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Spot Audit Evidence Admissible To Found Professional Misconduct Charges: MBCA

The Court of Appeal upheld a decision of the Law Society's Discipline Committee panel to disbar a lawyer found guilty of seven counts of professional misconduct in [Smith v. Law Society of Manitoba](#), 2011 MBCA 81. The court rejected the appellant's argument that the findings and penalty were unreasonable. Given the pattern of dishonesty, the appellant's continuing insistence that his conduct was not improper, and the grave concerns about his lack of insight, the panel's conclusion that the public interest could only be protected in future by permanently removing the appellant from the practice of law was not unreasonable. On the subsidiary issue of whether the Law Society was entitled to investigate information coming to its attention through a spot audit when that information did not relate specifically to the trust accounting rules, and whether the evidence obtained was admissible, the court found that s. 8 of the *Charter* does not apply to inspections for the purpose of determining regulatory compliance. Applying an earlier [SCC case](#) the court said:

individuals engaged in professions that are highly regulated will have little, if any, expectation of privacy with respect to a search by the professional regulatory authority of their place of business and material seized. *The Legal Profession Act*, C.C.S.M., c. L107 (the Act), is clear that the fundamental purpose of the regulatory scheme is to protect the public interest, and the dicta of the court in *Branch* applies to this situation.

Federation Council to Consider Third Report on Conflicts of Interest

The Federation of Law Societies published its [Report on Conflicts of Interest](#) on November 21, 2011. If adopted by the Federation Council, this third draft will complete the Federation's [Model Code of Conduct](#) released last March. University of Ottawa law professor Adam Dodek reports on this development in this [Slaw article](#) and in his paper [Conflicted Identities: The Battle Over the Duty of Loyalty in Canada](#), available for free download on SSRN. The article takes an in-depth look at the conceptual and public battles that have been fought over conflicts of interest in Canada over three decades.

Social Media Policies

Canadians use the internet at a rate almost double that of the rest of the world and there's no doubt many employees are using social media at work. Recent cases in [B.C.](#), [Quebec](#), [Alberta](#) and Ontario highlight the need for employers to develop clear technology use policies that address their concerns about productivity and reputation management, but also protect employee privacy and freedom of expression. The Law Societies of both [B.C.](#) and [Ontario](#) have developed model online and social media policies that can be used as a starting point for law firms to develop their own policies and those of their clients. Other excellent resources on this topic include:

- [Guidelines for Social Media Background Checks](#), The Office of the Information and Privacy Commissioner of BC;
- [Judicial Ethics and Social Networking Sites](#), which presents an American judge's perspective on the ethics of judges using social networking sites;
- [To Post or Not to Post: Employee Rights and Social Media](#), an SSRN post; and
- [Social Media Policy in the Workplace](#), Anatoliy Gruzd, Dalhousie University.

Capturing Time

If recording billable time is not your strong suit you may want to sign up for a free trial of one of the passive time tracking systems described in [Passive Aggressive: Background Timekeeping Tools](#), a recent [Attorney at Work](#) post. These systems monitor everything you do on your digital devices and can be programmed to generate customized reports which can then be used to prepare billing invoices.

Video Marketing

The latest editions of [Law Practice](#) magazine and [Law Practice Today](#) focus on marketing and personal branding, and each mention the increasing popularity of the latest branding tool, online video. Those considering jumping on the [video marketing bandwagon](#) will find many practical tips on how to do it right in these materials:

- [The Big Snore](#), a November 10, 2011 post on the [Brand Thinking](#) blog, presents the arguments in favour of video marketing;
- [How Lawyers are Using Video](#), from *Law Practice* magazine, describes a very successful "video-centric website project" undertaken by a U.S. law firm; and
- [Will Video Kill the Lawyer Star?](#), a 30-minute podcast in which two practice management experts, Tom Mighell and Dennis Kennedy, discuss the growing use of video by lawyers, survey the tools for creating and distributing videos, and share some observations and tips about lawyers entering the world of video.

Security Risks and Legal Privilege

Simon Fodden's recent Slaw post [Apple's Siri on iPhone 4s and Legal Privilege](#), questioning whether Apple's ability to access client communications dictated on an iPhone would prevent the attachment of legal privilege, generated a larger discussion on security of digital communication that's worth a read. Some feel that the focus on how technology impacts confidentiality is "panic mongering," but there is also consensus that lawyers need to be aware of the issue and the risks. For examples of the security risks lawyers may encounter see: [Securing Your Apple Devices](#); [A Window into Mobile Device Security: Examining the Security Approaches Employed in Apple's iOS and Google's Android](#); [The Cost of Free WiFi](#); and [iPad 2 Security Issue for Lawyers](#).

'Tis the Season

There are specialized gift giving guides for almost any group you can think of, and lawyers are no exception. If you are short on gift ideas for the lawyer who has everything check out the Slaw post [Find Something Nice for Your Special Lawyer With These Great Gift Guides](#), which links to four recommended online guides. Not surprisingly, tech toys figure prominently on all lists, and the post also links to the latest Consumer Reports magazine which rates the popular electronics.

Practical Ethics

Enrolment is limited for the Law Society's upcoming program on [Practical Ethics: Real Problems, Real Solutions](#), which takes place February 28, 2012 from 9:00 a.m. to 12:00 noon at the Law Society classroom. Featuring Canadian lawyer and leading legal ethics instructor Paul Paton and a local panel, this session will teach you what you need to know about ethical practice. [Register](#) soon to take advantage of early bird pricing.

2012 MBA Mid-Winter Meeting

The Manitoba Bar Association's [Mid-Winter Meeting](#) will be held January 19-20, 2012 at the Fort Garry Hotel. Programs are offered in specific practice areas and on general interest topics such as:

- Cloud Computing - What's Behind the Fog Bank?
- Innovative Strategies for Effective Communication.

For further details see the [registration form](#) or [brochure](#).

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