



Updates on Technology in the Courtroom

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Our Superior Court has finally entered the electronic age! No, we don't yet have a U.S. PACER style computerized filing system where all court documents are in electronic form and accessible to all. And, no, we haven't come so far as to set up wifi access throughout the court system, such that we can all download and read the OR's while waiting in court. However, two recent events would appear to indicate that the Ministry of the Attorney General has finally decided that there's no going back, and that the Superior Court has to face up to the digital reality that is going on all around it. I write of the introduction of digital recording devices (DRD's) into the courtrooms in Toronto (the last place in all of Ontario, and perhaps the country, to do so) and a brand new electronic devices protocol. What, you say? Read carefully, your career in court may depend upon it, in more ways than one.

WARNING! Open Mic Sessions Now Appearing At A Courtroom Near You!

The next time you're in court, be very careful what you say! Effective January 2, 2013, DRD's are in place and active in all Superior Court courtrooms in the Toronto region (in fact, across the province).

From this point forward, oral testimony in a proceeding will no longer be recorded by court reporters, but instead will be recorded via these DRD's. The same thing applies if judges require audio recordings be made in the case of self-represented litigants appearing in court. To supplement the audio portion of the recordings, human "monitors" will be in place in the courtrooms and will make typed, searchable annotations to the audio recording, as the evidence is being given. They will note down specific items in the evidence, such as "discussion of where and when promissory note executed". Judges and counsel will then be able to review or search the annotations for the particular portion of the evidence in which they are interested.

The good news is that counsel will be able to get complete and annotated recordings of the evidence on CD-ROMs right away at the end of each day (no waiting for transcripts – in fact there will be no transcripts, unless specifically requested by the judge or counsel. Note also that there will be a nominal charge for the CD-ROMs.) The potentially bad news is that the 17 or so extremely sensitive microphones placed in each courtroom will be simultaneously recording everything (that means EVERYTHING!) anyone says, including comments by lawyers at counsel tables and discussions with their clients, if they happen to be too close to the open microphones. So remember, if you can't say anything nice, write it on a Post-It Note!

Representatives of various organizations of the bar and members of the bench have already met with representatives of the Ministry of the Attorney General (MAG), who is in charge of the new system, to discuss their concerns, and a follow up meeting is being scheduled for April 2013, to discuss where things stand once the system has been up and running for a few months. If you have any concerns or questions, please forward these to [Terrine Glover](#) of the OBA's Civil Litigation section, so that they may be raised in a future meeting.

In the meantime, watch what you say when you're next in court! You want the witnesses' testimony on the record, not your off-the-cuff or off-colour comments!

To Tweet or Not to Tweet, That Was the Question

On February 1, 2013, the Superior Court's new Electronic Devices Protocol takes effect across Ontario. The Protocol is now on the Superior Court's website (<http://www.ontariocourts.ca/scj/en/notices/protocols/>), but, briefly stated, it bans the use of all electronic devices (broadly defined to include "all forms of" computers, personal electronic and digital devices, and mobile phones) in courtrooms, except by counsel, licensed paralegals, law students and law clerks who are assisting counsel during the proceeding, self-represented parties and the media. Members of the public are not permitted to use such devices in the courtroom, unless the presiding judge orders otherwise.

Even there, there are restrictions on the use of the devices for those who are permitted to use them. For example, no talking on them while in court (that should be pretty obvious, yet, there must be a reason it's in the Protocol), the devices cannot interfere with "courtroom decorum" (no ringing, buzzing, or other noisy sound effects) or the court recording equipment (see above, and think about how mobile phones can and often do cause interference with audio equipment). Authorized persons are permitted to "tweet" or, in court parlance, send "publicly accessible live communications" while in court, provided they comply with all other aspects of the Protocol. Plus, while certain persons (this time also excluding paralegals, students and clerks) are permitted to make an audio recording of a proceeding (no photos or videos unless specifically authorized), those recordings can only be used for "note-taking purposes", and the recordings are not permitted to be sent from the device.

And what happens if you don't comply with the Protocol? Well, the Protocol provides the presiding judge (includes Small Claims Court judges and masters) with the power to force the offending person to turn off the device, leave the device outside the courtroom or even leave the courtroom! Worse, in certain cases, the person could even be cited for contempt of court.

So, if the fact that all of your communications are being recorded is not enough to persuade you to put the Blackberry away the next time you're in court, maybe a citation for contempt of court will do the trick! Be safe - turn off your mobile devices. Make sure your clients do the same, as they aren't allowed to use electronic devices in the courtrooms at any time. And forget the tweeting and concentrate on your case. We'll all be better off for it.

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