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With legislation to ban the use of hand-held cell phones while driving expanding to several jurisdictions, do you intend to implement a cell phone usage policy?



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Are social networking websites useful business tools?

By *Yosie Saint-Cyr, LL.B., Managing Editor at HRinfodesk.com---Canadian Payroll and Employment Law News, March 2008*

According to Wikipedia, a social network service (which can also be referred as Web 2.0) uses

software to build online social networks for communities of people who share interests and activities or who are interested in exploring the interests and activities of others. Most services are primarily web based and provide a collection of various ways for users to interact, such as chat, messaging, email, video, voice chat, file sharing, blogging, discussion groups, and so on. Various social networking sites have sprung up catering to different languages and countries. It is estimated that combined there are now over 200 social networking sites using these existing and emerging social networking models. MySpace, Facebook, LinkedIn.com, Ryze, and Hi5 are some of the most widely used social networking websites in Canada.

Social networking has revolutionized the way people communicate and share information with one another. Various social networking websites are being used by millions of people everyday on a regular basis and is now a part of everyday life.

What does it have to do with business?

Several academic commentators have suggested that social networking will prove to be one of the most valuable business tools the Internet has yet provided.

Why?

According to these commentators and Academic postings on Wikipedia, social networking websites connect people at low cost, which can be beneficial for entrepreneurs and small businesses looking to expand their contact base. These networks often act as a customer relationship management tool for companies selling products and services. Companies can also use social networking sites for advertising in the form of banners and text ads. Since businesses operate globally, social networking sites can make it easier to keep in touch with contacts around the world. A good example of a social networking site being used for business purposes is LinkedIn.com. It is a social networking site with the aim of connecting professionals together. It has become one of the most powerful and widely used professional networking sites with more than 20 million registered users from 150 different industries.

Some business networking sites enable you to publish your own "blog," or join specific community discussion groups.

According to results of a recent survey on online social networking by the Institute for Corporate Productivity, 65% of business professionals utilize personal and professional social networking websites. In addition, recent research shows that one in five employers and recruiters admit to checking candidates social network profiles in their selection process.

However, a **September 2007 UK study by Peninsula** is suggesting that social networking is costing companies hundreds of millions of dollars in productivity. According to the study, *Facebook alone*

costs UK employers about \$260 million Cdn a year in lost productivity. It's also raising the stakes for managing trade secrets and confidential information. In addition, this phenomenon has resulted in a paradigm-shift in the world of marketing: Carefully polished brand images and reputations are now regularly tarnished by front-line employees who make Internet posts - and the news. Web 2.0 is fast becoming a new legal battleground between employers and employees.

So, what is the problem?

Mary Gleason and Anthony Moffat, lawyers at Ogilvy Renault's have stated in a recent article on Systematic HR that the widespread use of social networking sites and blogs has inevitably overlapped into the workplace as employees' access and post on these sites from and about work. Employers and the courts are still developing ways to handle the work-related indiscretions that can result.

Depending on who you talk to, there are several problems. Among the main business concerns organizations have with social networking sites:

- o Loss in workplace productivity and consequently revenue - Organizations are concerned about the time wasted in managing social network profiles. Employees are not using them for any business value but mostly for non-work-related purposes; for social purposes during work hours using company property.
- o Identity thefts - according to various consumer groups, millions of people are leaving themselves open to identity theft when using social networking websites.
- o Privacy concerns - sharing too much information or inappropriate material, trade secrets or confidential information with a third party; transmission of any material that is confidential or protected by copyright.
- o Inappropriate conduct - searching for or viewing or downloading web pages with offensive, lewd, or obscene content or that have content of a sexual nature or are in any way discriminatory; transmitting any material that is defamatory, offensive or obscene, untrue or malicious, or discriminatory.

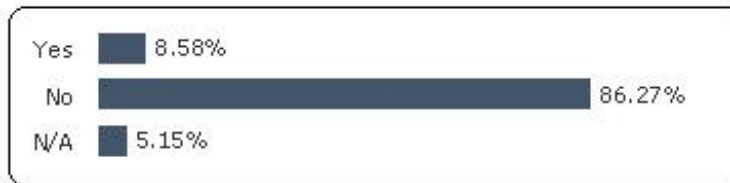
1. Loss in workplace productivity and consequently revenue

Based on several international polls and studies, the main reason many employers have problems with social networking websites is that they view them as time-consuming distractions that keep employees from doing their assignments.

This concurs with our latest HRinfodesk poll that asked participants if their company consider social networking websites (LinkedIn, Facebook, MySpace) useful business tools. Out of the 233 respondents to the poll, 201 (86.27%) indicated that they did not find social networking websites useful business tools and most of the comments provided with their responses stated that they felt most of the time would be spent networking and gossiping with friends rather than searching or using the social networking site for business opportunities.

Twenty (8.58%) respondents indicated yes, social networking websites are useful business tools, and 12 (5.15%) respondents did not feel this applied to their circumstances.

Responses	%	Total
Yes	8.58%	20
No	86.27%	201
N/A	5.15%	12
	100%	233



Only two comments in favour of social networking sites were submitted. They are as follows:

- "They don't like these as a firm and I think they are lost fighting the wrong fight! Like those individuals who spend too much time on the phone on personal calls or those individuals that take "smoke" breaks, the use of social networking electronic systems need to be managed. I just think it is a new medium."
- "Facebook is the communication of choice with our younger seasonal workers. Schedules and communications are effectively posted."

How are businesses dealing with the problem of lost productivity?

In an effort to combat this loss of productivity, companies have taken steps to block or restrict access to these sites after noticing the large amounts of time their employees were spending on them. In the UK study mentioned above, the findings found that British users spend an average of 191 minutes a month on Facebook, logging on to the site during office hours.

One of our respondents illustrated their organization's unsuccessful attempt to deal with the loss productivity issue:

We attempted using MSN messenger a year or so ago in order to help communication within the teams of the office. Unfortunately it was being abused and employees were distracted by it and spent much of their time speaking with friends and family instead of using it within the office as a useful business tool. It was hard to monitor and therefore we removed the program from all computers.

We also tried allowing our employees to access their Facebook accounts when on breaks and lunches; however, again, they were abusing this and checking the site constantly, thus our IT team had it blocked on our firewall.

These tools could be used and used effectively, but, unfortunately, the temptation to use them for non-business related activity is too great and for us, the employer, they are too hard to monitor. We do now use Skype for both internal and external business communications, but only key personnel have access to use it.

According to Daniel Lublin, a Toronto Employment Lawyer, spending an inordinate amount of time on Facebook while at work is tantamount to theft of an employer's time, which is cause for dismissal. Lublin states, "I am familiar with claims that some employees access the site up to forty times an hour. In these circumstances, seldom is Facebook being used for exclusively business purposes."

2. Identity thefts

If an individual posts their name, home town, contact information, date of birth, employer information, email address, and other details of their personal life on any social networking website, they may be exposing themselves to would-be identity and personality thieves.

To illustrate, usually banks and other credit companies ask a person's mother's maiden name or place of birth to check a person's identity. However, someone's mother's maiden name, or place of birth, is now so easily available on social networking websites, leading banks, specifically in the UK which are fully aware of the issue, are being forced to radically alter how they go about checking people's identity.

What if someone assumes your online identity, lifting a photograph, getting enough personal details right to fool some of your friends, and then starts undermining your personality? According to academics and experts in fraud prevention, as for personality thieves, there are enough personal facts posted on social networking websites such as users' family photos, information about likes/dislikes, hobbies, employer details and other personal facts - all information that could help a criminal guess someone's password or impersonate them. Many more have made details of their friends and family freely available to millions of other social networking users.

Identity or personality thefts occur when someone takes information about you and pretends to be you for fraudulent purposes. If you are a victim, the consequences are serious - you can be denied a driver's licence, a loan, cell phone service. It can take years to undo the damage.

According to the Office of the Privacy Commissioner of Canada, social networking sites like MySpace and Facebook are great for keeping in touch with friends, but can also be a goldmine for identity thieves. Using information you provide about yourself, fraudsters can potentially take on your identity.

However, it is also noted, on business oriented social networking sites, people are more likely to only share professional information that is made easily accessible purposely.

How should individuals deal with the problem of identity and personality thieves?

The Office of the Privacy Commissioner of Canada states that an individual can take steps to prevent online identity theft by restricting who can view their personal information online to people they know:

- Read and understand the privacy policies. They tell you what happens to your personal information and what privacy options you have.
- Use the privacy controls available. Sites like Facebook provide you with some level of control over your personal information. For instance, you can restrict who can see your full profile and photos of you, and who can find you in a search. You can also hide your list of friends from people who find you through a search. Experiment with the controls to find what works best for you.
- Don't accept friend requests from people you don't know in real life. Online, how do you know they are who they say they are?
- Be discreet about what you post online. Think about what information you're putting out there, and the implications of it. A photo of you and your friends hanging out, for instance, could reveal a lot - like where you live, where you go to school, or the car you drive.

For more information, visit the Office of the Privacy Commissioner of Canada's website: www.privcom.gc.ca.

3. Privacy concerns and 4. Inappropriate conduct

Increasingly, the argument is that social networking sites pose a threat to corporate security and corporate image. In fact, according to a recent survey by UK-based IT security firm Sophos, more than 66 percent of respondents feared their staff and colleagues are sharing too much information on Facebook. Some managers fear their employees' indiscretion and personal web photos could reveal corporate secrets or harm the company's image. Moreover, these sites give disgruntled employees a powerful soapbox.

A person's social networking page is online and can be accessible by essentially anyone surfing the Internet. Photos, messages and personal details are easily passed around from page to page. What individuals fail to consider is that online posts cannot be taken back. Photos and messages are easily copied by other users without you knowing it. Even if you delete something off your site there's no way of knowing who already saved the picture or messages on their computer.

In addition, every Facebook, MySpace, msn, iChat, or email message leaves an information footprint and this trail can be picked up by third parties; for example, through third party applications available on Facebook and other sites. According to the Canadian Marketing Blog, some companies (third party software applications) have brazenly admitted to offering services or products to people within the social networking arena with little or no regard for privacy or the expectation of privacy.

"This hopefully is where the government can and will intercede. The *Personal Information Protection and Electronic Documents Act* (PIPEDA) outlines what information organizations can and cannot gather about consumers. Unfortunately, this legislation does not directly impact consumer privacy in the social networking arena. The impact of this is that the privacy rights of consumers might be at risk - consent and awareness of how information is being used varies depending on the channel being used."

According to Daniel Lublin, a Toronto employment lawyer:

- Comments written on Facebook can link the author to his employer, despite an unintended connection. Because workers are invited to disclose their place of employment and then automatically linked with registered co-workers, employees making unsavoury and unmonitored comments can potentially compromise a company's reputation, trade secrets, or its competitive advantage - especially if the reader mistakenly construes a posting as having been authorized by the company. Given the value placed on confidential information, courts are more likely to respect an employer's decision to precipitously fire an employee whose posting compromised, or even potentially compromised, a competitive advantage.
- Criminal laws can also be invoked if employees harass or intimidate co-workers via Facebook. These employees can end up surfing the classifieds for a criminal defence lawyer, as well as for a new job.
- Unlike general Internet use, Facebook allows users to post information online for others to see, and later revisit. Postings of offensive comments, pictures or stories become incontrovertible evidence of an employee's behaviour. For example, the case of two BC employees fired for distributing a vulgar email at work detailing the sexual gymnastics of an overweight female co-worker. Similar to an email, the ability to create, disseminate and maintain postings on Facebook means that the evidence can be traced back to its originators long after the fact.
- Facebook profiles and postings created and maintained outside of working hours and on an employee's personal time can quickly derail an employee's fast-paced career if the content brings their employer's reputation into disrepute.
- There are reports that US employers and recruiters are cruising Facebook profiles of job candidates, gleaning intimate personal details of the candidate's life, before deciding whether or not to extend that person an offer. And where risqué content is found, the offer won't be forthcoming. In these cases, dicey comments or content can lead to your workplace execution before you ever set foot in the door.

How are businesses dealing with privacy concerns and inappropriate conduct?

Several employers have clear policies in place that spell out to workers what they can and cannot use the Internet for. However, a lot of them have banned access to social networking sites altogether by using blocker software. Business Monthly spoke to many employees who admitted they had circumvented their company's firewall by using proxy websites to chat, view social profiles and stream music and videos. "Managers must understand that there is no point in banning these sites because we can always find new ways to open them," says one employee at a multinational IT firm. "So the key is to monitor the use of these sites and not to completely ban them."

The business case for social networking sites

Notwithstanding the above problems with social networking sites in a business context, proponents such as Osama Saleh, information systems manager at automaker General Motors Egypt, who believe that social networking sites are good business tools provide the following business merits:

Social networking sites might seem like a waste of company time, but that doesn't mean that companies can't use these sites to benefit their business. Sites such as Facebook, MySpace and Bebo are always evolving to provide users with the ability to chase down old friends, make new ones or find groups with common interests. But these same tools make social networking sites powerful utilities for business. Here are a few potential applications:

- **Team building:** Employees and management can establish groups on social networking sites to discuss issues pertaining to their company in a non-threatening environment that might not necessarily be available in a meeting room. Groups can be open to all staff or restricted to invitation only.
- **Communication:** Company employees can create groups to discuss their products or inform users of changes affecting products and answer client queries. In essence, the sites become a marketing tool for companies to assess the perception of their products and communicate directly with clients.
- **Advocacy:** Users of social networking sites can create groups to petition for certain products or services. The group provides companies with information on the demands of its members which the company can use to assess its strategic planning for the product or service.
- **Charity/CSR:** NGOs can use social networking sites to recruit volunteers or solicit charitable donations, while companies can promote their CSR agendas by putting links on their pages to their NGO partners.

Case law in the employment context on Web 2.0

According to Mary Gleason and Anthony Moffat, lawyers at Ogilvy Renault's, jurisprudence on Web 2.0 (includes social networking websites) in the employment context has only begun to develop. However, employers can take solace from case law in other areas that indicates certain behaviour on Web 2.0 will not be tolerated by adjudicators. They state that:

The case of *Chatham-Kent (Municipality) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) Local 127 (Clarke Grievance) (2007), D.R. Williamson-Arb. (Ont. Lab. Arb. Bd.)*, confirms that posting confidential information online can be grounds for termination.

However, it appears it will be difficult for employers to justify terminating employees who gripe about their employer or supervisors online. Termination for insolence online may only be warranted if an employee makes comments which are found to be so irreverent as to undermine management's ability to effectively supervise the workforce. Case law in other contexts indicates an employer should look to both how damaging the comments were and the audience to which the comments were directed.

Employers will also have difficulty disciplining or terminating employees who conduct themselves in an unsavoury way online while identifying themselves with the company. Employers are not

considered "custodians" of employees' private lives. Generally speaking, a dismissal will not be upheld unless the employer can establish the online conduct of an employee seriously damages the company's reputation or the ability of the employee to perform his or her job.

It is worth noting, however, that employers may more easily justify the dismissal of an employee for embarrassing or criminal behaviour online if the employee, by virtue of his position or responsibilities, must maintain an appropriate image in order to perform assigned duties and be of continuing benefit to the company, as in *Pliniussen v. University of Western Ontario*, where the dismissal of a finance professor was upheld because it was found that the faculty's reputation would have been damaged had it continued to employ him.

What employers should be doing to protect themselves?

Employers should:

- Have a workplace policy in place addressing the appropriate as well as inappropriate use of technology such as the use of Internet, including blogging, text messaging, social networking websites, etc. The policy should also address the appropriate and inappropriate use of company owned property such as computers/laptops during and outside of work hours;
- Communicate and educate employees on the benefits, and possible dangers, of using these technologies for employees and employers;
- Communicate the policy and the potential ramifications for violating it to employees. According to Gleason and Moffat, all policies should be unambiguous, in writing and disseminated throughout the workforce. All new employees should have the policy included in their employment contract and adherence made a condition of employment.
- Actively monitor the computer use of employees, especially during work hours;
- Employers should be vigilant about enforcing the policy consistently and fairly.

Daniel Lublin has indicated that, *"The language in a policy can assist an organization's defence in potential wrongful dismissal suits, or eliminate potential liability altogether. It can only improve an employer's position to have things in writing."*

However, he points out Canadian employment law requires judges to look at the context around cases involving pornographic material and other acts of delinquency in the workplace.

"The context the Supreme Court would require is, firstly, to assess if the employee has a stellar record or a history of misconduct. The second would be to determine if the punishment fits the crime or proportionality."

"A long-term employee is less likely to be terminated if it's an isolated incident versus a short-term employee with a checkered history of warnings about workplace behaviour."

"Depending on the circumstances, judges will consider if there is a lesser form of discipline that may be more appropriate than dismissal."

While there are many types of misconduct that could lead to termination, Lublin highlights one area that's viewed as particularly egregious. "Online harassment is a big one and one of the most prevalent. Employers have human rights obligations to provide a harassment-free workplace." There are two types of harassment: personal or cyber-bullying, and discrimination-based harassment as defined in the human rights code as offensive based on race, ancestry, religion and so on.

Sources and some resources:

Employers caught in a tangled Web 2.0 by Mary Gleason and Anthony Moffat, lawyers at Ogilvy Renault on Systematic HR <http://systematichr.com/>

Ogilvy Renault website www.ogilvyrenault.com/

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'Fanciful' Facebook threats not to be taken seriously, court hears, National Post

www.nationalpost.com/news/story.html?id=319696

Daniel Lublin, Toronto Employment Lawyer www.toronto-employmentlawyer.com/

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