

Focus INFORMATION TECHNOLOGY

Legal process outsourcing requires precautions

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Outsourced and foreign provision of legal processing services is coming and Canadian lawyers need to consider the business, ethical, regulatory and confidentiality aspects of what's on the horizon, says a Vancouver corporate commercial solicitor.

B.C. bencher Rita Andreone said that with governments, regulators, courts and consumer groups advocating for greater access to justice and more cost-efficient legal services, the door is open to offshore or extra-jurisdictional legal process outsourcing (LPO) entities to gain a greater stake in the legal marketplace. LPOs are not regulated by Canadian provinces, Andreone said, and promise significantly reduced legal costs for matters such as research, litigation coding, contract and document review, mergers and acquisition due diligence, commoditized contract preparation, contract and compliance management.

"Their clients are law firms that are seeking more cost-effective means of legal service delivery or large consumers of these services, the law firms' clients themselves. This is either facilitated by their traditional, outside counsel — or not," Andreone said in her article, *Extra-jurisdictional Legal Process Outsourcers: 'The Wave of the Present.'*

While she said the market and eventually regulators will determine LPO roles, their emergence raises professional, insurance and ethical issues.

Andreone, a partner at Vancouver's Lawson Lundell, said counsel using such services need to ask what the terms are of any insurance carried by extra-jurisdictional legal process outsourcers, how the insurance offers meaningful protection to the client/engager and what comfort they will have that the work product meets practice standards.

Moreover, Andreone said lawyers need to ensure confidentiality is maintained under Canadian professional codes of conduct where LPOs are not recognized lawyers in Canada.

Andreone said because the engaging of an LPO entity could expose client's confidences and waive privilege, the client's informed consent would be needed as noted in professional conduct guidelines. Further, she noted, the use of such services could engage handbook rules dealing with the supervision of non-lawyers.

The issue has been scrutinized by the United Kingdom's Law



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Lawson Lundell LLP

Society and The American Bar Association (ABA).

Dr. Sam De Silva, chair of the U.K. society's technology & law reference group, said clients can benefit from cheaper labour in countries such as India and the Philippines, and increasingly from New Zealand and Australia. He added there can be time efficiencies if a client asks for work at the end of a day when it's dawn in the country where the work will be done. That work can be ready the next day, he said.

Another benefit, De Silva said, is that much outsourced work can be commodity issues, leaving lawyers to do higher level legal work.

But he stressed, "the U.K. firm is ultimately responsible for the advice and they have to underwrite it and guarantee it."

And, he said, it's best practice to tell clients what work will be outsourced.

In choosing an outsourcer, De Silva said due diligence is imperative. He suggested visiting the company to ensure security issues and confidentiality concerns are being met.

"You need to look at internal policies and procedures," he said. Some outsourcers may be doing work for a firm's competition, for example, and there must be assurances of ethical walls so information concerning opposing firms is not disclosed.

Firms that are outsourcing work should also ensure their intellectual property around templates, agreements and precedents are protected, De Silva said.

The ABA recently adopted outsourcing proposals from a resolution put forth by its Commission on Ethics 20/20, of which Prof. Andrew Perlman is chief reporter.

"Outsourcing has really always been there," Perlman said, noting the use of copying services and the hiring of outside firms. "Now, it's getting on people's radar screens because it's done more often."

Perlman, who teaches at Boston's Suffolk University Law School, said the practice breaks down into outsourcing to other lawyers and outsourcing to non-lawyers, each of which brings its own questions.

In the former case, he said a "lawyer must reasonably believe the lawyer's services are going to reasonably and competently" serve a client's needs. If the service is from a foreign jurisdiction, he said, the lawyer seeking the service should be sure they are not facilitating the illegal practice of law.

If the outsourcing is to a non-lawyer, Perlman said, the lawyer must ensure the service is compatible with their obligations. He said if the work includes cloud computing or data storage, compliance with obligations is again an issue. He said encryption and other data security concerns must be addressed.

He concluded that if due diligence precautions are taken, the use of LPOs "enables (lawyers) to provide most cost-effective work without sacrificing quality."

Perlman said general guidance on the issue is in the ABA rules of professional conduct and on the ABA website.

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