

TLA Mirror

Reflecting your membership

Professional Responsibility Reminders for the “Social” Lawyer

Erin Cowling, Cowling Legal

Are you a “social” lawyer? Do you tweet, blog, share updates on LinkedIn and Facebook, pin to Pinterest, post videos on YouTube, etc.?

Social media is a useful marketing tool. It is a cost-effective way to generate leads, improve traffic to your website, build your profile, and convey your brand as a lawyer in your practice area. I have been referred work by Twitter followers, LinkedIn contacts, and even lawyers who have Googled and read one of my blog posts. But I haven’t always been a successful “social” lawyer. When I first joined Twitter I would draft my 140 character tweet, only to edit it and re-write it until finally I would delete it all together. Why? The thought of having something go out into the “Twitter-verse” with my name on it, where it would exist forever, was daunting. I would think: “Will this tweet come back to haunt me?”

While I am getting (a bit) better, I don’t think I am wrong to hesitate before I post, blog, share or tweet. The recent appointment of frequent blogger Justice Brown to the Supreme Court of Canada, and the unearthing of his old blog posts by the media, shows that we cannot hide our “digital baggage”. As professionals, lawyers must always be mindful of our professional responsibilities, including when we use social media. Do you think about your professional responsibilities and ethical standards when using social media?

What Are My Professional Responsibilities?

Do you use social media personally, professionally, or as a hybrid of the two? I have a Twitter account in my personal name but I also use it to tweet about a variety of legal topics, my blog posts, and interesting cases (among other things). I would likely consider my account to be a “hybrid” account: both personal and professional. In fact, I would argue that as a lawyer, it would be very hard to have a purely personal account that is beyond the reach of our *Rules of Professional Conduct* (the “Rules”). Even if it is a “personal” account, as lawyers, dishonourable or questionable conduct in our private lives that reflects adversely on the integrity of the profession or the administration of justice is enough for the Law Society of Upper Canada (LSUC) to take disciplinary action, especially if the conduct would likely impair a client’s trust.¹ Generally, however, the LSUC will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer’s professional integrity.²

¹ See the commentary to Rule 2.1-1 Integrity of the *Rules of Professional Conduct*.

² *Ibid.*

In any event, I think it would be wise to err on the side of complying with our professional responsibilities when being “social”. I consulted resources provided by the LSUC,³ the Canadian Bar Association,⁴ and LawPro⁵ for the following recommendations:

1) Never Post Confidential Information

This should be an obvious one. Do not disclose confidential information on social media. Rule 3.3-1 of the *Rules* requires lawyers to hold in strict confidence all information concerning the business and affairs of your client.

If a client openly tweets to you, or puts a message on your Facebook page, or direct messages you on Twitter or LinkedIn, I would contact that client by phone or your firm’s secure email and advise that you will not communicate with them by social media and explain why.

If you do end up using social media to communicate with a client (which I would not recommend), you should retain records of those communications, just as you would if the communications were emails or letters. You should also not deactivate a social media account which contains communications with clients, unless those communications have been appropriately preserved.

The CBA also warns against *inadvertently* disclosing confidential information. For example, if you “friend” a client or start “following” them on social media sites you might risk disclosing that you have been retained by them. Also, be aware that some social media services can publicize the location of users and display when a lawyer is in the same city or in the same block as the client’s place of business.⁶

2) Be Respectful / Keep Your Integrity

Lawyers should be as respectful in online communications as they would be in person or in an email or letter. Rule 5.6-1 of the *Rules* requires us to encourage public respect for and try to improve the administration of justice. If you decide to blog about a case that you think was wrongly decided, it is probably not wise to say the judge was ‘stupid’. You can always respectfully disagree. You never know who might be reading your post or *when* they might be reading it. Your blog post will be around for a long time.

³ The Law Society of Upper Canada, “Sample Online Activity and Social Media Policy”,

<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147491875>

⁴ CBA Ethics and Professional Responsibility Committee, “Legal Ethics in a Digital World” 2014-2015,

<http://www.cba.org/CBA/activities/pdf/guidelines-eng.pdf> (“CBA”).

⁵ Pinnington, Dan “Social Media: Pitfalls to Avoid”, LawPro Magazine “Social Media”, December 2009 (VI. 8 no.4)

online: <http://www.practicepro.ca/lawpromag/socialmediapitfalls.pdf> and Victoria Caruso, “Does Your Firm have a Social Media Policy?”, LawPro Magazine, “The Changing Face of the Profession” (Vol. 13, No.2) online:

http://www.practicepro.ca/lawpromag/Does_Firm_Have_SocialMedia_Policy.pdf (“Caruso”)

⁶ CBA, *supra* note 4 at page 14.

3) Know Your Obligations regarding Acceptable Marketing Practices

The LSUC expects lawyers who use social media as a marketing tool to “play by the rules”.⁷ Rule 4.2-1 of the *Rules* allows lawyers to market their professional services, provided that the marketing is:

- a) demonstrably true, accurate and verifiable;
- b) neither misleading, confusing or deceptive, nor likely to mislead, confuse or deceive; and
- c) in the best interests of the public and consistent with a high standard of professionalism.

These ethical standards apply to any marketing, whether you use a print format or electronic formats such as emails, websites, or social media. Marketing that would contravene this rule includes making suggestions of qualitative superiority to other lawyers; raising expectations unjustifiably; suggesting or implying that you are an aggressive lawyer; make disparaging or demeaning comments about other groups organizational or institutions; or using testimonials or endorsements that contain emotional appeals.⁸

4) Be Careful Not to Form a Solicitor and Client Relationship

Remember that a “client” in the *Rules* includes someone who, having consulted a lawyer, reasonably concludes that the lawyer has agreed to render legal services on their behalf. This can include someone you have interacted with on social media. By inviting and responding to comments to a blog post, engaging in Twitter conversations, or responding to legal questions posted by users on your website you are creating a real risk of inadvertently forming a solicitor/client relationship. You can lessen this risk by adding a disclaimer when posting information online and keeping a record of online communications to defend yourself against a claim that you gave legal advice.⁹

Also, when doing any “snooping” research on a social network be careful not to have unintentional communications with a represented party. For example, depending on your settings, others can see if you have viewed their LinkedIn profile. This may prompt that person to contact you.

⁷ Law Society of Upper Canada, “Social media can provide helpful marketing tools – but lawyers must play by the rules” Ontario Lawyers Gazette (Spring 2010).

⁸ Commentary to Rule 4.2-1 of the *Rules*. Also, be aware that the LSUC is seeking input on proposed changes to the Rules, including those governing marketing:

http://www.lsuc.on.ca/uploadedFiles/For_the_Public/News/Consultations/call-for-input-document.pdf

⁹ CBA, *supra* note 4 at p. 16

5) Have a Social Media Policy in Place

Failing to have a social media policy is a common mistake lawyers make in relation to social media. Rule 6.1 sets out your responsibilities to supervise any non-lawyers that work for you. You are responsible for your staff's social media use that is related to your law practice. In other words, if you have a staff member in charge of your firm's LinkedIn page or Twitter account and your staff tweets or blogs confidential information about a client you may be held responsible. You should have a social media policy in place that is short, easy to understand, and is provided and explained to all employees.¹⁰

CONCLUSION

This article highlights just of some of the ethical considerations when being a 'social' lawyer. For further information see the LSUC, LawPro and CBA resources I consulted.¹¹ However, don't let these warnings or guidelines scare you from mastering social media as a marketing tool. The practice of law is changing. Technology is advancing and reshaping the way we interact with our clients and the public. You are already aware of your professional responsibilities as a lawyer; just don't forget them when you are being social.

¹⁰ Caruso, *supra* note 5.

¹¹ *Supra* notes 3-5.