

## Spring 2014

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## Retirement Announcement

Partners and staff would like to extend our best wishes to Carole St. Louis who will be retiring from the firm on June 30<sup>th</sup> after 26 years of devoted service to Prentice Yates & Clark and our clients.

Carole came to the firm from a client in 1988, worked for many years as part of the professional staff and eventually became our trusted office manager.

Carole's smiling face and infectious laugh will be missed around the office as she transitions to enjoying time with her family and friends especially her grandchildren, delight in her oil painting and entertaining her cherished pets with her piano recitals.

## The High Cost of Distracted Driving

**Employees who drive while distracted create substantial financial and other risks for their employers.**

Distracted driving laws are now the norm in all provinces within Canada. Of the three territories, Nunavut is the only holdout. In addition to levying fines, the majority of the provinces and territories have imposed demerit points.

Even with fines and demerit points, many drivers are not convinced that distracted driving affects their ability behind the wheel. A March 3, 2014, news release from the Ontario Provincial Police stated:

In 2013, distracted driving fatalities surpassed both impaired and speed related fatalities in fatal motor vehicle collisions investigated by the OPP. A total of 78 people died from distracted driving-related crashes compared to 57 deaths in impaired driving related crashes and 44 people who died in speed related crashes last year.

Both owner-managers and employees should be concerned about these figures, not only because of the unnecessary loss of life, but also because a laissez-faire attitude could ultimately cost owner-managers their business and employees their jobs.

### U.S. Lessons

To bring home the point, consider that within the United States, lawsuits have been brought against companies in which it was alleged the company was responsible for employees' actions:

In Virginia, a law firm settled for an undisclosed amount after a \$25-million lawsuit was launched against one of its lawyers for allegedly striking and killing a 15-year-old girl while talking business on a cell phone.

In Arkansas, a lumber company paid \$16.2 million when an employee seriously injured a woman in a vehicular accident.

In Florida, a company sales person talking on a cell phone seriously injured a 78-year-old woman. The end result was a \$21 million settlement.

Although these actions took place in the United States, they demonstrate the need for employers to ensure all personnel are aware of the potential consequences of distracted driving. In Canada, under the legal doctrine of "vicarious liability," an employer may be held legally responsible for negligent acts committed by an employee while the employee is on company business.

### Due Diligence

Steps to establish that an employer has exercised due diligence and care include:

- determining the types of electronic devices used by employees in their vehicles
- developing a road safety policy that incorporates guidelines for the use of all hand-held devices
- developing a clearly worded distracted-driving policy for the use of hand-held devices. All employees of the organization should be required to sign off that they have read and understood the policy. A signed copy of the policy should be provided to the employee and one maintained in the employee's file.

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## ***In-house seminars should explain the risks of distracted driving.***

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### ***In-House Awareness***

Employers should make attendance at distracted-driving seminars a mandatory condition of employment. The seminars should explain clearly what constitutes distracted driving and its potential impact not only on the business but also on the employees.

Such a seminar should:

- emphasize that the use of hand-held devices while driving is against the law and that company policy is consistent with the law
- provide examples of the potential dangers involved in various distracted-driving scenarios
- direct staff not to accept calls, make calls or text while driving
- direct staff to pull over to the side of the road to take or make calls or to read and respond to texts
- instruct staff to have a voicemail message that indicates they are driving and cannot respond to calls at that time
- ensure staff understand that adjusting a GPS smartphone, MP3 player or other device while driving is distracting
- ensure staff understand the no-phoning and no-texting policies apply whether they are operating a company vehicle or driving their own vehicle while working
- ensure employees understand that disciplinary action may be taken if they do not follow company policy
- ensure that all personally owned hand-held devices have hands-free capability
- install hands-free capability on all company-owned devices
- make it clear that employees who work in or travel to other provinces must follow the distracted-driving legislation of that jurisdiction

### ***Other Issues***

Staff must understand the impact distracted driving penalties may have on their driving abstract and their ability to work for your company. Demerit points, whether for distracted driving or impaired driving, negatively impact corporate vehicular insurance costs and could potentially lead to lawsuits or the cancellation of policies if individuals with bad driving records are involved in accidents.

### ***Seek Legal Guidance***

In that distracted driving infractions are a relatively new area of legislation, employers should have legal counsel review programs, contracts or agreements that address distracted driving and the rights of individuals. For instance, employers may wish to know whether termination policies for distracted driving can be incorporated into employment contracts.

### ***Contact Your Insurance Company***

Determine whether vehicular insurance policies and/or third-party insurance policies address distracted driving convictions and the potential impact of fines or convictions on your policy and premiums.

### ***Seize the Initiative***

Acceptance that distracted driving is as illegal and hazardous as drunk driving is a critical part of any employer-instituted program to increase awareness of the need for personal, company and third-party safety. In-house policies that demonstrate the responsibility of owner-managers for providing clear-cut practices to all employees will not only confirm corporate stewardship but may save your business from litigation and unnecessary costs.

### ***Get Your Employees to Sign***

A good example of a Distracted Driving Policy, which may be useful as a model for your own business, can be found at <https://www.osha.gov/distracted-driving/modelpolicies.html>. It is advisable to have your policy reviewed by legal counsel before asking your employees to sign. ♦

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## ***Beware of Malicious RATs***

***A RAT is malware that allows a remote “operator” to control your computer from any location.***

The acronym RAT brings shivers to even the most experienced anti-virus programmer. A remote access tool (also referred to as remote administration tool), or RAT for short, is a seemingly innocent type of software used to access and control a computer system remotely. As the description depicts, a RAT is not much different from products such as Windows Remote Desktop, TeamViewer or VNC in that it allows an external third party access to your computer to assist with team collaboration, troubleshooting, and/or repairs. Unlike these useful and legitimate tools, however, the software typically described by the acronym RAT is used for nefarious activity and is associated with those who wish to gain access to and control your computer for personal gain or malicious purposes and, as such, do not seek “permission to come aboard.”

The use of RATs to gain access to people’s private data and personal lives has gone “mainstream.” Notable occurrences are popping up more frequently in the news, such as when Cassidy Wolf, Miss Teen USA 2013, and several other victims were spied upon by a 19-year-old computer science student who took over their computer cameras and purportedly attempted to blackmail the teen with unflattering photos and videos.

### ***A RAT Is Powerful***

RAT software is incredibly powerful and can leave your computer, and therefore your data and personal life, vulnerable. Once installed, the third party can, without your knowledge:

- turn your computer on and off remotely at will
  - install other software
  - turn your computer camera on or off and capture images and sound
  - immobilize anti-virus software
  - make changes to your computer registry
  - use your computer to attack other computers
  - access credit card or other confidential data
  - steal passwords and account information
  - override the keyboard and the mouse
  - reformat your hard drive
  - access storage drives attached to your computer
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***A RAT can do anything you can do.***

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### A RAT Can Imitate You

In essence, anything you can do while sitting in front of your computer screen, a hacker with RAT software installed on your computer can also do from any remote location, whether it's down the street from your home or office, or across the globe. Maintaining up-to-date software, operating systems, and anti-virus programs has been the mantra of computer security experts since the first Trojan horses started appearing in a 1986 freeware program called PC-Write. Much like other viruses and Trojan horses, this type of malware can be introduced onto your system when you open attachments in your email, download and install software via P2P (peer to peer) file sharing software, or download files from the Internet. To help keep your system clean and secure and eliminate the risk of inadvertently installing a RAT onto your system, remember to follow these general computer safety guidelines:

- Purchase or download software from reputable software companies.
- Deal with known and well-established computer technicians and support companies in your community.
- Avoid the temptation to click on free software pop-ups or add-ons. Even if it appears harmless, you can never be sure how random freeware might impact other software on your computer.
- Carefully review any email that comes in with an attachment. Ask yourself whether you know the person from whom the email came. Even if you do, it might not be wise to follow a link or download an attachment just for the sake of seeing some cute kitten run across your screen.
- Download and install apps to your smartphone from the app store that has been vetted by your carrier. Avoid any third-party apps that provide links to download software, sounds or images to your phone.
- Always run an anti-virus scan on CDs, DVDs or any external data storage device before copying files or installing software.
- Keep your anti-virus software up to date, and always download and install any updates prior to going online or using external storage devices.
- Do not click on or open pop-ups that indicate they have found weaknesses in your system. Hackers have been known to use this scare tactic as a means of planting viruses within your computer.
- Don't download software or upload personal information unless you have a secure connection (HTTPS).
- Run anti-virus scans on data being transferred from one computer to another, even within your own office. It only takes one infected machine to compromise all your data.

### Anti-Virus Software Is Reactive, Not Proactive

It is always important to remember that most anti-virus software is reactive – malware or viruses cannot be detected by your anti-virus software unless there is something to find, which means that by the time it is detected, it might already be too late. To make matters worse, hackers are determined and inventive and are always looking for ways to “beat the system.” Recently, hackers have been trying to find and exploit vulnerabilities in frequently used software such as Oracle Java and Adobe Reader. This tactic is devious because these applications are not typically built to protect against such invasions and are not designed with the “beefed up” security of Microsoft Windows and other operating systems.

### Be Vigilant

While this new pattern of attack may leave the unsuspecting user at greater risk, a vigilant computer security regimen will help to protect against these hackers and can keep even the RATs at bay. ♦

# PYC Briefs

Congratulations to Jessie Everett who has successfully completed the Core Knowledge Exam (CKE) and will be attending the School of Accountancy (SOA) in June 2014.

### Dad...Mom... I Need Your Help

**If your son or daughter approaches you for a loan to start a business, make sure they have a solid business plan.**

It has always been difficult for young people to start their working lives. The traditional route has been to apply along with hundreds or perhaps thousands of other equally well-educated people for advertised positions. But many young people, even those with post-secondary education, are unable to find work and believe the only course of action is to start their own business.

Even though they are well educated in their chosen field and perhaps have studied accounting, marketing and other subjects essential to running a business, they are not necessarily experienced with the pragmatics of a business venture.

#### Turning to the Parent

Your offspring has finished their formal training and has come to you with an idea for a business. You want to help but you are also an owner-manager who knows how hard it is to start and grow a successful business. You don't want to say “no” but you are not prepared to say “yes” yet either. So, maybe a little role playing would help get the two of you to a decision.

#### Get a Business Plan

Pretend you are the loans officer of a bank and have your son or daughter pretend they are the small-business person approaching the bank with an idea. Your question, of course, is the same as the bank's: “Will I get my money back if I risk it with you?” To find the answer, the bank would ask for a business plan. You should too. If your offspring hasn't already prepared a business plan, this is the time to get some experience. Tell them there's plenty of help available online from the Business Development Bank of Canada, the chartered banks and, of course, in the bookstores.

**Check the Industry Canada website for important statistics.**

#### A Reality Check

Make sure they read the latest edition of the Industry Canada annual publication **Key Small Business Statistics**. The **Key** defines a small business as an incorporated business with one-to-99 employees that has remitted payroll deductions for at least one employee, has sales revenue of \$30,000 or more and has filed federal corporate tax at least once in the previous three years.

*I Need Your Help.....continued from previous page*

This publication is a reality check on survival rates, education levels of owners and many other facts that define small business ownership. The Industry Canada website is also an important source of useful benchmarking statistics that will give your young entrepreneur an idea of the way industries actually perform as measured by revenue, expenses and net profit/loss.

### **From a Business Perspective**

As a prudent investor, you will want to see the following in the business plan:

What is the product or service?

Is there a market for it and who are the competitors?

Does your child have the relevant education and other competencies?

What assumptions are made about the economy, the industry, the market and interest rates for the first five years of the business?

Have sales, cash flow and profit projections been prepared for the next five years? Are the projections reasonable in light of the assumptions?

Are there other partners or shareholders contributing capital?

Have their backgrounds been checked?

What will they do and do they have the requisite skills?

What are the terms of the shareholders' agreement?

Who has decision-making and signing authority?

How long will it take for the company to break even?

What is the anticipated rate of return compared to a risk-free investment?

Will there be any lenders ahead of you?

Is the loan insured against the death of the borrower(s)?

### **Your Investment Risks**

What security is available for you in the event the business fails?

How long will it be before the principal amount is repaid?

Is the proposed return on investment from the business equal to or greater than the current rate of return on your existing portfolio?

### **Think of the Long-Term Impact**

Don't make the loan for emotional reasons. Your offspring will have other opportunities; you may not. The older you are the less time and opportunity you have for financial recovery if your son's or daughter's company fails. You could end up with insufficient funds to live through your senior years. If the business fails and funds are lost are all parties aware of the emotional tsunami that may engulf the family? Have you discussed with other family members whether the outstanding loan will be deducted from the entrepreneurial child's share in the distribution of assets upon your death?

Have the business plan reviewed by professionals before committing your funds. Better to spend a couple of thousand dollars at the front end for professional guidance from accountants, lawyers, and investment advisors than it is to lose \$200,000 when the business goes south for lack of due diligence.

### **And Finally...**

Make it very clear to the adult child that business is business and family is family. When it comes to business, expect them to meet the conditions of agreements. If they do not, you will pursue available remedies in your own interest. ♦



**Spring 2014**

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