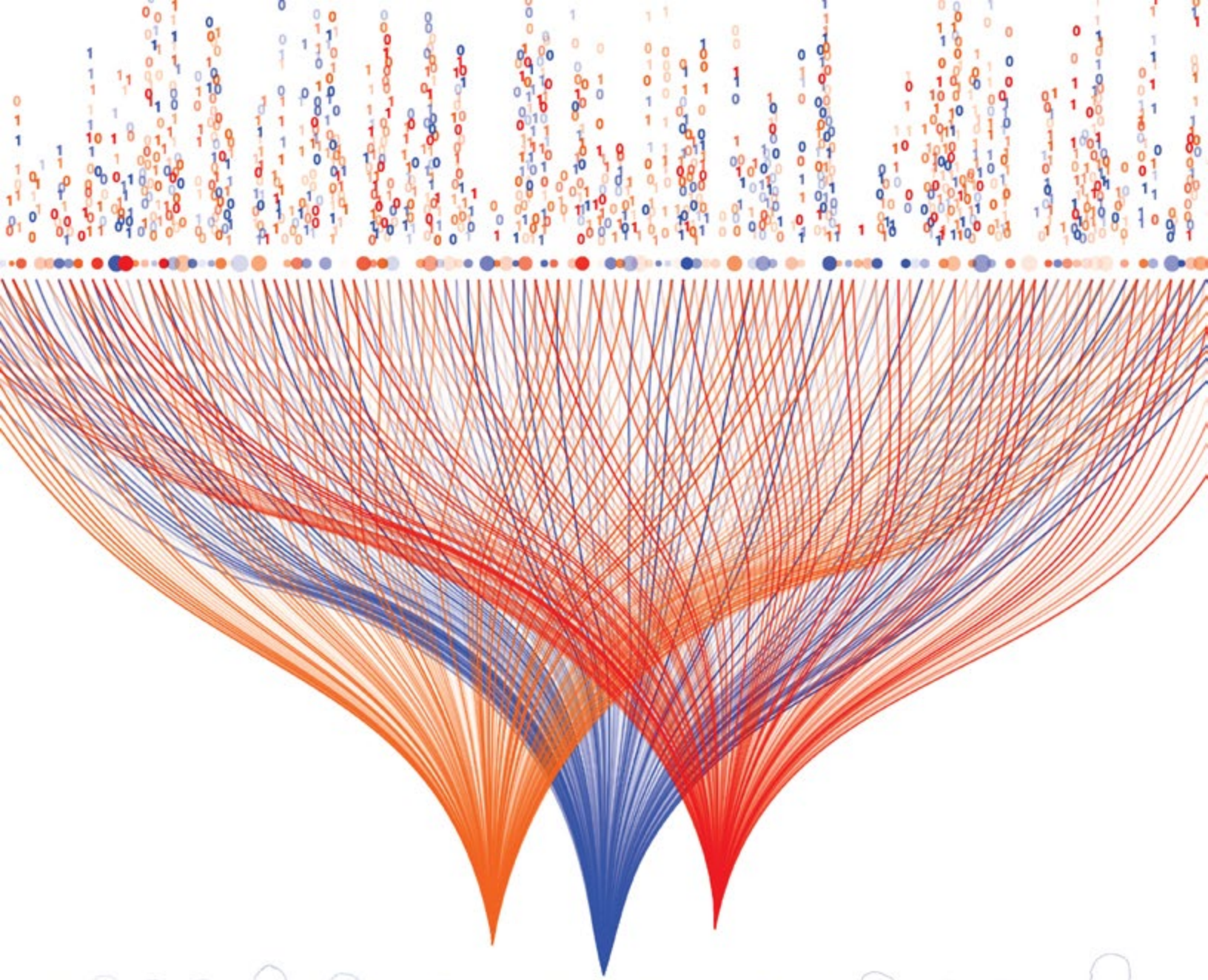


Law Commission of Ontario

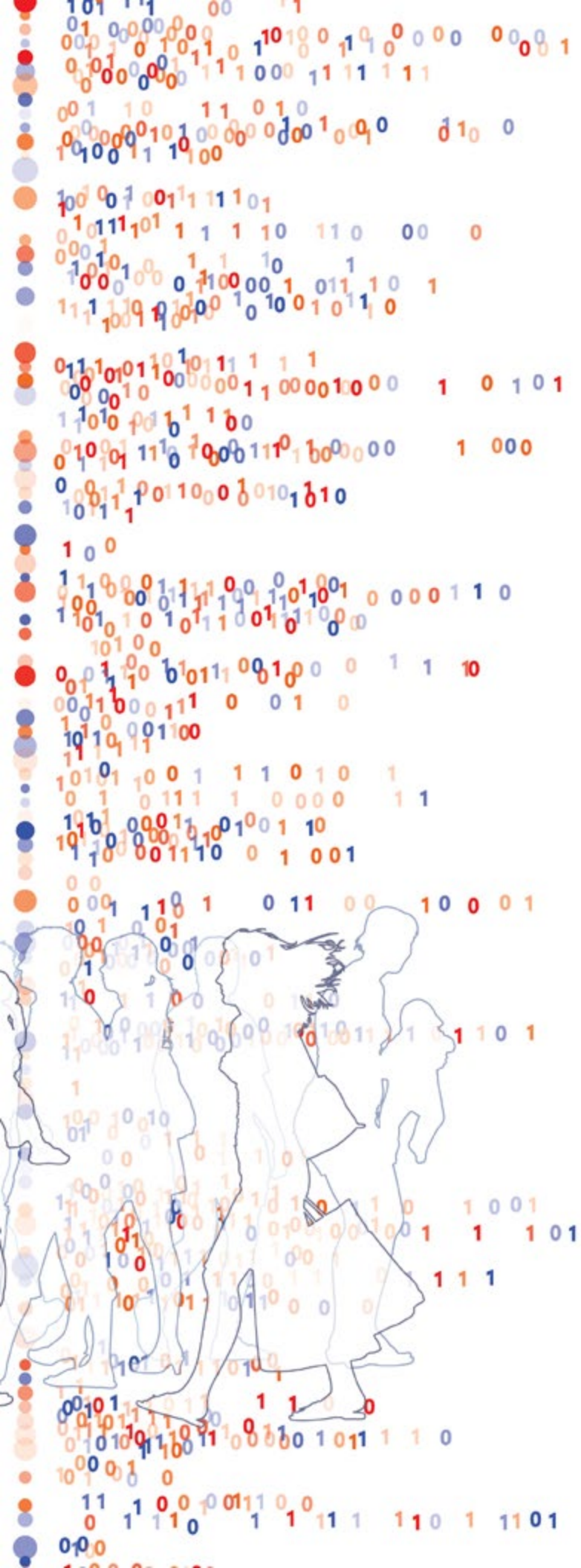
AI IN CRIMINAL JUSTICE PROJECT

AI Evidence in Criminal Justice:

Toronto Roundtable Report

December 2025

LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO



About the Law Commission Of Ontario

The Law Commission of Ontario (LCO) is Ontario's leading law reform agency.

The LCO provides independent, balanced, and authoritative advice on complex and important legal policy issues. Through this work, the LCO promotes access to justice, evidence-based legislation and policies, and public engagement on important law reform issues. The LCO is independent of stakeholder interests and is committed to a public interest perspective for every project.

Recent LCO reports and submissions addressing AI issues include:

- Human Rights AI Impact Assessment (with the Ontario Human Rights Commission, 2024)
- Submission to Government of Ontario Re Bill 194 (2024)
- *Accountable AI* (2022)
- *Regulating AI: Critical Issues and Choices* (2021)
- *Legal Issues and Government AI Development* (2021)
- The Rise and Fall of Algorithms in the American Justice System: Lessons for Canada (2020)

More information about the LCO and this project is available at: https://www.lco-cdo.org.

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Disclaimer

The analysis, findings, and recommendations in this paper do not necessarily represent the views of the LCO's funders, supporters, Advisory Committee members, or Issue Paper authors.

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How To Read This Event Report

This report summarizes key themes and issues discussed at the LCO's Roundtable on AI Evidence in Criminal Justice, convened in Toronto on August 14, 2025. As an event report, please consider the following:

- This report summarizes the full range of themes discussed. It does not necessarily reflect the priority or extent of discussion given to any particular theme.
- The summaries reflect the range of views expressed around the discussion table. No position or opinion should be ascribed to any particular participant, be interpreted as a consensus view, or be understood as representative of any final conclusion or recommendation.
- This report does not reflect the conclusions of the LCO. The LCO's AI in Criminal Justice Project will conclude in early 2026 with publication of a Final Report containing a range of law and policy reform recommendations.

Introduction

There is considerable and growing interest in the role of artificial intelligence (AI) technologies in criminal proceedings.

The issues AI raises for evidence law is an area of particular concern. The Law Commission of Ontario's (LCO) AI in Criminal Justice Project documents several known and proposed uses of AI in Canadian criminal proceedings, and describes the many ways this impacts on the generation, collection, analysis and prosecution of evidence.

It is widely acknowledged that AI tools have the potential to significantly benefit criminal investigations, focus police investigative expenditures, improve public safety and improve institutional oversight. For example, many police investigators now use AI to expedite the investigation of complex financial crimes and to distinguish real victims within thousands of child sexual abuse images.

At the same time, AI tools and evidence also have potentially serious risks. For instance:

- Police investigations may receive unreliable "deep fake" evidence, gather information through mass biometric surveillance systems at risk for bias and privacy rights violations, or act on AI recommendations prone to hallucinations and sycophancy.
- Raw images or videos may be artificially "enhanced" by an AI system that may undermine the reliability and validity of the evidence.
- Bail or sentencing decisions may rely on biased or unreliable AI risk prediction tools.
- Documents drafted with AI assistance – such as police notes, document summaries or audio transcripts – may contain errors that undercut, rather than expedite, judicial efficiency, and may contribute to undue deference.

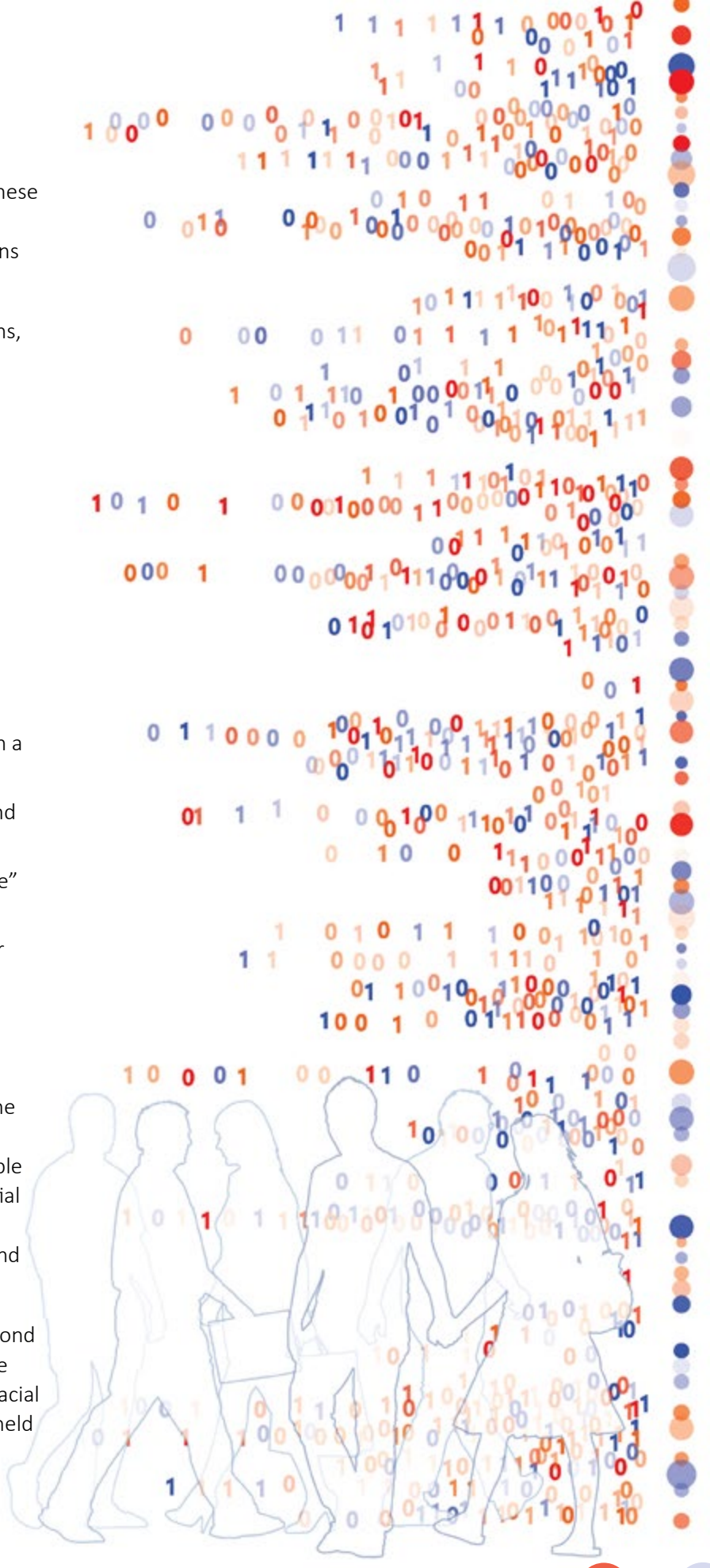
The LCO's AI in Criminal Justice Project identifies a series of questions about AI evidence that are – or soon will be – confronting Canadian criminal investigators, prosecutors, defense counsel, courts, and policymakers. These questions reflect an

emerging global consensus on issues crucial to the effective, trustworthy governance of AI systems. These issues are certain to have a significant impact on a wide range of evidentiary issues, including questions related to:

- Transparency, including AI disclosure obligations, timing and extent;
- Whether AI is characterized as novel scientific evidence, expert evidence, or something else;
- Evidentiary onus and legal thresholds for admissibility and weight;
- Standards for testing and establishing the reliability, validity and bias of AI systems;
- Equitable access to expert witnesses;
- Procedures and thresholds for obtaining prior judicial authorization before deploying AI in an investigation;
- The capacity of criminal courts to contend with a high volume of AI evidence;
- The legality of AI in risk assessments for bail and sentencing;
- Identifying and assessing potentially "deep fake" AI-generated evidence;
- How courts will receive AI evidence from other sectors like health care, social services, and immigration.

On August 14th, 2025, the LCO convened a Roundtable on AI and Evidence in Criminal Justice to consider AI evidence in criminal proceedings. The Roundtable brought together a broad diversity of stakeholders for a frank and collaborative roundtable discussion about AI evidence, including the potential benefits, risks, legal issues, and governance. This report summarizes the Roundtable's key themes and issues discussed.

The LCO Toronto Evidence Roundtable was the second of two LCO roundtables on AI in the criminal justice system. An earlier LCO Roundtable on the Use of Facial Recognition Technology by Law Enforcement was held in Vancouver on June 26th, 2025. Reports on both these events are available on the project website.



The LCO's AI in Criminal Justice Project

The LCO AI in Criminal Justice Project is a collaboration of leading practitioners and experts in Canadian criminal justice system. Project authors and advisors include representatives from governments, police services, Crowns, the criminal defence bar, courts administration, legal aid, human rights commissions, civil society organizations, and academics.

In April 2025, the LCO released a project introduction/summary and four Issue Papers. Each Issue Paper considers AI in a distinct phase of the criminal justice process:

Paper 1 Introduction and Summary

Paper 2 Use of AI by Law Enforcement

Paper 3 AI and the Assessment of Risk in Bail, Sentencing, and Recidivism

Paper 4 AI at Trial and on Appeal

Paper 5 AI and Systemic Oversight Mechanisms in Criminal Justice.

The LCO Criminal AI Project is organized around four key themes or topics.

First, the project considers important practical and legal questions that will soon confront Canadian police, courts, policymakers, Crowns, defence counsel, and accused, including:

- What AI tools could be used at each important stage of Canadian criminal justice?
- What legal issues are likely to arise at each stage?
- What is the state of Canadian law to address these issues?

Second, who is likely to be affected by AI in the criminal justice system? What institutions, agencies, organizations, or individuals will be affected?

Third, the project surveys potential solutions at the specific and systemic level, including:

- What we can learn from other jurisdictions that have confronted these issues?
- How Canadian policymakers, courts, and others have responded to AI systems?
- Are there gaps in Canada's current criminal AI regulatory landscape?

Finally, the project tries to foreshadow or predict what is likely to happen in Canadian criminal justice if action is not taken.

Detailed background information on AI and evidentiary issues is found in the third and fourth LCO Criminal AI project papers: ***AI and the Assessment of Risk in Bail, Sentencing, and Recidivism*** and ***AI at Trial and on Appeal***. The LCO's final project paper, ***AI and Systemic Oversight Mechanisms in Criminal Justice***, further highlights the range of potential systemic responses to these challenges. All project papers and background materials are available on the LCO website.

Organization of the Roundtable

The Toronto Roundtable brought together a broad range of stakeholders for a frank and collaborative roundtable discussion about AI evidence, including the potential benefits, risks, legal issues, and governance. Among the 32 participants were representatives of Ontario's judiciary, the federal and provincial Attorneys General, federal and municipal law enforcement, Crown prosecutors, private bar and legal aid defence counsel, provincial human rights and privacy agencies, academics, and public interest advocates representing a variety of communities.

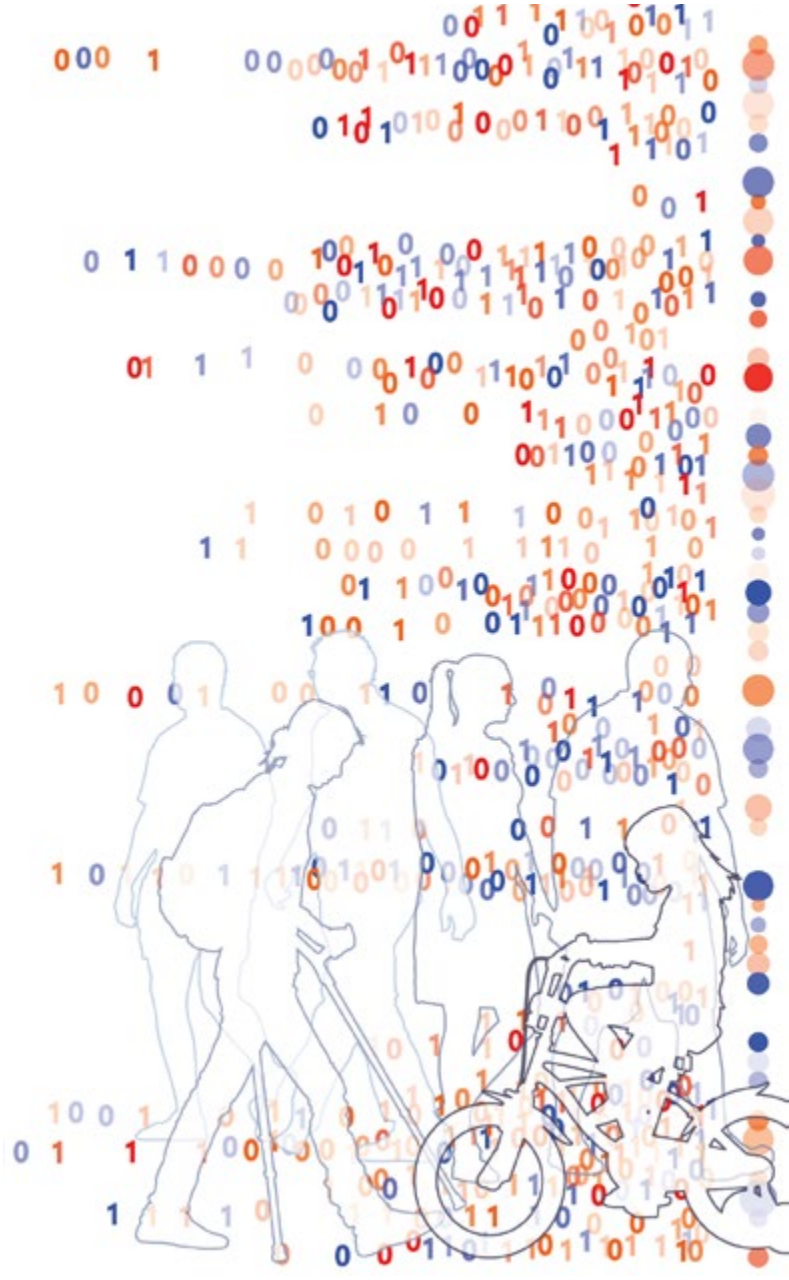
The half-day discussion agenda was organized into three thematic segments, each exploring issues identified through informal discussion with Roundtable participants prior to meeting. Each theme was introduced by leading practitioners through a brief presentation, and then worked through as a group.

The three discussion themes explored the following:

- **Overview of AI and Evidence Law:** How is AI being used in criminal proceedings? What are the potential benefits and the foreseeable legal complications of AI evidence?
- **Case Studies:** Judicial Authorizations and Risk Assessments: How will questionable AI evidence be contested? What is the legal onus and threshold for the admissibility, validity, reliability, and bias of AI evidence? What changes to procedures (such as bail hearings or applications for judicial authorization) are needed to govern AI evidence?
- **Systemic Needs and Potential Reforms:** What proactive reforms can address foreseeable challenges with AI evidence and lessen litigation-related "law lag"? Should some uses of AI in a criminal proceeding be subject to presumptive prohibitions? How best to ensure transparency and accountability to build public confidence?

The Roundtable was conducted under the Chatham House Rule. Participants were free to share their comments and questions without direct quotation or attribution. This report is consistent with the Chatham House Rule.

A list of background materials distributed to Roundtable participants is attached to the end of this report.



Roundtable Themes and Insights - Summary

Notwithstanding their different backgrounds and skills, it quickly became apparent that Roundtable participants shared three fundamental assumptions.

First, it was agreed that the sheer diversity and broad uptake of AI applications necessitates a proactive and systemic approach to governing AI evidence. As discussed in LCO's fifth project paper, ***AI and Systemic Oversight Mechanisms in Criminal Justice***, regulation by litigation has inherent limitations, including lagging behind technological developments by many years; generating precedents of narrow application; the imbalance of resources available to the Crown versus the defense; and having limited ability to direct systemic policies.[1] Roundtable participants were emphatic that the risks of improper arrests, wrongful convictions, increased litigation costs, delays and unequal justice are too serious to delay a proactive and systemic response.

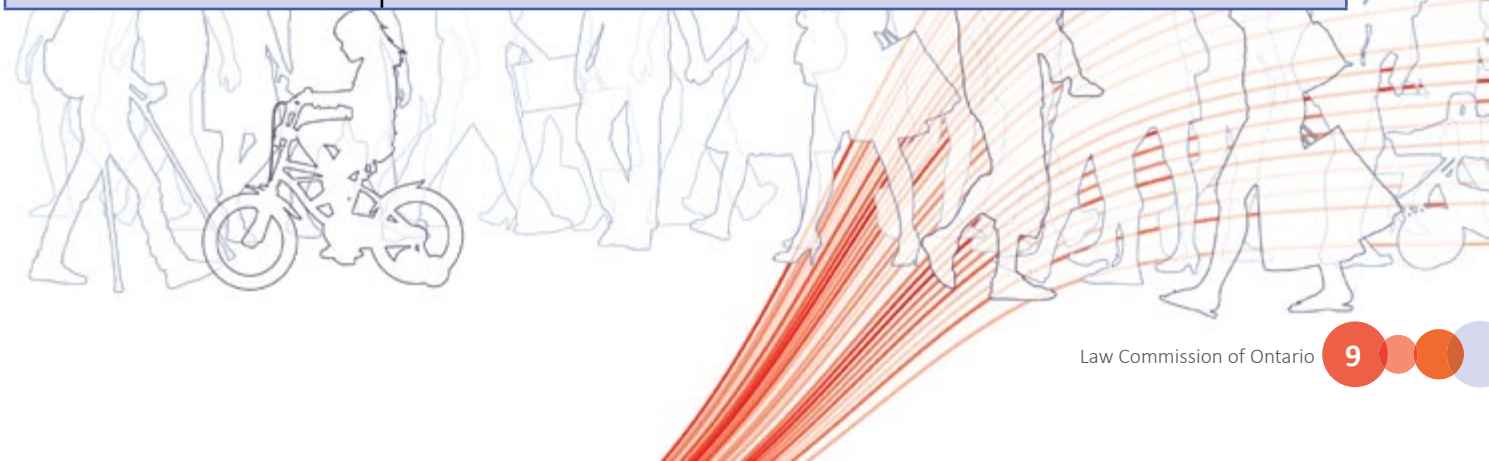
Second, while it was acknowledged that criminal evidence law is flexible and routinely adapted to novel technologies, existing provisions in the ***Canada Evidence Act*** and Ontario ***Evidence Act*** governing electronic or business records were not well-suited for AI evidence. For instance, granting the same presumptive integrity to AI-generated evidence as to other routinely generated or stored electronic records could mean courts fail to properly evaluate AI systems that produce outputs that are invalid, unreliable or biased. Similarly, existing evidential principles and procedures may be too vague or inappropriate to govern disclosure of technically complex and dynamic AI systems.

For instance, "disclosure" of an AI system could potentially include source code, training data sets, performance assessments, reasoning models, developer notes, expert reports, different versions of the same software, and so forth.

Third, it was widely acknowledged that AI tools may potentially significantly benefit criminal investigations, reduce police investigative expenditures, enhance officer safety, find missing persons, and remove barriers to court proceedings. For instance, the LCO's project papers discuss how RCMP investigators use AI to expedite the investigation of complex financial crimes and to distinguish real victims within thousands of child sexual abuse images.[2] Courts in Canada are also considering how AI might assist applicants in filing forms and for rapid translation.[3] The LCO has also heard from various oversight agencies who are interested in using AI to expedite the intake and review of hundreds (if not thousands) of police complaints and other public submissions.

The Roundtable generated many ideas, discussions and questions. The table on the next page summarizes seven key themes and insights. These themes and insights are discussed in more detail in the numbered sections that follow.

Evidence Roundtable Theme	*Insight and Discussion*
1. *AI deep fakes raise significant evidentiary and procedural concerns.*	Deep fakes present challenges for investigators, litigants, and courts. Deep fakesalso create new crimes for investigation. Roundtable participants discussed several evidentiary and procedural concerns with deep fakes along with several approaches to mitigating the challenges.
2. *AI disclosure obligations need clarification.*	In the absence of dedicated evidentiary rules, Roundtable participants discussed how existing law and procedure likely fall short of providing effective guardrails for AI evidence, and highlighted the need for a systematic approach to AI disclosure in criminal justice.
3. *Rules for AI evidence may merit requirements governing admissibility, onus, and bias.*	Roundtable participants emphasized that in the criminal law context, evidence from AI systems should be held to strict requirements governing admissibility, onus, and bias. The discussion also considered whether there should be different standards for the Crown and defense to address the relative resource imbalance between the prosecution and accused.
4. *AI risk assessments in bail and sentencing face significant legal hurdles.*	An array of AI-enabled tools now exist that aim to aid criminal courts in determining pretrial bail, sentencing, and post-sentencing risk and recidivism. Roundtable participants discussed several foreseeable issues with AI-mediated risk assessments, particularly given the rapid pace, high-pressure, and reduced evidentiary burden thresholds in bail hearings.
5. *Courts must anticipate increasing use of AI by experts in health, social service, and other sectors.*	Criminal courts often deliberate over information provided by health care and social services sectors that may aid in assessing guilt, bail eligibility, sentencing terms, and access to criminal diversion. There is a concern that increasing use of AI in these sectors to write report, summarize notes, and aid in diagnosis may undermine the presumed integrity and expertise of such evidence.
6. *AI legislation and certification could expediate assessment of reliability, validity and bias.*	A key challenge in updating evidence law is determining which standards of reliability, validity and bias apply to AI technology generally, as well as different specific AI tools and use cases. The lack of such guidance can impair the adoption of trustworthy AI technology in the justice system.
7. *7.Public accountability and reporting is essential for public trust.*	There is very little awareness or systemic tracking of the overall "footprint" of AI use in criminal proceedings in Canada. As a result, neither the public and nor criminal justice system institutions have a complete or consistent picture of how AI systems have been deployed or evaluated.



Roundtable Themes and Insights - Discussion

1. AI deep fakes raise significant evidentiary and procedural concerns.

Deep fake evidence is becoming a serious concern for the administration of criminal justice.

As discussed in the LCO project papers, inexpensive (or free) online generative AI tools can produce high-quality video, audio and images, making the creation of misleading and false evidence relatively simple and accessible to almost anyone.[4] The created or modified content "would falsely appear to a person to be authentic or truthful"[5] and show "real people saying and doing things they never said or did."[6]

Deep fakes present challenges for investigators, litigants, and courts, and create new crimes for investigation. For instance:

- Deep fake child sexual abuse material is being generated in such volumes that "cops [are] bogged down by flood of fake AI child sex images… [as] Investigations tied to harmful AI sex images will grow exponentially."[7]
- New crimes are being enabled by deep fakes, such as the "endless potential" for financial scams[8] or impersonation to criminally implicate the innocent.[9]
- Courts increasingly face and will adjudicate AI-mediated evidence. For instance, in the 2024 US murder trial – State of Washington vs. Pulsoka – the presiding judge deemed "AI enhanced video" inadmissible once it was determined the system added detail where none existed.[10]

Roundtable participants agreed with a recent assessment by Ontario courts who acknowledge a

> *consensus among the experts that deepfake AI will be easy to produce but very hard to detect. Whether it will become a major problem for the courts is unclear. But we need to be ready… [otherwise] the justice system will take an enormous hit.*[11]

Roundtable participants discussed several evidentiary and procedural concerns with deep fakes along with several approaches to mitigating the challenges.

For instance, Roundtable participants noted that both legitimate and illegitimate uses of AI generate similar concerns in criminal evidence law for admissibility, validity, integrity, authenticity, weight, and balancing probative value against prejudicial impact. Some AI tools could be used to fake images of an injury, while other tools could be used to clarify surveillance video that may exonerate (or convict) an accused. Both will raise similar concerns for the reliability and validity of the output or the technology used to create it. In other words, addressing the general limitations of AI evidence will capture many of the challenges specific to deep fakes.

A second concern emphasized that criminal courts must address any AI evidence at an early stage in a proceeding. This concerned deep fakes, but also broader AI tools and evidence in general. This is necessary to ensure appropriate disclosure, avoid delay and procedural complexity later in the proceeding, and ensure a procedural fairness.

The Roundtable also discussed potential law and policy reform options best placed to respond these concerns. In the main, it was suggested that AI evidence should be recognized as a distinct class of evidence with a set of dedicated disclosure rules and procedures. (The issue of disclosure is discussed at greater length below in section two).

The Roundtable noted that in July 2025 the Ontario Civil Rules Committee Artificial Intelligence Sub-Committee (hereafter "Civil Rules Sub-Committee") proposed a set of new *Rules of Civil Procedure* relating to both deep fakes and AI evidence.[12] The Roundtable discussed the proposed amendments at length.

The Sub-Committee's four main proposals would:

- Establish a definition of "artificial intelligence" to subject its many different forms and uses to a common set of evidentiary and procedural rules.
- Establish a disclosure and evidentiary onus rule on parties who put forth AI evidence. This would require parties to identify the AI software used, the data used to train it, and create an onus to show the system produces valid and reliable results.
- Establish a rule that where AI evidence is challenged for fabrication it is presumptively inadmissible. To be admitted, the proponent would be required to demonstrates on the balance of probabilities that the evidence's probative value exceeds its prejudicial effect.
- Establish a rule that would admit expert AI evidence (such as where a witness relies in whole or in part on material generated by AI) only where it can be shown that the evidence is based on sufficiently valid and reliable facts or data; is the product of valid and reliable principles and methods; and reflects a valid and reliable application of the principles and methods to the facts of the case.[13]

Roundtable participants agreed that amendments to the ***Rules of Civil Procedure*** would be an important precedent for equivalent rules in the criminal justice system. Any such rules would, of course, include appropriate modifications and important questions adapted to criminal justice (some of which are outlined in the remainder of this report).

The Civil Rules Sub-Committee's initiative is reflected elsewhere. For instance, in 2024 the U.S. Judicial Conference's Advisory Committee on Evidence Rules began meeting to develop a regulation on the admission of AI-mediated evidence, including deep fakes.[14]

In addition to litigation, the Roundtable discussion highlighted how every criminal justice institution can take a role in managing deep fake evidence. The Roundtable included a live demonstration of a sophisticated suite of tools being developed for a Canadian police force to identify and detect deep fakes and other evidence modified by AI. Standard forensic practices could be established to test evidence for AI modification or manipulation before it is proffered, saving the time and expense of litigation. At the same time, it was recognized that law enforcement and the state should not have a monopoly on these tools. It is important to a fair trial that defense counsel have equal and independent access to similar tools and expertise.

2. AI disclosure obligations need clarification.

Canadian federal and provincial governments acknowledge that "trustworthy" or "responsible" AI is only possible where governed by the principle that there be "no AI in secret."[15] Accordingly, procedures and rules directing AI transparency and disclosure are fundamental.

Many Canadian police services, governments and courts are beginning to establish detailed AI disclosure obligations as part of their AI governance frameworks. For example, the Toronto Police Services Board identifies "transparency" as a "guiding principle" of its "Use of AI Policy" adopted in 2022 (updated in 2024). This policy commits the Toronto Police Service to a standard:

> *Where the Service uses AI technology that may have an impact on decisions that affect members of the public, the use of that technology must be made public to the greatest degree possible.*[16]

Read plainly, this is a low threshold for a high degree of disclosure, triggering the obligation to disclose "to the greatest degree possible" even where an AI technology "may" potentially have an impact that affects the public. A disclosure commitment is also included in policies governing facial recognition technology used by the York Regional Police and Peel Police Service. Both policies ensure oversight by identifying the specific responsibilities of front-line officers and management.[17]

Leading Canadian examples of AI disclosure ***outside*** the criminal justice system include the federal government's public database of algorithmic impact assessments and the public transparency requirements required under Ontario's public sector AI legislation, ***Strengthening Cyber Security and Building Trust in the Public Sector Act, 2024*** (Bill 194).[18]

The federal court, and many provincial courts, have also established practice directions that set basic disclosure expectations for legal counsel and self-represented or unrepresented litigants who rely on AI tools to generate submissions.[19]

As yet, there are no dedicated AI evidence disclosure rules in Canadian criminal proceedings. As a result, criminal courts are generally following established disclosure rules and conventions that may fail to grapple with characteristics and procedural concerns associated with specifically AI evidence. Nor have there been any proactive proposals or processes equivalent to that of Ontario's dedicated Civil Rules AI Sub-Committee.

In the absence of dedicated evidentiary rules, Roundtable participants discussed how existing law and procedure likely fall short of providing effective guardrails for AI evidence. This discussion highlighted the need for a systematic approach to AI disclosure in criminal justice.

For instance, defense counsel attending the Roundtable noted that AI systems could be used to generate grounds for a warrant to look into someone's house. However, the investigating officer or "paper affiant" might not know the AI tool was used earlier in the investigation to generate these leads. The result may be a legal blind spot in which AI systems operate without oversight. Defence counsel suggested that such gaps could, by omission, undermine the duty to discharge "full, frank and fair" disclosure.

Duty counsel further noted that many criminal bail courts in Ontario observe disclosure practices giving counsel just 10-15 minutes to analyze a package of information and evidence ahead of the bail hearing. The packages may be accompanied by vague, overbroad disclosure statements that "AI may have been used in preparation of these materials." In the absence of clearer rules, it was predicted that procedural challenges as to the kind, extent and timing of AI disclosure were certain to bog-down many criminal proceedings; see requests for further and fuller disclosure; introducing delay and complexity; and generate pressure to simply and uncritically accept AI-mediated material as reliable.

In another example, body worn cameras may record people other than the subject of an investigation, such as bystanders. AI facial recognition technology may make it easy to identify and track these parties in conjunction with other technology such as cell phone triangulation. Yet without disclosure obligations this chain of investigation may be unclear.

The LCOs project papers and the Roundtable discussion emphasize additional characteristics that make clearer and binding AI disclosure rules important. For instance:

- The use of AI is often not obvious despite the potentially huge influence it may have on evidence. For instance, there are many types of AI police are using or considering, and without a disclosure obligation, it will be unclear which systems need to be disclosure in which cases.[20] Clearer disclosure rules would ensure the use of AI is made visible.
- While there are established principles and procedures governing disclosure in criminal cases, there is considerable ambiguity in what constitutes full or fair disclosure of AI systems. Disclosure obligations could potentially include training data sets, performance assessments, different versions of the same software, source code, reasoning models, developer notes, expert reports, and so forth.
- Law enforcement may be unclear about disclosure obligations and the content of such obligations, potentially leading to flawed investigations and prosecutions.
- Law enforcement and court officers are certain to use AI in many different forms and applications, making case-by-base legal advice impractical.

- Dedicated AI disclosure and production rules could tailor disclosure extent and timing requirements to suit specific practices and procedures. For instance, many participants suggested the need for dedicated AI disclosure procedures in bail proceedings. This would establish clear standards for police and Crowns while ensuring defense counsel are adequately prepared.
- Disclosure and production rules would better ensure that any AI systems used in a criminal proceeding adopt "compliance by design." Other jurisdictions demonstrate how the lack of such rules can result in the use of AI systems that intentionally delete, obscure, or edit potential evidence.[21]

Finally, the Roundtable believed that mandatory disclosure obligations promote fairer proceedings, reduce risk of wrongful convictions, and are likely to lessen the time and cost associated with litigation.

3. Rules for AI evidence may merit requirements governing admissibility, onus, and bias.

Consistent with the discussion above, several Roundtable participants emphasized that in the criminal law context, evidence from AI systems should be held to strict requirements governing admissibility, onus, and bias. The discussion also considered whether there should be different standards for the Crown and defense to address the relative resource imbalance between the prosecution and accused.

Drawing on the Ontario Civil Rules Sub-Committee's proposed new ***Rules of Civil Procedure***, several participants spoke in favor of making AI evidence in criminal law presumptively inadmissible unless the reliability and validity of the evidence is established in court. This would effectively create an onus on the proponent to produce all that is required to test and validate an AI technology.

Furthermore, it would differentiate AI evidence by establishing a threshold admissibility test focused on reliability and validity rather than allowing AI evidence to go to questions of weight. A weight analysis presumes that evidence has some degree of reliabilty and validity that may not be true for novel AI technologies. Accordingly, it may not be appropriate for AI evidence to be governed by prevailing common law interpretation of the ***Canada Evidence Act*** that supports "letting the evidence in and have it go to weight." Participants suggested that the CEA should be amended to subject AI evidence to an admissibility threshold analysis rather than to a weight analysis.

Roundtable participants also discussed the need for courts to address the potential for bias and discrimination in AI systems appearing in criminal justice. There was general agreement that bias and discrimination in AI systems introduces potentially unprecedented challenges to the criminal justice system.

The LCO has summarized AI bias and discrimination challenges in context of civil litigation in two submissions to the Ontario Civil Rules Sub-Committee.[22] In summary, the LCO has concluded that:

- AI systems have proven risks to human rights. As recognized in Ontario's ***Responsible Use of Artificial Intelligence Directive***, AI may "exacerbate existing biases and stereotypes... in a discriminatory manner and infringing on human rights."[23]
- Canadian AI systems must comply with human rights law.
- AI evidence is "high risk" and "high impact" – particularly in criminal law – and should meet high standards of validity, reliability, and freedom from bias and discrimination.
- AI systems raise new issues that do not exist with human experts including the speed and scale at which Ai systems may operate.
- Unlike a human, the AI system itself cannot be cross-examined for bias.

Addressing these concerns does not mean litigants should be held to a level of perfection. In the civil context, for example, the LCO has written how concerns for bias and discriminatory AI evidence can potentially be managed with discrete amendments to the proposed Rules, which would:

- Require that parties shall provide supporting evidence to show the output or results of the software or program are valid and reliable, and to provide an audit for bias if a party to the action or the court suggest is necessary.
- Require parties to show that they have taken steps to address, expose and disclose potential or existing biases and discrimination.
- Require parties to show the AI evidence is based on sufficiently valid, reliable and representative facts or data.[24]

A key concern is for the practicality of conducting bias assessments of AI systems. The LCO's civil AI evidence submission notes that AI human rights and bias testing is well established in law, policy and practice.

Human rights and bias testing are features of contemporary AI governance strategies that have been adopted and operationalized by governments, private sector organizations, and international institutions. For example, bias testing is now reqiured by public institutions such as the Government of Canada and several police services; private institutions such as Meta, Microsoft and Google; and in other jurisdicusions including many US states and muncipalities, the European Union, and others.[25]

The Roundtable also discussed how AI impacts the fairness of a proceeding in relation to the resource inequity between the prosecution and defense. The Roundtable considered if fairness may require the Crown to have a different burden of proof in relation to AI than self- or un-represented accused, or those represented by legal aid retainers with limited access to resources. The term "expert asymmetry" was used to describe differing capacity and resources to retain and consult with experts, marshal AI-mediated evidence, and make productive use of AI litigation tools. It was noted that evidentiary authenticity rules for AI could be designed to recognize that deep fake or other manipulated evidence from "an accuser with an axe to grind" would place vulnerable accused at tremendous disadvantage. It was felt this disadvantage could be ameliorated, in part, by subjecting AI to authenticity thresholds.

The Roundtable discussed the potential benefits of "certified" AI tools that courts, Crowns and defense could accept as meeting ongoing performance standards for reliability, validity and bias, and thus presumptively reliable. This would be of particular help to self- or un-represented accused, or those represented by legal aid with limited access to litigation resources.

Finally, the point was made in favor of updating other provisions of the ***Canada Evidence Act*** to ensure existing provisions do not contribute to the misinterpretation of AI evidence. As noted earlier, the the ***Canada Evidence Act*** and ***Ontario Evidence Act*** already contain provisions governing electronic and business records. These may lead to conflicting application to AI technologies. For instance, if AI-generated evidence is granted the same presumptive integrity as other routinely generated or stored electronic records, the court could fail to consider if or how an AI system AI could be be biased or subject to hallucinations or sycophantic outputs.

4. AI risk assessments in bail and sentencing face significant legal hurdles.

An array of AI-enabled tools now exist to aid criminal courts in determining pretrial bail, sentencing, and post-sentencing risk and recidivism. The impact of these tools is considerable. For an accused or convicted person, such tools could influence or determine in-custody or release status, parole status, the length of detention, the conditions of detention, and conditions on community living.

As discussed in LCO's second Issue Paper, ***AI and the Assessment of Risk in Bail, Sentencing and Recidivism***, such tools were initially met with considerable enthusiasm in other jurisdictions, such as the United States.[26]

Canada has been rather more cautious: AI-enabled risk assessment tools are not formally in use in Canadian criminal courts, and no tools have been validated for bail. But their use is certain to be considered.

Furthermore, criminal proceedings often rely on risk assessments from other sectors, including health care and social services that may increasingly incorporate AI into their own diagnostic, evaluative, and risk assessment recommendations. These findings can influence bail and sentencing decisions as well as eligibility for diversion to mental health courts, drug treatment courts, and community programs.

Roundtable participants discussed several foreseeable issues with AI-mediated risk assessments, particularly given the rapid pace, high-pressure, and reduced evidentiary burden thresholds in bail hearings. Many of these issues reflect issues relevant to AI evidence generally, including:

- **Risk of biased data or predictions.** Many studies have documented AI risk assessment's risk of biased data, variables, predictions and recommendations.
- **Risk of lack of transparency, reliability, validity and lack of explainability.** AI risk assessments can be opaque "black boxes." Related concerns include issues about their reliability, validity and potential lack of explainability.
- **Lack of disclosure.** Defense counsel report that current AI disclosure can be vague or does not disclose which AI systems were used or how; how such systems were trained; and if the systems were assessed for validity, reliability and bias.
- **Limited time and resources to analyze and challenge AI risk assessments.** Defence counsel describe court practices that often provide them with just 10-15 minutes to receive disclosure and prepare for a bail hearing. This makes it unlikely that AI risk assessment evidence could be effectively disclosed, analyzed, or challenged.
- **Unclear characterization of AI risk assessment evidence.** Participants noted that it is unclear how AI risk assessment tools will be characterized legally. For example, AI tools could be characterized as expert evidence, novel scientific evidence, opinion evidence, a demonstrative aid, as a matter for judicial notice, or other characterization. This may lead to considerable procedural wrangling and delays.
- **Burden of proof.** Participants noted that the burden of proof in a bail hearing is relaxed compared to trial or sentencing. Yet if AI bail risk assessment predicts a high risk of reoffending, it is certain to be argued as an aggravating factor subject to a burden beyond a reasonable doubt. This higher burden of proof will complicate and delay bail assessment, particularly since current AI-based risk assessment tools are unlikely to satisfy the higher threshold for reliability and validity.
- **Risk of inappropriate pleas.** Participants pointed out that there is little to be gained for most accused in contesting AI risk assessments in a bail hearing. The prospect of longer detention may induce accused to plead out.
- **Failure to consider individual circumstances.** Courts have to take individual circumstances into account, particularly in relation to Gladue or Impact of Race and Culture assessments. In contrast, AI systems may be incapable of understanding nuanced human contexts and relationships. Nor is it clear if or how AI bail or sentencing risk assessment would or could be used with Indigenous defendants.
- **Risk of algorithmic deference.** Many academic studies show a high concordance between risk assessment and judicial decision making.[27] In other words, the higher the prediction of risk the greater the likelihood of the jurist accepting it. This may foster the phenomenon of "algorithmic deference" in which AI recommendations are uncritically interpreted and often followed.

The failure to act on these concerns could have serious repercussions. LCO reports discuss how the risks of many criminal justice AI systems fall disproportionately on low-income, Indigenous, racialized, or otherwise vulnerable communities and individuals, potentially worsening the overrepresentation of these communities in Canada's criminal justice system.[28]

5. Courts must anticipate increasing use of AI by experts in health, social service, and other sectors.

As discussed in the fourth and fifth LCO project papers – ***AI at Trial and On Appeal*** and ***AI and Systemic Oversight Mechanisms in Criminal Justice*** – criminal courts often rely on information provided by health care and social services professionals to inform deliberations on fundamental liberty rights including determinations of guilt, bail eligibility, sentencing terms, and access to criminal diversion. There is a concern that the presumed integrity and expertise of health care and social service provider information may be undermined by the use of AI. For instance, medical doctors, psychiatrists, social workers, probation officers, immigration officers, housing providers, and others may increasingly rely on AI systems in a variety of ways: AI may be used to transcribe or summarize patient or client meetings; analyze and summarize patient or client records; generate assessment reports in whole or in part; conduct risk assessments; determine eligibility for programs; and ultimately contribute to a diagnosis or recommended course of action.

The LCO's fourth project paper, ***AI at Trial and On Appeal***, discusses how AI used by experts can raise significant challenges for courts.[29] For instance:

- The role of AI in generating expert evidence or opinions may be unacknowledged or unknown without clear disclosure requirements.
- AI-generated reports may include errors, such as incorrectly transcribing or summarizing patient or client meetings or missing crucial details or context.
- The sheer volume of cases relying on AI-augmented material could undermine or overwhelm the ability of courts to evaluate evidence.
- The use of AI in other sectors (such as health care, social services, etc.) may generate material that does not satisfy evidentiary standards in a criminal court (given the potential consequences for the accused). At the same time, criminal courts may have limited or no jurisdiction to direct general practices and procedures or professional standards in other sectors, limiting their ability to address "upstream" evidentiary issues on a systemic level.
- The potential risks of AI evidence are particularly acute regarding medical evidence. AI systems used in medicine have often been shown to discriminate against vulnerable racialized and low-income populations and can lead to inferior medical advice.[30] Matters in court that rely heavily on medical information – such as diversion – could be easily mislead by faulty information.
- AI systems are known to influence and undermine the expertise of human professionals who use and rely on AI tools (including those in health care, social services, etc). This may diminish the quality of human evidence and undermine the "human in the loop" expert meant to act as a check and balance on AI errors.[31]

6. AI legislation and certification could expediate assessment of reliability, validity and bias.

A key challenge in updating evidence law is determining which standards of reliability, validity and bias apply to AI evidence generally or to AI systems used in specific proceedings, such as bail. For instance, while there is a burgeoning AI assessment industry that has a proven ability to independently assess, calibrate, and certify the real-world performance of AI systems, there is as yet no single accepted standard for doing so. Importantly, there is also no guidance

that requires such AI assessments to reflect Canadian criminal law, including rights and protections under the ***Charter of Rights***, evidence law, procedural fairness, or criminal common law.

Several Canadian police services and others have noted that the lack of such guidance can impair the adoption of trustworthy AI technology in the justice system. For instance, Halton Regional Police Service recently noted the lack of regulation as a key adoption barrier, finding:

> *there is relatively limited Canadian case law specifically addressing facial recognition […] [and] no established admissibility standards" while "current trends suggest judicial caution and emphasis on privacy protection and proper authorization to use FRT.*[32]

The Halton Police also emphasize that the use of FRT generates leads for investigators to consider, not evidence to be admitted in court. Consequently, they suggest:

> *Public sector use of facial recognition in Ontario needs to be built on clear and binding guardrails (e.g. legislation) that effectively address safety, privacy, accountability, transparency, and human rights.*[33]

In a similar vein, Roundtable participants discussed how "procedural fairness by design" could address concerns about AI evidence if criminal AI systems were vetted and certified for reliability, validity, explainability, bias, and other key performance requirements before a system was deployed in the field.

Several different approaches were raised or discussed at the Roundtable and in background materials. For instance:

- Some Roundtable participants supported the development of dedicated Criminal AI Impact Assessment tools that proactively assess AI systems with relevant legal and operational standards.
- Participants compared criminal AI systems to intoxilyzers as an investigation technology that gains the benefit of procedural efficiency and public safety through robustly legislated verification, certification, training and procedural oversight requirements.[34]
- Existing oversight institutions could modernize their mandate to address the AI challenge. For instance, the Centre for Forensic Science is frequently called on to provide opinions on issues like bullet or blood spatter analysis and to provide training on evidence of this kind. This mandate could include AI systems, with the Centre playing a role in testing and issue reports on the validity, reliability, and suitability of various AI tools used in investigations or criminal proceedings.

- Other oversight agencies could also take a more active role in setting standards. In the investigative context this could include civilian law enforcement complaints agencies or Ontario's Inspector General of Policing.
- Voluntary umbrella organizations could play a key role in developing policies and practice standards in the absence of legislation. Groups like the Ontario Association of Chiefs of Police, the Ontario Association of Police Boards, or the federal Canadian Association of Chiefs of Police may be well placed to establish de facto standards.
- Finally, forensic labs in Canada and Ontario could consider establishing standards for evaluating AI systems used in criminal investigations.[35]

Notwithstanding the potential of these proposals, Roundtable participants noted the difficulty in creating and maintaining robust external assessments of AI investigative technologies due to technical, operational, legal and resource challenges. For example, law enforcement investigations may use similar AI systems for different purposes and in different contexts, thus triggering different legal rationales and performance requirements.

7. Public accountability and reporting is essential for public trust.

Finally, the Roundtable noted that there is very little awareness or systemic tracking of the overall "footprint" of AI use in criminal proceedings in Canada. As a result, neither the public and nor criminal justice system institutions have a complete or consistent picture of how AI systems have been deployed or evaluated.

This gap is being filled by many individual police services. For example, the RCMP and Toronto Police Service have committed to a principle of transparency "as a key consideration for maintaining public trust and confidence in the responsible use of these technologies."[36] Peel Regional Police also use various transparency instruments, such as privacy impact assessments assessmenets, to support the deployment of facial recognition systems.[37] These policies are commendable and should be supported. At the same time, however, these initiative are inherently limited because they do not create provincial or national obligations to disclose and report on criminal justice AI systems.

As stated above, many legislatures are enacting regulations with a variety of transparency requirements, including mandatory disclosure to defendants and published privacy and legal impact assessment reports.[38]

The leading international example of legislated standards for AI transparency in criminal proceedings is European Union's 2024 Artificial Intelligence Act. The EU prohibits real-time biometric identification in the absence of prior judicial authorization, and only for certain classes of "serious cases." The legislation then commits national authorities to receive notification of the use of any such system and any judicial application for authorization (whether approved or not) including information on the number of the decisions taken and their result. All of which must be published in publicly available annual reports.

Stakeholders have identified transparency and reporting of this kind as important to understand the "footprint" of AI technologies in criminal justice in Ontario and across Canada. Others flag how such reporting is essential to the involvement of local communities in making choices about the use of AI technologies by local law enforcement.

Next Steps and Getting Involved

Consultations

Individuals or organizations interested in working with the LCO on FRT issues or our AI in Criminal AI project should contact LCO Policy Counsel Ryan Fritsch. Ryan can be contacted at rfritsch@lco-cdo.org.

More information about the LCO and AI in Criminal Justice Project is available here.

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Toronto Roundtable Materials

The following materials were collected as background material for the Toronto Roundtable.

- LCO AI in Criminal Justice Project papers (April 2025), including: Ryan Fritsch, ***Law Enforcement Use of AI***; Armando D'Andrea and Gideon Christian, ***AI and the Assessment of Risk in Bail, Sentencing and Recidivism***; Eric Neubauer and Paul Thompson, ***AI at Trial and On Appeal***; and Brenda McPhail, Marcus Pratt, and Jagtaran Singh, ***AI and Systemic Oversight Mechanisms in Criminal Justice***.
- Justice Jill Presser, "AI in Evidence: A Brief Introduction" (slide deck presented to OBA Conference on AI Trial Advocacy (November 2024))
- Maura R. Grossman and Hon. Paul W. Grimm, "Judicial Approaches To Acknowledged and Unacknowledged AI-Generated Evidence" (26 Columbia Science & Technology Law Review 110 (2025))
- Mary D. M. Fan, "AI-Enhanced Evidence" (forthcoming Boston University Law Review, 2025-2026)
- Ontario Court Civil Rules Committee, "Consultation On Proposals For Rules Of Civil Procedure Relating To Evidence And Artificial Intelligence" (July 2025)
- Fernando Avila and Kelly Hannah-Moffat, "The Seductiveness of Fairness" (Chapter 6 in The Algorithmic Society: Technology, Power, and Knowledge (Routledge, 2021))
- Michael Geist, "Privacy At Risk: Government Buries Lawful Access Provisions in New Border Bill" (June 2025).

Endnotes

1 Law Commission of Ontario, *AI and Systemic Oversight Mechanisms in Criminal Justice* (April 2025) at 10, online: https://www.lco-cdo.org/wp-content/uploads/2025/04/LCO-AI-in-Criminal-Justice-Paper-5-Systemic-Oversight-1.pdf.

2 See for example, Law Commission of Ontario, *Law Enforcement Use of AI* (April 2025) at 22-23, online: https://www.lco-cdo.org/wp-content/uploads/2025/04/LCO-AI-in-Criminal-Justice-Paper-2-Law-Enforcement-Use.pdf; and the Law Commission of Ontario, *Law Enforcement Use of Facial Recognition Technology: Vancouver Roundtable Report* (December 2025) at 9, 13, online: https://www.lco-cdo.org/CrimAI.

3 See for instance CyberJustice Laboratory, "AI-Assisted Translation in the Courts: How Courts Are Balancing Access and Accuracy" (June 18 2025), online: https://cyberjustice.openum.ca/en/2025/06/18/ai-assisted-translation-in-the-courts-how-courts-are-balancing-access-and-accuracy/.

4 See for example, Law Commission of Ontario, *Law Enforcement Use of AI* (April 2025) at 22-23, online: https://www.lco-cdo.org/wp-content/uploads/2025/04/LCO-AI-in-Criminal-Justice-Paper-2-Law-Enforcement-Use.pdf. The examples that follow are reproduced from this section.

5 Francesca Palmiotto, "Detecting Deep Fake Evidence with Artificial Intelligence: A Critical Look from a Criminal Law Perspective" on SSRN (March 10, 2023), online: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4384122 at 2.

6 Robert Chesney and Danielle Keats Citron, "Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security" in California Law Review (2019; Volume 107), online: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3213954 at 1753.

7 ArsTechnica, "Cops bogged down by flood of fake AI child sex images, report says; Investigations tied to harmful AI sex images will grow "exponentially"" (January 31 2024), online: https://arstechnica.com/tech-policy/2024/01/surge-of-fake-ai-child-sex-images-thwarts-investigations-into-real-child-abuse/.

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9 In a recent 2024 case, for instance, a public-school athletic director in Baltimore was arrested after it was determined he framed the school principal using AI voice synthesis. See: ArsTechnica, "School athletic director arrested for framing principal using AI voice synthesis" (April 25 2024): https://arstechnica.com/information-technology/2024/04/alleged-ai-voice-imitation-leads-to-arrest-in-baltimore-school-racism-controversy/.

10 See NBC News, "Washington state judge blocks use of AI-enhanced video as evidence in possible first-of-its-kind ruling" (April 2 2024): https://www.nbcnews.com/news/us-news/washington-state-judge-blocks-use-ai-enhanced-video-evidence-rcna141932.

11 Ontario Bar Association, "Justice of Ontario's Top Court Urges Lawyers and Judges to Prepare for AI in Court" (October 8 2024), online: https://www.oba.org/JUST/Practice_List/2024/November-2024/Justice-of-Ontarios-Top-Court-Urges-Lawyers-and-J.

12 See Ontario Court Civil Rules Committee, "Consultation On Proposals For Rules Of Civil Procedure Relating To Evidence And Artificial Intelligence" (July 2025). For the LCO's detailed response to the proposed rules, see Law Commission of Ontario, "Letter to Courts of Ontario Artificial Intelligence Subcommittee of the Civil Rules Committee re: Consultation on proposals for Rules of Civil Procedure relating to evidence and Artificial Intelligence" (September 15 2025), online: https://www.lco-cdo.org/wp-content/uploads/2025/10/CRC-AI-Evidence-LCO-Submission-Final-September-15-2025.pdf; and Law Commission of Ontario, "Letter to Courts of Ontario Artificial Intelligence Subcommittee of the Civil Rules Committee re: AI and Bias – Additional Submissions" (December 1 2025), at 2, on file with the LCO

13 Since releasing its original proposal, the Sub-Committee has sought submissions, held a townhall, and organized dedicated meetings/briefings on specific issues and topics. For LCOs submissions, see links in end note 12.

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Threat to Evidence Authenticity?" (June 11 2025), online: https://natlawreview.com/article/ai-generated-deepfakes-court-emerging-threat-evidence-authenticity.

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25 Law Commission of Ontario, "Letter to Courts of Ontario Artificial Intelligence Subcommittee of the Civil Rules Committee re: AI and Bias – Additional Submissions" (December 1 2025), at 2, on file with the LCO.

26 See Law Commission of Ontario, *AI and the Assessment of Risk in Bail, Sentencing and Recidivism: Paper 3 in the LCO AI in Criminal Justice Project* (Toronto: April 2025), online: https://www.lco-cdo.org/wp-content/uploads/2025/04/LCO-AI-in-Criminal-Justice-Paper-3-AI-and-Risk-Assessment.pdf. A more comparative discussion with experiences in the United States can be found in Law Commission of Ontario, *The Rise and Fall of Algorithms in American Criminal Justice: Lessons for Canada* (October 2020), online: https://www.lco-cdo.org/wp-content/uploads/2020/10/Criminal-AI-Paper-Final-Oct-28-2020.pdf.

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34 For a brief discussion see Law Commission of Ontario, *AI at Trial and On Appeal* (April 2025) at s. 3.2.2, online: https://www.lco-cdo.org/wp-content/uploads/2025/04/LCO-AI-in-Criminal-Justice-Paper-4-AI-at-Trial.pdf. For a longer discussion see Law Commission of Ontario, "Case Study 2: Are Intoxilyzers a Good Example of a Mixed Legislative and Court Approach to Regulating Technology?" in LCO AI in Criminal Justice Project *Annex B, Project Case Studies* (April 2025) at 18-19, online: https://www.lco-cdo.org/wp-content/uploads/2025/04/LCO-AI-in-Criminal-Justice-Annex-B-Case-Studies.pdf.

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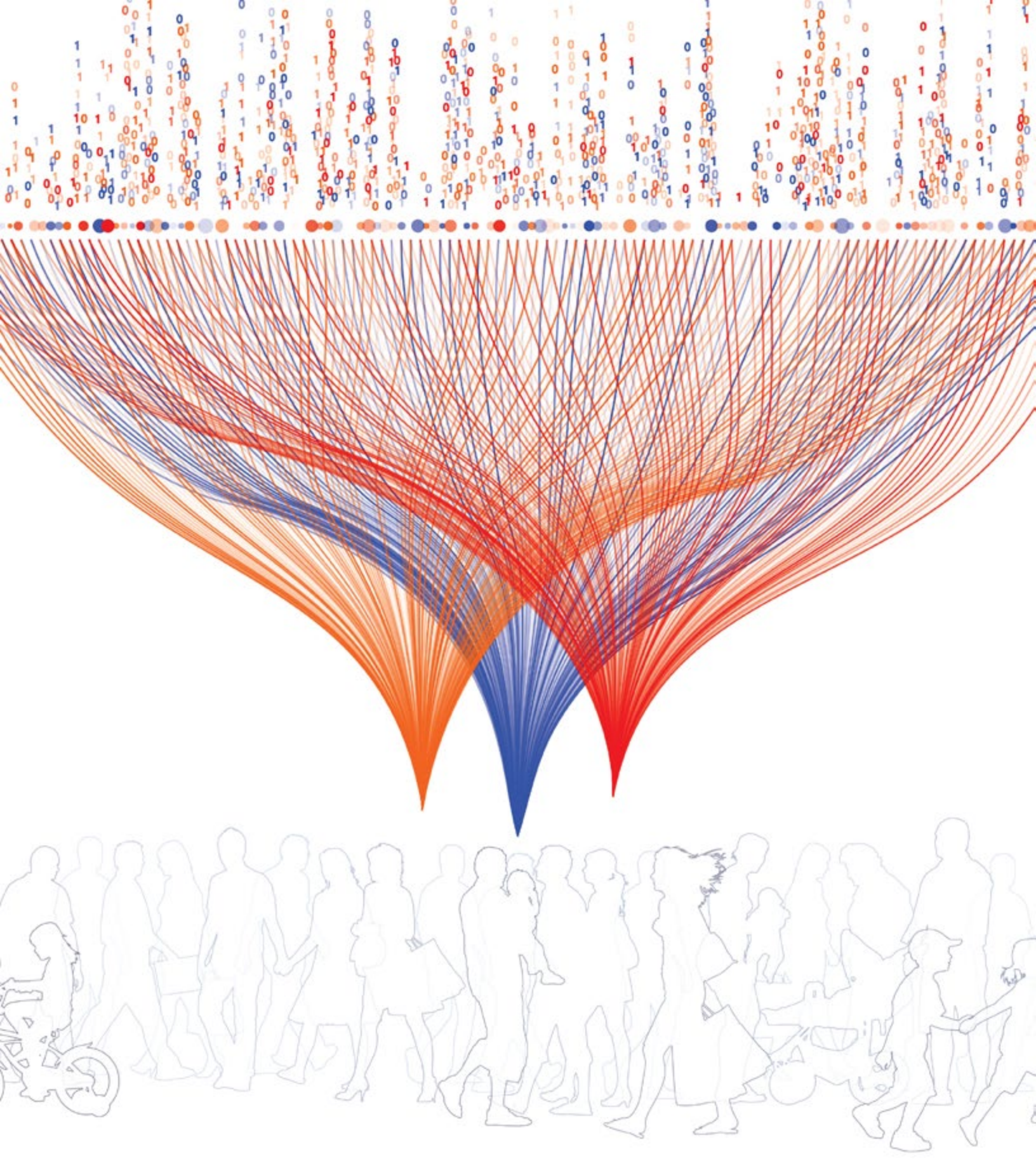

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