



February 22, 2023

The Honourable Geoffrey B. Morawetz
Chief Justice
Ontario Superior Court of Justice
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N5

Via Email (joshua.patlik@ontario.ca)

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Dear Chief Justice:

Re: Practice Direction Concerns and CaseLines

The Federation of Ontario Law Associations (FOLA) represents Ontario's 46 county and district law associations, and through them, their members. Most of those members are lawyers in the private bar, at the frontlines of legal practice in sole practice and small firms.

I write on behalf of the litigators in this constituency to relay growing concerns about the court's expectations regarding the use of CaseLines.

To be clear, FOLA is of the view that CaseLines has been a positive development in the long-overdue modernization of the Superior Court. We welcome its use and expansion to other courts, and we encourage all members of the judiciary to become more accustomed to its functionality so that printing and binding documents can be avoided and court staff time can be prioritized for other needs. We are optimistic that CaseLines (or a similar online platform) will eventually form part of a single, end-to-end filing and document sharing system that is used by all Ontario courts and that respects the open court principle. We hope that the judiciary shares this aspiration.

Our immediate concern arises in the context of the judiciary's expectations of counsel relating to the format and preparation of documents uploaded for use in CaseLines. These requirements are largely set out in practice directions, and not rules of court. Some of these expectations have recently been commented on in the court's own decisions. We flag the following sample passages, which appear to summarize current practice directions:

- "Lastly, I must comment on the use of CaseLines. The day before the hearing, my assistant contacted counsel to request that the material uploaded to CaseLines have proper hyperlinks. This means that there must be an index, identifying each exhibit, properly named, with

hyperlinks. Each exhibit must be hyperlinked in the body of the affidavits. List of authorities must be hyperlinked. Affidavits and caselaw must be hyperlinked in the body of factums. The respondent failed to do so.”¹

- “None of the parties hyperlinked the references to the evidence contained in their facta. Each such reference was to a motion record or transcripts with neither hyperlinks nor even a reference to the relevant Caselines page number. ... This failing alone is more than sufficient to warrant dismissal of this motion.”²
- “All factums and compendiums shall be hyperlinked to the evidentiary references within the CaseLines bundle, and to the case law and statutory provisions on which the parties rely.”³

With the greatest respect, our concern is that these expectations are unrealistic, when viewed from an access to justice and practicality standpoint. While we can appreciate that these decisions are merely articulating the requirements of the prevailing practice direction, the underlying directives themselves are problematic.

In regard to access to justice, it is crucial to understand that these expectations have a direct economic impact on already financially strained, ordinary Ontarians. They increase the growing number of Ontarians that simply cannot afford to pursue their cases in the Superior Court. We would like to ensure that the court appreciates the extra time burden these requirements are placing on lawyers and their staff (if they have any). These are burdens that ultimately get passed on to client accounts. It is difficult to argue that all of this time is adding value to the process.

The key issue is with the requirement to add links *between* documents *after* they are uploaded to CaseLines. Not only does this mean that the document on CaseLines is no longer the same document that was filed, but the cost and labour to carry out these tasks is immense. Adding hyperlinks between CaseLines documents after they are uploaded is detailed work that, in most cases, the lawyer would have to do themselves in order to have confidence that they can assist the court with the materials during the appearance. It could take many hours of billable time to perform this work for a single factum or affidavit – and those costs will ultimately be passed along to our clients.

The lawyer needs to budget sufficient time between receiving confirmation of a filing from Court Services and the appearance date to ensure that the material is reformatted for CaseLines. In some cases, the lawyer may not have prepared their compendium at the time the factum and record is served, as the compendium tends to accompany oral

¹ *Anthony v. Oqunbiyi*, 2023 ONSC 861 at para. [35](#) (emphasis added).

² *Basaraba v. Bridal Image Inc.*, 2021 ONSC 8038 at paras. [7-8](#) (emphasis added).

³ *Attorney General of Ontario v. Contents of TD Bank Account #1175-6485516*, 2021 ONSC 6386 at para. [21\(c\)\(ii\)](#) (emphasis added).

argument, meaning that a further round of linking could be required on the eve of a hearing. In many cases, the CaseLines portal is not even made available to the law office to perform these tasks until shortly before an appearance, even where documents are filed well in advance. This means that judge is likely to review the documents without the linking functionality in place.

Obviously, none of this is not ideal or cheap for court users. Where CaseLines is used in a Legal Aid matter, this puts further pressure on the lawyer's already limited certificate funds that could be used for substantive legal work. Canadian courts have repeatedly commented on the affordability of legal services and the crisis this is creating for access to justice. Onerous practice directions like the ones set out above are placing a further financial burden on parties.

From a practical standpoint, we are also not convinced that these measures are generating materials that are being used in the way the practice direction contemplates. For example, we repeatedly hear that judges are simply downloading the materials from CaseLines so that they can use the PDF files on their own device (or worse, they are printing them). When this happens, it means that hours of cross-referencing CaseLines documents has been for nothing, and any citations added that refers to CaseLines pagination was a waste of time.

In our view, it is a more useful exercise and more cost-conscious for practice directions to focus on hyperlinks within individual documents and to web-based materials. For instance, requiring that CaseLines documents contain hyperlinks to CanLII pinpoints, hyperlinked indices or tables of contents, and regular links throughout to return the reader to the index. These types of links can be easily entered in the drafting stage, in Word, before the materials are filed and uploaded. What is not as feasible or cost effective is the requirement to hyperlink the text of the affidavit to each of its exhibits or all evidentiary citations in a factum to the evidentiary record, as the above citations suggest is required. We would ask the court to dispense with this requirement in all practice directions other than in cases with the most voluminous records.

We can appreciate that some of the workflow concerns we are raising may not be clear to those who have not experienced CaseLines from the standpoint of the lawyer-user who is preparing for court. We would be pleased to speak further about these issues to assist the court in arriving at an appropriate balance that keeps costs to clients down while supporting the work of the court. We would also like to better understand how the judiciary uses the platform so that we can assist law associations in providing resources to legal counsel.

We acknowledge and appreciate that the judiciary has had to make rapid changes over the last few years and is working hard to improve access to justice through remote means, and increased use of technologies. For that work, we thank the court, and offer our assistance to work collaboratively to improve on these technologies.

As a goal in our efforts to resolve some of these issues and to improve the consistency of the materials uploaded to CaseLines by counsel, we would like to propose that all

CaseLines user accounts be given automatic access to a sample matter and individual bundle for their use and to practice uploading material. Within this sample matter, FOLA would be pleased to work with the court to develop and place a model set of materials to serve as a sample of the document functionality standards that are expected.

We thank you for your time in reviewing this letter and hope to hear from you on these issues. Should you wish to speak about these concerns further, please feel free to contact me directly at info@douglasjudson.ca.

Sincerely,



Douglas W. Judson
Chair

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