

REPORT TO BENCHERS FROM THE TECHNOLOGY COMMITTEE

BACKGROUND

The 2012 – 2013 Technology Committee of the Law Society of Manitoba met twice, continuing the work of the previous year's committee. Jim McLandress chaired the Technology Committee and David Swayze was the vice-chair. The committee consisted of David Asper, Kathy Bueti, Robert Dawson, George Derwin, Robert Gabor, Q.C., Paul Grower, Robert Pellizzaro, Jack Cram was an ex-officio member with Law Society staff Grant Gelinias-Brown (Law Society of Manitoba's Information Technology Director) and Tana Christianson. Cameron Wagner was also appointed to the committee.

At its first meeting, the committee learned that most of the initiatives recommended by the previous year's committee were well on their way to implementation. The only outstanding recommendation was considering what role a Technology Committee might play in developing guidelines/advice/standards/best practices.

QUESTIONS

Building on the previous committee's conclusion that it might be beneficial to develop general guidelines on how to use technology ethically, competently and in a manner that protects the public interest, the committee considered whether the LSM should establish consistent minimum standards for use of technology and posed the following questions:

1. Should the Law Society set a minimum standard required to protect the public?
2. Should the Law Society advise members that they should take steps to "be secure"?
3. Should the Law Society rely on continuing professional development programs and newsletter articles to educate members on best practices in technology?

CONCLUSION

Ultimately, the committee concluded that the previous committee was correct; the Code of Professional Conduct already gives sufficient guidance and regulation, although future reviews of the Code may want to include technology examples in code commentary to animate the rule.

The committee agreed that members who took an irresponsible approach to their use of technology could be disciplined for a Breach of the Code. A lawyer or law firm with an overly casual approach towards technology and security is no different than a lawyer who is careless with traditional office security. Letting your firm get hacked because of shoddy security is like leaving your office unlocked or letting client files blow in the wind. You can be prosecuted by the Law Society for wanton disregard of security of information. Lawyers should be reminded of this.

Educating lawyers so they realize they are not insured under their professional liability insurance policy for cyber coverage or for the damage that might arise out of technology breaches may also be motivation to take care. The committee concluded education of the profession is key. The profession needs to understand the nature of the risk.

The Technology Committee, composed as it is of lawyers, acknowledged it lacked the technical expertise to dictate standards for technology. There was also concern that, as technology changes constantly, standards prescribed today may be irrelevant or imprudent tomorrow. Also, technology is not one size fits all. The diverse range in use in an equally diverse collection of law firms make it difficult to set one standard that can be applied across the spectrum.

The committee agreed that it did not need to go further except to endorse education on the prudent use of technology. Fortunately, the Law Society of Manitoba has excellent CPD programming and can provide programs to help members think about their technology requirements and obligations. Also, the Law Society of Manitoba has the ability to alert the profession through publications and other communications.

RECOMMENDATIONS

The committee recommends that members should be reminded through LSM communications and education programs that they have an obligation to meet code requirements for technology and that failure to meet those obligations may result in a double hammer of adverse consequences – discipline charge and uninsured financial exposure.

As new developments arise in technology, a future committee may want to revisit tech issues again.