



## On the Internet, Nobody Knows You are a Dog: Contested Authorship of Digital Evidence in Cases of Gender-based Violence

New research by **Suzie Dunn** and **Moira Aikenhead** notes a lack of clarity regarding the standards for authenticating digital evidence in cases of gender-based violence and highlights related feminist concerns.

### CONTEXT

Digital communications in the form of text messages, e-mails, or postings on social media are becoming increasingly common and central forms of evidence in Canadian trials. In cases of gender-based violence, including sexual assault and intimate partner violence, digital evidence may provide crucial support for complainants' claims of victimization in a context where there would have been limited corroborating evidence in a pre-digital era. Digital evidence also raises novel concerns, such as how to prove authorship of digital evidence where online communications are anonymous or pseudonymous, or authorship is contested. This article examines the current legal landscape in relation to authenticating and proving authorship of digital evidence in gender-based violence cases, and highlights concerns that litigation strategies premised on disputing authorship risk reliance on harmful gendered myths and stereotypes.

### OVERVIEW

Our study identified a lack of clarity in the judicial discourse around the standards for authenticating digital evidence. It also noted inconsistency in the extent to which disputes about authorship can affect admissibility of digital evidence (as opposed to affecting only the weight a trier of fact may assign to digital communications). Defence counsel in some gender-based violence cases are relying on arguments that accused may not have authored incriminating messages to complainants; it is crucial that judges assess such claims with an awareness of the realities of digital technologies and of the broader context of gender inequality.

### KEY FINDINGS

- There is some inconsistency in the case law regarding whether disputes over authorship or possible fabrication can impact admissibility, or whether such claims go only to weight.
- Failures by police or Crown prosecutors to secure or tender sufficient supporting evidence of authenticity or authorship of digital evidence have resulted in such evidence being ruled inadmissible or assigned little weight by triers of fact in gender-based violence cases.

- In cases of gender-based violence, purely circumstantial evidence has frequently been sufficient to demonstrate that an accused has authored digital communications beyond a reasonable doubt. However, a recent Ontario Court of Appeal decision (*R v Aslami*, 2021 ONCA 249) calls this pattern into question.
- Defence counsel in a number of cases raised the possibility that complainants had authored harassing messages in order to “frame” the accused men, arguments which may implicitly or explicitly rely on tropes of “vengeful wives” and stereotypes that women lie about sexual violence.

### QUESTIONS AND IMPLICATIONS

The study demonstrates that a lack of clarity around the standards for authentication of digital evidence and for establishing authorship beyond a reasonable doubt may create unnecessary hardship for complainants in cases of gender-based violence. Police and Crown must strive to collect as much evidence as possible to support claims that accused authored digital communications, as it is unclear when and what level of circumstantial evidence will suffice to prove authorship. Judges must remain aware of the potential for fabrication and uncertain authorship of digital evidence without giving undue credence to such claims in the face of significant circumstantial evidence pointing to the accused as the author. Claims of fabrication in cases of gender-based violence must be assessed with awareness of harmful sexist myths and stereotypes that women and girls often lie about sexual or intimate partner violence, to ensure such myths do not improperly influence judicial assessment of these claims.

### AUTHOR

Suzie Dunn is an Assistant Professor at the Schulich School of Law at Dalhousie University. Moira Aikenhead recently completed her PhD at the Peter A. Allard School of Law at the University of British Columbia.

### FOR MORE INFORMATION

The authors and CCLISAR welcome enquiries about this research.

**Suzie Dunn**  
[suzie.dunn@dal.ca](mailto:suzie.dunn@dal.ca)

**Elaine Craig** CCLISAR Research Director  
[Elaine.Craig@dal.ca](mailto:Elaine.Craig@dal.ca)

Suzie Dunn & Moira Aikenhead, “On the Internet, Nobody Knows You are a Dog: Contested Authorship of Digital Evidence in Cases of Gender-based Violence” (2022) 19:2 CJLT 371.

### ABOUT CCLISAR

The Canadian Centre for Legal Innovation in Sexual Assault Response (CCLISAR) is a non-profit, non-partisan organization working to realize law’s potential to respond to sexualized violence. [www.cclisar.ca](http://www.cclisar.ca)