

'E-lawyering will be mainstream in 3 years'

BY KATHRYN LEGER, FREELANCE MARCH 4, 2011

A few weeks ago, a New Brunswick judge ordered a lawyer to force his client to download her Facebook page so that it could be used against her in a personal injury lawsuit with an insurer.

The lawyer, James Crocco, was told by the judge, Frederick P. Ferguson of Court of Queen's Bench, that he should hire another lawyer to summon his client to a meeting without telling her what it was about and obtain the download lest she delete some of her photos and videos.

The case has since been settled out of court with a cash award for the woman claiming a settlement from the insurer of the other driver involved in the car accident that injured her.

That stumped plans by her lawyer to challenge the order in appeals court on the grounds that it was the equivalent of executing a civil search warrant on his client and that it threatened her right to legal advice.

It is unclear whether such an order could be issued in Quebec, but the case - similar in nature to one in Quebec last year that captured worldwide attention - underlines how social media and new technology are changing the ways lawyers can advance or defend their clients' claims in court.

What jurisprudence does exist in Quebec relative to the use of social media as evidence in courts and what legal tools are available to different parties to obtain such evidence will be discussed at the fifth edition of the Legal IT conference that takes place a few weeks from now in Montreal (see www.legalit.ca for details).

"People think the rules are different because it is in a computer format, but there are still reliability thresholds to be achieved," says Marcel Naud, the Robic LLP intellectual property lawyer who is director of the organizing committee for the conference sponsored by the Young Bar Association of Montreal following its founding by Dominic Jaar, now legal technology adviser with KPMG Canada in Montreal.

"You have to be comfortable with issues that develop online because if you say: 'I don't deal with online stuff because it is too complicated,' you might miss something that is quite material."

Xavier Beauchamp-Tremblay, an intellectual property lawyer at Ogilvy Renault LLP who lined up this year's speakers for LegalIT 5.0, added: "Since the financial crisis, it has been more and more important for lawyers to understand technology to become more productive and give better client service and understand the issues.

"We're trying to provide that on the practical side to try and get lawyers to embrace technology but be aware of their potential pitfalls.

"And on the theoretical side, to understand how technology is very rapidly changing the role of law in

many domains."

"If you don't stay informed, you cease to be relevant," said Robic's Naud, adding that the conference also features forward-looking issues that could be in the mainstream in a year or two from now.

The dispensing of legal services to the public over the Internet is one of them.

The opening speaker is Richard Granat, recently described by technology magazine Wired as a pioneer in the field of eLawyering. He is the founder of Washington, D.C.-based Granat Legal Services, P.C., one of the first virtual law firms in the United States and is also co-president of the American Bar Association's task force on eLawyering.

Granat is quoted - some would say provocatively - as saying: "E-lawyering will be mainstream in three years. I predict that in five years, if you're a small firm and don't offer this kind of Web service, you're not going to make it."

In the opening session of the one-day event, Granat will talk about the evolution of eLawyering and how virtual law firms such as Legal Zoom, which could soon become one of the largest firms in the U.S., are gaining ground by offering members of the public documents to incorporate a business, register and search for trademarks and other types of corporate filings.

Legal Zoom, which just last month won a lawsuit in the U.S. launched by a lawyer over its practice of law, also operates in Canada (see [www. legalzoom.ca](http://www.legalzoom.ca)). It is only one of a growing number of services in Canada that offer selfhelp packaged legal information online, usually for a fee, and then consultation with a lawyer if needed, in the name of providing greater access to the law for citizens.

The Lawyer of the Week profiled on The Gazette's online legal page at www.montrealgazette.com/legalmatters is information technology lawyer Patrick Gingras.

Gingras practises law at the Quebec justice department and is on part-time assignment to The Hague Conference on Private International Law.

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