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TECHNOLOGY TRENDS

CLOUD COMPUTING FOR LAWYERS

Let's delve for a moment into "cloud computing" – one of the hot topics in technology and the legal profession today. It's also known as internet-based computing, where shared resources, software and information are stored online and are therefore available to computers and hand-held devices whenever and wherever the user logs on.

Standard cloud computing providers deliver applications such as word processors, scheduling calendars, time tracking and billing information, which are accessed online using web-based services or software, while the data is stored on servers. Some examples of free cloud computing applications are Google Docs, Gmail, Google Calendar, or WebApps by Microsoft. You don't need software or a server to use them, just an internet connection. The server and software are all in the cloud (or internet) and managed by a "cloud" service provider such as Google or Microsoft.

The benefits are clear: as documents are saved on internet-based servers, consumers and businesses require only an internet connection to access their files. This means more efficient computing as all programs needed to manage your files are contained within these internet-based programs, instead of running several unrelated software packages. Another attractive element to cloud computing is its paperless operation – when all operations and data are stored in online servers, your office automatically becomes more 'green'.

DID YOU KNOW?

The 2010 World Cup was insured for approximately \$9.5 billion (Cdn). About half that amount related to stadiums and training venues built or refurbished. Another significant portion was insurance for the players. Players at the height of their careers playing in a top league could be insured for over \$75 million (Cdn), assuming there are no pre-existing injuries. This would cover their entire body for sports disability as well as potential damage to the players', or their teams', reputation.

Concerns for privacy and security continue to be raised, as some argue that client data is more secure when managed offline on an internal server, while others argue that cloud providers have an increased priority to guarantee confidence and security in their products to maintain their customer base.

There are several web-based practice management systems that are tailored to the needs of lawyers today. One example is Clio, which was produced with the cooperation and advice of the Law Society of British Columbia (LSBC). The LSBC identified the need for a web-based practice management tool to fit the needs of firms. A system was developed to address challenges faced by most solos and small firms: calendaring, time tracking, note taking, trust accounting and managing retainers. To help lawyers meet their professional and ethical obligations, the LSBC's Practice Standards division advised the integration of features in Clio, such as retainer tracking, trust accounting logic and fail-safe calendaring. For a monthly subscription fee of around \$50 (less for non-lawyers), Clio guarantees the availability of software applications, and the security and retention of ownership of your information, where some cloud-based providers may attempt to lay claim to your intellectual property. Visit www.clio.com for more information and to sign up for a free trial of all applications.

LR-ANGST

TEN THINGS (AND AN INSURANCE TIP) YOU MAY NOT KNOW ABOUT "THE SYSTEM."

This column is intended to provide some practical hints (sometimes miscellaneous, sometimes targeted) on working with the *Land Registration Act* (LRA) and its electronic functionality.

1. Most of you are familiar with s. 60 of the *LRA* as a means of challenging, and removing, recorded interests. There is no time constraint on when you can send out the demand – with known "slow" lenders, why not send it out at the same time as, or immediately after, paying out the mortgage? This is especially useful if it is to a virtual bank since you would usually have proof of delivery of the demand if you sent payment with a tracking method. Boy, does it cut down on the outstanding undertakings!
2. Regulation 22 provides that a lawyer who becomes aware

of an error made by him/her in a parcel must correct it; so if you're acting post-migration, how do you determine who migrated it? Go to "details view." The last entry should be "Section 43 Notice of Registration," and click on that link. It will have the name of the migrating lawyer.

3. The rules have changed several times on notices of registration of title by adverse possession. Remember there are now no exemptions and the notice must be served in Form 9, and the proof of notice must be recorded with the LRO using Form 26N.

4. Section 63 is like s. 60 in that it can be used to challenge interests in a parcel, but not a security interest. It can be used to challenge burdens (such as easements, restrictive covenants, etc.) that you don't think should be there. It can also be used to remove expired interests.

5. Don't take the client's word on intake whether the parcel has been migrated or not. We've all had people who claim their home is not mortgaged ("but that's only a line of credit") and migrations are somewhat similar. Also, the lands under conveyance may be two or more lots, but only the "house lot" might have been migrated when it was financed. Check online before committing to a quote.

6. Interests inherited on a subdivision can be corrected using a Form 24 under Code 451, without recording cost. This includes, in the northern region (Pictou, Cumberland, Colchester, Antigonish) old benefits/burdens that were denoted in 2003-4 by the name of the owner rather than "together with/subject to." It also includes adding a specific PID when the parcel contains a "various PIDs" benefit/burden.

7. Remember, you can't do anything with a subdivided parcel until the Form 45 has been filed adding access and confirming/removing interests (which are automatically "inherited" from the parent). Do this immediately upon receiving the approved recorded plan so you don't forget it. There is no cost to a Form 45 and, shortly, it is expected to be in electronic format.

8. Similarly, on subdivision, consider adding all of the benefits/burdens (easements, covenants) that are contemplated by the development using a Form 24 and an instrument from the developer to the developer pursuant to s. 61 of the Act – this reduces clutter, mistakes on conveyance/revision, and parcel mismatches.

9. Regulation 23(2), originally enacted in 2005, states that a parcel register is a complete statement of judgments up to migration or last revision, as the case may be. There is some dispute whether this is retrospective (i.e. to cover a missed judgment on a parcel migrated in 2004 and not since revised). Remember that judgments recorded from 1990 to 2003 are still valid for 20 years.

10. Do you have a similarly named judgment on which you can't find any information (e.g. from two owners ago on a parcel you are now migrating)? Consider using section 68 to

require the debtor to confirm or deny it is the same person. If they do not confirm within the required time, or do not answer, you can migrate free of the judgment.

11. Don't migrate a parcel before your second coffee.

NEXT TIME: "DE FACTOS AND DE FICTION"

IMPORTANCE OF RETAINERS

You would never advise a client to enter into an agreement without reducing it to writing. The agreement with your client for your services is no different. Having a written retainer avoids misunderstandings and miscommunications when it comes to collection of your account.

If there is no written retainer agreement between a lawyer and client, the Courts have held that the lawyer bears a "special onus" to prove the contractual terms. In *Ross, Barrett & Scott v. Simanic* (1997 Carswell NS 347), Moir J. stated as follows:

The controlling law on this issue is the basic law of contract and a special rule. Lawyers have a duty to establish their retainers with clarity and to reduce the contract to writing. A rule has developed because of that duty: where there is no written retainer, and there is a conflict in the evidence of the lawyer and the client as to a term of the retention, weight must be given to the version advanced by the client rather than that of the lawyer. Our Appeal Court has said that this is an accurate summary of the authorities on disputes arising from parol contracts for legal services.

This same rule applies in determining who is liable to pay the bill in the event that it is alleged that someone other than the client is responsible. (*Smith v. Ward*, 2009 NSSM 65).

A written retainer agreement is important for your protection as well as your client's. If your clients are fully aware of their obligations, you have a better chance of getting paid and it reduces the likelihood that your client will make a claim (or a complaint) with respect to your services.

ARE YOU ON A BOARD OF DIRECTORS? (PART II)

AN OVERVIEW OF STATUTORY LIABILITIES

Provincial and federal statutes impose many different liabilities on directors. Two of these statutes are noted below. This is not intended to be an exhaustive list.

Pursuant to provisions of the *Income Tax Act*, you could be held personally liable for un-remitted federal income tax withheld from wages or salary paid to employees. While there are provisions in the Act that provide protection from liability if you exercise due diligence, the burden of proof is on you, to prove on a balance of probabilities that you exercised due diligence in your role as a director. Whether

you will be found to have exercised due diligence will depend on the factors and circumstances of the particular case and your particular skills.

Depending on the circumstances, as a director you could face fines or even imprisonment for serious violations of our *Criminal Code*. Claims against directors have been made in various other areas as well, including employment, the environment and securities.

In the case of *Allen v. Aspen Group Resources Corporation*, 2009 Can LII 67668 (On S.C.), G.R. Strathy J. considered whether the essential elements existed for a cause of action in a claim against a lawyer and his law firm relating to the lawyer's statutory liability as a director and for the lawyer's negligence. He found that the action could proceed both against the lawyer and his law firm for the solicitor's alleged negligence and the alleged breach of his statutory obligation as a director.

REPORTING TO YOUR D & O INSURER

Because of your potential liability, you should understand the coverage and reporting requirements of any D & O coverage that you or the corporation might have. This type of coverage is normally a "claims-made" coverage. This means that to be covered, the claim must have been made against you during the policy period and you must report it to the insurer before the policy expires. Whenever you have knowledge of a claim or facts or circumstances that could give rise to a potential claim against you as a director, you should report this immediately to your insurer.

Make sure the corporation's or organization's staff is aware of this important reporting requirement. When you report a claim or potential claim, keep a copy of the report for your own records.

IF YOU DO GIVE LEGAL ADVICE TO THE BOARD

During your tenure as a director, it may happen that an issue for which your legal expertise is well known arises. You may be asked to provide legal advice to the board. If you do, be clear that you are giving advice as a lawyer (if that is the case), so as to avoid insurance coverage issues (discussed in the last issue of LIANSwers, available at www.lians.ca).

DID YOU KNOW?

Both the mandatory and excess insurance policies are claims-made. This means it is not when the work was done that triggers coverage but when the claim was known to the insured and reported to the insurer that triggers the policy. If you have stopped carrying insurance at the time the claim is made, the policy may not respond.

Also ensure that you:

- have a detailed written retainer for the legal services you provide;
- give advice in writing, whenever possible;
- document in writing all verbal advice given;
- confirm in any written or verbal communication to the board whether your advice is given pursuant to your retainer for legal services, or whether your opinion is offered as a director; and
- accurately reflect in your billings to the organization whether the account is for legal services or simply for expenses as a director or officer.

ADDITIONAL RESOURCES

Two excellent texts are available through the Nova Scotia Barristers' Library, relating to directors' duties in Canada: *Directors' Duties in Canada* 2nd Edition, 2002 Margot Priest and Hartley R. Nathan QC and *Directors' Duties in Canada* 3rd Edition, Barry Reid.

Read these to learn how to minimize your risks when acting as a director of a corporation or not for profit board.

LAP WELLNESS

Human Solutions, the new provider for the Lawyers Assistance Program offers a variety of health and wellness articles online. The following is an excerpt from *Lifeskills*:

COMBINING FAMILIES

In a combined family, people come from different pasts. Individuals have different histories and start together from different beginnings. Here are some strategies to overcome some of the common difficulties parents experience in combining families:

DISCUSS THE ISSUES

Issues facing the new combined family include where the new family will live, if the new home means a school change for the children, how the children can maintain a good relationship with their absent parent, and how home and work responsibilities will be shared. Talk these matters over in advance, both as a couple and with the children.

DON'T TRY TO REPLACE YOUR STEPCHILD'S ABSENT BIOLOGICAL PARENT

It is important that the child maintains a strong relationship with the absent parent. Make sure your stepchild understands that you cannot replace her absent mother or father, nor do you wish to. Let them know you are glad she is a part of this new family and that she can count on your care, your love and your support.

A BIG CHANGE FOR THE CHILDREN

Encourage your respective children to talk about the change in being part of a combined family. Listen to what they have to say. Respect their feelings. Respond to their concerns.

BE FAIR; BE CONSISTENT

A stable home life is important for children. Everyone must understand the rules of the household, and make sure they are applied to everyone fairly and consistently. Children are more likely to have a sense of stability and security if the rules are fair and reasonable.

GIVE IT TIME

It is not realistic to expect children and their step-siblings to bond instantly. Telling them they should get along won't necessarily make it happen. Be patient. Give them time.

SPEND TIME WITH YOUR BIOLOGICAL CHILD

Your own child will now share you with step-siblings. Spending time with your own child on a regular basis will help him realize your relationship will always be strong. Regular one-on-one time will reinforce this bond and contribute to the health of the new combined family.

YOUR NEW SPOUSE HAS NEEDS TOO

Some parents may feel they should put the needs of their children ahead of those of their spouse. This is not a good idea. Remember this: children in a combined family need, above all, to feel their biological parent and step-parent together have a strong and secure relationship.

BOOK REVIEW

MAKING YOUR CASE – THE ART OF PERSUADING JUDGES

by Antonin Scalia and Bryan A. Garner, Thomson/West 2008:
ISBN 978-0-314-18471-9

If you're looking for some practical suggestions on how to win your argument in court, this book may be of interest. Two internationally renowned legal voices, Justice Antonin Scalia, an associate justice of the Supreme Court of the United States, and Bryan Garner, editor-in-chief of *Black's Law Dictionary*, have joined forces to present their thoughts on how to successfully convince the court. Their combined years of experience, both on and off the bench, have produced this practical, easy-to-read volume of advice on everything from the "general principles of argumentation" and "legal reasoning" to the oral argument and "handling questions," and even their thoughts on "after the battle."

The book contains 115 numbered, indexed topics so a reader go directly to the point of particular interest or can consult the volume on a particular area of concern in advocacy. For example #44 - *Banish jargon, hackneyed expressions and needless Latin*, or #81 - *If you're the appellant, lead with your strength*, or #96 - *Never speak over a judge*.

Just as the authors stress the importance of a logical order in the arrangement of one's argument, the book is arranged in the logical progression of a step-by-step guide from the earliest stages of litigation preparation to the effective presentation of the written and oral argument before all levels of court. Although written with an eye on the American legal system, the common law similarities of courtroom advocacy and the general understanding of litigation persuasion make it relevant to lawyers interested in advocacy in Canada or elsewhere.

While the authors note that published advice on how to persuade the judiciary can be traced back to Aristotle, Demetrius, Cicero or others, they indicate that the purpose of this book is to make the best of the earlier advice, combined with their more recent suggestions, available for today's practitioners.

The book is available through Library & Information Services at the Nova Scotia Barristers' Society.

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