

Judges must act to avoid 'Google mistrials'

Courts poked: tweets not sweet

BY ROBERT TODD
Law Times



Photo: Phil Brown

'The apparent problem in the U.S. should be ringing alarm bells in Canadian courtrooms,' says Adam Boni.

But Boni says members of Canada's legal community cannot simply shrug off the issue.

"The apparent problem in the U.S. should be ringing alarm bells in Canadian courtrooms," says Boni, who is a regional director

for Toronto with the Criminal Lawyers' Association. "I think this is a classic example of how technological advances can outpace developments in the administration of justice."

Boni says the reports have "taken everybody by surprise," and that lawyers simply assume jurors will follow instructions.

"I think we tend to downplay the impact of this technology on non-lawyers," he says.

"What it demonstrates is that human curiosity and our modern-day addiction to instantaneous information needs to be acknowledged in a very serious way."

If jurors are searching the Internet for news reports that might include excluded evidence, a fundamental right has been jeopardized, says Boni. He says the possible trend could become "corrosive to the right to a fair trial."

Boni says trial judges and lawyers must tackle the issue before it grabs hold in courts here. He suggests the following measures:

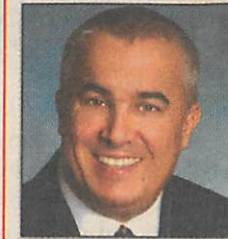
- judges and lawyers should discuss specific instructions for jurors during pre-charge conferences, and make clear the prohibition on Internet searches;
- judges must explain to jurors the reasons for the prohibition, including the fact that evidence in a trial is vetted by counsel and the court to ensure credibility, reliability, and fairness; and
- an immediate practice direction should be issued by regional senior justices on how trial judges ought to deal with this issue in the charge to the jury.

Boni says the latter recommendation should lead to the adoption of a uniform code of practice "without delay."

"What we don't want is a patchwork of different

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Quote of the week

"I used to live in Chinatown. I have no doubt that where I used to live would now be deemed contaminated."

— Harry Dahme, senior partner,
Gowling Lafleur Henderson LLP
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