NEW TECHNOLOGIES – SOCIAL NETWORKING SITES

By Steve Mark, Legal Services Commissioner (NSW)

Over the past few years, the legal services marketplace has seen unprecedented change as legal practitioners adapt new technology to practice. As we reported in the August 2010 issue of Without Prejudice, virtual law practices (or ELawyering), for example, are today becoming an increasingly acceptable method of structuring a legal practice due to the perceived cost benefits to both practitioners and clients. Similarly, the use of social networking sites like Facebook, MySpace, Twitter, LinkedIn and blogging sites to market legal practices and provide legal services is growing in popularity.

The Internet today plays an increasingly important role in a legal practice’s efforts to attract new clients and disseminate information about their legal services. Social and professional networking services such as Facebook, MySpace, LinkedIn and Twitter are being used by legal practitioners both in Australia and overseas to create online profiles that contain personal information and legal opinions, which can be made available to anyone with an internet connection or anyone who is a member of the networking site. For example, a legal practitioner may create a Facebook profile that is accessible to family, friends and prospective clients at the same time. The legal practitioner may then post professional announcements that are shared with all of those people. A number of top-tier law firms in Australia are regular users of social networking sites like Twitter, these firms include Clayton Utz, Mallesons, Freehills, Allens, Blake Dawson, Norton Rose and Corrs.

In addition to the generic sites like Facebook, MySpace and LinkedIn, there are also social networking sites specifically directed at legal practitioners. Lawysnet, for example, allows legal practitioners from all over the world to set up profiles, make connections and join groups. LawLink.com is a similar site yet is more developed, offering four interconnected websites to members – The Attorney Network, The Expert Witness Network, The Law Student Network and The Law Professional Network. LawLink.com’s services for members include networking, a Twitter Law Forum, moderated forums, document sharing and a news alert.

The growing popularity of social networking sites by legal practitioners also extends beyond the networking benefits. These sites can also be an excellent investigative research tool for legal practitioners. Use of these sites have, for example, become particularly common in family law and criminal law. Sites like Facebook, LinkedIn or YouTube can uncover valuable (and embarrassing) information about adverse parties and witnesses. Noting this, Swaab Attorney’s have prepared a written advice for their clients who are involved in family law matters on precautions to take if they are using social networking sites, internet forums and chat rooms.

These sites have also been used by law enforcement agencies to serve court orders. In Victoria, for example, police obtained court approval to serve an alleged cyber bully via Facebook after having failed to serve the order in person, over the telephone or via the post. However, whilst these sites may be beneficial for litigants, the sites are also being used to jeopardise cases. In South Australia last year for example, an accused murderer was publicly named on Facebook despite there being a court order that his name be suppressed. The court order was ineffective in stopping internet users from posting the accused’s name on Facebook.

Social networking services are also being used to deliver legal services online. The twitter feed @thelegaloracle is the first Twitter “law firm” in the world to offer free legal advice in 140 characters on questions that have been tweeted. The Twitter feed is being staffed by a law firm in the UK, Loyalty Law Solicitors. According to the founder of the tweet, the use of Twitter is aimed at providing legal advice and guidance.
NEW TECHNOLOGIES – SOCIAL NETWORKING SITES continued

The question-and-answer style of legal advice online has also gained prominence with the establishment of two websites based in the U.K. – www.expert-answers.co.uk and www.questiontheexpert.com – which allows people worldwide to pose questions to a panel of legal practitioners about legal issues. The websites stipulate that no client relationship is created and that “the answers given are for information purposes only and are not a substitute for specific professional advice.”

Questiontheexpert charges users between £9 and £31 to pose a question depending on the service level they require. The legal practitioner answering the question receives half of the amount charged. Expert-answers does not charge users like Questiontheexpert does; instead, it allows the user to set the price for the question posed. The aim is to bridge the gap between those who are eligible for legal aid and those who cannot afford to pay for legal advice from high street firms.

The changes in legal practice brought about by the use of these new technologies are a by-product of globalisation. The dynamics of industry, technology, and trade liberalisation, in particular, have had a fundamental effect on law firms and the legal services marketplace. The Internet, computers and social media have revolutionized business and the practice of law. Communication is now easier, making trade liberalisation, in particular, have had a fundamental effect on law firms and the legal services marketplace. The Internet, computers and social media have revolutionized business and the practice of law. Communication is now easier, making

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Social networking presents many new ways for lawyers to reveal confidential client information, sometimes inadvertently. Lapses in confidentiality can occur on a firm’s Web site and client intake forms, in emails and attachments, on lawyer blogs, bulletin boards, chat rooms, and listservs, and in many other communication forms. A legal practitioner who discusses his or her cases on Twitter, Facebook, or a blog runs the risk of violating Rule 2, absent client consent. Similarly, a legal practitioner who tweets to followers what they are doing or what new clients they are representing could also be at risk of violating Rule 2. A legal practitioner should not blog, tweet, or post any information that can be connected to a client without that client’s consent.

Security presents another threat to confidentiality. Social networking sites use a third party provider to host information. Like virtual law firms there is no guarantee that a legal practitioner’s account cannot be hacked into, corrupted or information stolen. A hacker impersonating a legal practitioner and providing legal advice to clients, for example, is not unforeseeable in practice today.

The new technologies also pose a risk of creating unintended practitioner/client relationships. Social networking sites like Facebook can lead to users claiming that they have formed client relationships with law firms where the practitioner believes they have only become “friends”. It is easy to imagine a situation where a Facebook friend posts a legal question on your Facebook wall. If you respond to that question, you could be forming an attorney-client relationship, and along with such a relationship comes a host of legal and professional responsibilities. Although there is no bright, clear line denoting when an attorney-client relationship is formed, general communications about the law are less likely to create an attorney-client relationship, whereas more specific communications about the law and an individual’s particular circumstances are more likely to create a relationship. The problem is that with the way social networking occurs – the casualty of conversations – it can become difficult to differentiate between casual and formal relationships.

A Regulatory Response

Social media is today becoming an integral part of our personal and professional lives. According to a worldwide study from Nielsen Communications conducted last year, Australians spent 7 hours and 19 minutes in April 2010 on social networking sites — more than users in the U.S., who spent six and a half hours. The Nielsen-Community Engine 2010 Social Media Business Benchmarking Study found that 70 percent of Australian businesses intend to undertake some form of social media for their business, a significant increase from the 40 percent engaged in social media in 2008. Social media use today is encouraged in the commercial world – even in legal practice. In January 2010, for example, the Law Council of Australia actively encouraged law firms to “seriously consider blogs, Twitter, LinkedIn and possibly Facebook” for marketing, recruitment and knowledge-sharing.
1995 (NSW). Rule 8.2.1. provides: Professional Conduct and Practice Rules is found in Rule 8.2.1 of the Revised The requirement to retain documents require that most trust records be kept in “permanent form” for seven years after the “last transaction entry in the record”. However, some trust records, for example “files relating to trust transactions or bills of costs or both”, are required by clause 89 to be kept for seven years after “finalisation of the matter to which the record relates”. Clause 90 of the Regulations requires records and supporting documentation relating to other categories of trust money, including written direction money, controlled money and power money, to be kept for seven years. Records of non-trust investment money are similarly required by clause 90 to be kept for seven years.

We recently received a query from a legal practitioner concerning file retention. The question sought advice as to whether keeping documents in electronic format rather than hard copy would satisfy the requirement to retain documents.

The requirement to retain documents is found in Rule 8.2.1 of the Revised Professional Conduct and Practice Rules 1995 (NSW). Rule 8.2.1. provides:

“A practitioner must retain, securely and confidentially, documents to which a client is entitled, for the duration of the practitioner’s retainer and at least seven (7) years thereafter, or until such time as the practitioner gives them to the client or another person authorised by the client to receive them, or the client instructs the practitioner to deal with them in some other manner.”

The Rules do not specify what form, electronic or hard copy, documents need to be kept. Both this office and Lawcover, the legal insurer, take the view that retaining hard copy files provides the best level of security. Obviously, technical advances, space shortages, the need to save costs and simple convenience will lead to an increasing number of records being kept only electronically. This raises a number of complex and not immediately soluble problems related to security, confidentiality and the cost of maintaining and, say, scanning documents. The capacity for small firms and sole practitioners to comply with what we would hope would be the high standards that should be applied to the retention of electronic records is surely something that will be a significant issue in the future.
2009-2010 OLSC ANNUAL REPORT

The OLSC’s Annual Report for 2009-2010 was recently tabled in Parliament.

I am proud to report that we have had an extremely productive year:

- We received 2,661 written complaints during 2009-2010.
- Of the 2,661 written complaints received and registered, 1,812 were consumer disputes and 849 were investigations.
- We referred 26% of all the complaints registered to the New South Wales Bar Association and the Law Society of NSW.
- We registered the completion of 1,736 consumer disputes retained by the OLSC during this period.
- We registered the completion of 334 investigations retained by the OLSC.
- We received 8708 calls from the public on the OLSC Complaints Inquiry Line.

Copies of the 2009-2010 Annual Report can be obtained via our website at http://infolink/lawlink/olsc/l_olsc.nsf/pages/OLSC_annualreports

RECENT PAPERS/ARTICLES/SEMINARS

CONTINUING LEGAL EDUCATION ASSOCIATION OF AUSTRALIA (CLEAA), 28 OCTOBER 2010, SYDNEY

On 28 October 2010 the Commissioner was a panel member at the Annual Conference of Continuing Legal Education Association of Australia (CLEAA). The focus of the panel was on continuing legal education as a secret weapon for success and satisfaction in law. The Commissioner discussed the purpose and role of continuing professional development for legal practitioners and the infusion of ethics into education programs.

NSW YOUNG LAWYERS CLE SEMINAR, 20 NOVEMBER 2010, SYDNEY

On 20 November the Assistant Commissioner (Legal) presented a seminar for NSW Young Lawyers. The seminar was entitled “The Three C’s, Communication, Conflicts and Complaints.” The Assistant Commissioner (Legal) discussed the number and nature of complaints in relation to family law matters and the OLSC approach to dealing with such complaints.

ETHICS SEMINARS IN FULFILLMENT OF RULE 42 OF THE LEGAL PROFESSION ACT 2004 (NSW).

Over the last few months the Commissioner and the Assistant Commissioner (Legal) have presented numerous ethics and professional responsibility seminars to practitioners in fulfilment of the requirements under Rule 42 of the Legal Profession Act 2004 (NSW). Seminars were delivered to a range of organisations including law firms, in-house legal departments at organisations, regional law societies and government organisations.

2010 ANNUAL ASSEMBLY CONFERENCE OF NSW YOUNG LAWYERS – ETHICS HYPOTHETICAL, 13 NOVEMBER 2010, SYDNEY

On 13 November, the Commissioner and the Research & Projects Coordinator presented an ethics hypothetical for the 2010 Annual Assembly Conference of NSW Young Lawyers. The hypothetical encouraged participants to focus on the professional conduct rules as well as general moral standards to interpret behaviour. The hypothetical generated much discussion amongst participants about the role and function of legal practitioners.

WITHOUT PREJUDICE VIA EMAIL

As indicated in previous issues the OLSC can send out future issues of Without Prejudice via email. If you would like to receive Without Prejudice via email please contact us at OLSC@agd.nsw.gov.au

Comments ? Suggestions ? Something you’d like to know more about ? Write to the editor Tahlia Gordon at Tahlia_Gordon@agd.nsw.gov.au

WITHOUT PREJUDICE is published by The Office of the Legal Services Commissioner

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Printed on Monza Satin – 55% recycled and 45% FSC paper stock, using vegetable oil based inks and an environmentally friendly alcohol-free printing process.