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Extra-jurisdictional Legal Process Outsourcers: 'The Wave of the Present'

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Governments, regulators, courts and consumer groups, alike, have advocated for greater 'access to justice' and more cost efficient legal services. For example, some legal regulators in Canada, at least, have taken steps to broaden the roles of paralegals and articulated students², on the implied assumption that their services will be more affordable, in addition, possibly, to expanding legal services in less-populated areas.

Enter the offshore or extra-jurisdictional legal process outsourcing entities - those that do not use British Columbia-regulated legal service providers³. In some form or another, they promise significantly reduced legal costs for matters like 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.

Those that engage them must understand how extra-jurisdictional legal process outsourcers may be different from their traditional legal service providers and how they impact them. If they do, as a British Columbia lawyer, I must move over and make room for them, as I have for others that properly practice in traditional legal areas. The market (and eventually, the regulators) will determine their roles. Still, at this point in time, there are some significant professional, insurance and professional ethics issues raised by their provision of legal services.⁴

For example, consider these questions, particularly, if you are a lawyer (including, an in-house lawyer), acting for a client, given your own professional responsibilities:

- What are the terms of any insurance carried by the extra-jurisdictional legal process outsourcers? Does the insurance offer meaningful protection to the client/engager?
- What comfort will the client/engager have that the work product will meet a British Columbia practice standard? What if it does not?

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² See "The Times They Are A Changing" by Bruce LeRose, QC, Benchers' Bulletin, 2012: No. 2 Summer, Law Society of British Columbia, Canada - the example I am most familiar with.

³ In this regard, also consider extra-provincial/extra-territorial lawyers covered by any mobility or reciprocity schemes or excluded under the definition of "practice of law" under the British Columbia Legal Profession Act, S.B.C. 1998, c. 9, as amended.

⁴ According to this post

(http://www.abajournal.com/mobile/article/ethics_20_20_commission_outsourcing_mobility_confidentiality/), the American Bar Association has on its agenda for its annual meeting in August 2012, proposals to revise provisions in the Model Rules to emphasize, presumably, where engaged by regulated lawyers (in-house, private or governmental practice?), that lawyers and law firms should make reasonable efforts to ensure that services provided by non-lawyers outside the firm perform that work in a manner that is compatible with the lawyer's own professional obligations, including protecting client information from inadvertent disclosure.



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- Is the extra-jurisdictional legal process outsourcer regulated and in whose interest? Is the lawyer who engages them assisting in the unauthorized practice of law in British Columbia? Under the British Columbia Legal Profession Act,⁵ “practice of law” includes

...

- (d) agreeing to place at the disposal of another person the services of a lawyer,
- (e) giving legal advice,
- (f) making an offer to do anything referred to in paragraphs (a) to (e), and
- (g) making a representation by a person that he or she is qualified or entitled to do anything referred to in paragraphs (a) to (e) ...”

There are exclusions that should be considered.

- A hallmark of a lawyer/client relationship is client confidentiality and privilege. Would these exist in the circumstance of legal process outsourcing where the service providers are not recognized lawyers in British Columbia - or in Canada?
 - Do you have the client’s informed consent to engage the extra-jurisdictional legal process outsourcer and potentially expose the client’s confidences and waive its privilege?
 - Chapter 5 of the Law Society of British Columbia’s, Professional Conduct Handbook⁶ sets out a lawyer’s professional obligations regarding a client’s confidential information. In general, a lawyer is required to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship and must take all reasonable steps to ensure the privacy and safekeeping of a client’s information. A lawyer must not disclose the fact of having been consulted or retained by a person unless the nature of the matter requires such disclosure. A lawyer may disclose confidential information with the client’s consent and unless the client directs otherwise, to others whose services are used by the lawyer.
 - Chapter 12 deals with a lawyer’s professional obligations regarding supervision of non-lawyers. The general rule is that a lawyer may permit a non-lawyer to act only under the supervision of a lawyer. Consider if this might apply in the context of engaging extra-jurisdictional legal process outsourcers? Rule 12(1) states: “A lawyer is completely responsible for all business entrusted to the lawyer. The lawyer must maintain personal and actual control and management of each of the lawyer’s offices. While tasks and functions may be assigned to staff and assistants such as students, clerks and legal assistants, or to non-lawyer members of a multi-disciplinary practice (MDP), the lawyer must maintain direct supervision over each non-lawyer staff member.”

Extra-jurisdictional legal process outsourcers may represent the ‘wave of the *present*’, in many ways. However, the lawyers that engage them need to satisfy themselves that issues such as those outlined above have been addressed in the interests of clients.

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⁵ S.B.C. 1998, c. 9, as amended – My emphasis added to the extracts of the definition.

⁶ Accessible in annotated form at: <http://www.lawsociety.bc.ca/page.cfm?cid=383&t=Annotated-Professional-Conduct-Handbook-Table-of-Contents>. The Professional Conduct Handbook will be replaced January 1, 2013, with the new Code of Professional Conduct for BC (the BC Code). The current draft of the Benchers approved BC Code is available on the Law Society’s website.