

*Is it '1984' at the Canada/US boundary?*

## 'Blank' laptops, PDAs to cross US border

BY MIKE BOWERBANK  
BLAKES LLP

Is Big Brother waiting at the border to confiscate your laptop, BlackBerry and their data? Well, no... and yes.

Under the terms of the US *Patriot Act*, you don't have to be suspected of anything to have your laptop confiscated as you cross the border into or coming from the States.



Mike Bowerbank

So lawyers and administrators traveling to or through the United States may well be subject to searches of files and data stored on any and all electronic devices they have with them.

Agents working with US Customs do not need to be suspicious of any wrong-doing to conduct a search; it could be random, it could be targeted.

Many lawyers travel with proprietary information or confidential files. What you need to ask your lawyers and administrative staff is this: How sensitive is the data traveling with you? Are you comfortable with US federal agents creating a copy of every file, document, picture and e-mail you have, and running forensic searches on your data indefinitely?

All things being equal, the average search so far involves seizing a laptop and informing the owner that it will be returned by mail at some later date. In many reports, laptops are never returned. Other searches are less problematic—the owner is sim-

*Is it '1984'? — Continued on page 2* →

*A look ahead at BCLMA's projects this year*

## 'Promising developments, exciting plans' underway for BCLMA

BY STEPHANIE CORNELL  
BCLMA PRESIDENT

It is my pleasure to serve you as 2008/09 BCLMA President. Many of you will know that the BCLMA is dear to me. I have held several roles since joining the Association in 1996.

In the last 12 years, I have led the Facilities and the Marketing subsections, served as Secretary to the Executive Board, and continue to remain involved with our *Topics* newsletter.

The Association has always offered me endless opportunities to learn and grow; to meet people and network. It has certainly supported

me throughout my professional legal career. I feel strongly about protecting and nurturing the wellbeing of this thriving organization. It feels right to continue to give back.

As President, I am supported by what is, I'm sure, the largest Executive Board ever. The amount of involvement at this level tells me that I am surrounded by members who care about the BCLMA as much as I do. I am proud to be a part of this outstanding team. Further, the association is at its largest—with 310 members representing more than 90 firms. As President, I have already had the



→ *Promising Developments: Continued on page 7*

Stephanie Cornell talks about the benefits of the BCLMA with two potential members. "The Association has always offered me endless opportunities to learn and grow; to meet people and network," she says.



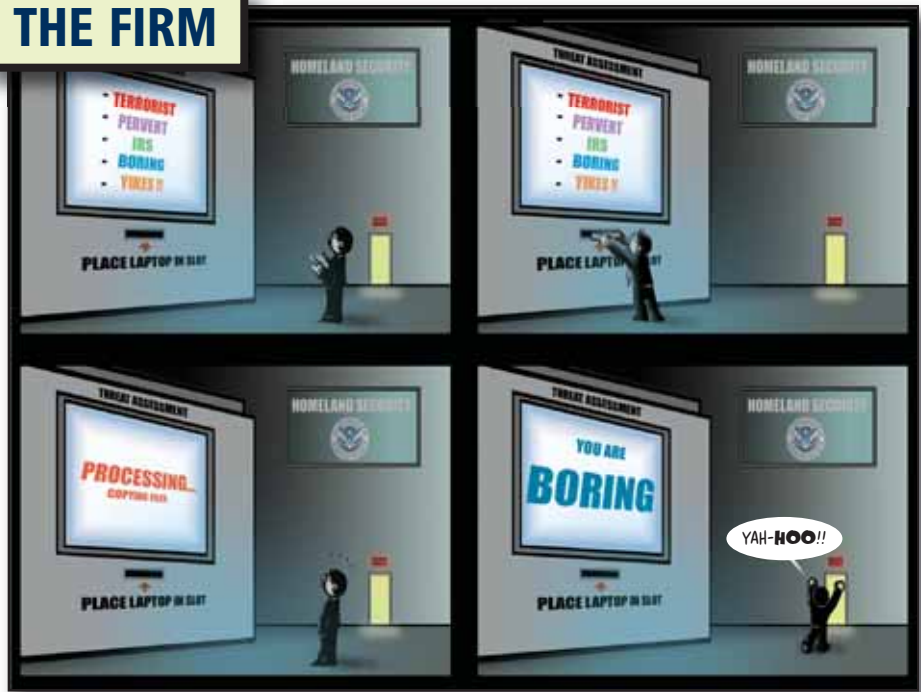
ply asked to turn on the computer, and the agent simply does a quick search for any suspect information without actually confiscating anything. Either way, you should be taking steps to secure your data.

So how are law firms responding to this? I talked to the IT professionals at a mid-sized law firm, and they said that their lawyers are given a blank laptop, with just an operating system and some basic applications. To get their files, they connect remotely to the file server and obtain their files that way. When loaner laptops are returned, all files are deleted.

Another law firm's current policy entails informing lawyers of the potential risks of the *Patriot Act*, but it leaves it up to them to take proper precautions. A new pending procedure for that same firm, however, will change that. Lawyers will be given blank loaner laptops and they will have to connect remotely to access their sensitive files.

By and large, there is a general awareness, but not many firms are

## THE FIRM



GRAHAM MORGAN © 2008

going far enough to secure their data.

So what should firms be doing? Here are some suggestions from the US Customs and Border Patrol's website:

### 1. *Minimize the Risk*

In light of the possibility that the

government could take possession of all the information stored on a laptop computer, international travelers should minimize the amount of proprietary, privileged, or other-

→ Is it '1984'?—Continued on page 4

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wise confidential information they store on the laptop during their trip.

2. **Be Prepared**

These searches can happen to anyone and when the US government seizes a computer, it may take time for the computer or other hardware to be returned. If a computer contains information (documents, presentations, contact information, etc.) that the traveler will need, the company should maintain a backup to replace the materials in the event of a border seizure.

3. **Be Insured**

Many companies have insurance policies that cover the loss of computers and electronically stored information. Border seizures of laptop computers represent another way in which a company can suffer such losses. By negotiating to have a policy cover these seizures, companies can protect themselves against the cost of replacing computers that are not re-

turned and against the possible disclosure of confidential information.

4. **Cooperate, but don't consent**  
If agents confiscate an employee's

→ Is it '1984'? — Continued on page 5 →

**THE REACTION TO 'US VS ARNOLD'**

"Our *amicus* brief and the lower court opinion... say that the government must also have some cause to search laptops. The Ninth Circuit panel rejected our argument [on April 22 in the lead case on the topic, *US vs. Arnold*] that the privacy invasion resulting from searching computers is qualitatively different from, and requires higher suspicion than, searching luggage or other physical items.

"The opinion is almost certainly wrong to classify laptop searches as no different from other property searches. *Fourth Amendment* law constrains police from conducting arbitrary searches, implements respect for social privacy norms, and seeks to maintain traditional privacy rights in the face of technological changes. This *Arnold* opinion fails to protect travelers in these traditional *Fourth Amendment* ways.

"The defendant has time to petition the Ninth Circuit to rehear the case *en banc*, and the Court might agree to do so. The panel included a District Court judge sitting by designation. Additionally, the opinion sets up Arnold's reliance on cases protecting highly private areas like the home from suspicionless searches as a straw man, and then knocks the argument down by pointing out 'the simple fact that one cannot live in a laptop.'

"This strained and strange argument suggests that *Arnold* is not the last word on border searches of laptops. In the meantime, travelers carrying their corporation's trade secrets, personal emails, or health and financial information are at risk of arbitrary and capricious fishing expeditions at the border."

—Electronic Frontier Foundation, <<http://www.eff.org>>

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computer, the employee should be co-operative and respectful. These seizures are legal, and customs agents are just doing their jobs. But if an agent asks the employee for permission to search the contents of the computer, the employee should respectfully decline to consent either verbally or in writing.

Although the agents may still take the computer and perform the search, the company will retain more legal rights if employees decline to consent.

5. *Get a receipt and as much information as possible*

Customs agents usually provide receipts for computers they confiscate—make sure your employees get one. Employees should also try to get as much information as possible about who to contact if they do not receive the computer back, if the computer is damaged, etc.

Taking a few extra preventative steps can make a big difference. Don't

wait until someone actually has this problem before you prepare for it. Big Brother is watching... are you comfortable letting him see everything? ■

**CLICKABLE ARTICLE RESOURCES**

The Ninth United States Circuit Court of Appeals decision, *U.S. vs. Arnold*, as a PDF file: <[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/6D5D931898D8168188257432005AC9B8/\\$file/0650581.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/6D5D931898D8168188257432005AC9B8/$file/0650581.pdf?openelement)>

Alternate address: <<http://tinyurl.com/3nsffc>>

The U.S. Customs and Border Patrol:

<[http://www.cbp.gov/xp/cgov/travel/admissability/authority\\_to\\_search.xml](http://www.cbp.gov/xp/cgov/travel/admissability/authority_to_search.xml)>

The Electronic Frontier Foundation commented May 1 on a range of strategies people might take at the border dealing with computers and PDAs here:

<<http://www.eff.org/deeplinks/2008/05/protecting-yourself-suspicionless-searches-while-t>>

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good fortune of meeting several new people, both within and outside of our immediate organization. I look forward to meeting many more of you!

The 2008/09 year kicked off in high gear. I am happy to share some already promising developments and exciting plans for the upcoming year.

**NEW AND RENEWED RELATIONSHIPS**

In April, 2007/'08 Past President Ernie Gauvreau and I traveled to Chicago at the invitation of the Association of Legal Administrators (ALA) to meet with its Executive Board.

The President and President-Elect from the Toronto Legal Office Management Association (TLOMA) were also invited and in attendance.

While TLOMA has not been a member of ALA for almost 20 years, the BCLMA—as a society—has not been operating under the umbrella of the ALA since January 1, 2005.

The agenda was to discuss three distinct programs that might bring us together in a new fashion. While we mutually agreed that our three societies are independently robust, collaboration can make us stronger still. Opportunities for increased growth and knowledge-sharing can provide our members with even greater value.

The three organizations have made a commitment to work together to present programs and initiatives that will offer you professional development and greater recognition for your vocation. Some of these initiatives include:

*Professional Legal Management Week*

Soon, you will hear more about the Professional Legal Management Week (PLMW).

It's a week-long program of international scope that supports all levels of legal managers, and brings awareness to the profession.

The BCLMA and TLOMA have already pledged sponsorship of PLMW. We will be lending our support along with several associations with which our subsections regularly partner with on educational efforts: International Legal Technology Association (ILTA) and Legal Marketing Association (LMA), for instance.

Currently, our 'sponsorship' level

**Our participation in this program will generate global awareness of the BCLMA. Let's see where it goes from there!**



**Stephanie Cornell**

means our logo will appear on all PLMW materials and we will take advantage of offered space in the PLMW magazine with an article that will present legal matters or developments from a Canadian perspective. Our participation in this program will generate global awareness of the BCLMA. Let's see where it goes from there!

The third annual PLMW runs the first week of October, 2008.

*Webinars*

The three associations discussed combining resources to co-host webinars that explore topics relevant to both Canadian and American audiences.

Again, whenever the BCLMA is involved, our logo will appear, so that you will be able to easily identify which presentations have Canadian content and/or relevance.

This project is already underway. Select executive members of the three societies discussed possible topics in May. You are welcome to submit

ideas for webinars to any member of the BCLMA Executive. Our contact information is on the back page of this and every issue of *Topics*.

*Certified Legal Management*

We also looked at possibilities of Canadianizing the Certified Legal Management (CLM) Course. This program is for legal managers who do not have post-secondary degrees, such as MBA, B.Comm or CGA, to achieve a recognized designation.

Between 10% and 20% of administrators do not have other designations or degrees; these are typically people who have grown with the firm and moved up through its ranks.

The CLM is gaining momentum as more recruiters and consultants include the CLM designation to recognize the accomplishment for candidates in job postings. Currently, there are about 300 CLM graduates in the US and three in Canada. Recertification is required every three years.

The greatest barrier to the CLM's success in Canada is its requirement for participants to study US law. Further, the tax laws are different (however, this area is already customized from state to state).

In order for the CLM to gain widespread popularity here, the program must focus on Canadian law, and it must be run in conjunction with one (or more) local academic institutions to provide course material.

Overall, the project would be a huge undertaking, and will require more research. This may be deferred to the 2009/10 calendar.

*Respect*

Probably the most important result of the meeting was the mutual respect ALA, BCLMA and TLOMA have for one another.

We respect the value each society brings to its members, and to one another.

**RESOURCES**

There's more info about PLMW and CRT here:  
<<http://www.alanet.org/education/cert.aspx>>

other. We are excited to forge this new relationship with our North American colleagues.

**BYLAWS**

Typically, membership in an Association rests with the individual—not their employer—as is the case, for example, with CGAs, CMAs, members of the BC Law Society or the international Association of Legal Administrators.

BCLMA is unusual in attaching membership to the employer, rather than to the individual. While membership in BCLMA certainly benefits the law-firm employer, our focus is on serving individuals employed in law firms.

The Membership Section (Part 2) of our *Bylaws* has been discussed often over the years, and again at the recent Annual General Meeting.

The suggestion is that the Bylaws be improved to embrace individuals, including when an individual moves between law firms, or upon unfortunate and/or unexpected termination. We know that this period of transition is the time that members need us the most—for support and networking occasions that can assist them with regaining employment in the legal field (if, indeed, that is the goal).

Our bylaws require adjustment to

accomplish that. Part 2 of the Bylaws will be revamped to encompass this broader concept.

When the changes are completed and reviewed by legal counsel, we'll provide them to you for discussion. Members will be asked to vote on the new bylaws at a Special Resolution Meeting shortly thereafter. As we have not yet registered the changes presented at the AGM on April 2 with the Companies Branch, the Association will not incur any additional registration costs on the occasion of the further alterations.

**QUARTERLY NEW-MEMBER BREAKFAST**

In September, we will launch the New Members Breakfast. Those joining the BCLMA for the first time will be invited to meet one another, members of the Executive Board and a few subsection leaders.

Questions about membership benefits, volunteer opportunities and events will be answered in this casual setting over coffee and muffins.

Invitations will arrive by e-mail in mid-August.

**UNDER CONSTRUCTION**

By now, you will have received

your 2008 educational conference package. *Under Construction* is already well on its way to becoming another truly successful event. The conference committee is working hard on all of the details. But it need not end with them.

You, too, can make a significant contribution to the conference. You can volunteer your time; embrace every opportunity to speak to your vendors for sponsorship dollars or door prizes (even a \$25 gift card makes people happy!); but, most importantly, you can attend.

Your conference program outlines the agenda, introduces the keynote speakers and workshop leaders who will provide you with new tools that will enhance your skills and improve the outcome of your business plans.

Let your Managing Partner have a good look at the package when you outline your reasons to attend. It will detail the benefits and value the firm will gain with what you will learn from attending this three-day event.

**HERE'S TO THE YEAR AHEAD**

We have an ambitious year ahead of us! Together, we can accomplish a lot of great things for one another and for the association. *I look forward to working with you!* ■■

**Oseen Retires**

*Donna Oseen took the stage at the annual spring social to announce her retirement.*

*Donna has been a fixture in Vancouver's legal community for 30 years.*

*She began her current career path at Russell & DuMoulin (R&D) in 1970. At the time, she had just returned from a year flitting around Europe and she had a three-month-old baby. She began as a part-time secretarial floater. Once both of her children were in school, Donna became a full-time secretary. Then, under the tutelage of Ron McGregor, she became the Office and Facilities Manager.*

*In 1980, Donna joined what was then known as VALA. She received the Doug Robertson award in 1991 for Outstanding VALA Service for organizing the Office Services subsection. She also helped form the Editorial Board to launch this successful newsletter, Topics, which*



*went on to gain widespread recognition as an award-winning publication.*

*In 1997, Donna co-founded DLO Support Services to become Director of Move Co-ordination & Facilities Management Services.*

*She remained involved with R&D as a consultant through its transition to Fasken Martineau, and was most recently a leading force in the firm's remarkable move to Bentall 5.*

*Donna has already had a taste of what life has in store for her as she has just returned from a month-long vacation in Great Britain. Last year, she spent a week on a golf cruise.*

*Undoubtedly, there are more recreational activities such as these on Donna's agenda.*

*The BCLMA would like to thank Donna for all of her contributions over the last 100 years (!), and we also wish her all the best in her new and exciting endeavours.* ■■



# Getting people's attention with the F-word

**BY WARREN HAAG  
MANNING ELLIOTT LLP  
CHARTERED ACCOUNTANTS**

It used to be the case that if I was at a party and someone asked me what I did for a living, I would try and find as many ways as possible to say something other than "I'm an auditor."

Partially that's because, as a Chartered Accountant in public practice, there's a lot more to my job than auditing, but mainly because saying the word "auditor" was usually met with a look that suggested I had horns growing out of my head and a polite, "Hmmm, that sounds.. interesting."

Even if someone actually asked me a few more questions about exactly what being an auditor entailed, usually the first question was, "Does that mean you catch people who cheat on their tax returns?" At which point I'd say "Not really," and change the subject.

It's admittedly a bit dry to think about auditing and then to further distinguish between auditors who work for the government versus auditors who work for public-practice accounting firms, and, still further, the various types of audits they are hired by clients to perform.

Yet if you introduce the f-word—"fraud"—into a conversation about auditing, accounting or financial management in general, everyone's antennae seems to perk up.

I suppose a story about a fraudster's deceit or trickery is a little more entertaining than the particulars of the auditing profession. And, regardless of the day and age, the formula for fraud, like a murder mystery, doesn't change much.

After all, it's not like fraud is a new idea. In fact—and I'm not a cynic—I think it's a timeless condition that will always rear its head in some fashion or another: people have been ripping off each other for a long time, and will continue to try to do so.

Yet, starting with the corporate fail-

ures of Enron and WorldCom approximately six years ago, fraud prevention and detection have become, more than ever, part of an on-going conversation auditors have with their clients, and controllers and other professionals involved in business administration often have with their bosses.

A lot of conversations about fraud usually end up with a conclusion that goes something like, "Well, the most money we could lose is X, and we've got insurance anyway, so what else do we need to worry about?" In many cases for smaller businesses, it's true that outright stealing will be an organization's only exposure to

fraud risk.

But con-

compliance with their covenants, but only because they cooked the books.

Situations such as this one are the type of fraud that financial-statement auditors may encounter that is less obvious. It involves intentionally misstating financial information in order to gain an advantage, which may not always result in the fattening of an individual's wallet. In this example, the loan that perhaps should be called by the bank wouldn't be, which would benefit the organization and everyone working there.

Regardless of the type of fraud, every time this topic is written about in the media, questions such as "How could this have happened?" and "Could it have been prevented?" or "How do we make sure it never happens again?" seem to be raised.

These types of stories and questions suggest an expectation that all fraud should be preventable, or, if somehow it should occur, that an administrator, controller or auditor should have detected it. We know this expectation to be unrealistic, because fraud continues to take place: think first about the instances of fraud you've heard about because the fraud was eventually detected. Next consider all of the other successful frauds that have occurred, which, by definition, no one knows about.

Practically speaking, there is no such thing as a fraud-proof system of preventative controls for an organization, nor is there such a thing as a detection system that will provide absolute assurance that fraud is not taking place. Theoretically, such systems could exist, but the cost would most likely be prohibitive.

Of course, this doesn't mean that an organization shouldn't bother trying to prevent fraud. To the contrary, there are a number of time-honoured, simple controls that go a long way to reducing fraud risk. For example:

✓ Worried that someone is creating fictitious vendor invoices, and sliding



MICHAEL BROWN

*The F-word — Continued on page 10 →*

them through accounts payable below the radar screen?

Consider setting up a secure master list of approved vendors. If you control the list and link your cheque-writing process to it, you've added an additional control over where your money goes. It's also likely that you have dual-signing requirements for cheque disbursements. Payment to an unusual or off-the-list vendor should be picked up upon the signer's review.

✓ Concerned that an employee is having too much personal enjoyment on a company credit card, or pushing through personal expenses on an expense report?

First—and it should go without saying—carefully consider which employees will receive this responsibility. Next, consider placing limits on company credit cards.

For the expense-report situation, prevention starts with limiting how much disbursement-independence you really need to give an employee.

If you trust them, you don't need to go down this path.

Most airlines, hotels and car-rental agencies will deal with an organization on account, or the same arrangements can be made via a travel agent, and controlled by the organization through the agent.

For out-of-pocket incidental expenses, consider daily limits, also known as per diems, to cover items such as meals. If you implement options like these, you eliminate many of the circumstances which give rise to expense re-imbursements in the first place.

For small and mid-sized business, getting beyond the basics of designing and implementing preventative controls can be a lot of work and to be thorough and complete, requires a lot of imagination. So most organizations end up with some sort of expo-



Warren Haag

sure to fraud risk.

Detective controls provide red-flag information which may prompt a business owner to do a little "fishing." For example:

✓ It's still possible to create a fake cheque, but the counterfeiter shouldn't know the numerical sequencing of your bona fide cheques. Reviewing the numerical continuity of the cheques clearing your bank account should allow you to spot an out-of-sequence cheque, which would be cause for concern.

✓ Organizations which require employees to fill out hourly timesheets all run the risk of their employees massaging their numbers for a variety of reasons. Budgeting, or even having a ballpark expectation of what the actual result for a given project should be, and performing an actual-to-budget comparison, is a common method for monitoring accurate time allocations.

✓ For those organizations that handle trust funds, the mandate is to ensure funds are only disbursed in accordance with the terms of the trust agreement.

The significance of a breach of trust typically correlates with the amount of money involved. Accordingly, a prudent response, depending on the volume of transactions, may be to use on-line banking to monitor disbursements on a daily or weekly basis, and spot-check trust disbursements that are greater than a certain amount or that otherwise appear unusual or unexpected.

From an auditor's perspective, these examples also provide a good opportunity to demonstrate the difference between what business owners who hire an auditor might expect, and what the auditor is actually engaged to do.

In the timesheet example, a financial-statement auditor would likely test the total wage expense of the organization for the year, which would probably include examining a sample of employee timesheets. However, unless specifically asked to, such an auditor may not consider if the allocation on a given timesheet to various internal cost centers was determined correctly, so

## A BCLMA MEMBER IN CONVERSATION: SHEILA THAM'S IDEAS ON OFFICE SECURITY

**S**heila Tham is a Financial Controller for the Vancouver firm of Oyen Wiggs Green & Mutala LLP, which focuses on intellectual property issues. She offers her ideas on how to run a tight ship.

"Having a positive work environment will increase staff moral and there will be less chance a good employee turning into a bad employee..."

"Make sure the employee understands the company's policies and procedures clearly and keep an open line of communication between management and the employee—this is very important—because once management stops listening to the employees needs, the employee starts to feel unworthy..."

Tighten your company's internal control... for example, the person going to the bank should not

be posting cash receipts...

"Do background checks on people before hiring them. A dishonest employee would have a problem passing a background check, but an honest employee should not... I know that some companies now require this before they decide to bring the candidate in for interviewing..."

"Keep your employees well educated... give your employees more training, which would increase your operation efficiency, which would increase revenue..."

"Perform regular internal audits. It may help the company streamline the operations duties and you may discover a fraud that has taken place. If fraud *was* discovered during the internal audit, you can then decide to take action... and tighten your internal controls, policies and procedures."

long as the total amount charged to wage expense was still accurate.

In the range of auditors of government, to financial statements, to trust accounts, it's important to understand the scope of a given auditor's engagement, and the extent to which they have a responsibility to consider specific items of interest to you, such as fraud risks in your organization.

While I still don't generate much interest at a party with the announcement that, "I'm an auditor", it seems that there is a little more general awareness and interest in day-to-day life about fraud and the auditing profession's relationship to it.

Or maybe I'm just going to different types of parties these days.

The stories that people hear about usually involve how a fraud was eventually uncovered, but the best and worst outcomes, of course, are the stories that are never told: ones about frauds that were prevented, and the ones about frauds that have never been detected. ■■

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www.manningelliott.com

### THE TRICKY STUFF: POINTS TO PONDER

All firms, big, medium or small, have some sort of transaction processing system to deal with the common, day-to-day financial aspects. But Warren Haag suggests you ask questions, even if it's of yourself, to ensure you're protected:

- \$\$ Who can place an order or enter into a purchase agreement?
- \$\$ Do we track all purchase commitments, and link them to invoices?
- \$\$ Do we accrue obligations upon receipt of goods/services?
- \$\$ Do we compare actual spending to budgeted amounts?
- \$\$ Do we keep authorized signatories lists up to date?
- \$\$ Do we ensure cheque continuity and control blank cheques?
- \$\$ Do we cancel paid invoices to

- avoid duplicate payment?
- \$\$ Can funds be withdrawn from accounts electronically?
- \$\$ When information is reviewed, is this fact documented?
- \$\$ Do we document—and follow up—unusual items and the relationships noted?
- \$\$ Who can accept an order?
- \$\$ Who do we extend credit to and how much?
- \$\$ Are we linking orders to invoices? All of them?
- \$\$ Are we recognizing revenue appropriately?
- \$\$ Are we independently listing cash receipts and comparing them to actual amounts?
- \$\$ Are we doing sequential depositing on a daily, or at least regular, basis? ■■

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*Spring showers? Coldest June in decades? Must be time for a BCLMA social event*

## Spring Social's warm and toasty camaraderie centred on propane 'campfires', a tasty barbeque and a batch of interesting door prizes

BY TIM WURTZ  
BAKER NEWBY LLP

**T**he sun shone brightly, while people mingled casually on the open-air patio, with beautiful red-and-white checkered picnic blankets spotting the grass..." That's how I would have *liked* to have begun this.

Nonetheless, the BCLMA spirit of networking to rekindle our professional relationships was not dampened by the rainy June evening that dominated some of the conversation during this year's Spring Social.

With a beautiful, large tent-and propane heaters acting as hubs for group conversations—the Brock House Restaurant was an excellent host, and clearly prepared for mild weather events. The perseverance and dedication of our membership was evidenced by the near record 88



**Tim Wurtz takes his own photo (sigh) of winning a prize**

RSVPs for this event.

Executive members, 'Old Salts', alumni as member-guests and social-function regulars (like me) were joined by a growing number of members who have not traditionally attended these types of event. While I milled about with my camera, a frequent theme of discussions involved people noting that it was nice to see a lot of new faces.

Upon seating, we were treated to a truly first-class selection of traditional barbeque cuisine, including hamburgers, plus a variety of salad, salmon and chicken side dishes. The prize presentations were performed shortly after. Two powder-blue Tiffany's gift bags generated much interest because they were clearly displayed as guests passed the gift table on the way to get their dinner.

Sh'eli Mullin of Lang Michener LLP



**Maureen O'Leary of Jeffery & Calder with Allison Milroy, BCLMA Conference Chair, and Marian Verdicchio of Roper Greyell LLP**



**Kathy Hogarth, Shirlee Law and John Baxter all of Lawson Lundell LLP, with Marie Finstad of McQuarrie Hunter.**



**Tom Doyle of Klein Lyons, Susan Spalding of Owen Bird Law Corporation, Sonia Kenward of Fasken Martineau and Carol Hastie of McCarthy Tetrault LLP**

*Spring Social: Continued on page 13* →

was the lucky recipient of a gift basket presented by Donna Oseen, courtesy of her company DLO. Donna stole the show, however, by publicly announcing her retirement from the legal-administration field. Her brief musings were just sentimental enough to bring a tearful glaze to many an eye.

Gift certificates worth \$25, courtesy Ratcliff & Company, were taken home by George Lo of Harper Grey LLP, Tom Doyle of Klein Lyons, Roy Boal of Blake Cassels & Graydon LLP and Jane Brackeen of Hastings Labour Law Office.

Sarah Anderson, on behalf of ZSA Legal Recruitment, with pink gumboots

and a scarf, really the only one who dressed appropriately for the event, presented the Tiffany's bling. Elsa Chan of Davis & Company LLP won a bracelet, and a money clip went to Augustino doSouto of Harper Grey LLP.

Rounding out the prizes, courtesy of BCLMA: a \$50 certificate to Chevron for Catherine Jacobs of Watson Goepel Maledy LLP, a \$50 certificate for a liquor store to both Ruth-Ann Spencer of Bull Housser & Tupper LLP and Andrea Dawson of Gowling Lafleur Henderson LLP, a \$60 gift certificate to Pacific Centre won by Annie Ronen of Lawson Lundell LLP, and a do-it-yourself-BBQ Basket & Safeway

certificate to both Jacquie Wintrup of Lawson Lundell LLP-and, ahem, yours truly Tim Wurtz of Baker Newby LLP.

Stephanie Cornell of Fasken Martineau, speaking at her first social as President, thanked ZSA Legal Recruitment for their generous sponsorship of the event, expressed appreciation for everyone's attendance, and strongly encouraged everyone to register for our educational conference, *Under Construction*, in Whistler in October.

Dolly Parton says, "The way I see it, if you want the rainbow, you gotta put up with the rain." I will certainly only remember the rainbow of this social. ■■



**Sarah Anderson, ZSA Legal Recruitment, Elsa Chan of Davis & Co LLP**



**Donna Oseen of DLO and Sh'eli Mullin of Lang Michener LLP**



**Jane Kennedy, BCLMA Administrator**



**Roy Boal of Blake Cassels & Graydon LLP with Stephanie Cornell of Fasken Martineau**



**David Bilinsky, Practice Management Advisor, The Law Society of BC with Colleen Chapman of Brawn Karras & Sanderson**

# Overcoming the top challenges of associate engagement and retention

BY GARY MITCHELL  
GEM COMMUNICATIONS

I had the pleasure of facilitating a discussion about engaging and retaining associates on April 30 with 25 administrators.

They were from firms ranging in size from 10 to well over 100 lawyers. Despite their size differences, each administrator made it clear that their challenges were the same.

After a healthy discussion on engaging and retaining associates, members of the audience ranked their major challenges in this area. Their top four were:

- ✓ The need for associate business plans;
- ✓ Lack of leadership at the practice group level;
- ✓ Lack of an internal communications strategy; and,
- ✓ The need to change the compensation model.

This article offers hope. Change is possible. A firm's Administrator *can* initiate it and *can* produce results in these areas for their firms. How? One lawyer at a time.

Real, lasting change—the kind you want to see in your firm—starts with behavioural changes, not with policies or structure. Let's face it: lawyers who like change can be hard to find. So here's a summary of how to initiate behavioural changes—even if you're initiating change from a position of non-authoritative leadership within your firm.

- 1 Pilot your initiatives with early adopters.

- 2 Measure everything.
- 3 Share the results internally.
- 4 'Show them the money'. With your pilot successes, seek approval from senior partners to widen the scope of your initiatives.
- 5 Roll out your initiatives on a broader scale.
- 6 Support with policies. Continue to measure and communicate results.

[Editor's note: A full description of this



Gary Mitchell

They also agreed on a number of other related benefits: Associates would take ownership of their career path, and become its driver. The process would help them identify their strengths and weaknesses so they could capitalize on their strengths and work on improving their weaknesses.

It would get more of their lawyers thinking of their practice as a 'franchise' of the firm, and taking a business approach to everything they do. It would help integrate them into teams, and administrators could align the goals of the individual with those of the firm.

*The solution:* Integrate a business planning process into the Associate Development Program.

*Here's how:* Start with early adopters. Find one or two Associates who seem keen on taking charge of their careers. Give them one-to-one attention. Hire outside expertise

if you don't have the capacity. Get to know what motivates each individual associate. Provide one-to-one career coaching, and lead them through the business-planning process.

Practice group leaders and others around them will start to see their focus and identify them as future leaders of the firm.

Go back to the senior partner group and help them do the math. Give them projections on how these results would af-

fect the firm's bottom line if they broadened the scope of the initiative. Remind them what it costs them to lose an Associate after just three years with your firm.



**BLOCK OUT THE KINDS OF CHANGES YOU NEED TO MAKE**  
Real, lasting change—the kind you want to see in your firm—starts with behavioural changes, not with policies or structure. Let's face it: lawyers who like change can be hard to find.

part of the process is provided on page 12 in this year's Spring issue of Topics).

Now let's take a specific look at how to initiate change in the top four areas of concern.

### ASSOCIATE BUSINESS PLANS

*The dilemma:* This group agreed that planning would go a long way to engaging their Associates.

### PRACTICE LEADERSHIP

*The dilemma:* It's widely known

Four Challenges: Continued on page 15 →

MARINA BORODJIEVA

ALEXEY KLEMENTIEV

that the majority of firms do not provide leadership training for practice group or team leaders, or even for managing partners. Yet these lawyers are expected to lead teams effectively.

Associates need role models. They have to be able to see themselves in the future of your firm. Yet, this group of administrators finds it challenging to get practice group leaders and senior partners to see that leadership training is needed and would improve the firm's efficiency and Associate engagement.

*The solution:* Two initiatives. First, your firm's leaders are provided with leadership training and support so they become effective with the fundamentals of team leadership: hiring members, building the team, mentoring, providing feedback, offering encouragement, running effective meetings, getting buy-in from team members and holding them to account.

Secondly, leadership responsibilities are recognized in role accountabilities and compensation plans.

*Here's how:* Not all practice group or team leaders will like the idea or understand the value of leadership training, but some will. So start with those who do.

Make no mistake, when I refer to leadership training, I am not talking about sending them to a three-day intensive workshop. Most of those simply offer the 'what' and don't provide the 'how'. Give your leaders ongoing one-to-one coaching and training, allowing them to learn 'in the moment', in 'real time', with real team issues that are theirs. Track the productivity results of these leaders, but also of their teams.

Go back to senior partners with these results. Project the results when all leaders are provided with this training. Expand the training program. Track the expanded results.

Go back to the senior partner group with your plan to institute leadership accountabilities into leaders' roles within the firm, and align

compensation plans accordingly.

**INTERNAL COMMUNICATIONS**

*The dilemma:* This roundtable audience unanimously agreed that communications within their firms need attention. Missing in most cases are communications about the firm's strategic plan and direction, learning-and-development programs and their successes, client-and-team successes, and updates on how the firm



is doing overall. Bottom line: Engagement is missing.

*The solution:* Introduce an internal communications strategy.

*Here's how:* First, determine who is going to own this. Who on your management team is going to lead the internal-communications strategy for your firm? Who is going to be accountable?

It's usually a debate between Human Resources and Marketing. If your firm is large enough, internal communications should be handled by Human Resources.

If you're a lean shop, then your current communications team needs to add this important internal audience to their list of critical stakeholders, and develop a communications strategy that addresses their distinct needs and your firm's objectives.

**COMPENSATION**

*The dilemma:* This group of administrators agreed that law-firm compensation models today reward only one thing: Me, my and mine. Without the ability to have the models align to the behaviour they wish to change, even the greatest of results from your pilots will eventually fall flat. Senior partners aren't exactly open to making changes in this area.

*The solution:* Introduce a compensation plan that recognizes and rewards the various roles a lawyer can

play: Leader, business developer, team player, etc.

*Here's how:* You have results. You have lawyers and staff behaving in highly effective ways.

More and more people within the firm will find it hard to argue the facts. When you have a growing group of lawyers taking new approaches and getting results, the firm's management won't have much choice but to consider ways to reward this new behaviour.

Sit down with your management and help them do the math. Point to the successes and changes in behaviour. Point to the increase in associate retention; point to the growing client development;

point to the fact that teams are operating effectively; point to the increased level of client loyalty, and then *show them the money*. Give them projections for what this means on a larger scale. Bring it back to what this will mean for each partner in profits. You're far more likely to get their agreement to change compensation structures when you've done this.

*Important to remember:* While these issues are not new to law firms, what is different is their increased convergence.

Add globalization to that, as well as fewer students graduating from law school, an aging partner population, more lawyers exiting the profession overall, a down—turn in the US economy etc. It makes for a perfect storm.

With most, if not all, firms facing these same issues, albeit to varying degrees, it is my belief that those who are first to lead changes in these areas will be in a place to make their competition irrelevant. Is your firm going to be one of them?

So, how do you lead change?

One lawyer at a time. ■■

*Gary Mitchell is Managing Director of GEM Communications, a firm specializing in business training for lawyers and law firms.*

*He can be reached at 604.669.5235 or E-mail: Gary@GemCommunications.ca*

# How to get around company policies that interfere with a good work-life balance

**BY ANTONIO ZIVANOVIC  
CORPORATE OCCUPATIONAL  
SOLUTIONS INC.**

Corporate Occupational Solutions has discovered that company policy can be a roadblock that keeps firms from taking a progressive approach to obvious needs in the matter of work-life balance.

As the sponsor of the Canadian Bar Association's first Work-Life Balance Award, COS "seeks to advance people and cultures, by fostering the development of optimal workplaces." I discovered the issue while working on this.

After exhaustive discussions with colleagues, various law-firm partners and associates, human-resources consultants and knowledgeable business mentors, I've come to understand that company policy can be a primary barrier to a firm's employees achieving work-life balance.

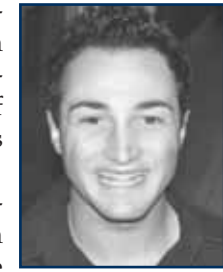
Why are law firms reluctant to pursue work-life balance

world's largest work-life balance initiatives have found that the average return for many top programs is approximately five dollars for every dollar invested in staff.

But law firms have been slow to adopt progressive programs, and remain sceptical of the benefits, all the

continue to be ignored, and so I'm making it a particular mission of COS to address this problem.

While formulating a game plan to address the work-life balance issues in the Vancouver legal industry, I'm reminded of a story that came across my desk about five years ago. It's in the adjacent box.



**Antonio Zivanovic**

Why was I reminded of that story? Many contemporary workplaces do not have the facilitators, the plans, or the expertise to effectively address their employees' cries for work-life balance. There is buzz among Vancouver law firms about the alarming costs of increasing attrition rates and the lack of work-life balance.

Ironically, the following themes are pervasive mantras in many local firms: the importance of building relationships, listening to clients, demonstrating commitment to clients, appreciating diversity and promoting inclusion, supporting employee health and individual-

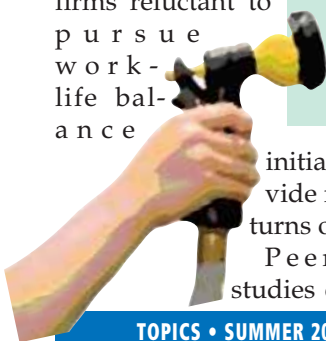
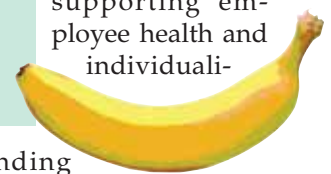
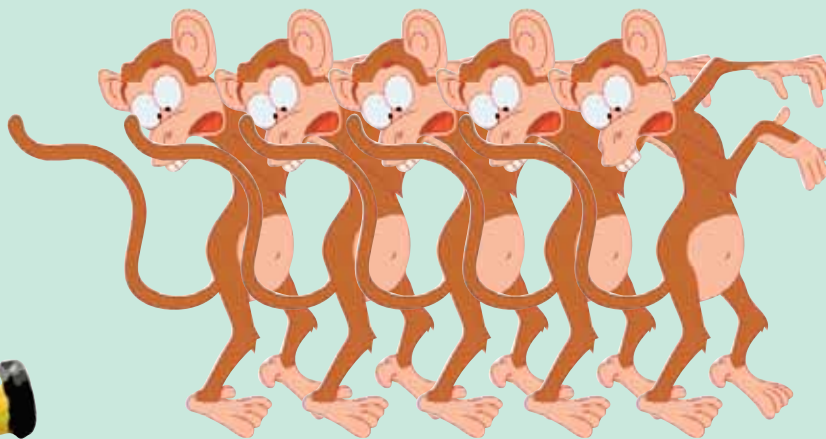
## HOW COMPANY POLICY BEGINS

*Start with a cage containing five monkeys. Inside the cage, hang a banana on a string and place a set of stairs under it. Before long, one of the monkeys will go to the stairs to climb toward the banana. As soon as he touches the stairs, all the monkeys will be sprayed with cold water. After a while, another monkey makes an attempt with the same results. All the monkeys are sprayed with cold water. Pretty soon, none of the monkeys will try to climb the stairs.*

*Now, put away the cold water. Remove one monkey from the cage and replace it with a new monkey. The new one sees the banana and wants to climb the stairs. To his surprise and horror, all the other monkeys attack him. After another attempt and attack, he knows that if he tries to climb the stairs, he will be assaulted.*

*Next, remove another of the original five monkeys and replace it with a new one. The newcomer goes to the stairs and is attacked. The previous newcomer takes part in the punishment with enthusiasm. Likewise, replace a third original monkey with a new one, then a fourth, then the fifth. Every time the newest monkey takes to the stairs, he is attacked.*

*Most of the monkeys beating him have no idea why they were not permitted to climb the stairs or why they are participating in the beating of the newest monkey. After replacing all the original monkeys, none of the remaining monkeys have ever been sprayed with cold water. Nevertheless, no monkey ever again approached the stairs to try to get the banana. Why not? Because as far as they know, that's the way it's always been done. And that my friend, is how company policy begins.*



initiatives that provide measurable returns on investment? Peer-reviewed studies of some of the

while suffering from soaring attrition rates.

Calls by associates and partners for help in achieving balance cannot con-

ty, understanding client needs, rewarding new initiatives, and educating employees.

*Monkey business: Continued on page 17* →

DENNIS TOKARZEWSKI, DIMITRY GOLOBOKOV AND IRINA TISCHEVKO



→ Monkey business: Continued from page 16

With such strong and progressive words, one would assume that work-life balance is part of each firm's corporate culture. A quick survey of the baby-boomers and traditionalists at law firms reveals that work-life balance has not been on the industry's radar for many years, and instead, marketing the firm and its services were of prime importance.

Technological change, the added stresses of the hand-held electronic leash and many other factors have made work-life balance crucial. And it's not just a matter of satisfying the employees. It's also a wise financial move for a firm to invest in fostering this balance. The return on investment is measurable, significant, and greater than that of many other employee programs.

Why then is the problem not being addressed? And why does company policy block the introduction of suitable programs in law firms? Why is it so radical an idea that implementing workplace health and wellness programs could be extremely beneficial

to a law firm, not only from a morale and team-building perspective, but also in terms of return on investment?

The answer: "Well, the industry never had such programs before; we've done without them in the past, so why do we need them now?" You get the idea.

I strongly encourage employers to take the necessary progressive steps to seek out experts to assist in addressing the issues at each firm.

Why do some firms continue to perform at mediocre levels, while others keep on growing and excelling in the same marketplace? Perhaps the mediocre performers focus only on getting the banana, using whatever methods work. Usually these are the habitual methods that exact a cost in terms of employee health and well-being.

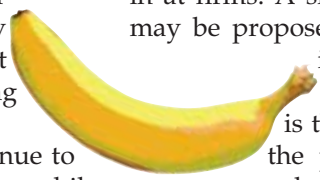
The lesson to take from the story, though, doesn't concern *how* the monkeys behaved, but *why*. All the monkeys did things "the way we always have" because that's how they were taught by the other monkeys.

The impression I have so far from

HR and Admin in many firms is that if they make a novel proposal, if they reach for the banana, everyone will reject their idea—it's simply the way things are done.

There's a possible reason work-life balance programs don't reach implementation or achieve adequate buy-in at firms. A small, token program may be proposed, or half-heartedly implemented, and not achieve much. It is then easy to revert to the path of least resistance: what has always been done in the past. These are the unwritten protocols new associates pick up from many seasoned partners letting them in on what works and what doesn't.

It is not only the workforce that must seek to understand the barriers to achieving a well balanced lifestyle, but also the professionals attempting to address the possible issues presented by each individual case. Any implemented program must be well-



Monkey business: Continued on page 18 →

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*Giving major clients some help is good marketing*

## The case that's being made for volunteering and secondments involves goodwill

**BY PETER MORGAN  
MORGAN:NEWSLETTERS**

benchmarked beforehand, and regularly evaluated to ensure it is on track. It will take a lot of understanding and planning, possibly a little preaching, and a leap of faith to start delivering health-and-wellness services to firms, but I believe this task will be accomplished. Firms and employees alike will benefit greatly from their new programs designed to cater to their needs.

Competition is omnipresent in the legal industry and at a level that some might suggest is not natural and even unhealthy. Maintaining this competitive status quo usually appears easier in the short term than being the pioneer and blazing a new path.

The first large firm in Vancouver to genuinely embed work-life balance in its corporate culture, not simply paying lip service to it or implementing partial services, but really seeking to understand and address these issues in their workplace, will reap the rewards.

Articled students, associates and partners seeking to find a new home for their portfolio will be drawn to work in a forward-thinking workplace, people will see that the firm cares, attrition rates will likely plummet within the firm adopting the programs, and the benefits will be evident from all angles.

We are all creatures of habit: "Monkey see, monkey do!" Break the mold, and address the work-life balance issues at your firm. *Make a break for the stairs! Grab the banana!*

Your firm could be the first to start new and healthy initiatives, set the example, and attract top talent and retain top performers. Rather than reaffirming why something can't happen, take the initiative; make it a goal for your firm to be nominated for the next Work-Life Balance Award awarded by the CBA. ■

*Antonio Zivanovic is President of Corporate Occupational Solutions Inc., a workplace health & wellness services provider. Prior to launching his own firm, Antonio was a consultant for leading public and private sector firms across Canada. E-mail him at [antonio@cosinc.ca](mailto:antonio@cosinc.ca) or visit his website at <http://www.cosinc.ca>.*

**W**orkopolis says there's a good business case to be made for firms to encourage staff to volunteer for a wide range of socially important work.

It should know. It's the company chosen by the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games (VANOC) as a corporate sponsor—read 'corporate volunteer'—to help recruit and process the applications for quite a few of the 50,000 volunteer applications VANOC has so far acquired. VANOC will need that many people—and more—to select and maintain the team of 25,000 volunteers it expects to need before and during the Games.

The value of Workopolis's sponsorship, which is the amount of time, people, work and resources it's literally giving to VANOC, is worth at least \$3 million to VANOC, and might go up to \$15 million. Sure, Workopolis gets branding rights to VANOC logos, some free tickets to the Games, and some other perks, but that's still a whole lot of volunteering.

And the same business case it made for itself is not just for the Games, says the web-based firm; it applies to volunteers and secondments supporting any type of structured social activity.

Number one in the business case: retention and morale boosting within the sponsor itself.

"Many employers believe that adding more to a paycheque is the surest way to secure top talent in the current competitive labour market. While there is no doubt that money talks, some organizations are finding that focusing on being better corporate citizens and encouraging a culture of volunteerism are making them more appealing to workers," according to Laura Williams, a senior benefits consultant in the Vancouver office of Hewitt Associates, which

drafted Workopolis's business case about volunteering.

VANOC itself is looking for volunteers from the legal industry, particularly in dealing with commercial-rights management. "You'll protect VANOC, Canadian Olympic Committee, International Olympic Committee and Olympic Games marketing partners against misuse and infringement of Olympic Games's marks, distribution and sale of counterfeit products, ambush-marketing activities, propaganda and commercial advertising," a VANOC spokesman says, adding, "We're looking for diplomacy and firmness in dealing with situations."

There's a lot of peer support in the Canadian legal industry for the concept of helping others, which ranges

*Volunteering for profit: Continued on page 20 →*

**BCLMA's 2008  
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**Thursday  
November 6**  
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**Keynote Speaker:  
Ken Bagshaw, Q.C.  
Chief Legal Officer,  
VANOC**

# YOU BE THE JUDGE

BY PAULA BUTLER, LAWYER

Here's the case we posed to you last issue, followed by a selection of responses from the members of the BCLMA. On the right is a new scenario for you to judge, and, below it, are instructions on how to let us know what you would do in that situation.

Bonus! A respondent will be randomly chosen to receive a \$25 gift certificate to Chevron. Note that your response remains 100% anonymous *unless* you attach your E-Business Signature with your text. Even if you identify yourself to us to be entered into the draw, your participation will remain anonymous to our readers. We won't publish your name, neither as a respondent nor as a winner. And, yes, we gave out Starbucks cards in connection with the comments for this month's scenario.

Paula Butler is a sole practitioner who specializes in labour and employment law from her office in West Vancouver.

## THE CASE OF JOHN AND THE BOTTLE

John Jones has been the Director of Finance and Administration for 17 years.

As the Human Resources Manager, you have worked with John for 12 years, and have had an excellent working relationship with him.

Lately, John is often late for work, and you have noticed that many of the things that he usually does are either not getting done or are done late. This week alone, he missed the Monday morning administration meeting without any explanation, and forgot to tell the Finance group that the auditors were coming in on Wednesday.

Over the last few weeks, you have noticed that he has been going for long lunches and coming back to the office smelling like alcohol. This morning, when you rode up on the elevator with John, you noticed that he was wearing the same clothes that he had on yesterday, and that he smelled like alcohol.

**What do you do in this situation—and what does the firm do?**

### RESPONSE: TWO POSSIBILITIES

In reading the scenario, two choices of action come to mind.



John's clothes looked like they'd been slept in and he smelled of alcohol.

CRAIG WACTOR

*Our new scenario—tell us what you'd do in:*

## THE CASE OF BETTY & THE ACCIDENT

Betty Johnson has been an accounting clerk at Lonkar and Weston for many years, and for most of that time you have been her supervisor. Betty is an avid skier, and one winter ski day, she is involved in a tragic accident. She becomes reliant on a wheelchair for mobility.

After many months, Betty returns to work.

She approaches you to say that her current work station is no longer functional for her, and she will need a new work station to accommodate her wheelchair.

She also tells you that the only wheelchair-accessible wash-room in your building is on the main floor of the building; your firm occupies the 17th floor.

She tells you that bladder problems she sustained from the accident means she must be nearer to appropriate facilities.

**What do you tell her?**



LISA YOUNG

Betty's finally returned to work after her accident and months of rehabilitation, but she says some changes will have to be made.

## HOW TO BE OUR JUDGE TO RESPOND: WWW.BCLMA.ORG

This feature of Topics, compiled by Vancouver lawyer Paula Butler, is designed to get you thinking about workplace scenarios that might happen—or have happened—to you.

Read the case above, aimed at challenging your management ability. Then, click here <<http://www.BCLMA.org>> to go directly to the BCLMA website. On the home page, click on the Respond to Topics Scenario button to arrive at the You Be The Judge response form. Describe how you would answer the question at the end of the scenario. Submissions are 100% anonymous. Neither sender's name nor the firm's name will be revealed to the editors—only your response. Next edition, we'll print a selection of your anonymous responses—and provide a new scenario.

The case of Betty & the Accident : Continued on page 22 →

all the way, of course, to pro-bono work.

In fact, Canada's first National Pro Bono Week, hosted by Pro Bono Law BC, is to be held in Vancouver this September 15 to 19.

Part of that project is to promote pro-bono legal-service partnerships between lawyers, law firms and not-for-profit organizations, according to organizers.

The week is to focus on a conference at the Wosk Centre for Dialogue, with the plenary opening speech by the Chief Justice of Canada, Beverley McLachlin on September 18. Louise Arbour, the United Nations High Commissioner for Human Rights and a former justice of the Supreme Court of Canada, is scheduled to give the keynote address.

According to the results of a nationwide survey released just over a year ago, 71% of businesses operating in Canada either encourage or ac-

commodate employee volunteer activity as a way of improving the work environment and increasing their profile in the community and among clients.

"Large companies in particular tend to be strategic," one of the authors of the study says. Debra Basil, a professor of marketing at the University of Lethbridge in Alberta, adds, "It's an expense for them because employees are taking time to volunteer, but they can justify it if they can argue the benefits for the company."

One of those benefits, says Williams, is that it encourages employee engagement within the firm if the firm supports their work. Engagement is an indicator not only of how likely employees are to stay with a firm, but how positive they are when they speak about it, and how motivated they are to work hard to achieve corporate goals.

In short, a focus on increasing employee engagement can help with attraction, retention and productivity.

Research from a study of Maclean's 2007 Best Employers in Canada looked at the engagement level of various generations of employees.

Williams notes that, "One of the factors that is important in boosting employee engagement is organizational reputation. While slightly more important to older employees, organizational reputation ranks amongst the top five drivers of employee engagement for every generation. People want to work for an employer they respect and believe in. Organizational reputation alone is not enough to ensure an engaged workforce, but it can clearly help to increase employee satisfaction and loyalty."

Another of those benefits is building career experience, which benefits those working for the law firm; the law firm itself, since it has gained more experience in fields that interest its associates and partners; and the organization that benefits from the secondment. Where a group works closely with a client team, for instance, a joint volunteer initiative can help them to get to know each other better and find new ways to work together professionally.

A handful of examples we've come across, picked at random:

- ✓ Borden Ladner Gervais lawyer Jennifer Lepp has volunteered to the board of the Children's Legal and Educational Resource Centre (CLERC), and BLG intends to donate the proceeds from its annual Labour and Employment Law Symposium to CLERC, which provides free legal advice, education and representation to children and youth.
- ✓ Vancouver's Pivot Legal Society, an organization that relies on volunteers to help it with its social causes that are focused on Vancouver's gritty downtown east side, notes that one of them is Simon Owen, who spent his first few months as a lawyer in Hamilton, Ontario, before coming to Vancouver for the summer to help with Pivot projects. "He's also excited to work at a law firm that includes a lunch hour," ac-

## SOME TAX IMPLICATIONS OF SECONDMENTS

**A**n article written by Craig Burley, now of Borden Ladner Gervais LLP, is one of the best outlines of some of the major business issues a Canadian employer needs to know when arranging a potential secondment for any of its people.

"The design of employee- or executive-secondment agreements raises taxation issues that may not be immediately apparent," Burley writes. "Where employees are being seconded within a corporate group or between arm's-length parties, care should be taken to ensure that the desired business results are achieved."

He notes that there are at least two tax issues that should be considered: whether the secondment arrangement will be subject to GST, and whether the seconding employer or the employer temporarily receiving the employee's services, the receiving employer, as he terms it, is responsible for withholding and remitting source deductions to the Canada Revenue Agency.

In a typical secondment agreement, Burley notes, the parties tend to characterize the employer-employee relationship differently for different purposes. For example:

- ✓ The ability to direct and control the employee;
- ✓ The responsibility for compensating the employee;
- ✓ The ability to terminate the employee; and,
- ✓ Dividing up legal liability, including liability for severance if the seconded employee is fired.

"In some cases, such as those in which there is a fixed term for the secondment," writes Burley, "the seconding employer may wish to continue to be characterized as the employer at common law, and the receiving employer not to be considered the employer for the purpose of the secondment agreement. Typically in such an agreement, the seconding employer continues to compensate the employees, and the receiving employer reimburses the seconding employer for employment-related expenses. This type of arrangement has the effect of separating the party that controls and directs the employee from the party that actually compensates the employee."

cording to Pivot.

- ✓ The Sierra Legal Defense Fund seconded articling student Ryan Fritsch to Pivot as well.
- ✓ Maria Boltman, an articling student with Aird & Berlis LLP, spent half of a summer on secondment at Corus Entertainment.

Another part of the business case has to do with business opportunities that arise as a result of encouraging a firm's personnel to volunteer or help them with secondment.

"Clients and customers are increasingly on the lookout for vendors and service providers that are as involved in the community as they are. They want to partner with organizations that share similar values. Questions about community or charitable participation are now appearing more frequently in Requests for Proposals, for example, and or-

ganizations are expected to demonstrate their community involvement with tangible examples," notes Williams.

In a 2006 Hewitt survey, *Attracting and Retaining the New Workforce*, employers were asked about community-oriented work arrangements:

- ✓ 55% of respondents indicated that they provide matching-gift charitable contributions.
- ✓ The same amount — 55% — provided paid time off for community or charitable activities.
- ✓ Just over 3% of employers provided unpaid time off for volunteer activities—but many more had plans to do so.
- ✓ In fact, 69% of organizations expected to provide unpaid time off for community or charitable activities by 2009.

Another means by which organizations are supporting staff volunteer activities, reports Williams, is through

unpaid sabbaticals (44%, increasing to 58% by 2009).

Some employees want to take extended periods of time off to pursue some volunteer activity, often abroad. If the employee is someone the organization wants to retain, it may well offer the employee a chance to take the time off, with the promise of a job when he or she returns.

"The most proactive employers establish formal volunteer programs that align with the company's mission," concludes Williams. "The exact initiatives that the employer chooses to support are often determined by surveying employees about their volunteer interests, so that the company facilitates efforts that are truly important to its workforce." ■

*Peter Morgan is president of Morgan: Newsletters of Vancouver, which has two sides to its business. One side helps organizations publish business-to-business newsletters for their customers or clients. The other side: since 2003 it has published a daily news service for executive subscribers about the business developments of the 2010 Winter Olympics.*

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*There's more info at the website: <<http://www.Morgan-News.com>>.*

**CLICKABLE ARTICLE RESOURCES**

For the full article by Craig Burley (it may cost \$4.95), click here:  
 <[http://goliath.ecnext.com/coms2/summary\\_0199-15671\\_ITM&referid=2090](http://goliath.ecnext.com/coms2/summary_0199-15671_ITM&referid=2090)>

For details about the Pro Bono conference this fall in Vancouver, click:  
 <<http://www.probonoconference.ca/>>

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My first inclination was to take a nurturing approach, meet with John privately to discuss his 'drinking problem', and try to help him resolve the issue. I would feel that having worked with John for so many years, I owed him this consideration. Doing so would make me feel good as a person. [I assumed] that if the roles were reversed, he would do the same for me.

My business mind tells me to still meet with John to discuss performance issues, but not mention alcohol. Alcoholism is a disease, and by acknowledging that I think he has a drinking problem, I would be confirming that he has an illness. This could prohibit me from relieving him of his duties with just cause if matters got worse. For this reason, I would focus solely on his performance and the deterioration thereof, and tell him that things must improve or I would be forced to take further action.

*Hi, this is Paula. Alcoholism is considered a disability under B.C.'s Human*

*Rights Code. Ignoring John's possible alcoholism is probably not a good option in this case.*

*If you discipline him and ultimately terminate his employment for just cause because of the performance issues related to the alcohol addiction, he will have the option of filing a human-rights complaint, or perhaps raising the human-rights issue in a wrongful-dismissal claim.*

*Speaking to John, and sensitively raising the issue of his possible alcohol addiction in the context of his performance issues, would be a better approach than ignoring the potential alcoholism completely.*

**RESPONSE: CALL FOR HELP**

I think it is time to bring in the professionals and use the EAP program, if the firm has one, or arrange for sick leave, during which John must seek treatment for his alcoholism. As this employee has been with the firm for 17 years, something must have changed for him in the past year. The firm should be supportive of John until he gets back on track. If this is impossible for him, it should be addressed at a later date.

*If John admits that he has a drinking problem, and this is substantiated by a medical professional, the firm has a duty to accommodate his disability.*

*Giving John time off work to address his addiction issue and providing EAP support are both ways of accommodating him. Human-rights jurisprudence also suggests that paying for the employee to attend rehab is another way to accommodate addicted employees.*

*When John is ready to come back to work, the firm may want to consider putting rules in place to help him manage his disability—one example is continued attendance at a 12-step program—to ensure that he resumes being a productive staff member.*

**LOOK AT OUR NEW SCENARIO**

Your comments and responses help all of us better understand our workplace.

Don't forget to read the *Case of Betty & The Accident*, our scenario for this issue, on page 19. Let us know your suggestions about how you would solve that workplace problem, and we'll provide your comments in the next issue of *Topics*. ■

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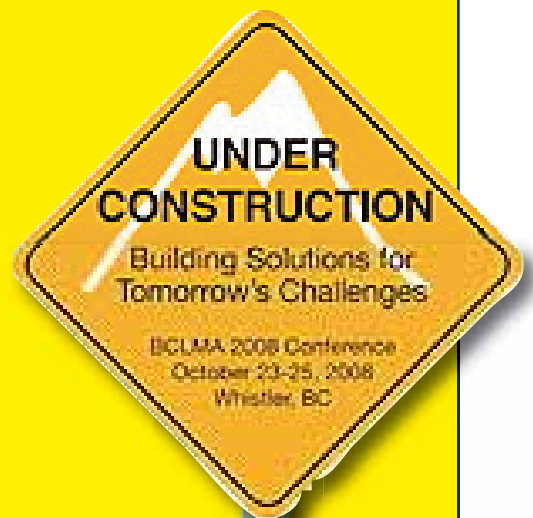
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