

Law Society of Saskatchewan Webinar: “Creating and Managing a Digital Practice”

Introductory Comments:

In 2003, the Law Society of Saskatchewan (“LSS”) with the support of Saskatchewan Lawyers’ Insurance Association (“SLIA”) established the Practice Advisor Program.

The Practice Advisor Program is intended to be educational in nature, providing support to members in establishing and maintaining safe and effective practices.

The objective of the Practice Advisor Program is to identify practice issues and to assist lawyers with having adequate skills and knowledge for the practice of law.

During the past few years, the Practice Advisors have observed that many lawyers are moving toward a digital practice. In other words, many lawyers are moving away from having paper files to having electronic or digital files.

Arising from their reviews of members’ practices, the Practice Advisors have identified some practice issues associated with the move from paper files to digital files.

In response to the observations and concerns expressed by the Practice Advisors, in 2016 the Professional Standards Committee of the LSS struck a sub-committee/working group to examine the issues around law office digital practices. The committee members were: Ronni Nordal, David Rusnak, Q.C., Colin Clackson, Q.C., Andrew Mason, and Riley Potter.

The committee ultimately prepared the “Digital File Management - Practice Tips” paper. The paper may be found on the LSS website, at:

<https://www.lawsociety.sk.ca/media/394324/digitalfilemgmtjan2018.pdf>

I encourage all lawyers to review the paper.

Practice Issues Associated with a Digital/Electronic Files:

It is important to keep in mind that most of the same expected professional standards pertaining to paper files apply equally to electronic files. For example:

- i) As with paper files, lawyers are expected to have well-organized electronic files; and
- ii) As with paper files, lawyers are expected to ensure their electronic files are secure and the file contents remain confidential.

Email Address:

It is important to keep in mind that the professional standards set out in the **Code of Professional Conduct** pertaining to protecting the confidentiality of verbal and written client communications apply equally to protecting the confidentiality of electronic communications with clients.

There are many email service providers from which a lawyer/law firm may choose when establishing their practice, with levels of security and reliability varying among them.

Given lawyers' professional obligation to protect the confidentiality of client communications, lawyers would be best advised to speak with a qualified IT person and determine what email service providers are most appropriate for a law firm.

Cloud Computing:

Many lawyers are using a cloud computing services to store their law firm's data, including their clients' confidential, and often highly sensitive, data.

The Law Society of British Columbia ("LSBC") have prepared materials on cloud computing. Those materials are posted on the LSS website, at:

<https://www.lawsociety.sk.ca/media/61906/lbcloudservicereport2012.pdf>; and

<https://www.lawsociety.sk.ca/media/61907/lbcloudservicechecklist2013.pdf>

These are the most recent updated materials available on the use of cloud computing services by lawyers, though the LSS is looking into developing more up-to-date materials. For the time-being, lawyers who are interested in using a cloud computing service are best advised to read the LSBC materials.

The LSBC materials identify a number of best practices to consider putting in place should a cloud computing service provider be used to store the law firm's data and the clients' data.

Back Up of Electronic Data:

Recently **LSS Rule 961** has been amended to read as follows:

961(2) A firm using a computerized accounting system shall

(d) maintain an electronic backup of the accounting records updated on a weekly or more frequent basis in a safe and secure offsite location (emphasis added).

It is important to note there are the following two components to Rule 961(2)(d):

- i) Backup of the accounting records updated on at least a weekly basis; and
- ii) The backed up data must be kept in a safe and secure offsite location.

Concluding Comments:

As with all new practice initiatives a digital practice does present some important professional standard issues to keep in the forefront of your mind.

A well-researched and thought-out plan for transitioning from a paper practice to a digital practice is critical in order to make the transition as seamless as possible and to maintain required professional standards.

Colin's presentation along with the "Digital File Management - Practice Tips" paper will assist all lawyers intending to establish an electronic/digital file system.

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