

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsement Continued

July 13/09. M. Mackillop for moving party  
T. O'Sullivan for responding party.

The solicitors met following their attendance on April 23/09 but unfortunately were unable to resolve the outstanding issues around production. Apparently at 5 p.m. on Friday July 10 the defendant did deliver correspondence where they agreed to produce some of the requested information. Unfortunately neither (plaintiff) counsel nor his associate reviewed the correspondence ~~and~~ if such detail so as to understand exactly what the defendant was prepared to deliver. Much of today's attendance dealt with everyone's attempt to decipher the intricate details of what the defendant would or would not produce. To have left this until the Friday before a holiday hearing when counsel were specifically instructed to deal with this on April 23 is disconcerting. Time has been wasted.

On the issues:

- (g) The defendant is prepared to provide detailed statistics including year of call, billable hours for 2003-2006 for the IP and IP litigation group and rank. As well the defendant is prepared to deliver the compensation structure for income and equity partners nationally for the years 2003-2006. McCarthy is also prepared to deliver statistics on the admission to equity partnership nationally by gender for 2003-2006. This would include the ratio of male to female lawyers in the Toronto office from 2003-2006. The plaintiff is not satisfied with the scope of production and seeks information with respect to all lawyers in the Toronto office from 1999-2006. Specifically the plaintiff wants more than just IP and IP litigation information.
- With respect to the production spanning the years 1999-2006, I am of the view that the request is too broad at this stage of the inquiry. It may be that at discovery it becomes evident that the pre-2003 information is necessary but at this time, the 2003-2006 and production is so limited.

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On the issue of the limitation to IP and IP litigation, I find that narrowing the scope to only those departments is too limiting, particularly in light of the pleadings which clearly allege systemic gender discrimination. Accordingly, the information shall be produced across all departments within the Toronto office.

(h) Documents related to admission as counsel, income or equity partners. ~~the~~ The production is limited to 2004-2006 and is ~~is~~ ordered. The defendant is prepared to produce the applications for income and equity partnership. The plaintiff seeks production of all of the documents which the defendant considers when reviewing applications. The plaintiff wants all evaluations and memoranda used in consideration of partnership in the Toronto office. It may be that additional information such as evaluations and memoranda will become ~~be~~ producible in future but at this stage of the inquiry, the applications for income and equity partnership of all lawyers in the Toronto office are relevant and producible.

(i) Performance Reviews <sup>and emails</sup>  
As above - All the communication <sup>and emails</sup> regarding around the performance reviews is definitely premature. It is sufficient to produce the ~~the~~ performance reviews for all lawyers of a national bank who submitted applications to become income or equity partners and who were called to the bar between 1992 and 1997.

(j) Compensation documents  
The plaintiff wants all documents regarding compensation for all lawyers including IP and IP litigators in the Toronto office for 1999-2006 including gender, rank, year of call etc. The request is appropriate for the years 2003-2006.

(k) Billing rates  
The plaintiff is satisfied with the information provided by the defendant that the rates are set regionally and the Ontario rates have already been produced.

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On the issue of confidentiality and sensitivity of the information I find that the information is to be appropriately redacted so names will not be legible. The information is obviously subject to the implied undertaking rule. I do not believe that head-hunters would be particularly interested in information which is 5 years old but should consider have concerns, they may, on consent, request that I review any sensitive material and I would be pleased to do so.

Documents related to the cross-appointment of lawyers

The parties are now in agreement that the defendant shall produce information regarding any lawyers that do have cross-appointments during the years 2002-2006. This information is relevant to the pleading.

Documents relating to the formation of the defendant's IP and IP litigation group. It was agreed that the information sought by the plaintiff will be produced for the years 2002-2006.

Billable / Non-billable

There has been information produced but the plaintiff takes exception to it, as the client names and identification numbers have been redacted thereby making it difficult to decipher. The defendant has refused to divulge the information without a confidentiality order and I applaud their position. Confidentiality is the cornerstone of the solicitor/client relationship. The Law Society Rules protect that relationship unless either the client agrees to release of the information or a court so orders.

If after the plaintiff is examined for discovery the insufficiency of the information continues, then the parties may either together or with me, detail a confidentiality agreement. At this stage complete disclosure by court order or confidentiality agreement is premature.

All documents and information which have been ordered produced shall be produced by September 7/09. After the production have been reviewed, counsel shall meet by October 15/09 on the issue of e-discovery.

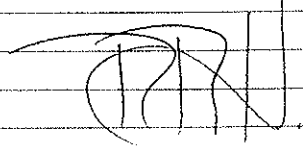
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Judges Endorsement Continued

Court's submission together with court's affidavits shall be exchanged and filed by August 15/09. If the parties cannot agree on the issue of costs. ~~the~~ The written submission shall be brief. No reply submissions may be ~~made~~ delivered without leave.

~~ALL INFORMATION~~



Master Ronna Brott