

Social Media In The Quebec Workplace



No need to reiterate the omnipresence of social media in our daily environment. Whether it is reading the mayor of Montreal's latest tweet, browsing a friend's pictures of his or her newborn on Instagram, or expressing dissatisfaction on our Facebook walls, there exists a multitude of reasons to get lost online.

Through their "social" character, social media gives the possibility to people to share more or less private information to a large public. As a direct consequence, it may occur that an employer gets his or her hands on information that would otherwise have been out of reach. In this context, it is legitimate to ponder on the use an employer can make of such information collected on social media.

Our jurisprudence has established that social media can be used as a means of investigation and surveillance. For instance, in *Sucre Lantic*¹

Several elements on social media can therefore be used as evidence, particularly photos, comments, statuses or fan pages. This is partly made possible due to the loss of expectation of privacy with regard to online content. Thus, in *Landry*² The Commission des Lésions Professionnelles (CLP) rejected a motion to declare the evidence inadmissible on the ground that it violated the right to privacy of the complainant coworkers. In this case, copies of Facebook comments made by coworkers and directed at the complainant were used as evidence. On this question, the CLP concluded that a person with a Facebook account who "[TRANSLATION] allows to his/her friends and to the friends of his/her friends to read his/her comments (...) can control his/her friends list, but it becomes more difficult to control access to a profile for friends of friends, a list that can become almost infinite". The CLP came to the conclusion that "[TRANSLATION] what ends up on a Facebook account is not part of the private domain in light of the multiplicity of people who can access it".

It is essential that one keeps in mind that evidence arising from social media must respect section 2858 C.c.Q. and thus, that it cannot have the effect of bringing the administration of justice to disrepute. For instance, the CLP stated in *Campeau*³ that an employer could not make false representations in order to obtain evidence on social media. In this case, a representative of the employer had fraudulently created a Facebook account likely to interest an employee. The goal was to thus become friends with the targeted employee in order to access the content he was publishing. Therefore, the method of collecting the information remains important for the admissibility into evidence of content collected online.

All in all, an efficient method for the employer to ensure the proper use of this

technology is to adopt an internal policy on the use of social media. The adoption of such a policy can thus guide employees as to the conduct to follow regarding their use of social media, whether it be in or out of the workplace. Such a policy will raise employee awareness in their use of social media, it will limit their expectation of privacy, it will remind them of their duty towards their employer, and it will facilitate the implementation of disciplinary measures in the event of non-compliance with the policy. Furthermore, the absence of a policy relating to social media could be considered as a mitigating factor in the event that an employee acts wrongfully. The adoption of such a policy is a first step towards the effective management of social media in the workplace.

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