Workplace Law And Media's Viewpoints Are Not So Far Apart

A browse through last week's papers reveals how the disparate themes of *National Post* columnists reverberated with the issues my clients face.

Consider Charles Krauthammer's piece, in Friday's *Post*, comparing the significance of the use of social media by the powerful and the powerless, particularly when responding to problems abroad, referring to Barack Obama's feckless responses about Nigeria, Ukraine and Syria. Krauthammer wrote:

"When a superpower, with multiple means at its disposal, reverts to rhetorical emptiness and hashtag activism, it has betrayed both its impotence and indifference. But if you're an individual citizen without power, if you lack access to media, drones or special forces, then hashtagging your solidarity with the aggrieved is a fine gesture and perhaps even more. The mass tweet is, after all, just the cyber equivalent of the mass petition."

Employers, too, have far more direct means at their disposal, in engaging their employees, than social media; announcements, speeches, emails and even the too often neglected one-on-one conversation.

I recommend to every client who wants to remain union free that the owner, local manager or chief executive meet privately with every employee on a regular basis. In addition to learning more than you imagined, it instills loyalty and ensures you have various sources of early warnings in the event of union predation.

Employees, with less access, are reduced to expressing their concerns about their employers in chat groups and Twitter. Many employers now have websites for employee engagement.

Increasingly, however, the line between acceptable and unacceptable commentary is blurred and employees have been disciplined and fired for disparaging comments made to co-workers or third parties in a social media setting.

On Saturday, *Post* columnist Jonathan Kay commented on *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*, a new book by Glenn Greenwald, a lawyer, journalist and defender of Edward Snowden. Kay discussed how everything we do is now monitored. He said the book made him "feel that he should be outraged, as opposed to actually making him feel outraged."

The same dichotomy plays out in workplace law between those who believe we need state surveillance for our security and those who believe privacy rights trump.

On the one hand, we have many legislative privacy codes along with a growing new specialty of Privacy Law. On the other, employees legally enjoy virtually no privacy protection. As Kay noted, “every keystroke we type on a corporate email is legally snoopable by our employers.” Employers have the right to know virtually everything you do on their dime. They can instal cameras, monitor the emails on your corporate iPhones, review whatever social networking sites they can access and potentially discharge you for any off-duty conduct that may be damaging to its image.

Where an employer suspects impropriety, it can set up an investigation wherein an employee’s refusal to be forthcoming can be cause for dismissal without severance. Even when the employer crosses what little line there is, there is almost no effective recourse. The courts have found that a lawsuit for even the most socially atrocious invasions of privacy is worth, if successful, only a few thousand dollars, a small fraction of the cost to proceed to recover it.

Also in Saturday’s *National Post*, Rex Murphy, Robert Fulford and George Jonas all wrote on the dangers of identity politics and the consequent diminished freedom of speech.

Jonas noted that the establishment of human rights commissions was an early warning of Canada’s drift from a free society to a police state.

Fulford talked about how Ayaan Hirsi Ali, a genitally mutilated Somalian Muslim, who just had her offer of an honorary degree from Brandeis University withdrawn because she was too controversial, was then pilloried by the press which found her attacks on radical Islam to be “too harsh.”

Murphy bemoaned the new campus cry to “check your white privilege” as a form of racism and diminishing of accomplishment based on hard work.

These same attitudes are reflected in Canadian tribunals and workplaces, particularly in the public sector, where affirmative action and harassment grievances for perceived slights have become endemic. The legal profession, both in adjudicators and the many “politically correct” practitioners, has not been aggressive enough in calling out bogus complaints. As University of Calgary’s Ted Morton, said: “There is an ideological homogeneity; in Canadian law schools… To train for the legal profession is to study the politics of victimology.”

Rather than being blind to colour, gender and sexual orientation, employers are now overly concerned about allegations that human rights are being inadequately respected, to the point that they too quickly resolve even entirely unfounded, opportunistic complaints. This finds its way into responses to employees who claim to be disabled, even when it is obvious they are avoiding work. Rather than meet with them and devise modified work, or put them to the test of an independent medical examination focusing on their functionalities and limitations, taking advantage of the legal rights and obligations employers have, they meekly provide paid time off, for fear of risking an unsubstantiated human rights charge.

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