibility of ESI as Real Evidence — Classification of ESI as Real Evidence — Distinguishing ESI as Real Evidence From Other Forms of Evidence** — In this chapter, the authors review the difference between a photograph which would be tendered as real evidence and a photograph of the screen of a digital device which could be tendered as either real evidence or documentary evidence.
- **Working with ESI at Trial — Communicating with the Court — Ontario** — In this chapter the authors discuss amendments to the *Ontario Rules of Civil Procedure* allowing for electronic filing of originating processes.