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# Deepfakes, texts and secret recordings: Growing role of digital evidence in Ontario family law disputes

By **Lorne J. Fine**

Law360 Canada (March 23, 2026, 2:38 PM EDT) -- Digital communications are everywhere: text messages, emails, social media posts and recorded conversations. They are an entrenched part of modern daily life.



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They are also routinely introduced in Canadian courtrooms, especially in family law disputes including parenting time and support. But their prevalence raises concerns by judges, lawyers and other stakeholders about the risk of using AI-generated materials, not to mention the risk of data being deliberately manipulated.

The sheer range of issues arising from digital data and AI use can be staggering. On the most severe end is outright data falsification. But there are more nuanced problems as well, such as the rampant problem of AI "hallucinations."

In the recent ruling in *Kapahi Real Estate Inc. v. Elite Real Estate Club of Toronto Inc.*, 2026 ONSC 1438, an Ontario lawyer duly submitted a factum on behalf of his client, containing references to real cases, and correctly cited them to the CanLII database. "But then counsel added quotations from the cases," the court explained. "The quotations do not exist in the cases. The quotations are fake."



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To make matters worse, the lawyer went on to falsely deny using AI for his factum at all. The court declined to investigate further, calling upon the Toronto Police Service and the Law Society of Ontario (LSO) to do so if they saw fit. The court then referred its own ruling to the LSO, for its consideration as to potential professional misconduct.

**Assessing digital evidence**

There is no denying that technology — when used correctly — and the data it produces can be invaluable. But when its digital output is presented to a court as evidence, it triggers all the usual

hard questions about evidentiary admissibility, and adds privacy concerns to the mix.

This leaves Ontario family courts in the position of having to assess how these forms of evidence should be weighed within the broader framework of promoting fairness and justice between the parties, and safeguarding the best interests of children.

***a) Text messages and screenshots***

In family disputes, text messages and emails are among the most frequently relied upon forms of digital evidence. Most often they are used to demonstrate pervasive communication breakdowns between parents, significant disagreements about parenting arrangements or representations made about finances. They can even reflect alleged minor parental shortcomings: in one recent family case involving a parenting dispute, text screenshots were ruled admissible to show (among other things) that the father had repeatedly forgotten to put his child's diaper on before putting the child to bed (*T.I. v. C.B.*, 2025 ONCJ 392).

More practically, text messages may be introduced to show a parent's refusal to comply with a parenting schedule or to demonstrate patterns of communication that affect co-parenting. In support disputes, electronic communications may also be used to challenge claims about income, employment status or financial hardship.

Courts approach these materials carefully — just as they do any kind of evidence. Screenshots or isolated excerpts of conversations can easily be misleading if the surrounding context is missing. Messages may also be incomplete or selectively presented. In some contexts, there may be privacy concerns around introducing electronic, and — especially in the criminal realm — even Charter-based challenges (see for example *R. v. Marakah*, 2017 SCC 59).

***b) Social media evidence and reputational harm***

Social media is one area where the court's evaluation of the evidence is the most challenging. It is also one type of digital data that is frequently presented as evidence in family litigation.

Social media posts, photographs and comments are often used by litigants against each other to challenge credibility, contradict financial claims or demonstrate behaviour that may be relevant to parenting disputes. In some cases, social media activity may reveal information that is inconsistent with a party's position in litigation. For example, a parent claiming financial hardship may post photographs suggesting otherwise (e.g. vacations, luxury items, etc.), or posts may reflect ongoing hostility between parents that affects the co-parenting relationship.

We recently had a situation wherein the father alleged that he was unable to work due to a leg injury. As a result, he argued that his support obligation should be adjusted downwards. Unfortunately, he also decided to post on Instagram photos of himself dancing at a party. This did not assist his argument that he was injured and unable to work. He was not thinking when he decided to post photos of himself online.

Social media-based evidence can also intensify conflict between parties. Negative posts about the other parent, disputes aired publicly or comments involving children can deepen tensions and complicate efforts to maintain cooperative parenting arrangements — and can sway the court's ruling on substantive issues.

As just one of many examples, in the recent case of *Tevlin v. Sobolev*, 2025 ONSC 4451, the court heard that the father had publicly posted on social media with accusations that the mother and her new partner were "child abusers," and that the mother was conducting a campaign of "parental alienation." This helped the court conclude that the father was unlikely to support the mother's relationship with the child, and that he "completely and utterly" rejected the new partner's role as stepparent.

In light of these kinds of scenarios, many family lawyers now recommend that parties do NOT post anything on social media. There is also now the inclusion of non-disparagement provisions or social media restrictions in separation agreements. These provisions may limit what each parent can post online about the other parent, the litigation or the children. The goal is often to reduce conflict and

protect children from becoming the subject of online disputes.

***c) Location data and digital surveillance***

Another emerging category of digital evidence involves location data and digital tracking technologies. Smartphones, family-sharing applications, vehicle GPS systems and even devices such as AirTags can generate detailed information about a person's movements. (This was the case in *Gill v. Gill*, 2025 BCSC 236, where both spouses accused each other of accessing security systems and cameras/microphones in the other's home, and the wife claimed the husband had secretly put an AirTag in her vehicle.)

In some family disputes, parties attempt to rely on this information to establish timelines or challenge claims about where someone was at a particular time. For example, location data might be introduced to support allegations about parenting time arrangements or disputes over travel.

However, the use of tracking technologies raises significant privacy concerns. Courts may examine not only what the evidence reveals but also how the information was obtained. This can lead to judicial criticism and the rejection of any evidence obtained through intrusive means, especially where the surveillance has exacerbated the conflict between parents.

***d) Secret recordings***

Secret recordings have long been a controversial issue in Canadian family litigation. Canada operates under a one-party consent regime for recordings, meaning that it is generally lawful for a person to record a conversation if they are a participant in it.

However, the fact that a recording may be legal does not necessarily mean that courts will view it favourably — especially where it could undermine the parents' ability to cooperate over parenting in the future. This was emphasized by the court in *Van Ruyven v. Van Ruyven*, 2021 ONSC 5963, where the judge ultimately refused to listen to the surreptitious recordings made by either party, stating:

> I find that any probative value that they hold is undermined by policy considerations that call for extreme caution before allowing such recordings to become part of family litigation. Since that which we permit we promote, allowing those recordings to be routinely admitted into evidence absent exigent circumstances undermines any chance that these family law litigants will ever be able to work together for the benefit of the child.

But even more broadly, Ontario family courts remain vigilant about the impact that the collection of secret recordings can have, especially where the parties' litigation is already high-conflict. Even though the evidence may be technically admissible, courts will also consider whether the conduct used to obtain it might undermine the broader policy goals of the family justice system.

***e) AI-generated evidence and deepfakes***

Finally, advances in artificial intelligence have introduced a new and evolving challenge for courts assessing digital evidence. AI tools can now generate realistic images, credible audio recordings and persuasive videos that mimic a person's voice or likeness.

These technologies, often referred to as "deepfakes," raise the possibility that digital evidence could be fabricated or manipulated in ways that are difficult to detect. As the court pointedly observed in *Lenihan v. Shankar*, 2021 ONSC 330: "In an era of 'fake news' it should come as no surprise that from time to time, courts will be presented with fake evidence."

While Canadian family courts have long dealt with altered photographs or misleading documents, synthetic media introduces a new level of sophistication. An AI-generated audio recording or manipulated video could potentially be presented in litigation as though it were genuine.

The concerns are exacerbated when it comes to self-represented parties, who are becoming commonly seen in family courts across the country. Whether knowingly or unwittingly, self-represented litigants are causing an influx of inaccurate and misleading materials to be filed with the courts — prompting a need for greater scrutiny and a greater tax on limited judicial resources.

For example, in *X.L. v. Z.L. et al*, 2025 ONSC 5880, it quickly became obvious to the court that the wife, who was self-represented, had "used artificial intelligence and cited either fake cases or hyperlinked to cases which did not stand, even remotely, for the propositions submitted." After citing seven specific examples in the filed materials, the court concluded that all the submitted authorities were AI hallucinations, and noted this was tantamount to an abuse of process and making a false statement to the court.

**What courts ultimately care about**

Despite the growing volume of digital evidence in family litigation — and growing concerns about manipulation and accuracy — Canadian courts tend to focus on a relatively small number of established key principles. They continue to emphasize the importance of properly authenticating electronic evidence before relying on it. They will often consider the broader communication thread, surrounding circumstances and whether there is corroborating evidence confirming the authenticity of the messages.

**Looking ahead**

As digital communication continues to shape modern relationships, it will inevitably play an expanding role in family litigation. Ontario courts will continue to refine how digital evidence is assessed, particularly where questions arise about authenticity, privacy and the potential misuse of technology in high-conflict family law disputes. Ultimately, the challenge for courts will be to ensure that technology serves the search for truth, rather than becoming another source of conflict in already difficult family proceedings.

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