

Neil Wilson: The Ontario justice system is ‘a cattle call of lawyers’

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“Access to justice” has been a perennial concern for the legal profession, the government and the public for many years. While there is no single solution for the general unaffordability of lawyers, one long-overdue step in the right direction is the modernization of the administration of our civil courts.

The acute accessibility problems in civil courts have been remarked upon in the highest ranks of our judiciary. Canada’s Chief Justice Beverley McLachlin recently described the situation as a threat to the rule of law. The Canadian Bar Association has long warned of a “crisis.”

The core problem is that lawyers are expensive. Sadly, in Ontario, a large part of the expense of hiring a litigation lawyer is a civil justice system that wastes lawyers’ time — and most civil litigators bill by the hour.

On any given day, courtrooms across Ontario are filled with lawyers not arguing motions and trials, but rather scheduling motions and trials to be heard in the future. Even when both parties’ lawyers agree on the hearing date, as is often the case, an appearance before a judge to bless the scheduling of the hearing is in many cases mandatory. Counsel often sit around for hours waiting for their case to be called.

The courtrooms where lawyers aren’t scheduling motions are filled with lawyers who are waiting for their motions to be heard. Because there are no specifically allotted time slots, all the lawyers with motions show up at the same time. Again, they sit around until their motion is heard.

Finally, once the lawyer’s motion is heard, he or she may have to contend with the inefficiency of the court’s outdated paper-based document management system. Justice David Brown, a Toronto commercial judge, has described the lack of an electronic document tracking system as a “scandalous” state of affairs the costs of which are borne by litigants. He has even gone so far as to suggest that the current “antiquated” and “wholly-inadequate” system may fail to meet the province’s basic constitutional responsibility for the maintenance of provincial courts.

Clients shouldn’t have to pay their lawyers to sit around in court. Three simple changes would make a huge difference:

First, eliminate the requirement to attend court simply to book motion or trial dates. In cases where the parties are in agreement on scheduling a date, a flesh-and-blood appearance before a judge should not be mandatory.

Second, institute an electronic motion booking system where parties can log in and sign up for a date and specific time slot for a motion. This would be a simple, cheap and effective tool to ease court congestion and eliminate the cost of running hearings, the result of which could be accomplished with the click of a mouse. (As a colleague recently pointed out, if his tennis club can manage online bookings, why can't Ontario's Superior Court, the biggest in Canada?)

Third, create an electronic document management system. As entertaining as Justice Brown's tales of court staff frantically running between buildings looking for documents and judges on their hands and knees rifling through piles of paper are, stories like these bring home the real cost an outdated system places on litigants, the courts and ultimately the taxpayer.

These suggestions are hardly novel. In 2007, the government commissioned the Honourable Coulter A. Osbourne to investigate the state of civil justice in Ontario. His report, the Civil Justice Reform Project, described certain scheduling courts as "little more than a cattle call of lawyers, for which the appearance of counsel added nothing except costs to their clients." The report deemed having lawyers wait in court all day to argue a motion "unacceptable on cost grounds." Yet more than five years later, these problems persist.

Contrary to popular belief, lawyers are capable of acting like adults. We can handle booking court appearances without judicial supervision and are not averse to change. Hopefully not contrary to popular belief, lawyers want what is best for their clients and the public, and what is best for both is an efficient 21st-century court system.

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