

PROTOCOL AND SUBSCRIPTION: USE OF WI-FI BY LAWYERS IN THE COURT HOUSE

Explanatory Notes

With the cooperation of the Courts and Courts administration, Legal Data Resources (Manitoba) Corporation ("LDRC"), a subsidiary of The Law Society of Manitoba, has arranged for installation of a high speed secure Wi-Fi system for use by lawyers at the Law Courts Building, 408 York Avenue. This system will provide security which other computer access methods do not have and will provide sufficient speed to allow connection to users' offices or the internet via computer, almost seamlessly, using encrypted transmissions.

As part of this initiative, LDRC approached the Chief Justice of Manitoba, the Chief Justice of the Court of Queen's Bench and the Chief Judge of the Provincial Court concerning use of such facilities during court room appearances and in the Court House generally. The judges have advised that use of the system for court and professional purposes only would be expected when such systems are used in the Court House and have provided guidance on the form a usage protocol ought to take. This Protocol and Subscription is the product of those discussions, in addition to incorporating subscription documentation required for LDRC's purposes. LDRC, on its own initiative has also included its own security requirements in this Protocol and Subscription.

The section below under the sub-heading "Privilege, Confidentiality and Privacy" has been recommended by The Law Society of Manitoba as the appropriate standard of professional conduct with respect to preservation and protection of solicitor client privilege.

Use of Wi-Fi in Court Rooms

1. Use of Wi-Fi facilities in court rooms by the private bar is encouraged for the following purposes:
 - (a) scheduling of dates for trials, bail applications, motions and other appearances using electronic scheduling systems (such as Microsoft Outlook) so that dates can be established on an instantaneous basis during court appearances which times will be firm and will no longer be subject to subsequent change due to scheduling conflicts previously unascertainable until counsel returned to her/his office;
 - (b) providing private bar members with a computer communications link to their law firm office systems for the purpose of case management during the hearing of trials or motions, review of correspondence and documents pertaining to the file but not carried to the Court House, research via the Internet, or consultation with other firm members in support of trial or motion activities.
2. No use of Wi-Fi is to be made which will interfere with the smooth flow of evidence and arguments during the course of a trial, motion or other appearance. In particular, counsel should not interrupt proceedings with the excuse that access to counsel's offices via computer is required before allowing current evidence or further evidence to be

presented, or before questions are asked by the Court or by opposing counsel. However, use of a computer by counsel assisting lead counsel, using such Wi-Fi capabilities, is encouraged, subject to the overriding consideration that it is not disruptive.

Use of Wi-Fi in the Court House Generally

No use of Wi-Fi in the Court House shall be made for any purpose which would be embarrassing or bring the administration of justice into disrepute. Accordingly, no use of the Wi-Fi system shall be made for any purpose unrelated to cases in which counsel is representing clients before the courts or is monitoring, whether the unrelated use of the Wi-Fi system be for recreation, entertainment or business matters other than those pertaining to cases before the court on which counsel is retained or is monitoring. This condition of use is to be considered a general condition of use and individual discretion is expected to be applied by users in ensuring this condition is met notwithstanding the measures described below which are being adopted by LDRC.

In addition to the foregoing, it is also agreed and acknowledged by the Subscriber that LDRC will employ standard business use content management software to block access to a range of potentially embarrassing sites. Practitioners requiring access to any blocked site will be granted access to a specific site or sites on an individual request basis according to the following process:

1. In the event that counsel requires access to a blocked site in order to facilitate representation of a client, counsel is to phone, or correspond, with the General Counsel of The Law Society of Manitoba at the number below to provide such explanation as is necessary and if, in the opinion of General Counsel such access should be granted, General Counsel will so advise LDRC without disclosing the name of the client or the reasons why representation of the client requires unrestricted access to the site in question.

Ms. Noelia Bernardo, General Counsel, The Law Society of Manitoba, 219 Kennedy Street, Winnipeg, Manitoba R3C 1S8, Phone No.: (204) 942-5571, Fax No. (204) 956-0624, Email: nbernardo@lawsociety.mb.ca. Failing the availability of Ms. Bernardo on a timely basis, counsel are advised to contact Ms. Kris Dangerfield, the CEO of the Law Society at the same address, Phone No.: (204) 942-5571, or Email: kdangerfield@lawsociety.mb.ca

2. In the event that counsel requires access to a blocked site for reasons that do not pertain to the representation of a specific client, counsel is to phone or communicate with LDRC, which will permit such access as is necessary if counsel is able to provide a reasonable explanation as to why access is required.

Any abuse of this section may result in temporary or permanent cessation of service in the sole discretion of LDRC. LDRC may share with the Law Society the names of subscribers whose access has been suspended and the reasons for LDRC's suspension of their access.

Privilege, Confidentiality and Privacy

LDRC has undertaken the supply of this service on the assumption that a significant portion of the information transmitted over the Wi-Fi system is subject to solicitor/client privilege and will

react accordingly in the event it is served with a court order authorizing police access to the Wi-Fi system generally or to any Subscriber's communications. Further, if legislative changes previously presented by the federal government eliminating the requirement for a court order are enacted, LDRC will safeguard any requested information but resist provision of such information to authorities by applying to court in cooperation with the Law Society for a ruling on whether such information is privileged. Further, unless the applicable legislation or court order states otherwise, LDRC will advise immediately the Chief Executive Officer of The Law Society of Manitoba when such court order is served or authorities attempt to obtain such information pursuant to new legislation so that the Law Society may respond in accordance with its "Privilege Protocol".

With respect to confidentiality, in the absence of a court order or new authorizing legislation, LDRC will not provide information to any party concerning the use by a lawyer of the service supplied nor will it supply any information relating to userids, passwords or any other matter without the express written consent of the lawyer on each occasion when information is requested by a third party.

With respect to the privacy and security of the system, LDRC will exercise its reasonable best efforts to ensure the integrity and security of the system including ensuring that all transmissions are encrypted. For the purpose of providing privacy and security for the system, users will be required to apply for a userid and will be assigned a password. LDRC will also conduct periodic reviews to test the security and integrity of the system and, as a consequence of such reviews, may require users to adopt new security measures, including requiring new userids and more secure passwords or requiring use of plug-in devices for authentication purposes, and may prescribe new protocols for access to the system. LDRC will notify any affected Subscribers of any security breaches it discovers.

The Subscriber agrees that in the event of any change in the system which has the effect of preventing LDRC from granting the Subscriber partial or complete access to the system, or in the event of the breach of a protocol by the Subscriber, LDRC shall be entitled to discontinue service to the Subscriber, as applicable, without such discontinuance of service constituting a breach of this agreement by LDRC.

Prohibited Activities

As a condition for use of the LDRC facility and access to the Wi-Fi system at the Court House, the Subscriber will not:

- (a) permit any person to use his/her/its userid;
- (b) divulge, share or compromise his/her/its password;
- (c) use any other LDRC Clients' or another party's userid;
- (d) attempt to access or modify the datasets, data or programs of LDRC or another user;
- (e) enable any user who does not have the necessary authorization to access data belonging to or intended for a third party;
- (f) use the facility for activities different from those for which access was granted;

- (g) develop or use programs or create situations which adversely impact computer services to other LDRC Wi-Fi system users;
- (h) make unauthorized copies of LDRC proprietary software;
- (i) reveal details of any checking, editing, validating, balancing or security mechanisms included in hardware or software, to any other person without the authorization of LDRC received in writing;
- (j) test or attempt to compromise security related to the facility;
- (k) take any action which might reasonably be construed as injurious or detrimental to the interests of the facility or its use by other subscribers;
- (l) reverse engineer any element of the system for the purpose of providing a competing service.

Subscription and Term

Based on all of the foregoing, the Subscriber hereby subscribes for Wi-Fi service for a term of one (1) year, which term shall be automatically renewed for a further year assuming satisfactory operation of the system during its first year, subject to termination on three (3) months' written notice by LDRC or the Subscriber. The Subscriber also agrees that service may be terminated by LDRC in the following circumstances:

1. upon the termination of Wi-Fi service as a result of the direction of either of the Chief Justices, the Chief Judge or the Minister of the Crown in charge of the Court House;
2. in the event that any technical problem arises for a period of longer than fifteen (15) days without correction, which technical problem prevents the service from being provided and which technical problem cannot be rectified within a reasonably foreseeable time;
3. in the event of any event beyond the control of LDRC, including acts of God and labour disputes, which interrupts service for a period of more than thirty 30 days;
4. in the event of a breach by the Subscriber of any confidentiality or privacy protocol as set out above.

Cost

The Wi-Fi service is to be supplied to Subscribers who are practising members of The Law Society of Manitoba without cost during the Term. Limited and reasonable support will also be provided by LDRC without charge, provided that where substantial support, in the opinion of LDRC, is required by a firm or practitioner in order for it to use the Wi-Fi system, LDRC shall provide a notice stating that further support will require payment to LDRC before it is provided and provide notice of the applicable hourly rate to be applied.

Communication Method

It is understood that the Subscriber will be deemed to receive communications from LDRC when sent by e-mail to _____ [insert e-mail address]. The Subscriber

acknowledges that she/he is responsible to provide LDRC with notice of changes to her/his e-mail address. It is also understood and agreed that the Subscriber will be sent an e-mail or written communication identifying a network user identification number and that a password will be provided via a separate communication.

Practitioners whose offices have technical support personnel for their remote access systems should arrange for such personnel to contact LDRC Technical Support at (204) 984-9840 as soon as possible once this Subscription form is accepted, to ensure that such remote access systems will function properly using the Court House Wi-Fi system.

Maintenance and Support

LDRC will exercise its best efforts to ensure system availability during all hours when the Court House is open. In the event of any outage, LDRC will attempt to communicate immediately by e-mail with its users to notify them concerning such outage and will also provide advice about processes which can be used during any outage period.

LDRC will also provide user assistance through its Help Desk which can be reached at (204) 984-9840 or courtwifi@ldrc.net. Help Desk support will also be available to internal law firm computer personnel for the purpose of establishing communications to law firm computer networks for scheduling, e-mail and case management purposes.

No Claims Against LDRC and Indemnity

The Subscriber hereby acknowledges that services provided by LDRC hereunder are provided on a no-cost, best efforts basis with the subscriber accepting all risks of use and that there are therefore no express or implied warranties in respect of the service including but not limited to implied warranties of merchantability and fitness for a particular purpose. Accordingly, the Subscriber hereby waives any right of action against LDRC arising from any action or failure to act on the part of LDRC or for any indirect, incidental, consequential, special, punitive or exemplary damages including for lost fees or profits even if LDRC has been advised of the possibility of such damages. Further, the Subscriber waives any right to seek injunctive or other relief falling outside the scope of a claim for damages.

The Subscriber also agrees to indemnify LDRC and to hold it harmless from and against any loss, damage, claims or demands whatsoever arising out of Subscriber's activities including loss, damage, claims or demands of third parties arising from but not limited to, any express warranties or representations made by the Subscriber, its agents or employees, relating to protecting the confidentiality of information through use of the Wi-Fi system.

Governing Law

This agreement shall be governed by the Laws of the Province of Manitoba.

No Assigns

This service is available at the outset only to practicing lawyers resident in Manitoba who are in good standing with The Law Society of Manitoba. The Subscriber shall not have any right to

assign this agreement or to sell any individual portion of the service described in this agreement or to sell or assign any software associated with the service described in this agreement or make copies of such software without the written consent of LDRC.

Signature

This subscription form has been duly executed by the subscriber this ____ day of _____, 20__.

Signature

Subscriber Name

Address

City, Province, Postal Code

Telephone Number

Acceptance

LDRC hereby confirms acceptance of the above Subscription this ____ day of _____, 20__.

**LEGAL DATA RESOURCES (MANITOBA)
CORPORATION**

Per: _____

Legal Data Resources (Manitoba) Corporation
Subscriber Profile for Use of Court House WIFI

User's Name : _____

Law Firm: _____

Address: _____

Postal Code: _____

Telephone: _____

Fax: _____

E-Mail: _____

Operating System Used: _____

For password reset identification purposes, please provide a challenge question and response (e.g. first school attended).

Question: _____

Response: _____

Signature of User

Date