

# The Paperless Office?



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# Outline

- The Rules
  - Use of IT in general
  - E-money questions
  - Unauthorized practice
- Social Media: friends, links and more
- Security: who's responsible?
- Transactions: what's different?
- Electronic signatures: by regulation?
- Electronic evidence: making sure
- The future (and the Futures report)

# The Rules - Paper Please

- New Rules of Professional Conduct in Ontario as of October 1, 2014.
  - The amendments do not refer to rules about the use of technology
  - That's because none of the rules touch the use of technology (except e-reg for land title transfers)
  - LSUC technology practice guidelines - <http://www.lsuc.on.ca/with.aspx?id=2147491197#5.1>
  - Fallback source of ethical guidance: CBA (2014)
    - <http://www.cba.org/cba/activities/pdf/guidelines-eng.pdf>

# The Rules - Use of IT

- **LSUC Technology Practice Management Guidelines:**
  - 5.5 Competent Use of Information Technologies
  - Lawyers should have a reasonable understanding of the technologies used in their practice or should have access to someone who has such understanding.
- **CBA – Practising Ethically with Technology:**
  - “Lawyers ... should understand how to use technology responsibly and ethically.”
- **ABA Model Rules of Professional Conduct**
  - ABA has ethics opinions but also reformulated rules

Rule 1.1 Comment [8]: “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.** “

# The Rules - Use of IT

- Rule of confidentiality
- LSUC Rule 3.3-1 A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship and shall not divulge any such information
  - Silent with respect to use of cloud software and storage with other providers or electronic telecommunications
- ABA Model Rules of Professional Conduct include:
  - Rule 1.6 (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

# The Rules - Office Finance

- The world of e-payments and m-payments may come to an end at the door of a Law Society audit.
  - No trust funds via PayPal because audit trail deemed inadequate; not a financial institution
  - Using latest technologies – efficient, cloud – may be too new for LSUC auditors

# The Rules - Unauthorized Practice

- The rules have not changed; you can't practise where you're not licensed to practice
- That includes giving advice in the place where you are licensed about the law of somewhere else.
- So: no advice ever by Internet? Or vigorous disclaimers on every page? In every tweet?
- Or: does the rule really make any sense any more?
- What about legal process outsourcing – outside Canada or outside the province?
  - Restriction on fee splitting or marking up fees
  - Cf. Tory's Halifax office – not practising Nova Scotia law

# Social Media

- May you/should you/must you publicize your practice – and yourself – on social media?
- Which social media give a lawyer the best ROI?
- May you ask for or comment on social media endorsements?
- May you tell your clients to clean up their social media sites before litigation?
- May you contact an unrepresented person by social media? Are there any limits?
- Can you use evidence from social media sites?
- May you/should you ‘friend’ a judge – and vice versa?



# Security


- What does the reasonable lawyer have to know about IT security?
  - What are the consequences of not knowing, or not acting?
- Security and lost money
  - If your bank account is hacked, will the bank pay?
  - Does it matter if it was your trust account?
- Security and lost privilege
- Security and professional conduct
  - Are lawyers the weak link in clients' security systems?
- Security and crippled practice
  - Your firm is your own critical infrastructure

# Security - Passwords

- Password: 12345
- So many software, different accounts – how are you going to keep track of passwords and ensure they are strong passwords
- Document on desktop storing all passwords?
- (France) Employer held liable for not protecting employee's privacy because passwords were too weak

# Security - Passwords

LastPass 

ENGLISH 

FEATURES

HOW IT WORKS

GO PREMIUM

ENTERPRISE

SIGN IN

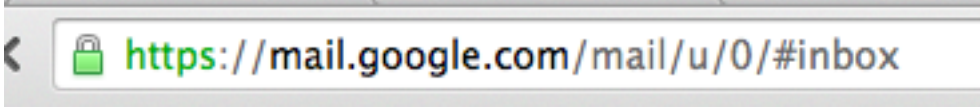
## Simplify Your Life.

LastPass remembers your passwords so that you can focus on the more important things in life.

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# Security - Encryption

- Define encryption
- Encrypt what?
  - 1. https: A screenshot of a browser address bar showing a secure connection to a Gmail inbox. The address is <https://mail.google.com/mail/u/0/#inbox>. The address bar includes a green padlock icon on the left, indicating a secure connection, and a back arrow on the far left.
  - 2. Encrypts to server and then what?
  - 3. double encryption – encrypt data to server and down – so only encrypted data stored to server; necessary?
  - ABA model rules - (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

# Security - BYOD



- Policies? – What to think about?
- Who has access to what documents?
- Can they only access files through an Internet portal?
- How do you handle if lawyer leaves?

# Security - Document Management

- Software Cloud solutions – lifecycle could be 3 years; Here today gone tomorrow
- What are your responsibilities on storage and retention of documents?
  - E-Commerce Act s. 12 – meet retention requirement by appropriately reliable and fully accessible e-records
  - CRA also has requirements - not new but how to apply to mobile devices, tablet law practices if any
    - <http://www.nevcon.com/resources/recordkeeping.pdf>
    - <http://www.cra-arc.gc.ca/E/pub/tp/ic05-1r1/ic05-1r1-10e.pdf>
  - Content is king – cf. lawyer of anecdote who deletes or advises client to delete all electronic files after 6 months (can you spell ‘spoliation’?)

# Paperless - Insurance Coverage?

- As of the 2014 policy year, LAWPRO includes \$250,000 for losses related to cybercrime of client confidential information or trust monies
- Excluded: losses not related to professional liability such as damage to equipment or software; intellectual property; cyberlibel; damage to third party systems; impairment to access to systems of information
- Lawsuits about data breach may not continue to fail; meanwhile legislation e.g. Bill S-4

# Transactions - what's new?

- M-commerce



- Ubiquity of e-commerce? (Expectations)
- ODR in prospect, or not?
- Cross-border issues
- Strongly connected to privacy issues: geolocation, RFID, Big Data, etc.



# Electronic signatures today

- Not often a legal problem: a practical and prudential one
- Not everyone is on the same page (comfort level) and law does not generally require use
- Check specific statutes and old contract language (note that the e-com statutes don't amend contracts, corporate by-laws etc.)
- Q re real estate transactions: particularly vulnerable? Special duties by LSUC. Other?

# Electronic evidence

- E-discovery the flavour of the month/year/decade for obvious reasons
- E-admissibility: a tower waiting to crumble?
  - How do you *\*really\** know what's in your computer, or the other side's computer
  - If the CSEC and NSA are in your, and the other side's, computer, who else is?
  - Could you defend the reliability of your system?
  - Standards development: is it enough?

# Tech for Paperless Law Practices

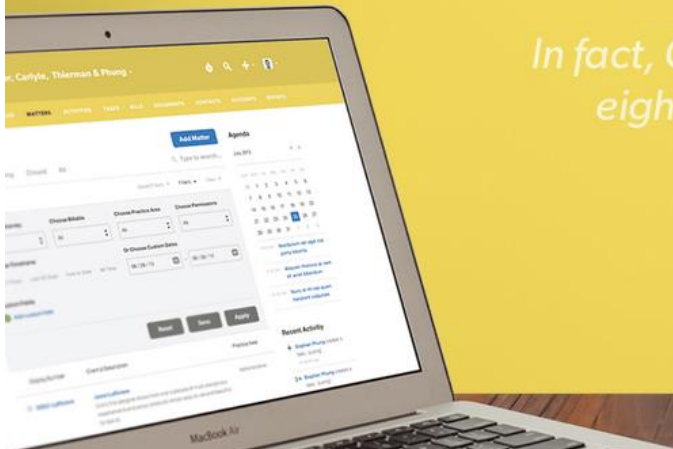
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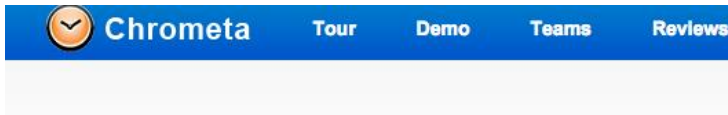
# Tech for Paperless Law Practices

## 3. Electronic Pens, Portable Printers



# Tech for Paperless Law Practices

## 4. Time Tracking Software



Capture time even  
when you don't enable time tracking

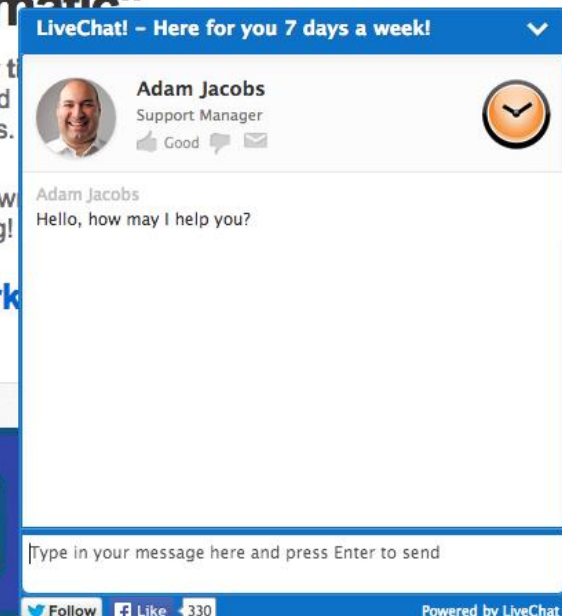


## Easy Time Tracking It's All "Automatic"

Chrometa captures your **work** on your PC, Mac and need to start or stop timers.

It's like having your very own at your service all day long!

Here's How It Works



**START YOUR 30-DAY FREE TRIAL**

# Tech for Paperless Law Practices

## 5. Electronic Signatures

The screenshot shows the top portion of the DocuSign website. The header is dark blue with the DocuSign logo on the left. On the right, there are links for 'Contact', 'Support & Training', 'Resources', 'Partners', and 'Access Documents', along with a 'LOG IN' button. Below the header is a dark grey navigation bar with links for 'How it Works', 'Features & Benefits', 'Solutions', 'Pricing', 'Customers', and 'Company'. On the right side of this bar are buttons for 'FREE TRIAL' and 'BUY NOW', and a search icon.

The Global Standard for Digital Transaction Management™

The main banner features a smiling man in a dark suit and tie, holding a smartphone. On the left side of the banner, there is a white box containing the following text:

  
 Stop chasing paper.  
 Just DocuSign It™  
 Accelerate results, save money, and  
 delight customers by going 100% digital  
 with DocuSign.  
[QUICK DEMO](#)

Introducing  
DocuSign for iOS 8,  
featuring Touch ID

14-Day Free Trial  
Fastest and easiest electronic signature  
solution. Try DocuSign Free.

Digital  
Transaction  
Management

# CBA Legal Futures Initiative

- “...technology is a key enabler of innovation and should be an integral part of the future management and delivery of legal services.”
- Technology will be client facing and lawyer facing
  - e.g. TurboTax vs TurboTax software used by accountants
- Who will (and should) lead technology innovation?
  - CBA, Lawyers, Non-Lawyers
- <http://www.cbafutures.org/The-Reports/State-Of-Research>