



## Defining Your Social Media Policy

*Merriam Webster* defines social media as “forms of electronic communication (such as websites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content (such as videos)”.

For many of us, social media is very much part of everyday life. From the ubiquitous Facebook, to various other platforms including Twitter, LinkedIn, Google groups, Yahoo! Groups, and YouTube – social media is used for personal and professional purposes.

This article refers to materials regarding social media published by law societies and bar associations of other jurisdictions, and discusses why a law practice should consider developing a social media policy.

### Benefits and Risks

According to the American Bar Association (“ABA”), social media is widely recognised as an efficient marketing and client development tool, and it unquestionably has its benefits when it comes to the practice of law.<sup>1</sup>

In relation to Twitter, the New Zealand Law Society says that it allows lawyers to “...interact with other colleagues and potential clients (in a public domain of course), hear about breaking news and recent developments in their field, discuss various issues and topics, and to promote

themselves or their firm or employing organisation. It allows someone to talk about their profession in a more laid-back manner”.<sup>2</sup>

However, the ABA warns that social media “... also serves as a virtual minefield for potential ethical violations.”<sup>3</sup>

### Blurred Lines

You must be vigilant when using social media to ensure that you do not contravene your professional and ethical obligations, including obligations under the Personal Data Protection Act (“PDPA”).

You must also be aware that your personal postings on social media could be interpreted as representing the views of your law practice.

There are potential risks because the boundary between one’s professional and private life is easily blurred in the social media universe.

The Law Society England & Wales, in its *Practice Note on Social Media* (18 June 2015), describes it succinctly as follows:

Social networking sites are used both personally and professionally. It is often not clear where personal and

professional boundaries lie and when your professional obligations start and end.

It may also be difficult at times to distinguish casual or informal interactions from more formal communication.

If you disregard your professional obligations, this may result in the following violations:

1. Breach of client confidentiality
2. Breach of rules on professional conduct including rules on publicity

Materials published in the U.S. and Australia also touches on social media in the context of the prohibition against communicating with an opposing client who is represented.<sup>4</sup> A lawyer is prohibited from communicating with a person whom the lawyer knows to be represented by counsel without first obtaining consent from the represented person's lawyers (or in certain other prescribed situations). The materials discuss whether a Facebook friend request or LinkedIn invitation to a person whom the lawyer knows to be represented by counsel amounts to communication.

According to the Law Institute of Victoria:

A practitioner must not deal directly with another practitioner's client or clients except in certain urgent and limited circumstances. For example, it would be unethical for a practitioner to make a Facebook 'friend' request to another practitioner's client or to make such a request to another practitioner's client in order to gain access to their Facebook page. Similarly it would be unethical to accept a 'friend' request from a person whom a practitioner knows to be another practitioner's client and caution should be exercised generally when accepting "friends".<sup>5</sup>

While the ABA has said the following:

In representing a client, Rule 4.2 of the ABA Model Rules of Professional Conduct expressly prohibits lawyers from communicating about the subject of representation with a person that the lawyer knows to be represented by another lawyer in the matter. This rule arguably applies to social media communications when it applies to 'communications with any person who is represented by counsel concerning the matter to which the communication relates'.<sup>6</sup>

## Vicarious Liability

Employers can be held vicariously liable for their employees' social media use, e.g. if confidential client information is disclosed, or if personal data is disclosed in breach of the Personal Data Protection Act.

In the recent decision of the Personal Data Protection Commission ("PDPC") in *Executive Coach International Pte Ltd* [2017] SGPDP3, the complainant complained that the organisation disclosed her past personal history, which was personal data, in a WhatsApp group chat without her consent and without notifying her of the purpose of the disclosure. The group chat comprised a director of the organisation, the complainant and other staff and volunteer trainees. The information was disclosed in the group chat by the director. The organisation claimed that the director was acting in his personal capacity when he disclosed the information. The PDPA deems any act done or conduct engaged in by an employee in the course of his employment as done by his or her employer, regardless of whether the act or conduct was done with the employer's knowledge or approval. The PDPC found that the director who disclosed the information was acting in the course of his employment and not in his individual capacity. Accordingly, the organisation was found to have breached the PDPA.

Although this matter involved the use of WhatsApp, the disclosure of personal data could also happen in social media channels.

## Social Media Policy

If your law practice does not already have a social media policy, you could consider developing a policy.

The Law Institute of Victoria in their Guidelines on the Ethical Use of Social Media advises as follows:

If a firm uses social media channels, employees of the firm should be given clear guidance and instruction on their use. This can be best achieved by having a social media policy for the firm and providing all partners and employees with appropriate instruction in its implementation and use.

The following principles could inform the social media policy that you develop for your law practice;

1. acting in the best interest of the client;
2. upholding the standing of the profession;

3. maintaining client confidentiality;
4. complying with the rules of professional conduct and publicity;
5. avoiding comments that may prejudice matters *sub judice* or that may be in contempt of Court; and
6. avoiding adverse remarks on the conduct or character of the opposing party.

Careless use of social media in contravention of these principles may amount to misconduct unbefitting an advocate and solicitor

If your law practice has email and IT use policies, you should ensure that your social media policy is compatible with these policies.

The guidance and instructions in your social media policy may include the following aspects:

### ***Official social media platforms and the personal use of social media***

1. Identify the law practice's official social media platforms—e.g. Facebook, LinkedIn. The law practice should appoint a site administrator to develop content and manage messages or information for posting.
2. Differentiate between what is placed on the law practice's official social media platforms and the personal use of social media platforms. Disclaimers that postings do not represent the views or position of the law practice should be included for personal use of social media.

### ***Responsibility for personal use of social media***

3. All individuals in the law practice must accept responsibility for their personal use of social media platforms, and they must not refer to or name clients or lawyers of the law practice without their approval.
4. All individuals should not say anything in their personal social media postings that may be construed as emanating from or representing the views of the law practice. Inclusion of the law practice's name or email address in the posting may imply or give the impression that the individual is acting on behalf of the law practice.

### ***Maintain client confidentiality***

5. All individuals must not share information that is confidential to the client, without the client's consent.

### ***Professional conduct rules***

6. Consideration must be given to the rules of professional conduct (including rules on publicity) as well as the obligations under the PDPA.

### ***Risks***

7. A solicitor-client relationship may be created online. Precautions are necessary so that a lawyer does not inadvertently enter into a solicitor-client relationship. Lawyers should not offer or appear to offer legal advice in their messages or postings on social media.
8. Undertakings should not be provided via any social media channels.
9. All individuals must be conscious at all times not to make defamatory, misleading, adverse, or offensive comments about clients, opponents, witnesses, the judiciary, government agencies, counsel for the opposing party, or any other party.

## **Knowledge Management Department The Law Society of Singapore**

### **Notes**

1. Jessica Weltge and Myra McKenzie-Harris, Esq, *The Minefield of Social Media and Legal Ethics: How to Provide Competent Representation and Avoid the Pitfalls of Modern Technology* (American Bar Association, Section of Labor and Employment Law, Ethics & Professional Responsibility Committee Midwinter Meeting March 24, 2017).
2. New Zealand Law Society's Practice Briefing – Getting Started With Twitter (April 2016).
3. *Supra* n 1.
4. In the Singapore context, rule 7(3) of the Legal Profession (Professional Conduct) Rules provides that a legal practitioner must not communicate, about a matter in respect of which he represents a client, with any person whom he knows to be represented by another practitioner except in certain prescribed situations.
5. Law Institute of Victoria, *Guidelines on the Ethical Use of Social Media*.
6. *Supra* n 1.