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INTEGRATING SOCIAL MEDIA INTO THE WORKPLACE

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Social Media - The Good, the Bad and the Ugly

The selection of Mark Zuckerberg as Time magazine's "Person of the Year" is a strong signal of the increasing importance of social media in today's society. As co-founder of the social-networking site Facebook, 26 year old Zuckerberg is the second youngest person ever to be chosen as a Time "Person of the Year". As Facebook crossed the threshold of 500 million users in 2010 and has been proclaimed the largest human interaction in the history of mankind, businesses and the legal profession continue to grapple with issues that are slowly seeping out of this phenomenon.

Social media encompasses any internet applications that allow users to create and exchange content, blending technology with social interaction. Popular social media sites include Facebook, Twitter, LinkedIn and YouTube. These applications are very accessible at no cost, such that anyone is able to have a global audience with a very low level of technical skill. With the instantaneous nature of social media sites, there is no lag time between creation and publication as is the case with traditional forms of publishing. These sites can be used as powerful marketing and networking tools for business, yet they can also be used to destroy goodwill or brand value built up over years by creating electronic records that are universally accessible to an instant audience.

In Canada, there are no specific laws focused on regulating social media sites. For the foreseeable future, lawyers and businesses will have to deal with issues that arise in creative ways, through laws of general application developed for other purposes. Nonetheless, businesses need to prepare themselves to react quickly and effectively to situations that arise from the ubiquitous nature of social media.

For example, two employees of Dominos Pizza used a cellular phone to video food tampering which was then posted on YouTube. This video was viewed hundreds of thousands of times before Dominos was able to have the video taken down. Although the two employees were criminally charged, the damage was already done. Unfortunately, clips of the video can still be viewed on-line.





Another example is Dave Carroll, the musician who had his guitar broken by United Airlines. As a result of United denying his compensation claim, Mr. Carroll created a music video and posted it on YouTube. "United Breaks Guitars" has now been viewed by just under ten million people.

Businesses and their advisors should take preventative measures against these types of actions by creating an overall strategy on dealing with social media. Legal counsel can assist by preparing general policies, and advising clients on how to regulate their employees' conduct with respect to use of the Internet, including use of business names on social media sites, during business hours. Typically, such policies would prohibit videos, media or other Internet activity that is inappropriate, offensive, slanderous, fraudulent, defamatory or unprofessional, while such employees are using company resources. By having employees sign such policies, or incorporate such policies within the employment contract upon commencement of their employment, the message should be conveyed that breaches may result in penalties, sanctions, or disciplinary action, including termination of employment.

Employers are free to obtain public information that are posted on social media sites and consider the information in their decisions to hire and terminate employees, particularly if there are established and well communicated policies at the work place regarding employee code of conduct and the use of social media tools. However, employee hiring and termination are governed by existing legislation such as employment standards, labour and human rights laws.

Companies should also anticipate and plan to deal with problems. For example, they can monitor social media sites from time to time for positive or negative feedback, and also use such sites to their advantage to respond to a problem by creating their own corporate accounts and posting positive media clips.

In the case of anonymous users posting negative comments on-line, the law of defamation generally applies. Legal advisors can assist by contacting, and preparing cease and desist letters to, operators of such websites and chat rooms to immediately remove such postings. Canadian courts have recently ordered the disclosure of the identity of anonymous posters or authors in certain cases, particularly in cases involving defamation, if the host of the site has this information.

Social media is here to stay. Businesses need to consider how to integrate social media into their workplace, and to be ready to react quickly if they want to protect their brand and reputation in cyberspace. By becoming plugged into the social media network, many businesses may discover that this is a powerful, and yet largely untapped tool.

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