

Other Areas of Practice**In defence of data dumps | Marcel Strigberger**By **Marcel Strigberger**

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(June 12, 2020, 1:30 PM EDT) -- The Ontario Court of Appeal, in a recent case, *Welton v. United Lands Corporation Limited* 2020 ONCA 322, has accused many trial judges of being too verbose, saying their reasons for decision often amount to "factual data dumps." The court noted that the documents it must deal with often contain a "blizzard of words."

I say this criticism is harsh and unwarranted. I sympathize with the trial judges. In my view it is major challenge for a judge to find a good balance between dumping a verbal tsunami or being too skimpy.

To quote Einstein, "Everything should be made as simple as possible but not simpler."

Let us examine the tasks each of the two levels of court have. Compared to the job of a trial judge, being an Appeal Court judge is a breeze.

Firstly, let's remember that all judges are also lawyers firstly. We are obsessive about getting it right and therefore cautious about oversimplification. Why then for example would lawyers draft a will as, "Last will and testament. I give, devise and bequeath." They can simply say: "My will. My son Jeremy gets everything." Maybe for emphasis, they can add a "badda bing, badda boom." After all, all Jeremy wants to hear is, "What am I getting." I'll bet he never even heard of the word bequeath.

Being lawyers therefore, the Court of Appeal should be the first to understand that verbosity is in our DNA.

And they should appreciate the challenges of the trial judge, who generally sits for days or weeks listening to all the evidence. He or she has to take copious notes and then culls them, in order to write a fair and accurate decision to possibly make life easy for a potential appeals court justice. I don't know what the trial judge in *Welton* did wrong. I'm sure he tried hard to keep it balanced. I doubt his factual data dump included information such as, "10:03 a.m. I took a sip of water. Ahhh. Good."

The appellate judges on the other hand do not review the appeal documents until a day or so before the hearing. Also, there are three judges. One or all can do the work and ask questions of the lawyers. Their choice. If a judge chooses to daydream and think about when the Toronto Blue Jays will win the World Series again, no problem. Just maybe doodle a bit to make it look like he or she is absorbing the desperate lawyer's pitch.

After the argument of generally a half day or less, they can retire and one of them later gives reasons for their decision. The enviable part is that the other two judges can simply endorse the record with the words, "I agree." How balanced is that?

I have never known a losing lawyer to ask one of these judges the obvious question, "Why?" I was tempted a few times to ask it, and to add, "What law school did you go to?" I'd call "I agree" a bird-size data dump. I suppose if time is tight, they can even just say, "agree."

It reminds me of that Woody Allen quote where he says, "I took a speed-reading course once ... and I was able to go through *War and Peace* in 20 minutes. It's about Russia."

Furthermore the Court of Appeal panel judges can often make up their minds on the merits of the appeal quickly after the appellant lawyer's argument, and end it all, saying to the respondent's lawyer, "We don't have to hear from you, Ms. Bailey."

How's that for simplicity? A trial judge can't get off that easy. I practised for over 40 years and I always thought my clients were right. However never did I have the pleasure of a trial judge agreeing with me without me having to say a word. (I will add very often I thought my opponent's evidence was a data dump.

The Court of Appeal should appreciate the diligent efforts of trial judges to keep it balanced and simple. Then again, in both courts, judges are only judges, not Einsteins. Badda bing, badda boom.

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