

ISSUE 6, Spring 2024

# ACEDS CANADA

ASSOCIATION OF CERTIFIED EDISCOVERY SPECIALISTS



**CANADIAN  
INSIGHTS**

**NEWSLETTER**

**ACEDS.ORG**

# ISSUE AT A GLANCE



**03**

**PRESIDENT'S MESSAGE**

**06**

**TORONTO CHAPTER  
UPDATE**

**08**

**VANCOUVER  
CHAPTER UPDATE**

**11**

**UNDERSTANDING THE NUANCES  
OF EMERGING DATA SOURCES IN  
CANADIAN EDISCOVERY**

**15**

**2023 CANADIAN EDISCOVERY  
CASELAW YEAR IN REVIEW**

**18**

**MEMBER SPOTLIGHT:  
ANDREA WILLIAMS**

**19**

**REFLECTIONS ON THE  
SPRING 2024  
CANADIAN LEGAL  
INNOVATION FORUM**

# PRESIDENT'S MESSAGE



Dear Readers,

As we embrace the spring season, the recent solar eclipse reminds us of new beginnings. This celestial event, where the moon momentarily obscures the sun, brings a moment of reflection and wonder, signalling a time of renewal and potential.

In eDiscovery, we also experience cycles of transformation and renewal. Just as the eclipse marks a rare and significant occurrence, we in the eDiscovery field continue to witness moments of change and growth. Whether it's the excitement for potential efficiencies of tech like Gen AI, the changing privacy landscape's rules and regulations to protect data, or the ever-important focus on information governance in a time when data volumes continue to grow, this spring let us look towards the opportunities ahead and embrace curiosity!

Our industry continues to evolve, driven by technological advancements and shifting legal landscapes. The ACEDS Canada community stands at the forefront of this evolution, ready to embrace the challenges and opportunities that come with it. Our commitment to education, innovation, and collaboration has never been more vital.

# PRESIDENT'S MESSAGE



Reflecting on the past year, we've seen significant achievements across our chapters. The Vancouver chapter continues to deliver meaningful content and engaging social events with a recent wine and cheese social sponsored by Triage and panel presentation on "What's In Your Smartphone," sponsored by Open Text. In Toronto, the chapter saw a spike in membership, driven by our in-person holiday event at the end of 2023. Many thanks to our holiday event sponsors, Consilio and Reveal! The chapter has been busy planning the year's events, which will include upcoming informative sessions on cyber incident response strategies, our summer Pride event collaboration with Toronto Women in eDiscovery, and later this fall, a not to miss session on personal development. The chapters continue to find ways to collaborate with each other and other important groups stretching across the country.

This spring, I encourage you to consider how you can contribute to our small and mighty Canadian community. Your involvement is key to our collective success, whether by engaging with our local chapters in Toronto and Vancouver, sharing your expertise, becoming a mentor, or participating in our events. For those who have yet to join ACEDS, spring represents the perfect time to become a part of ACEDS! Use the discount code [TORONTO10](#)



# PRESIDENT'S MESSAGE



or [VANCOUVER10](#) for 10% off, or watch for further discounts as part of our occasional membership drives.

Finally, let's approach this season with the same awe and anticipation that the solar eclipse evoked. We can harness this moment together to foster innovation, nurture relationships, and drive our industry forward!

Warm regards,

A handwritten signature in black ink that reads "C. Anger".

Carolyn Anger  
President | ACEDS Toronto Chapter



“

I'm inspired by our members' dedication to building a vibrant community. Together, we are forging meaningful connections and exploring exciting avenues for collaboration.

*Chris Walker, VP Toronto Chapter*

Established in February 2020, the Toronto Chapter was the inaugural Canadian chapter to join ACEDS. Over the past four years, the Chapter has cultivated a strong membership base. The Chapter Board remains committed to finding new and creative ways to engage with the community.

06 **SPRING 2024 NEWSLETTER**

# TORONTO CHAPTER



Carolyn Anger  
*President*



Chris Walker  
*Vice President*



Eda Bardhi  
*Secretary*



Stephanie Mills  
*Marketing Director*



Ceyda Tocsoy  
*Membership*



Anna Traer  
*Treasurer*



MaryRose Ebos  
*Director at Large*



Lauren Fishman  
*Director at Large*



Matt Maslow  
*Director at Large*



Andrea Williams  
*Director at Large*



Stephanie Williams  
*Director at Large*

# TORONTO CHAPTER



## PAST EVENTS

<b>November 2023</b>	ACEDS Toronto Holiday Party <i>Sponsored by Consilio &amp; Reveal</i>
<b>February 2024</b>	eDiscovery Caselaw Year in Review
<b>May 2024</b>	Navigating the Cybersecurity Landscape
<b>June 4, 2024</b>	Mastering Information Governance

## UPCOMING EVENTS

<b>June 13, 2024</b>	Summer Social <i>Sponsored by Reveal, Triage Data, CounselQuest &amp; ellwood Evidence Inc.</i>
<b>Fall 2024</b>	Data Privacy Update



[Toronto@aceds.org](mailto:Toronto@aceds.org)



[@TorontoACEDS](https://twitter.com/TorontoACEDS)



[Toronto.ACEDS.org](https://Toronto.ACEDS.org)



“

I'm thrilled to witness our community's agile response to the shifting eDiscovery landscape in Canada. Together we can bring about greater efficiencies and streamlined processes to eDiscovery in Canada.

*Veronica MacInnes, President Vancouver Chapter*

Established in August 2020, the ACEDS Vancouver Chapter became the second Canadian chapter to join with ACEDS. The Chapter Board is committed to enriching the eDiscovery community in Vancouver and beyond by offering diverse educational and networking initiatives.

08 **SPRING 2024 NEWSLETTER**

## VANCOUVER CHAPTER



Veronica MacInnis  
*President*



Lisa Evenson  
*Vice President*



Tracy McBride  
*Secretary*



Sonam Sharma  
*Marketing Director*



Monique Sever  
*Membership*



Peter Sanford  
*Treasurer*



Ann Halkett  
*Past President*



Bridget Hui  
*Director at Large*



Yvette Kind  
*Director at Large*



Tania Moolla  
*Director at Large*



Lisa Rennie  
*Director at Large*



Tiana VanDyk  
*Director at Large*



# VANCOUVER CHAPTER



## PAST EVENTS

- |                   |   |
|-------------------|---|
| <b>March 2024</b> | Wine & Cheese Networking Social<br><i>Sponsored by Triage Data</i>          |
| <b>March 2024</b> | What's In Your Smartphone<br><i>Sponsored by OpenText</i>                   |
| <b>May 2024</b>   | Happy Hour Networking Event<br><i>Sponsored by Reveal &amp; Triage Data</i> |

## UPCOMING EVENTS

- |                       |   |
|-----------------------|---|
| <b>June 12, 2024</b>  | Wired for Justice: Navigating Technological<br>Competence in Legal Ethics<br><i>Sponsored by Heuristica</i> |
| <b>September 2024</b> | Event Topic to be Determined  |



[Vancouver@aceds.org](mailto:Vancouver@aceds.org)



[Vancouver.aceds.org](http://Vancouver.aceds.org)



# ACEDS CANADA EXAM & PRICING

In 2021, ACEDS launched an exam and training program designed specifically for Canadians, with content developed by eDiscovery professionals from coast to coast. The program has achieved significant success, facilitated by study groups guided by Canadian Certified eDiscovery Specialists.

**Exam Package**  
CAD \$1,395

**Complete Package**  
CAD \$1,995

## TESTIMONIAL

“ Taking the CEDS exam was intense, but the knowledge and confidence I gained was invaluable. I highly recommend joining the study groups, seeking out a knowledgeable resource to help explain topics or answer questions you have, reading the Sedona Canada Principles, and taking handwritten notes as you review the study materials. I also recommend listening to or reading the case stories/blog provided by eDiscovery Assistant (complimentary three month membership). Although ACEDS is U.S. based, I found the information helpful when I considered some of the scenarios on the exam.

**Sandra Janzen**

Paralegal/Firm Case Manager, MLT Aikins LLP

Use code TORONTO10 or VANCOUVER10 to save 10%  
For additional information and to learn more, please visit [aceds.org](https://aceds.org)



# UNDERSTANDING THE NUANCES OF EMERGING DATA SOURCES IN CANADIAN EDISCOVERY

DERA NEVIN, MANAGING DIRECTOR, [FTI TECHNOLOGY](#)

Emerging data sources (i.e., collaboration tools, chat applications, file shares for documents and media, ticketing and workflow technologies and other cloud-based systems) are creating new challenges and risks for legal teams worldwide, especially in fulfilling eDiscovery obligations and conducting internal investigations. According to [The General Counsel Report 2024](#) from FTI Technology and Relativity, these challenges are compounding year over year — 62% of respondents in the study said they have encountered new issues relating to emerging data sources, an increase from 45% in the prior year report. Additionally, 93% reported concerns about the impact of new data sources on their organization (up from 57% in 2023). Nearly one-third rated this as a significant risk area.



While the complexity of the impact from emerging data sources will vary dependent on case type, issues pleaded and other factors, the reality is that data from chat and cloud-based systems now plays a significant role in nearly every eDiscovery matter and

in many internal investigations. For legal teams in Canada, understanding and addressing new sources of electronic evidence and identifying the full scope of sources that may be relevant to a case is crucial to fulfilling discovery obligations and preparing an accurate affidavit of documents.

However, the workflows, tools and expertise developed for collecting and reviewing conventional electronic documents and email are not suited to the complexities of emerging data types, and therefore no longer fully sufficient to ensure comprehensive discovery. For example, short-form messages from apps and collaboration channels are very different from email messages and cannot be “threaded” in the same way to provide meaningful context about a case. Legal teams and courts are grappling with how to group conversations, what formats should be used for viewing a chat or channel message outside of its original platform, and how investigative teams can determine the meaning different individuals intended when using reactions, emojis, short-hand and slang in their business communications.

Another important consideration is that existing tools do not support the technical functionality required to collect and process data and metadata related to many forms of chat/channel messaging, shared file access, linked content and dynamic document versioning. As both individuals and companies move to cloud-based collaboration technologies, legal teams need to better understand the environment and context in which evidence might be identified, preserved and collected.

For example, identifying, collecting and reviewing documents sent in an email or chat as a hyperlink in the place of a static attachment requires custom workflows to determine version

history, deduplicate multiple alike versions of the same document and match linked items to their corresponding “parent” message, which is usually collected from a source other than email. More, there’s no readily available way for legal teams to identify everything a custodian had care, custody and control over in a shared environment. Resolving these issues often requires in-depth technical knowledge and custom solutions.

A 2023 [ruling in Saskatchewan](#), in which the judge concluded that a thumbs up emoji constituted acceptance of a contract, is a prime example of how modern communications, and even seemingly trivial reactions in chat threads, are impacting the outcome of legal proceedings. The judge’s commentary noted, “...this case is novel (at least in Saskatchewan), but nevertheless, this court cannot (nor should it) attempt to stem the tide of technology and common usage — this appears to be the new reality in Canadian society and courts will have to be ready to meet the new challenges that may arise from the use of emojis and the like.”

Indeed. Just as courts must determine how to contend with new forms of communication, so too will legal teams need to establish standards and new methodologies for identifying them as part of electronic evidence reviews and affidavit drafting.



*Dera Nevin is a data lawyer and expert, with more than 20 years of experience addressing digital risk issues, including privacy, data protection, information risk management, eDiscovery and the application of emerging technologies to the delivery of legal services. Ms. Nevin specializes in applying artificial intelligence, automation and synthetic data strategies to complex client challenges.*



# ACEDS

A BARBRI Company

The mission of ACEDS is to help professionals in various disciplines improve and certify their eDiscovery knowledge and skill, advance their careers, and increase overall competence in eDiscovery and related fields. Start where you are and improve your eDiscovery knowledge and skill with a program that is right for you.



**ACEDS MEMBERSHIP**



**INTERNATIONAL EDISCOVERY EXECUTIVE  
(EDEX) CERTIFICATE COURSE**



**CERTIFIED EDISCOVERY SPECIALIST (CEDS)  
CANADA CERTIFICATION COURSE**

Save  
10%

On ACEDS  
Membership

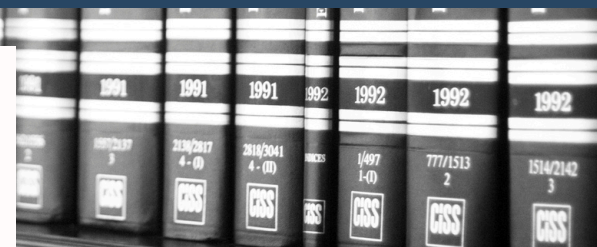
Use code  
TORONTO10  
or  
VANCOUVER10





# 2023 CANADIAN CASELAW REVIEW

MICHAEL LALANDE, EDISCOVERY COUNSEL, DAVIES



eDiscovery, has become a critical component in modern legal proceedings, reshaping how evidence is gathered, analyzed, and presented in courtrooms. Recent cases have highlighted the growing significance of eDiscovery, shedding light on its challenges, implications, and the evolving legal landscape surrounding digital evidence.



In the case of [dTechs EPM Ltd. v. British Columbia Hydro and Power Authority, 2023 FC 1460](#), the court emphasized the importance of substantiating

claims for eDiscovery costs. While acknowledging the potential for such expenses to be recoverable as litigation costs, the court ruled against the defendants due to insufficient justification and legal precedent.

Similarly, in [Bellsam Contracting Limited v. Torgerson](#), the court scrutinized claims for eDiscovery specialist costs, underscoring the need for thorough legal arguments and adherence to established legal frameworks. Failure to provide adequate legal basis and contextual relevance led to the rejection of cost recovery.

The ramifications of mishandling digital evidence were starkly illustrated in [Chura v. Batten Industries Inc.](#) The plaintiff's deletion of crucial data from a Microsoft Surface Pro device constituted spoliation, resulting in severe repercussions. The court's condemnation of such behavior as "reprehensible conduct" underscores the judiciary's commitment to preserving the integrity of evidence in the digital age.

Moreover, [Commissioner of Competition v. Rogers Communications Inc. and Shaw Communications Inc.](#) highlighted the evolving nature of eDiscovery costs. Despite challenges to the substantial cost claims, the tribunal affirmed the necessity and legitimacy of eDiscovery expenditures, recognizing its increasing indispensability in modern legal proceedings.

In [Gowing Contractors Ltd v. Walsh Construction Company Canada](#), the court's intervention underscored the importance of adherence to eDiscovery best practices, such as the Sedona Canada Principles. The case exemplifies the judiciary's role in ensuring proportionality and efficiency in the eDiscovery process, mitigating overproduction and enhancing document



relevance.

Furthermore, [Grummett v Warholik](#) clarified the discoverability and spoliation implications of web-based evidence, affirming its status as electronically stored information. The court's application of established legal principles to digital data underscores the continuity between traditional and electronic evidence standards.

These cases collectively demonstrate the evolving legal framework surrounding eDiscovery, emphasizing the importance of adherence to established principles, diligent legal arguments, and the preservation of digital evidence integrity.

As technology continues to advance, legal professionals must remain vigilant in navigating the complexities of eDiscovery to uphold the integrity and fairness of legal proceedings in the digital age.



*Michael Lalande serves as legal advisor at Davies Ward Phillips & Vineberg LLP on eDiscovery practices and identifies ways to leverage cutting-edge technologies to better serve firm clients. He manages and facilitates communication between internal teams, including business, legal and technology groups, on all aspects of digital evidence and eDiscovery.*



# MEMBER SPOTLIGHT

## ANDREA WILLIAMS

I am a Principal with Fides associates Inc. based in Toronto. I've been in the industry for nearly 20 years and have benefited from having a broad spectrum of roles in leading service providers prior to joining my partners at Fides in our own services venture. I'm passionate about collaborating with experientially diverse people and creating impactful solutions that stem from the powerful alignment of experience, capabilities, and technology.

Like many others I stumbled into the world of eDiscovery. After moving to Toronto, I wanted to return to working in a technology-focused company. I was fortunate to start my journey in the early days of the industry with Commonwealth Legal, a Canadian Legal Services Provider. Founded initially in scanning and coding services, Commonwealth Legal was an early eDiscovery provider and the first web-hosting provider in Canada (predating the term: "SaaS"). With eDiscovery disrupting the industry, it was exciting, challenging, and a perpetual opportunity to help our clients solve their emerging discovery challenges. The technologies had limitations, and we were always looking for tools and processes that could enable our clients to tap into efficiencies and "less linear" ways of working, navigating around limitations, and getting to the heart of their matter. It was an exciting journey and one that appealed to my "MacGyver" nature - I loved working with a great team and together, solving so many challenges!

### ACEDS Involvement

I've long admired the high-quality education and impactful work that ACEDS consistently delivers to the industry. Toronto's thriving chapter, along with its collaboration with the Vancouver Chapter, adds significant value by addressing Canada's specific needs. Over the years, I've actively participated in hosting legal technology conferences and educational events, contributing to their success. Joining ACEDS as a Director at Large this year presents an exciting opportunity for me to further contribute to the chapter's ongoing initiatives and continue learning from this vibrant community.

## REFLECTIONS ON THE SPRING 2024 CANADIAN LEGAL INNOVATION FORUM

The Canadian Legal Innovation Forum (LIF) is an educational platform bringing together invited leaders and guests across the Canadian legal ecosystem to forums, webinars and roundtables. Its purpose is to foster the sharing of insights into the drivers and trends in risk and innovation where Canadian business and the law intersect. The Spring 2024 LIF held in Toronto on May 15, 2024 centered on a unifying theme: forging new directions in a rapidly evolving legal ecosystem.



## Introduction

ACEDS, an education partner, along with approximately 20 additional legal vendor partners and 250 attendees and panelists, attended the 2024 Spring LIF and heard up-to-date insights by Canadian leaders during various roundtable discussions. The purpose of this article is to summarize key themes and topics that were discussed.

## Themes and Discussion Topics

The following is a summary of the themes and discussion topics discussed during the forum.

**Takeaway #1 - AI and GenAI:** Artificial Intelligence (AI) and Generative AI (GenAI) can be used by business and legal stakeholders to realize efficiencies, however, realizing these efficiencies needs to be done in a responsible way. It is important for business and legal stakeholders to understand their data, where data is located and how data is being used. Organizations are encouraged to conduct an AI Impact Assessment in an effort to understand the risks associated with AI and GenAI, including whether AI or GenAI vendors provide transparency so that users understand how the output was arrived at.

Legal stakeholders can provide guidance to business stakeholders regarding ethical requirements and compliancy obligations. Further, with respect to AI and GenAI, organizations should: (1) provide training and education to its employees; (2) collaborate with legal stakeholders; (3) develop a “Responsible Use” policy; and (4) have an AI Governance framework in place delineating acceptable use practices.

The use of AI and GenAI should not be solely focused on realizing business efficiencies. Transparent use, ethical considerations and timetables for frequent review of use should be put in place.

**Takeaway #2 - The Role of the Legal Function:** The legal function within an organization should no longer be seen as a necessary but undervalued cost to an organization. By dividing the legal function into two clear service streams: (1) lawyers who provide legal advice; and (2) legal operations personnel who run business functions (i.e., tracking legal spend, data analytics and metrics, knowledge and contract management, KPIs etc.), organizations are better able to “see” the value of the legal function and what the organizations legal costs are being spent on. This transparency will allow for a more positive relationship between business stakeholders and the legal function where legal can move beyond its reputation as an expensive “Department of No” to a valued business partner.

**Takeaway #3 - Incident and Cybersecurity Plans:** In the complex digital world, organizations should have both incident and cybersecurity plans in place that include definitions and details approved by various stakeholders (i.e., IT, legal, human resources, business units, etc.). The plans should be regularly tested to identify gaps and a regular review schedule should be implemented. Further, organizations should implement regular education and training for stakeholders and employees related to the plans.

The question of who ‘owns’ the incident and cybersecurity plans is commonly debated. A suggestion gaining more support is that the legal function should ‘own’ the plans given that legal stakeholders have a unique overarching view of the organization



and is well-positioned to take on the responsibility of fostering relationships of trust, both with external vendors and internal stakeholders, while ensuring ethical and regulatory compliance needs are met.

## Conclusion

It is the opinion of this author, that ACEDS and the eDiscovery community as a whole have skillsets and technical knowledge that have, and will, play a role in helping the legal ecosystem face the challenges and opportunities discussed during the 2024 Spring LIF. While eDiscovery skills and technologies have historically been used primarily in dispute and litigation environments, the eDiscovery community and its intimate knowledge of document (data) identification and collection, as well as preservation and culling techniques, are well positioned to help organizations make data-driven decisions and to help legal stakeholders mitigate risks in these uncertain times.



*After law school, MaryRose's passion for organizing information prompted her to earn a Master of Commerce in Information Management in 2005. A desire to effectively manage what she saw as inevitable volumes of information and data informed her approach to the practice of law, first as a litigator in private practice and then, as a commercial lawyer in-house. MaryRose currently provides fractional legal services as an eDiscovery review lawyer. She is currently a member of the Toronto chapter of Women in eDiscovery (WiE) and a Director-At-Large with the Toronto Chapter of ACEDS.*



# Share Your Voice

**We are now welcoming  
submissions for our Fall 2024  
Newsletter. Share your voice  
and contribute to the  
conversation.**



[Toronto@aceds.org](mailto:Toronto@aceds.org)



[Vancouver@aceds.org](mailto:Vancouver@aceds.org)





Moraine Lake  
Banff National Park  
Alberta, Canada