



BARRISTERS SOLICITORS



Building Your Social Media Policy
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Thank you for joining us.
The session will begin shortly

Outline

- Social media legal risks for organizations
- Potential solutions
- Key elements of a social media policy and drafting tips
- Statutory changes: *Digital Charter Implementation Act*

Social Media Legal Risks

- Privacy and Security
- Public vs Private Accounts
- Product or Service Misrepresentation
- Reputational Risks
- Occupational Health and Safety
- Freedom of expression

Case Study: Canadian Mental Health Assn. v British Columbia Government and Service Employees' Union (Ferraro Grievance)

- Grievor terminated for alleged insubordination, insolence, breach of Code of Ethics, breach of trust
- CMHA's executive director told by former employee that Grievor was part of a Facebook chat group dedicated to disparaging the employer
- Executive director asked to see Grievor's phone to check and she refused - was terminated

Potential Solutions

- Have a policy in place - ensure employees understand it and that it is enforced consistently
- Training and education
- Discipline and/or termination where appropriate

Policies and training/education will allow employers to take more aggressive steps if an employee does something on social media that puts the employer at risk

Case Study

Kim v International Triathlon Union

- Ms. Kim was communications manager with triathlon governing body
- She had social media accounts, from which she made a small number of posts and tweets that were arguably somewhat unprofessional, though may have been intended as humorous
- She wrote an emotional and highly inflammatory post on her personal blog that disparaged her supervisor (compared her supervisor to her mother) - fired for cause

Policy Audit / Needs Assessment

- Before drafting need to:
 - Define need and scope
 - Examine what is in place in policy & contracts
 - Look at applicable contractual provisions
 - Ensure alignment with existing policies:
 - Privacy Policy, Use of Technology/Network Policies, Harassment Policies, Code of Conduct

Social Media Policy Implementation / Enforcement

- For existing employees, have to give proper notice of the change in policy/new policy
- Employees must acknowledge that they understand the policy
- Consistent enforcement is crucial

Key Elements of a Social Media Policy

- Applies to conduct after work hours
- Restrictions on social media use at work
- Notify employees of monitoring by employer
- Employees' obligation to protect confidential information
- Restrictions on the use of employer email accounts and/or logos
- Clearly set out prohibited conduct and consequences of non-compliance

Drafting Tips

- Always write clearly and precisely
- Include a “why” and “who” statement
- Definitions are important: Include an expansive definition of “social media” - anything specific can become outdated quickly (i.e. Myspace)
- Include an expansive description of what would constitute “prohibited conduct”
- Include clear rules about acceptable use
- Enforcement and consequences need to be clear

Sample Provisions

- Purpose: “This policy governs employee use of social media and other on-line platforms in order to ensure that the legal and business interests of the Employer are protected.”
- Scope: “This policy applies to employees, contractors, volunteers and anyone else that could reasonably be seen as representing the company/employer”

Sample Provisions

“**Social Media**” means any form of online publication or presence that allows employees and citizens to engage in multi-directional conversations in or around the content on an internet-based application. For the purposes of this policy, social media should be broadly understood to include blogs, wikis, microblogs, message boards, chat rooms, electronic newsletters, online forums, social networking sites, and other sites and services that permit users to share information with others in a contemporary manner. For further clarity, social media includes but is not limited to the popular websites and platforms of Facebook, Twitter, Instagram, TikTok, YouTube, and LinkedIn.

Sample Provisions

Employees have the same rights of free speech as other citizens. However, employees must not:

- Use the Employer's name on any social media or on-line platform.
- Participate on social media in a manner that harms the Employer's reputation. This includes posting offensive content, such as racial, ethnic, sexual, religious, and physical disability slurs, or engaging in conduct that constitutes harassment or bullying.
- Make comments on social media that relate to the Employer, the Employee's work with the Employer, or other employees, without first obtaining written permission from the Employer.

Case Study: *Toronto (City) v Toronto Professional Fire Fighters' Association, Local 3888*

- Grievor was firefighter with 2.5 years of service
- He made several publicly visible tweets on Twitter with varying levels of sexist, racist, and/or vulgar content
- Identifiable as Toronto Fire Service employee
- Three of his tweets were featured in a National Post article about the culture at the Toronto Fire Service
- Fired for cause and cause upheld

Statutory Changes: *Digital Charter Implementation Act*

- Has the potential to impact private companies in Alberta
- Only in first reading with House of Commons
- Not clear yet whether there will be an exception (like in PIPEDA) for Provincial companies
- Much broader than current provincial legislation, so companies may need to respond with changes to social media policies once implemented



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Thank You For Your Attention

Questions Welcome!