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Information Technology

Layout tips for legal documents



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Many legal documents would benefit from an Adobe-inspired layout makeover.

"In a document I recently reviewed, the price adjustment language for share purchase prices was contained in one paragraph almost two pages long," recalls Brock Smith, a Vancouver-based partner in Clark Wilson LLP's technology and IP group. "I don't know how we expect business people to understand this."

"Walls of copy daunt the average person who doesn't understand legalese," adds Zahra Alharazi, creative director for Calgary-based Foundry Communications Inc.

Poor document layout causes more problems than just bad communication. In a 2007 Law.com article entitled "Beware the Hidden Costs of Bad Formatting," president of New York-based Chelsea Office Systems Inc. Roberta Gelb estimated billable time needed to make three basic changes to two visually identical (but



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differently formatted) 30-page Microsoft Word documents. One required two-and-a-half minutes, the other more than 60 minutes.

According to Gelb's math, such layout-related cost overruns for a 20-lawyer, 20-secretary firm exceed six figures annually. Then there's the actual look of the document, something that might, in a client's mind, not compare favourably with the professionalism and credibility implied by a firm's website, brochures or other branded material.

"You can't overlook the psychology that occurs when you hand people a document," says David Canton, a business lawyer with London, Ont.-based Harrison Pensa LLP. "If a document looks sloppy, people assume the con-

tents are not high-quality."

He uses standard customer agreements as an example. "I prepare documents in a very professional format," he explains. "A user perceives that agreement as cast in stone. But if it seems cobbled together, the look implies it could be challenged."

"Clients don't want to have to call their lawyers to find a specific sentence or paragraph," Canton continues. "Good formatting is a pragmatic approach to increasing readability. You should do it just to be a better communicator."

Yet the 1950s look persists in many legal documents. A lack of computer training is commonly blamed, but lawyers wonder how clients would perceive slick layout. "Would the client pay for extra training, proper layout, even dedicated document layout professionals?" Smith wonders. "For some of the old-school clients, there's nothing wrong with Courier 12 point, and they might think, 'If you're making it all

fancy, do I pay for that?'"

In a large firm, not necessarily. Smith, for instance, goes to people in the word processing or support departments when he needs help. "That will be a job of the future," he says. "Lawyers, as a group, will never be as good at document layout as their support staff."

Lawyers sometimes bring formatting difficulty on themselves. A document Gelb mentioned in her article, for example, was full of tabs, hard returns, manual numbering and other direct formatting which can't be changed easily. If the font size for 50 paragraphs needed to be changed, all 50 paragraphs had to be individually formatted.

Pasting content from other documents can also foul up formatting.

Improving document layout

Want to make over the staid look of your firm's documents while you reduce the time it takes to create them? Try the following tips:

Brand your business first

"What's your point of differentiation?" asks Alharazi. "Do you market to women? Do you see yourself as more approachable?" Once you decide on your point of differentiation, put it into everything that shows your firm identity.

"Do it right the first time," Alharazi advises. "If you do stuff cheaply, in the long run your competitors will outshine you. It's better to do it right up front than to rethink it as you go."

Brand your documents

"Have some idea of what you want the document to look like," Canton advises. Take styling cues from your firm's branded materials as well as documents that you like the look of.

Write with style(s)

Word styles let you apply multiple formatting settings with one choice, whether for headings, See **Layout** Page 12

Privacy commissioner calls for enhanced enforcement powers



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The Privacy Commissioner of Canada, Jennifer Stoddart, has signalled a move toward enhanced enforcement powers. Speaking at a conference, the commissioner emphasized that she was deeply troubled by recent information security breaches.

To address this issue, the commissioner expressed her view that substantial, "attention-getting" fines must be levied against organizations that fail to

adequately safeguard individuals' personal information in accordance with applicable privacy legislation. In conjunction with her provincial counterparts, Stoddart has recently issued a self-assessment tool highlighting what may be considered adequate safeguards for personal information.

On May 4, the commissioner opined that "the information and communications revolution" has resulted in a "data explosion."

Recognizing that there is inherent value in technology and the ability to share information, she focused her comments on the resulting risks to personal privacy and noted the need to implement safeguards to "ensure that privacy is protected and respected." She said that at this time, government, business and individuals have not determined how to ensure that individual privacy is adequately protected. In addition, given the ease of storage, many organiza-

tions maintain more information than they are able to safeguard effectively.

After reviewing the existing technological state of affairs, Stoddart offered a solution. Specifically, she indicated that the time has come to begin imposing "significant, attention-getting fines" on organizations as a real incentive to comply with privacy obligations.

The enhanced enforcement See **Enforcement** Page 12

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Schedule layout training sessions to coincide with computer upgrades

Layout

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paragraph text, numbered or bulleted lists and so forth.

If you need to change the look of hundreds of paragraphs to which you applied the same style, you need only change that paragraph style and not the hundreds of paragraphs.

"Documents generated by users who don't have a strong grasp of Word styles are very difficult to work with," Smith says.

One story, one word processor

Different word processors handle Word's .doc document format (the most commonly used format) in different ways, which means they often undo sophisti-

cated formatting. If it's created using Word, all co-authors should also use Word.

Keep non-printing characters visible

While they can take some getting used to, non-printing characters show all manual formatting, and thus any formatting errors manually introduced to a document.

Non-printing characters expose one of Canton's pet peeves. "In Word, you can use styles to make the spacing between paragraphs look consistent," he says, "but people often don't set up spacing before and after in a style. They just create extra line breaks to get the spacing they want."

Shorten paragraphs

Break down large sections into smaller ones and give sections descriptive headings. "There's no excuse for a two-page paragraph," Smith says.

Paste special

Word lets you apply the right formatting in your target document when you paste something from another document when you use "Paste special" in the edit menu.

Create modular documents

"For long documents that have definition sections, put definitions in a schedule that can be detached and referenced without the reader having to flip back to the section each time," Smith advises.

Create templates

Once you have a design that works, capture that design in a template you can reuse endlessly.

"We give clients stringent brand standards so they know what they can do and what they can't," Al-harazi says, noting those standards cover colour palette, font use for headings and body copy, and everything in between.

Create a style guide

Turn the template into a style guide. List your brand standards in the template lawyers use to start documents. In particular, explain how each style should be used, using actual styles in the guide itself to illus-

trate their use.

Train document creators

Schedule mandatory training sessions to coincide with computer upgrades or other occasions. Even quick lunch-and-learn sessions can promote time- and cost-saving behaviour.

Consider outsourcing important documents

Need to create special documents for high-stakes matters like mergers or acquisitions? Consider contracting a graphic designer to get the layout just right. ■

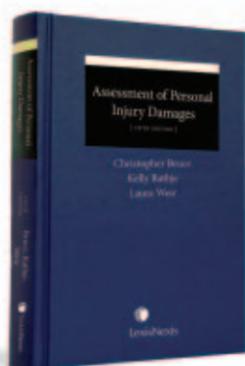
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Self-assessment tool uses international standards

Enforcement

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model with significant fining authority proposed by the commissioner is consistent with the approach taken in numerous foreign jurisdictions. By way of example, the commissioner pointed to her counterparts in the U.K. and France and their recent record-setting fines in the wake of information security incidents.

The U.K. Information Privacy Commissioner, Christopher Graham, has the authority to levy considerable fines for violations of the U.K. *Data Protection Act*. Graham used this authority to impose a significant monetary penalty of 100,000 pounds against a U.K. city council that faxed highly sensitive information to an unintended recipient. He noted in an announcement the careless nature of the mistake, leading to the compromise of sensitive information.

Similarly, in March, the French data protection authority, the Commission nationale de l'informatique et des libertés (CNIL), levied a precedent-setting fine of 100,000 euros against Google. In issuing the fine, the CNIL cited Google's failure to comply with the French *Data Protection Act* by collecting individuals' personal information without their knowledge.

The growing importance of securing personal information is evidenced by the willingness of foreign privacy regulatory authorities to impose significant fines. Stoddart has echoed this theme by focusing on adequate safeguarding measures for personal information and issuing guidance on how this may be achieved. In conjunction with her counterparts in Alberta and

B.C., Stoddart recently released *Securing Personal Information: A Self-Assessment Tool for Organizations*.

By way of background, in Canada, private sector organizations in all provinces are subject to privacy legislation that requires organizations to implement reasonable safeguards to protect personal information under the organization's custody or control. More specifically,



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security safeguards must be implemented to protect against the unauthorized access, collection, use, disclosure, copying, modification, disposal or destruction of personal information.

The self-assessment tool is based on international standards and feedback from organizations and sets forth an online questionnaire that outlines the minimum security requirements that organizations must meet for compliance with the statutory safeguarding requirements. The self-assessment tool also provides guidance to organizations on ways in which they can raise their current security standards beyond the minimum levels articulated by the commissioners.

Consistent with previous findings of the federal and provincial commissioners, the self-assessment tool promotes a

multi-layered approach to the safeguarding of personal information. It provides direction on the implementation of several layers of security, including risk management, policies and procedures, records management, human resources security, physical security, technical security, access control, incident management and business continuity planning.

Although it is well-established that effective compliance with the statutory safeguarding obligations requires a holistic approach, in the case of an information security breach, the reasonableness of the implementation of such safeguards will be evaluated based on a number of factors. These include:

- the sensitivity of the personal information involved;
- the foreseeable risks;
- the likelihood of damage occurring;
- the medium and format of the record containing the personal information;
- the potential harm that could be caused by an incident; and
- the cost of preventive measures. In some instances, relevant industry standards may also come into play.

Stoddart's recent comments, in conjunction with her guidance on adequate safeguards, signal a shift toward a more robust enforcement environment. In light of the changing landscape, organizations should review existing practices to ensure that personal information is protected by appropriate safeguards. ■

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