

BUSINESS & CAREERS

Netbooks can be useful tool for lawyers



HI-TECH

**LUIGI
BENETTON**

They're tiny, cheap, under-powered, and many of us wouldn't want to use them too often. But netbooks as business computers suit some lawyers just fine.

Which, considering the history, is odd. A 2009 article in *Wired* magazine traced their existence back to a Massachusetts Institute of Technology initiative named One Laptop per Child. The vision: small, inexpensive, low-power-consumption (and slow) notebook computers distributed to children throughout the developing world could make education more easily accessible.

Along the way, commercial computer makers figured that emerging markets would flock to small inexpensive netbooks (whose performance would have been ordinary in the mid 2000s) and marketed the first netbooks.

Unexpectedly, sub-\$400 netbooks sold so well in developed countries that every major computer maker (minus Apple Inc.) now sells them.

The name hints at a netbook's main uses. Lightweight in just about every sense of the term, netbooks prove good enough for people to check e-mail and surf the Web.

"They're designed to be Internet appliances, so they lag behind state-of-the-art in terms of power, RAM, processor speed and so forth," says Jim Calloway, director, management assistance program, for the Oklahoma Bar Association.

Such shortcomings don't turn everybody off. "I am thankful for my netbook on every flight when the person in front of me reclines



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their seat and it has no effect on my ability to keep working," says Matthew Powelson, an IP/trademark attorney and partner at LaRiviere, Grubman & Payne, LLP in Monterey, Calif.

"They're great as a 'floater' computer for people who travel," Calloway adds.

"Even when I'm not travelling," Powelson says, "it's great to have the small form-factor for taking down the hall to a meeting."

No netbook user denies the compromises endemic to tiny devices at tiny prices. Regular-size keyboards, certain ports and, most prominently, optical drives don't fit a netbook's undersized chassis or cost structure.

"Software installation can be difficult if the software is on a CD or DVD and you do not have an external CD/DVD drive," says New

York, NY-based Marc Misthal, a partner with Gottlieb Rackman & Reisman, P.C., "but it is increasingly possible to download software for installation." (Misthal owns an external optical drive for his netbook.)

While certain upgrades, like maximizing a netbook's RAM, boost performance without pushing the price tag into full-size-notebook territory, it's easy to reach the typical netbook processor's limits. "When you rely on heavy multimedia functionality to be optimal, the processing speed simply can't keep up," says Powelson.

Those processors also limit the buyer's choice of operating system. Popular options include Windows XP, Windows 7 Starter Edition or Linux. Anything else may slow netbooks to a grind.

Even using a snappy OS, certain software windows don't fit on pint-sized netbook screens.

Low cost throws another type of curve at netbook owners. For instance, Calloway suggests putting the free OpenOffice.org on netbooks. "It seems wrong to spend more on the office suite than the computer," he says.

For all their limitations, their economical nature keeps netbooks on the small business computer-buying radar. "They are remarkably inexpensive and practically disposable," says Nicole Garton-Jones, a Vancouver-based attorney with Heritage Law. Support costs are "essentially zero in the hosted desktop deployment scenario." (Garton-Jones refers to a setup where computer users access software and data that resides on servers.)

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Partner loses appeal over compensation

THOMAS CLARIDGE

The Ontario Court of Appeal has unanimously upheld a trial judge's dismissal of a claim by a former Aird & Berlis LLP partner that he was short-changed by the firm before he left it eight years ago.

Harold Springer sued the Toronto law firm for breach of contract, negligent misrepresentation, breach of fiduciary duty and unjust enrichment, but the appeal court said his appeal focused "exclusively on an issue that, according to the trial judge, was raised for the first time during closing argument, namely: did the respondent owe and breach a fiduciary duty to inform the appellant of where he 'fit' under a new firm compensation system to be implemented in 2002 and to warn the appellant that his remuneration as a partner would be significantly reduced under that system?"

In their per curiam ruling, Justices Robert Sharpe, Eleanor Cronk and Jean MacFarland observed that the trial judge, Superior Court Justice Frank Newbould, had given "very thorough and detailed reasons for rejecting the appellant's evidence and for dismissing the claim," which they proceeded to accept without qualification.

Springer had contended that Aird & Berlis breached its duty by not warning him that a new compensation system for part-

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BUSINESS & CAREERS

Partner likely knew compensation would drop

Compensation

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ners introduced in December 2000 would result in him being paid significantly less. "This contention rests on the theory that had he been warned that his compensation would be significantly reduced, he would have withdrawn from the partnership earlier and received a higher payout based on his 2001 allocation of partnership units," the court said.

However, it agreed with the trial judge's finding that under the terms of the partnership agreement Aird & Berlis did not owe Springer a fiduciary duty in relation to decisions made by the firm's executive committee concerning compensation.

In *Springer v. Aird & Berlis LLP* Justice Newbould held that, in addition to the firm not owing Springer the fiduciary duty, even if it did, the plaintiff had failed to prove that the duty had been breached and, in any event, Springer was well aware of the likelihood that his share of the partnership units and,

hence, his income, would be significantly lower in 2002.

"We are not persuaded that the trial judge erred with respect to any of these findings," the court said.

The judges observed that neither the *Partnerships Act*, R.S.O. 1990, c. L.16, nor the Aird & Berlis partnership agreement imposed a duty on the firm's management. "Moreover, no such duty arises at common law."

Although Springer had relied on oral assurances he said the firm's managing partner had made in February 2001, that he would be at the new compensation scheme's highest level, she had died shortly after the action commenced, the trial judge had rejected the plaintiff's account of what he had been told.

Noting Justice Newbould's "overall negative assessment of the appellant's credibility," the appeal judges said it was clearly open to him "to conclude that the appellant had failed to satisfy him that she had not told him that his units allocation would be significantly reduced in 2002 and that, as a result, the appel-

lant had not satisfied the onus he bore of proving any breach of the alleged fiduciary duty."

As for the issue of when Springer had learned that his income would be reduced in 2002, the judges said changes in the way partnership units were allocated among the part-

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ners were "well-publicized and well-known to the appellant well in advance of the actual allocation made for 2002. The trial judge found that on a plain reading of the documents relating to the new compensation

system, it would have been apparent, given the nature of the appellant's practice and his contribution to the firm, that his income would be substantially reduced under the new system."

The court said evidence of statements Springer had made to other partners in 2001 "was capable of supporting the trial judge's inference that the appellant likely knew that his level of remuneration would be significantly reduced in 2002."

It followed that even if there was the alleged fiduciary duty, and even if it was breached by Aird & Berlis, "it did not cause any loss to the appellant."

Springer, who was called to the Ontario Bar in April 1986 and is no longer practising law, worked with the Outerbridge law firm as a junior litigation lawyer until November 1988 when he joined Aird & Berlis to practise with four other lawyers in insolvency litigation and restructuring. He became a partner in January 1990 and remained a partner until his withdrawal in 2002.

In dismissing the appeal, the court awarded costs to the respondent of \$30,000, which will be in addition to an award of nearly \$500,000 by the trial judge.

Aird & Berlis was represented by Linda Rothstein and Robert Centa of Toronto's Paliare Roland Rosenberg Rothstein LLP, while Thomas Dunne and Benjamin Na of Gowling Lafleur Henderson LLP acted for Springer.

In an e-mail statement Centa has this to say regarding the decision: "Aird & Berlis is very pleased with the decision of the Court of Appeal for Ontario. The firm's position was vindicated at trial and on appeal. The firm is looking forward to putting this matter behind it," he continued, "The decision of the Court of Appeal is a common sense application of well-established principles of law." ■

Reasons: *Springer v. Aird & Berlis LLP*, [2010] O.J. No. 1578.

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Netbooks, iPads useful tool for lawyers constantly on the go

Netbooks

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And Misthal challenges the common view of netbooks as limited. "The standard configuration should have enough power for most everyday functions performed by lawyers," he says.

"It's a question of managing your expectations."

"As long as we just use e-mail, word processing, Google and, say, PowerPoint or Excel, the machines are fine," says James Roberts, managing partner with Global Capital Law Group P.C., who uses his netbook as a secondary machine when at the office.

"Our IT guy tweaked their performance, which helped," he adds.

"We even standardize on netbooks for our home-based staff and floating offices," says Garton-Jones, "because they are just as good as desktop PCs, when attached to an external monitor and keyboard, for access to our hosted desktop infrastructure."

Mobile-phone companies have jumped on the bandwagon by offering discounted netbooks to wireless internet service subscribers, albeit with one inconvenience. "Having a USB modem (or a flash drive) sticking out the side of the netbook while traveling can be annoying," Misthal says.

Some of the factors that have

spurred netbook sales in recent years seem set to propel "slates" (also known as "tablets," keyboard-less touch-screen devices like Apple's newly minted iPad) into netbook sales turf.

Austin, Tex.-based attorney Dirk Jordan brought an iPad into his practice after trying other options. "I tried a netbook, but gave it up after a couple of days because of the difficulty in typing and my inability to see the screen clearly," Jordan says.

Thus far, Jordan has used his iPad to interview witnesses and do work away from the office. It also serves as a "companion" on long trips thanks to the device's media features and long battery life.

"I would not like to create long documents on the iPad that call for lots of research. For that, I need a large monitor where I can have the case law and my brief side by side."

Such arguments make Johnson's opinions that of the majority: "I don't think the iPad or a netbook will be the only computer a lawyer has; lawyers need larger notebooks or desktops.

"The netbook or iPad will only be an auxiliary that is quite mobile." ■

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