



LOSS PREVENTION BULLETIN

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A A R E B C

Editor: Karen L. Dyck,
Loss Prevention Coordinator

36 Toronto Street
Suite 510
Toronto, Ontario
M5C 2C5

Email: karen.l.dyck@gmail.com

■ Bulletin # 217 Doing Nothing is Not an Option

It has been estimated that a staggering 1.4 million Canadians will have Alzheimer's disease and other dementias by 2031. Lawyers of course are not immune to the effects of aging. Whether presented with Alzheimer's, mild cognitive impairment or dementia, those in management of law firms need to be alert to the changes that may occur as firm members age.

Diminishing cognitive ability is something that comes naturally with aging. Normal age-related cognitive decline means that each of us will, over time:

- Rely more on prior knowledge in decision-making and less on analytical thinking;
- Learn more slowly and need more repetition to acquire new knowledge;
- Experience memory changes, such that, for example, recall of words is more challenging without visual cues; and
- Process new information at a slower speed.

Mild cognitive impairment is different. It may come on suddenly, after an acute event or accident or other trauma. But more typically, there is a gradual onset that may be set into motion as a result of medication use, substance abuse, depression or stress or burnout. Some of the signs of cognitive impairment to watch for include:

- Late payments and poor business decisions
- Loss of skill (bad outcomes, legal errors)
- Office staff concerns or turnover
- Lawsuits or complaints to regulatory agencies
- Dissatisfied clients
- Professional boundary problems and poor judgment
- Irritability, impatience, mood swings.

Those living with a person with declining mental capacity are most likely to notice signs of decreasing mental capacity first. But they are also most likely to seek to protect their family member from the potential effects of disclosing that decline, whether due to fear of loss of the ability to practice or to avoid "betrayal" or any perceived stigma attached to dementia.

For this reason, firms may want to put in place processes to create an accessible and safe avenue for concerns about a lawyer's mental competence to be raised. This may be similar to processes used to raise issues related to addictions or any other competence concerns. These internal processes should provide a means for firm members, whether partners,

associates and support staff, to safely raise concerns about a lawyer whose competence appears to be in question.

Of course, care is also required so as to protect the lawyer about whom concerns are raised, as well as the firm and its clients. Given that those suffering age-related cognitive impairment are most typically senior and respected members of a firm, every effort should be made to pursue these issues with due tact and concern.

At the same time, doing nothing is not an option when you notice that a colleague appears to be declining in competence. Questions that need to be asked and answered include:

- What about the effect on the lawyer's clients?
- Is the lawyer's ability to do her job impaired?
- Can the lawyer still do any kind of legal work? Perhaps with assistance and support?

It is important to know that an individual's expertise and judgment may be undiminished even though cognitive function is diminished or impaired. In some cases, providing functional support may suffice to allow the lawyer to continue at least in some capacity, although this will require careful assessment and monitoring.

Assumptions should never be made about cause for the behavior. What appears to be a physiological issue related to the process of aging might just as well be attributable to a mental health or addictions issue.

Ultimately, a medical referral will likely be required to obtain a diagnosis that will assist in determining the next steps for both the individual and the firm.

Your lawyer's assistance program, offered through your local law society or bar association, is a good place to turn for support and resources to work through this time of transition for both the individual lawyer and the law firm.

More Resources on Aging and Lawyers:

Joint Commission on Aging Lawyers, Final Report:
<http://nobl.roundtablelive.org/Resources/Documents/NOBC-APRL-1.pdf>

Putting the Brakes on Age Related Cognitive Decline:
http://www.oaap.org/2011/documents/insight/Brakes_on_Age_Rel_Cog_Decline_Dec_2012_InSight.pdf

Aging and Transitioning with Dignity:
<http://www.texasbar.com/AM/Template.cfm?Section>

Transition to Retirement: Strategy and Success:
<http://www.lawsociety.sk.ca/media/50937/retirementarticlecpdselectoct2012.pdf>

Apps for Aging Lawyers: Prostheses for the Mind:
www.americanbar.org/publications/gp_solo/2013/july_august/apps_aging_lawyers_prostheses_the_mind.html

■ Bulletin # 218 Embracing Disruption

Disruptive innovation is a term coined by Clayton Christenson in his book *The Innovator's Dilemma*. It refers to a new product or business process that is effectively a game-changer, in that it disrupts and changes the marketplace for that product or process by displacing existing products or processes, to become the new normal. Lately, it's not uncommon to hear the term used in relation to changes occurring in the legal marketplace.

In the Harvard Business Review blog post, *Is Timex Suffering the Early Stages of Disruption?*, Grant McCracken describes the crowd-funding approach taken by bespoke watchmakers, Hudson River Watch Company (HWC) and asks whether this new business model challenges longstanding watchmaker Timex in the marketplace. His point isn't that this small upstart is a threat to Timex, but that HWC's arrival in the market creates an opportunity for the old guard to reexamine their business models and assumptions about consumers and the marketplace they operate in.

McCracken suggests that the questions for Timex to ask are:

1. "What could HWC be telling me about the world? What's out here that I can't see?"
2. "What is HWC telling me about my assumptions? What's in here that I can't see? What prevents me from seeing this noise as signal?"

Whenever there is change on the horizon, or indeed, right under your nose, these are good questions to ask.

In the context of the legal marketplace, you might ask these questions about alternate business structures in England and Wales, about legal process outsourcing, both domestic and international, and even about increased reliance on paralegals and technicians. What do these legal marketplace innovations tell you about the demand for legal services? What else is happening out there that is driving these changes?

Then, turning the questions inward, you might ask what do these changes in the legal marketplace tell you about your own assumptions and biases? And what are your own deeply held beliefs that prevent you from seeing these innovations as disruptive?

McCracken suggests that the watch industry is on the cusp of disruptive change, and notes that:

"To contend with disruptive change, we want to see innovations as early as we can. But in the early days, all innovations look more or less the same: they are odd, implausible, and in some cases, ludicrous. This makes us our own worst enemy. We can't see disruptive change in its infancy because we are captives of our ideas and instincts."

It could be argued that the watch industry has already been disrupted, though perhaps they've not yet noticed as McCracken contends. In my house, for example, there is a basket of watches – maybe a dozen – all with dead batteries, and it's been a couple of years since I last wore one. My parents gave me my first wristwatch when I was 9 (when I was old enough to remember to wind it every morning) but I don't expect that my 9 year old will ever wear one.

Similarly, the legal profession, long held captive by our ideas and instincts about the needs of the legal marketplace, has also been and is still being disrupted, particularly by technological innovations, changing consumer attitudes and global economic conditions.

Dan Pinnington, Vice President, Claims Prevention and Stakeholder Relations at Ontario's LawPro wrote in *The Future of Law: The challenges and opportunities of practising in a global village* that:

"Lawyers tend to be slow to change and it seems many lawyers don't see or won't acknowledge the changes that are coming. Some think they are different or they say that their matters are "unique" and require the services of a lawyer. Lawyers should not fool themselves: The basic market forces of supply, demand and pricing apply to them. There is an oversupply of traditional and high (some say over) priced legal services. The client demand for lower-priced legal services is being filled by the new types of non-lawyer legal services providers.

Lawyers and law firms need to recognize that changes to the legal services market are occurring and embrace them."

It's time that we as a profession stop looking at our watches and rather start paying heed to what the new marketplace of legal services is really telling us. Then, we need to honestly look at ourselves to define and remove those barriers that prevent us from embracing the changes already in progress, as well as those innovations still on the horizon.

Sources:

Is Timex Suffering the Early Stages of Disruption by Grant McCracken, April 25, 2013: <http://blogs.hbr.org/2013/04/is-timex-suffering-the-early-stage/> (accessed October 4, 2013).

The Future of Law: The challenges and opportunities of practising in a global village by Dan Pinnington, October 2013: <http://www.practicepro.ca/LAWPROMag/Pinnington-Future-of-Law.pdf> (accessed October 4, 2013)

(Based on the post, *Have You Got the Time?* published July 31, 2013 on Slaw.ca: <http://www.slaw.ca/2013/07/31/have-you-got-the-time/>)