

Professional Responsibility on Social Media in Canada

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This article reviews the current state of the law in Canada regarding lawyers' use of social media, with specific reference to the Rules of Professional Conduct in Ontario, Canada's largest jurisdiction. The article reviews recent caselaw amid a decline in civility and professional courtesy as a result of the Israel-Hamas conflict.

Introduction

Social media has become deeply integrated into our daily lives, providing a platform for unrestricted expression. Yet, with this uncharted freedom comes an increased responsibility for individuals to exercise caution in their online interactions, especially considering the potential legal consequences stemming from the amplified harm caused by careless posts. This caution is especially crucial for professionals subject to regulatory oversight, such as lawyers governed by bodies like the Law Society of Ontario ("LSO").

There is a fine balance between the right to freedom of expression enshrined in Canada's *Charter of Rights and Freedoms* ("Charter")¹ and the obligations imposed by regulatory bodies. There are boundaries for acceptable conduct by regulated professionals. Regulators have the authority to discipline lawyers for online content under the *Rules of Professional Conduct* ("Rules"),² and legal professionals should maintain decorum in their online presence. These Rules serve to safeguard not only individual professional reputations but also the overall integrity of the legal profession.

I. The Limits of Freedom of Expression on Social Media

¹ *Canadian Charter of Rights and Freedoms*, s 2(b), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter].

² *Law Society of Ontario Rules of Professional Conduct*, r. 5.1-5 [LSO Rules].

³ *Charter*, *supra* note 1, s 2(b).

⁴ Julian Walker, "Hate Speech and Freedom of Expression: Legal Boundaries in Canada" (2018) 2018-25-E Background Paper, Library of Parliament.

⁵ Halsbury's Laws of Canada (online), "Weighing freedom of expression and harm to the plaintiff" (IV.3.(2)(c)) at HDE-196 "Defamation" (2023 Reissue) [HDE-196].

⁶ *Ibid.*

(a) Free Speech

Navigating the complexities of free speech within the framework of the Charter can be challenging. Section 2(b) of the Charter bestows upon individuals "fundamental freedoms of thought, belief, opinion, and expression."³ While Canadian law upholds the values of democratic self-governance, truth-seeking, and individual self-fulfillment through open communication, it is vital to acknowledge that freedom of expression is not without its limitations.⁴

Even though social media is a platform for self-expression, legal boundaries exist, with defamation and libel serving as clear examples of these constraints. It is noteworthy that "expression on a matter of public interest may be protected, even if it is conclusive or sarcastic."⁵ The degree of public interest in safeguarding expression is determined by its proximity to core values such as intelligent democratic self-governance, truth determination, and individual self-fulfillment.⁶ Conversely, expressions containing deliberate falsehoods, personal attacks, or offensive language are afforded limited protection.⁷ As such, publications motivated by malice are granted minimal safeguarding under the law.⁸

(b) Defamation

Defamation and libel on social media can have severe consequences for personal and professional reputations. In defamation cases, courts evaluate whether statements published online lower a person's standing in the eyes of a reasonable individual, considering both the literal and implied meanings of the communication.⁹ Courts have also acknowledged the rapid dissemination and sharing dynamics inherent in social media platforms.¹⁰ This has emphasized the crucial

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Hosseini v Gharagozloo*, 2024 ONSC 1106 at para 56 [Hosseini]; *Grant v. Torstar*, 2009 SCC 61 at para 28 [Grant]; *Ibid* at paras 57-58; *Crookes v. Newton*, 2011 SCC 47 [Crookes]; *Kam v. CBC*, 2021 ONSC 1304 at para 38, *aff'd* 2022 ONCA 13 [Kam]; *Bernstein v. Poon*, 2015 ONSC 155 at para 43 [Bernstein]; *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3 at para 62 [Botiuk].

¹⁰ Peter A. Downard, *The Law of Libel in Canada*, 5th ed (LexisNexis Canada Inc, 2022) at §3.01 [§3.01]; *Stocker v. Stocker*, [2019] U.K.S.C. 17 at para 39, [2020] A.C. 593 (S.C.) [Stocker].

understanding that the response and opinions of a “reasonable reader” are often immediate and transient, rather than the result of deliberate reflection.¹¹

Consequently, accusations made on social media platforms—such as those alleging dishonesty, immorality, pedophilia, terrorism, racism, or other grave offenses—are inherently defamatory and pose heightened risks.¹² The potential harm to an individual's reputation is so evident that the likelihood of damages can be readily inferred.¹³ Recent legal cases underscore the complexities of grappling with defamation in the digital age, where false allegations and hate speech can swiftly propagate to a global audience.

In 2023, the Ontario Superior Court in *D'Alessio v. Chowdhury*¹⁴ responded decisively to online defamation, awarding damages to a law firm following a negative Google review from a dissatisfied client. This decision recognized the review's defamatory nature and potential harm to the law firm's reputation.¹⁵ Other cases further underscore the complexities of grappling with defamation in the digital age. In *Paramount Fine Foods v. Johnston*,¹⁶ the defendant disseminated derogatory statements about Canadian Muslims, including branding them as “terrorists,” “terrorist scumbags,” and “Nazis,” with the effect of demonizing Islam.¹⁷ Similarly, in the defamation case involving a doctor and media publication owner, a social media post labeled the complainant doctor as a “long-time Hamas activist.”¹⁸

Furthermore, a recent social media dispute over pro-Palestinian rallies involved a Hamilton lawyer facing defamation claims for criticizing a call by a local union director to halt the rallies.¹⁹ Tensions rose when the respondent tagged the union director's employer, accusing her of attempting to generate “manufactured consent for the genocide and ethnic cleansing of Palestinian people.”²⁰ The complainant argued that the respondent's social media posts aimed to damage her reputation and expose her to harm.

Professional Regulatory Bodies

Professionals who propagate false statements and disseminate hate speech on social media, especially those implicating individuals in serious crimes cause substantial reputational harm and risk facing defamation suits and potential disciplinary action by professional regulatory bodies. Central to professional responsibility is the concept of civility, which requires that members maintain a respectful demeanor, even in their online interactions.

Professionals are obligated to adhere to their respective codes of conduct when engaging in online activities, considering the wide-ranging audience their posts may reach. Maintaining civility in online interactions is paramount for upholding public trust in various professions, particularly in influential roles such as those held by lawyers.²¹

Civility encompasses human respect and fundamental standards of polite conduct, whereas incivility extends beyond overt behaviors like shouting or using profanity to include actions such as blame-shifting and condescending communication.²² In the justice system, incivility is viewed as a serious breach, characterized by displays of disrespect and patterns of rude, improper, demeaning, and disruptive conduct.²³

The recent surge in public displays of hostility due to the Israel-Hamas conflict has presented new challenges in maintaining civility among professionals.²⁴ One notable instance of incivility occurred when Illinois government lawyer Sarah Chowdhury who worked in the comptroller's office was terminated from her position for making antisemitic remarks in private Instagram messages. Chowdhury's derogatory comments included

¹¹ *Ibid.*

¹² *Hosseini, supra note 6*, at para 60; *Canadian Union of Postal Workers v. B'nai Brith Canada*, 2021 ONCA 529 at para 10, affg 2020 ONSC 323 [*Canadian Union of Postal Workers*].

¹³ *Ibid.*

¹⁴ *D'Alessio v. Chowdhury*, 2023 ONSC 6075 [*D'Alessio*].

¹⁵ *Ibid.*

¹⁶ *Paramount Fine Foods v. Johnston*, 2019 ONSC 2910 [*Paramount Fine Foods*].

¹⁷ *Ibid* at para 19.

¹⁸ Khalil Hamra & Meghan Grant, “London, Ont., doctor files defamation suit against Rebel Media owner over Social Media Post | CBC News”, (21 February 2024), online: *CBC News*, <https://www.cbc.ca/news/canada/london/london-doctor-defamation-lawsuit-rebel-news-owner 1.7120817>.

¹⁹ Bobby Hristova, “Hamilton lawyer faces \$250K defamation lawsuit over social media posts about Israel-hamas war | CBC News”, (1 February 2024), online: *CBC News*,

<https://www.cbc.ca/news/canada/hamilton/israel-hamas-mancinelli-bsat-lawsuit-1.7100357>.

²⁰ *Ibid.*

²¹ *Strom v Saskatchewan Registered Nurses' Association*, 2020 SKCA 112 at para 21 [*Strom*].

²² Melissa D. Mortazavi, “Incivility as Identity” (2020) 2020 Michigan State Law Review 939 at 950 [Mortazavi].

²³ *Ibid.*

²⁴ Joe Adam George, “Are the pro-Hamas protests in violation of Canada's hate speech and terrorism laws?” (13 November 2023), online: *MLI*, <https://macdonaldlaurier.ca/are-pro-hamasprotestsviolation-of-canadas-laws/>.

referring to a Jewish account user as a "Zionist pig" and stating, "Hitler should have eradicated all of you."²⁵

Chief Justice Richard Wagner of the Supreme Court of Canada (SCC) underscored the importance of cooperation, civility, and professionalism within the legal profession, even amid disagreements.²⁶ The Canadian judicial system recognizes the right to dissent but emphasizes the exercise of this freedom in support of the rule of law, rather than as a pretext for personal attacks.²⁷

(a) Professional Regulatory Oversight

Professional regulatory bodies can enforce standards of conduct on social media to ensure alignment with professional responsibilities. Instances of disciplinary actions against professionals who express controversial or harmful views serve as poignant reminders of the importance of upholding elevated standards, even beyond their official duties.²⁸

In the United Kingdom case of Farrukh Najeeb Husain, a solicitor faced disciplinary measures and was ultimately barred by the Solicitors Regulation Authority (SRA) for sharing offensive and antisemitic tweets.²⁹ Despite the solicitor's assertion that his Twitter account was personal, the SRA deemed the tweets blatantly inappropriate and antisemitic, employing terms such as "typical Zionist" and "Zionist pig."³⁰ This case highlights the regulatory bodies' mandate to address misconduct and emphasizes the wider implications of maintaining professional standards.³¹

Similarly, in *Peterson v. College of Psychologists*,³² Dr. Peterson, a clinical psychologist and member of the College of Psychologists of Ontario, found himself compelled to undergo a mandated continuing education

program by that College. This was prompted by concerns about his public comments and social media posts being perceived as "degrading, demeaning, and unprofessional," raising potential risks to the public and trust in the psychology profession.³³ The psychologist's extensive presence on social media and his contentious commentary on topics such as transgender issues, racism, overpopulation, and COVID-19 led to the intervention.³⁴ The court left that decision undisturbed. This case underscores the critical importance of upholding high standards in regulated professions, even when individuals act in personal capacities.³⁵

(b) The Rules of Professional Conduct

i. Conduct Guidelines for Lawyers on Social Media

The LSO has established guidelines in the Rules governing lawyers' conduct. The Ontario Bar Association offers further guidance, emphasizing the importance of exercising good judgment and understanding the impact of online comments.³⁶ These guidelines emphasize the necessity of thoughtful expression and professionalism. Despite these efforts, surveys indicate a significant decline in civility in the legal profession, with nearly 70 percent of respondents reporting encounters with uncivil behavior in 2023.³⁷

Under the Rules, lawyers are obligated to adhere to specific standards when representing themselves online. The Rules can be extended to their conduct and posts on social media, advising them to exercise restraint in public comments regarding the administration of justice, recognizing the weight their opinions carry in the public eye.³⁸ For example, Rule 5.1-5 mandates that lawyers

²⁵ David Thomas, "Illinois official fires lawyer over antisemitic Instagram messages ...", (19 October 2023), online: Reuters <https://www.reuters.com/legal/legalindustry/illinois-official-fires-lawyer-over-antisemitic-instagram-messages-2023-10-19/>.

²⁶ Zena Olijnyk, "Why collegiality in the legal profession is important for lawyers, judges – and the law", (18 June 2021), online: *Canadian Lawyer*, <https://www.canadianlawyermag.com/resources/practice-management/why-collegiality-in-the-legal-profession-is-important-for-lawyers-judges-and-the-law/357334>; Richard Wagner, *Opening Statement by the Right Honourable Richard Wagner, P.C. Chief Justice of Canada* (Queen's College, University of Cambridge, England, 2019).

²⁷ *Ibid.*

²⁸ *Peterson v. College of Psychologists*, 2023 ONSC 4685 at paras 50-51 [*Peterson*].

²⁹ Bianca Castro, "Solicitor faces tribunal over 'plainly extremely offensive' tweets", (18 September 2023), online: Law Gazette, <https://www.lawgazette.co.uk/news/solicitor-faces-tribunal-over-plainly-extremely-offensive-tweets/5117265.article>.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Peterson*, *supra* note 28, at paras 50-51.

³³ *Ibid* at paras 1-3 & 41.

³⁴ *Ibid.*

³⁵ *Ibid* at para 5.

³⁶ Dan Ciraco, "10 THINGS EVERY LAWYER SHOULD KNOW ABOUT SOCIAL MEDIA", (18 October 2016), online: Ontario Bar Association, https://www.oba.org/JUST/Archives_List/2016/October-2016/SocialTips-5.

³⁷ Julie Sobowale, "Experience of incivility pervasive for Ontario Lawyers: Toronto Lawyers Association Survey", (13 December 2023), online: *Law Times*,

<https://www.lawtimesnews.com/resources/professional-regulation/experience-of-incivility-pervasive-for-ontario-lawyers-toronto-lawyers-association-survey/382235> [Sobowale].

³⁸ "Public appearances and statements", (27 April 2023), online: The Law Society of Ontario, <https://lso.ca/lawyers/practice-supports-and-resources/topics/the-lawyer-client-relationship/public-appearances-and-statements>.

should be courteous, civil, and act in good faith toward tribunals and all individuals with which they engage.³⁹ Rule 5.6-1 directs licensees to uphold public respect for the administration of justice, cautioning against making petty, intemperate, or meritless criticisms about other legal professionals.⁴⁰ Moreover, Rule 7.2-1 extends this requirement to dealings in the course of legal practice, emphasizing the avoidance of ill-considered or uninformed criticism of fellow legal practitioners.⁴¹ Rule 7.2-4 states that lawyers must not communicate in a manner that is abusive, offensive, or inconsistent with the proper tone of professional communication.⁴² Finally, Rule 7.5-1 allows lawyers to make public appearances and statements, provided there is no infringement on the lawyer's obligations to the client, the profession, the courts, or the administration of justice.⁴³

In terms of striking a balance between lawyers' rights and the constraints placed by rules of professional conduct, the Supreme Court of Canada decision in *Doré v. Barreau du Québec*⁴⁴ highlights the need for a proportionate balancing act.⁴⁵ The court held that while lawyers have the right to speak their minds freely, they also must do so with dignified restraint, in line with the expectations of their profession.⁴⁶

ii. Disciplinary Authority Over Social Media Posts

Professional regulatory bodies, such as the LSO, have the authority to discipline members for their behavior on social media, especially in cases where misconduct involves inappropriate, disrespectful, or unprofessional conduct. The significance of maintaining professional conduct early in a legal career is that "to practice law is not a right, but a privilege."⁴⁷ This is reflected in s. 27(2) of the *Law Society Act* (the "Act"),⁴⁸ which states that a law license can only be issued to an applicant of good character, to safeguard the public, uphold ethical standards, and maintain trust in the legal profession.⁴⁹

Following its mission to promote justice and uphold the rule of law, the LSO is empowered to take

disciplinary action when a lawyer's social media activity demonstrates incivility, creates confusion, undermines trust in the administration of justice, or obstructs the LSO from fulfilling its statutory duties.⁵⁰ In *Law Society of Ontario v McEachern*,⁵¹ the lawyer was subject to discipline proceedings due to social media posts, which he referred to as a "witch hunt."⁵² The decision issued by the LSO included ceasing public broadcasts, deleting specific Facebook materials, and refraining from making unwelcome comments about LSO staff, complainants, and witnesses.⁵³ Further, the LSO's disciplinary jurisdiction extends beyond professional conduct to include personal behavior that could detrimentally affect the legal profession or hinder the administration of justice, as articulated in s. 33 of the Act.⁵⁴

Section 33 of the Act prohibits licensees from engaging in professional misconduct or conduct unbecoming, with disciplinary proceedings initiated under s. 34(1).⁵⁵ Importantly, the LSO's disciplinary reach extends to both professional and personal social media accounts, irrespective of disclaimers or the absence of a direct link to the legal profession.⁵⁶ Disciplinary measures may be taken if there is a reasonable belief that a client's trust in the lawyer or the legal system could be compromised. The Rules state that a lawyer's conduct is not excused solely by its occurrence outside the courtroom or the lawyer's office.⁵⁷

The LSO oversees lawyers, paralegals, and licensing candidates, administering disciplinary proceedings, and conducting good character investigations for candidates. In *Guo v. Law Society of Ontario*,⁵⁸ a licensing candidate faced disciplinary action for inappropriate social media posts, resulting in the referral of her licensing application for a good character hearing.⁵⁹ The tribunal considered factors such as the nature and duration of the misconduct, the passage of time, and expressions of remorse and rehabilitation.⁶⁰

³⁹ LSO Rules, *supra* note 2, r. 5.1-5.

⁴⁰ *Ibid*, r. 5.6-1 and Commentary 1 and 3.

⁴¹ *Ibid*, r. 7.2-1.

⁴² *Ibid*, r. 7.2-4; Sobowale, *supra* note 30.

⁴³ LSO Rules, *supra* note 2, r. 7.5-1.

⁴⁴ *Doré v. Barreau du Québec*, 2012 SCC 12 [*Doré*].

⁴⁵ *Ibid*.

⁴⁶ *Ibid* at para 68.

⁴⁷ Warren K. Winkler, *Remarks of Chief Justice Warren K. Winkler on the Occasion of the Law Society of Upper Canada's Call to the Bar Ceremony* (Toronto: Ontario, 2010).

⁴⁸ *Law Society Act*, RSO 1990, c L.8, s. 27(2) [*Law Society Act*].

⁴⁹ *Ibid*; *Puchiele v. Law Society of Upper Canada*, 2018 ONLSTH 19 at para 42 [*Puchiele*].

⁵⁰ *Ibid*.

⁵¹ *Law Society of Ontario v McEachern*, 2020 LSDD No 24 at para 51 [*McEachern*].

⁵² *Ibid* at para 51.

⁵³ *Ibid* at para 33.

⁵⁴ LSO Rules, *supra* note 2, r. 1-1.

⁵⁵ *Law Society Act*, *supra* note 48, s. 33 & s. 34(1).

⁵⁶ LSO Rules, *supra* note 2, r. 7.5-1 and Commentary 1.

⁵⁷ *Ibid*.

⁵⁸ *Guo v. Law Society of Ontario*, 2019 ONLSTH 46 at para 3 [*Guo*]; *Law Society of Ontario v. Forte*, 2019 ONLSTH 9 [*Forte*].

⁵⁹ *Ibid*.

⁶⁰ *Ibid* at paras 2 & 46.

Similarly, in *Simone v Law Society of Ontario*,⁶¹ a paralegal licensing candidate's 2020 social media posts were scrutinized, emphasizing the importance of tone, language, and compliance with human rights laws.⁶² The discipline panel clarified that the case does not advocate for silence on contemporary issues, affirming that engaging in social or political commentary is not inherently misconduct.⁶³ Instead, it held there is a need for respectful language, particularly when expressing dissenting views on cultural and political matters.⁶⁴

Conclusion

Navigating social media effectively requires an understanding of the limits of freedom of expression, particularly for regulated professionals. There is a complex interplay between free speech, defamation, and professional responsibility. Lawyers must exercise caution in their online communications. In today's digital age, prudent online behavior is essential to upholding public trust and maintaining the integrity of the legal profession.

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⁶¹ *Simone v Law Society of Ontario*, 2023 LSDD No 27-30, 36 [Simone].

⁶² *Ibid* at paras 25, 39, 75 & 83.

⁶³ *Ibid* at paras 75 & 83.

⁶⁴ *Ibid* at para 69.