

Technology

The *Technology Guideline* outlines the circumstances in which the use of information technology is mandatory, as in the case of electronic registration. It also outlines the circumstances when information technologies are recommended. The *Technology Guideline* invites lawyers to consider the use of technologies to support client service expectations and practice management systems and reminds lawyers to address concerns respecting security, disaster management, and technological obsolescence.

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- 5.1 Mandatory Use of Technology.

Lawyers must ensure that they comply with any mandatory requirements relating to the use of information technologies in their law practices, including but not limited to

- electronic registration of real property
- mandatory electronic filing requirements or processes of courts or other tribunals
- Law Society of Ontario electronic filings (e.g., Lawyer Annual Report and Continuing Professional Development Reporting via the Law Society Portal)

Lawyers must have knowledge of relevant legal or regulatory provisions governing or relating to information technologies. In particular, if relevant to a lawyer's area of practice, lawyers should familiarize themselves with statutory or other provisions relating to the legal status of electronic documents or electronic signatures.

- 5.2 Systems to Support Client Service

Lawyers should consider the use of information technologies to enable them to perform all client service functions conscientiously, diligently, and in a timely and cost-effective manner. [rr. 3.1-1(e) and 3.1-2 of the Rules of Professional Conduct ("Rules")]

Lawyers may wish to consider the use of the following information technologies:

- 5.2.1 Electronic Legal Research Methods

Lawyers should consider whether their legal research skills include and make use of online legal research tools (e.g., CanLII or Quicklaw) [r. 3.1-1(c)(i) of the Rules].

- 5.2.2 Electronic Document Management Systems or Services

Lawyers should consider the use of electronic document management systems such as

- case management or litigation support software for litigation matters
- document assembly software to create legal forms and documents.

- 5.2.3 Analysis Support Software

Lawyers should consider the use of information technologies that support their analytical skills and functions including spreadsheet software where appropriate. [r. 3.1-1(c)(ii) of the Rules]

- 5.2.4 Productivity Software

Lawyers should consider the use of electronic productivity software or voice recognition software to ensure that writing and drafting is accomplished in a timely and cost-effective manner (e.g., Word, Word Perfect, Adobe Acrobat, and Google Docs) [rr. 3.1-1(e) and 3.1-2 of the Rules].

o 5.2.5 Communication Technologies

Lawyers should consider the use of information technologies to communicate with the client in a timely and effective manner appropriate to the abilities and expectations of the client. Lawyers may consider the use of all or some of the following systems [rr. 3.1-1(d) and 3.1-2 of the *Rules*

- voice mail
- email
- facsimile transmission
- text or private messaging platforms (e.g., WhatsApp®)
- telephone or video conferencing (e.g., FaceTime®)

- 5.3 Systems to Support Practice Management

Lawyers should consider the use of the following information technologies to assist in complying with the Rules and By-Laws made pursuant to the Law Society Act [rr. 3.1-1(g) and 3.1-2 of the Rules]:

- 5.3.1 Database Management Systems

Lawyers should consider using database management software systems for

- conflicts checking to support compliance with Section 3.4 of the Rules
- maintaining client information or file lists to effectively manage their practice. [rr. 3.1-1(i) and 3.1-2 of the Rules]

Lawyers may also consider using a searchable database of client files which easily identifies open and closed client files.

- 5.3.2 Calendar and Scheduling Systems

Lawyers should consider the use of calendaring and scheduling technologies to

- perform client service and practice management functions in a timely manner [rr. 3.1-1(e) and 3.1-2 of the Rules]
- implement an effective tickler or reminder system to flag important dates or deadlines

- 5.3.3 Legal Accounting and Time Billing Systems

Lawyers should consider using electronic accounting and billing systems to assist in complying with record keeping and accounting requirements. [By-Law 9 and Section 3.6 of the Rules]

- 5.4 Competent Use of Information Technologies

Lawyers should have a reasonable understanding of the technologies used in their practice or should have access to someone who has such understanding.

- 5.5 Delivery of Legal Services Through the Internet

- 5.5.1 Uphold Law of Other Jurisdiction

Ontario lawyers practising law in other jurisdictions through the provision of legal services on the Internet should

- respect and uphold the law of the other jurisdiction
- not engage in the unauthorized practice of law.

- 5.5.2 Conflicts of Interest

To avoid conflicts of interest when delivering legal services through the Internet or e-mail, lawyers should take reasonable steps to determine the actual identity of the parties with whom the lawyer is dealing.

- 5.5.3 Capacity in Which Lawyer is Acting

A lawyer who communicates with others in chat rooms, blogs, discussion groups, or through electronic or social media shall ensure that the capacity in which the lawyer is acting is made as clear as possible to anyone with whom the lawyer deals.

In particular, a lawyer should advise when he or she is or is not providing legal advice or services.

- 5.6 Remote Commissioning of Documents

Some lawyers wish to use electronic or online tools and platforms to commission legal documents. This practice is referred to as remote or virtual commissioning because it involves the use of audio-visual technology to authenticate or witness the document(s) signed by the deponent or declarant.

Effective August 1, 2020, remote commissioning is permitted in Ontario if the conditions set out in O. Reg. 431/20 *Administering Oath or Declaration Remotely*, made under the *Commissioners for Taking Affidavits Act*, are met. Lawyers should consult the Law Society's Remote Commissioning resource for further information and guidance.

- 5.7 Confidentiality.

Lawyers using electronic means of communications shall ensure that they comply with the legal requirements of confidentiality or privilege. [Section 3.3 of the Rules]

When using electronic means to communicate in confidence with clients or to transmit confidential messages regarding a client, a lawyer should

- develop and maintain an awareness of how to minimize the risks of disclosure, discovery or interception of such communications
- discuss the inherent security risks associated with each technology with the client and confirm in writing that the client wishes to communicate using that method
- use firewalls and security software to protect at-risk electronic information
- use and advise clients to use encryption software to assist in maintaining confidentiality and privilege
- take appropriate measures to secure confidential information when using cloud-based services
- ensure that non-lawyer staff who have access to such client communications understand the importance of protecting client confidentiality and how to preserve same.
- develop and maintain law office management practices and policies that offer reasonable protection against inadvertent discovery or disclosure of electronically transmitted confidential messages.

- 5.8 Marketing and Making Legal Services Available

- 5.8.1 Rules of Professional Conduct Apply

Advertising by lawyers in various forms of electronic media, including web sites, network bulletin boards, and direct e-mail, are governed by the *Rules*, Section 4.1 Making Legal Services Available, Section 4.2 Marketing, and Section 4.3 Advertising Nature of Practice.

- 5.8.2 Identification of Lawyer in Electronic Media

Lawyers making representations in generally accessible electronic media should include the name, law firm mailing address, licensed jurisdiction of practice, and e-mail address of at least one lawyer responsible for the communication.

- 5.8.3 Multi-Jurisdictional Advertising

Where a lawyer is entitled to practice in more than one jurisdiction, and these jurisdictions are identified in representations on electronic media, the lawyer shall ensure that the advertisement complies with the rules governing legal advertising in each of those jurisdictions.

- 5.8.4 Restrictions on Distribution

Lawyers may offer their services to potential clients subject to certain restrictions, including influencing a person who has already retained another lawyer or paralegal for their matter to change legal representatives. [r. 4.1-2 of the *Rules and Commentary*].

Interactions with the public that are not compatible with the public interest, the best interests of the legal professions or the administration of justice, include

- advertisement of professional services using electronic media where the advertisement is directly and indiscriminately distributed to a substantial number of newsgroups or electronic mail addresses
- posting of electronic messages to newsgroups, listservs or bulletin boards where the topic of the posting does not represent what is being advertised in the body of the posting

- 5.8.5 Controlling Misuse of Electronic Communications

Lawyers should consider implementing and enforcing firm policies for the acceptable use of electronic communications to ensure that discriminatory content is not disseminated. Policies may include

- restrictions against downloading, viewing, or circulating within the office or to outside recipients electronic material of a discriminatory nature
- mandatory deletion of such material if received in an unsolicited manner from third parties.

- 5.9 Preventing Software Piracy

Lawyers should guard against intentional or accidental software piracy. Lawyers, not office personnel exclusively, have the ultimate responsibility for the management and organization of, and compliance with, license agreements for all software used by a firm.

Lawyers should guard against accidental software piracy by carefully reviewing the provisions of software licensing agreements used in their practice.

- 5.10 Security Measures

Lawyers should be familiar with the security risks inherent in any of the information technologies used in their practices including

- unauthorized copying of electronic data
- computer viruses which may destroy electronic information and hardware
- hackers gaining access to lawyers' electronic files
- power failures and electronic storms resulting in damage to hardware or electronic information
- theft of vast amounts of electronic information stored in stolen hardware.

Lawyers should adopt adequate measures to protect against security threats and, if necessary, to replace hardware and reconstruct electronic information.

- 5.11 Back-up and Disaster Management

Lawyers should have back-up and disaster recovery plans for information technologies. Lawyers may consider implementing some or all of the following policies and procedures

- performing regular back-up of data
- storing back-up disks or tapes in a secure off-site location
- performing routine checks to ensure data can be restored
- having insurance in place to cover the costs of recovering lost hardware or electronic information.

- 5.12 Obsolescence

Lawyers should ensure that information in electronic form will be accessible in the future. Lawyers should consider the benefits and risks of storing crucial information in paper or electronic form.

Disclaimer: The *Practice Management Guidelines* (“*Guidelines*”) are not intended to replace a lawyer's professional judgment or to establish a one-size-fits-all approach to the practice of law. Subject to provisions in the *Guidelines* that incorporate legal, [By-Law](#) or [Rules of Professional Conduct](#) requirements, a decision not to follow the *Guidelines* will not, in and of itself, indicate that a lawyer has failed to provide quality service. Conversely, use of the *Guidelines* may not ensure that a lawyer has delivered quality service. Whether a lawyer has provided quality service will depend upon the circumstances of each case.

Last Updated: July 31, 2020

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