

PRACTICE ADVISORS WEBINAR SERIES PART 2: Communication and Cloud Computing



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Law Society of Saskatchewan Practice Advisors

THE PRACTICE ADVISORS PROGRAM

The Professional Standards Committee piloted the Practice Advisors Program in 2003 and the Program was made permanent in 2005.

The purpose of the program is not disciplinary, but rather educational and supportive, to ensure that members bring adequate skills and knowledge to the practice of law.

THE PRACTICE ADVISORS PROGRAM

The role of the Practice Advisor and services is provided to members who meet any of the following criteria:

1. New sole practitioners*
2. Number of SLIA claims
3. Number, nature seriousness and timeframe of complaints
4. Number of accounting issues
5. Concerns raised by the courts and/or members
6. Failure to meet mandatory professional development requirements

** "New sole practitioners" includes both junior and senior lawyers who had previously worked in a large firm or corporate environment. "Sole practitioners" also includes members who practice in association where expenses are shared but there is no real firm management or consistency in office and accounting procedures.*

THE PRACTICE ADVISORS PROGRAM

For any members who do not meet the criteria noted, the Practice Review Program is available, though a fee is payable by the member.

Practice advisors can be appointed by the chair of the Professional Standards Committee to review complaint matters and to conduct a 'law office management review' as a result of the complaint or complaints.

As well, the Practice Advisors Program (in accordance with the criteria noted) is an effective way to have a practice advisor offer assistance to members in a proactive way without a complaint.

THE PRACTICE ADVISORS PROGRAM

When a matter is referred to the Practice Advisor, an on-site, hands on review of the member's office procedures, accounting system, file organization, file opening and closing practices, diary system, case advancement and general management of office, staff and clients is conducted.

The Practice Advisors provide practical and concrete advice for improvement and will assist the member in implementation of the recommendations.

EMERGING PRACTICE ISSUE

The Use of Cloud Computing for the Storage and Accessing of Client Information: Some Practical and Ethical Considerations



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INFORMATION PRIVACY AND DATA PROTECTION

LEXPERT upcoming seminar:

“Information Privacy and Data Protection:
Technology, Security and Corporate Accountability
in Today’s Marketplace”

December 9, 2013 - Toronto, ON

INFORMATION PRIVACY AND DATA PROTECTION

National September/October 2013 Vol. 22, No. 6:

- “On guard: In matters of data security, a firm’s lawyers are often the weakest link”, by Pablo Fuchs at page 7;
- “A five-point plan to having a rock-solid data-protection plan”, at pages 8-9;
- “Trends in data protection in Canada” at page 10; and
- “Leaking information: Law firms are hubs of confidential information. Are they doing enough to protect it from prying eyes?” at pages 12-17.

CODE OF PROFESSIONAL CONDUCT

2.05 Preservation of Client's Property

2.05(1) A lawyer must:

- (a) Care for a client's property as a careful and prudent owner would dealing with like property; and
- (b) Observe all relevant rules and law about the preservation of a client's property entrusted to a lawyer.

2.05(5) A lawyer must account promptly for clients' property that is in the lawyer's custody and deliver it to the order of the client on request or, if appropriate, at the conclusion of the retainer.

CODE OF PROFESSIONAL CONDUCT

2.03.1 Confidentiality

Confidential Information

s.2.03(1) A lawyer at all times must hold in strict confidence all information concerning the business and affairs of a client acquired in the course of the professional relationship and must not divulge any such information unless:

- (a) Expressly or impliedly authorized by the client;
- (b) Required by law of a court to do so;
- (c) Required to deliver the information to the Law Society;
- (d) Otherwise permitted by this rule.

WHAT IS CLOUD COMPUTING?

- What is the attraction of Cloud Computing for lawyers?
- What are the drawbacks to Cloud Computing for lawyers?
- Due Diligence.

LAW SOCIETY OF BRITISH COLUMBIA: CLOUD COMPUTING RESOURCE MATERIALS

- Law Society of British Columbia Report of the Cloud Computing Working Group (January 27, 2012)
- Law Society of British Columbia: Cloud Computing Checklist (January, 2013)
- The British Columbia Law Society Resource Materials are available on the Law Society of Saskatchewan website:
- See: Practice Resources: General Resources: Usage of Technology/Internet.

PRACTICAL AND ETHICAL CONSIDERATIONS

- Costs to use a Cloud Service Provider
- IT Considerations
- User reviews of Cloud Service Providers
- Sensitivity of the client information

CLOUD SERVICE PROVIDER AGREEMENTS

Read, and if necessary, negotiate the terms of the Cloud Service Provider's agreements.

NOTIFICATION TO CLIENT AND OBTAINING WRITTEN CONSENT

- Inform the client of the lawyer's intention to use a Cloud service provider for the storage of the client's information
- Obtain the client's written consent

BACK-UP

- Maintain a local backup of the data transferred to the cloud service provider
- Ensure the backup is stored in a safe, secure and fireproof location

SUCCESSOR

- Inform your successor that you are using a cloud service provider.
- Provide the successor with a copy of all agreements entered into with the cloud service provider.

LIABILITY INSURANCE

- Will professional liability insurance cover privacy issues arising from the use of a cloud?

APPLICATION OF PRIVACY LEGISLATION

- Law firms, like other organizations, must comply with privacy legislation
- The Federal Personal Information Protection and Electronic Documents Act, SC 2000, c.5 (“PIPEDA”)
- Office of the Privacy Commissioner of Canada booklet: “A Privacy Handbook for Lawyers: PIPEDA and Your Practice”- a good resource

CONCLUSION

- Cloud computing can offer many advantages to lawyers
- When considering the use of a cloud it is imperative that due diligence is done
- We are accountable to our clients (and ultimately to the Law Society) for the use and outsourcing of our clients' information
- The “buck stops with us”-we have the onus to protect and preserve the confidentiality of our clients' information

COMMUNICATION: COURTS AND CLIENTS



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COMMUNICATION

- Courts and Tribunals
- Clients

COURTS AND TRIBUNALS

- Formal Rules
 - Types of communication
 - Time frames

COURTS AND TRIBUNALS

- Less Formal Rules
 - Practice Directives
 - Administration Notices and Publications
<http://sasklawcourts.ca>

CLIENTS

- Communication is Competence
- Code of Professional Conduct
Chapter 2.01(1)

COMMUNICATION MUST BE...

- Honest
- Candid
- All information know that may affect the interests of the client.

CLIENTS WITH DIMINISHED CAPACITY

- Maintain a normal lawyer and client relationship

Code 2.02(9)

FEES

- Disclosed in a timely fashion

Code 2.06(1)

CONCLUSION

- Know the formal and informal rules
- Know your obligations under the Code
- Create an agreement with the client around communication
- Do not avoid bad news

CIVILITY IN COMMUNICATION



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OLD CODE OF CONDUCT

- Chapter I... “The lawyer shall discharge with integrity all duties owed to the clients, the Court, other members of the profession and public”
- Chapter XVI...”The lawyer’s conduct toward other lawyers should be characterized by courtesy and good faith”
- Chapter XIX...” The lawyer should observe the rules of professional conduct set out in the Code in the spirit as well as in the letter”

NEW CODE OF PROFESSIONAL CONDUCT

. Chapter 4, Rule 4.01 (5)... "A lawyer must be courteous civil and act in good faith to the tribunal and all persons to whom the lawyer has dealings"

- Chapter 6, Rule 6.02(1)... "A lawyer must be courteous and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice"
- Rule 6.02(4)... "A lawyer must not, in the course of a professional practice, send correspondence or otherwise communicate to a client, another lawyer or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer"

WITHDRAWAL

- Chapter 2, Rule 2.07(2)...” If there has been a serious loss of confidence between the lawyer and the client, the lawyer may withdraw”
- Recognize when its time to terminate the solicitor/client relationship
- No need to be discourteous or uncivil

OLD SCHOOL

- Indignation has no place in practice
- Anger and shouting has no place in practice
- You are not doing your job unless telling someone to “ off”

TAKE A DEEP BREATH

- Do not react immediately
- Sober second thought
- Review with a colleague
- Avoid complaints

?? QUESTIONS/COMMENTS ??



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FOR FURTHER INFORMATION...

- For further information regarding the Law Society Practice Advisor Program, or to contact a Law Society Practice Advisor:

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