

Financial Services Flash

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May 7, 2014

The Commercial List: A Court of the Future

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A recent case conference memorandum issued by the Honourable Mr. Justice David M. Brown of the Ontario Superior Court of Justice has received interest from the Commercial List bar, due to its focused discussion with respect to a desire to increase the use of e-trials at the Commercial List.

“Our community has undergone radical changes in the way it handles and communicates information ... Why should courts and lawyers be any different? Why should we be able to expect that treating courts like some kind of fossilized Jurassic Park will enable them to continue to provide a most needed service to the public in a way the public respects? How many wake-up calls do the legal profession and the court system need before both look around and discover that they have become irrelevant museum pieces?”

Could this be the wake-up call to the legal profession?

In *Bank of Montreal v. Faibish*, 2014 ONSC 2178, 2014 CarswellOnt 4364, Justice Brown’s often colourful memorandum, including the quotation above, provides guidance with respect to the court’s support for greater use of e-trials. Justice Brown asked counsel to consult as to whether the trial should be conducted as an e-trial, and in response to some counsel’s communication of a desire to conduct a traditional “paper” trial, Justice Brown stated at paragraph 5:

“Our Court must choose: are we a Court of the Past or a Court of the Future? I vote for a Court of the Future, and therefore I will not accept counsel’s suggestion that the six-week trial for this complex commercial litigation on the Toronto Region Commercial List proceed using both paper and digital information. I know there

are judges available who are chomping at the bit to conduct more e-trials. Paper must vanish from this Court and, frankly, the judiciary cannot let the legal profession or our court service provider hold us back. Accordingly, I order that [the trial] be conducted as electronic trials.”

Accordingly, financial institutions, receivers, monitors and other parties who interact primarily with the legal system via the Commercial List should review their current practices and capacity to conduct e-trials, and bring to bear other electronic means to ensure compliance with the future direction of the Commercial List.

In support of this electronic disclosure trend, the judiciary has also informally disclosed to bankruptcy and insolvency professionals, including, without limitation, receivers, monitors and trustees in bankruptcy, of the court’s expectation that not only will orders and reports be posted online, but these websites will also include, as appropriate, motion records and all other relevant court materials. Accordingly, insolvency professionals should review current practices to ensure that all relevant documents will be properly posted and that electronic means are brought to bear in any process, even those of the most traditional (and sometimes archaic) nature, to make such matters more efficient and effective.

The Financial Services Group at Aird & Berlis LLP has extensive experience with matters in front of the Commercial List. For more information, please contact any member of the Financial Services Group. Details can be found on our [Financial Services, Insolvency and Restructuring](#) web page, by clicking on [members](#).

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