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A A R E B C

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■ Bulletin #82 Time to set our alarms for the year 2000

When is the deadline?

To avoid professional liability, and as sound business practice, all lawyers must address the year 2000 problem. The deadline for finding solutions is nearer than you might think. Your firm may need time to agree on replacement software, to implement it, and to train those who use it. Your banker and your business interruption insurer will be pushing you to show that you are prepared. And to test new programs that are only run at or immediately after the calendar year end, you'll have to have them in place by 12/31/1998. Those whose planning calendars are computerized may already have encountered computer dates beyond 1/1/2000, or may do so tomorrow.

A problem of many parts

By now we are all familiar with one part of the year 2000 problem. Most older computer programs use only two digits to specify the year (98). So in 2000 the computer will not know whether the year (00) is 1900 or 2000. As a result, the computer either will not work at all or will incorrectly store, process, sequence, or exchange data. Program crashes will be easy to spot, but errors might simply cause applications to operate incorrectly or to slowly corrupt data over time.

And this is more than just a computer problem; it also affects systems such as your means of tracking long distance telephone calls. In fact, any device whose processing logic depends upon dates can be affected. Embedded computer chips that include dates are found in a surprising variety of devices. Some examples:

- office machines: photocopiers, fax machine, telephone answering machine
- building systems: heating, ventilating, air conditioning, elevators, fire detection, security
- time-keeping and attendance systems

Year 2000 compliance includes at least four other issues as well. First, systems that don't recognize 2000 as a leap year may give inaccurate results when computing a limitation date or other critical deadline. Second, some law offices have used 1/1/99 or 9/9/99 to mean something other than the actual date, such as 'date unknown' or 'never destroy.' Firms must carefully modify all data that used the old logic, even if they buy a new computer system to solve other parts of the year

2000 problem. A third time-consuming problem is the need to redesign screens and forms. Many already-crowded data input screens on the computer leave room for only two digit dates, as do their corresponding hard copy forms. Fourth, firms will have to consider whether their file-naming conventions include two-digit dates that will create sorting or file recall problems. Good risk management requires that firms review and adjust their office procedures in time to ensure continuous, smooth work flow in the office.

What about your clients' year 2000 problems?

Whatever kind of law you practice — be it corporate, immigration, tax, health, or other — your clients will have year 2000 problems. Some lawyers expect to see a flood of litigation, in part because the fiduciary duty of corporate officers will force them to sue. But others suggest there will be no flood for several reasons: business owners can't blame others for their old computer systems, businesses will insure around the problem, the small dollar amounts involved won't make it worth suing, firms to be sued might go out of business, or a few initial cases will settle the law. Whatever the number of cases, you can avoid professional liability by refusing to take them unless you are well-versed in computer law, product liability, exclusion clauses, and warranties.

Some issues you might flag for your clients' attention:

- Clients should review agreements to determine who is responsible to repair year 2000 problems.
- Clients should review insurance agreements for possible coverage for year 2000 compliance costs.
- Year 2000 compliance should be a part of any new agreements that extend beyond 2000.
- If your clients fix their year 2000 computer problems themselves, they might violate a warranty provision or intellectual property right.
- Clients who are service providers may have a duty to warn of their own year 2000 non-compliance or foreseeable service disruptions.

- Clients who are directors and officers may risk liability to both the corporation and themselves if they don't address the year 2000 issue within their organization.
- When valuing a closely held corporation for a property settlement, consider the impact of its year 2000 status.
- Stock exchanges and auditors now require disclosing the level of year 2000 compliance.
- Major mergers and acquisitions require a year 2000 audit, much as we now recommend environmental audits.

How big is the problem within your office?

Dimensions of the year 2000 problem differ for different sized firms: small firms using off-the-shelf software have the least problem, while mid-sized firms with custom software and insufficient internal resource have the greatest. Some old, large firms are running applications developed 15-20 years ago on out-of-date hardware that they will probably have to replace.

Some issues you should consider:

- *The office building:* Will it still be welcoming to clients? Will it have heat, light, elevators? Is your building owner looking after these matters?
- *Communications:* Will you be able to communicate with clients? Will your computer turn on? Will your word processor and its macros work? Your network? Your phone system? Your voice mail or e-mail?
- *Administration:* Will your administrative systems still deliver? Will you be able to pay your staff? Is your payroll provider year 2000 compliant? Will you be able to keep track of disbursements? Is your photocopier's page counter compliant? Will you be able to log long distance calls? Do proposed new systems allow you to access archived material? Have you allowed time for testing and training on new administrative systems?
- *Accounting:* If your systems crash, can you still bill your clients? Fulfill your requirements for trust accounting? Access your trust records?
- *Limitation dates:* Will you still have a working limitations diary? Is your diary on a mainframe or P.C. that won't handle dates in the 21st century? Have you also got your diary dates somewhere else? Will you miss a date? Will you spend days recreating your limitations diary?

Steps to take now

Canada's Task Force Year 2000 recommends that you and your clients immediately implement a formal written plan including at least these steps:

- inventory all systems and identify which are most critical
- assess what computer codes or systems must be replaced
- convert or replace faulty systems
- test the new system and its interfaces
- plan 'work arounds' for systems that can't be fixed in time
- monitor your key partners' preparedness

Remember to inventory database files and files in archives — and to update your inventory as you acquire new items. When you assess your systems' compliance, check it in your own environment and with your own combination of applications and data. Don't be fooled by an initial success. Sometimes the computer will appear to accept the date, but when you restart the machine it will have forgotten, leaving you to re-enter the date every time you start the machine. Many common legal software packages *are* capable of handling dates in the 21st century. Check the vendors' web sites or contact the vendor to ensure that the versions you are using comply. And consider low-tech precautionary measures such as printing hard copies of all data files or being prepared to keep track of hours and process bills by hand.

Looked at another way the year 2000 problem is an opportunity to upgrade computer systems, business processes, and templates. If you use the year 2000 as an opportunity to buy a new computer system, be aware of one further loss prevention issue. When you sell your old computer, erase all confidential material on the hard drive by doing a low-level format to overwrite old files with zeros. If you just do a simple delete, the new owner of your old computer may still be able to retrieve your files.

For more information

<http://www.cba.org/abc/year2000.html>

Checklist of legal issues from the Canadian Bar Association's Working Group on the Year 2000.

http://strategis.ic.gc.ca/sc_mangb/y2k/engdoc/homepage.html

Web site of Industry Canada on Year 2000.

<http://www.cc.columbia.edu/cu/ais/html/year-2000-links.html>

Links to other year 2000 issues and information from software vendors.

<http://www.ncl.ac.uk/ucs/info/2000.html>

Surveys completed by computer vendors and reviews of database and spreadsheet programs. Fixes for Windows 3.1 and Windows for Workgroups.

<http://www.y2k.com>

Articles and tips for lawyers drafting contracts or advising clients who might be affected by computer problems in 2000.

<http://www.cica.ca/>

Canadian Institute of Chartered Accountants on year 2000 issues.

<http://www.royalbank.com/English/year2000>

The Royal Bank's year 2000 web site.

With thanks to Marta Burns, Witten Binder, Edmonton; Laird Hunter, Worton Hunter, Edmonton; Martin Kratz, Bennet Jones Verchere, Calgary.