

How to get your message out without getting yourself in hot water

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Agenda

- What is Social Media
- Legal Pitfalls
 - Privacy
 - Defamation
 - Human Rights
- Tips for Using Social Media Effectively
- Questions



Legal information?



Legal advice?

What is Social Media?

- Platforms that allow users to create and share content with other users or participate in social networking
- Can be in many different forms: blogs, webpages, apps, messaging services
- Has a very far reach, which is great for promoting your organization or getting your message out

What are the main legal concerns?

- Intrusion upon seclusion (Privacy Tort)
 - Relatively new cause of action in Ontario (last decade)
 - Cases have given various tests for what this entails
 - Involves giving publicity to a matter concerning the private life of another, where publicizing the matter would be highly offensive to a reasonable person **and** not a legitimate concern to the public

What are the main legal concerns?

- Defamation
 - Libel vs slander
 - Harm to a person's reputation
 - No defences available

What are the main legal concerns?

- Human Rights Obligations
 - Housing/Service providers must provide equal treatment with respect to the occupancy of accommodation or provision of services, and must provide services/accommodation that is free from harassment
 - Employers must provide equal treatment with respect to employment and must provide employment free from harassment
 - Rouge Valley Co-op case
- Non-legal concerns = reputation

The “medium is the message”:

- can be accessed from virtually anywhere
- can reach far more people far more quickly
- are often used to distribute information and opinions very quickly
- are often used without considering the permanence of what is being posted or sent
- are prone to being forwarded easily by others, without control over how they are distributed
- parts can be distributed selectively



Naythemua

October 6 at 1:30pm · 🌐

So I'm scrolling through Facebook and this is the #dove ad that comes up.... ok so what am I looking at....



👍 Like 💬 Comment ➦ Share

Which type of defamatory post would be more serious:

- a post on twitter
- a post on a website with member only access
- newspaper publication in national newspaper

What the courts have said:

- Posts on the internet “have tremendous power” “to cause instantaneous and irreparable damage”
- messages can be forwarded and reposted, even after you remove a website or a post, “it is impossible to erase the damage that they caused when they were published.”
- anonymous nature of communications create a greater risk that the messages will be believed

But what if you haven't posted anything?

- you can be liable
- it can be enough that you provide, operate or administer a website that others can post to, or to repost statements originally posted by somebody else
- Concerted action liability

But what if you never intended the message to be distributed?

- you can be liable – courts have accepted that the individual posting content online or sharing it electronically should know that a post on social media or blog can be circulated widely
- the extent of the damage will involve a consideration of how widely the message was distributed and to whom

Does that mean you can't post anything negative?

- Need to take into account privacy and human rights obligations
- There are defences to defamatory statements including:
 - Justification – its true
 - Fair comment – it's a comment based on true facts – BUT FACTS MUST BE KNOWN
 - It was communicated responsibly (journalism)
 - Qualified Privilege

Tips for protecting your organization

Tip # 1:
**Be careful and thoughtful about
what is posted**

Tip # 2:
Have clear internal policies about social media use, content, approval of posts and sharing of outside information.

Tip # 3:
**Segregate personal and professional
social media accounts.**

Tip # 4:
**If your platform is participatory,
have a code of conduct for
participants.**

Tip # 5:

If you allow comments and posts from members or the public, monitor the account closely.

Tip # 6:
Make sure individuals appearing in photos and videos have consented, even if their image is captured in a public place.

ANY
QUESTIONS
?

Thank you!