

## BUSINESS &amp; CAREERS

# Many lawyers still Luddites resisting technological advances



HI-TECH

**LUIGI  
BENETTON**

Does everybody in the legal industry embrace technology? You might think so, but certain anecdotes give me pause.

For instance, a recent *National Post* headline announced: "Trial adjourned due to lawyer's laptop." According to the article, an Ontario justice agreed with the Crown prosecutor, who labelled said defence lawyer's laptop an "electronic recording device," and told him to shut it off.

Since the defence lawyer in this stunt-driving case had all his information on the computer and could not proceed without it, the justice adjourned the trial till summer.

More recently, CourtCanada Ltd. brought a suit against the Attorney General of Ontario for not expanding the use of OSCAR, CourtCanada's online attendance booking system, beyond the estates and commercial lists.

Here's the money quote from the statement of defence, as reported in *The Lawyers Weekly*: "In the period from July 2009 to June 2010, only 52 matters, or .073 per cent of all matters booked in Commercial Court were reserved by lawyers using OSCAR." The remainder went through phone calls, faxes and email.

Few (if any) statistics support the conclusions these anecdotes imply. But that doesn't stop certain lawyers from weighing in on the matter.

British Columbia Prosecution Service Crown Counsel Nils Jensen published a slaw.ca post headlined: "Are Technophobes Negligent?" Jensen gives no quarter as he writes "...a lawyer who refuses to use modern technology is as negligent as the doctor who refuses to use modern technology. The only difference between the two when things go sideways? The lawyer needn't be concerned about liability. No one will ever be able to prove that the case was lost because the lawyer refused to use courtroom technology."

But technophobes, at least in large firms, likely aren't too concerned. After all, basic activities in the practice of law can be done on paper or with an assistant's help.

"When lawyers adapt technology, they do so as minimally as possible," says Simon Fodden, professor emeritus at Toronto's Osgoode Hall Law School of York University. "If they're in a firm wealthy enough to hire the right kind of support, non-tech-savvy lawyers can practice perfectly good law."

However, technology continues to creep into previously non-technical crevices. Chris Bennett, a Davis LLP video game and intel-

lectual property (IP) lawyer based in Vancouver, offers research as an example. "You can go to a law library and pick out books," he says, "but you have to use a computer to figure out where the books are."

And how much support should a lawyer reasonably expect? "The less tech savvy you are, the more strain you place on the firm's technical support staff," Bennett says.

He does recognize common disincentives, like the "adequacy

plateau." "The longer you've been practising, the less interested you might be in learning new technology," says Bennett.

Besides, "Lawyers are too busy, and adapting new technology is time-consuming," he adds.

Erik Magraken's firm doesn't force technology on its lawyers, letting them instead decide what works in their practice areas, for their clientele. "There's no one-size-fits-all technology

solution for all lawyers," says the partner at Victoria-based MacIsaac and Company.

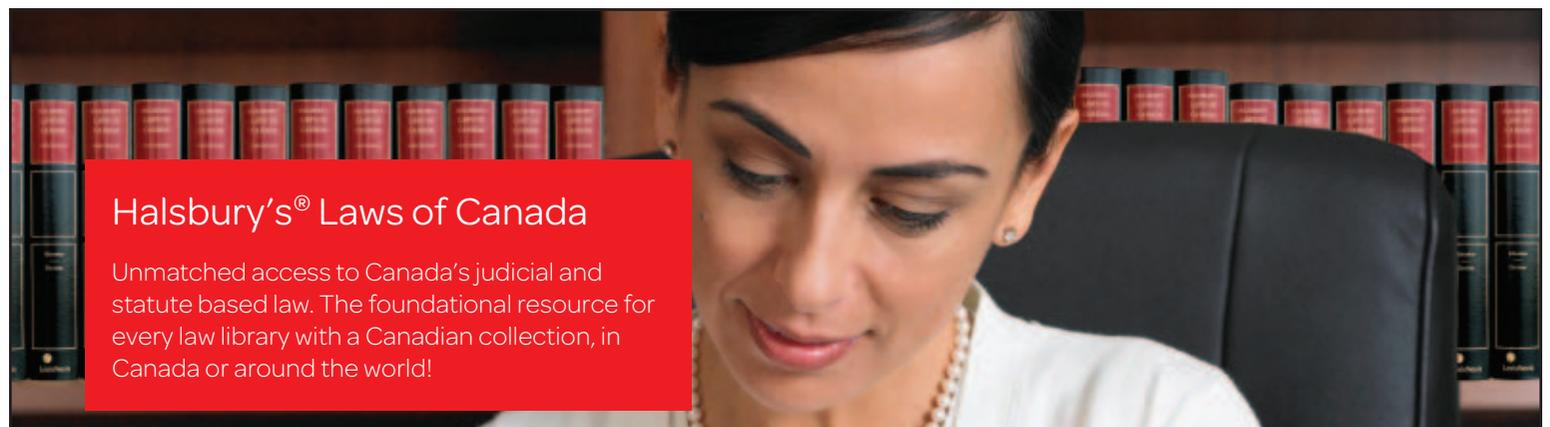
And, of course, there's the generally conservative nature of the industry. "Law always seems a year or two behind private industry," Magraken observes.

Could such factors sink a legal career? For instance, increasing numbers of U.S. attorneys bring improving technology into the courtroom in the belief that bet-

ter technology provides an edge (don't mention this to judges presiding over stunt-driving trials in Ontario).

Client concerns may be the most effective carrot (or stick) for lawyers to "get" technology. "Technology is part of your client's business," Fodden says. "Lawyers must learn a client's technology as part of the background, much as they'd learn

See **Technology** Page 27



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Sheila Nemet-Brown, B.A. (Hons.), LL.B.

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## BUSINESS &amp; CAREERS

# Embracing technology is key to success

## Technology

Continued From Page 25

about their stock prices and the challenges they face.”

In a BlawgIT.com post entitled “Luddite Patent Attorneys Are More Expensive Than You Think,” American patent attorney Brett Trout states that the FBI issued a warning about cyber attacks on law firms to gain access to client intellectual property.

Why the law firm and not the client? Trout claims that technology firms defend their computers better than their lawyers defend theirs, and since lawyers often keep copies of client IP on their computers, lawyers make

worthwhile (and easier) targets.

Step one in helping lawyers overcome techno-inability may be to define the minimum level of techno-ability the modern lawyer needs to avoid accusations of malpractice.

“Technology alters the nature of law in a way that nothing else has ever done,” Fodden states. “It’s important to step back and ask what the profession as a body is doing.”

“Lawyers have a bad habit of letting other people deal with peripheral matters, to outsource,” Fodden continues. “It would be a mistake for the legal profession to do that any longer with technology.”

For instance, Fodden claims

many lawyers don’t read blogs or understand RSS. “They pass that job on to law librarians,” he states. “If it weren’t for law librarians, law firms would be in real trouble.”

Magraken surmises that social networking ought to appeal to older lawyers who have been networking for years. “They just need to transfer their years of experience to computers,” he says.

He voluntarily got into social media like Twitter, Facebook and LinkedIn (which explains how he, on Vancouver Island, connected with a Toronto-based freelance technology writer). “Nobody here has been told to do that,” he says.

Making software more “usable” might help technophobes adapt.

Bennett puts this in the context of his firm’s document management system, praising the simplification of the common task of filing client email. “People appreciate even one less step, especially when you do this hundreds of times a day,” he says.

“It’s wrong to sit on the sidelines and act as though this is a force of nature and you can do nothing,” Fodden says. “It is a force of nature, but you can do something with it.”

“I want to see creativity and initiative rather than lawyers given the sense that this is a shit-storm and we’ve got to take cover, or hire underlings to hold the umbrella.” ■

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Retaining female lawyers is key to having a diverse, inclusive work environment at a law firm.

## Talent management à la carte

### Talent

Continued From Page 24

successful legal advocates can over-complicate internal exchanges and conversations. Applying the essential elements of effective communication is linked to better decision-making, improved accountability, enhanced employee engagement and stronger working relationships.

### Foster diversity

Diversity, while philosophically embraced by law firms, is often managed as a policy requirement or regulatory mandate. An effective approach to diversity, however, is fast becoming a business imperative. Today’s employees want to work for firms that openly embrace diversity as an opportunity rather than an obligation, and forward-thinking firms will move to adopt a comprehensive, business-focused diversity strategy.

### Identify future leaders

It’s becoming increasingly clear that the effective cultivation of talent in leadership roles is directly linked to overall financial

performance, and successful firms are re-shaping their talent strategies accordingly. Consider a leadership process that integrates recruiting, selection, 360-degree feedback, competency assessments, leadership reviews, coaching and formal learning to drive specific business outcomes.

### Keep employees engaged

Many firms conduct employee engagement surveys. But most don’t realize that employee engagement can itself be a key component in a broader talent management strategy. Surveys that elicit insight instead of just probing satisfaction levels make employees feel closely connected to the firm—“engaged” in its success and its future. And simply put, employees who are highly engaged in their work are more likely to stay put.

### Tweet your way to success

Law firms can use social media to define their identity, raise market profile, uncover new revenue and attract a generation of workers for whom social media tools are second nature. There are

risks, however, and firms that enter this space should plan carefully: set clear objectives, get their partners and leaders on board, provide appropriate training and set policies, and evaluate—is social media doing what the firm wants? If not, tweak the tweets.

While each of these topics is important for a robust and successful talent management program, law firms must think about what to focus on and where to focus resources.

Every firm’s situation is unique and evolving. It comes down to what each firm needs to do, wants to do and is willing to do to stay ahead of the competition and make themselves the firm of choice for their current people, new prospects and top lawyers looking to make a change. ■

*Richard Lee is a partner and Sara Arnstein is a manager in Deloitte’s Human Capital practice, based in Toronto. Deloitte’s Human Capital practice helps organizations develop and implement effective talent management strategies.*

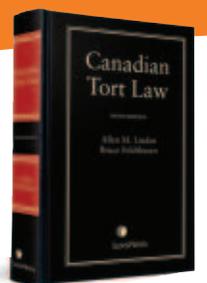
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