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A A R E B C

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Go to www.clia.ca, and click on Loss Prevention to find a past issue.

■ Bulletin # 173 Retainer Letters and Conflicts of Interest

The law of conflicts of interest is currently the subject of widespread discussion among lawyers across Canada. Following on the heels of the Supreme Court's June 2007 decision in *Strother v. 3464920 Canada Inc.*, 2007 SCC 24, the Canadian Bar Association has established a Task Force on Conflicts of Interest (<http://cba.org/CBA/groups/conflicts/>) that is right now considering the feedback received from their Fall 2007 consultation paper *Practical Difficulties with Today's Conflict of Interest Rules*.

The Task Force consultation paper raised the question of use of retainer letters - an issue that flows directly from the *Strother* decision, where the minority judgment made these observations:

The lawyer owes the client a duty to act loyally for the client in performing as agreed in the retainer. The duty of loyalty is not a duty in the air. It is attached to the obligations the lawyer has undertaken pursuant to the retainer. It is not conflict of loyalties in the abstract that raises problems, but conflicting duties — duties that are determined by the retainer.

Thus, the retainer letter can play a key role in determining whether or not a conflict exists. The Task Force wrote:

We believe that there are many advantages to retainer letters. They are an appropriate way to record client expectations, and document the shared understanding of the lawyer's mandate. Both lawyers and clients benefit from clarity at the outset of the client-lawyer relationship, thereby minimizing surprises and misunderstandings later. For lawyers, a retainer letter may also limit liability, as was made evident in the *Strother* decision. The lawyer and firm involved would have faced much larger - and perhaps even catastrophic - liability had the retainer not been in place and limited in scope.

...The contents of retainer letters will vary according to the circumstances but should generally set out, for each new file:

- a) the identity of the client (for example, individual, corporation, group of shareholders, partnership, or partner)
- b) the scope of the mandate
- c) any exceptions to confidentiality requirements
- d) an agreement on fees and billing arrangements
- e) an outline of the proposed schedule for the work to be done
- f) a statement about whether or not the firm may act against the client, on unrelated

matters, provided that confidentiality is fully preserved

- g) the procedure for terminating the client-lawyer relationship, and
- h) a statement about when or if any duty or loyalty continues after the retainer ends.

This is excellent loss prevention advice. Whether or not the models proposed by the CBA Task Force are ultimately adopted, you should already be using clear, detailed retainer letters in your legal practice. In doing so, you will reduce your liability exposure.

■ Bulletin # 174 The Challenges of Caregivers

Statistics Canada reported that in 2002, more than 1.7 million adult Canadians, aged 45 to 64, were providing informal care to nearly 2.3 million seniors. Of this group, 70% were also separately employed. The survey went on to note that the impact of caregiving on the caregiver varies depending upon both the intensity of care required and on the intensity of the paid work. Not surprisingly, those reporting the highest intensity of caregiving and the longest hours of work also experienced the most disruption in their social activities, vacation plans or sleep patterns. The high intensity, long work-hours group were also most likely to have made employment-related compromises as a result of caregiving, including reduced hours, changed work patterns, reduced income or deferred training or education.

Law firms and law departments need to be aware of the potential impacts on the workplace as the list of responsibilities already juggled by baby-boomer lawyers expands to include caring for aging parents or partners. Members of this "sandwich generation" have been advancing in their careers while balancing the demands of parenting teenage and young adult children, but are now also taking on the additional responsibilities of caregiving for partners or parents. The most likely result is mounting stress levels that may manifest in any number of ways.

Successful lawyers already rely on a variety of mechanisms to cope with stress - whether exercise, creative endeavours or taking time off. But as responsibilities accumulate, finding time for stress-reduction activities becomes more difficult and negative impacts may soon be evident. Over-stressed lawyers may withdraw from social contact, become depressed or experience decline in

personal health. As priorities shift away from the achievements of professional life to the demands of personal life, there is a corresponding increase in the potential for professional misconduct or malpractice claims.

To minimize this risk, firm managers need to be alert to the rising pressures on lawyers in the sandwich generation and should be ready to consider requests for reduced or flexible hours as well as delegation or reassignment of work responsibilities. By accommodating the caregivers, law firms will protect themselves and reduce the risk that the challenges of caregiving will negatively impact their clients or their firm's reputation.

Resources on providing support to caregivers are increasingly available and the websites below provide an overview of the issues caregivers face:

- Canadian Caregivers Coalition: Links:
<http://www.ccc-ccan.ca/links/index.php>
- Caregiver's Handbook:
http://members.shaw.ca/bcseniors/caregiver_handbook.pdf
- Health Canada's Family/Informal Caregivers site:
http://www.hc-sc.gc.ca/hcs-sss/home-domicile/caregiver-interven/index_e.htm

■ Bulletin # 175

Ten Timesaving Tech Tips

In the spirit of year-end list-making, here's my list of *10 Things I Learned* in the past year that help me to work more efficiently.

1. **Ctrl A** - This handy keyboard shortcut selects all text in a document. Use it when you want to copy (Ctrl C) and paste (**Ctrl V**) the contents of one document into another document or into an email.
2. **RSS Feeds** – Subscribe to RSS (Really Simple Syndication) feeds on websites you visit often. An RSS feed-reader links to the website for you and checks for anything new, e.g. the CanLII feed alerts to postings of new decisions from the courts you have chosen to monitor. Check the web pages you visit most to see if RSS feeds are available by looking for this symbol:  Click on it and follow the instructions to subscribe. It's quick, easy and free.
3. **Outlook Rules** – If you subscribe to a variety of email newsletters that clutter your inbox and distract you from tasks, eliminate the temptation to read these emails on arrival by setting up an auto-filing system using Outlook's Rules function. With minimal effort, the newsletters can be filed directly into Outlook folders for review at a later time. You can use same process to automatically forward email you receive to others.
4. **tinyurl.com** – This website fixes the problem of extra-long URL web links that often break when pasted in an email by providing an alternate, permanent link that is indeed “tiny.” Copy and paste an extra-long web address

into the space provided at www.tinyurl.com and a new, short URL will be provided for use in your emails or other documents where you need to include a web link. It's free and easy to use.

5. **Online word processing software** – To access documents-in-progress from both home and office, you could email the documents to yourself as attachments, but the usual result is multiple versions of the same document stored on two or more computer hard drives and the ongoing challenge of figuring out which version is most current. Instead, try using free, accessible online word processing software, like Google Docs (www.docs.google.com) to work on non-sensitive documents from any computer with internet access. The software even allows you to invite others to review, edit or collaborate on your document if you choose.
6. **Google Desktop** - Google Desktop can index everything stored on your computer, whether email, Word documents, PDFs, photos or spreadsheets, and gives you the power and speed of a Google search when looking for that reference to a case that someone sent you or for that misfiled work-in-progress. It's easy to use and rarely disappoints.
7. **Paste Special** - When pasting text from one document or web page into another document, instead of using just the usual Paste (Ctrl V) function, click on the edit menu and then click Paste Special. In the dropdown menu that appears, select "Unformatted Text" and proceed. The result will be text pasted into your document with the formatting of your document, rather than the formatting of the document you copied from.
8. **My Library** - Following the Microsoft file-naming formula, create a folder on your computer entitled My Library, and save interesting articles, white papers, web pages, and blog postings to that folder for future access. Used in conjunction with the Google Desktop, you can easily search the contents of the folder to find all saved resources on any given topic.
9. **Reduce Email Interruptions** - If you want to get more work done in less time, try changing your email settings so that the auto send/receive only occurs every hour or two, instead of every 5 or 10 minutes. At the same time, turn off any notification sounds or pop-up windows. Then, discipline yourself to check email only on that schedule and settle into the tasks at hand knowing you won't be interrupted.
10. **Delegate More** - Here's a no-tech tip. Before you start on an administrative task, ask yourself: Does this task require a law degree? If the answer is no, delegate it if possible and remember to follow the basic rules of delegation: 1. Select and clearly define the task; 2. Identify the appropriate person to complete the task; 3. Communicate what needs to be accomplished, when and how, if appropriate; and 4. Follow up.