Ontario Deputy Judges Association

From the Editor

By Beverley A. Martel

I hope you enjoy this edition of ODJA's Newsletter. It offers a little bit of everything; opinion, observation, humour and information. This is the last edition published by Trish and Erin and I cannot thank them enough for taking on this chore. And of course, welcome back Sandra! You have some large shoes to fill but I know you're up to it.

Like many of you I find time passing much too quickly of late. I hear folk far younger than I lamenting "where did summer go?" and while I share the same emotion I also wonder, "where oh where did the last two decades go?" Our eldest grandchild, a baby only yesterday it seems, celebrated his 24th birthday over Labour Day weekend. At the other end of the spectrum our youngest grandchild (also a boy) is just 11 weeks old. What kind of world will he inherit I wonder? What have I done to make it a better place for him to grow up in?

However, I digress (one of the perks of editing my own work).
Overall, the pandemic panic seems to have abated and most of us have adapted to our new virtual world, so much so that one's first in-person trial can be rather unsettling. I'm sure it's not only Brampton experiencing more than a few "glitches" in the courtroom. If nothing else the last two years have taught me that patience is not only a virtue, it's the only way to preserve one's sanity when the proverbial s**t hits the technology fan.

So, read on, learn a little, laugh a little, (who doesn't need a laugh?) and have a Fantastic Fall!!!

You deserve it dear colleagues, each and every one of you.

Bev Martel

ODJA

When Less is More; Effective Communication in Court

By Jack Zwicker

Perhaps Covid 19 has affected the way that parties and their representatives communicate with Court staff and with us as Deputy Judges.   Perhaps not.

In the good old days, before Covid struck and we were paper based, I don't recall seeing the volume of documents we are now regularly being bombarded with. Of course, a file that had been in the system for several years might begin to resemble a Superior Court of Justice file.

Post Covid I am regularly seeing Claims, sometimes Defences that run 10 to 15 pages. That isn't so bad. But where the system is being bombarded is with multiple tabbed documents that are uploaded with Claims or Defenses.

Rule 1.03 of the Small Claims Court regulation under which we operate mandates that our court is to secure the "just, most expeditious and least expensive determination of every proceeding on its merits…." While this Rule establishes a normative view of the mandate of small claims courts, it utterly fails to provide any mandatory guidelines for SRL's or legal representatives to follow such as:

i)   Laying out a concise Claim or Defence that informs the Court only of the essential facts and legal principles in play.
ii)   Prescribing maximum page limits for all pleadings.
iii)   Reminding parties that when Claims specifically ask for the 'what, when and why' of a Claim, these forms must be filled out, not left blank.
iv)   Reminding parties and their legal representatives that document filings or critical extracts from them must be limited. All too often parties are uploading 75-100 page document filings to be used at settlement conferences.
v)   Reminding SRLS's and legal representatives that the fundamental purpose of a settlement conference is facilitation of settlement or at the very least, exploration of a possible pathway to settlement.
vi)   Redirecting attention from the 'what, when and the why' [ie litigious concerns] to the parties' financial and psychological interests wastes time during a limited one hour conference. We need to be able to hit the road running at 100 km and hour, applying a common sense cost-benefits approach. Parties who come to a conference intending to lay out a pre-trial preview of their case wastes their time and ours. Their mindset is litigious not facilitative.

When Less is More   (cont'd)

We all know that formal Rule change takes an Order in Council. Most of us will be past age 75 by the time that happens. I don't count on formal rule changes.

The dilemma, as I see it, has two critical components. Since virtual filings are and will remain the norm, we need to recognize that courts are overworked and understaffed. Excessive filings take time, especially when some parties experience technical difficulties with uploads and depend on court staff for assistance.

The second part of the dilemma is this. Once SRL's and legal representatives are all raring to 'argue' facts and law it takes time to refocus their attention to settlement using standard ADR principles that maximize mutual gain, or at the very least, minimize potential mutual loss.

Just because parties and legal representatives have the right to be heard does not mean that we should stand by and allow them to bicker. Of course, there will always be cases where the parties and their representatives are primed and itching for a fight. One of the obvious tip offs are parties and representatives who talk over others, refusing to listen much less acknowledge that the opposite party may have a grain of reasonableness in his position.

Short of any formal Rule changes, it may be worthwhile seeing whether our senior Justices would be prepared to author an across the province Memorandum to parties and court staff that is couched in 'instructive language' which aids all concerned on how to maximize the benefit of using small claims courts.

The bottom line is that using our courts as a documentary dumping ground comes at a cost to staff and to us as judges. It does neither any good if we are unable to make the system efficient. Rule 1.03 is a wonderful normative rule. But on its own it is insufficient to get us where we really need to go. We need to persuade stakeholders that "less is more".

Deputy Judge Jack Zwicker

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