SOCIAL MEDIA PROTOCOLS FOR PROFESSIONALS

In the past two decades, social media – that area of cyberspace in which people interact, trade ideas and form relationships – has increased exponentially. The potential for professional exploitation of social media networks for advertising, dissemination, and service provision has largely been realized by the parallel development of advanced access devices and bandwidth availability.

The technological penetration of the internet in Barbados has been assessed at 76.% by the World Bank as at 2015[[1]](#footnote-1), compared to just 4% in 2000. This represents an incredible level of access to educational and commercial resources, as well as a prime resource for professionals to market their wares and skills on a global scale.

Sadly, however, we have to admit that the internet is not truly being used to its optimum positive maximum, nor are its users – professionals and others – utilizing its powers for all that is “pure, lovely and of good report”. Indeed, it may be fairly said that when one looks at the breakdown of global internet usage trends, there is a tendency to utilize online resources more for personal browsing use than for business development and leveraging information for professional development and information.[[2]](#footnote-2)

For professionals in general and legal practitioners and their employees in particular, social media use possesses certain benefits and definite burdens. Under the terms of the Legal Profession Code of Ethics 1988, made under the Terms of the Legal Profession Act[[3]](#footnote-3), an attorney has to tread very lightly when it comes to utilizing social media for any purpose.

For example, when the public is up in arms in relation to a particular case or a particular person with matters before the Courts, there is always the clamour for a lawyer’s opinion. Should the lawyer comment in accordance with his right under clause 9[[4]](#footnote-4)? Should the lawyer withhold comment in accordance with the sub judice doctrine? Furthermore, does the comment, coming as it does from a lawyer of reasonable skill, contravene the tenet that prohibits emphasis on professional competence?

Another issue arises in relation to the code of ethics and the lawyers. Let us suppose that a lawyer feels the need to vent his/her concerns or strong feeling about a legal issue or a decision made by the Judge or Magistrate? Is the lawyer entitled to exercise his/her constitutional right to freedom of speech in a tweet, a Facebook post or a newspaper interview published online? Or should the lawyer be mindful of clause 40 of the Code[[5]](#footnote-5)?

While you think on these things, let us consider one final aspect of the lawyer in cyberspace. By dint of skill and expertise, a lawyer becomes well known and sought after. By contrast, a freshly-minted junior lawyer may struggle to gain early recognition. Does a social media presence by that junior contravene clause the prohibition against advertising as mandated by clause 61[[6]](#footnote-6)? Bear in mind that in years gone by, the profession was sufficiently circumscribed by this prohibition that the only public profile many lawyers had was a listing in the telephone directory, or a discreet sign outside the office. Is this a reasonable expectation in the world of LinkedIn, where a lawyer can post what amounts to an autobiography on his/her profile?

It may be clear by now that the social media environment can be a serious trap for the unwary practitioner. It can be navigated, however, by the application of common sense and the consideration of some simple guidelines. In time, the Bar Association may wish to codify rules for the knowledge and benefit of its members. Until that time, here are some suggestions:

**Determine the reason for your use of social media**

Once you know the purpose of your use of social media, it becomes relatively simple to make your own, personal rules. A worthwhile suggestion is to remember the principles of Lord Reith, the first Director General of the BBC : media is at its best when it is used to inform, educate and entertain, in that order.

**Think before you post**

This may seem obvious on first reading, but how many of us have posted, or forwarded, a piece of social media that was later shown to be false, inappropriate or even actionable at law? Sensible policy on placing an item, opinion or image online should always be dictated by forethought as to the potential consequences of that post.

**Remember who you are and what you do for a living**

Again, this may appear self-evident, but as an attorney at law, you must be mindful that your posts are not just those of the man in the street. Rightly or wrongly, you are held in a certain esteem in the eyes of the public, your clients, your colleagues and the judiciary. As stated earlier, you have obligations under the Code of Ethics that ought to give you pause when you are engaging in dialogue online, or when you post comments relating to your work or the profession in general. Any comments relating to your work that are misconstrued may result in a loss of public confidence, loss of clients, and even accusations of unprofessional conduct. Indeed, even posts relating to your personal life may reflect badly on your professional work. Be careful.

**Monitor your employees’ use of social media**

Sometimes it is easy to lose sight of the fact that the doings of employees can have a serious impact on one’s professional dealings. One ill-mannered Whatsapp “blast” by an employee can hurt you. You therefore have two options: create an office policy on social media use and display it prominently and issue periodic reminders; or monitor the posts of the employees. Admittedly, neither option is entirely satisfactory, but consider the alternative.

**Consider separation of personal and professional social media use**

Most social media sites permit the creation of professional as well as personal spaces online. It might serve as a best practice for lawyers to maintain separate accounts on each site, one professional, one personal. The same may also be suggested for email addresses.

**For ease of reference**

The Bar Association is advised to examine the Practice Note of the UK Law Society[[7]](#footnote-7) for a detailed approach to the implementation of social media policy.

1. http://data.worldbank.org/indicator/IT.NET.USER.ZS?locations=BB [↑](#footnote-ref-1)
2. https://wearesocial.com/special-reports/digital-in-2017-global-overview [↑](#footnote-ref-2)
3. Cap 370A of the Laws of Barbados [↑](#footnote-ref-3)
4. 9. “An attorney-at-law may speak in public or write for publication on the legal topics provided that he does not thereby emphasize his own professional competence.” [↑](#footnote-ref-4)
5. 40. “(1) An attorney-at-law shall maintain a respectful attitude towards the court and shall not engage in undignified or discourteous conduct which is degrading to the court. (2) An attorney-at-law shall encourage respect for the courts and the judges (3) An attorney-at-law shall support judges and magistrates against unjust criticisms. (4) Where there is ground for complaint against a judge or magistrate an attorney-at-law may make representation to the proper authorities and in such cases, the attorney-at-law shall be protected.” [↑](#footnote-ref-5)
6. “61. An attorney-at-law shall not in the carrying on of his practice or otherwise permit any act or thing which is likely or is intended to attract business unfairly or can reasonably be regarded as touting or advertising.” [↑](#footnote-ref-6)
7. http://www.lawsociety.org.uk/support-services/advice/practice-notes/social-media/ [↑](#footnote-ref-7)