

September 25, 2014

Is Paper What Ails the Justice System?

At least one Superior Court judge seems to think so. In a decision on costs, Justice David Brown made the following comment regarding the claims for photocopying:

At least one Superior Court judge seems to think so. In a decision on costs, Justice David Brown made the following comment regarding the claims for photocopying:

Although the parties in this case most helpfully provided me with electronic copies of all materials filed, the continued requirement that the parties file paper copies of materials with the Ontario Superior Court of Justice imposes an unnecessary cost on litigants who avail themselves of the service of this Court. If our provincial government truly is committed to providing the residents of this province with access to affordable justice, it must remove the very real financial barriers to such access caused by the continued insistence that litigants deal with this Court through the dated and expensive medium of paper.

(See 2014 ONSC 5063; <http://canlii.ca/t/g8swh>)

Is paper really at the heart of the legal system's access to justice woes? Consider the situation of Mr. Mehedi, who wished to bring a motion pursuant to s. 59.06 of the *Rules of Civil Procedure* to have a judgment set aside on the ground of fraud, relying on new evidence that came to light following trial.

Believing that such a motion must come before the original trial judge, his counsel wrote to the judge asking for dates for the hearing of his motion. In response, he received a letter advising that it was inappropriate to communicate with a judge directly and that he ought to schedule his motion through the Court Registry. When he attempted to do so, the trial scheduling clerk told Mr. Mehedi that a motion before the trial judge could not be booked since the scheduling office was not privy to the schedules of specific judges.

Mr. Mehedi's counsel then contacted the trial judge's assistant and was informed that the trial judge would be sitting in criminal court for the foreseeable future. To schedule his motion, Mr. Mehedi should bring a preliminary motion for directions. Mr. Mehedi did so. The motion judge's endorsement stated that since the original matter had been appealed to the Court of

Appeal, directions should in fact be sought from that court as a motion to re-open the appeal.

That was how Mr. Mehedi came to be before Juriansz J.A., representing himself, two-and-a half years after the fresh evidence came to light. What did the Court of Appeal conclude? That it was not in fact the correct forum and that Mr. Mehedi's motion could be brought before *any* judge of the Superior Court, scheduled in the ordinary way.

(For the full decision of the Court of Appeal, see 2014 ONCA 604; <http://canlii.ca/t/g8pmw>)