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STAY IN TOUCH

We welcome all suggestions and comments. Feel free to send your feedback to Doris Sun, Manager of Communications, at: dsun@cssea.bc.ca.

KEEPING WATCH: HOW TO NAVIGATE OFF DUTY EMPLOYEE CONDUCT

The second of this two-part series on social media looks at the consequences of off duty employee conduct. It follows an earlier article from the Summer issue of CSSEA News that introduced social media use in the workplace and discussed recent decisions involving Facebook.

By Tamina Mawji

With social media permeating so many aspects of people's lives, it is inevitable that there will be implications for the workplace. This has proven to be a challenge for employers, who are increasingly dealing with a blurring of the traditional distinction between the work and personal lives of employees and whether they have the right in some circumstances to discipline employees for social media use. As discussed in Part 1 of this series, the law offers clarity in situations involving inappropriate use of social media while an employee is on duty. What happens, though, when employees use their own time, 'off the clock,' to post objectionable content and/or behave inappropriately on social media?

Here, we examine several case studies.

The notorious case, *International Union of Elevator Constructors, Local 50 v. ThyssenKrup Elevator (Canada) Ltd, 2011 CanLII 46582 (Ont. L.R.B.)*, provides an example of the workplace repercussions for an employee who took part in an off-duty prank which occurred on the worksite.

The employee was an elevator mechanic at a construction site working on a large downtown Toronto office tower project. There were a number of different subcontractors working at the site and the building was not occupied at the time, other than with construction personnel. The construction employees were all male and, on various occasions, had engaged in pranks at the worksite influenced by the MTV television show "Jackass." There were bets, with money gathered in the lunchroom going to individuals who engaged in a number of outrageous acts, including incidents of eating spoiled food and even chewing someone's rotten toenail directly from their foot. Sometime after these acts had been performed, the mechanic accepted a bet for \$100 to staple-gun a body part (his scrotum) to a 4"x4" plank in the lunch room during lunch. The mechanic knew he was being recorded when he went through with the prank and bet.

When the video clip, posted on YouTube, came to the employer's attention, the mechanic was terminated from employment for violating the Workplace Harassment policy. Even though the employee was not the one to post the video online and the employee had no history of discipline, the termination was upheld at hearing. An important factor was the offensive and shocking nature of the conduct as explained in the following comment:



“In my view, any reasonable employee would recognize that exposing one’s genitals and having one’s scrotum stapled to a 4x4 wooden board on the employer’s premises and permitting that conduct to be recorded on a video is patently unacceptable in almost any workplace particularly when the employer of the employees involved can be easily identified. An employer, in my view, need not establish and promulgate a policy prohibiting that kind of behaviour.”

Lessons Learned

It is not surprising that the more egregious the employee expression, the more severe the discipline. This case also provides an example of the importance of establishing a nexus between the employee’s expression and the potential harm to the employer. Of significance in this case was that the employer was engaged in a safety sensitive industry and that there was the potential that the employer would experience damage to its reputation. In this context, the employer had “a significant interest in preventing, if not an obligation to prevent, its employees from engaging in stunts, pranks or horseplay in the workplace.”

Twitter Twits

Personal tweets made off-duty and not directed to anyone in the workplace or in reference to anything work related led to very severe and public consequences for two Toronto firefighters.

In 2013, the National Post published an article featuring offensive tweets from both firefighters and suggesting that the culture of the Toronto Fire Services may not be welcoming to women. The article identified both firefighters and the employer at around the same time the employer had initiated a program which was designed to increase female and diversity recruitment. After investigation, both firefighters were terminated for inappropriate off-duty use of their Twitter account, violation of a number of workplace policies, including its social media policy and harming the reputation of the employer, particularly with regard to diversity initiatives it had been trying to implement.

In the first decision, *City of Toronto v. Toronto Professional Firefighters Association* (Edwards Grievance), the one tweet by the grievor featured by the National Post article was found not to warrant discharge, but rather a three day suspension. Of significance was that the tweet appeared to be an isolated incident, the circumstances were at the low end of the spectrum of unacceptable behaviour; the grievor apologized a number of times to the employer and his colleagues; the tweet was not directed to anyone in the workplace; and was not an attempt to challenge the employer’s efforts at creating a more inclusive and welcoming workplace for women.

Conversely, in the second decision, *Toronto (City) v. Toronto Professional Fire Fighters’ Association, Local 3888* (Bowman Grievance), the Arbitrator upheld the termination. While the National Post article identified three tweets by the grievor, upon further investigation by the employer, numerous sexist, misogynistic, racist and generally offensive tweets were uncovered. While the Twitter activity occurred off-duty, he clearly identified himself as a Toronto firefighter in his profile.

The Arbitrator had no trouble finding the grievor’s use of his Twitter account as reckless and concluded that disseminating “slurs, derogatory comments, insults, in the form of jokes, even if created by someone else, constitute serious acts of discrimination.” In making her decision, the Arbitrator largely focused on the sexist, racist and homophobic nature of the tweets and how that reflected on the employer. Despite the grievor’s apology, the conduct was exacerbated by the nature of the employee’s role, as firefighters occupy a role of trust within society and ought to be held to a higher standard of conduct.

Lessons Learned

The different outcomes with respect to the firefighters in these decisions serve as a reminder that employers should pay careful attention to the particular circumstances of each case as there is ‘no one size fits all’ approach to address employee social media use.

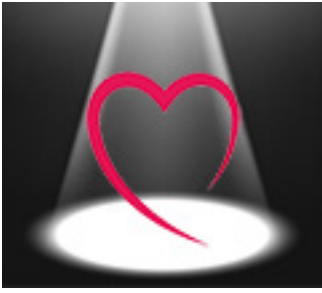
Conclusion

Recent cases illustrate that social media posts can provide a reasonable basis for discipline and discharge from employment even where the employee’s social media activities occur off-duty. If an employer is considering whether to respond to employee activity outside of the workplace, it is essential to conduct a thorough investigation to determine if there is a sufficient nexus between the off duty conduct and its business. In this context, it is prudent for employers not to misuse information with respect to off duty conduct and to recognize the blurred distinction between private activities of an employee and conduct that has a workplace connection.

Employers can proactively mitigate risks from potentially damaging and harmful employee social media expression by creating clear and consistently enforced policies on social media use. As a further step, existing policies, such as workplace harassment and code of conduct policies, should be updated to reflect the prevalence of off duty social media use. To help minimize risk, employers should be engaging in dialogue and ensuring that employees understand what is expected of them.

HAVE AN HRLR TOPIC YOU WANT US TO TACKLE?

Send your story ideas to: communications@cssea.bc.ca



THE SECTOR SPOTLIGHT

Stories of impact and innovation in the social services sector

EDITOR'S NOTE: *This regular column aims to shine a spotlight on members and associates who are conducting operations in innovative ways. It is hoped that these shared ideas will allow community social services agencies to function at their best. If you have a story to submit about a program or practice that has improved the workings of your agency, email Doris Sun at dsun@cssea.bc.ca for a chance to be featured.*

Treasure Hunt Chronicles

By Doris Sun

Many of us have enjoyed that feeling of elation when stumbling across the last shirt in your size, a pair of shoes you were searching for, or those special dishes that had been sold out for months. Scoring an unexpected find is a universally exciting experience and one that Cythera Transition House Society has been cultivating since it opened its doors in April, 2011 with its Cythera Unique Boutique. A slightly different concept than a traditional thrift shop, the boutique offers a high-end thrift store experience, replete with carefully chosen home decor, jewelry, giftware and women's clothing. The store is managed by an employee with a keen eye for styling, as well as previous work experience in design and display in Australia. According to Cythera's Executive Director, Teresa Green, the thoughtfulness in visual presentation has allowed the boutique to thrive as a separate concept. "It opened the door for a different type of donation," said Green. "It opened the door for the public to donate things they might otherwise be more emotionally attached to, because they know their donations will be well cared for." The store's knack for making slight tweaks to an item, for instance, dressing a light with a different lampshade to transform it, has been instrumental to the store's success. "Some people have bought their own stuff back because it looked so great!" Teresa said with a laugh.



The Unique Boutique runs in tandem with a traditional thrift store, open since the mid-1990s, which operates with the goal of allowing the community access to low cost items that meet every day needs. Net proceeds from both stores are funneled back to the agency for services and programs, particularly those that only receive partial funding. The idea for the boutique sprang in 2010 from the original thrift store, when staff noticed some donated items were of a rarer quality. This included complete sets of children's books that were sold at such low prices, other second hand retailers were purchasing and re-selling them at a substantial markup. After some contemplation on how best to address this issue, Teresa decided to create a space that separated "wants from needs." The agency had funds from the sale of some housing and took a gamble by purchasing a new space for the boutique on the 22000-block of Lougheed Highway in Maple Ridge, which would ultimately become the Unique Boutique.

Looking back, the gamble was well worth it, as it ultimately expanded both the donor and customer base and proved to be a win-win for individuals who could donate to a worthy cause and shoppers who benefitted from a hand curated experience.

Individuals who use Cythera's services have also benefited. They are periodically given vouchers to shop at the thrift store, which has been an invaluable experience for victimized women leaving a transition house with no belongings. "Fleeing abuse is expensive," said Teresa. "Sometimes people don't put a price on it, even when it's on a temporary basis and they often find themselves lacking basic items, which also happen to be the hardest to find funding for." For many who have benefited from the kindness of this service, though, it's created a positive feedback loop. Teresa has seen many women return after using Cythera's



services to become volunteers or sponsors of families in need during Christmas. Similarly, some individuals with learning disabilities who moved on to employment have also returned to volunteer at the shops and to maintain social interactions.

For all of the positives, the boutique does experience its share of challenges. The work of hand sorting through items is labour intensive. Also, items dropped off during non-designated times, often left outside in the elements, have resulted in damaged goods and caused thousands of dollars in dumpage fees. Space limitations is also a regular issue.

To see the excitement that comes with happy shoppers, however, makes the venture entirely worthwhile in Teresa's eyes. "I don't think we've had anybody who walked in

there and wasn't surprised by what they saw." And because the boutique allows individuals to be charitable without having to write a cheque, it's been warmly received by area residents.

"It's a nice place for things to end up in."



Visit the Shops!

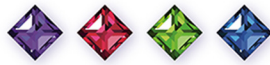
Visit the Cythera Unique Boutique at: 22362 Lougheed Highway, Maple Ridge (Tel: 604.467.8118)

Or

Cythera's original thrift shop at: 22318 McIntosh Avenue, Maple Ridge (Tel: 604.467.9939)

CONGRATULATIONS 2017 AWARDS OF EXCELLENCE RECIPIENTS!

BC COMMUNITY SOCIAL SERVICES
**AWARDS OF
 EXCELLENCE**



We are very excited to announce this year's BC Community Social Services Awards of Excellence recipients and look forward to celebrating their achievements at the upcoming Awards of Excellence Luncheon! The Luncheon will be taking place October 25 at 12pm at the Delta Grand Okanagan Resort in Kelowna. We look forward to honouring:

Rising Star - *Damian Brennan*, Chilliwack Society for Community Living - A newcomer to the community social services sector, Damian has thrived at working with individuals who have exceptional behavioural support needs. He is valued by colleagues for devoting his own time and resources to providing support to numerous individuals in the Fraser Valley.

Hero - *Paulina Weslowski*, Semiahmoo House Society - Paulina is not only passionate about building an inclusive and multicultural community, she is active in volunteering her time to support a wide range of causes. From multicultural dance, to Spanish classes, to being involved with her church, Paulina has proven to be a force for positive change.

Leader - *Kelly Kelland*, Interior Community Services - Kelly prides herself on being a 'people person' and it shows. She is as equally well-loved by individuals served in the Kamloops area as she is by her staff. Kelly not only serves as a mentor and friend, she is also known as an advocate for the community social services sector, expanding program offerings and doubling the budget of her agency since she took over as CEO.

Legend - *Diane Entwistle*, Okanagan Boys & Girls Clubs - Diane is highly respected by both staff and the community at large for her mentorship, passion for developing new leaders and her willingness to share expertise with others. Diane is involved with organizations nationally, and while that takes up much of her time, staff appreciate Diane for her open door and eagerness to support and nurture staff.

We hope to see you at the Luncheon, where you will learn so much more about what makes our recipients so special. To purchase tickets, go to our conference website at: conference.cssea.bc.ca and click Register/Online Registration. Tickets to the Luncheon are \$55 +GST.

ACTIVATE EXTRA SAVINGS WITH



You can always count on Telus to provide fun games, prizes and exclusive offers at our conferences and this year is no different! Visit the Telus table at the upcoming AGM and Conference, taking place October 24-26 at the Delta Grand Okanagan Resort, for the opportunity to score something extra. The first 100 new activations on the Employee Purchase Program will receive a \$25 gift card, in addition to savings on your phone plan.

Telus will also be offering games at their booth during our Happy Hour Reception on October 25 from 5:30-7:00pm. Be sure to swing by, mingle with staff and delight in some drinks and appetizers from the Okanagan!