



Addendum, Solo and Small Firm Edition, January 2009



In this month's *Addendum*...

Vol. 6, No. 9— January 2009

- About us
- Feedback
- Printer-friendly
- Visit the *National* webpage
- Technical difficulties?

Receive a
FREE DAY on a
weekend rental.

AVIS

LEARN MORE

stewart
title guaranty company

www.stewart.ca
888.667.5151

NetLegal

Electronic Case
Filing using NetLegal

...
quick, secure, easy.
www.netlegal.ca

- **Marketing strategy:** Recession? Refocus.
- **Supremely small:** A small firm lawyer at the highest court.
- **Communication:** What is my client telling me?
- **Practice management:** Strategies for surviving a downturn.
- **Technology forecast:** More interest in social marketing, SaaS, and virtual lawyering.
- **Referrals:** Marketing games can set you on the right path.
- **CBA Conflicts Toolkit:** Helping lawyers avoid conflicts of interests.
- **Techno-liability:** Best practices for the digital world.
- **Giving back:** The CBA Pro Bono Mentorship Program.
- **PracticeLink:** Networking options; leaving a firm; better public speaking; and more...

Marketing	SCC	Communication	Practice	Tech
Referrals	CBA	Tech-liability	Giving back	PracticeLink

Addendum

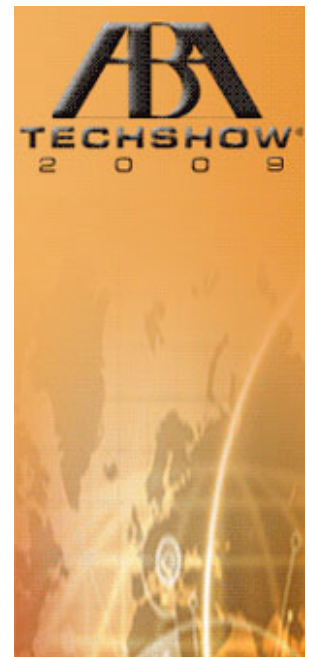
E-Publications Editor:
Conrad McCallum

Production:
Kathryn Robichaud

Contributors:
David Bilinsky
Ava Chising
Amy Clark Kleinpeter



Addendum is published by *National* magazine, the official magazine of the Canadian Bar Association. The views expressed in the articles contained herein are solely the views of the authors, and do not necessarily represent the views of the Canadian Bar Association.



Amy Jo Ehman
Gary Holstein
Conrad McCallum
Valerie Mutton

© Copyright 2009. Canadian Bar Association.

Time for a marketing rethink

By Valerie Mutton

Think twice before you slash your marketing budget in these times, warns legal marketing expert Doug Jasinski. You could be shooting yourself in the foot.

The principal of Skunkworks Creative Group Inc. in Vancouver says a recession may be just the time for a marketing push. "Hold the line if necessary... increase it if possible," he advises.

If you have no cash flow, then you have time. "Focus some of that time toward marketing," says Jasinski. "You can do that in ways like adding content to your blog or website, or writing articles to post on your website. Online marketing is the area where you can still punch above your weight class."

You can use sites like Facebook, Twitter and YouTube to connect with potential clients and provide them with information that they can use. Conveying that information through RSS feeds, podcasts and videos can increase your visibility, with minimal effort. "These are opportunities to redistribute your content in multiple forums. The content can appear in three or four or seven different places. That's an excellent expenditure of time and money."

Jasinski cautions lawyers to educate themselves about the ethical considerations that apply to lawyers in the context of advertising, because a regular marketing person, graphic designer, or web designer is unlikely to be aware of them. A class of expert consultants who focus on marketing for law firms is emerging, and they understand both the ethics and the necessity of developing a professional esthetic.

Lawrence Pascoe agrees with Jasinsky that in a recession, it makes sense to emphasize marketing activities that are costlier in terms of time rather than dollars. That can mean speaking engagements, newsletter writing and contacting your former clients. It should also mean online marketing and a regularly updated website, says Pascoe, an Ottawa-based sole practitioner who has presented at several continuing legal education programs on the topic of using technology to market legal services.

"It should be more than a glorified brochure. You should give something to the client, like free information," he advises. "Even if they don't become clients, I feel good for having provided that to people." For those who are concerned about giving valuable tips away for free, Pascoe has this advice: when trying to attract new clients, you need to be able to convince them with your expertise.

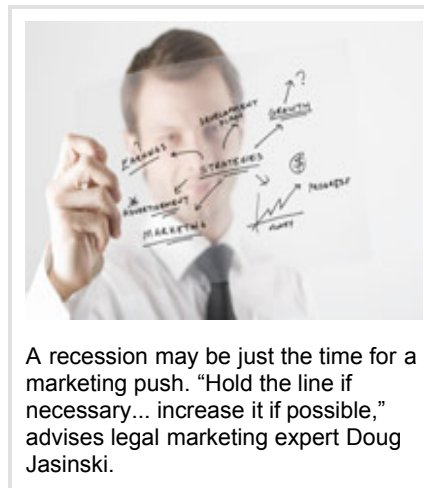
Take the opportunity to let the client know you are human, with links on your website to some of your personal interests. And your emails to clients should have a standard blurb—not just about the confidentiality of the information, but to remind them to update their wills!

Recognize that the web is interactive, not static, and provides opportunities for creative marketing. Pascoe says he has posted quizzes and surveys on his website and has contacted those who respond.

Examine whether your office procedures can help with your marketing. For example, your voice mail message can direct people who call after hours to your website for further information.

A downturn in the economy is also a time to analyze your practice and determine whether you should spend more time going after new business or retaining old. There should be a sustained focus on seeking new business, along with cost-effective ways to keep in touch with old clients: email newsletters, provide reminders to update wills, and pay attention to clients' birthdays.

Valerie Mutton is a freelance writer.



A recession may be just the time for a marketing push. "Hold the line if necessary... increase it if possible," advises legal marketing expert Doug Jasinski.



Marketing
Referrals

SCC
CBA

Communication
Tech-liability

Practice
Giving back

Tech
PracticeLink

A small firm lawyer at the Supreme Court

By Ava Chisling

Arguing a case before the Supreme Court of Canada can be a heady experience for any lawyer. It was for Gregory Senda, who represented the respondent in *Alberta v. Hutterian Brethren of Wilson Colony*, which the court heard on Oct. 7, 2008. Senda, a partner at the eight-lawyer firm of Peterson & Purvis in Lethbridge, Alberta, offered his perspective on the experience.

Why did you become a lawyer?

I became a lawyer by accident. I was working construction in Edmonton and it was very cold. I thought to myself, "I don't want to do this," and later wrote my LSAT. I was called to the bar in 1981, and then worked in Japan for 7½ years, which is where I got a taste of international law. Currently, I don't have a primary area of practice. I aim for files that are complex and big. That is how the Hutterian Brethren found me.

Can you summarize the case?

In 2003, the Alberta government made it mandatory to have your photo taken when you receive or renew your license. My clients are part of the most conservative sect of the Hutterian Brethren. They believe in a literal translation of the Bible and that the second commandment forbids them from willingly having their picture taken. By the time we hit the SCC, the case was narrowed down to a freedom of religion section 2(a) argument.

Did you think it might go the Supreme Court?

I had my suspicions, even right at the beginning. I pleaded at the Queen's Bench, the Court of Appeal, and then [for leave at] the SCC. I received a one-liner that said "leave of appeal granted." We had about 30 minutes lead-time on the public.

Did your heart stop?

Yes, it did. Professionally, it was a loss for my client, since it was the government of Alberta that was granted the appeal, but from a personal standpoint, I think all lawyers want to go in front of the Supreme Court of Canada.

What happened next?

When you argue at the lower levels, you rely on the SCC. You know what the issues are and you prepare for that. But when you are at the SCC, you are there because your issue is of national importance; one that has not yet been resolved. Before, we were arguing law, but at this level, it becomes a conceptual or philosophical argument. I had to re-think everything. I couldn't rely on what I had done in the courts below.

On a constitutional case, the chief justice has to agree on the issue beforehand. So there was some back and forth between her and the appellant, and when it was settled, I realized I did not know what the issue was! Then I worried. It was not until very close to the actual hearing that I settled in my own mind what I was going to argue, what the policy issue was. That was the most difficult part.

How did you prepare?

We had about 10 months. I watched a lot of CPAC as we got closer to the date, and on two separate occasions, I saw lawyers get completely lost. The justices were asking them questions and they just could not answer them. One of them even had the deer-in-a-headlight response, with big, wide eyes. And the court was dead silent! And I thought, "Hmm, I am not going to watch anymore of this, because this is exactly what is going to



Gregory Senda, a partner at Peterson & Purvis, an eight-lawyer firm in Lethbridge, Alberta, argued before the Supreme Court in October: "At this level, it becomes a conceptual or philosophical argument. I had to re-think everything. I couldn't rely on what I had done in the courts below."

happen to me.”

Around 10 days before the hearing, I used a pro bono service called the [Supreme Court Advocacy Institute](#). They set up a panel of three lawyers who acted as SCC justices. At that point, I still did not know what I was going to argue, so the process was extremely helpful. They brought up some very good questions I had not thought of. I would really recommend the service.

Also, when you go to the SCC, you must have an agent (law firm) in Ottawa. It’s not cheap, but it’s very useful, and they help you with everything. I used them a fair amount, just to ask little questions so you’re not jittery about the minor things.

What was it like walking into the courtroom?

We were let in around 30 minutes beforehand. It’s the biggest courtroom I have seen. There’s a sitting area at the back, which you don’t see on CPAC. And that was an issue for me, because my clients do not willingly allow their pictures to be taken. They can’t be on TV.

So I had to check with the registrar about this, and he confirmed that the last two rows would not be seen on camera. It brought a little chuckle to the courtroom, because there was a previous freedom of religion case where one of the parties could not have their photo taken due to their religion, but then right after the hearing, he held a press conference.

Were some justices more intimidating than others?

They all scared me! Justices Abella, Deschamps and Binnie were the three who asked the most questions. It didn’t bother me to be interrupted. I think I answered their questions adequately. I’ve seen the tape since then and there are certain things I wish I had said differently. But for the most part, I’m fairly pleased with how it went.

What was the biggest surprise?

That the justices listened to my argument and that they didn’t lean forward and say, “Mr. Senda, you don’t know what you’re talking about!”

Did you secretly wish they would rule on the spot?

No. If they do, it means it’s not an important case. I’m glad I was so focused on my argument that I didn’t realize the ramifications of what I was arguing until I came down from the whole experience and started thinking about it. I’m really looking forward to this decision. This can be a very important constitutional case. Almost the first question asked of me was: “Are you suggesting that we get rid of *Oakes*?” It’s of that level of importance.

Are you anxious?

It’s either over-confidence or stupidity, but on the facts, I’m not worried. On the law, I’m not worried. I’m looking forward to this decision, which will come hopefully around April. We’ll learn about it half-hour before everyone else. For any first time lawyer like myself, going to the Supreme Court is just amazing. I want to go back again.

Ava Chisling is a media lawyer in private practice and a freelance writer.

[Marketing Referrals](#)

[SCC CBA](#)

[Communication Tech-liability](#)

[Practice Giving back](#)

[Tech PracticeLink](#)

What is my client telling me?

By Amy Clark Kleinpeter

What is the lowest value you would accept in settlement? Full or shared custody? Accept a plea bargain? How many times has a client looked at you and said, “Well, what do you think?” Or even worse, “We have decided to go with whatever you think.”

The problem comes when we, as lawyers, try to elicit information without providing the necessary background information the client needs. This education should begin in the initial client interview and continue throughout the relationship.

A lawyer must listen to his or her client—listen to the words



and gather facts, but also listen to word choices, tone, and body language. What is your client telling you about his/her feelings? How you react to these nonfactual communications will build or tear down the relationship. Do not over-think your reactions to your clients' words. Just be yourself and your client will relax in your natural sincerity.

Allow clients to begin the initial interview by telling their story in their words. Only after a few minutes should you begin to review any of the legal procedures, laws, and remedies that may apply. Once clients trust that you will listen to their unique (in their minds) situation, they will settle in and be better able to absorb information you provide.

In my initial interviews of clients, I have in front of me a checklist of everything I need to tell them. Rather than reading down the list, I mark topics off as they occur in conversation. If an interview goes too far off track, I refer to the list and say: "We need to discuss another issue here." Somehow pointing to this list—delegating my authority for a second—makes the interruption more palatable to my clients.

The best client questions come not in response to a direct request like, "Do you have any questions?" Instead, allow clients to tell their story and ask you for important information along the way. As the clients' comfort grows, they will ask questions that give the lawyer a chance to go over some legal procedures and available remedies—things clients need before they can make decisions about their situation.

At the close of the interview, your clients hopefully feel confident in their understanding of their situation. This confidence will last about as long as it takes to leave your premises. Two things can help continue the positive relationship and communication.

First, give clients papers that repeat a lot of the basic information you have provided. It may be a general list that you have highlighted, a follow up letter you send the next day, or even a brochure. Second, be available for follow up questions. Being available in at least two ways—phone and email, for example—help clients communicate with you in the way they feel most comfortable. And a comfortable client will retain more of the information you provide, so that benefits both of you!

Amy Clark Kleinpeter is a solo practising bankruptcy and consumer law in Pasadena, California. Contact her at amyck1@gmail.com or visit her [website](#). This article was published in *GP Solo – ABA General Practice Solo and Small Firm Division*. © 2008 American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

Marketing
Referrals

SCC
CBA

Communication
Tech-liability

Practice
Giving back

Tech
PracticeLink

Strategies for surviving a recession

By David Bilinsky

The signs are clear. The world is definitely in a recession, even if the tsunami has not yet washed over Canada's shores. So what can law firms do now to prepare for the hard times?

Here is a list of steps that you can take:

- Law firms are seeing receivables balloon as clients are slow to pay. Ensure that your retainer agreement and invoices state that interest will be charged (in accordance with the *Canada Interest Act*) at a rate set higher than credit card rates to act as an incentive for clients to pay. Insist on up-front retainers. Consider holding a cash retainer but the firm expects all accounts to be paid on time. If the client defaults, the funds in trust would be used to pay the last account and the firm gets off the file.



A lawyer must listen to his or her client—listen to the words and gather facts, but also listen to word choices, tone, and body language. What is your client telling you about his/her feelings?

- Check your available credit arrangements and balances. Pay down debt as cash comes in, ensuring that you will have available credit if you need it. Discuss increasing your credit limits, just in case.

“Seventy per cent of a law firm’s expenses are in facility costs, compensation and technology: there is typically little room to reduce expenses without cutting into capacity.”

- Seventy per cent of a law firm’s expenses are in facility costs, compensation and technology: there is typically little room to reduce expenses without cutting into capacity (entertainment and such being the exception). Don’t start laying off staff. Not only does that reduce your income-earning ability, it works against the firm’s culture (sending a message of “every person for the lifeboats”) and against morale. You will need good staff to carry you through the tough times.

- Protect your stars – the #1 profitability strategy of firms these days is to hire away excellent lawyers and staff from other firms.
- Deal with underperformers. Communicate expectations clearly through performance reviews and continued monitoring. Eliminate underperformers who do not respond. Do so quickly, efficiently and humanely – the rest of the firm is watching how you handle this.
- Chances are that you will have lawyers who have had their practice areas collapse around them. Assist them in transition over to productive areas of practice. If this can’t be done, the firm may be looking at how to carry them through the recession on the basis that their practices will eventually come back. But if matters are dire, they may need to leave the firm to ensure its survivability. There are no easy answers here, just hard consequences.
- Work on effectiveness improvements. By becoming a lean, efficient machine, you will be better able to take advantage of the change in economic fortunes when they eventually come.
- Lastly, focus on your clients who are facing the same economic consequences – and hoping you will help them through this mess.

By taking the right steps now you can be singing “*We’re in the money, that sky is sunny, Old Man Depression you are through...*”

David J. Bilinsky is the practice management advisor for the Law Society of British Columbia, and the author of the [Thoughtful Legal Management blog](#). The article was first published in the December 2008 issue of [BarTalk](#), the CBABC’s official magazine.

Marketing
Referrals

SCC
CBA

Communication
Tech-liability

Practice
Giving back

Tech
PracticeLink

The year ahead in legal tech: more interest in social marketing, SaaS, and virtual lawyering

By Conrad McCallum

Legal industry bloggers marked the end of 2008 with predictions for the year ahead. Here are some of the top trends and tips that emerged.

Social marketing is taken more seriously

Ross Kodner, a Milwaukee-based legal technology consultant who blogs at [Ross Ipsa Loquitur](#), predicts more law firms will be eager to adopt [Facebook](#), [Twitter](#), [LinkedIn](#), [Plaxo](#) and other social connection and networking tools as standard elements of their business development plans.

And the tools that lawyers perceive as helping them to build trust online will gain the most traction, adds Carolyn Elefant, a Washington, D.C. solo practitioner, author and [blogger](#). She expects Facebook to surpass LinkedIn as the top networking tool for professionals, "precisely because it offers clients and other lawyers a peek behind the professional curtain," providing a sense of "what a lawyer is like on a personal level."

Look for online visual media to increase in popularity. Elefant says people hanker for "the simple comfort of the personal" in tough economic times, so the ability to see how a lawyer speaks and looks, either on a video or through a tool such as [Skype](#) (software that allows users to make telephone calls over the Internet) can become a valuable asset.

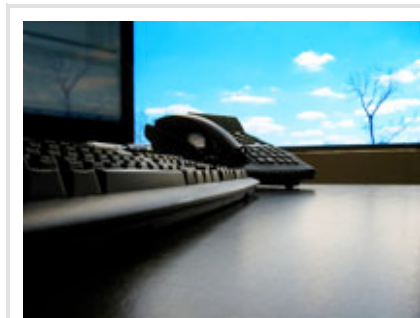
Blogging continues to win converts

Legal bloggers share their thoughts with a group of like-minded people; they also use tools such as [Twitter](#), [Facebook](#), [LinkedIn](#), [LegalOn Ramp](#), and [JD Supra](#) to network, says Neil Squillante, of [TechnoLawyer](#). But it's publishing that remains the most reliable way to increase search engine ranking and traffic, and this year, more law firms will recognize its advantages. Squillante adds: "Publishing on a daily basis is difficult, so expect some law firms to outsource the content creation."

Virtual law practices

Lawyers will continue to adopt technologies and free online applications to reduce overhead in law office administrative tasks, turning to tools such as [Basecamp](#), [GoogleDocs](#), [Webex](#), [Adobe ConnectNow](#), [GoToMeeting](#), and [Dimdim](#).

Others will go exclusively online by entirely eliminating law office space. Kodner predicts that virtual practices, made possible by "virtual officing" services offered by companies such as the Regus Group, will rise in popularity – "especially among solos who maximize their profitability and flexibility by working primarily from a home office."



Legal industry observers say sole and small firm practitioners will continue to adopt technologies and free online applications to reduce overhead in law office administrative tasks.

More elements of the bar will prize tech know-how

CLE on legal technology will be better attended, according to Kodner. As the economy puts pressure on firms to look for new efficiencies, they will be keen to harness technology and integrate it into their workflow and case-handling processes, he predicts.

iPhone legal applications

Squillante says the iPhone's desktop-class operating system and programming tools will make it one of the most important mobile devices for legal applications by the end of the year. Blackberry and Windows Mobile aren't going anywhere, but the iPhone will be the big story, he predicts. Legal applications are also expected to appear on the iPhone, including portable research capability.

Marketing innovation rewarded

During a recession, why keep the marketing engine at full throttle? Because when money tightens, firms have to position themselves to sustain a viable practice, says small firm lawyer [Victor Medina](#), of Pennington, N.J., who hosts a podcast for Mac-using lawyers.

"It may seem counterintuitive," Medina adds, but an economic downturn is also a time to start planning "for when business will pick back up."

“Be entrepreneurial and innovative. Aggressively seek out business while still maintaining your ethics,” advises coach/consultant Susan Cartier Liebel, of [Build a Solo Practice, LLC](#), based in Fairfield, Connecticut. “When the dust settles, those who realized this was a time of great opportunity will be profitable.”

A breakout year for practice management systems?

Kodner says [PracticeMaster](#), a software that allows law firms to manage the case, contact and client information, will continue to soar in popularity. He’s hopeful that STI’s product and other law practice management systems will surpass their traditional 10-20% market share when they begin to offer “automatable workflow” as a standard practice management feature. He predicts web-based software as a service (SaaS) practice management products will be the first to do so; [Rocket Matter](#) and [Clio](#) were among the new SaaS law practice management products launched in 2008. (With SaaS, an application is hosted as a service provided to customers across the Internet, eliminating the need to install and run the application on the customer’s own computer).

Minding the metadata

Many computer programs embed information into files and other program outputs when they are created, opened and saved. This “metadata,” although hidden on normal viewing, can be revealed and accessed by others when the document is circulated electronically.

Kodner predicts that reported “metadata disasters” will raise the profile of metadata issues in 2009, dramatically increasing the popularity of metadata removal products.

“Metadata best practices” are addressed in a section of the [CBA Guidelines for Practising Ethically with New Information Technologies](#). The section reads, in part: “Lawyers have an ethical obligations, when transmitting documents electronically, to exercise reasonable care to ensure that clients’ confidential information is not disclosed in the metadata.”

Conrad McCallum is the e-publications editor at the CBA National Office.

Marketing	SCC	Communication	Practice	Tech
Referrals	CBA	Tech-liability	Giving back	PracticeLink

Marketing games can help you achieve your marketing goals

By Gary Holstein

Too often, lawyers dread and resent the effort required to market their services to referral sources. Often, they misunderstand what is involved. They also don’t realize that there are many ways to turn marketing into an enjoyable challenge.

Referral marketing is the systematic process through which lawyers make themselves known, liked, and trusted by those who are in a position to refer clients to them. If you think of referral marketing in this interpersonal context, you’ll probably realize that you can market yourself and feel comfortable at the same time.

To focus you and your staff on important marketing functions, consider structuring your marketing efforts as a game. This strategy will keep you thinking about results, reduce the stress you probably experience when you think of marketing, and encourage everybody to get onboard with the effort.

Issue a marketing challenge

Often, lawyers’ intentions to market become overshadowed by the demands of the practice. Yet to successfully grow a practice, lawyers need to make three significant marketing contacts per week. What’s significant? A conversation of at least 20 minutes, best conducted over a meal, or at a venue that provides some face time with the referral source.

To make this more fun, issue a challenge. Announce that each time you or another lawyer in your office makes a marketing contact, he or she will put a small amount of money, ranging from \$2 to \$5, in a specified basket. At the end of every month, the staff votes on how to spend the balance that has accrued. This simple activity keeps everyone focused on marketing, involves the staff and injects some fun into the process.

You can create the same reward system to monitor who sends out the largest number of thank you notes to sources referring business to the firm, the number of new clients, the number of new referral sources, or any other metric that helps the whole firm concentrate on marketing.

Develop a signature event

“To focus you and your staff on important marketing functions, consider structuring your marketing efforts as a game. This strategy will keep you thinking about results and encourage everybody to get onboard with the effort.”

You can also create a reward for the person who comes up with the best signature marketing event idea. A signature event is generally held once a year; it becomes an occasion that both referral sources and possibly even the community look forward to, and one that others associate with your firm. Because so many lawyers feel a strong responsibility to advancing the public good, the signature event is often linked to a charitable cause. In this case, your firm can partner with the charitable organization or any organization that is synergistic with your practice.

For example, you can sponsor golf tournaments, wine and cheese parties, chocolate gatherings, jazz nights, and softball games—there are many possibilities to explore. Consider holiday-themed events too. For ideas, ask people outside your firm and even referral sources; they’ll appreciate being solicited. If you come up with several ideas, ask your staff or partners to vote for the best one. Treat the winners to dinner, or offer some other type of recognition.

These ideas will make everyone feel good—and you’ll be accomplishing your marketing goals in a way that’s not merely painless, but also fun.

Gary Holstein, a practice advisor with [Atticus, Inc.](#), is a management consultant, experienced manager, and senior advisor who has consulted with corporations throughout the United States, Europe, and the Pacific Basin. This article was originally published at [The Complete Lawyer](#), an online resource for legal profession. Reproduced with permission.

Marketing
Referrals

SCC
CBA

Communication
Tech-liability

Practice
Giving back

Tech
PracticeLink

The CBA Conflicts of Interest Toolkit: a new resource for lawyers

Successfully managing conflicting interests and ensuring that a client’s confidential information is protected need to be a part of every lawyer’s practice, and the [CBA Conflicts of Interest Toolkit](#) was designed to help you achieve this objective. It complements and supplements the task force’s [final report and recommendations](#) that were adopted in Quebec City, paving the way for the amendments to the *CBA Code of Professional Conduct* that are on the agenda at the upcoming Mid-Winter Meeting of Council.

In a conflict of interest, an interest gives rise to a substantial risk of material and adverse effect on a lawyer’s ability to represent his or her client. A conflicting interest can occur when a lawyer’s self-interest conflicts with the performance of a client retainer (a conflict of duty and interest); a lawyer’s duty to another client conflicts with the performance of a client retainer (a conflict of duty and duty); and a lawyer’s duty to another client impairs the lawyer’s relationship with a client and thereby impairs client representation (a conflict of duty with relationship).

The Conflicts of Interest Toolkit contains guidelines, checklists and precedents that address these issues:

- How to analyze a potential conflict of interest.
- The need for general conflicts systems.
- Dealing with “phantom” clients.
- Tactical conflicts.
- Acting for family and friends.
- Non-engagement and termination of engagement.
- Model engagement/retainer letters.
- Joint/multiple representations.
- Client waiver of conflict.
- Independent legal advice.
- Barriers and confidentiality screens.
- RFPs and “beauty contests.”
- The hiring of transferring lawyers.

- Lawyer’s personal interest.
- Serving as director of a client corporation.
- Ongoing assessment and management of conflicts.

Every time you have a new client or a new matter for an existing client, and throughout the course of any active matter, you should be on the lookout for the existence of a real or potential conflict of interest and alert to the possibility that confidential information you have about one client may bar you from acting for another.

The requirements for successfully managing conflicts are quite basic: be aware of your obligations; exercise good judgment; and effectively communicate and document the decisions you make and actions you take when dealing with conflicts.

The [CBA Conflicts of Interest Toolkit](#) can assist you in achieving this objective.

Marketing Referrals	SCC CBA	Communication Tech-liability	Practice Giving back	Tech PracticeLink
-------------------------------------	-------------------------	--	--------------------------------------	-----------------------------------

Techno-liability

By Amy Jo Ehman

If you think metadata and zombie botnets sound like the stuff of science fiction, you could be putting your practice and professionalism at risk. They’re part of the lingo of new information technologies that, if ignored, could violate standards of professional conduct, practice competence and client confidentiality.

An informal survey of lawyers across Canada found that most “were not acquainted with the term ‘metadata,’ much less its implications,” says David Day, co-chair of the CBA’s Ethics and Professional Issues Committee.

Recognizing that gap, the committee began work in 2005 to explore the most commonly used information technologies and establish best practices for Canadian law firms. In September 2008, the committee released the *Guidelines for Practising Ethically with New Information Technologies*, a supplement to the [CBA Code of Professional Conduct](#), offering advice on topics such as security, storage, deletion and marketing in an era of rapidly changing global technology.

Mining for metadata

Metadata is information embedded in a computer document: when and where it was created, the author(s), word count, distribution, various versions and edits, plus the time spent working on it.

That’s not the kind of data you want falling into the wrong hands, and the CBA guidelines stress the ethical obligation not to reveal client information through the metadata.

Mobile devices also pose a target for prying eyes if lost or connected to a main computer through a wireless network. The CBA guidelines recommend that lawyers protect confidential information by encryption, which makes the data unreadable by anyone without the “key” to decode it.

Hands-on security

Further security measures are required to block hackers and spammers who infiltrate computer systems through unprotected wireless networks or via the Internet. These measures include firewalls and strong passwords — a mix of numbers and letters, upper and lower case, more than eight characters long — that protect computers from the likes of malware, spyware, Trojan horses, worms and zombie botnets (which hijack a system and use it to send out spam in the middle of the night).



New CBA guidelines recommend, among other best practices, that lawyers protect confidential information by encryption, which makes the data unreadable by anyone without the “key” to decode it.

The CBA guidelines also give practical advice for the storage, archiving and deletion of sensitive files, and for “scrubbing” electronic devices before they are discarded.

Whether a law firm engages a private IT contractor or manages its electronic security in-house, the onus is on lawyers to understand the ethical implications of practising in a digital world.

Download a copy of [Guidelines for Practising Ethically with New Information Technologies](#).

Amy Jo Ehman is a freelance writer based in Saskatoon. The full version of this article will appear in the January/February 2009 issue of [National](#) magazine.

Marketing	SCC	Communication	Practice	Tech
Referrals	CBA	Tech-liability	Giving back	PracticeLink

CBA Pro Bono Mentorship Program: call for participants

Interested in pro bono work to give back to your community? The CBA is looking for lawyers, notaries, and articling students in search of a mentor for their pro bono work. [Visit our website](#) to find out how you can participate in our new Pro Bono Mentorship Program.

Get a mentor, find a pro bono project, and give back to your community in a new way.

Marketing	SCC	Communication	Practice	Tech
Referrals	CBA	Tech-liability	Giving back	PracticeLink

New on CBA PracticeLink: solo practitioners explore a range of networking options

It’s not the traditional notion of networking – the socials, talks, lunches, clubs, hobbies and events that get you “out there” in the community. But online networking can bring you support, advice, and, most importantly, clients.

Other lawyers feel that that face-to-face networking is essential to a successful solo practice for building trust, generating referrals, creating a support network and easing the isolation that comes with working alone.

How we network and with whom we network is a matter of personality, lifestyle, and the nature of the law practice, and what works for one does not work for all. [More...](#)

You can also check out these articles at [CBA PracticeLink](#):

To leave or not to leave

Leaving a law firm is an emotional process. You must want to do so, and believe you have no other alternative. [More...](#)

Be a better public speaker

There's a common misconception that because you're a lawyer, you're automatically a fearless orator. Public speaking is a learned skill. [More...](#)

Building business through client teams and interviews

Keeping clients and expanding your business with them largely depends on understanding their needs. [More...](#)

Marketing	SCC	Communication	Practice	Tech
Referrals	CBA	Tech-liability	Giving back	PracticeLink