Judge Slams Excessive Legal Fees, Endorses Use of AI in Legal Practice

We here at LexisNexis have not been subtle about our views on the impact we believe artificial intelligence is having—and will continue to have—on the practice of law. We've told you how AI is evolving the practice of small law. And we recently discussed how AI can help small law firms level the discovery playing field.

While we believe—humbly of course—that we are an authoritative source for all things legal, we understand that attorneys tend to give the most weight to words that come out of judges' mouths. So, when we learned of a decision delivered north of the border in late 2018 by Justice A.C.R. Whitten of the Ontario Superior Court of Justice, we were intrigued.

In that decision, Justice Whitten casually mentioned that the use of AI in legal research would have reduced the amount of time one of the attorneys for the defendant would have spent preparing his client's case.

The decision concerned a request for attorneys' fees and expenses by defendant, Port Dalhousie Vitalization Corporation (PDVC). The court granted summary judgment in PDVC's favor against a woman who sued PDVC after she slipped and fell at an Ontario bar for which PDVC was the landlord. The bar, My Cottage BBQ and Brew, defaulted in the case.

Excessive Attorneys' Fees

Justice Whitten was not impressed by PDVC's request for fees. He began his analysis by asking why two attorneys represented PDVC in a lawsuit that was "not so complex that there would be any need for a division of labour." He challenged the need for the attorneys to spend 26.5 hours defending a *pro forma* motion to amend a pleading. He further questioned why an attorney requested a fee for two court hearings that were handled by a law student. And, he thought the 80 hours spent preparing a summary judgment motion was excessive, noting that 20 to 30 hours would have been more acceptable.

Justice Whitten was similarly unimpressed by the defendant's request for about $24,000 in expenses. He trimmed a reimbursement request for a medical opinion by 50 percent (from $10,000 to $5,000).

A Call for AI in Legal Research

Then Justice Whitten turned to the defendant's request for $900 in research-related expenses. And *that's* where we encounter the topic of AI. The judge questioned the need for the legal research given the nature of the case and what was being researched. He ultimately denied the $900 request. But not before he said the following:

"If artificial intelligence sources were employed, no doubt counsel's preparation time would have been significantly reduced."

And then, just like that, he moved on to address (and ultimately reject) the defendant's request for reimbursement of $5,500 in costs awarded *against* the defendant earlier in the litigation for questionable litigation behavior.

What is most striking—and most promising—about Justice Whitten's reference to AI is how matter-of-fact it was.

There was no history lesson about what AI is and how it came to be.

There was no long string citation to cases that reference the use of AI in litigation.

There was no discussion of how Justice Whitten envisioned defense counsel using AI for its legal research.

There was just a passing reference to using AI in legal research.

Now, to be clear, we will never know how much Justice Whitten thought AI would have helped here. After all, the legal research bill at issue was only $900. And Justice Whitten's analysis does not touch on the costs of implementing the AI software, whether those costs are billable to the client, etc. He just mentions AI and moves on to the next topic.

But that's exactly why we were so intrigued by this relatively obscure decision.

Justice Whitten's nonchalant reference to using AI in legal research, and his choice to not go into further detail about AI, is exactly how a lawyer would expect a judge to discuss a well-established legal tool for which no further explanation is necessary.

AI is here and ready to help attorneys of all stripes practice law more effectively and more efficiently. Justice Whitten is the latest judge to remind attorneys of that fact.

He will not be the last.

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