

Have jurors won the right to Google the accused?

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Justice Gladys Pardu of the Ontario Court of Appeal has dismissed an appeal that hinged on a juror Googling for information about the case.

photo from ultravires.ca

A trip to Tim Hortons was all it took to trigger a potentially precedent-setting court decision highlighting the need for our justice system to be brought into the 21st century.

It was 2012. A judge was about to sentence two brothers who had been convicted of possession of the proceeds of crime and conspiracy to traffic in cocaine, when one of the

jurors met a friend at a coffee shop.

They commiserated about a juror who Googled to learn information about the case that wasn't available in court; little did the pair know they were being overheard.

Soon after, a private investigator was knocking on the talkative juror's door and later, an appeal was launched by the accused brothers — Lucas and Leonard Farinacci Jr. They wanted their convictions overturned because they claimed jurors were exposed to “extrinsic” information, compromising their right to a fair trial.

But on Wednesday, an Ontario Court of Appeal judge disagreed, saying that “jurors do not live in a bubble” and “will be inevitably exposed to some aspects” of the publicity of a case, but that doesn't always compromise a trial.

Justice Gladys Pardu threw out the appeal on behalf of a three-judge panel, a decision that some are calling an “influential” move finally accounting for the wealth of information available to jurors at the click of a button.

“Jury members can be searching for information on an accused every day and as long as they aren't telling anyone they are doing it, no one will ever know. There is no doubt that this happens on a regular basis,” said Iain MacKinnon, a lawyer who represented the Star and other media in a fight to lift a publication ban associated with the case.

What rarely happens and what makes the case precedent-setting, he said, is that this time the jurors were caught.

That's usually not an easy feat considering the hours, sometimes even days, that jurors spend in deliberation rooms, far from the ears and influence of lawyers and the judge.

Before trials even begins, many judges read from a Canadian Judicial Council script warning jurors “not to use the Internet or any electronic device in connection with the case in any way.” Some repeat the caution just before deliberations begin, but jurors' online searches aren't tracked and they're never intensely grilled about any private investigations they start on the accused unless a concern arises.

Unless someone is “bold and brave enough to step forward” and point out a fellow juror who scoured the Internet or consulted media for concealed case details, MacKinnon said there's no way of knowing exactly when a juror might have quietly flouted their duties.

Frank Addario, a lawyer who represented Lucas Farinacci, said he deplores counsel who declare their own cases to be precedent-setting, but he believes this decision was an open invitation for jurors to Google the accused.

“We need to be realistic. Jurors fetch information outside of the trial. We have no idea how much. We have no idea if they are influenced by it,” he told the Star in an email. “The courts are generally incurious about that. Parliament encourages this by making jury inquiries difficult and jury research impossible.”

A case like this one, said MacKinnon, entangled with the realities of the Internet age, “highlights that jury instructions need to be brought into the 21st century.”

But revamping the system is quite a challenge, pointed out Criminal Lawyers’ Association president Anthony Moustacalis.

Previous trials that ran for months pressed the courts to stop sequestering juries, and there are few other ways to prevent jurors from acting on their curiosity, he said.

“With the increase in technology you would be able to look at what people are accessing, but that would be seen as an intrusion so other than reminding people about the importance about listening to what is said in the case, what else can you do?” he questioned.

Education is the answer, said Paul Cooper, who applied for a mistrial during the [Jennifer Pan](#) case after a juror was found to be texting his wife and getting information about things he should not have heard.

“It needs to be understood by the public that jurors have to be careful not to innocently or out of some suspicion go down a road that is against what is said in court,” he said. “They shouldn’t be Googling. When you are a juror, you are a judge, not an investigator and that needs to be taken seriously.”