



eLaw - Practice Management Update

March / April 2012 - No. 42

ISSN 1916-3940

In This Issue

Solicitor-Client Privilege and Lawyers' Trust Accounts: BCCA Lateral Transfers and Conflicts of Interest

The Latest in Technology: ABA Tech Show Tips and Favourite Apps for Lawyers

Conversation Starters and Exit Lines: Making the Most of Networking Opportunities

New on CanLII

Work Life Balance Resources

Upcoming CPD Programs: LSM

Online Primer on FLSC Model Code of Professional Conduct

Solicitor-Client Privilege and Lawyers' Trust Accounts: BCCA

Trust account ledgers are not presumptively privileged according to a majority of the court in [Donell v. GJB Enterprises Inc.](#), 2012 BCCA 135, a case concerning the scope of solicitor-client privilege and the application of [Maranda v. Richer](#), 2003 SCC 67 in a non-criminal context and to financial records other than fees. In this case, a Receiver sought production of a law firm's trust records concerning a client who operated a Ponzi scheme. The appeal court ordered production of only those trust records which did not relate to communications to obtain legal advice, but "merely... to money management and...the movement of funds held in trust into and out of investment vehicles." The majority summarized its views at para. 59:

1. at a minimum, *Maranda* establishes that lawyers' bills, in the criminal law context, are presumptively subject to solicitor-client privilege;
2. this presumption flows from the connection between lawyers' bills and the nature of the relationship between lawyers and clients; the account reflects work done on behalf of the client which involves communications that are privileged;
3. the presumption may be rebutted if it is established that there is no reasonable possibility that disclosure will directly or indirectly reveal any communications protected by privilege;
4. *Maranda* did not do away with the distinction between communications, which are privileged, and facts, which are not;
5. other financial records of lawyers are not presumptively subject to solicitor-client privilege insofar as they merely represent records of actions or facts, but they should not be produced automatically solely for that reason;
6. *Maranda* mandates that it is necessary to consider such records in order to determine whether they arise out of the solicitor-client relationship and what transpires within it, that is, communications to obtain legal advice;
7. if it is concluded that the records do arise out of that relationship and what transpires within it, they are presumed to be privileged, but the privilege can be rebutted and the document produced if it is established that production will not permit the deduction or acquisition of communications protected by solicitor-client privilege.

One judge dissented, finding that solicitor-client privilege protects "all information arising out of solicitor-client relationships whatever may be their legal context" and noting how difficult it is "to segregate single professional acts from the complex of facts, events, and communications that characterizes ongoing solicitor-client relationships." (paras. 94 and 100)

Lateral Transfers and Conflicts of Interest

The Alberta Court of Appeal decision in [Dow Chemical Canada Inc. v. Nova Chemicals Corporation](#), 2011 ABQB 509 highlights the need for law firms to have screening devices in place to identify potential conflicts of interest when lawyers move. The decision provides a "new analysis of the principles governing what is necessary for a client to consent to a conflict in advance, how imputation rules operate in national firms, lawyers transferring between law firms, and the intersection between law society rules and judicial determinations in assessing conflicts" says Alice Woolley in her Ablawg post [Conflicts of Interest and Good Judgment](#).

An increase in lateral transfers has prompted many practice management advisors to urge law firms to revisit their conflicts policies. Resources to consider include: [A Checklist for Avoiding Conflicts on Lateral Lawyer Transfers](#), from LawPro magazine; and Do's and Don'ts for Departing a Law Firm: [Part 1](#), [Part 2](#) and [Part 3](#), from The Legal Intelligencer blog.

The Latest in Technology: ABA Tech Show Tips and Favourite Apps for Lawyers

The March/April edition of [Law Practice](#) magazine is a special issue featuring articles on the latest in law firm technology and the 2012 ABA Tech Show, held annually in Chicago. Many of the presenters from the show have posted their materials online as well, including the popular [60 Apps in 60 Minutes](#) and [60 Sites in 60 Minutes](#) summaries. There are posts about Lexthink.1 (an event featuring 6 minute presentations on the future of law practice) on both [Slaw](#) and [Attorney at Work](#), and David Bilinsky [summarizes](#) his thoughts about the show on his Thoughtful Legal Management blog.

If you are new to the world of apps and would like some guidance on what other lawyers find useful take a look at these recent articles: [Favorite Android Apps for Lawyers](#), [Top iPhone and iPad Apps for Lawyers](#) and [Take Some Travel Apps for a Spin](#), all from Attorney at Work, and [Useful Apps for Lawyers!](#), from the CBA's Practice Link.

Conversation Starters and Exit Lines: Making the Most of Networking Opportunities

Cocktail party networking can be as difficult for seasoned lawyers as it is for the newly called, but it's a critical skill for lawyers to master. For some useful strategies to enhance your relationship-building and business-development skills take a look at the Slaw articles [Small Talk Is a Big Opportunity: How to Work a Room](#) and [Parting Is Such Sweet Sorrow - So Take Your Leave Properly](#).

New on CanLII

Citing statutes and researching judicial treatment of specific legislative provisions just got a whole lot easier as of April 3, 2012, thanks to a new feature on [CanLII](#) which provides a link from each section to citation tools allowing you to search for citing documents, display a full citation ready to cut and paste to another document, and go directly to the other linguistic version of the section. The feature applies to statutes and regulations from most jurisdictions, including Manitoba.

Work Life Balance Resources

The Oklahoma Bar Association recently held a work life balance week, during which it published daily articles and videos about stress and healthy living on its website. This [recap](#) collects the week's publications in one place, providing an overview of what companies and individuals can do to get on the right path to balance. And, if time management is critical to your ability to find balance, that's the focus of the May/June edition of [Law Practice](#) magazine. It contains articles on time management tricks, tools and tips and an overview of the [Getting Things Done](#) system of personal productivity.

Upcoming CPD Programs: LSM

May is a busy month for continuing professional development at the Law Society. The following programs concern practice management issues:

- [Client Management - Do or Die \(Webinar Program\)](#) - Join Barney Christianson, the Law Society's Practice Management Advisor, and lawyer Greg Evans as they discuss the benefits of proper client management in this one-hour webinar on May 10, 2012, from 12:00 noon to 1:00 p.m. Group discounts are available as noted in the [registration form](#).
- [The Advent of e-Filing in Manitoba](#) - Is your firm ready for the advent of e-filing in Manitoba? Madam Justice Laurie Allen and several presenters who are familiar with the progress of the Queen's Bench e-filing initiative will discuss what it will mean for your practice on May 16, 2012, from 1:00 to 4:00 p.m.
- [Dealing with Complaints to the Law Society - What Every Lawyer Needs to Know! \(Webinar Program\)](#) - The Law Society's Director of Discipline, Leah Kosokowsky, will review the complaints' process and how best to respond in this one-hour webinar on May 17, 2012, from 12:00 noon to 1:00 p.m.
- [Accommodation in the Workplace](#) (joint program with MBA) - Presenters Aaron Berg, Kris Gibson, Grant Mitchell, and Donna Seale will review significant new cases in the area of reasonable accommodation, new legislation on flexible workplaces, the law on accessibility, parental leave and family status, and ethical issues in human rights cases at this half day program on May 28, 2012, from 1:00 to 4:00 p.m. in the Law Society classroom. [Register](#) soon to ensure your spot.

Online Primer on FLSC Model Code of Professional Conduct

The CBA's Ethics and Professional Responsibility Committee is presenting the online program [What You Need to Know: A Primer on the FLSC Model Code of Professional Conduct](#) on May 9, 2012. Presenters will discuss how the Federation's newly approved Model Code of Professional Conduct will affect how lawyers practise, particularly with regard to conflicts of interest.

The Law Society of Manitoba provides this service solely for the benefit of and to support the competence of its members. Members should exercise their professional judgment in using or adapting any content.