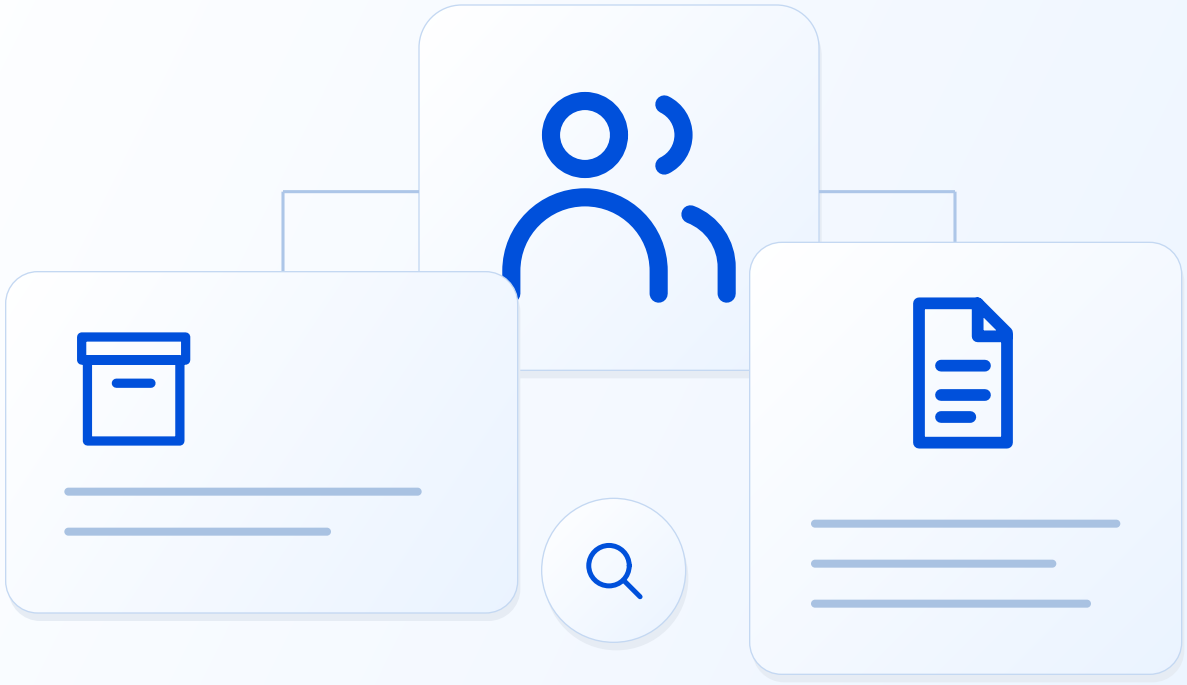
DFI FORENSICS

A GUIDE FOR LITIGATION LAWYERS

Briefing a digital forensics expert

Clear instructions for evidence you can evaluate and use



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01 / A USEFUL QUESTION

Connect the examination to the decision that matters

A digital forensics engagement is most useful when it answers a question that matters to the case. “Review the laptop” leaves the examiner guessing about relevance, authority and the intended deliverable. A focused brief connects the disputed facts to available sources and gives counsel a realistic basis for deciding what to do next.

Good instructions also protect independence. Counsel identifies the legal issues and explains why particular facts matter. The expert determines what the technical evidence supports, including findings that complicate the client's position. DFI's work with counsel follows that division of responsibility. [1]

This guide offers practical engagement guidance for Canadian counsel. Procedural examples are jurisdiction-specific, not a national statement of litigation requirements. Confirm current rules, practice directions and orders for the actual proceeding.

Give the expert a question to test

Describe the allegation, its source and the competing account separately. Identify agreed facts, disputed facts and assumptions supplied for analysis. A witness's recollection should not become an established event merely because it appears in the instructions.

Useful questions include what relevant access, copying or transfer activity is recorded during the defined period; which devices, accounts or destinations can be associated with that activity; and what supports or conflicts with the suggested sequence.

Invite consideration of routine synchronization, approved transfers, shared access and gaps in collection where relevant. Ask the expert to distinguish direct observations from interpretation and to explain any uncertainty about attribution. An account event may identify an account without establishing who operated it.

Explain how an answer will help: deciding whether additional collection is justified, understanding a chronology, testing another report or preparing evidence for a hearing. Avoid asking the examiner to decide liability, credibility or another legal issue outside the proposed expertise.

02 / SCOPE AND PRESERVATION

Define the sources and the limits of access

Describe the devices, accounts, custodians and date ranges that may matter. State what is actually available: an original device, a forensic image, an administrator's export, selected screenshots or a report without its underlying data. Identify missing sources and previous handling that may affect the work.

Counsel should explain the legal basis and limits for access to each source, including relevant consent, orders or agreed protocols. An instruction to examine a corporate laptop should not silently expand into an examination of every personal account accessible from it.

Specify exclusions and the route for resolving uncertainty. For example, the examiner may need to pause and seek instructions if potentially privileged material, another custodian's data or a new account falls outside the agreed scope. Agree who can authorize an expansion and who may receive the findings.

Preserve first, examine under agreed instructions

Preservation and examination can be separate stages. A source may need prompt protection while counsel resolves the permitted review or decides which questions justify further expense. Preserving a collection does not itself authorize unrestricted analysis or production. [2]

Ask what is at risk from continued use, account changes, retention limits or planned replacement. Obtain source-specific handling advice before changing a device's state. A universal instruction to power everything off, open every application or make a convenient export may be inappropriate.

Discuss what the proposed acquisition will retain and omit. A forensic image, targeted collection and mailbox export preserve different information. Request a record of source identifiers, acquisition method, dates, handling and appropriate verification. Document known limitations when the starting material is already a copy or export. [2]

Preservation is not unrestricted review

Authority to protect a source and authority to inspect or disclose its contents may be different.

03 / INSTRUCTIONS AND ENGAGEMENT

Make the brief usable and the engagement proportionate

Provide an indexed set of relevant material with stable identifiers. Include the necessary pleadings or issue summary, chronology, source inventory, collection records and any existing technical reports. Supply relevant contradictory material rather than only the documents supporting the preferred account.

Record substantive instructions and changes in writing, including revised questions, assumptions, new sources and dates. Ask the expert to identify which material was examined and relied upon. Keep a distinction between information supplied by counsel, observations made during examination and conclusions drawn from those observations.

Set expectations for preserving working records and reporting changed opinions. Do not assume that every communication, draft or consultant's file will remain privileged or undisclosed. Counsel should determine those issues under the applicable law and process. For example, British Columbia's civil rules expressly address instructions in reports and production of specified expert material. [5]

Agree stages, costs and the intended output

An engagement can begin with scoping and preservation, proceed to a focused examination, and then expand to reporting or testimony if justified. Agree an estimate for each stage, its assumptions and a point at which counsel receives findings before authorizing further work.

Ask what could change the estimate: inaccessible data, additional custodians, large volumes, new questions or a requirement to respond to another expert. Identify responsibility for third-party costs, secure storage, supplementary work and hearing attendance.

Define the deliverable precisely. An evidence export, factual chronology, preliminary consultation and signed expert report serve different purposes. A useful report should connect the question, sources, method and reasoning to the conclusion, with limitations visible. Reserve time for clarification, new material and testimony preparation without making a preferred conclusion part of the bargain.

04 / EXPERTISE AND FORUM

Match the expert and report to the proceeding

Ask for the proposed expert's current CV and experience with the relevant technology and issue. Experience recovering mobile messages does not automatically establish expertise in every cloud audit system, malware question or document-authenticity dispute. Clarify who will perform the work, who will review it and who would testify.

Discuss prior involvement, relationships or interests that could affect the engagement. In White Burgess, the Supreme Court of Canada explained the expert's duty to provide fair, objective and non-partisan opinion evidence and the significance of independence to admissibility. Counsel should assess the proposed expert in context, rather than treating credentials or previous testimony as automatic qualification. [4]

DFI's qualifications page describes Tyler Hatch's legal background and specialist computer and mobile-device forensic training. It invites a matter-specific discussion and a request for the current CV. That conversation should establish where the proposed question fits and whether additional expertise is needed. [3]

Build the forum's requirements into the brief

Tell the expert the jurisdiction, court or tribunal, proceeding type and proposed role. Supply the applicable procedural requirements and actual timetable early. A hearing date alone does not identify every relevant deadline.

In **British Columbia Supreme Court civil actions**, Rules 11-2 and 11-6 address the expert's duty, certification and report contents. Rule 11-6 generally requires service of a party's report at least 84 days before trial and a responding report at least 42 days before trial, unless the court otherwise orders. Part 11 has application limits, so these dates should not be transplanted into every BC proceeding. [5]

Under the **Federal Courts Rules**, Rule 52.2 requires specified content and certificates for an expert affidavit or statement. The accompanying Code addresses qualifications, facts, assumptions, methodology, reasons, limitations and material changes. Use those requirements with the applicable service rules and orders. [6][7]

For **criminal proceedings**, Criminal Code section 657.3 provides distinct notice and disclosure provisions for proposed expert testimony, including different provisions for the prosecution and accused. A civil report timetable is not a substitute. [8]

Other provinces, family proceedings, tribunals and arbitrations require their own analysis. Confirm the proposed expert's availability and responsibilities for conferences, responding evidence and attendance. Neither a signed report nor compliance with a reporting form guarantees admission or acceptance of the opinion.

05 / A FOCUSED EXAMINATION

Ask what the evidence supports including another explanation

ILLUSTRATIVE SCENARIO / NOT A DFI CASE

Consider a hypothetical departing employee whose laptop records a USB connection shortly before resignation. The client suspects a confidential pricing file was copied. The employee says the device was used for an approved presentation.

A useful brief identifies the disputed file, relevant period and available sources, then asks what evidence supports transfer and whether the permitted presentation activity explains the observations. Counsel confirms authority for the laptop and relevant business records, with any personal device outside scope unless separately authorized.

The examination might correlate the USB event with available file and application records and compare authorized destination material. It might support transfer, favour the alternative explanation or remain inconclusive. The report should explain which result the evidence supports. A connection event alone should not be presented as proof that the disputed file was copied or that misconduct occurred.

Evaluate the answer, not just the conclusion

Read the result against the original question. Which observations are recorded directly? Which depend on an assumption, an account attribution or a comparison source? Ask the expert to explain why an alternative was rejected, retained or not testable with the available material.

If the examination identifies a missing source or a new question, make the next instruction explicit. Counsel can then weigh its likely value, cost and timing without treating the initial engagement as permission for every possible investigation.

Leave room for an independent answer

A result that complicates the client's account may still help counsel make a better-informed decision.

06 / EXPERT HELP AND REFERENCES

Start with the question that matters

DFI helps counsel translate disputed facts into an agreed examination, preserve relevant sources and understand independent findings. Reporting, evidence production and testimony can be scoped to the matter rather than assumed at intake. [1]

Bring the issue, likely sources, authority limits and deadline to an initial discussion. DFI can discuss a proportionate next step and the expertise required. Request the proposed expert's current CV and agree the intended deliverable.

Arrange an initial evidence discussion

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Contact DFI first to arrange secure evidence transfer.

An inquiry does not establish an engagement or guarantee a response time. Do not include passwords or confidential evidence with the initial inquiry.

Sources and technical notes

Primary sources checked 9 November 2026. This is general technical guidance, not legal advice. Verify applicable law, current product capabilities and the actual source environment for the matter.

[1] DFI Forensics · Lawyers and law firms
Counsel/expert responsibilities, independent examination, scope and deliverables.

[2] DFI Forensics · Evidence preservation and acquisition
Preservation versus review, acquisition choices and documented handling.

[3] DFI Forensics · Expertise and qualifications
Current-CV availability and matter-specific assessment of relevant experience.

[4] White Burgess, 2015 SCC 23 · Official Supreme Court Reports
Especially paras. 10, 32 and 46–49: objective, non-partisan assistance and independence.

[5] BC Supreme Court Civil Rules · Part 11
Rules 11-1, 11-2 and 11-6: application, duty, content, service and specified expert material.

[6] Federal Courts Rules · Rule 52.2
Requirements and certificates for an expert affidavit or statement.

[7] Federal Courts Rules · Code of Conduct for Expert Witnesses
Impartial duty, assumptions, methodology, limitations and material changes.

[8] Criminal Code · Section 657.3
Distinct criminal expert notice and disclosure provisions.