

Time for courts to go paperless

BY BROOKE MACKENZIE

Much ink has been spilled, so to speak, on the Ontario courts' failure to move into the digital age. Despite this frequent criticism, the problem persists without a solution in sight.

Technology has made nearly every aspect of my day-to-day life more efficient and convenient. I now pay for my morning coffee and my groceries using my phone. I pre-order my lunch on an app while sitting at my desk. I use Skype to speak face-to-face with clients on the other side of the country and FaceTime to catch up with my five-year-old nephew.

And yet, when perfecting an appeal recently, I had to hire a process server to pick up boxes of paper transcripts, exhibits, appeal books and factums from my office, lug them to Osgoode Hall, wait in line and physically hand over these materials to the court registry officer for filing. This came at considerable cost to my client, notwithstanding the fact that the Rules of Civil Procedure also required us to file additional electronic copies of the transcripts and factum with the Court of Appeal for Ontario.

Recently, I served a defence on opposing counsel by fax — the latest and most efficient technology I can use to effect service without the express consent of the opposing parties. (If you're not yet convinced that our profession has fallen behind, ask your non-lawyer friends about the last time they used a fax machine.)

Neglecting to fully embrace simple, everyday technologies such as email, searchable PDFs and electronic scheduling creates unnecessary costs, wastes time and perpetuates inefficiencies in an already backlogged system. Moreover, the continuation of this woefully inadequate state of affairs erodes public confidence in the administration of justice and in the legal profession.

Last summer, Ontario Attorney General Yasir Naqvi expressed a commitment to "find ways to introduce



SPEAKER'S CORNER

more technological solutions" to make our courts "more effective and user-friendly." He has emphasized the need for Ontario to take incremental steps and research and build on what other jurisdictions have already done in this regard.

Although pleased he has identified this as a priority, I am skeptical. We've been down this road before. One need only look at Ontario's history with the failed "Integrated Justice Project" in the late 1990s and the "Court Information Management System" abandoned in 2013 to lose confidence in the prospect of seeing progress any time soon.

On April 24, a new Rule quietly came into effect. Rule 14.04 now provides that a statement of claim "may be filed electronically . . . in a court location for which the software authorized by the Ministry of the Attorney General for the purpose may be used . . ." Indeed, since 2014, various other rules have referred to "authorized software" for filing and issuing documents.

There has been no word, however, as to what this software might be and when it might be authorized. Given past experience, I expect it is years away. In the meantime, litigants and lawyers should not be stuck in an antiquated and expensive paper-based system. Here are three changes that can and should happen right now:

Eliminate the consent requirement for service by email: The rules permit service by email only "if the parties consent or the court orders." This is a modest, 20-century improvement on the pre-2014 rule, which required the recipient lawyer of record to reply to the email to validate service. The consent requirement is enough of an impediment to steer many of us to serve documents using more archaic means and, in any

case, adds time and cost to the litigation process. Most lawyers' email addresses are published online (whether on their firm website or the Law Society directory), and Microsoft Outlook can provide delivery receipts as proof of service. There is no reason I should have a fax number in 2017.

Accept electronic documents through existing filing systems: As noted above, the rules already require parties to file electronic copies of documents in certain circumstances, whether by sending the files to a dedicated court email address or by bringing a USB key to the court office. The Ontario Court of Appeal and the Commercial List have developed detailed guidelines to facilitate these filings — no "authorized software" required. Nevertheless, these electronic copies must be filed in addition to paper copies of the same documents. As a stop-gap until they implement effective online filing software, our courts should accept electronic documents as an alternative — not supplement — to paper copies. Our clients' legal bills are high enough; asking them to shell out hundreds of dollars for printing and binding is unjustifiable when the courts can and do accept electronic filings.

Research other jurisdictions' court technology: E-filing is permitted, at least to some extent, in British Columbia, Alberta, Newfoundland, New York, Delaware and California, to name a few. Despite the Rules' reference to "authorized software," MAG has not commenced an initiative to implement a province-wide e-filing system. Ontario does not have to re-invent the wheel; the software is out there, waiting to be authorized. Enough is enough. MAG should begin studying the options and their potential to scale in Ontario without delay. **LT**

▶ Brooke MacKenzie is a litigator in Toronto and the co-founder of MacKenzie Barristers PC. Her (largely paperless) practice focuses on civil appeals and professional responsibility issues.