

Lawyers' Professional Duties

Brian Sunohara
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In [*Blake v. Blake*](#), 2019 ONSC 4062, Regional Senior Justice Daley provided a detailed overview of a lawyer's professional duties to keep up to date on case law and to bring relevant authorities to the court's attention.

Disclosure of Authorities

Counsel have a positive duty to make full disclosure of all binding authorities relevant to a case, whether or not the authorities support or undermine the position being urged upon the court.

At the same time, lawyers are not required to present a disinterested account of the law. If possible, they should distinguish those authorities which do not support their clients' position.

Conducting Research

Lawyers have a duty to conduct reasonable research on points of law that are known in advance to be contentious. The *Rules of Professional Conduct* require lawyers to keep abreast of developments in all areas of law in which the lawyer practices.

Therefore, Regional Senior Justice Daley stated that ignorance may be no excuse. Counsel may be found to be in breach of their duty to the court if they do not conduct reasonable research.

Overview of Counsel's Responsibilities

Regional Senior Justice Daley stated as follows:

- Binding decisions must be raised if relevant.
- Cases that are not binding but are persuasive need not necessarily be provided to the court. However, counsel should nevertheless raise a case if it is on point and from the same jurisdiction.

- Where a lawyer submits that he or she did not know of an authority, in determining whether the lawyer ought to have known of the authority, the court may ask whether the authority was easy to find. If a lawyer practices in a specialized area of law, he or she should know the authorities in that area.
- Counsel cannot decide on their own whether or not a case is distinguishable. If the case is relevant and on point, they must bring it to the attention of the court and allow the judge to determine whether or not the case can be distinguished from the facts or from another decision.

Decision of Court

In the matter at hand, Regional Senior Justice Daley found that the respondent's lawyer purposefully did not bring a relevant case to his attention, which had been released prior to the argument of the motion.

While conducting his own research, Regional Senior Justice Daley came across a blog written by another lawyer at the same firm as the respondent's lawyer. The blog addressed the lower court's decision of the relevant case in issue, which was upheld by the Court of Appeal.

Due to this, Regional Senior Justice Daley drew an inference that the respondent's lawyer knew of the relevant authority at least by the date the blog was published, if not earlier.

Although oral argument of the motion took place prior to when the blog was published, counsel had a duty to inform the court of the relevant authority while the decision was under reserve.

Regional Senior Justice Daley stated that, apart from professional discipline or reprimand, the penalty for counsel's failure to comply with their duty to the court is typically reflected in a costs award. The respondent was ordered to pay substantial indemnity costs.

Conclusion

In summary, lawyers must keep current in the areas of law in which they practice, and they must be candid with the court at all times, including advising the court of authorities that go against their clients' position.