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Professionalism and Technology Refresher: A Case-Driven Exploration of Professional Standards and Technology

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Part A: Scenarios

Scenario 1:

John has just landed a new institutional client where John will be responsible for managing a large corporate trademark portfolio of over 80 trademarks. The new client signed John's standard retainer agreement, specifying that all communications would be primarily through secure emails. The following week, the client sent John instructions to use a third-party cloud-based software platform to manage the trademark portfolio and to direct all related communications through the software platform as, according to the client, the software platform allows uploading and sharing documents, communicating via instant messages, and holding virtual meetings. John has not heard of or used the software before.

Questions:

1. Can John go ahead and use the software platform?
2. What issues does John need to think about before doing so?
3. What does John need to discuss with, or to say to, the client?

Scenario 2:

Originally, Emma was a partner at a reputable, mid-sized law firm where she had practiced intellectual property law for 15 years. She decided to leave the firm and open her own practice. When she did so, Emma had the administrative and management experience to set up her solo practice, but on the finance side, she decided to hire a part-time bookkeeper to handle trust and general accounts.

After a few years as a sole practitioner, Emma received a communication from the Law Society informing her that a former client had filed a complaint, alleging that Emma failed to properly account for funds held in trust. As a result of the complaint, the Law Society has initiated an investigation and is seeking Emma's financial books and records for audit purposes.

Scenario 2 (Cont'd):

Emma contacted her bookkeeper to obtain the information that the Law Society was requesting, only to find out that the bookkeeper did not have the full financial records. After some investigating, Emma learned that the bookkeeper's computer system had likely experienced a cyberbreach in the past that resulted in the loss of much of the financial data relating to Emma's practice including the financial data for the period that the Law Society is investigating.

Questions:

1. What were Emma's responsibilities with respect to the client's financial records?
2. What were Emma's responsibilities with respect to her bookkeeper?
3. What are best practices to avoid loss of records and to mitigate cyberattacks?

Scenario 3:

Tim is one of three partners in a small boutique law firm and Tim has volunteered to take on the role of articling principal for the incoming articling student, Jessica. The partners agreed to have Jessica run the firm's social media accounts, posting marketing materials as well as commentary about the firm's practice.

Just before Jessica joined the team, the firm had been retained to act in a high-profile public interest litigation matter. When Jessica joined the firm, Tim asked Jessica to prepare a series of posts about the firm's role in the matter, all to bolster the firm's online profile. While Tim approved the first post that Jessica prepared, which was well written, he instructed her to publish the next post without first reviewing it.

Scenario 3 (Cont'd):

Shortly after the second post went live and started to gain traction in the online community, Tim reviewed the post and realized the post appeared to misrepresent the firm's involvement and expertise in relation to the litigation matter.

Questions:

1. What responsibilities does Tim have for the conduct of the firm's articling student?
2. What are the firm's general responsibilities for the use of social media and advertising its legal services?
3. What does the firm need to do in relation to the circumstances in which it finds itself?

Scenario 4:

- (a) Pat has been practicing technology law for 10 years. This includes having done one or two small files involving Artificial Intelligence (AI), but he does not have any experience on files involving robotic systems. A new client who manufactures and sells robots for plant automation that are controlled by AI systems asks Pat to prepare a standard-form services agreement for them. They need the agreement in 5 days' time.
- (b) Given the urgency, Pat assigns the file to Sam, a junior associate. Pat instructs Sam to prepare the draft agreement and include extensive provisions dealing with non-disclosure and confidentiality, as well as IP licensing terms. Given the aggressive turn-around time to present a draft, Sam decides to use a free, publicly available generative AI chatbot to assist him in drafting some of the clauses and does not advise Pat that he has used this online AI tool.

Questions:

1. What are Pat's responsibilities to the client when the client approached Pat to ask Pat to prepare the standard-form agreement?
2. What are Pat's responsibilities to Sam in asking Sam to prepare the draft agreement?
3. Did Sam have any responsibilities, to Pat, the firm, or to the client, in deciding to use the publicly available generative AI chatbot to assist with drafting some of the clauses?

[See: LSO's [Futures Committee Report to Convocation, April 25, 2024](#)]

Part B: Resources

Scenario 1 Resources:

Related LSO Decisions:

- *Law Society of Ontario v. Rappaport*, [2024 ONLSTA 13](#)
- *Law Society of Ontario v. McDonald*, [2024 ONLSTH 80](#)

Applicable Rules of Professional Conduct:

- Rule 3.1-2 (Competence)
- Rule 3.3-1 (Confidentiality)
- Rule 3.5-2 (Preservation of Client's Property)
- LSO's Technology Guideline
 - Section 5.2 (Systems to Support Client Service)
 - Section 5.4 (Competent Use of Information Technologies)

Scenario 1 Resources (Cont'd):

Statutory Considerations for Public Entities

City of Toronto Act

- Section 179(2)
- Section 200(1)
- Section 201(3)

Municipal Act

- Section 254

Municipal Freedom of Information and Protection of Privacy Act

- Section 4.1
- Section 30
- Reg. 823, Section 3

Scenario 2 Resources:

Related LSO Decision: *Law Society of Ontario v. Hertzberger*, [2024 ONLSTH 69](#)

Applicable Rules of Professional Conduct:

- Record keeping requirements under By-Law 9
- Rule 7.1-1 (Communications from the Law Society in which a response is required)
- Rule 7.1-3(f) (Duty to Report)
- Rule 3.1-2 (Competence)
- Rule 3.5-2 (Preservation of Client's Property)
- LSO's Technology Guideline
 - Section 5.10 (Security Measures)
 - Section 5.11 (Back-up and Disaster Management)

Financial Management Guidelines:

- Section 4.10 (Records)
- Section 4.11 (Form of Records to be Maintained)
- Section 4.13 (Internal Controls)
- Section 4.14 (Computer Controls)
- Section 4.17 (Disaster Plans)

Practice Management Guidelines

File Management Guidelines

- Section 3.8 (Managing Documents)
- Section 3.10 (Managing Experts or Other Professionals)

Guide to Opening Your Practice - <https://lso.ca/lawyers/practice-supports-and-resources/topics/guide-to-opening-your-practice>

Scenario 3 Resources:

Related LSO Decisions:

- *Law Society of Ontario v. Diamond*, [2024 ONLSTA 8](#)
- *Law Society of Ontario v. Hamza*, [2024 ONLSTH 27](#)
- *Law Society of Ontario v. Forte*, [2019 ONLSTH 9](#)

Applicable Rules of Professional Conduct:

- Rule 4.2-1 (Marketing of Professional Services)
- Rule 6.1-1 (Direct Supervision Required)
- Rule 6.2-2 (Duties of Principal)

Scenario 4(a) Resources:

Related LSO Decision:

- *Senjule v. Law Society of Ontario*, [2023 ONLSTA 22](#)

Applicable Rules of Professional Conduct:

- Rule 2.2-1 (Integrity) Commentary 1 and 2
- Rule 3.1-2 (Competence) Definition of Competent Lawyer 3.1-1(h) and (j)
- Rule 3.2-1 (Quality of Service) Commentary 1.1
- Rule 6.1-1 (Direct Supervision) Commentary 2

Coach and Advisor Network (CAN) – coachandadvisor@lso.ca

Scenario 4(b) Resources:

No LSO decisions available.

- See *Zhang v. Chen*, [2024 BCSC 285](#), where a lawyer relied on ChatGPT and cited two non-existent cases in a notice of application. The court ordered that the lawyer be personally liable for costs.

Applicable Rules of Professional Conduct:

- Rule 2.1 (Integrity)
- Rule 3.1-2 (Competence)
- Rule 3.2-1 (Quality of Service)
- Rule 3.2-2 (Honesty and Candour)
- Rule 3.3-1 (Confidentiality)
- Rule 3.5-2 (Preservation of Client's Property)

LSO's Technology Guideline

- Section 5.2 (Systems to Support Client Service)
- Section 5.4 (Competent Use of Information Technologies)
- Section 5.7 (Confidentiality)
- Section 5.10 (Security Measures)

LSO's [Futures Committee Report to Convocation, April 25, 2024](#)

Note: If advising FIs on any AI issues, OSFI has a number of useful AI-specific resources.

Professional Responsibility Practice Tips:

1. Address the use of technology in the Client Engagement Letter. Then review the Client Engagement Letter with the Client.
2. Subject to the size of your organization, consider having a Rules of Professional Responsibility SME as a single point of contact, or inquire as to whether external counsel can assign a point person as needed.
3. Develop and maintain/update a best practices guide to ensure alignment with Rules of Professional Responsibility and applicable LSO Guidelines.
4. Maintain a compliance or logging system to manage compliance.
5. Attend annual CPD sessions like this one, or otherwise hosted by your organization.

Professional Responsibility Practice Tips (Cont'd):

6. If applicable, recommend the articling committee be briefed on the most current Rules of Professional Responsibility as it relates to mentoring (i.e., a dedicated training session).
7. Assign a resource, internally or externally, to complete due diligence to ensure corporate policies and practices align with the Rules of Professional Responsibility and applicable LSO Guidelines.
8. With the support of both internal counsel (if applicable) and external counsel, corporate management is responsible for fostering a corporate culture of compliance with applicable rules, responsibilities and corporate policies (in effect, leadership from the top down).

Questions?

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