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# Law Matters

## Technology in Law

**Dentons Business:  
Legal Technology in Action**

**Point/Counterpoint**  
Cloud Storage

**Computer  
Dispute  
Resolution**



THE CANADIAN  
BAR ASSOCIATION  
Alberta Branch

# EDITOR'S NOTES

By Robert Harvie, QC

The "Law", as we know, is an amorphous and uncertain animal. It changes with the tides of public opinion - and we, as lawyers, profit from that ongoing and perpetual uncertainty. We are modern-day explorers, seeking out to find the Northwest Passage for our clients' issues - the "way through" often poorly charted waters, where sandbars and rocks appear and disappear before us with the stroke of a legislator's pen or a judge's decision.

So, then, many of us look to technology as an anathema to our traditional way of business. If the law cannot be predictable, just how much can a machine based on predictable and certain outcomes facilitate our practice?

Yes. We can create more documents faster - we can communicate quicker - but is "technology" a legal game-changer in any real and significant way? This issue discusses that question.

Noren Hirani poses some examples of how technology may facilitate exchange of legal information and improved coordination of legal services for people having difficulty retaining their own counsel in the "access to justice" arena.

Terry Cooper and myself discuss the pros and cons of "the cloud" in serving the interests of lawyers and their clients - and Devin Mylrea provides a more detailed examination of what the "cloud" actually is, and how it works.

In a more substantive way, Dragana Sanchez-Glowicki discusses the use of "artificial intelligence", to take

technology from simply improving efficiency to actually engaging in what used to be considered pure "lawyer" work, including the use of ROSS artificial intelligence to engage in "independent intuitive research" and Beagle software to actually analyze contracts to quickly and simply summarize the areas in which a new contract differs from previous contracts, and other software technologies quickly changing how lawyers may do business.

If lawyers can, in some manner, be replaced by computers - Tony Young suggests, why not Judges too - discussing the potential for computer managed dispute resolution. Can computers be used to facilitate more effective ways to resolve conflict? Perhaps so.

This issue engages in some interesting, and perhaps intimidating discussions regarding the influence technology may have and is having already on the way that we do what we do as lawyers. Will technology reduce the public "need" for lawyers? Maybe, maybe not.

Should we be afraid? Are lawyers at risk of being replaced by machines? My advice in this regard is - "ignorance is not bliss". Read and be aware of changes coming and changes already here. To use the above mentioned analogy, explorers Magellan and Cook would hardly ignore GPS and sonar/radar technology if it was available to them in their day - as lawyers, we may be just as foolhardy in ignoring the growing world of legal technology available to us now. 📱



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# PRESIDENT'S REPORT

By Jeremiah Kowalchuk



Welcome to 2017! On behalf of the Executive Committee of the CBA Alberta Branch, I want to extend our best wishes for a Happy New Year to you all.

One of the first highlights of the year in the CBA calendar is the Distinguished Service Awards, held jointly with the Law Society of Alberta. The dedication of our award winners to pro bono legal service, scholarship, the community, and the profession sets a shining example for the rest of our profession to aspire to in our careers. Please join me in congratulating the winners of the 2017 Distinguished Service Awards:

Pro Bono Service - Buddy Melnyk  
Legal Scholarship - Professor Jonnette Watson Hamilton  
Service to the Community - Robert A. Philp, QC  
Service to the Profession - Virginia A. Engel, QC

Turn to page 14 to see photos of the awards luncheon, which took place on January 26.

Some of you will have noticed that the Alberta Law Conference, normally held annually in late January, did not take place this year. Instead, we are pleased to be partnering with CBA British Columbia for CBA West scheduled to take place November 17 - 19, 2017 in Las Vegas, Nevada at the Wynn Hotel. The CBA West organizing committee is currently finalizing professional development and registration details, and we expect registration to be open early this spring.

We have heard from some members who have expressed interest in hosting a firm retreat in conjunction with CBA West in November. The Wynn Hotel has generously extended the conference room rate to the three days prior and following the conference to accommodate retreats, and can assist with booking meeting rooms and other retreat needs. If this is of interest to your firm, please contact the CBA Alberta office at 403-263-3707, or email [communications@cba-alberta.org](mailto:communications@cba-alberta.org) for more information.

I am extremely proud of the advocacy work that has been done by the CBA nationally, and by our Alberta Branch. The matter of judicial vacancies has been top of mind in a number of provinces, including Alberta, and we are now seeing the federal government take action to fill some of these vacancies. In December, we put forward three CBA Alberta members as nominees for CBA Alberta's position on the Judicial Advisory Committee for Alberta. Minister of Justice & Attorney General Jody Wilson-Raybould announced the advisory committee appointees, and we are very pleased that Hanan Campbell will be our Branch's representative. We look forward to seeing Alberta's superior court vacancies filled, and the creation of new positions to meet the growing demand in our province.

Canadian Bar Association staff and volunteers were busy

throughout the fall contributing to the Re-Think initiative, with work continuing well into 2017. In September and October, CBA staff across the country were assigned to task groups, which laid out the roadmap for Re-Think work in 2017. This roadmap identifies the steps that will be taken in order to align various departments of the CBA with the opportunities laid out early in the Re-Think process, which are to develop deep, smart member intelligence, deliver distinct and relevant professional development, advocate on behalf of the profession, prepare the profession for the future, and cultivate an inclusive, engaged professional community.

We have already seen some exciting changes take place as a result of the Re-Think, including the CBA Connect program (see [www.cba.org/CBA-Connect](http://www.cba.org/CBA-Connect) for more information), and look forward to further work aligning the CBA with the above opportunities.

Here in Alberta, we are committed to delivering top-notch professional development through our Sections, and through the Savvy Lawyers Series of webinars that take place throughout the year. In January, we launched the "Bread & Butter" webinars as a part of the Savvy Lawyers Series, which focus on real estate and wills and estates. Part I of the series, Basic Real Estate, took place in early January, and is still available to purchase as an on-demand video. Part II, Basic Wills and Estates, is scheduled for March 17 at 12pm, and is available in person in our Edmonton office, or by live webcast. For more information or to register, visit [www.cba-alberta.org/SavvyLawyers/Bread-Butter](http://www.cba-alberta.org/SavvyLawyers/Bread-Butter).

With the start of the New Year, our provincial Law Day committees are now in full swing planning events in April. Law Day is our opportunity each year to provide public legal education, and is an important event in providing access to justice to people across Alberta. Law Day events will be held in Calgary and Edmonton on Saturday, April 22, and in Fort McMurray, St. Paul, Red Deer, Lethbridge and Medicine Hat throughout April and May. This year, in addition to activities promoting access to justice and public legal education, Law Day events in Alberta are recognizing Canada 150 - celebrations that recognize the 150th anniversary of Confederation.

Law Day is an excellent (and fun!) opportunity for members of the legal community to volunteer their time to improve access to justice in our province. For more information on Law Day events in your community, or to reach out to your local event organizer for information on getting involved, please visit [www.lawdayalberta.com](http://www.lawdayalberta.com).



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# WHAT'S HAPPENING

## February

**28: The Ontario Bar Association presents Essential Update on Estate Litigation Costs.** Live webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17TRU0228X](http://www.cbapd.org/details_en.aspx?id=ON_17TRU0228X).

## March

**3: The Canadian Bar Association presents the CBA-FLSC Annual Ethics Forum.** Law Society of Upper Canada, Toronto, ON. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=na\\_ethics17](http://www.cbapd.org/details_en.aspx?id=na_ethics17).

**7: The Ontario Bar Association presents Financial Abuse of the Older Client: Practical Legal Strategies to Prevent and Respond to the Exploitation of Seniors.** Live webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17OBA0307X](http://www.cbapd.org/details_en.aspx?id=ON_17OBA0307X).

**8: The Ontario Bar Association presents Vital Skills for the Immigration Practitioner.** Live webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17IMM0308X](http://www.cbapd.org/details_en.aspx?id=ON_17IMM0308X).

**16: The Calgary Bar Association presents the 2017 Judges Dinner.** Westin Hotel, Calgary, AB. Visit [www.calgarybarassociation.com](http://www.calgarybarassociation.com) for more information.

**17: The Canadian Bar Association - Alberta Branch presents Savvy Lawyers Bread & Butter Series: Basic Wills & Estates.** CBA Alberta Office, Edmonton, AB or Live Online. Visit [http://www.cbapd.org/details\\_en.aspx?id=AB\\_SKIL17317](http://www.cbapd.org/details_en.aspx?id=AB_SKIL17317).

**27: The Ontario Bar Association presents Buying and Selling a Business: A Comprehensive Guide.** Live webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17BUS0327X](http://www.cbapd.org/details_en.aspx?id=ON_17BUS0327X).

**28: The Ontario Bar Association presents Tax Update.** Live webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17TRU0328X](http://www.cbapd.org/details_en.aspx?id=ON_17TRU0328X).

**30: The Ontario Bar Association presents Ethics, Professional Responsibility and Practice Management Toolkit for Workers' Compensation Lawyers.** Live webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17WCB0330X](http://www.cbapd.org/details_en.aspx?id=ON_17WCB0330X).

## April

**2-4: The Canadian Corporate Counsel Association and the Canadian Bar Association present the CCCA National Conference: Agents of Change.** Hilton Toronto Hotel, Toronto, ON. To register, visit [www.ccca-accje.org/Conference](http://www.ccca-accje.org/Conference).

**8: The Canadian Bar Association presents the 2017 CBA Criminal Justice Conference.** Fairmont Hotel, Vancouver, BC. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=na\\_crim17](http://www.cbapd.org/details_en.aspx?id=na_crim17).

**18: The Ontario Bar Association presents Annual Update on Judicial Review.** Live webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17ADM0418X](http://www.cbapd.org/details_en.aspx?id=ON_17ADM0418X).

**20: The Ontario Bar Association presents Pleading Your Case Effectively.** Live webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17CIV0420X](http://www.cbapd.org/details_en.aspx?id=ON_17CIV0420X).

**20: The Ontario Bar Association presents The Next Generation of Managing Partners and Succession Planning.** Live webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17LPM0420X](http://www.cbapd.org/details_en.aspx?id=ON_17LPM0420X).

**21: The Canadian Bar Association presents the 2017 CBA Constitutional and Human Rights Conference.** Sheraton Hotel, Ottawa, ON. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=na\\_const17](http://www.cbapd.org/details_en.aspx?id=na_const17).

**27-28: The Canadian Bar Association presents the 2017 CBA Environment, Energy and Resources Law Summit.** Hyatt Regency, Montreal, QC. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=NA\\_env17](http://www.cbapd.org/details_en.aspx?id=NA_env17).

## May

**4: The Ontario Bar Association presents 15<sup>th</sup> Annual Current Issues in Employment Law.** Live webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17LAB0504X](http://www.cbapd.org/details_en.aspx?id=ON_17LAB0504X).

**4-5: The Canadian Bar Association presents the 2017 CBA Health Law Summit.** Queen's Landing Hotel, Niagara-on-the-Lake, ON. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=NA\\_health17](http://www.cbapd.org/details_en.aspx?id=NA_health17).

**7-9: The Legal Education Society of Alberta presents the Annual Refresher: Practical Excellence.** Lake Louise, AB. To register, visit [www.lesaonline.org](http://www.lesaonline.org).

**11: The Canadian Bar Association presents the 2017 CBA IP Day.** Shaw Centre, Ottawa, ON. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=na\\_ipday17](http://www.cbapd.org/details_en.aspx?id=na_ipday17).

**12: The Canadian Bar Association presents the 2017 CBA Charity Law Symposium.** Toronto Region Board of Trade, Toronto, ON. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=NA\\_char17](http://www.cbapd.org/details_en.aspx?id=NA_char17).

## Save the Date

**November 17 - 19: The Canadian Bar Association - Alberta Branch and BC Branch present CBA West Conference.** Wynn Hotel, Las Vegas, NV. Stay tuned for more information! 📺

Please send your notices to:  
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## Does Access to Justice = Greater Access to Technology?

By Noren Hirani

A smartphone app called Legalswipe allows anyone with a smartphone to know their rights when being stopped by a police officer, the app gives the user specific language to be able to respond to police officer's inquiries. JusticeTrans, is another a mobile app that provides legal information on transgender rights. Law Scout Inc., an online service connecting small businesses with pre-vetted lawyers. Small Claims Wizard, is another online service that provides step-by-step guidance through Ontario's small-claims process.

These examples show us that technology allows for greater delivery of legal information and services thereby decreasing the financial burden associated with conventional legal interactions and thus improving access to Justice. Some of our current solutions to addressing access to justice have traditionally emphasized refining court processes and increasing access to legal education and representation. But, technology could be used to develop new ideas of tackling the issue, such as:

- allowing for efficiencies;
- facilitating collaboration;
- engaging a potentially wider constituency;
- providing unique and creative solutions to systemic issues;

The influence of technology may have some potential negative impacts and we need to be mindful and the understand the new issues that will arise in the legal landscape and access to justice with the increased use of technology.

The anecdotal stories below by three very talented, community minded and engaged students at the University Calgary exemplifies some of these pro and cons to the use of technology as it related to access to justice.



**Greg Whiteside** is a second year law student at the University of Calgary and has set-up western Canada's first Health/Justice Partnership between Student Legal Assistance (SLA) located in Calgary, Alberta and the Calgary Urban Project Society (CUPS), a downtown community health centre specializing in medical, housing and education. Through this model, law students offer legal resources to the multi-disciplinary team at CUPS made up of medical and community professionals all working to assist low-income Calgarians in the downtown core.

The project is currently establishing what kind of legal information is helpful to medical and community professionals and how this information can be shared by the centre's technological systems. This information will be loaded into the centre's online databases and allows professionals to easily access information that will help them understand a patient's legal situation and how this may affect any medical, housing or family programming that may

be developed on behalf of their patient.

This partnership exemplifies how to plug the legal profession into the information exchange going on around them thereby leading to better advice that can be provided for both patients and clients.



**Meagan Potier** is also a second year law student at the University of Calgary who works with the University of Calgary's chapter of Pro Bono Students Canada (PBSC) as a Program Coordinator, and with SLA as a caseworker/group leader. Her experience sheds light on how the two groups use technology. PBSC is an organization works both to represent the needs of clients through court based processes on a short term basis (for example, as duty counsel) and contributes to legal education through a wide-ranging number of research based projects. SLA works primarily to represent clients through the entire life of their legal issues. Both PBSC and SLA have been around since before widespread access to internet-equipped cellphones and the prevalence of websites touting supposedly sound legal advice.

SLA is an organization that handles a lot of physical paper. Client files consist of hand-written time tables and notes, even if typed, printed and added to a file kept in a cabinet in a locked office. If a closed file needs to be accessed and it must be physically located. However, clients can find SLA online on their website.

PBSC, unlike SLA, deals with external organizations and those organizations are PBSC's clients. Coordination with these clients is easily done through email and telephone, and PBSC coordinates with regional and national offices with relative ease using technology to allow for sustainable information sharing and collaboration. Processes are all online or through email, and as PBSC coordinates among members themselves using social media and cloud services.

PBSC is a great example of how appropriate use of technology can provide sustainable collaboration within groups, given that PBSC works with mainly institutional clients.



**Matt Fergel** is a first year law student at the University of Calgary and works on the PBSC Pro Bono Yes Means Yes Project. He believes that, "while technology can be a huge aid in improving access to justice, new problems can arise which require the legal community to educate people on how to use it properly". Matt gives presentations to teenagers in high schools regarding sexual consent and how the law

The **Unsung Hero** column is intended to introduce a member of our profession who has demonstrated extraordinary leadership, innovation, commitment, or made significant contributions to social justice and community affairs.

## Upholding Privilege: Supreme Court of Canada Reinforces Protection of Solicitor-Client and Litigation Privilege

By Maureen Killoran, QC and Allison Kuntz

It is trite to say that privilege is fundamental to the administration of justice in Canada. Solicitor-client privilege allows us to communicate candidly with our clients because our clients know these communications are protected from disclosure. In addition, litigation privilege allows us to zealously advance our clients' interests in litigation by maintaining a protected area to prepare their case.

In two recent decisions, the Supreme Court of Canada had the opportunity to consider the degree of protection to be afforded to these privileges. It is of comfort to note that the Court in these decisions affirmed the importance, and the robust protection, of litigation privilege and solicitor-client privilege in Canada. In *Lizotte v. Aviva Insurance Company of Canada (Lizotte)*,<sup>1</sup> and *Alberta (Information and Privacy Commissioner) v. University of Calgary (Alberta IPC)*,<sup>2</sup> the Supreme Court of Canada confirmed that for the legislature to abrogate either litigation privilege or solicitor-client privilege clear, explicit, and unequivocal statutory language is required.

### *Lizotte v. Aviva Insurance Company of Canada*

In *Lizotte*, the appellant, the assistant syndic (the "Syndic") of the *Chambre de l'assurance de dommages*, asked the respondent, Aviva Insurance Company of Canada, to send her the complete claim file of an insured. The Syndic's request was based on s. 337 of the Act respecting the distribution of financial products and services (*ADFPS*), which states that "Insureds [...] must, at the request of a syndic, forward any required document or information concerning the activities of a representative." Aviva refused to do so on the basis that some of the requested documents in the claim file were protected by litigation privilege. In response to the refusal, the Syndic filed a motion for declaratory judgment.

The issue at the Supreme Court of Canada was whether the

principle that a legislature may only abrogate solicitor-client privilege by using clear, explicit, and unequivocal language should also apply to litigation privilege. Affirming the decisions of the Quebec Superior Court and the Quebec Court of Appeal, Gascon J. found that litigation privilege, like solicitor-client privilege, cannot be abrogated without clear and express language.<sup>3</sup> In coming to this conclusion, the Court noted that:

1. Litigation privilege is a class privilege and not a case-by-case privilege. This creates a presumption of non-disclosure once the conditions for its application are met;<sup>4</sup>
2. Litigation privilege is subject to clearly defined exceptions, not to a case-by-case balancing test;<sup>5</sup> and
3. Litigation privilege can be asserted against third parties, including third party investigators who have a duty of confidentiality.<sup>6</sup>

The Court concluded that because litigation privilege is a class privilege, and because it serves an overriding public interest, the principle that clear, explicit, and unequivocal language from the legislature is necessary to abrogate privilege applies.<sup>7</sup> Based on that, the Court found that s. 337 of *ADFPS*, which merely authorized a request for production of "any ... document", did not contain sufficiently clear, explicit, and unequivocal language to abrogate litigation privilege.<sup>8</sup>

### *Alberta (Information and Privacy Commissioner) v. University of Calgary*

In *Alberta IPC*, a former employee of the University of Calgary (the "University") made a request for access to information in the University's possession under s. 7 of Alberta's *Freedom of Information and Protection of Privacy Act (FOIPPA)*. The University

<sup>3</sup> *Lizotte* at 63.

<sup>4</sup> *Lizotte* at 33.

<sup>5</sup> *Lizotte* at 39 and 41.

<sup>6</sup> *Lizotte* at 47.

<sup>7</sup> *Lizotte* at 63 and 64.

<sup>8</sup> *Lizotte* at 66 and 67.

<sup>1</sup> 2016 SCC 52

<sup>2</sup> 2016 SCC 53

*Unsung Hero - cont'd from p.5*

deals with it. He present real cases that have proceeded through Canadian courts to show young people real-life situations and their consequences. Some of these situations involve technology in sexual contexts, such as sexting. For example, he teaches the legal rights and responsibilities when one person receives an intimate image from another, and the potential consequences if the receiving party shares or threatens to share it with others. A criminal charge of distribution of child pornography is just one of those potential consequences, not to mention the emotional, social and psychological effects on a victim.

The need to educate young people on this topic is a prime example of how increased use of technology, which can have empowering effects on access to justice, can also create the need for new legal education. 📱

### Do you know an Unsung Hero?

Tell us about them.

If you know a lawyer who deserves to be recognized, please send us an email to [newslet@cba-alberta.org](mailto:newslet@cba-alberta.org) with the lawyer's name and the reasons why you believe they are an "unsung hero". The only formal requirements for nomination are that our "unsung hero" be an Alberta Lawyer and a CBA member.



Noren Hirani is an Associate in the Intellectual Property Group at Gowling WLG (Canada) LLP in Calgary and Chair of the Alberta Branch - Equality Committee of the CBA. She studied law in French at the University of Ottawa and grew up in Ottawa.

# CHOOSE FROM ALBERTA'S TOP MEDIATORS AND ARBITRATORS




provided some records in response to the request, but claimed solicitor-client privilege over other records. The former employee brought an application under *FOIPP* seeking production of the withheld records.

In order to assess the claim of privilege, a delegate of the Commissioner issued a Notice to Produce Records to the University under s. 56(3) of *FOIPP* requiring it to produce the documents. Section 56(3) states that production is required to the Commissioner "despite any other enactment or any privilege of the law of evidence." The University did not comply with the request and sought judicial review of the decision to issue the Notice to Produce Records.

Justice Côté, for a majority of the Court, found that s. 56(3) does not require a public body to provide the Commissioner with documents over which solicitor-client privilege is claimed. Justice Côté stated that "solicitor-client privilege cannot be set aside by inference but only by legislative language that is clear, explicit and unequivocal."<sup>9</sup> She noted that solicitor-client privilege has been repeatedly described as a substantive rule rather than merely an evidentiary rule.<sup>10</sup> Further, she noted that solicitor-client privilege is a "civil and legal right and a principle of fundamental justice in Canadian law."<sup>11</sup> Given that solicitor-client privilege is a substantive rule and not merely an evidentiary rule, Justice Côté found "privilege of the law of evidence" in s. 56(3) was not sufficiently clear, explicit, and unequivocal to evince legislative intent to set aside privilege.<sup>12</sup>

## Conclusion

*Lizotte* and *Alberta IPC* have affirmed the Court's robust protection of solicitor-client and litigation privilege. Together these cases set a high standard for legislature to abrogate their application. When faced with a demand to produce documents that fall under either type of privilege, lawyers need to carefully examine the statutory provisions on which the demand for production is based. Only clear, explicit, and unequivocal legislative language will suffice to set aside privilege. 

*With special thanks to Matthews Huys for his assistance.*

<sup>9</sup> *Alberta IPC* at 2.

<sup>10</sup> *Alberta IPC* at 38 and 44.

<sup>11</sup> *Alberta IPC* at paragraph 41 citing *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, 2002 SCC 61 at 49.

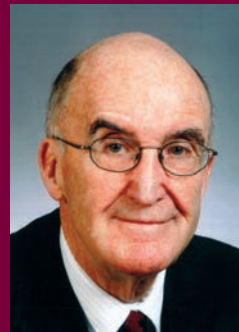
<sup>12</sup> *Alberta IPC* at 44.



Maureen Killoran QC, is the Managing Partner and Partner in the Litigation Group of Osler, Hoskin and Harcourt LLP in Calgary, a Canadian Bar Association Partner Firm. Maureen has been contributing to the "Practice Pointers" column since 2008.



Allison Kuntz is a partner in the litigation department in the Calgary office of Norton Rose Fulbright Canada LLP. Her practice includes corporate and commercial litigation, domestic and international arbitration, oil and gas litigation, as well as securities and financial services disputes



The Hon. John C. (Jack)  
Major, C.C., Q.C.



The Hon. W. Vaughan  
Hembroff, Q.C.



The Hon. Ernest  
Marshall, Q.C.



Clint G. Docken, Q.C.



Graham Price, Q.C.



E. David D. Tavender,  
Q.C.



Harold W. Veale, Q.C.



Robert B. White, Q.C.

## Being the Cloud: A Decision to Consider

By Terrence A. Cooper, QC

Being “in the clouds” used to describe someone or something that was impractical. Today everyone is “in the cloud”, meaning we are using software (apps) and computer systems or services that are interconnected and running through the internet. In the cloud is something most law firms have embraced to some degree (eg. computerized research). The question is far do we work in the cloud before we are “in the clouds”.

My philosophy is technology is great if you understand it and if you control the technology rather than allowing the technology to control you.

Our firm transitioned into a digital practice in 2008. A digital office is perhaps better positioned to utilize the new cloud technology but there are cloud technologies that are valuable for all law practices.

When we are considering new technologies the first thing we should do is to assess how those technologies will assist us cope with an event all law firms hope never occurs. I am referring to disaster recovery.

In recent years our firm has had two unique experiences in dealing with disaster recovery. In 2015 our office building had an electrical fire and had to relocate entirely for 4 months. Approximately 11 months later the entire population of Fort McMurray was evacuated as a result of a wildfire that devastated our community. Although our law practice was impacted significantly by these two events, the impact was not as severe as it could have been because of our digital practice and the fact that we were “in the cloud”.

For disaster recovery, if your practice is not “fully digital practice” the critical data for your practice which you can place in the cloud includes your accounting information, your calendaring information (including emails and diarizations) and your office precedents. For those who have a digital practice they can also place all of their client files in the cloud.

Disaster recovery is a learning process. In 2015 our “cloud server” was in our control at a satellite office. In addition to the backups on site, the backups that we made daily to removable drives, we also had a complete backup of our active files, our precedent material, etc. on our own internal cloud server. The day following the fire we had access to our client files. We had to set up a computer to run our accounting software but once that software was installed and the backup restored, we were operational. We were able to relocate our exchange server but if the exchange server had been damaged, we would have been able to set up a new exchange sever and restore the data from the backup. Having our own “cloud network” meant that after our June 22nd fire we were able to access important files on June 23rd, begin working out of a hotel on June 24th, and re-open at a new location on July 6. Once we relocated and our exchange server was operational we had full access to our email, calendaring and Tasks. Things were far from perfect but we had

our essential data.

On May 3, 2016 the Fort McMurray Wildfire meant that our office was again evacuated. On May 5th we began the process of relocating all available evacuated staff to our Edmonton Satellite Office. At that time we made a decision to go further into the cloud as part of the recovery from this disaster.

We use Microsoft Outlook for calendaring (including electronic copy of our limitation diary) e-mail, and also tasks. We use tasks as an electronic note pad for each file. Microsoft offers a product where the functions of the exchange server are “in the cloud”. The data for the emails, calendar, and tasks would be stored in the cloud and is able to be downloaded to the local user or accessed through a web browser remotely. We had now dodged the bullet twice and made the decision to migrate the Outlook exchange functions to the cloud. We discovered that we not only retained the functionality that we had relied on but we had the added feature of complete access from any location even in the event of another disaster.

Disaster recovery is an important reason to be “in the cloud” but if you are relying on the cloud for disaster recovery, you need to know that your backup and data in the cloud is in fact complete and secure.

Backing up to the cloud can take significant bandwidth and may involve moving significant data. This might cause you to consider backup protocols that rely on partial backups. I am a firm believer in full backups as opposed to sequential backups or incremental backups. I am also a firm believer of maintaining numerous sequential full backups.

This belief comes from an experience when our firm first moved to server based technology for our accounting function. Within 3 weeks the state of the art server with built in redundancy, a raid array of hard drives and a tape backup failed. No problem; we would replace the failed hardware, restore the backup and be up and running. That was the theory but then we discovered that we did not have a proper backup. The result was that we had to re-enter the data for the past 3 weeks. It could have been worse.

The takeaway message is this. Embrace cloud technology if only for your disaster recovery plan but remember you need to understand how the backups are working. You need to know what you need to do to restore your data, how long will it take to download the data and what happens if one of the backups is corrupted or has simply disappeared into the clouds. ☹️



Terrence A. Cooper, QC, is a partner at Campbell Cooper Law in Fort McMurray. Terry sits on the CBA Alberta Editorial Committee and is a member of the CBA Alberta Provincial Council.



# Cloud Data Storage: Why It's Probably a Bad Idea

By Robert G. Harvie, QC

Remember vinyl records? Unless you're sporting a waxed mustache, wearing an American Apparel hoodie, while you drink a Pabst Blue Ribbon, most of you probably have never actually played one.

The "cloud" - that amorphous *somewhere* - now holds all the music we desire. Apple iTunes makes 40 million tracks available to users. When I consider the convenience of "the cloud" compared to my first car with an 8-track player it's hard to even imagine the difference. My iPhone alone - ignoring streaming potential - holds 1,241 songs at present.

Is this "cloud" also the new utopia for law office data storage? It seems to be marketed as such. The "cloud" offers easy, inexpensive storage for office data, which also reduces your need for expensive hardware to attend to your digital storage.

However.

## Is My Data Still There?

The rules of the Law Society of Alberta require that we store accounting information and client content for at least 10 years (s. 119.37 of the Rules of the Law Society of Alberta). There is no prohibition of that information being stored digitally, and likely most law firms now store all of their accounting in a digital format, and many (including mine) now keep client files digitally.

The problem with digital storage is it's inconvenient and expensive. A new server for an office may be \$10,000.00 and you are generally advised to do a daily backup and take a copy of that backup offsite every night. Backup does you no good if your office burns down in the middle of the night and your server and backup tapes are both gone.

With cloud storage, your computing needs are marginal - basically, anything that connects to the internet - with your data all kept nice and safe, uh, somewhere else.

Question: Where is it, exactly? The short answer is its being stored in someone else's computer outside of your office. So - the first problem with cloud data storage is that the existence of that data is outside of your control. If the provider suddenly stops doing business or has a catastrophic event, your data is just gone. Poof!

The Law Society of Alberta requires you to assure that your client data is secure and confidential:

Lawyers have a fundamental obligation to ensure that they maintain confidentiality over their clients' records, whether those records are stored in hard copy or in digital form. Lawyers must exercise due diligence when choosing any service provider that might be engaged in the storing of confidential client information. In the case of digital storage, the onus is on lawyers to understand the technology they are using and to exercise appropriate levels of care when converting or storing client information in digital formats.

Now - you can reduce this risk, by doing some due diligence. Does your provider store data in multiple locations to minimize a single point of failure? But even then, "Network World" offers this advice:

While it's true that most major cloud providers tend to get things up and running again quickly, that's not going to be much help when you need access to your data now. Furthermore, when all of your data is stored in the cloud, you run the risk of losing it forever. Unfortunately this does happen every so often, so the best way to sidestep this issue is to **back up at least your mission-critical information to a local server.**

So. Use the cloud, but keep backing everything up on your local server anyway? I'm not sure if I need to go on. Using cloud-based data storage may be a problem.

## Is Barack Obama... err Donald Trump and his Russian Friends Reading It?

In light of revelations about data mining by the American government and the Patriot Act, and the more than 10,000 other agencies in the U.S. that can access cloud storage by subpoena without warrant<sup>1</sup>, to begin with, if you are considering cloud data storage, you cannot use an American service provider. While some suggest that data compromise by the U.S. government is "unlikely" that's a pretty big "maybe" when solicitor/client privilege at risk.

However, even if you are sending data within Canada, there is a probability that a good portion of it is getting routed through the U.S.A.

One Canadian expert suggests that "at least 90 per cent of Canada's digital activity, from Facebook to Foursquare to basic email and beyond, is routed through **exchange points** in the United States<sup>2</sup>." Your email or other data sent from Calgary to Vancouver may well get routed through Seattle, Washington. There is no "secure border" for internet data, and there is currently no certain way to prevent it. So - sending client data, regularly, through the internet, may be a concern.

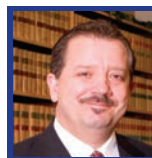
So, while the Law Society of Alberta doesn't prevent it - before you embark on a cloud storage program, I would recommend you, firstly, to the **Law Society of British Columbia Report of the Cloud Computing Working Group** - suggesting that cloud storage probably runs you offside of your professional obligations, and also to the Law Society of Alberta information on "**File Retention and Document Management**"<sup>3</sup> which provides guidance if you're willing to take your chances.

I wouldn't, and I don't. 

<sup>1</sup> Hume, Gavin QC, et al, "Report of the Cloud Computing Working Group", Law Society of British Columbia, 2012 - [http://www.lawsociety.bc.ca/docs/publications/reports/CloudComputing\\_2012.pdf](http://www.lawsociety.bc.ca/docs/publications/reports/CloudComputing_2012.pdf)

<sup>2</sup> Potter, Mitch, (June 7, 2013) "Canadians not safe from U.S. online surveillance, expert says", The Star - [https://www.thestar.com/news/world/2013/06/07/canadians\\_not\\_safe\\_from\\_us\\_online\\_surveillance\\_expert\\_says.html](https://www.thestar.com/news/world/2013/06/07/canadians_not_safe_from_us_online_surveillance_expert_says.html)

<sup>3</sup> Law Society of Alberta, Practice Resources - File Retention and Document Management" - <http://www.lawsociety.ab.ca/lawyers/practice-resources/file-retention-and-document-management.aspx>



Robert G. Harvie, QC, is the Chair of the CBA Alberta Editorial Committee and Editor of Law Matters. Rob is also a former bencher of the Law Society of Alberta, and currently practices in Lethbridge at the firm of Huckvale Wilde Harvie MacLennan LLP.

## Dentons Business: Legal Technology in Action

By Dragana Sanchez-Glowicki

Dentons business is analogous to a precedent setting legal trilogy, consisting of the practice of law, the business of law, and the evolution of law. Lawyers understand the practice of law because it's what we do everyday; we provide legal services to our clients. Firms also know the business of law when implementing an infrastructure necessary to continue to gain clients and increase the number of lawyers in the firm. But, there is only one law firm in the world creative and brave enough to use technology to drive innovation into the legal industry; Dentons is the leader of "the evolution of law". Dentons is the principle stakeholder of NextLaw Labs. NextLaw Labs is a corporation specializing in design, development and deployment of Legal intelligence technology.

NextLaw Labs CEO Dan Jansen explains how the decision to invest in a technology business is made. "We look for trends, frustrations and undeveloped areas to invest in. We want to bring better, faster, and cheaper legal solutions to lawyers, all over the world". John Fernandez, Dentons' U.S. Chief Innovation Officer and a Partner, is no ordinary lawyer. Prior to joining Denton, Fernandez served as President Barack Obama's Assistant Secretary of Commerce for Economic Development. During his tenure Fernandez launch innovative and strategic initiatives for the Obama government. This experience puts Fernandez in the perfect position as the Global Chair of NextLaw Labs. Fernandez explains "the leadership and Partners at Dentons have fully embraced the powerful vision to change the practice and to have

a broader impact on the practice in all respects". Dentons also involves its clients when it comes to this technology. Fernandez explaining "Dentons involves and engages clients when it come to testing the products. This type of client involvement changes the conversations we have with our clients, and they can see how they are at the root of our business and are highly valued". NextLaw Labs currently has 9 subsidiary companies offering legal technology.

**ROSS Artificial Intelligence** software streamlines legal research in ways that will change the practice of law forever. Currently ROSS is used in U.S. Bankruptcy Law. As a result of it's success, NextLaw Labs and Silicon Valley based Y-Combinator are working together with IBM to bring this type of artificial intelligence to every area of the practice. ROSS is an independent intuitive expert legal researcher that is easy to use. ROSS uses IBM's Watson-powered legal cognitive computing and has natural language processing capabilities. Lawyers simply ask ROSS their legal question using natural language, as they would another person, and ROSS reads through the law, gathers evidence, draws inferences and provides as evidence-based answer. While it is preparing the legal memorandum ROSS is making hundreds of millions of calculations per second. ROSS is a resource tool that helps lawyers improve their work processes, provides clients with cost efficient legal services, and ultimately provides better results for the client. ROSS is not replacement for lawyers. Jansen describes the interface between ROSS and a Dentons lawyer using ROSS as "an exciting time for lawyers because talented lawyers are able to use cutting edge technology available to them to provide expert legal services while doing away with the mundane tasks that are often not billed". ROSS also gets smarter each day, and changes and adapts just like a lawyer and the law. Dentons is the first law firm in the world to use Ross, and, Denton is Ross's "laboratory".

ROSS is fascinating, exciting and real! But there is so much more business being done by Denton's. NextLaw Labs, in collaboration with Dentons as the testing and development laboratory have 8 other companies that also provide legal technology tools, equally as exciting, important, and lacerative as ROSS.

**Beagle** software reads the contracts, automatically analyses them, gives you an immediate explanation of how the contract terms are structured, compares the contracts even if there are 1000's of them to be reviewed and analyzed, graphically summarizes them to help understand which are the same and which are different and need to be concentrated on. It also provides lawyers with real-time collaboration with all parties involved in the deal for frustration free negotiations. And, if this is not enough, Beagle gets smarter every time you use it because it learns your preferences. Dogs really are man's best friend!

**Doxly** is transaction management software that transforms the archaic and manually labor-intensive way that legal transactions, such as mergers and acquisitions are conducted. Doxly turns the process into a streamlined and efficient way to manage all stages of the deal. For instance, Doxly automates workflows for diligence and closing checklists, provides transaction-specific analysis and reports, automates electronic signature collection and archives transaction-related information to create digital closing-books.



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# TECHNOLOGY IN LAW

**Apperio** is matter management software for law firms and in-house lawyers. Its application is best used for big deals. The software shares fee information between law firms working on big deals and allows everyone involved to track the legal spend at either an overall or matter level, in real time. The advantage is when this information is shared during the deal, it significantly improves the working relationship for everyone involved (lawyers/firms and the clients) by eliminating the surprise's relating to fees and the disputes over fees and invoices that often ensues after the deal is completed. Apperio is currently being used by 17 of the top 100 UK law firms.

**Libryo** was designed to overcome regulatory complexity. Regulations are constantly increasing and changing, and regulatory complexity leads to significant risk and compliance costs for companies. Libryo software enables any person, working in any jurisdiction and organization to understand the legal obligation resulting from regulatory compliance.

**Hire an Esquire** software is transforming the legal marketplace with on-demand workforce technology. Hire an Esquire allows firms to source top attorneys, recruit instantly and efficiently for the job, and manage the external workflow and workforce. The firm/lawyer can also use the software to directly communicate with the hire, track time, and approve invoices.

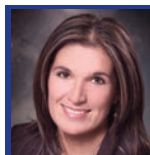
**Qualmet** software is designed to raise legal quality and business value between in-house and outside counsel. It provides the in-house lawyer with over 20 different ways to easily assess the quality and business value of their legal service providers, share

results to allege expectation and goals and identify opportunities for improvement. It then provides law firms with the tools to learn how their clients perceive their contributions, benchmark their performance, and develop strategies to improve and maximize business opportunities.

**Clause** is software that is used for data driven contracts. Clause will allow the firms existing corporate database to be linked to the contract and allow the contract to essentially self-execute, all while ensuring compliance with governing regulations.

**Brexit Contract Review Solution** is technology designed to help lawyers and their clients plan and navigate the legal complexities and uncertainty created as a result of the UK's departure from the European Union.

Dentons and NextLaw Labs are clearly shaping the legal world by investing in, developing and creating innovative legal products and solutions. The fruits of it's labor is creating advantages and opportunities, shaping the legal profession and transforming the industry. NextLaw Labs, in collaboration with Dentons are the leaders of today and will undoubtedly continue to lead the future. 🌐



Dragana Sanchez Glowicki, has been a member, and past Chair/Editor of the CBA Alberta Law Matters Editorial Committee, since 2002, in addition to chairing many CBA sections. Dragana practices Estate Law with an emphasis on litigation and dispute resolution.

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## Cloud Storage: The Nitty, Gritty Details

By Devin Mylrea

Whether you are a Luddite or running the bleeding edge of technology, there is one certainty that binds all: we live in an age of near exponential technological advancement and discovery. This is well apparent in the advent and subsequent boom in cloud based computing and storage services. From the late 2000's cloud based services have transitioned from relatively limited offerings to full data storage, software and IT services enabling businesses of all sizes and industries to conduct all of their computing and data storage in the Cloud.

So what is the "Cloud" really? It seems odd to ask that question in 2017, but cloud computing is still subject to its fair share of misinformation and myth. Simply put, cloud computing is a means of storing and accessing data, software and services over the Internet as opposed to your laptop or PC in your home or a physical server in your office. When one says "Cloud" what you are really saying is "Internet".

Cloud storage is not one single method or process and there are many permutations, as below:

- Private cloud storage: resources are managed externally from your firm, but in a server that is reserved for your data (e.g. hosting contract);
- Public cloud storage: offered publicly by a provider (e.g. iCloud, Gmail, Google Docs, Dropbox, Microsoft Office 365, etc.) with few administrative controls and access facilitated by anyone you authorize;
- Community cloud storage: akin to private storage, this model is used to meet the needs of several organizations that wish to collaborate on their resources; or
- Hybrid cloud storage: Generally involves a combination of two or more models (private, public and/or community) of cloud storage, depending on the specific needs of the organization.

In addition to the types of cloud storage available, there are a considerable number of cloud storage service providers in the world. Whether any one service provider is suitable depends on many factors, the most notable being security of data. In this article, the focus is on Cloud storage security and considerations to be made in assessing security.

Where in the world is my data? "Only in Canada" seems to be the preferred refrain. The near universal consensus in cloud based computing discussions among legal writers is that cloud servers and systems located in one's local jurisdiction or country are strongly recommended. Where data is hosted in a foreign jurisdiction, a firm would need to assess the risks related to the laws governing privacy and security of the data there and the social and political risks of that foreign jurisdiction. The data will be subject to the laws and conditions of that jurisdiction, be it Dublin, Ireland or Changhua County, Taiwan. If the data travels through more than one jurisdiction, the problem of assessing security becomes exponentially more difficult (if the cloud storage provider discloses what jurisdictions those servers are located in), for example, as does the question of whom there has access to that data.

As with any service, cloud storage is governed by a contract with

the provider. Read the contract: does it restrict the locations where the data can reside? Does it specify Canada? Does the provider have to ask for consent to transfer data outside Canada? Ideally, the answer should be "yes" for all 3 questions. If there is ability to negotiate, these aspects are important. If not, secure the desirable terms with another provider. Jurisdictional risks can be managed to a great extent with contractual terms.

Lawyers and law firms should be particularly sensitive to data location, given their professional obligations to protect and maintain client privilege and the confidentiality of often critically sensitive data. Data security remains the obligation of the organization that has collected the personal information.

In the recent past, there were few widely available options for hosting servers in Canada offering cloud storage and software services in comparison to the number and scale of data centers in the US, India and UK. In the last few years that has changed for the better. One recent and significant example of increased scale and availability of home jurisdiction servers is Microsoft: as of May 2016, Microsoft now boasts generally available "resident in Canada" servers for its Azure system and Office 360. Microsoft's data centers are located in Toronto and Quebec City, adding to the fast growing number of providers in Canada with cloud storage and services operating and hosted on Canadian soil.

Who's data is it, anyway? While there are clear advantages to cloud storage in terms of ease of access, software efficiency, active security and reduced hardware costs, there can be significant disadvantages in the form of risks to the security of data hosted in or transiting in the cloud. For example:

- Data can become inaccessible (or worse, destroyed) if the servers storing the data become unavailable (power failures, breakdowns, etc.). However, those risks are generally inversely proportional to the size of the facility hosting the data: the bigger the facility, the more likely it is to have comprehensive redundancies to maintain service and data integrity.
- Another unpleasant inaccessibility problem arises when the data is withheld by the cloud provider. This can occur for several reasons: failure to pay hosting fees; the contract terms render the data inaccessible at the end of the contract; there are inordinate delays or time limits within which data can be recovered once the contract is over; or there is no express clause confirming the data is yours. Again, the terms of the contract are vital.
- The problem of inaccessibility is compounded by storing and transferring data across multiple servers. This can make it difficult (or even impossible) to comply with legal obligations respecting how personal information is disposed of when no longer necessary for the purposes for which it was gathered or a person revokes consent of its use.
- The use of shared infrastructure can result in data becoming commingled. Lack of segregation may prevent the use of a provider or even the storage of certain critical data in this way.

## RECORD-BREAKING NUMBER OF SUBMISSIONS



2016 was a banner year for the number of CBA's submissions to the federal government. Surpassing the previous record of 82 in a calendar year, the 2016 tally showed 97 submissions by year end.

Highlights include submissions on medical assistance in dying, immigration (temporary foreign workers and family reunification among others), court delays, criminal law and judicial appointments.

Legislation and Law Reform Committee Chair Ken Mandzuik and Vice-Chair Jean Nelson agree that last year's success is due to the contributions of many, including volunteers and staff. "We are the trusted voice of the legal profession for a reason; the quality of our work-product is part of that reason," says Ken Mandzuik.

Already in the queue for 2017 are national security issues, *Canada's Anti-Spam Law* (CASL), PIPEDA, *Criminal Code* amendments and more on court delays.

For more information on submissions, visit [www.cba.org/Our-Work/Submissions](http://www.cba.org/Our-Work/Submissions).

*Cloud Storage - cont'd from p.12*

The provider should be in a position to answer questions about redundancy, data continuity and precisely what occurs at the end of the contract term.

Keep it secret, Keep it safe. Don't assume that the level of security and encryption procedures a provider uses are suitable for your purposes. Take an active approach to establishing and understanding the security measures and protocols of the provider. You can gain a firm understanding of the provider's level of security by asking some primary questions:

- How are network and information security risks managed?
- What security tasks are carried out and which type of security incidents are mitigated by the provider?
- What contingencies are in place for natural/other disasters affecting data centers or connections?
- How does the provider ensure their personnel work securely?
- How is physical and logical access to customer data or processes protected?
- How is software security ensured (if you are also using a cloud based software like Office 360 for example)?
- What level of encryption is used? 128 bit? 256? Tokenization?
- Are you able to go to the provider's location and conduct an inspection?
- Are there redundant back-ups? Consider another method of redundant back-up if not.

Keep in mind that even with the best cloud based security it is incumbent upon you to ensure the access points and equipment connected to the cloud are also secured by sound internal security protocols and robust anti-virus software. Sensible

## UPCOMING CONFERENCES

Is your National Section hosting a conference this spring? Save the date for one of these great events:

- CBA-FLSC Annual Ethics Forum (Toronto, March 3)
- CCCA National Conference (Toronto, April 2 - 4)
- CBA Criminal Justice Conference (Vancouver, April 8)
- CBA Constitutional and Human Rights Conference (Ottawa, April 21)
- CBA Environmental, Energy & Resources Law Summit (Montreal, April 27 - 28)
- CBA Health Law Summit: Critical Issues in Health Law (Niagara-on-the-Lake, May 4)
- CBA IP Day (Ottawa, May 4)
- CBA Charity Law Symposium (Toronto, May 12)
- CBA Military Law Conference (Ottawa, May 25)
- CBA Competition Law Spring Conference (Toronto, May 25)
- CBA Aboriginal Law Conference (Winnipeg, June 1 - 2)
- CBA Tax Law for Lawyers Conference (Niagara-on-the-Lake, June 4 - 9)
- CBA Immigration Law Conference (Toronto, June 8 - 10)


And don't miss this great event coming up this fall:

- CBA Leadership Conference for Professional Women (Calgary, October 20 - 21)

For more information on these, and other great CBA conference and PD events, [visit www.cbapd.org](http://visit www.cbapd.org).

security practices and systems in use at your firm or office need to remain in place and are as critical to keeping that data secure. Who's watching the watcher?

As users of cloud based services, law firms should conduct a higher level of due diligence on providers to ensure data is being secured and transmitted in compliance with the contract. Adding audit rights to the contract (if not already present) can allow for the audit of the provider's systems and security from time to time, and help facilitate due diligence where deemed necessary. Audit rights can also require the contract to allow for you or your external auditor/IT consultant to access the provider's datacenter or premises where the data is located. Your provider should be required to provide you with immediate alerts to any security/data breach so that you can respond to such events as effectively as possible.

Cloud based storage and services have significantly advanced in the past decade. Such services will no doubt be utilized in much greater numbers due to the burgeoning availability of data centers in Canada. Lawyers and law firms whom may have discounted cloud storage in the past are likely to now consider cloud storage as an alternative to traditional internal hardware solutions. With a firm understanding of security, protocols and professional compliance obligations, one should be able to make a prudent and reasonable assessment of any cloud based storage service to determine if it is suitable for your needs. 



Devin Mylrea is a Partner with Shea Nerland Calnan LLP in Calgary, where he practices in the Business Law and Commercial Real Estate groups. Devin is also a member of the CBA Alberta Editorial Committee.

# FRONT AND CENTRE

## 2017 DISTINGUISHED SERVICE AWARDS



The 2017 Distinguished Service Award winners: (back, l to r) The Hon. Robert Philp, QC (Service to the Community), Jeremiah Kowalchuk (President, CBA Alberta); (front, l to r) Buddy G. Melnyk (Pro Bono Legal Service), Virginia A. Engel, QC (Service to the Profession), Anne Kirker, QC (President, Law Society of Alberta), Professor Jonnette Watson Hamilton (Legal Scholarship).

Photo credit: Monique de St. Croix ([www.uniqueperspectives.ca](http://www.uniqueperspectives.ca))

## JANUARY 2017 MEETING OF COUNCIL



(l to r) Rene Basque (National President, CBA), Jeremiah Kowalchuk (President, CBA Alberta), Ola Malik (Secretary, CBA Alberta). Photo credit: Monique de St. Croix ([www.uniqueperspectives.ca](http://www.uniqueperspectives.ca))



CBA Alberta Branch Past Presidents. (l to r) Jeffrey D. Wise, QC, Marian V. De Souza, QC, Cyril Gurevitch, QC. Photo credit: Monique de St. Croix ([www.uniqueperspectives.ca](http://www.uniqueperspectives.ca))

# FRONT AND CENTRE

## 2017 PRESIDENT'S DINNER



(back, l to r) Wayne A. Barkauskas (Past President, CBA Alberta), Maureen Armitage (Executive Director, CBA Alberta), The Hon. Chief Justice Neil C. Wittmann (Court of Queen's Bench of Alberta), Jeremiah Kowalchuk (President, CBA Alberta), Jenny McMordie (Vice President, CBA Alberta); (front, l to r) Frank Friesacher (Treasurer, CBA Alberta), Ola Malik (Secretary, CBA Alberta).

Photo credit: Monique de St. Croix ([www.uniqueperspectives.ca](http://www.uniqueperspectives.ca))

## EDMONTON EVENTS



Frank Friesacher (Treasurer, CBA Alberta) speaks at the University of Alberta law student welcome reception, October 17, 2017.



Law Student Section Meeting, November 21, 2017. (l to r) Areezah Jiwa, Erin O'Neill, Joe Sellman, Ashley Ahluwalia, Allison Grimsey, Juliana Ho, Eric Adams, Joanna Harrington



Inns of Court, November 14, 2016. (l to r) The Honourable Mr. Justice Graesser, Kevin Feth, QC, The Honourable Madam Justice Ross, Trina Kondro, Frank Friesacher

# ALBERTA BRANCH NEWS

## SAVVY LAWYERS SERIES



The latest addition to the Savvy Lawyers series of webinars is now available. This "Bread and Butter" series includes webinars on the basics of both real estate, and wills and estates, the meat of the practices of many small and solo practitioners. Whether you are thinking about a change in practice, or opening your own firm, this series is for you.

Part I: Basic Real Estate took place on January 6, and is now available as an on-demand video on the CBA Alberta website.

Part II: Basic Wills & Estates will take place on March 17 at 12pm. This session is available in person at the Edmonton office, or via live webcast.

For more information on these webinars, or to purchase or register, visit [www.cba-alberta.org/SavvyLawyers/Bread-Butter](http://www.cba-alberta.org/SavvyLawyers/Bread-Butter).

## CBA WEST - SAVE THE DATE!

The CBA Alberta Branch has partnered with the CBA BC Branch to host the premier conference for legal professionals in western Canada, CBA West. This conference takes place November 17 - 19, 2017 in Las Vegas, NV at the Wynn Hotel.

Save the date and keep an eye on [www.cba-alberta.org](http://www.cba-alberta.org). Registration details will be available in early spring.

## LEGISLATIVE SUMMARY

The Legislative Summary document is now available to read and download on the CBA Alberta website at [www.cba-alberta.org/Publications-Resources/Legislative-Summary](http://www.cba-alberta.org/Publications-Resources/Legislative-Summary). Limited print editions are also available. If you would like to receive a printed copy in the future, please email [communications@cba-alberta.org](mailto:communications@cba-alberta.org).

## LAW DAY 2017

Law Day 2017 is taking place on Saturday, April 22 in Calgary and Edmonton, and on various dates throughout April and May in Fort McMurray, St. Paul, Red Deer, Lethbridge, and Medicine Hat.

This year, Law Day events will be recognizing the 150th anniversary of confederation with a project featuring Canadians who have recently received their citizenship, as well as expanded citizenship ceremonies in selected cities. For more information on Law Day events in your community, visit [www.lawdayalberta.com](http://www.lawdayalberta.com).



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## Chatbot or Robot Overlords?

By Anthony Young, QC

Imagine a world where machines make decisions. There would be an algorithm to sort the wheat from the chaff. These decisions could be made quickly, objectively and dispassionately, based upon programming and presented facts.

As Google develops the technology for autonomous self-driving vehicles, the decision making power of the digital age is being fully explored. What decision will be made by the Google inspired vehicle when it is faced with a situation where "Logic clearly dictates that the needs of the many outweigh the needs of the few...Or the one."? In life and death circumstances this is a difficult (and very human) question. The answer, I suspect, is that the vehicle will do what it is programmed to do. If the algorithm determines that the passengers of the autonomous car should be sacrificed to save other lives, that decision will be made. If the primary directive is to keep the passengers safe, the cost to the world at large (in terms of human lives) may be higher.

There are many experiments underway regarding Online Dispute Resolution or "ODR". These experiments, for the most part do not involve computers making decisions. Rather, they are portals, set up for the purpose of facilitating the flow of complaints, simplifying processes and streamlining needed information. The complaints are eventually dealt with by an on-line (human) mediator who attempts to resolve the dispute between the parties.

Many portals exist. Consumer Protection BC describes ODR has "an online self-help tool that consumers can use to resolve issues with one of (their) participating licensed debt collection agencies." The European Union Alternative and Online Dispute Resolution (ADR/ODR) is to be used when consumers have a problem with a trader regarding a product or service they bought. They can settle their dispute in an online out-of-court through an Alternative Dispute Resolution procedure.

Another portal was proposed for dealing with traffic tickets in Ontario. The essence of this proposal was that the online process would apply only to infractions involving provincial statutes and municipal bylaws. Part of the proposal was that offenders would be assessed an "administrative money penalty" and that they would have access to the online process for resolving an argument about the ticket. At the end of the day, the matter was to be ultimately determined by a hearing officer, not a judge. The proposal was eventually abandoned because the system lacked "due process" and because of the backlash over many things including an attack on the "presumption of innocence" and the lack of "judicial hearing".


All of these portals are somewhat creative but they rely upon a

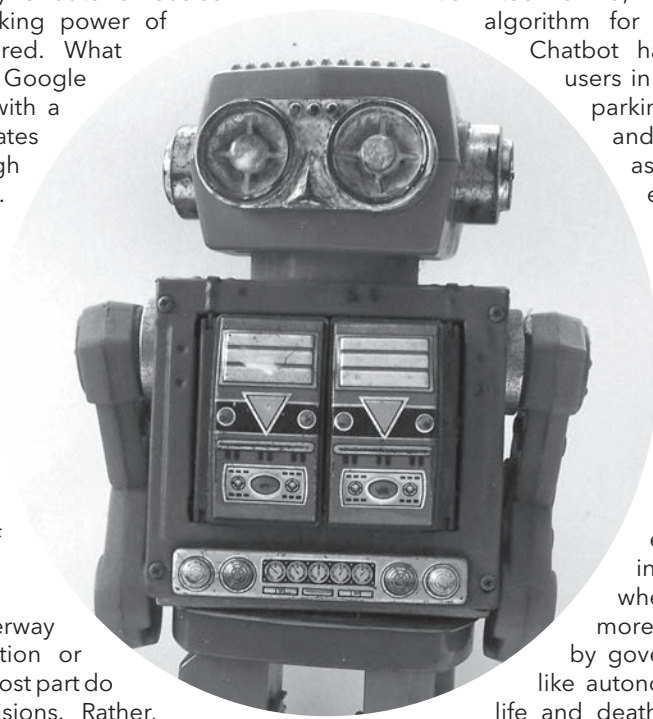
voluntary process of consensus building where actual decision making is not really digitally aided.

Enter Chatbot and Watson.

British technokind, Joshua Browder, developed an algorithm for what he calls a "robot lawyer". Chatbot has helped tens of thousands of users in formulating successful defences to parking tickets in the United Kingdom and the United States. After the "bot" asked basic questions to determine eligibility for a defence, suitable advice was given.

IBM's Watson and its various iterations have already changed the way in which legal research is completed. Rather than simply returning documents for review (like a search engine), the system actually answer questions.

Enormous strides are taken each day in advancing artificial intelligence. There may be a day when simple adjudications (or even more complicated ones) are decided by government computers. With systems like autonomous self-driving vehicles making life and death decisions, how far off can it be that "Judgebot" will be commissioned to deal with the ever increasing expense of brick and mortar courthouses. Decisions in the virtual courtroom will no doubt be made quickly, objectively and dispassionately. The question to be asked before embarking on such a long and arduous search for cheaper justice, however, is whether preference should be given to decisions made with patience, open-mindedness, courtesy, tact, courage, compassion, humility, common sense and understanding. My preference is for the latter. 



Anthony Young, QC, is Counsel at Dunphy Best Blocksom LLP in Calgary, where he practices in the area of family law. In addition to his contributions to *Law Matters*, he is also the President of the Law Society of Alberta, and past chair of the Alberta Law Foundation.



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If you could expand your clientele and provide legal services at your usual hourly rate, but with reduced overhead and receivables, while providing a referral source for judges, court administrators, Legal Aid, community legal clinics and other organizations helping people willing to pay, would you?

The Limited Scope Retainer Project (LSRP) is being undertaken by a steering committee made up of members of the Law Society of Alberta, the CBA Alberta, PBLA, Legal Aid, the Alberta government and the Canadian Research Institute for Law and the Family, and is aimed at promoting and studying limited scope retainer work in Alberta.

Limited scope retainers, also known as unbundled or short legal services, are retainers in which lawyers provide an agreed number of specific legal tasks for their clients, as negotiated with their clients. Typical limited scope work ranges from drafting affidavits to providing opinions to providing advice at initial consultations, and is performed with no expectation that any further legal services are required or will be performed.

Limited scope work is approved by the Law Society of Alberta, which passed a series of amendments to the Code of Conduct in 2013 intended to heighten awareness and use of limited scope retainers.

We are looking for volunteer lawyers to help the project, which will entail:

- Registering for the project - Each lawyer will have their bio, photo and contact information displayed on a dedicated, stand-alone website aimed at marketing volunteer lawyers to people seeking limited scope work.

By **Robert G. Harvie, QC** and **John-Paul Boyd**

- Receiving training and support - Lawyers will be given training in providing limited scope work and the ethical issues involved in such work. Participating lawyers will have access to vetted model retainer agreements and other resources to help support their limited scope work.
- Providing your services - Participating lawyers will be asked to recommend working on a limited scope basis to clients when, in their opinion, the approach suits the client and the case. Lawyers should aim to enter into at least one limited scope retainer every two or three months

- Promoting your services - The LSRP website and your contact information will be promoted throughout the legal community in Alberta by the Law Society of Alberta, the CBA Alberta, PBLA, Legal Aid, court administration, community legal clinics and others.

- Providing feedback on your experience - Upon finishing a limited scope retainer, you and your client will separately

complete very brief online surveys of your experiences, with occasional interviews by the LSRP researchers, to gauge your satisfaction with and views on providing limited scope work.

This data will be collated and analyzed at the end of the information-gathering phase of the LSRP (estimated to be 18 months), following which a report will be prepared and distributed to help guide lawyers and policy-makers about the implications and use of limited scope legal work, and to improve future limited scope services for both lawyers and their clients.

For more information and to register, please contact us at:

**Robert G. Harvie, QC**  
E: rgh@huckvale.ca  
T: 403-328-8856

**John-Paul Boyd**  
E: jpboyd@ucalgary.ca  
T: 403-216-0340



## Judicial Updates

### COURT OF APPEAL

**The Honourable Madam Justice Michelle G. Crighton** has been appointed a judge of the Court of Appeal of Alberta in Edmonton, effective October 20, 2016.

**The Honourable Madam Justice Jo'Anne Streckf** has been appointed a judge of the Court of Appeal of Alberta in Calgary, effective October 20, 2016.

### COURT OF QUEEN'S BENCH

**The Honourable Mr. Justice Kirk Sisson** (Red Deer) has retired effective January 3, 2017.

**The Honourable Mr. Justice Terrence D. Clackson** (Edmonton) has elected to become a supernumerary judge effective December 17, 2016.

**The Honourable Madam Justice Marsha C. Erb** (Calgary) has elected to become a supernumerary judge effective November 15, 2016.

**The Honourable Mr. Justice Bryan E. Mahoney** (Calgary) has elected to become a supernumerary judge effective November 15, 2016.

**Kevin P. Feehan, QC** has been appointed a judge of the Court of Queen's Bench of Alberta in Edmonton, effective October 20, 2016.

**James T. Eamon, QC** has been appointed a judge of the Court of Queen's Bench of Alberta in Calgary, effective October 20, 2016.

**Jolaine Antonio** has been appointed a judge of the Court of Queen's Bench of Alberta in Calgary, effective October 20, 2016.

**George Fraser** has been appointed a judge of the Court of Queen's Bench of Alberta in Edmonton, effective October 20, 2016.

**Bonnie Bokenfohr** has been appointed a judge of the Court of Queen's Bench of Alberta in Edmonton, effective October 20, 2016.

### PROVINCIAL COURT OF ALBERTA

**The Honourable Judge Donald G. Ingram** (Edmonton) retired as a supernumerary judge effective January 18, 2017.

**The Honourable Judge Shauna C. Miller** (Edmonton) resigned effective January 13, 2017.

**Michele Marie Collinson** has been appointed a Provincial Court judge in the Edmonton Region, effective December 13, 2016.

**Julia (Julie) Claire Lloyd, QC**, has been appointed a Provincial Court judge in the Edmonton Family and Youth division, effective December 13, 2016.

**Catherine A. Workun, QC**, has been appointed a part-time Justice of the Peace in Edmonton, effective October 26, 2016.

**D'Arcy Depoe**, has been appointed a Provincial Court judge to the Edmonton Criminal Division, effective October 26, 2016.

**Michelle C. Doyle, QC**, has been appointed a Provincial Court judge to the Edmonton Criminal Division, effective October 26, 2016.

**Jasmine K. Sihra** has been appointed a Provincial Court judge in the Northern Region/Grande Prairie, effective October 26, 2016.

**Thomas W. Achtymichuk, QC**, has been appointed a Provincial Court judge to the Edmonton Region, effective October 26, 2016.

**Brenda F. Scragg** has been appointed a full-time Justice of the Peace in Grande Prairie, effective October 19, 2016.

**Ivan M.L. Ladouceur** has been appointed a Provincial Court judge in the Edmonton Region/St. Paul, effective September 28, 2016.



David Blackwood (b. 1941) – *The Burning of the S.S. Diana*  
Triptych 1968 A/P, Colour Etching and Aquatint, 22" x 69"



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## North

Happy New Year! We hope everyone had a restful and enjoyable holiday season.

I am honoured to be able to step into the role of co-Northern Section Coordinator, recently vacated by the Honourable Madam Justice Bokenfohr on her appointment to the Court of Queen's Bench. I am also pleased that David Hiebert is continuing on as the other North Section Coordinator.

There were a number of highlights and interesting presentations throughout the first half of the CBA year. Personal highlights for me included the Creditor and Debtor Law Section's traditional Holiday Masters Lunch; the Criminal Justice Section's presentation by Donald Netolitzky, Legal Counsel with the Court of Queen's Bench, on "Freemen and the Courts", and the topical presentation by Dr. Robert W. Murray to the Civil Litigation Section: "Making America Great Again: The Impact of a Trump Presidency on World Order".

David and I will be looking to attend as many Section Meetings in the New Year as we can to meet with the executives of the different Sections.

**Inns of Court:** The Inns of Court dinner took place on November 14, 2016, with the topic: "Streamlining the Queen's Bench Process: Efficient Litigation and the Young Lawyer". An intimate group of 21 junior lawyers were able to take in this presentation. The next Inns of Court will be taking place in May of 2017.

### From the desks of David J. Hiebert and Kyle Kawanami

**Upcoming Events:** In addition to the various Section Meetings taking place in the New Year, you can mark your calendars for Law Day on April 21, 2017. More information will be forthcoming closer to the date, but the Law Day Committee is already hard at working planning for this year's edition of Law Day.

**What About the Alberta Law Conference?** You may have noticed that the Alberta Law Conference is not taking place in late January this year as it has in the past. In its place, CBA West will be taking place November 17-19, 2017, along with the British Columbia CBA, in Las Vegas Nevada! Be sure to save the date for what promises to be a fun time of learning and networking. No word on whether the Vegas Golden Knights will be in town that week. 🍷



David Hiebert is a partner at Witten LLP in Edmonton. David is a long-time CBA member and volunteer, having served on Council, as a member of the Alberta Law Conference committee, and as chair or co-chair of a number of different sections.



Kyle Kawanami is a partner at Emery Jamieson LLP, where he practices in the area of civil litigation with an emphasis on creditor and debtor law. Kyle has served on the Creditor & Debtor Law and Junior Lawyers executives, and is currently a member of the Edmonton Law Day Committee.

## South

With 2016 having roared to a close, we want to thank all of you for your support of the 41 southern Alberta sections. We are seeing strong in-person attendance at section meetings in the CBA office, and we are encouraged by growth in out-of-town webcast attendees. The strength of our CBA sections clearly depends on an active and engaged membership. We hope to see this continue!

To that end, as 2017 begins, there are a number of interesting sections and events for members to explore or become involved with. First, there are a few newer sections that are continuing to grow and are seeking to attract members. These include Diversity, Food and Agribusiness and Law Firm Management & Leadership. For more information on these and other sections, please see the Alberta South Sections link at [www.cba-alberta.org](http://www.cba-alberta.org). Next, please stay alert for special events and courses such as the next instalment of the Savvy Lawyer Series on March 17th called "Basic Wills & Estates".

Finally, the executive committees of all sections are always on the lookout for new volunteers. These committees are typically solidified between April and June, which is generally when they complete their planning for the year ahead. If you have interest in participating on one of these committees, please reach out to the current section executives.

A vital role of CBA section coordinators is to provide assistance

### From the desks of Andrew Bateman and Sean FitzGerald

to our sections in delivering a high standard of service to our membership. If any of you have suggestions on how individual sections could be improved, please send us an email. Or, if you are part of a section executive committee and have questions on how to better serve your members, please get in touch. We are pleased to have received a number of inquiries over the past months and we welcome new opportunities to assist.

Please feel free to email either Sean FitzGerald ([fitz@milesdavison.com](mailto:fitz@milesdavison.com)) or Andrew Bateman ([abateman@felesky.com](mailto:abateman@felesky.com)) or Linda Chapman ([sections@cba-alberta.org](mailto:sections@cba-alberta.org)). 🍷



Andrew Bateman is a partner at Felesky Flynn LLP, where his practice covers a broad spectrum of taxation law including personal tax planning, corporate tax planning, commodity tax, trust and estate tax planning, and tax representation and litigation. Andrew is a past chair of the Tax Non-Specialist Section.



Sean FitzGerald is a partner with Miles Davison LLP in Calgary, where he primarily practices in general civil litigation. Sean has previously sat on the executive committees of the Civil Litigation, Employment Law and Insolvency Law sections.

## University of Alberta

Every new year brings about new goals and aspirations for University of Alberta law students, and the CBA is ready to support these aspirations by providing enriching, student-driven events. 2016 was a successful year for the CBA Students' Section and we hope to continue to provide opportunities that cater to the diverse interests of each student.

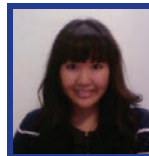
Our first event of the year was the Mentor Reception where students were paired with practicing lawyers and had the opportunity to ask questions and get a taste of the legal profession. Students chose an area of law in which they had interest, and the CBA best matched each student with a mentor lawyer in that specific field. The goal of the Mentor Reception was to expose students to different areas of law and create career-long relationships that broaden both the lawyer and law student's network. The CBA Students' Section greatly appreciates the time and effort each mentor lawyer puts in to create lasting relationships with their mentee. Without support from the participating lawyers, the CBA Students' Section would not be able to provide resources and unique experiences to as many law students as we currently do.

A new and innovative program created by the CBA is the CBA Law Students' Forum, which has been highly effective. Student Chairs from every Canadian law school have the opportunity to participate in monthly conference calls to share new ideas and different methods to combat similar issues facing law students

By **Juliana Ho** and **Areezah Jiwa**

across the country. The forum creates a collegial and supportive environment within the Student Chairs and provides an opening to discuss and develop new programs that are informative and creative. Furthermore, through the forum, the Student Chairs have been able to participate in sub-committees; for example, access to justice initiatives within Canadian law schools.

Our goal this year is to best prepare each student entering the legal profession through providing information that aids in the transition between law school and practicing law. The CBA Students' Section at the University of Alberta is motivated to reach this goal throughout this coming year! 📢



Juliana Ho is Co-Chair of the CBA Law Students section at the University of Alberta Faculty of Law, and is in her third year of studies. She is born and raised in Edmonton.



Areezah Jiwa is the 2L CBA Student Chair at the University of Alberta. She actively volunteers on and off campus through students groups and within the community. This past summer, Areezah went to Dubai to compete at the Jubilee Games, an international sports tournament, representing Team Canada's women's basketball team.

## University of Calgary

With the 3Ls returning from exchange, reality has set in and the final push is on. The second semester has kicked off following the completion of the intensive dispute resolution, negotiation and trial advocacy courses. The 3L intensive trial advocacy course provides our future graduates with practical written and oral advocacy skills that will serve them well when they enter the legal profession.

This year, 3Ls had the opportunity to learn about trial advocacy from Marie Henein of Henein Hutchison LLP. She provided valuable guidance and practice pointers that will prove to be helpful for future litigators. She also gave the 2017 Milvain Lecture on Jan. 6 to a packed lecture room at the University of Calgary. She spoke about the importance of zealous advocacy for the client's benefit and always remembering the reasons for entering the legal profession.

There are a number of exciting events planned for the semester. More and more students have been requesting networking opportunities with small and regional firms. The annual "Small and Regional Firm Day" will be held on February 3rd, which allows students an opportunity to network and explore opportunities with lawyers from rural areas, solo practices, and small or mid-sized firms across Alberta. Following the success of the "Small Firms: Big Connections" event held last year, the U of C CBA Students' section, together with the Career and Professional Development Office will be hosting the second

By **Geeth Makepeace** and **Holly Wong**

annual event in March. The event provides students interested in smaller practices with the opportunity to meet face-to-face with practitioners.

Later this semester, the Diversity and Law Society ("DLS"), in collaboration with the CBA Diversity Section, will be hosting a panel discussion centered on how diversity fits into the legal recruitment process. This event brings together students and individuals involved in the student recruitment process to discuss issues that are often pushed to the background. More details to follow! 📢



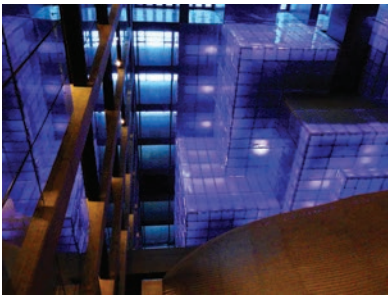
Geeth Makepeace is a third year JD/MBA student and Co-Chair of the University of Calgary Law Student Section. Previously, Geeth worked in operations and compliance for a number of major financial institutions.



Holly Wong is second year law student at the University of Calgary, and Co-Chair of the University of Calgary Law Student Section. She currently serves on the Board of Directors of the Servants Anonymous Society. Previously, Holly obtained her MA from the University of Calgary.

## The Chip Age's Cubic Conundrum – Exponentially More Contact. How Can it be a Good Thing?

By Benjamin J. Kormos



### The Cubic Conundrum

There are often two primary factors to our professional effectiveness: time, and attention.

It is true that we only have so much time in a day. We can also only attend to so much information or analysis at once. Energy

for quality client services and business needs share this total battery, until we re-charge.

Can we get more hours in the day? Can technology share the load?

### The Processing Paradox

Have you ever wondered if the latest practice management or document management software, or newest smart-device would help you do more, with the less? (or at least, more with *the same*?)

Just as when you believed the document management software would manage the documents, only to realise that it could begin to manage you, so too can the latest smart device organise, process, and send gigabytes of data into the *aether*. This is the paradox presented by technology: It can do more, but that takes more. More time. More energy.

And, it seems, the opportunities for this trap grow each year. Moore's law, which predicted that the number of transistors in a chip would double every two years, has been accurate from the 1970s until quite recently, when the progression slowed.<sup>1</sup>

Still, chip architects and software developers will release further 'productivity' options. LinkedIn articles will tout the latest apps to free your mind, relieve muscle aches, solve the office HVAC issues, and do anything up to brewing your coffee (if you don't drink it *cortado*, at least).

### How Can It Be a Good Thing?

Well, if this all sounds bad in terms of our mental health, there is good news to temper the bad.

First, there is an alarming observation that smart phones have significantly shortened our attention spans.



<sup>1</sup> Tom Simonite, MIT Technology Review, *Moore's Law is Dead. Now What?* (May 13, 2016): <https://www.technologyreview.com/s/601441/moores-law-is-dead-now-what/>

<sup>2</sup> Leon Watson. The Telegraph, Science. *Humans have a shorter attention span than goldfish, thanks to smartphones* (May 15, 2015). NB: the article noted that such technology users may in fact have become more efficient at multiple tasks, which may compensate somewhat.

One recent, short enough, headline actually stated: "*Humans have a shorter attention span than goldfish, thanks to smart phones.*"<sup>2</sup>


Evidently, a Canadian study that found that, since smart phones' common usage began in 2000, average human attention span has plunged 25%. This is down to 8s from 12s – to put it in perspective, this 4s is far more than enough to accelerate a Porsche 911 GT3 RS from 0-60 mph (3.1s). A goldfish would be able to watch that occur 3 times, with their 9s attention span, before it tired of it.

And yet, there is hope for productivity. There is a study of what psychologists term "metacognition," in technology use. (Metacognition in this context is the ability to govern attention, to focus it on a subject).

Despite finding that devices can significantly impair performance without a strategy to plan their use as a communication tool, there is a way to make it work. By scheduling technology usage times, or setting and sticking to some guidelines, we can evidently mitigate some of the downsides from these distractions.<sup>3</sup>

Finally, technology can be liberating when used wisely. There is some evidence that a vacation itself does not produce lasting happiness after it is over, and that anticipating is the happiest part (several short breaks are recommended).<sup>4</sup> Yet, there is no doubt that time away from the office gives you time to practice your hobbies, to meet and help others outside of the law, or to just think.

While certain risks exist, technology can expand your energy tank when travelling outside the office. It can provide you with a free, secure connection<sup>5</sup> to schedule a break in your travels to have a brief meeting or to review and approve draft documents or reports (if you have put into place an effective support relationship with your colleagues back at the office).

You can then enjoy your time away, to do all those things you have no time to do when you are at your desk. Like taking a picture with your real, old-fashioned camera! You will return more focus, and with new experiences to unlock some creative solutions. 

<sup>3</sup> Dr. Larry Rosen, Psychology Today, *Attention Alert: A study on distraction reveals some surprises* (April 9, 2012). And see: Canadian Mental Health Association (BC) and BC Partners for Mental Health and Addiction. *Staying mentally healthy with technology* (2015): <http://www.heretohelp.bc.ca/sites/default/files/wellness-module-10-staying-mentally-healthy-with-technology.pdf>

<sup>4</sup> Tara Parker-Pope. New York Times, *How vacations affect your happiness* (February 18, 2010): [http://well.blogs.nytimes.com/2010/02/18/how-vacations-affect-your-happiness/?\\_r=0](http://well.blogs.nytimes.com/2010/02/18/how-vacations-affect-your-happiness/?_r=0)

<sup>5</sup> Free wifi hotspots (e.g. airports and cafes) don't count. Kaspersky. *How to Avoid Public Wifi Security Risks*: <http://usa.kaspersky.com/internet-security-center/internet-safety/public-wifi-risks#.WG1hB7GZORs>



Benjamin J. Kormos is a Partner and the Estate, Wills & Trusts Litigation Group leader at Walsh LLP. He is also the Treasurer of the CBA Alberta Wills & Estates (South) Section, and member of the Editorial Committee.

## Limited Scope Retainers and Pro Bono: Doing Big Things in Small Ways

The Limited Scope Retainer Project ("LSRP") is a joint working group of Alberta Justice, the Canadian Bar Association - Alberta Branch and the Law Society of Alberta. PBLA is a participant in the LRSP working group.

Limited scope retainers ("LSRs") or "unbundled legal services" are not new to legal practice in Alberta. Through the provision of discrete services like document preparation, review and general counselling, lawyers are able to improve access to

justice for self-represented litigants. LSRs provide an alternative between full representation and no representation, and offer a variety of benefits for litigants, lawyers and courts. LSRs offer huge possibilities for lawyers to tailor the nature and scope of assistance they can provide to their areas of expertise, interest and schedules. Limited scope legal assistance may advance a client's legal matter to the next step in litigation more efficiently than if that client had to navigate that step on his or her own. Legal assistance, even if limited in scope, also provides insight and comfort to individuals who otherwise may be unable to understand the rules, procedures and requirements of the legal process. Empowering self-represented litigants may also have the added effect of improving efficiencies in court processes.

From a *pro bono* perspective, LSRs are an important tool for engaging lawyers in *pro bono* legal service. LSRs allow lawyers who might not otherwise take on *pro bono* files due to comfort level or time commitment to become involved in *pro bono* service. By encouraging lawyers to take on *pro bono* matters using LSRs, more individuals who cannot afford legal services can be assisted. This is particularly so in areas of law with significant representation of self-represented litigants, like family law. Among the many justifications for the adoption of LSRs, improving access to justice is, perhaps, the most significant. An increased adoption of LSRs in *pro bono* legal service not only means that more Albertans are empowered to resolve their legal issues when representing themselves, it will also contribute towards bridging the access to justice divide.

Although LSRs are already used in *pro bono* service and have increased opportunities for lawyers to provide *pro bono* legal services, greater knowledge and understanding of lawyers' and clients' experiences with LSRs is needed. The Limited Scope Retainer Project ("LSRP") is undertaking a study of lawyer and client experiences to better understand the implications and use of limited scope legal work and to improve LSR services for both lawyers and their clients. The anticipated results from this study will benefit service providers and others involved in the access to justice sector. The results of the LSRP will provide the education needed to expand service delivery, including *pro bono* service, and thereby enhance access to justice.

LSRs are just one way to do *pro bono* work. There are many ways to engage in *pro bono* service and many opportunities to do so, including summary legal advice, duty counsel projects, taking on matters on a full or limited scope representation. The many different ways to get involved offer something for every lawyer - and irrespective of the scope and type of assistance you provide, the impact is valuable and makes a world of difference.

By Nonye Opara and Kendall Moholityn

PBLA thanks all lawyers, articling students and law students who continually volunteer their time and expertise in various capacities and programs across the province. For more information about getting involved in PBLA's programs and initiatives, contact [vls@pbla.ca](mailto:vls@pbla.ca).

### Interested in LSRs? Get Involved in the LSR Project!

The Limited Scope Retainer Project is looking for volunteers to participate in a study of lawyer experiences and the impact of using LSRs in practice. For more information, Contact Robert G. Harvie, QC ([rgh@huckvale.ca](mailto:rgh@huckvale.ca)) or John-Paul Boyd ([jpboyd@ucalgary.ca](mailto:jpboyd@ucalgary.ca)), or see more information on page 18.



Kendall Moholityn, LL.B., is the Executive Director of Pro Bono Law Alberta. She is also the Co-Chair of the CBA Alberta Branch Access to Justice Committee.



Nonye Opara is the Program Manager at Pro Bono Law Alberta. Nonye is a graduate of the LL.M. program at the University of Calgary's Faculty of Law, and was an active volunteer for both the CCDC and QB Amicus projects prior to joining PBLA.



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## Embracing the Future of Legal Technology

By Jennifer Flynn

My children are sometimes dismayed at my inability to manage some "basic" technology tasks. ("Seriously, Mom, you have a graduate degree in technology, but you still can't figure out how to switch from Xbox One to Netflix?") While there are still technologies that elude me, how technology is affecting the future of our profession remains perpetually front-of-mind.

Like many of you, we at LESA were struck by the 2014 CBA Legal Futures report and its predictions.<sup>1</sup> In the last few years, we have seen significant developments underscoring the need to be well-educated about technology and its effects.

A recent Harvard Business Review article summarizes some of the current technology trends affecting professionals. For example, almost 50 million people reportedly relied on online tax-preparation software (rather than professionals) in filing their 2014 US tax returns, and monthly visits to online WebMD health sites has now surpassed the number of doctor visits in the US.<sup>2</sup> Are lawyers immune from the effects of this trend? Apparently not, with 60 million conflicts among eBay traders resolved annually with online dispute resolution (instead of through lawyers and judges).<sup>3</sup>

Mitratech - a multi-national legal information services company - shared recent survey data that mirrors this trend. In their study, 353 law firms and legal department decision makers were canvassed on how much law departments and law firms spend on technology - and, more specifically, on what. Results of the survey reveal some telling statistics:<sup>4</sup>

- Legal project management software was reportedly used by 51% of large firms (40+);
- E-Billing software was used by 80% of large firms and 48% of mid-sized firms (10-39); and
- 74% of large firms, 48% of mid-sized firms, and 52% of small firms (1-9) reported the use of document management software.

The future of legal technology is now, and LESA strives to embrace this technological shift. This year, you can look forward to some innovative programming that focuses on the future of technology in the legal industry.

### Alberta Legal Technology Conference

Join us for the debut of our first ever Alberta Legal Technology Conference on February 24, 2017 in Edmonton. Participate in discussions and demonstrations on topics that include e-Discovery and Litigation Management; Cyber-security and Information Governance; Artificial Intelligence and Machine Learning in Legal Technology; Remote Workplaces, Virtual Law Firms, and the Technology-Augmented Lawyer; Technology for

<sup>1</sup> CBA Legal Futures Initiatives. "Futures: Transforming the Delivery of Legal Services in Canada." August, 2014. Retrieved from [http://www.cba.org/CBAMediaLibrary/cba\\_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf](http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf)

<sup>2</sup> Ibid.

<sup>3</sup> Susskind, R., Susskind, D. (2016). Technology Will Replace Many Doctors, Lawyers, and Other Professionals. Harvard Business Review. Retrieved from <https://hbr.org/2016/10/robots-will-replace-doctors-lawyers-and-other-professionals>

<sup>4</sup> Legal Leaders Limited. (2016). Legal technology spend at \$3bn and growing. Retrieved from <http://www.legaltechnology.com/latest-news/legal-technology-spend-at-3bn-and-growing/>

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### 50th Annual Refresher: Practice Excellence

We invite you to join us in celebration of 50 years of legal excellence at the 50th Annual Refresher: Practice Excellence in Lake Louise (May 7-9).

- Our Refresher keynote features author, speaker, and independent adviser Professor Richard Susskind, OBE (who, among other achievements, served as a CBA Futures' expert adviser and is co-author of the HBR article previously referenced).
- In our cross-practice plenary sessions, you will uncover innovations in technology, including electronic records, electronic signatures, privacy, confidentiality and security of documents, and communications in the virtual age.
- In our concurrent substantive law break-out sessions, you can deepen your legal knowledge in your choice of civil litigation, family law, transactions (business and real estate), or wills and estates.

Whatever your area of practice, this year's Refresher is your year.

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Jennifer Flynn is the Executive Director of the Legal Education Society of Alberta and the Director of the CPLED Program in Alberta.

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## Reform Matters

By Barry Chung

*The Alberta Law Reform Institute advances just and effective laws through independent legal research, consultation and analysis. We operate through the continued agreement of the Law Society of Alberta, the University of Alberta and the Ministry of Justice and Solicitor General. Our operating funding is provided by the Alberta Law Foundation, the Ministry of Justice and Solicitor General and the University of Alberta. Funding in kind is provided by the University of Alberta and the University of Calgary.*

### Property Division for Unmarried Couples

Melissa isn't who most people picture when thinking about individuals struggling through a relationship breakdown. Today, she's an established academic of a global initiative at a leading Canadian university, but she clearly recalls the struggles she faced as a graduate student fighting for her rights when her relationship broke down. Dividing property upon marital breakdown can be contentious, but the uncertainty that comes at the end of a common-law relationship can be a much different ballgame. Hardship usually awaits those involved as well as strain on an already pressured court system. Recognizing that common-law relationships are more prevalent, the Alberta Law Reform Institute (ALRI) consulted with family law professionals and spoke to Melissa about her experience as part of our project on property division for cohabiting couples.

### Uncertainty for Common Law Couples

Despite not being legally married, Melissa and her partner Chris functioned as a typical family unit. Their children and many of their friends did not know that they were not married but most of the financial decisions were made unilaterally by Chris causing hardship throughout their time together. As Melissa recalls, "I became pregnant early in our relationship, around the time I entered grad school. Financial issues were a regular source of conflict. He would support our child but refused to support me or put my name on any of our assets. I couldn't qualify for many kinds of financial aid, including jobs on campus because our family income was too high. I had to cover my expenses on my own and had to close my consulting business because I didn't qualify for a line of credit since I legally had no assets."

Years later she decided to leave the relationship with their children in tow but found her experience with the legal system frustrating. Her lawyer unsuccessfully made applications for exclusive possession of the family home as well as for spousal and child support. Chris disputed the facts and had the case delayed, keeping Melissa and their children out of the family home for 13 months. After multiple applications, case management and a cancelled JDR, Melissa learned that it would take years to get to trial at a cost of \$100,000+. The reality is that many Albertans will face the same daunting task of dividing their property if their common-law relationships breakdown.

### ALRI Consultation

In 2016, ALRI conducted a province-wide telephone survey and found that 540 of the 1,208 individuals surveyed were in, or had been in a common-law relationship. Statistics Canada found in their 2011 census that the proportion of couples in a common-law relationship increased to 19.9% from its 1981 census figure of 6.3%. The trend towards unmarried long-term relationships along with the absence of an established property

division scheme is particularly concerning. It was noted by one practitioner that:

People are under the mistaken assumption that they acquire property rights as soon as they move in together...In fact, some cohabiting couples think that they have even better property rights than married couples.

Couples are commonly under the misconception that they acquire property division rights after 6 months of living together. While many respondents felt that the rules that apply to married couples should also apply to common-law relationships, the vastly different circumstances under which common-law relationships exist warrant investigation into more appropriate legislation.

ALRI also conducted roundtable discussions in the fall of 2016 with family law practitioners in Edmonton and Calgary and found that opinion was divided. On one end of the spectrum, practitioners felt that new legislation is unnecessary. One attendee stated that,

Many people fall into living together instead of making a conscious decision to do so like getting married. Legislation may be workable when dealing with long term relationships but problems arise if the relationship lasts less than 10 years.

In contrast, others believe that the lack of policy leads to uncertainty, delays, and expensive litigation as it did in Melissa's case.

Legislation would clarify and simplify things and would result in fewer dissections of the relationship, like who cleaned up after the dog etc.

Despite the differences of opinion, many practitioners agreed that most of their clients are unaware of the economic consequences when their common-law relationships end.

### Law Reform is Needed

Whether through new legislation, or reform of the existing Matrimonial Property Act and Adult Interdependent Relationships Act, clarity is needed to prevent further hardship for those already going through tumultuous times. ALRI is currently exploring policy options for the division of property at the end of a common-law relationship and will release consultation documents in the coming months.

Stay current with our projects by subscribing to our mailing list at [www.alri.ualberta.ca](http://www.alri.ualberta.ca).



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Barry Chung is the communications associate for the Alberta Law Reform Institute (ALRI). Prior to joining the ALRI, he served in various roles at the University of Alberta including communications and content developer for the U of A's health and wellness portfolio.

# A VIEW FROM THE BENCH

By The Honourable Judge A.A. Fradsham

I remember when my late father hit what I call “life’s brick wall”. Dad was a very intelligent man with a deeply embedded work ethic and sense of responsibility. Just after my tenth birthday, Mom died, and Dad single-handedly raised my older sister and me, and, being adamant that education was essential both for one’s inner self and for societal success, he ensured we completed post-secondary education. Dad was well-read, thoughtful, and steadfast. He was, and remains, representative of the standard to which I strive.

In his working lifetime, he had dealt with a variety of new technologies, but the pace and extent of electronic intrusion into the life of the average citizen increased exponentially by the time he was about 85 years old. He had been doing quite well living on his own and in the same house he had occupied for over 35 years. ATMs were just making their appearance, and while he had established an uneasy peace with them (think of China and Taiwan), he was able to continue conducting his financial affairs with human bank employees. By all measures, he continued to be a spry and engaged octogenarian with whom one could carry on thoughtful conversations on a wide variety of topics, though it was best not to engage in one of those conversations if one were poorly prepared on the topic (think of your worst experience in front of the Court of Appeal).

Consequently, I was somewhat taken aback when I watched him confront, and none too gracefully, concede defeat to a VCR. Now, many of you may have had little, or no, experience with VCRs. Suffice it to say they were the bulky and rudimentary forerunner to the DVD player. A VCR’s most advanced features were “fast forward” and “reverse”. However, to make the VCR operational, one had to ensure that the television to which it was connected was on a predesignated channel, and the controls for the VCR were separate from the television.

My sister and I thought we were quite clever when we bought a new VCR for Dad for his birthday. We thought it would let him watch the movies he chose, and to do so on his timing. To cut to the chase, he never did warm to the VCR, and never did “embrace” the technology. At his stage of life, he was not prepared to expend the effort to tackle one more advance in electronics. The VCR was in pristine, though dusty, condition when he died several years later.

This story flashed into my mind a couple of weeks before this past Christmas. Gloria and I had driven downtown to attend a choir concert in which our eldest grandson was performing.

As a coddled member of the bench, my downtown adventures can usually be accommodated by parking at the courthouse. To this point in my cocooned existence, I had been spared the joys of street parking in the age of “Park Plus” and the Calgary Parking Authority. I had seen people trying to read the on-screen prompts, and figure out the zone number of the area in which they had parked, but, apart from tackling a parking machine at the University, I was a neophyte in the world of electronically controlled parking.

I dropped Gloria off at the concert venue, and was able to eventually find an unoccupied parking spot within the same time zone. I struggled in the bitter December wind to read the cryptic instructions on the screen of the parking machine (note to Calgary Parking Authority: black letters which are only technically darker than their grey background are not easy to read through a plastic cover which could, at best, be described as having been made translucent through age or abuse).

Eventually, I was able to persuade the machine to take my credit card, and, with great relief, I authorized whatever price was demanded (for all I know, I bought a life interest in the parking spot, or, at the least, I have rented it until this coming Easter). As I made my way to the church in which the choir was performing, I was struck with the realization that it was likely that I was now entering that phase of my life in which the technological world would, with increasing frequency, be doing laps around me. I confess to wondering: “What will be my “VCR”?”

As a post script, I am happy to report that a subsequent Christmas adventure in “unlocking” an iPhone for the benefit of a grandchild was successfully, though admittedly not expeditiously, concluded, so it would seem that I have not yet hit the brick wall. That it is coming, I have no doubt, but I am quite pleased that it will be something more formidable and exotic than “on street parking”.



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The Honourable Judge A.A. Fradsham is a Provincial Court Judge with the Criminal Court in Calgary. His column “A View From the Bench” has been a highlight in the Canadian Bar Association newsletters for over 15 years.

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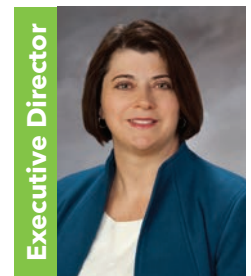
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