



FÉDÉRATION INTERNATIONALE DES CONSEILS
EN PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL FEDERATION OF
INTELLECTUAL PROPERTY ATTORNEYS

INTERNATIONALE FÖDERATION
VON PATENTANWÄLTEN

Covid-19 Resources

FICPI WEBINAR 20 MAY 2020 'How will the world look after lockdown?'

Session notes

These notes do not capture every element of the recording but will provide an overview.

Moderator: [Doug Deeth](#)

Speakers: [Nancy Shapiro](#), [Marshal Stearns](#)

Good morning, afternoon and evening!

My name is Doug Deeth, I'm an IP lawyer in Canada and I'm the immediate past President of FICPI, and this webinar looks at what our offices are going to look like when this pandemic is over or almost over.

As you probably know, FICPI is a global community of independent IP attorneys. In fact, FICPI is the only international NGO whose membership consists entirely of IP attorneys in private practice. We believe that the FICPI business family makes the world a little bit smaller, bringing independent IP attorneys from around the globe together to connect, share knowledge and grow.

Like everyone else in the world, FICPI and FICPI members are striving to address issues that arise as a result of the COVID-19 crisis and we are working hard to support FICPI members and the IP community at large.

As part of our resource package during that time we've developed this webinar series; a comprehensive spreadsheet of key changes in IP offices; plus blogs and news articles; and other initiatives, to bring alternative ways to share knowledge and thought leadership and for members to contribute their own ideas and experiences.

For those of you who are not yet members of FICPI, but are interested in joining, we will send you details about how to join after the webinar.

Many of us now dealing with an emergence from the lockdown and feel that we are being pushed to return to normal rather than being held back by the rules that were intended to flatten the curve.

The question for today is: How are things going to look when we return to normal or near normal?

When I needed someone to talk to about the office of the future, Marshal Stearns of Bartlett & Associates was one of the first people I called.

Nancy Shapiro of Koskie Minsky has offered guidance and advice to my firm for the past 20 years. She will talk to us about how changes may affect our relationships with our staff.

Doug: Marshal – I started talking to you about my plans for future of my office a few months ago, before Covid, when we were looking at having more people work from home.

**FICPI is a global community, built on trusted relationships,
which strengthens the practice of the independent IP attorney.**



What should we expect now?

Marshal: It's a work in progress during this point.

On a very optimistic basis, we will get through this through this with a vaccine, growing immunity or other solution, and Covid19 will become a background virus similar to the other ones we live with.

Of all the different work spaces, the legal space is very well suited for working in a world where a virus is present, with private offices and assistants typically more than six feet apart and meeting rooms that can be reconfigured easily to achieve social distancing. No major redesign is likely going to be required compared to a tech firm with open offices, for example (with one significant exception which I'll talk about later on).

The government mandated work from home (WFH) (which is currently relaxing) has forced us to look at technology from the point of view of the user and the support services from the legal firms. We were all less productive during the early stages of WFH for various reasons. The social aspect of the office has also been missing and people may prefer to migrate back to the office for this reason.

Will need a transition strategy to help us to get back to the office. The transition strategy consists of three significant steps:

- Continue WFH programmes but with more office working mixed in.

Gradual return to work

Building confidence

Balancing essential office work with risk factors and individual preferences

The workplace will be less dense when we come back after Covid-19

- Retrofit furniture

Very visible step that provides reassurance to staff. It can be installed at reasonable cost and could involve installing panels to create more secure work stations and staggered seating as there will be some people still working from home.

- Establish protocols

This is another visible step that will provide reassurance to returning workers. It could be just a set of policies or a form of contract between the employee and the law firm.

Example image from Knoll furniture manufacturer shows panels fitted to work stations – there's an opportunity to make the retrofits at reasonable cost and in quick time. It will mean workers feel more reassured.

Reasons for protocols



To protect the law firm against law suits from employees claiming to have contracted Covid-19 whilst at the office. It also demonstrates the interest of the employer in taking care of them. It's a visible course of action for the employee to see the employer taking care of them.

Individual employees may need to fill out a questionnaire at the beginning of the day to state that they are not suffering from symptoms of Covid-19 and thereby gain permission to attend the workplace.

You'll need to think about staggered working hours – some employees could arrive at 7am and some at 2pm, to avoid rush hour and limit the number of people in the office at any time.

In our view we shouldn't look to eliminate social interaction but to limit it to maintain social distancing.

Disposable desk pads will be supplied each day and disposed of at the end of the day, to avoid the desk being contaminated at the end of the day. Floor markings will show flow and distancing. Hygiene stations will be everywhere.

Cleaning will become part of the protocol of the employees.

Firms will need to have a policy for a Covid-19 event which will need to be clearly understood so that everyone understands the actions they'll need to take.

Protocols also involve WFH protocols.

These can include the ergonomics of WFH – safety of task chairs and work stations. There will be the question of who pays for new furniture if its required. Requirements for confidentiality, agreement for work hours, tech support, etc.

Managing a WFH workforce

This will be beyond the experience of most senior managers currently who will need to support the WFH strategy. Senior management will also need to support the WFH strategy.

Will need to maintain the sense of corporate culture and being part of the firm.

HR will need to provide support on career path objectives so that people WFH don't feel out of sight is out of mind or that they'll miss out on promotions.

The workplace areas

Reception – the law firm needs to decide if they want a virtual receptionist such as an iPad or a friendly receptionist with 6 ft distance and a protective screen. Hand sanitizers should be available and one question you'll need to decide is whether the receptionist should have the right to refuse entry.

In north America, most private IP offices are exclusive to a single lawyer. There is some office sharing with clerks and students currently which will need to stop.

Paper sharing is not abiding by the 6 ft interaction and there will need to be more of a switch to a corporate digital initiative.



In Europe and elsewhere in the world there is more of a sharing of private offices amongst lawyers and working from home will help facilitate single occupancy. If the decision is to not allow two lawyers sharing an office at the same time it may require smaller offices for individuals and this could be a significant capital cost and may require more office space.

Executive assistants – in North America, executive assistants do typically have the 6ft social distancing, if not panels will need to be installed and furniture relocated as necessary. Filing cabinets should not be shared if possible.

Meetings will be virtual where possible, even with colleagues within the office. Personal devices will be used to control the rooms to avoid cross contamination on air con and other controls. Hand sanitisers and disinfectant wipes will need to be available.

Central print copy/filing areas are fairly common in law firms. Do you have one administrator for this who drops it off throughout the day or do you allow individuals to access one at a time? Most people might think that there will be too much cross contamination if 10 or 20 people are using the room throughout the day. We expect to see more personal print copiers being installed.

General office space such as marketing, accounting and tech support tends to be open plan. There will be no desk sharing at first. There will be work required to retrofit/reorient/separate workstations. Staggered seating can be introduced as part of the WFH policy and screens can be used to create demarcation.

Here's an example of a furniture layout to take advantage of the empty desks from a WFH policy. The 'B' individuals are at the office and the 'A' individuals are working from home. You want to avoid the As and the Bs never meeting each other so need to some mixing and matching of individuals.

The firm café – most firms will want to establish capacity limits and a sani-wash dishwasher will be critical. It's worth considering that the landlord will put in food court restrictions and employees will have less of an appetite for eating out. This could lead to eating at desks and a policy should be devised around this.

In the longer-term, furniture design will likely change for private offices and open areas. Antimicrobial – it is not clear at this time whether that has any impact on Covid-19. We would encourage panels put in to avoid claustrophobic environment of old world cubicles. Once WFH numbers have been defined, more permanent redesigns can be achieved. This might be a year or more down the line. You will have a clearer understanding of what's required at this point. After the initial period, workstation layouts will be refined for the longer term. Small meeting rooms could be turned into private offices because they will pose difficulties of hygiene even if used as telephone rooms.

Example from Cushman & Walkfield shows markings on the floor between individuals and workstations (these can be quite subtle to fit company colours) and the temporary desk mats.

Longer term effects

What will be the impact on real estate footprint? It depends on a number of factors. WFH means less dense workplace and social distancing requires its more spread out. The appetite for shared desking is key. Giving up space may mean giving up space that's contiguous to your office and that could be very hard to get back in the future. It will be very hard to reverse the decision and to get that space back. We advise you don't jump to any decisions.



Tech enabled mini hubs could be an option, located mid-way between the home and office. They will offer better connectivity and could be a co working space.

Cell phones will become the main phones and laptops will be available for all.

The landlord-tenant relationship.

Tenants will need to ask the landlord how they will handle expended tenant working hours. How often is deep cleaning scheduled and how will it be paid for? Will the landlord have the right to refuse a new design for a new tenant if they don't feel it meets distancing for Covid-19.

Recap – we will get through this and will return to the office although WFH will be more popular than before.

Doug: Thanks Marshal, that was fascinating and changed a lot of my perspective about what should be done in the future.

Nancy – with the changes such as temperature screening, working staggered hours and so on, what effect will that have on the relationships with our employees, colleagues and partners in the firm?

Nancy: Marshal's presentation brings to mind a lot of question marks and unknowns because there is not case law in many jurisdictions around this.

We heard from Marshal about a lot of the big picture issues and what I'm going to talk about has a lot to do with the individuals.

This presentation will discuss Canadian law only.

I'm an Ontario practitioner and cannot advise on laws outside Canada. The issues I'll talk about will give you a springboard to look at the issues in your jurisdiction.

I'm going to talk about 7 points today:

1. Who should be physically present in the office
2. How to be physically present in the office
3. Health & safety
4. Hidden risks of remote work
5. Screening
6. How to deal with diagnosis of an employee
7. Liability

So, who should be physically present in the office?



Perhaps it's easier to identify who should *not* be in the office. Look at the laws in your jurisdiction. Be cautious about creating risks for people. Are you forcing people to return to the office or are you permitting a combination of WFH and office?

You are justified in asking if staff are living with front line workers, they should not be in the office, neither should anyone with a health condition that makes them high-risk or if they're living with someone who is high-risk. If the employee is vulnerable with asthma, and other chronic conditions, it would trigger the obligation by the employer over not coming back to work. They may need to be placed on leave.

People with childcare responsibilities may not be able to return to the office if schools remain closed. If the childcare responsibilities cannot be met, you cannot necessarily demand that people leave their families and come in but this is a convoluted ground and would involve getting information about their spouse or others who could look after the children or if there are other childcare resources available.

This is a very fluid situation.

How to be physically present in the office

As Marshal said, we expect a gradual return to work and there will need to be a cultural shift and mindset shift about how we go to work. I would recommend prioritising who needs to go into the office. You may have people who would prefer to go into the office but you need to assess the need.

You have to follow the expert recommendations about distancing and necessary office modifications.

You need to track who is in the office when, to determine close contact – you'll want to know who came in on those days and to make note of that. You need to sometimes assess who has been in close contact with someone when they have been diagnosed with Covid.

You need to be able to make recommendations on who stays home and self-quarantines.

Health & safety laws

All those legislations give employees the choice to refuse unsafe work. If you fail to take appropriate safety precautions you could see refusals to work and Ministry of Labour being called into work.

This is about creating safe work environments so that you don't start facing workplace refusals. There could be a policy rather than a contract about how you work and the policy can change over time.

If you have someone who contracts Covid-19 at work, you could face a workplace safety insurance claim. It will all boil down to negligence and what a reasonable person would do to protect their staff.

Working from home – hidden risks of remote work

Some jurisdictions, such as Ontario, state employers are not responsible for H&S at home, you need to check your jurisdiction's requirement and whether you want to assist with WFH ergonomics etc even if you are not required. There are still good reasons to ensure your staff are safe and healthy.



One of the biggest risks of remote work is tracking hours. Most jurisdictions have limitations on hours of work. Licensed professionals may be exempt from this but support staff may not be. Establishing hours of work and keeping to those hours of work will be important.

Also ensure paperwork isn't vulnerable. Staff must still appreciate that everything is still confidential even from spouse and staff.

Check what's insured after it's left the office and is now at home.

Be sure you're attuned to the privacy requirements in your jurisdiction. E.g. health records are supposed to be kept locked and should be kept in a secure location even if someone prints it off at home.

Screening

Because of Covid-19 it might be ok to take someone's temperature but generally it could violate human rights. And even so there could be another underlying medical condition that gives people a temperature. There will be some buildings putting in place screening on entry and you must let staff know and ensure there is signage for temperature screening etc.

Dealing with a Covid-19 diagnosis

Have a policy requiring your employees to tell you if they are diagnosed with Covid-19.

You are going to need to be poised to implement these and to advise the close contact people that they have been exposed.

Liability

We are trying to keep all staff healthy and safe and to avoid liability.

This is a time to be agile and implement protocols and policies and demonstrate a safe working environment before people return to work.

Be cautious and plan. Rules and recommendations are changing so be ready to change and adapt.

Questions

Doug: Who is responsible for protective equipment such as PPE?

Nancy: In practice the employer should take responsibility and supply the PPE. Governments may make it required practice in the future.

Doug: What's a rough figure per person for retrofitting screening, sanitisers, etc?

Marshal: Like so many things it really depends, we're at the early stage of return to work. The more expensive costs will be screens and workstations and lower costs sanitisers and paper etc. The first set of costs is specific-incident dependent. I'd guess at panels around \$200-\$300 per work station but you'd need to analyse it per pod. For hand sanitisers and paper I don't know as it depends how long the process will go on for.



Doug: Things may be all right 'for now' – firms are imposing wage cuts and telling people they have to take vacations now although they can't go anywhere.

Nancy: These are very complex issues. There are no sudden rights to change what you do with your staff and your policies with your staff. Most companies have policies around vacation, for example. Wage cuts are a bigger issue – is it constructive dismissal, a claim for wage loss, will people just accept it? It could be another one-hour discussion.

Doug: Are flexible hours going to be acceptable going forwards?

Nancy: Lawyers are different to support staff. Support staff should have a set number of hours per day but you could say that they flex them over a time period, they don't have to stick to working 9-5.

Doug: The virus lives on hard surfaces longer than soft, how does that sit with screening being made of hard surfaces?

Marshal: Hard screens can be easier to clean but we look for a solution that gives people confidence to return to work and a critical element will be allowing them to be cleaned at the end of each day. In the longer-term, products will come out from furniture manufacturers that will accomplish screening and acoustic aspects (which hard surfaces don't tackle well).

Doug: Concerns over unsafe workplaces – is that an objective decision over whether a workplace is safe?

Nancy: Yes it is objective and the decision would be made by a Ministry of Labour type inspector.

Doug: When we set our policies with respect to hours and flexibility, should we have formal policies, or can we just cover it off in discussion with employees?

Nancy: It's hard to prove your policies or if you've properly communicated them if they're not in writing. My recommendation is that they should be in writing.

Doug: Thank you both!

I'd also like to highlight that we will have number of additional webinars coming up, as you can see listed on the slide. Keep an eye open for announcements.

And finally, thank you to all of you for attending. You will receive an email shortly with a link to the webinar recording and other useful information.

How to join FICPI

Go to the website www.ficpi.org where you can see many national sections and you can contact them directly and join that way

Otherwise – can apply direct to secretariat@ficpi.org and we will contact you and provide you with more information.