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BARRISTERS AND SOLICITORS

The Social Network – At Work

By Leanne E. Standryk & Christopher J. Bittle
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In October 2010, the British Columbia Labour Relations Board (“Board”), upheld the termination of two employees who posted disparaging, disrespectful and possibly threatening messages about their employer on Facebook. This case is believed to be the first Facebook firing case in Canada.

A manager was “friends” with the two employees on Facebook and noticed the inappropriate messages and postings. Concerned, the manager searched the two employees’ Facebook pages to discover further posts that were of a disparaging and threatening nature regarding the employer and specific managers.

The employer conducted an investigation based on the seriousness of the employees’ posts. During the investigation, the employees were dishonest and lied about their involvement regarding posting the messages. The employer concluded that the employees’ comments were inappropriate, insubordinate and created a hostile work environment for co-workers and supervisors and terminated the employment relationship. The employer concluded that the posts had the potential to damage its reputation and business interests.

In dismissing the employees’ application, the Board rejected the employees’ argument that based on the privacy settings offered by Facebook, the employer could not rely on their posts as grounds for termination and found:

- ◆ The Facebook comments were “very offensive, insulting and disrespectful” about supervisors or managers because the comments were made to other employees and former employees of the employer that were friends of the employees on Facebook;
- ◆ The comments were akin to comments made on the shop floor and amounted to insubordination “used as a verbal weapon to degrade a Supervisor in front of others”;
- ◆ There was no serious expectation of privacy when publishing comments on Facebook (even if the comments were made off-site during non-work hours);
- ◆ It was irrelevant that the employer had no established workplace policy prohibiting such conduct on Facebook;
- ◆ The terminations were not motivated by anti-union animus as alleged by the employees;
- ◆ The fact that the employees had no previous disciplinary record was outweighed by the fact that the employer had not previously encountered such conduct, had conducted a proper investigation and the postings amounted to serious insubordination; and

- ◆ The postings were egregious and compounded by the employees' dishonesty during the investigation.

Ontario Courts have maintained a similar view that there is no reasonable expectation of privacy that will attach to social networking posts. This will open the door for employers to develop social networking policies governing employee conduct that may adversely affect the interests of the employer, its business, employees and individuals it may serve. Further, employers should consider that social networking may traverse the line from personal life to workplace requiring an employer to act on allegations of harassment and/or workplace violence prohibited by the provisions of Bill 168 of the Occupational Health and Safety Act.

To minimize the risks posed by social networking, employers should consider appropriate social networking, internet and blogging policies that are tied to their workplace violence, harassment, confidentiality and code of conduct policies.

***The foregoing information is provided to you for information purposes only.
We caution you to obtain legal advice specific to your situation in all circumstances***

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