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Court Must be Extremely Cautious in Awarding Costs Personally Against a Lawyer: ONCA

The appeal court set aside a $72,000 costs award against a lawyer personally in *Galganov v. Russell (Township)*, 2012 ONCA 410, finding that the lower court had erred in principle in failing to distinguish the lawyer's conduct from that of his clients and in not fully articulating what aspects of the lawyer's conduct constituted negligence resulting in unnecessary costs. The judge erred in principle, said the court, since the lawyer should not be responsible for advancing a weak case if instructed to do so by the clients. In addition,

> ...if an order of costs is to be made against a lawyer personally on the basis of negligence, then that negligence must be based on a breach of the objective standard of care of a reasonably competent lawyer in the same position. Here, that position would be of a lawyer acting on instructions or with the approval of his clients. The court must also bear in mind to whom the lawyer's duty of care is owed. That duty is primarily to the client and to the court.

> The rule was not intended to allow the frustration of the opposing party's counsel to be taken out against a counsel personally because he or she went down a series of blind alleys with his or her clients' instructions or approval. Rather, resort is to the general principles governing costs between parties, which include deterrence of unnecessary steps that unduly prolong litigation... (para. 43).

Rule 57.07(1) of the Ontario *Rules of Civil Procedure* is similar to our *Queen's Bench Rule* 57.07(1).

The *Law Times* article *Appeal court clarifies costs orders against lawyers* discusses the decision.

Google Good and Bad

Most of us use Google for online searches, but not all of us use it effectively. For tips on how to improve your search results and on how to use other features like Google Advanced Search or Google Scholar take a look at these articles: *Useful Google tips and tricks for lawyers* and *Sites for Sore Eyes: Beyond the Basics of Google*.

Users should be aware, however, that changes to Google's privacy policy, which took effect March 1, 2012, mean Google is now sharing the information it has gleaned from your searches with other web sites. So, if you are suddenly seeing online ads relating to Google searches you have made, it may be because of this new policy. This Washington Post article suggests that users cannot opt out of the policy without abandoning Google, but those who deleted their web history before the changes came into effect may have limited Google's ability to use their old information. To see your own history, go to Google Web History and sign in. And, for another take on privacy invasion see the following section.

Nothing to Hide: Frictionless Sharing and Privacy Concerns

You don't have to be a Facebook user to be a victim of frictionless sharing, the unwitting sharing of your online activities with others, including marketers and Facebook friends. *Is Facebook secretly sharing what you are watching and reading?*, an article from the May/June 2012 LAWPRO magazine, tells you how to check which information you may be sharing and what permissions you may have unknowingly granted in the social media tools you use (Google, Linked In, Dropbox, Twitter, etc.). To learn more about frictionless sharing and why businesses do it, see *Facebook's Frictionless Sharing: A Privacy Guide* *Is Fricionless Sharing Like Digital Privacy Cancer?*

Conversations With Clients

One of the best ways of collecting information about what clients think of legal services is the post-matter client survey says the author of the Slaw post *Post-Matter Client Service Survey*. The post includes links to online survey tools and sample electronic surveys that can be adapted to meet different firm needs. A more direct approach is to involve the client in the pricing process, as advocated by Jordan Furlong in *Pricing to the Client Experience*. He argues that the "nature and value of how your client receives your services can be the basis of your pricing" as it is in other service businesses, but pricing must be a two way conversation so that you know what the client values in a given piece of legal work.

Limits on Virtual Practice

The American Bar Association Ethics 20/20 Commission is looking for feedback on its draft issues paper on the limits on virtual presence in another jurisdiction. Comments should be sent to Natalia Vera at natalia.vera@americanbar.org by July 31, 2012. In a recent Slaw post Dan Pinnington sets out some legal and practice issues that arise when a lawyer has a virtual presence, but no physical presence, in a jurisdiction. Those who are considering a web-based practice will find the paper and the post of interest.

MLRC Website Update

The Manitoba Law Reform Commission has recently revamped their website, updating the design and lay out and adding more electronic content. All 125 Commission reports are now electronically archived and available online at www.manitobalawreform.ca.

Think Like a Business Person

The theme of the July/August 2012 edition of *Law Practice* magazine is law firm profitability and it includes articles on all aspects of financial management from cost-saving tips to spending suggestions.

One key to avoiding financial trouble, especially in an uncertain economy, is to get a handle on the costs of making money, from realization rates to unbilled disbursements, to WIP. Slaw Tips is currently publishing a series of posts called the Cash Flow Reports in which practice management advisors David Bilinsky and Laura Calloway examine the many perspectives on cash flow management. The series looks at "the top 10 monthly cash flow managerial reports you should be getting from your accounting system, what they mean, and why you should be producing (and reading!) them at least monthly." The Slaw article *So You Think You Are Profitable: 10 Ways to Assess Your Law Firm's Cash Flow* also examines this topic.

CBA Practice Link Resources

The Canadian Bar Association has recently posted a number of new articles dealing with practice management (especially technology related) topics on Practice Link. They include:

- *Summary: Cloud-based options*
- *Lock and save: Web-based file archiving and data sharing solutions*
- *When lawyers connect using IT*
- *How to sell your value through content marketing*
- *Build your brand, grow your practice*
- *Put your best profile forward on LinkedIn*
- *What's ailing productivity?*

Road Warriors

If your practice involves travel you'll want to read Attorney at Large: A Field Guide for the Mobile Lawyer, an e-guide to trip planning, mobile technology and communication tools published by Attorney at Work. From travel apps and portable scanners to tips for staying healthy this guide summarizes what you need to know to keep your output high and your stress level low on the road.

Mentoring 101

Lawyers acting as mentors to the new crop of articling students or associates should take the time to read the Attorney at Work article *Supervising Other Lawyers: The Essentials*. In succinct fashion it identifies four factors that will make you a better supervisor and enhance the quality of work done for you.

Lobbyist Legislation

For those who missed the recent CPD program on the new *Lobbyists Registration Act*, it is important to know that the act may apply to you if you communicate with public officials in order to attempt to influence government. As of April 30, 2012, when the act came into force, lobbyists must file returns on their lobbyist activities. Check the website of the Office of the Lobbyist Registrar for further details. The Blakes' article *Recent Developments in Lobbying Legislation* summarizes developments in lobbying legislation across Canada.

CPD Program Update

The Law Society is offering a wealth of practice management programming next fall:

- Practice Management Potpourri - the Western Bar Association annual CPD at Clear Lake will focus on emerging technology issues and practice management concerns. This half-day session, from 9:00 a.m. to noon on September 7, 2012, will count as three EPPM (Ethics and Practice Management) hours. Download the registration form for further information.
- Dealing with Law Society Complaints - What Every Lawyer Needs to Know - this webinar replay, facilitated by Law Society staff, will show you

how to handle a Law Society complaint with grace and professionalism. It takes place on September 18, 2012, from noon to 1:00 p.m., and will be eligible for one hour of EPPM credit. See the registration form for details on webinar group discounts.

- Join Barron Henley, an expert in the field of legal technology, for one or two full day sessions on law office technology. Start it Up, Reboot, or Reload - The Technology You Need, on October 3, 2012, covers technology basics such as computer security, billing and accounting software, cloud computing, word processing programs, remote access and training. Strategic Solutions to Law Office Technology, on October 4, 2012, will review strategies for paper reduction and document management and give tips on formatting complex legal documents, among other things. Register by September 10, 2012 to take advantage of the early bird rate.
- Integrity: Good People, Bad Choices, and Life Lessons from the White House - Egil "Bud" Krogh, former White House staff under Richard Nixon, will discuss The Integrity Zone®, a model he developed for making decisions that are based on integrity, at this afternoon program on October 23, 2012. Register by September 21, 2012 to take advantage of early bird pricing.
- Confidentiality & Privilege: An Estate Litigation Perspective - this practical lunch session will address the confidentiality and privilege issues that arise when third parties request information concerning the wills or powers of attorney of others. It will be held from noon to 1:30 p.m. on October 25, 2012. Register to attend in person or by teleconference.
- Gain the Edge!® Negotiation Strategies for Lawyers - learn how to negotiate with a strategic mindset at this popular program for both new and seasoned negotiators. It will be held November 7, 2012 at the Law Society classroom. Register before October 1, 2012 to receive the early bird rate. A discounted rate applies if you register for the follow up program in December.
- Advanced Negotiation Strategies - this program goes beyond the basics to teach you how to avoid divulging strategic information, how to maximize your leverage, how to counter "objective" standards, and the strategies for successful closing It takes place from 9:00 a.m. to 4:30 p.m. on December 6, 2012. See the program agenda and registration form for further details.
- Electronic Legal Research Booster - this intermediate level legal research program, a joint presentation of the LSM and the MBA, is for practitioners looking to take their electronic legal research skills to the next level with the use of secondary sources and other on-line commentary. A portion of the program is designed to provide specific guidance on electronic legal research for selected practice areas and will involve a group exercise. The program takes place from 1:00 to 4:00 p.m. on November 14, 2012. Enrolment is limited, so register soon.
- Practical Ethics: Real Problems, Real Solutions - at this live repeat of the popular February 28, 2012 program leading legal ethics instructor Paul Paton and a panel of local lawyers will teach you how to integrate

your knowledge of the ethical rules that govern your conduct into action in your practice. Morning and afternoon sessions will be held on December 10, 2012. Register before November 5, 2012 and pay a reduced rate.