



# 5 SERVICES PRIVATE INVESTIGATORS PROVIDE TO LAWYERS



**Lyonswood**  
INVESTIGATIONS & FORENSICS



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Today's legal services industry is changing and it's no surprise that the industries providing support to legal professionals are in a dynamic state as well. Whereas once private investigators assisted lawyers in a select few areas of the law, such as the investigation of insurance claims, these days investigators are increasingly likely to have broad-based expertise.

The chances are, regardless of the area of law in which you practice, your clients could benefit from the services of an investigation firm. Lyonswood Investigations and Forensics has been the preferred investigative services provider for Australian lawyers for 35 years, assisting firms in a wide range of practice areas and in a variety of jurisdictions.

Just as we believe in educating ourselves about the law, we encourage our clients to learn about a few key service areas in which our evidence-gathering expertise can make all the difference. We have taken the time to set out the services investigators most commonly provide to lawyers below but, regardless of the form of evidence you require, please get in touch with us for an obligation-free discussion about your client's specific needs.



Although little is known in the legal fraternity about the capabilities of today's private investigators, surveillance is an investigative technique known to all. In the course of a surveillance engagement, a licensed field operative monitors a subject person or premises and documents relevant activity on video and in a written report.



## SURVEILLANCE IS AN INVESTIGATIVE TECHNIQUE KNOWN TO ALL

Despite the fact that surveillance is a well-known investigative technique, the circumstances in which it can be useful are not instantly recognizable. Beyond personal injury and infidelity investigations there are a multitude of situations in which surveillance evidence can assist in achieving the client's objectives. They include:

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### **BREACH OF CONTRACT**

for example a breach of restraint of trade clause or fiduciary duty in an employment contract.

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### **BREACH OF INTELLECTUAL PROPERTY**

including proof of use of a trademark or breach of confidentiality.

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**PROOF OF INCOME**

for example in family law financial settlements.

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**PROOF OF NEGLIGENCE**

in child access cases.

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**PROOF OF PLACE OF RESIDENCY**

for substituted service or other purpose.

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**PROOF OF MALICIOUS DAMAGE, STALKING, HARASSMENT  
OR BREACH OF AN AVO**

or similar order

.....

**PROOF OF BREACH OF DEVELOPMENT LAWS AND REGULATIONS**

or similar order

.....

**PROOF OF BREACH OF TENANCY AGREEMENT.**

.....

Where required, surveillance operatives provide affidavit or testimonial evidence and digital surveillance footage. As with any area of investigations, observations need not necessarily be conducted for the purposes of court hearings but can just be for a client's peace of mind.

Regardless of the objective, a competent and experienced investigator can advise a client as to whether there is a prospect that surveillance will assist him or her to gather the evidence needed.

If seeking an estimate of costs for surveillance, it is important to provide the investigator with as many details as possible regarding the circumstances and the subject of the investigation. Lawyers should always strongly consider discussing the optimal investigation plan with the investigator before issuing instructions as minor changes can potentially dramatically affect the outcome of a surveillance engagement.



Databases play an important role in modern investigative work. As technology develops and the need for information grows, investigators have at their fingertips increasingly powerful digital tools. Databases are used for a number of purposes in litigated matters, including:

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**LOCATING PERSONS**  
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**CONDUCTING ASSET SEARCHES**  
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**CARRYING OUT BACKGROUND CHECKS**  
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.....  
**IDENTIFYING THE RESIDENT OF A PARTICULAR ADDRESS**  
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.....  
**IDENTIFYING THE OWNER OF A PHONE NUMBER**  
.....

.....  
**OBTAINING SAMPLES OF A PERSON'S SIGNATURE**  
.....

Database searches are often useful for clients wishing to locate a debtor, a witness, a beneficiary or a relative. Asset and background checks may also be required for existing or potential family members, family provision claimants and potential business partners. On occasion, investigators can help persons, including police, witnesses and lawyers, to effectively disappear from databases so as to be all but untraceable.

Other investigative services may be needed to complement searches but usually the searches are examined first as they are relatively inexpensive. Getting an approximate estimate of costs is straightforward provided you can concisely set out your objectives and provide the investigator with key details.



A computer forensic technician is an investigator who specialises in obtaining and presenting digital evidence. Evidence of this type can be sourced from computer hard drives, smartphone drives, digital storage devices, websites, digital cameras and so on.

The evidence may already exist, on a storage device for example, or it may need to be unearthed after an investigation, such as would occur in tricking a cyberbully into divulging his or her IP address.

While IT support staff may have knowledge regarding IT systems generally, they are not cognisant of the forensic protocols that should be adhered to when documenting evidence. In fact, the very act of accessing data may affect it, compromising the forensic quality of the evidence. If there is any prospect that the validity of digital evidence will be questioned then a forensic computer technician should be consulted immediately.

It is important to provide the technician with as many details regarding the subject infrastructure as possible to be able to obtain an estimate of costs. Extracting data from a smartphone is of a vastly different scope to searching for deleted emails on a large company server for example.

As is the case in investigations generally, cases involving computer forensic expertise often also require the deployment of other investigative skills. It is therefore important to engage a broad-based investigator who can manage the various elements of the case concurrently. Our broad-based experience enabled us to assist our client get judgment in the Supreme Court in AS v Murray [2013] NSWSC 733 (4 June 2013), a matter which helped develop the Tort of Intimidation.



A COMPUTER  
FORENSIC  
TECHNICIAN  
**SPECIALISES IN  
OBTAINING AND  
PRESENTING  
DIGITAL  
EVIDENCE**



A forensic handwriting and signature expert is accepted at the court level as an expert in the examination of handwritten text. With the aging of Australia's population and an increase in the amount of litigation over wills and estates, there is a concurrent growth in the needs for handwriting analysis. The analysis is not restricted to wills however and can be useful in disputes over loans, family law settlements and in cases of handwritten threats or defamatory notes.

In most cases the expert will be called upon to compare handwriting or signatures to express an opinion as to authorship. There is usually a sample of writing, the authorship of which is questioned. This is compared against genuine specimen samples, known to have been authored by a particular person.

Provided there is a sufficient amount of writing to examine and provided the writing is sufficiently distinctive, the expert will offer an opinion as to whether the author of the specimen sample is also the author of the questioned documents. The process is virtually identical for signatures.

The key is providing the expert with enough samples for a forensic opinion of some strength to be formulated. In order to understand what type of documents are required and in order to obtain an estimate, contact a handwriting expert ensuring there is ample time to search for documents before the court hearing dates.



## FACTUAL INVESTIGATION

The term factual investigation is typically understood to refer to an investigation carried out on behalf of an insurance company into the circumstances surrounding an insurance or negligence claim. In truth, the term can be applied to an investigation into any event or set of events that needs to be retrospectively examined. An example is an investigation into an alleged breach of a code of conduct in a workplace to determine whether there is sufficient evidence of wrongdoing to bring disciplinary proceedings.



LOOKS AT  
**ANY EVENT OR SET  
OF EVENTS THAT  
NEEDS TO BE  
RETROSPECTIVELY  
EXAMINED.**

A factual investigator will seek to gain an understanding of the facts surrounding the subject event so as to ensure solicitors and / or barristers are properly briefed at an early stage. Usually interviews with witnesses will be conducted, statements taken and relevant documents sought.

Investigators cannot compel witnesses to give statements but experienced factual investigators are resourceful and will endeavour to lawfully gather all available evidence, one way or another.

Unless there is a specific brief, a factual investigation might be difficult to quote for as there are often unknown elements that cannot be accounted for at the outset. If necessary, in ongoing matters a factual investigator can periodically provide interim invoices regarding costs incurred.