



# LOSS PREVENTION BULLETIN

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## ■ Bulletin # 211

**Your Professional Liability Insurance and Cyber Coverage By: Tana Christianson, Director of Insurance, Law Society of Manitoba**

CLIA's Lawyers' Professional Liability Insurance Group Policy, which covers all insured lawyers in Manitoba, has what is generally referred to as a "cyber coverage" exclusion. Condition 3.9.1 of the Policy of Insurance excludes "claims arising out of or from damage to or loss of use of tangible or intangible property, loss of data, disclosure of confidential information, or any other loss which is directly or indirectly connected with the receipt or transmission of a computer virus or other damaging program via the internet or in any other electronic manner, or through unauthorized interference with an internet connection, network, computer or telecommunication device."

CLIA has recently clarified what this policy exclusion means. Essentially there is no coverage for most cyber claims, including claims where the law firm itself suffers damage as a result of unauthorized interference from things like cyber-attack, computer melt-down due to viruses, theft, or hacking of electronic equipment or data. Further, there is no coverage where a client suffers damage as a result of the theft, cyber-attack or hacking of your firm's computers.

What does this mean for you? If you lose your smartphone, your laptop is stolen from your vehicle or computers or servers are taken from your office in a break-in, your professional liability coverage will not respond. Likewise, if you are a victim of "hacking" - like the recent well-publicized cyber-attack on Bay Street firms involved in the unsuccessful Potash Corp sale - damage suffered by the firm or its clients would not be covered.

Surely few Manitoba lawyers have been under the impression that their professional liability insurance would replace their lost or stolen smartphone or laptop. But, some lawyers may have been laboring under the misapprehension that they would be covered if the client whose confidential information was stored on such

devices and equipment suffered a loss when the devices were either stolen, hacked or otherwise interfered with.

So, what should you do to protect yourself from exposure to claims arising from lost equipment or compromised data? You may find some coverage for theft or cyber-attacks in your existing general office liability policy. Read that policy carefully and check on your coverage limits for lost or stolen devices and data interruption at the same time. There are also some commercially available cyber policies specifically designed to cover "hacker" and "cyber-attacks". Check those out with your insurance broker.

More importantly, do what you can to prevent cyber-attacks, and consult with a computer security expert about firewalls, encryption, anti-virus software, secure passwords, intrusion detection systems and other ways to protect your equipment and your clients' information. Protect your portable devices with secure passwords, and keep them locked and stored in a safe place when you are not using them, and try not to leave your laptop on the bus.

(Originally published in the Law Society of Manitoba's October 2012 Communiqué and reprinted with permission.)

## ■ Bulletin # 212

**Lawyers Are Vulnerable Too**

*When we were children, we used to think that when we were grown-up we would no longer be vulnerable. But to grow up is to accept vulnerability... To be alive is to be vulnerable.*

- Madeleine L'Engle

The release of Canada's national mental health strategy, *Changing Directions, Changing Lives* last spring served as a reminder that we are all, even lawyers, vulnerable to the effects of mental illness. The website *Guarding Minds @ Work* notes that:

*...psychological health problems occur on a spectrum, from mild psychological difficulties on one end (low mood, sleep difficulties, excessive worry) to severe psychological disorders on the other*

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*(schizophrenia, bipolar disorder, severe depression). Because milder psychological health problems are far more common in the workplace, they account for a larger proportion of the negative impacts on employees and employers.*

In today's knowledge based workforce, mental illness affects not only individuals and their families, but also the economy:

*Taking care of our mental health at work has never been more urgent than it is in today's knowledge-based economy.... "Most new jobs today demand cerebral, not manual, skills, defining what we call a brain-based economy...where brain-based mental disorders are the leading causes of workplace disability," exacting an annual \$1-trillion toll in the European Community and North American Free Trade Area combined....*

(Winnipeg Free Press, The Mind Grind, May 8, 2012)

These impacts may be compounded by the effects of aging, including cognitive decline, dementia or Alzheimer's disease.

When a lawyer's mental health suffers, the ability to practice competently may suffer as well. The Federation of Law Societies of Canada's Model Code of Professional Conduct (the Model Code) makes it clear that an individual lawyer is responsible to practice to the standard of a competent lawyer; but, it is less clear what the obligations are for those who become aware of another lawyer's declining mental health. With respect to partners and associates, the Model Code notes that "...A lawyer who is incompetent does the client a disservice, brings discredit to the profession and may bring the administration of justice into disrepute. In addition to damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's partners and associates."

Just what are your obligations when you note a decline in competence of a lawyer you work with? Where there are serious concerns, Chapter 6 of the Model Code requires that you report to the appropriate law society:

**Duty to Report Misconduct**

6.01 (3) Unless to do so would be unlawful or would involve a breach of solicitor-client privilege, a lawyer must report to the Society:

- (d) the mental instability of a lawyer of such a nature that the lawyer's clients are likely to be materially prejudiced;
- (e) conduct that raises a substantial question as to another lawyer's honesty, trustworthiness, or competency as a lawyer; and
- (f) any other situation in which a lawyer's clients are likely to be materially prejudiced.

The Commentary to this provision notes that:

Often, instances of improper conduct arise from emotional, mental or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Society supports professional support groups in their commitment to the provision of confidential counselling. Therefore, lawyers acting in the capacity of counsellors for professional support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received.

As suggested in the Commentary, this obligation to report may not need to come into play if law firms are proactive and take steps to address and support the mental health of their lawyers and staff.

Ensure that your firm policies support the mental health of your lawyers and provide guidance for lawyers who notice a change or decline in a lawyer's mental health. Set out a protocol that lets your lawyers know who to talk to about these issues, whether personal or relating to another lawyer in the firm. Encourage team approaches to client work so that a struggling lawyer can continue to work if able, but is supported.

Develop a culture of support. John Hoyles, CEO of the Canadian Bar Association says "The culture must be that it is okay for lawyers to seek help. They do not have to solve everything themselves." (*Tough Lawyers*, published on Slaw.ca, May 4, 2012). You can do so through your policies, through personal relationships and through education.

And don't hesitate to contact your local Lawyers Assistance Program (LAP). These programs are available in every jurisdiction and offer professional help in a way that does not expose the person seeking assistance. To find the LAP nearest you, check out: <http://www.lpac.ca/main/main/laps.aspx>

Further resources on mental health in the workplace are available online at:

- Mental Health Commission of Canada - [http://www.mentalhealthcommission.ca/SiteCollectionDocuments/Workforce\\_2011/The\\_Road\\_to\\_Psychological\\_Safety.pdf](http://www.mentalhealthcommission.ca/SiteCollectionDocuments/Workforce_2011/The_Road_to_Psychological_Safety.pdf)
- Canadian Centre for Occupational Health & Safety – <http://www.ccohs.ca/resources/>
- Canadian Mental Health Association – [www.cmha.ca](http://www.cmha.ca)
- Mental Health in the Legal Profession: <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=1579>