Back to the Future of Legal Services:
A report from the Conference of Regulatory Officers

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The Conference of Regulatory Officers is an annual event that brings together personnel from all Australian legal profession regulators, the Law Societies, Bar Associations, Legal Practice Boards, Legal Services Commissioners and Complaints Committees. This year's conference was held in Sydney on 13 and 14 October, with the theme being "The Future of Legal Services".

A particular focus of the conference was the lightning-paced development of technology and its impact on the delivery of legal services, along with the regulatory implications arising from the ever-expanding role that modern technology plays in legal practice. The impact of technology on legal practice also has quite significant implications for the health and wellbeing of practitioners, as well as for the health of the legal practices themselves.

The conference heard from an American lawyer, Ellyn S Rosen, who is currently Regulation Counsel for the American Bar Association Center for Professional Responsibility. Ms Rosen is also currently serving as Counsel to the ABA Commission on Ethics 20/20 (as in vision), which is charged with reviewing the Model Rules of Professional Conduct and the US system of lawyer regulation in response to the challenges that globalisation and advances in technology present to clients, lawyers, law firms and the public. The ABA 20/20 Commission is currently seeking submissions on its proposals for amendments to the model conduct rules with regard to the issues of outsourcing, technology and confidentiality, and technology and client development, and as Ms Rosen noted, the current model conduct rules do not touch on issues of technology at all. The proposals under consideration, just to mention a few, include extending the competency requirements on practitioners to require that they "keep abreast of changes in the law and its practice, including the benefits and risks associated with technology", and ensuring sufficient and reasonable measures are taken by lawyers to protect the confidentiality of client information from unintended or unauthorized disclosure when that information is in electronic form. More detail on the deliberations of the ABA 20/20 Commission can be found on the ABA's website at **http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20.html**

The sorts of regulatory changes being considered by the ABA 20/20 Commission, driven by the advances in technology, may well have to come under consideration in Australia in the no-too-distant future.

Be the Master, not the Slave

In the age of technology, we have been conditioned to believe that the fastest; shiniest, highest-capacity whiz-bang hardware and "apps" will be the solution to our overstretched and overstressed professional and private lives (which often exist on either side of an increasingly blurry line). Smart phones, tablets and e-readers, laptops with more capacity than could have been imagined even five years ago, wireless internet connections in every café, bookshop, airport lounge and bedroom, blogging, social networking and cloud computing. All of these things are having a massive impact on the way we work, and the legal profession is no exception.

Already a well established phenomenon in the US (albeit as a small percentage of legal practices) is the "virtual law practice", which in some US states can be truly a cyber-office without any bricks-and-mortar location at all. Where regulations allow, these practices operate entirely from a digital platform, primarily a website supported by video-conferencing, web-streaming or Skype communications with clients, and often maintain entirely electronic files. These sorts of practices are slowly emerging in Australia, although current legislative requirements dictate the need for some form of physical business address. One of the major challenges with virtual law practice appears to be establishing appropriate delineation between the practitioner's professional and private life, which can very easily become so intertwined that a lawyer can end up with very little truly private personal time at all. The conference heard from the principal of one such firm, a family

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and criminal law practice based in Queensland, and I was left thinking that this practitioner was on the slippery slope to complete burn-out. The practitioner described how her working day involved her leaving her house at a ridiculously early hour, carrying a laptop, two mobile phones and an iPad, spending long hours wading through endless emails in between video-conferencing and teleconferencing with clients, answering enquiries from prospective clients using her firm's website and eventually going back home on the train, reading and replying to emails and texts as she goes, a habit that often extends well into the evening hours at home. The practitioner described how she had one current client who had only engaged her within the past few weeks, but who was already bombarding her with such a daily volume of email on all manner of extrinsic subjects (and behaving in a manner that was inimical to the solicitor/client relationship) that she was considering terminating the retainer.

The message that can be taken away from this sort of experience is that technology and its application to your legal practice may well be a valuable tool, but only if you learn how to harness it to serve you, rather than allowing yourself to become a slave to the technology and the client users of the technology. It may be thought that to succeed in a competitive marketplace, you need to make yourself more available to your clients, but for your own wellbeing as well as for that of your practice, the more important task may actually be to appropriately limit your availability. Allowing clients to have unlimited access to you may well be setting yourself up for both professional and personal meltdown.

Cautionary tales

Being overly accessible can lead to expectations of more or less instantaneous responses to every communication, which can carry their own risks such as not taking the necessary time to review the file, consider all implications of the advice that is being given, and provide a sufficiently detailed response. While the facts of the case pre-date the current cyber-communication age, *Ross Ambrose Group Pty Ltd v Renkon Pty Ltd* [2009] TASSC 86 is a good example of the adverse outcome that can arise from a practitioner providing "off the cuff" advice without due reference to the file. There, the solicitor received a telephone call from a client who sought some advice in what the judge described as "a perfunctory manner". The solicitor provided advice, but did so without having reference to the file, and as a consequence, without turning his mind to some other relevant issues that ultimately impacted on the client's position. The practitioner was found to have breached his duty of care to his client and was found liable in negligence.

Similar cautionary messages came from presentations on the use of social networking platforms (such as Facebook and Twitter) and blogging. If you or your firm is considering using, or currently uses, applications such as Facebook or Twitter, think carefully about the way in which that use is managed. Adverse consequences can include the inadvertent disclosure of confidential client information, the formation of unintended solicitor/client relations, a breakdown in proper supervision of less experienced practitioners if appropriate protocols for checking of communications undertaken in this way are not in place, and the pressure to continually be developing and posting interesting, relevant and accurate content (without which your Facebook page or blog may leave readers thinking you are far from the dynamic and up-to-date practice that you would like to be seen as). It is not beyond possibility either that social networking accounts might be hacked into, corrupted or have data stolen (risks that also affect virtual law practices, especially if data storage is via offsite hosting or "cloud computing"), and it is not unforeseeable that a hacker could impersonate a legal practitioner, providing what purports to be legal advice under the auspices of a legitimate practitioner's website, social networking account or blog. Once again, being on board with these modern trends may seem to be an important aspect of legal practice in the 21st century, but a careful and informed approach is needed to ensure the well-being of both your business and your personnel.