

Social Media and the Litigation Process

We clearly live in a world of Facebook, Twitter, and a growing list of other networking tools. If you are someone who wants to share your activities and thoughts with a group of other people these can be very powerful tools. However there are negative aspects to these applications.

Private information that you share quickly loses its privacy when it is disseminated to persons to whom you did not intend. This can be dangerous in situations such as identification theft, stalking, harassment and break and enters.

This information can also be damaging to persons who are involved in civil litigation and are claiming injuries from, for example, an automobile accident or a slip and fall injury.

The courts have held that the defense lawyers are entitled, in many circumstances, to copies of plaintiffs Facebook and Twitter accounts.

Therefore, if you have been injured in an automobile accident and claim that you are unable to return to work, it will be devastating to your case to have to turn over your Facebook account in which there are photographs of you vacationing in Florida for a month in the winter, and playing golf and taking the grandchildren to Disney World.

Insurance companies have a hard time justifying the payment of damages for personal injury and loss of income when they are aware that the injured party has been taking vacations and appearing to be carrying on in a normal fashion.

Similarly many plaintiffs claim depression as part of the pain syndrome resulting from an accident. You can imagine how that claim will be dismissed if your Facebook account has photographs of you smiling and laughing at various family functions or out for an evening at the movies.

Even if an injured person is careful what he posts on his own Facebook account, problems can arise when that person is included in a photograph of a friend or family member who comments that a "good time was had by all" and sends that document out to its recipients and to the injured person's Facebook account.

Previously, in litigation cases, the plaintiff was able to argue that the defense should not have a right to all of his photos and correspondence as a means of a fishing expedition as those documents were considered private. It is difficult now to make that argument when injured parties take what was private information in the past and post it on to what are clearly non-private Facebook account pages.

Further, from a privacy point of view, although the intent of accounts such as Facebook was to provide people with the ability to share information around the world, the result is that by doing so Facebook stores a wealth of your personal information for use as it sees fit.

There are presently hundreds of court decisions dealing with photographs and comments made on Facebook and their evidentiary value in court proceedings. The bottom line is that if any of these photographs or comments are relevant to

the issues raised by the plaintiff then the plaintiff will have to produce them as part of the litigation process.

The result is that whereas in the past the defense was entitled to take surveillance videos of the plaintiff's activities these were often just a few days of video and were usually ineffective.

By use of the social media what is happening now is the plaintiff or his well-meaning family or friends are generating enormous volumes of self-surveillance that will be a gold mine for the defense in litigation matters.

I expect that the same problems are going to be encountered by persons claiming long-term disability, CPP disability or WSIB.

Therefore when a person is making allegations of injury that person should give careful consideration to the contents of their social media accounts.

This article is not legal advice.