



Defence Counsel / Paralegal Application
For Access to the Ministry of the Attorney General's
Criminal Digital Disclosure Hub

Defence Counsel / Paralegal Applicant Information:					
First Name	Middle Name	Last Name			
Law Firm Name				Law Society of Ontario #	
Address	Floor / Suite	City	Province	Postal Code	
Email		Verify Email			
Primary phone number					
Second phone number <i>(optional)</i>					
To obtain access to this service, you must provide an email address to be used for log in verification.					

Undertaking, Confidentiality Agreement and Conditions of Use

I hereby apply for credentials (user ID and password) to access the *Criminal Digital Disclosure Hub*. I acknowledge and agree that such credentials are confidential to me and person(s) under my employ and supervision in accordance with my undertaking and s. 5. 1-6 of the *Rules of Professional Conduct*. Pursuant to s. 5. 1-6 of the *Rules of Professional Conduct* I give an undertaking on behalf of myself and my employee(s) to:

1. Maintain the confidentiality of my *Digital Disclosure Hub* credentials (user ID and password), and
2. Use the said service only for the purposes of obtaining disclosure materials in relation to valid retainer agreements on behalf of my clients.

I acknowledge that failure to abide by the conditions of this undertaking may result in the loss or restriction of my privileges with respect to access to the service.

I agree to promptly contact the Crown Attorney's Office to advise of any potential confidentiality breach and/or change to the above details in the *Defence Counsel / Paralegal Applicant Information* section above.

I acknowledge that any materials received are to be used solely for the purpose of making full answer and defence to the charges identified in the information to which this disclosure pertains.

I agree to keep these materials secure and not to copy, publish, transmit, post or otherwise share or distribute them or their contents, in whole or in part, except for the purpose of making full answer and defence in accordance with the terms of this and any other disclosure related undertaking given to the Crown Attorney's Office. I agree that, except as specifically addressed within this and any other disclosure related undertaking given to the Crown Attorney's Office, all other copying, publication, transmission, posting, sharing and distribution of materials disclosed via the *Digital Disclosure Hub* requires the prior written permission of the Crown Attorney's

Office, which I am obliged to retain a record of until such time as the disclosure is destroyed or deleted.

I acknowledge that I am responsible for the handling of the Digital Disclosure by any persons under my employ or retained experts, pursuant to s.6. 1 of the *Rules of Professional Conduct* and s.7. 1 of the *By-Laws* of the Law Society of Ontario.

Sensitive Disclosure Undertaking

Disclosure via the ***Criminal Digital Disclosure*** Hub ***may*** include digital and/or multimedia files [i.e. including, but not limited to, video, audio, photographs and other images, electronic communications such as chat logs, text messages, social media posts, screen captures, etc.] that were created/copied by the investigating police agency and are identified as sensitive in nature. In order for the accused to make full answer and defence, the Crown is prepared to produce copies of the digital media files to counsel for the accused provided that **counsel agrees to the following terms and undertakes that:**

1. Upon expiration of the time allowed for an appeal of this matter's final disposition (the completion of the case), the said digital media disclosed shall be destroyed or deleted from all locations and devices where it has been digitally stored by counsel or his/her designate within 60 days of the completion of the case. Retention beyond this time period requires the written authorization of the Crown and a copy of the written authorization must be maintained by counsel;
2. Subject to the other terms in this undertaking, counsel shall not permit the accused or any other person outside of counsel's law firm to have any access to the digital media without the written consent of the Crown Attorney's Office or an order of the Court, which must be maintained by counsel;
3. The digital media may be used by counsel only for the purpose of making full answer and defence. Any further use is prohibited absent the consent of the Crown or pursuant to a court Order (Rule 30.10 of the *Rules of Civil Procedure* as per *(P.(D.) v. Wagg* (2004), 71 O.R. (3d) 229 (C.A.));
4. At no time is the accused to possess, control, view, listen to, or have access to the digital media, unless under the direct supervision of counsel or his/her designate within counsel's office. In the event that the accused is not able to attend counsel's office due to the COVID-19 pandemic, the following exception to this term of the undertaking applies:
 - a. Where the accused is not able to attend counsel's office due to the COVID-19 pandemic, the accused may virtually access the digital media under the direct supervision of counsel or his/her designate within counsel's office through remote videoconferencing. If videoconferencing technology is used, counsel must disable the record feature and assure themselves the software used is secure and the digital media are not being recorded/captured/streamed by the accused or third parties. Counsel must also advise their clients not to record/capture/stream any portion of the digital media and to turn on their cameras to enable counsel's supervision. No one other than the accused person may be present with the accused person if digital media is being viewed by videoconferencing. If there is any concern about counsel's ability to supervise the accused in accordance with the terms of this undertaking, videoconferencing shall not be utilized. For statements involving any charge of human trafficking, sexual services offences, sexual assault, sexual interference, sexual exploitation, invitation to sexual touching, incest, or any historical offence involving sexual violence and/or domestic assault complainants, and/or

witnesses under the age of 18, only the audio shall be shared remotely under the direct supervision of counsel and no one other than the accused person may be present with the accused person while the audio is being shared remotely;

5. The digital media files are not to be copied, published, transmitted, posted or otherwise shared or distributed except as it is necessary for the purpose of expert analysis, transcription, or court purposes. In the event that counsel or members of counsel's firm are working remotely due to the COVID-19 pandemic, the digital files may be copied or transmitted in order to allow counsel or members of counsel's firm, and only counsel or members of counsel's firm, to securely access the material remotely;
6. The digital media shall at all times be in the possession or control of said counsel or members of counsel's firm or an expert or transcription agency hired by counsel to whom disclosure is necessary in order to make full answer and defence;
7. Counsel will advise any such expert or transcription agency retained by counsel that in order to receive the material(s), they will be bound by the same conditions set out in this undertaking and counsel will provide any such persons with a copy of this undertaking;
8. Any disclosure provided to such expert or transcription agency will be kept secure within the expert's or transcription agency's possession or control and any such material provided will be destroyed or deleted from all locations and devices where it has been stored, or returned to counsel if it was provided on an external device, forthwith upon completion of the expert's or transcriptionist's work on the case and, in all circumstances, will be destroyed or deleted no later than 60 days following the completion of the case;
9. In the event of any change of counsel, any digital media disclosure, including any such materials produced to an expert or transcription agency, shall be destroyed or deleted from all locations and devices where it has been stored as soon as practicable, and no later than 15 days after the removal of counsel of record, and the Crown Attorney's Office notified in writing;
10. If the digital media disclosed in this matter (including but not limited to 911 recordings) includes any personal identifiers (i.e. address/phone numbers/email address/social media or other contact information) of alleged victims, witnesses, or third parties, counsel undertakes not to disclose any personal identifiers to any person, including but not limited to the accused(s) or any co-accused(s).

In the event that counsel for the accused receives any disclosure via the *Criminal Digital Disclosure* Hub, sensitive disclosure or otherwise, in relation to which they believe that they are unable to comply with any of the terms of this undertaking, or any other additional undertaking signed and filed with the Crown Attorney's Office, counsel undertakes to immediately destroy or delete the disclosure material in question from all locations and devices under their possession and control, and the possession and control of any person under their employ or supervision, on which it is stored and to immediately thereafter notify the Crown Attorney's Office responsible for the prosecution of the case of the nature of the concern.

I have read the above-noted terms and I undertake to comply with them.

Dated at _____, Ontario this _____ day of _____, 20__

Signature: _____

Application Submission Instructions:

1. Complete the form online
2. Once the form is completed, print and sign the form:
 - a. Save a copy for your records.
 - b. Scan a copy of the signed form along with a photocopy of your Law Society of Ontario Identification Card and email it to the Crown Attorney's Office; or
 - c. Bring the form along with your Law Society of Ontario Identification Card to the Crown Attorney's Office.