

Social Media And Employment Law



Modern technology has created important challenges to old paradigms when it comes to workplace conduct. The internet allows basically anyone on earth to become a famous writer. Most of the opinions and literature are posted in relatively well controlled social media outlets such as Twitter, Facebook, LinkedIn and others. According to a recent poll, Canadian teens and young adults are the heaviest users of social networking sites with 83% of 13 to 17 year old's and 74% of 18- to 29-year old's having visited at least one such site. Six in ten people in their thirties have visited at least one social networking site and 45% of people in their forties have done so.

However full of benefits it may be, social media also carries its own risks, challenges and potential for abuse. Just recently, many have voiced outrage at how Facebook may have conducted psychological experiments with hundreds of thousands of users, without their consent, measuring one's ability to manipulate emotions by posting positive or negative news on their news-feeds.

Users of social networking websites will normally provide a host of personal information in a profile, including posting photos and expressing various free-floating thoughts. The problem with social media is that it is not always clear when the message is intended to be public or private and many users often do not realize that they are effectively making their private life part of the public domain. Certain privacy settings allow users to make their profiles and posts open only to a select number of chosen 'friends' but even here, the level of privacy that can be achieved is far from evident. For example, in the cases of *Murphy v. Perger* and *Leduc v. Roman*, the Ontario Superior Court held that a person with hundreds of friends on a social media outlet can have no reasonable expectation of privacy for elements freely posted on that site.

In the context of employment law, the use of social media as a forum for free expression raises a number of issues: to what extent can an employee use social media during working hours? Are employees limited in what they can write and post on social media outlets in relation to their work and colleagues? What

about employers – can they insist on disclosure of passwords to social media sites as a condition of employment? Are employers allowed to use technology to monitor their employees at work?

While social media per se remains largely unregulated in Canada, the use of social media in relation to employment is indirectly impacted by privacy and human rights legislation in Canada and the web of multiple laws, common law principles and regulations that comprise it.

The Canadian approach to privacy protection today lies closer to the European model of an all-encompassing overriding legislation, versus the US approach which delivers peaks and valleys of protection. In Canada, there are privacy laws that are applicable to public sector organizations, while others apply to the private sector. Also, by virtue of the existence of two levels of government (federal and provincial), Canadian privacy laws apply under federal law on the one hand, and under the laws of various Canadian provinces on the other, as is further explained below.

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