



Employee Relations

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Helen Lam

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Social media dilemmas in the employment context

Helen Lam

Faculty of Business, Athabasca University, Edmonton, Canada

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Abstract

Purpose – The purpose of this paper is to analyse social media issues that give rise to employment-related legal and ethical dilemmas, with reference made to recent case law development, and offer recommendations for employers and employees.

Design/methodology/approach – Prior research, statistical trends, and case laws are reviewed.

Findings – Employers using social media for employment decisions may risk crossing the lines of discrimination, infringement on personal privacy, and/or interference with employees' concerted activities protected by US law. However, employers not using social media may face negligent hiring and damages for improper employee messages posted. For employees, while social media provides a connection tool, messages posted off-duty and thought to be "private" may still be used as evidence in support of disciplinary actions.

Practical implications – Employers, employees, and their unions must be cognizant of the ethical and legal implications of using social media in the employment context, and the latest developments in the privacy rights, human rights, labour relations rights, and contractual rights. Concerns about power shift need to be addressed.

Social implications – Social media growth has blurred the boundary between work and private lives. With employers able to monitor employees' social media activities almost at all times, this has implications for the overall power and control. On the other hand, employees may find social media offering another voice channel that can also potentially increase their power to some extent.

Originality/value – Social media is a fast developing area with new case laws emerging regarding its use in the employment context. The paper provides a systemic review of the issues and latest developments.

Keywords Best practice, Human resource management, Business ethics, Employee relations, Selection, Laws and legislation

Paper type General review

Introduction

The popularity of social media has soared so much in recent years that it has become almost an inevitable part of one's social and work life. Social media helps people connect and share information but also can bring a host of issues, some of which can have legal and ethical implications. In the employment setting, employers have increasingly used social media for recruiting employees, screening job applicants, as well as monitoring or disciplining current employees. In the process, employers run the risk of crossing the lines of discrimination, infringement on personal privacy and freedom, or interference with employees' concerted activities that are protected by US law. However, employers choosing not to use social media can run other risks as well, such as negligent hiring and damage to company image for improper employee messages posted. Employers, in general, are not ignorant of the potential problems of using social media. For example, 74 per cent of employers in a Deloitte LLP's Ethics and Workplace Survey realized that organization reputation could be easily destroyed by social media, if not handled appropriately (Deloitte, 2009). Yet, many are not well prepared to deal with social media-related employment matters.

For employees, the boundary between private and work life is becoming more and more blurry with time. Social media messages shared with friends can quite easily



and quickly get into the hands of other unintended parties, including the employer or other colleagues. Case laws have shown decisions upholding employee disciplines arising out of posting allegedly non-private messages harmful to the employer or offensive to the supervisor. Interestingly, research has found that millennials, which comprise a significant portion of social media users, are aware of their vulnerability using digital media but still post significant volumes of personal information (Sánchez Abril *et al.*, 2012). Among employees, another dilemma exists when one is torn between keeping colleagues' information private and disclosing to the employer under a duty of loyalty, such as when another employee badmouths the employer on social media. While these concerns are not totally new, the social media context has certainly brought attention to some of these issues to a new height. As social media offers employers more employee monitoring opportunities and tools, even outside of the work place and hours, it has the potential to shift the power balance in the employment relationship towards employers. Hence, employees and their collective institutions may have to figure out their appropriate role in shaping the policy developments and use of social media in their organization.

Although many lawyers and consultants as well as some human resource (HR) scholars have written on social media in the employment context, most of their articles usually deal with a specific issue triggered by a recent development within a country or jurisdiction. There is a general lack of studies that provide a systematic and comprehensive examination of the topic relating to the broad range of employment issues and settings. This paper is intended to help fill the gap. In particular, its focus is on social media issues that give rise to employment-related dilemmas, for both employers and workers, as the dilemmas are what make the issues particularly challenging for decision making. The paper starts with an analysis of recent social media trends and common usages in the employment contexts. It then identifies and discusses issues involving ethical and legal dilemma, with references made to case laws. These include the broader implications for employees relating to the shift of power and control in the employment relationship. The paper also offers a set of recommendations for employers and employees and suggestions for future research. It is written with a broad range of audiences in mind, including academics in HR or law, HR practitioners, line managers and workers in general.

Social media trends

Social media is defined in the Merriam-Webster dictionary as “forms of electronic communication (as websites for social networking and micro blogging) through which users create online communities to share information, ideas, personal messages and other content (as videos)”. Its main features include participation, openness, conversation, community, and connectedness (Mayfield, 2008). The fast speed of communication, the wide reach, the almost impossibility of retraction of inappropriate messages (as the messages might have been forwarded or kept by previous receivers) are also important characteristics that make social media very different from other prior forms of communication, like informal discussions among employees around the water cooler or at social gatherings. Moreover, anonymity or possible use of pseudo names offered by social media may easily lead one to be less careful about divulging information such as communication that could be construed as a misconduct in the eyes of the employer (Miller, 2013).

The popularity of social media is evident from a number of reports. Pew Research Centre (n.d.) found 74 per cent of online adults use social networking sites.

McKinnon (2014) reported from a Canadian Digital, Social, and Mobile Statistics study that there were over 1.8 billion active social network users, representing 26 per cent of the world population. Facebook is considered the most commonly used social medium as of January 2015, with around 1.37 billion users worldwide (representing 38.6 per cent of the global online population), while Twitter has also been fast expanding with 284 million active users (Statista, 2015). LinkedIn, a social network catering to professionals, reported a global user base of 300 million in 2014, with 41 per cent of users having over 500 connections and 48 per cent of them reported spending over two hours per week on this network (Conner, 2014). The wide usage of social media is also supported by other studies and surveys. For example, Diercksen *et al.* (2013) found in their survey of 115 students that 87.5 per cent of them used social media more than eight hours a week, with the vast majority of them having Facebook open while completing work. Similarly, a large UK survey showed 55 per cent of employees who responded admitting to spending time on social networking sites while at work, to the magnitude of over one hour a day for 6 per cent of them (My Job Group, 2010, p. 14). In the employment setting, an SHRM survey published in 2013 found 77 per cent of its members regularly using social media for recruiting, with 94 per cent favouring LinkedIn, 54 per cent Facebook and 39 per cent Twitter (SHRM, 2013). A survey commissioned by Microsoft found 79 per cent of people responsible for hiring in the US had reviewed online information of prospective employees (Microsoft, 2013).

Employer use of social media

Organizations use social media for dissemination and acquisition of information as well as for interaction with clients, potential employees, and other stakeholders. For employment matters, it is used most frequently in relation to recruitment, selection, and disciplinary situations.

Recruitment

Recruitment is the organizational process of attracting prospective employees to apply for the organizational jobs and obtaining an applicant pool. Organizations know that letting potential job applicants learn of the company culture and career opportunities is a great way to attract these people. Large employers have started realizing the benefits of social media for recruiting purposes. For example, Microsoft has developed a specific website for recruitment, using jobblogs and life at work videos to provide relevant information to both active and passive job-seekers (Joos, 2008). Similarly, Deloitte places employee testimonials on social media sites (e.g. YouTube videos) to allow potential job applicants to learn more directly from the insiders (HR Specialist, 2011). Some employers have even put up virtual worlds, like Second Life Work for recruitment purposes and even for new employee orientation and training (Miller, 2013). Social networks have recognized this great business potential and are offering business account holders various features to aid with their recruitment activities. For example, LinkedIn allows for job postings, sending of private messages to users on career opportunities, and potential employees' profile management, etc., while Facebook offers a good medium for communicating recruitment advertisements and messages, including simple text and blogs, videos and pictures as well as polls and surveys (Hunt, 2010).

The economic benefits of using social media for recruitment is easily seen through both efficiency and cost, as communication is often instantaneous and can reach a wide

range of audiences. It is, therefore, no surprise that 92 per cent of companies in a Jobvite survey said they were using or planning to use social media in hiring (Jobvite, 2012). The downside of it is whether the job messages can get through to the target audiences. Low cost does not necessarily mean cost-effectiveness. Attracting many applicants who may be unsuitable will end up wasting much time and resources for screening. A more ethically controversial dilemma is whether the social media recruitment approach is discriminatory. Although there may not be specific case laws to support this yet, the argument of systemic discrimination can possibly be made. According to a Pew Research Centre (n.d.) study, 89 per cent of adults ages 18-29 used social networking sites and the percentage decreased with increasing age, with only 49 per cent of for adults aged 65 and over using social networking sites. Zide *et al.* (2014, p. 599) found in the US LinkedIn study that only 10 per cent were non-white, which was not really representative of the overall population. Therefore, advertising jobs through social media only is disadvantageous for or even arguably discriminatory against the older workers (Bologna, 2014) or the visible minority. As age and ethnic background are often prohibited discrimination grounds for most developed nations, there could be legal repercussions, although the likelihood of court actions is not high due to the legal cost involved and the potential difficulty in proving discrimination in such situations. Regardless of the legal implications, is it ethically right to “discriminate” against the population groups that do not use social media regularly, especially when the lack of use may be due to resource and skill constraints? On the other hand, APCO Worldwide and MacDonald (2011) found in their survey on the state of the US workplace that 58 per cent of employees would rather work for an organization that uses social media; 60 per cent said using internal social media was an indication of innovation while 61 per cent considered the tool helpful for collaboration. So, organizations wanting to present an innovative and collaborative culture to appeal to applicants can do so effectively using social media, and such candidates attracted through social media may fit in well with the organization and benefit the various organizational stakeholders.

Selection

The ethical issues and dilemma with using social media for selection, often also known as cybervetting, are more complex and serious than for recruitment. Selection involves the process of screening applicants to identify the suitable ones for employment. Social media provides a wealth of information about the job applicants and can offer employers more insights into the suitability of the individuals for the organization. For example, Klout score calculated based on one’s profile and connections can provide some indications of a user’s social influence (Hidy and McDonald, 2013). Indeed, a prospective employee for a senior marketing position was reportedly terminated in his interview because of his low Klout score (Hidy and McDonald, 2013). On the positive side, Donald *et al.* (2012), found in two studies of over 200 cases that profile analysis ratings based on social networking websites did correlate with job performance, providing some empirical support for the validity of cybervetting. On the other side, a host of problems could arise with such online screening. First, profiles available on social media sites can be inaccurate, information could be taken out of context, and wrong profiles could be matched (especially for people with same names or where pranksters or enemies created or altered one’s profile information) (Slovensky and Ross, 2012). Social media information is also known to be incomplete, with substantial differences in the amount of posted information across occupational groups and gender. Zide *et al.* (2014) found that men were more likely to offer or receive

recommendations or post personal and professional interests than women on LinkedIn. Similarly, sales/marketing professionals were found to be better at “marketing” themselves in their online profile than HRs professionals or industrial psychologists. Making hiring decisions based on incomplete and even potentially erroneous information is risky for the organization (hiring the “wrong” person) and unfair to the rejected individuals.

A second ethical issue with cybervetting involves the infringement of privacy. According to a Deloitte survey, 63 per cent of 18-34 year olds did not think social media information is any business of their employer (Deloitte, 2009). It can, thus, be expected a similar or even higher percentage may be thinking so for their potential employer. Many social media sites have privacy settings. However, users may be unaware of the proper use of such and expect privacy when it may not always be construed so by courts. For example, in a US case, *United States v. Gines-Perez*, 214 F. supp. 2d 205, 255 (D.P.R. 2002), the decision states “placing information on the information superhighway necessarily makes said matter accessible to the public, no matter how many protectionist measures may be taken” (Bryant, 2012, p. 212). Even if the posted social media information could be considered “public” and employer access to it is not illegal, it still remains questionable whether it is ethical to do so, especially when the sites are not intended for job application purposes and consent has not been obtained. A poll by Manpower reported by Slovensky and Ross (2012) shows that 56 per cent of applicant would view such cybervetting by potential employers as unethical and 43 per cent would even “feel outraged” by such actions. Moreover, The Fair Credit Reporting Act in the US, for example, prohibits employers from obtaining information from third parties or using background information on applicants without having prior consent from the applicant (Lieber, 2011). So, does getting consent for job applicants before visiting their social media sites make it better? Getting such consent would allow applicants to remove information that is not intended for the eyes of the potential employer. However, considering the vulnerability of an applicant who is in need of a job, any consent given is likely not free from coercion. If one refuses to provide consent, imagine the kinds of negative signals it may convey – either the individual has something to hide or the individual is not cooperative. In general, case law has supported that access was not considered authorized if consent was not freely and truly given, such as when the individual felt compelled to provide the login information (see, e.g. *Pietrylo v. Hillstone Restaurant Group* (Case No. 06-5754 (Dist. Court, D. New Jersey 2009))).

There have been reported instances of more serious intrusions where potential employers required applicants to provide social media passwords and login information or access their social media pages in the employer’s presence, a practice admittedly used in some police and government departments (Suddath, 2012). This has led to many legislatures passing laws prohibiting such practices, including, for example in the US, the states of Arkansas, California, Colorado, Illinois, Maryland, Michigan, Jew Jersey, Nevada, New Mexico, Oregon, Utah, Vermont, and Washington (Strumwasser, 2014). Moreover, there could be other legal repercussions arising out of asking for such social media access. Facebook, for example, requires all users to not share passwords with others. The terms and conditions of use are viewed as a contract between the user and the provider. When an employer forces a job applicant or an employee to disclose the login and password information, it puts the applicant or employee in a position of breaching a contract. How ethical is it really for the employer to do so, even if legal wrong-doing may not always be easily established for coercing the breach?

While there have not been explicit statutory prohibitions in Canada regarding asking of social media login information, intrusion of privacy are actionable statutory torts under some provincial privacy acts (e.g. British Columbia, Saskatchewan, Manitoba, and Newfoundland) (Zurbrigg and Cote, 2012). The Ontario Court of Appeal further identified the elements required to establish torts of intrusion upon seclusion under common law, in the case of *Jones v. Tsige* (2012 ONCA 32 [Jones]). According to this first appellate-level case in Canada to recognize such a common law tort, the tort elements involved are: intentional (including reckless) conduct, private concerns of individual invaded without lawful justifications, and invasion being highly offensive (Zurbrigg and Cote, 2012).

A third ethical issue involves human rights. Many developed nations have human rights legislation prohibiting employers from making employment decisions based on individual's demographic characteristics unrelated to the job requirements or performance, such as age, gender, race, religion, marital status, and sexual orientation. Some states in the US also have laws protecting an employee's (including a potential employee's) off-duty lawful activities, including, for example, alcohol and tobacco consumption (McHale, 2012). Social media sites inevitable provide some of such personal information, and if an employer has access to it, could the information have biased the recruiting personnel, whether the decision has been consciously or subconsciously made? Zide *et al.*'s (2014) study of hiring professionals in New York found 60 per cent actually paid attention to the connectedness of the applicants and their profile picture on LinkedIn, probably as a way of inferring their professionalism. They also found hiring professionals tended to make negative inference when profile pictures were missing, as in the case of 16 per cent of their sample. However, the validity of such an inference on professionalism has not been clearly established. In a Carnegie Mellon University field research involving over 4,000 US employers with real job openings, the researchers designed realistic resumes and online profiles with manipulated personal traits regarding religion and sexual orientation, and after controlling for various firm and other demographic variables, found Muslim candidates had statistically significantly fewer interview opportunities than their Christian counterparts (Acquisti and Fong, 2014). Even if employers have no intentional bias, just the fact that the employer has looked at the sites could have legal ramifications. In a US case, *Gaskell v. Univ. of Kentucky* [No. CIV.A.09-244-KSF, 2010 WL 4867630 (E.D. Ky Nov. 3 2010)], a candidate sued the employer for rejecting him for a scientist job after another employee e-mailed his religious belief information available on his personal website to the hiring committee and the court found the plaintiff had a triable issue of fact related to religious discrimination (Morgan and Davis, 2013).

So, is it simply best not to look at social media sites for screening purposes in order to not get into allegations of illegal conduct involving applicant's privacy rights? There is another side of the ethical dilemma, however, that needs consideration. Employers can be held responsible for negligent hiring. Basically, employers have a duty to its employees and other third parties "to use skill and care in hiring employees", as appropriate for the position to be filled (DuPlessis *et al.*, 2014, p. 493). This is better described in the *Pontiacs v. K.M.S. Investments* [331 N.W. 2d 907, 911] case, where the court states that "liability is predicated on the negligence of an employer in placing a person with known propensities, or propensities which should have been discovered by reasonable investigation, in an employment position in which, because of the circumstance of the employment, it should have been foreseeable that the hired individual posed a threat of injury to others" (Weiss, 2011, p. 18). So, if an employer fails

to check the social media information on an applicant's background, especially if it is quite publicly available, it can potentially be found at fault for its carelessness in the hiring process, if something damaging happens later. Therefore, there are pros and cons with using social media for selection purposes.

In sum, while there are some legal protections for job applicants concerning employers' use of social media, particularly under the human rights and privacy areas, employers are generally quite free to screen applicants based on information available through the social media and it would be difficult for applicants to gather sufficient evidence to bring legal actions against employers for violating their rights. There is little doubt that the power balance is much in favour of employers in the selection process, and especially so with the availability of social media information. However, good employers should really be cautious in using the social media information, as there are certainly ethical concerns in addition to legal ones.

Employee monitoring

Organizations also face an ethical dilemma when it comes to monitoring current employees' social media activities. It is important to be able to know for various reasons what employees are doing with their communications with people who are associated with the organization, may be doing business with the organization, or can have an impact on the organization. First, employers have a duty to offer a safe and harassment-free workplace to employees. If an employee is using social media to harass a coworker or supervisor and if it is something the employer can easily find out, the employer has the obligation to act appropriately to cease such incidents and to offer remedial training, policy guidelines, proper guidance, and oversight as well as take disciplinary actions, where warranted. Similarly, monitoring measures may be justified to prevent comments by employees on social media that are defamatory to the company or anyone associated with the company. These issues are not at all uncommon. A 2009 American Management Association/The ePolicy Institute survey of 586 US companies found 89 per cent of employees admittedly had used the office system to send "jokes, gossip, rumors or disparaging remarks" to outsiders; and 9 per cent had used company e-mail to send "sexual, romantic or pornographic text or images" (The ePolicy Institute, 2009).

The second reason supporting employee monitoring is the need to protect the company against losses from confidential information leakage or damages to company image. A 2010 study commissioned by a security software company found an overwhelming 94 per cent of users in a large social network actually accepted a "friend request" from a stranger posed as a young pretty woman and that 73 per cent of a small sample confided confidential business information (e.g. on company strategies and upcoming products) to their new "friend" (Weiss, 2011). Another survey by the American Management Association found 14 per cent of employees had sent e-mails to outsiders containing confidential company information (Mello, 2012). Being able to monitor employee communication on social media may help the employer identify the extent of the problem for the specific workplace and take necessary preventive or remedial actions to reduce potential losses.

The third reason revolves around other employers' legal obligations as there are a number of laws with which the company must comply in relation to social media usage. For example, in the US, the Sarbanes-Oxley Act requires publicly traded companies to retain all e-mails related to financial transactions and to provide timely and accurate disclosure of important information to the public, such as through the social media if

those channels have commonly been used by the organization (Sherman, 2011). The Federal Trade Commission Act has restrictions on social media statements made about a competitor or about the employing organization's product, such as, requiring the disclosure of the relationship of the person posting messages and the organizations involved (Lieber, 2011). The Uniform Trade Secrets Act adopted in most US states deals with misappropriation of trade secrets, including through social media means (Lieber, 2011). It is therefore critical that the employer keeps a close eye on what is communicated to the public via the social media channel to ensure only authorized personnel should communicate on such important business matters and that the information communicated by employees in the organization would not give rise to misrepresentation. Proper monitoring of employee social media activities can also allow the employer to comply with mandatory reporting such as child pornography or child abuse situations when such incidents are exposed in the social media activity. This is particularly important for the employer if the employee involved is using company computers or company time in communicating those social media messages or a social media account related to the employer.

On the other hand, there are just as many, if not more, arguments against employers' monitoring of employees' social media activities. As in the situation of cybervetting in the recruitment situation, there are infringement of privacy concerns. To what extent should employers have in accessing or monitoring employees' social media sites? In the US, for example, employers generally have the right to monitor employees' electronic communication under the Electronic Communications Privacy Act 1986 but expectation of privacy depends on the content of the communication, the employers' social media policy, and steps taken by the employee to protect privacy (Weiss, 2011). In France, if an employee has an electronic folder marked "personal" on a work computer, the expectation of privacy is established (Sánchez Abril *et al.*, 2012). In the UK, the court has held that the employer owned the contacts database created by an employee on the employer's computer system, even though the list include personal and professional contacts made before employment with that employer (Weiss, 2011). In Australia, Thornthwaite (2013, p. 5) acknowledges that "there is no statutory or common law right to privacy that might protect [employees] against a growing intrusion of employer control in their private lives" although according to the High Court, the development of a privacy tort is possible in the future.

There is an additional concern in the US on monitoring of employee social media activities arising out of the National Labor Relations Act Section 7, which specifically protects employees who engage in "concerted activities for the purpose of collective bargaining or other mutual aid or protection [...]". That is, employees, in both the public and private sectors, have the right to discuss among themselves issues relating to their terms and conditions of employment, free from employer interference, which may include monitoring, attempts to stop or chill such concerted activities such as through company policies and regulations, and disciplinary actions for employees expressing opinions on terms and conditions in a concerted way the employer dislike. To qualify for "concerted activity", the employee's social media postings must not be only a "gripe of one employee" and must involve the terms and conditions of employment. The National Labor Relations Board (NLRB) has established a few considerations for determining "concerted activity", which include the discussion medium, the subject matter (e.g. whether related to employees' collective concern or group action), the nature of the employee's outburst, and whether the outburst is provoked by any employer's unfair labour practice (Weiss, 2011). Even if the activities

seem to pass through these four tests, they can still be not protected “if in the course of engaging in such [protected concerted] activity, [the employee] uses sufficiently opprobrious, profane, defamatory, or malicious language” (American Hospital Association, 230 NLRB 56 (1977)). So, interpretations and decisions on this area may not always be clear cut.

In the non-US setting, while there may not be specific protection on employee concerted activities provided by statute, there may still be other constitutional rights on freedom of association or expression that can render prohibitions of or intervention with such activities unlawful. Even if these legal protections are not there, the question remains as to whether it is really ethical for employers to interfere with employee collective actions which aim at improving their terms and conditions of employment and thereby their livelihood.

Employee discipline

Social media information has been increasingly used as evidence to justify disciplinary actions by employers on employees. In the US, an SHRM (2012) survey found as many as 33 per cent of organizations with a social media policy had disciplined employees for inappropriate use of social media (SHRM, 2012). The US Supreme Court has confirmed that adverse employment actions could be taken against an employee for off-duty and off-premise comments (*City of San Diego v. Roe*, 543, U.S. 77 (2004)). In Canada, based on the Act to Establish a Legal Framework for Information Technology, “Facebook is a technology-driven document having equivalent legal value to documents on paper or on any other medium” and the *Leduc v. Roman* case [2000 O.J. No. 681] confirmed that Facebook postings are “data and information in electronic form” that can be produced as documents under the Ontario Rules of Civil Procedures (Haykowsky, 2013). Privacy arguments against employers’ use of social media information have not always been met with success. For example, in a New York case, *Romano v. Steelcase Inc.* [2010 NY Slip Op 20388 [30 Misc 3d 426]], the court concluded that “as neither Facebook nor MySpace guarantee complete privacy, plaintiff has no legitimate expectation of privacy [...] notwithstanding her privacy settings” (Weiss, 2011). In Canada, the *Landry et Probigo Quebec Inc.* case [2011 QCCLP 1802, J. Hudon] differentiates between private postings and personal postings in that Facebook messages are the latter, but not necessarily the former (Haykowsky, 2013). In Australia, the cases of *Escape Hair Design* (2010) [204 IR 292] and *Good Guys* (2011) [FWA 5311] also confirmed that employee off-duty activities could not be assumed private nor would they be considered off limits to the employer (Thorntwaite, 2013).

There have been many cases where employers successfully defended their disciplinary actions based on employees’ social media activities. Below are just a few examples from Canada. In the case of *Lougheed Ltd.* BCLRB B190/2010, the employer was found to have just cause for dismissing two employees due to their off-duty derogatory Facebook remarks about the employer, with the naming of the supervisor constituting insubordination. In *Chatham-Kent (Municipality) v. National Automobile, Aerospace, Transportation and General Workers Union Canada Local 127*, [2007] O.L.A.A. 135, a nurse’s dismissal was upheld for posting on MSN Spaces a blog disclosing confidential patient information and making disrespectful remarks of management. In *EV Logistics v Retail Wholesale Union* [2008] BCCAAA. No. 22, an employee’s racist posting, even though intended to be a private one, was found to justify some forms of disciplinary actions but not outright dismissal in light of the degree of negative impact made and that the remarks were not directed at the employer. Rather

than focusing on inappropriate social media comments as in the above cases, the case of *Sucre Lantic – CSN et Sucre Lantic Limitée – Raffinerie de Montréal* [(5 mai 2009), AZ-50556494 (TA)] successfully used social media as evidence for theft to justify a discharge, after the grievor's posting of a promotional video of his wrestling, with a light in the background that had been stolen from the workplace (Chouinard, 2014).

In the UK, Richards (2011) reported on ten recent disciplinary investigation or action cases for employee misbehaviour on the internet, including a hospital staff breaching patient confidentiality, a prison officer befriending inmates, employees badmouthing the employer or insulting customers, and employees posting photos of inappropriate activities at the workplace. Richards (2011, p. 31) further suggests that internet misbehaviour is increasingly happening outside of work and that it is more an "inter-organizational socially organized phenomenon".

Although different countries may have somewhat different statutory provisions on privacy, their case law analyses and considerations under common law have generally been quite consistent for disciplinary actions due to inappropriate employees' social media postings. Courts and tribunals tend to place significant weight on the 'moral intensity' of the employee conduct, in terms of whether the conduct "brought the company into disrepute; repudiated the contract of employment; attacked the integrity of management; damaged the employer's legitimate business interest; or challenged management prerogative" (McDonald and Thompson, 2016, p. 72). There are many other factors of consideration and Thornthwaite (2013) provides a good summary list of the common issues being looked at in disciplinary decisions, including the nature of the post, where the posting resides, the naming of the employer, public access to the post, adverse impact on the employer's business, intentionality of the post, employee remorse, remedial action taken (e.g. removing the post), the provisions in the employer's social media policy and the proper communication of such. Employers wanting to bring any disciplinary actions to employees for their social media activities are well advised to pay attention to these aspects.

Similar to the various arguments against cybervetting discussed above, employers using social media for disciplinary actions need to be cautious that the information used as evidence is through legitimate and ethical means. That is, they should be free from coercion, false representation, fraudulent schemes or other underhanded ways. Else, it could be considered a breach of privacy rights, rendering the evidence inadmissible. This is clearly illustrated in *Campeau et Services alimentaires Delta Dailyfood Canada Inc.*, [2012 QCCLP 7666] in which the court agreed with the employee that the evidence obtained by the employer was illegal because an employer representative intentionally created a fake Facebook account that would appeal to the specific employee in order to be her "friend" and obtain evidence against her through the social media.

The above case law analyses have generally shown that employers can use social media for various employment decisions, including monitoring and disciplining employees for their social media activities, whether on or off duty. The law generally only offers basic protection to employees who have to bring court actions to prove illegal treatment to obtain that protection. Hence, employers, who are already having the upper hand in the employment relationship, have their power further enhanced by the recent social media changes. So, one broad ethical dilemma faced by employers is whether they should take full advantage of such a power increase to exploit employees? This will be discussed in the next section as part of the recommendations for employers.

Recommendations for employers

With regards to using social media for recruitment, a feasible solution to the “to use or not to use” dilemma is not to simply avoid using social media but to ensure that job and career information is not only available through social media, and that multiple recruitment channels are employed to fairly reach potential applicants of various demographic backgrounds. That way, allegation of systemic discrimination or unfair favouritism to certain applicant groups can be avoided.

When it comes to selection, scholars and practitioners have offered some advice on how to deal with the ethical dilemma that can help the organization obtain the necessary information without getting into privacy infringement or discriminatory concerns. These include: checking only publicly available sites, preferably after personal interviews when basic personal traits would have been known then; informing the applicant beforehand that there would be an online background check, and obtaining clear authorization for doing so; limiting the online background check to clearly authorized individuals and situations; separating the data-collection and employment decision roles such that the data collection person or agent will remove any information that would constitute prohibited grounds for discrimination before forwarding to the decision-maker; and documenting the use of social media information for the selection decision, if any, and using the data in a consistent manner (McHale, 2012; Morgan and Davis, 2013; Russell, 2011). Where an organization is unable to have such measures in place or it does not have the necessary HR expertise to ensure ethical recruitment and selection, the use of social media for such activities may best be held off until thoroughly thought-out policies and processes are available. Once social media has been in use for recruitment and selection, the organization should periodically evaluate the social media channel effectiveness, in terms of cost, quality of hires, and fairness to candidates.

For employee monitoring and discipline, there are a number of things an employer can do to appropriately utilize social media without treading into illegal or unethical grounds. An employer can start off with a social media policy and a confidentiality policy that clearly indicate what information is appropriate to share online and what not. For example, employees should be clearly informed and trained of the need to be professional both on and off duty as off duty activities can still be used to support disciplinary actions. They need to be aware of what may constitute harassment and learn to be respectful of others in all communications, including online ones. They also need to know what comprises confidential information and who has the official authority to communicate to others on important company matters. Moreover, conditions and restrictions of use of company informational technology (IT) equipment, software, or social media accounts in the company’s name must be clearly stipulated. All the above discussed policies should be aligned with each other with necessary cross-referencing as needed and communicated to employees through training or other easily accessible channels. As well, the various consequences of breaching the company’s social media, harassment, IT or confidentiality policies should be stipulated and communicated as well, as normally needed for good progressive disciplinary measures. Where social media information is used as evidence, it is important that all information is gathered free of coercion or any underhanded way. If evidence is used to support disciplinary actions, a due process should be in place for the employee concerned to tell his/her side of the story.

Banning all social media activities or the use of IT equipment for personal use may not be realistic and in the US, can even lead to a violation of Section 7 of NLRA if the policy ban is seen to have a chilling effect on concerted activities to discuss terms and conditions of employment. For the latter situation, when constructing the policy

provisions and language, care must be taken to avoid any unintended violation. For example, policy provisions telling employees to check with the employer before posting messages when in doubt can even be considered unlawful as employees should be free to engage in protected activities (Winston and Shrawn LLP, 2012). Provisions prohibiting offensive or inappropriate remarks or warning employees to avoid harming the image of the company can also be construed as unlawful as such criticisms might be related to the discussion of employer's labour and employment policy (Winston and Shrawn LLP, 2012). Overly broad restrictions on social media will not be acceptable and even though a clause stating that the social media policy is compliant with the NLRA helps, it is likely not sufficient. Hence, restrictions have to be specific and well supported with reasons that are not contravening any laws. In general, if any kinds of social media ban is to be introduced, the rationale for such must be clearly considered and communicated to employees, with restrictions limited and reasonable. It is best to use the policy introduction as an educational opportunity to reinforce the organizational values and policy goals so employees clearly know what is expected of them.

To be able to establish appropriate social media policies and practices, employers must be familiar with the relevant laws and recent case developments. Personnel responsible for such policies and processes should be provided with the necessary legal training and exposure and they should also have an excellent knowledge of social media and its application. Consultation with employees and experts in the field, as well as benchmarking to organizations known to have reputable practices in the area, will go a long way towards establishing a meaningful, well-balanced, and feasible policy. To know if one is doing the "right" things, it may be necessary for the employer to do a social media audit. Sometimes, what is communicated in the policy may not have been exactly followed. Auditing will also provide useful information on the types and extent of social media usage, as well as the kinds of problems encountered. Surveying and talking with employees about their use of social media and their understanding of the company policies as well as testing their knowledge and skills on social media can highlight needs for policy improvements, better communication and appropriate training. Although the prior case law analyses seem to suggest that the social media technologies have given employers more latitude and tools in controlling the employees and that they are free to exercise their unilateral rights to develop and enforce a social media policy (as long as it does not contravene the law), having the extra power does not necessarily mean that employers should always use it to exploit employees, as the process and outcome arising from command and control may not really be superior to those of employee empowerment and commitment (Walton, 1985). By engaging employees in the policy development and improvement activities, employers are signalling that they value employee input and are willing to share responsibilities with their employees. This will not only help in the employees' understanding of the policy, but also their policy buy-in and support, leading to smoother implementation of the intended social media policy.

Last but not least, to properly handle social media issues, employers must devote sufficient resources to it. Unfortunately, this has not been the case yet in most organizations. According to a 2010 research report by Social Media Influence, even among the Fortune Global 100 companies, 41 have not staffed up in this area and many have no plans to build an in-house social media team (Warner, 2012). Salaries for the social media profession were also found to be below their counterparts in traditional marketing or public relations positions (Warner, 2012). It is hoped that with better awareness of the huge potential impact of social media in the employment context and beyond, companies will start to see the value of dedicated social media personnel.

Employee dilemmas*Employee privacy and rights*

This paper will not be complete without a look from the employee perspective. While the above sections have focused on employers' dilemma, they should have already shed light on a number of issues that relate as well to the employee side. Regarding the matter of privacy or right to concerted activities (as in the case of US), this freedom is limited. Employees should not simply assume their social media postings are private as a number of arbitration or court cases cited earlier in the paper have decided otherwise. Nor can they expect that off duty online remarks to be not producible as evidence. Even though people in developed nations generally have the freedom of speech, posting inappropriate comments that can harm coworkers, the company, or others, is basically unethical, if not outright illegal, and can lead to disciplinary actions. In more extreme situations in other countries, inappropriate social media comments like cyber slander can even land one in jail, as in the case of an American mechanic facing charges in the United Arab Emirates (Engel, 2015). Therefore, employees must be careful about what should and should not be posted. Moreover, it is not just posting of comments that may get an employee in trouble. Just clicking on "like" or "dislike" a Facebook page may have consequences, as in the case of an employee terminated for "liking" a post in support of gays and lesbians (Hidy and McDonald, 2013). Even though a discrimination claim was subsequently filed by the US Equal Employment Opportunity Commission against the employer, it is a good example to show that employees should always be mindful of being watched for their social media activities.

Employees or potential employees may sometimes be asked by an employer for their consent for accessing their social media page. While this may be prohibited by law in some jurisdictions, it can be legal in others. Employees or potential employees must be cognizant of this possibility. Even though they may legally refuse to provide the access information, such a refusal will likely provide negative signalling that may cost them a job, or a job opportunity. Some may argue that an honest individual should have nothing to hide from the employer but that still does not mean that all information should be made available as things may easily be taken out of context without a chance for the employee or the job applicant to provide an explanation.

Another ethical dilemma an employee may face is when their collegiality to coworkers conflicts with their loyalty to their employer. For example, if an employee (a social media "friend") sees a coworker who claimed to be sick and lying on his/her bed for the entire week posting a picture on social media of him/her vacationing in a tropical island in the exact time frame, should the employee divulge such information to the employer? Is this a private matter of the coworker? Is the lie damaging to the employer? Is speaking up violating a friend's trust, especially when the posting is only accessible by a few good friends? Does not speaking up make one dishonest or even an accomplice in this dishonest act? There is no easy answer. Employees should understand that the bigger their social network, the greater the chances of such incidences happening.

Shift of power and control

A much broader and potentially more serious issue for employees relating to the social media growth is the shift of the power balance between employers and employees in favour of the former, furthering employers' upper-hand position in the employment relationship. The employment relationship has been described by Richard Edwards (1979) as a "contested terrain", where conflict in the labour process and resistance to various forms of control occur constantly. It has also been described by Paul Edwards (2003) as "structured

antagonism”, where cooperation and conflict are both inherently present in the relationship, the former of which is needed for tapping into employee creativity, while the latter is inevitable as labour has to be exploited to generate surplus and profit. Hurrell *et al.* (2013) contend that social media allows employers an additional electronic monitoring tool, a new form of control over employees both within and outside of the workplace. As the above case laws and discussions indicate, employees’ social media activities outside of the workplace are no longer deemed to be necessarily private and employers could make use of such postings to justify disciplinary actions. Hence, employees’ private off-duty life is being increasingly infringed upon by the technology controls available to employers, to the point, as Thornthwaite (2013) argued, that employees may never be truly off-duty. On the other hand, social media also offers a voice for employees and the opportunity to share knowledge, express themselves, and promote self-organized forms of resistance (Hurrell *et al.*, 2013; Richards, 2011). Employee voice or cynicism about work gives employees “a sense of control and attachment to their own occupational or professional community, while providing distance from the corporate culture initiatives” (Richards and Kosmala, 2013, p. 66). However, what employees see as voice or private communication may well be seen by employers as threats to reputation and social media policies could be meant to increase “managerial activism in the ‘private’ sphere” and chill employee social media discussions about work (McDonald and Thompson, 2016, p. 77). This, thus, creates another dilemma for employees – should they fight hard against or support their employer’s use of social media and how should they go about doing so? A full discussion of the impact of social media growth on the balance of power and control in the employment relationship is beyond the scope of this paper. However, with social media representing a major change that has “facilitated shifts in the boundaries between the public and private in organizational life” (McDonald and Thompson, 2016, p. 70) and introduced more areas of contestation that could potentially alter the power balance, it is certainly an area that warrants more research and discussion. In the next section, some suggestions are offered on how employees and employee associations can manage this change.

Recommendations for employees

Just as the case for employers, it would not be wise to avoid using social media just because of some potential issues one may encounter as such use has many benefits to offer. However, it is best to properly manage the access and keep abreast of the employer’s social media-related policies and employees’ legal rights (e.g. privacy rights, human rights, labour rights, and contractual rights). Being careful about setting privacy settings may help, although one should never assume that social media postings are really private. Once the posting gets into the hands of friends, there is no knowing where it may go further. In the workplace, it is best to keep using social media for private activities to a minimum, even if the employer’s policy allows this to some extent. Where possible, one should clearly separate private communications from work communications, such as by having clearly marked “private” folders, with the hope that they will remain private in the eyes of tribunals or courts, if and when evidence in such folders gets scrutinized there.

In sum, employees should be careful about social media use. One should not post online anything that one would not say to others in person or in any other written forms. It is advisable to set appropriate privacy settings and keep private matters separate from work matters wherever possible. Familiarizing oneself with company policies and laws relevant to social media and employment may help in realizing what are considered acceptable activities. One should also ask if it is a good idea to be “friends” with everyone and follow everyone’s posts as it is not always the more people

you know, the better. It is also advisable to spend time wisely online according to the goals one has about online access, even if it is done during off-duty times.

In terms of whether to fight or support an employer's social media policy, fighting an inevitable trend will likely be ineffective. However, employees should still try their best to voice their concerns about invasion of privacy and inequitable treatments, preferably through a collective institution such as a trade union. Unions can help in many ways. First, they can prevent employer reprisal against individual employees who raise the social media concerns. Second, they have better power as a collective institution in getting employers' attention and agreement in making changes to their social media policy and practices. Third, they have the resources and skills to help employees (as well as employers) deal with employment matters related to social media use. Unions can negotiate provisions in the collective agreement that restrict unjust dismissals or employee treatment, require an effective due process in disciplinary actions, and/or necessitate union involvement in major policy development that have huge employment implications. These can protect employees against employer exploitation and unfair treatment relating to social media use and counter the power imbalance to some extent. They can campaign to have employers act responsibly in relation to social media and be a watchdog for employer actions. In addition to filing of grievances when the employer violates employee rights either granted by statute or the collective agreement, unions can also be proactive in providing constructive suggestions to employers in shaping the social media policy, such as offering to have employee representatives on a joint policy-making committee. Hopefully, this will result in a more well-balanced policy that takes into consideration the employee perspective. A good employer would appreciate that having a harmonious workplace with employee and union input and support is way better than an adversarial one where resources are largely used for fighting disputes.

Conclusions

The use of social media by employers and employees is becoming a common phenomenon. Social media can provide a volume of useful information and help people connect but such use is not without concerns. For employers, not ensuring proper use can mean missed opportunities for attracting talents, damaged reputations, loss time, decreased morale and productivity, as well as legal ramifications. For employees, careless use of social media can lead to unintentional damages to the employer or coworkers with the possibility of facing discipline, job loss, sour friendship, and even legal responsibilities such as for defamation. There are no simple answers on how to handle social media issues in light of the various ethical and legal dilemmas as discussed in the paper. There is a fine balance on what should or should not be done.

The recommendations in this paper are largely based only on case decisions and best practice literature. This limitation can be addressed by future empirical tests comparing the effectiveness of the recommendations either across organizations or within an organization before and after social media policy changes.

As widespread use of social media is still a relatively new phenomenon and media technology is changing all the time, much more research is also needed on an ongoing basis to help both employers and employees stay abreast of the latest developments in related technology, legislative changes as well as landmark legal decisions. Knowing ones rights and responsibilities in the cyberspace as well as recourse options will not only prevent or remedy harm, but also contribute towards a more productive and harmonious workplace. Moreover, research is suggested for studying the change in power balance in the employment relationship resulting from social media growth.

References

- Acquisti, A. and Fong, C.M. (2014), "An experiment in hiring discrimination via online social networks", Social Science Research Network, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2031979 (accessed 7 March 2015).
- APCO Worldwide, MacDonald, G. (2011), "The 3rd annual employee engagement study: unleashing the power of social media within your organization", available at: www.gagenmacdonald.com/downloads/3rd-Annual-Employee-Engagement-Research-Study.pdf (accessed 10 September 2015).
- Bologna, M. (2014), "Social media strategies in recruiting, hiring pose legal risks for employers", *HRfocus*, Vol. 91 No. 5, pp. 1-4.
- Bryant, E.O. (2012), "Employer bashing on social media in the railroad workplace: when is it protected?", *Journal of Transportation Law, Logistics & Policy*, Vol. 79 No. 3, pp. 211-221.
- Chouinard, A.A. (2014), "Social media in the Quebec workplace", *Global Workplace Insider*, available at: www.globalworkplaceinsider.com/2014/11/social-media-in-the-quebec-workplace/ (accessed 16 April 2015).
- Conner, C. (2014), "New research: 2014 LinkedIn user trends (and 10 top surprises)", *Forbes*, 4 May, p. 1, available at: www.forbes.com/sites/cherylsnappconner/2014/05/04/new-research-2014-LinkedIn-user-trends-and-10-top-surprises/ (accessed 29 January 2015).
- Deloitte (2009), "Deloitte's 2009 Ethics & Workplace Survey examines the reputational risk implications of social networks", *CSR News*, 18 May, available at: www.csrwire.com/press_releases/26972-Deloitte-s-2009-Ethics-Workplace-Survey-Examines-the-Reputation-Risk-Implications-of-Social-Networks (accessed 2 September 2015).
- Diercksen, M., DiPlacido, M., Harvey, D. and Bocso, S. (2013), "The effects of social media in today's workplace", *Proceedings for the Northeast Region Decision Sciences Institute (NEDSI)*, pp. 946-952, available at: www.nedsi.org/proc/2013/proc/p121102007.pdf (accessed 1 September 2015).
- Donald, H.K., Rosen, P.A. and Mossholder, K.W. (2012), "Social networking websites, personality ratings, and the organizational context: more than meets the eye?", *Journal of Applied Social Psychology*, Vol. 42 No. 5, pp. 1143-1172.
- DuPlessis, D., Enman, S., O'Byrne, S. and King, P. (2014), *Canadian Business and the Law*, 5th ed., Thomson Nelson, Toronto.
- Edwards, R. (1979), *Contested Terrain: The Transformation of the Workplace in the Twentieth Century*, Basic Books, New York, NY.
- Edwards, P. (2003), "The employment relationship and the field of industrial relations", in Edwards, P. (Ed.), *Industrial Relations: Theory and Practice in Britain*, 2nd ed., Blackwell, Oxford, pp. 1-36.
- Engel, P. (2015), "An American was jailed in the United Arab Emirates for Facebook posts he made in the US", 3 March, available at: www.businessinsider.sg/ryan-pate-jailed-in-the- united-arab-emirates-for-facebook-posts-made-in-the-us-2015-3/#.VPoeuk10yzc (accessed 4 March 2015).
- Haykowsky, T. (2013), "Social media as evidentiary basis for employee discipline", Lorman Education Services Employment Related Records Seminar, Edmonton, Alberta, October 9.
- Hidy, K.M. and McDonald, M.S.E. (2013), "Risky business: the legal implications of social media's increasing role in employment decisions", *Journal of Legal Studies in Business*, Vol. 18 No. 1, pp. 69-107.
- HR Specialist (2011), "Deloitte recruits grads through social media", *HR Specialist: New Jersey Employment Law*, Vol. 6 No. 2, p. 5.

- Hunt, K.G. (2010), "Finders keepers: social media strategies help find top talent", *Journal of Property Management*, Vol. 75 No. 6, pp. 36-40.
- Hurrell, S., Richards, J. and Scholarios, D. (2013), "The kids are alright: employed students' experiences of and attitude towards the use of social networking sites in recruitment and employment", *International Labour Process Conference, Rutgers University, New Jersey, NJ, 18-20 March*.
- Jobvite (2012), "2012 Social recruiting survey results", available at: http://web.jobvite.com/rs/jobvite/images/Jobvite_2012_Social_Recruiting_Survey.pdf (accessed 13 April 2015).
- Joos, J.G. (2008), "Social media: new frontiers in hiring and recruiting", *Employment Relations Today (Wiley)*, Vol. 35 No. 1, pp. 51-59.
- Lieber, L.D. (2011), "Social media in the workplace – proactive protections for employers", *Employment Relations Today*, Vol. 38 No. 3, pp. 93-101.
- McDonald, P. and Thompson, P. (2016), "Social media(tion) and the reshaping of public/private boundaries in employment relations", *International Journal of Management Reviews* Vol. 18 No. 1, pp. 69-84.
- McHale, R. (2012), "Using Facebook to screen potential hires can get you sued", available at: www.fastcompany.com/1843142/using-facebook-screen-potential-hires-can-get-you-sued (accessed 2 February 2015).
- McKinnon, M. (2014), "Canadian digital, social and mobile statistics on a global scale 2014", available at: <http://canadiansinternet.com/canadian-digital-social-mobile-statistics-global-scale-2014/> (accessed 29 January 2015).
- Mayfield, A. (2008), "What is Social Media?", available at: www.icrossing.com/sites/default/files/what-is-social-media-uk.pdf (accessed 7 March 2015).
- Mello, J.A. (2012), "Social media, employee privacy and concerted activity: Brave new world or big brother?", *Labor Law Journal*, Vol. 63 No. 3, pp. 165-173.
- Microsoft (2013), "Take charge of your online reputation", available at www.microsoft.com/en-GB/security/online-privacy/reputation.aspx (accessed 13 April 2015).
- Miller, M.B. (2013), "Avatars and social media: employment law risks and challenges in the virtual world", *FDCC Quarterly*, Vol. 63 No. 4, pp. 279-294.
- Morgan, H.A. and Davis, F.A. (2013), "Social media and employment law: summary of key cases and legal issues", available at: www.americanbar.org/content/dam/aba/events/labor_law/2013/04/aba_national_symposiumontechnologyinlaboremploymentlaw/10_socialmedia_authcheckdam.pdf (accessed 4 March 2015).
- My Job Group (2010), "Social media in the workplace", available at: <http://myjobgroup.co.uk/socialmediawhitepaper/SocialMediaWhitepaper.pdf> (accessed 2 September 2015).
- Pew Research Centre (n.d.), "Social media use by age group over time", available at: www.pewinternet.org/data-trend/social-media/social-media-use-by-age-group/ (accessed 4 March 2015).
- Richards, J. (2011), "What has the internet ever done for employees? A review, map and research agenda", *Employee Relations*, Vol. 34 No. 1, pp. 22-43.
- Richards, J. and Kosmala, K. (2013), " 'In the end, you can only slag people off for so long': employee cynicism through work blogging", *New Technology, Work and Employment*, Vol. 28 No. 1, pp. 66-77.
- Russell, T.E. (2011), "Employment law meets social media: advice for employers", *HRfocus*, Vol. 88 No. 10, pp. 4-7.
- Sánchez Abril, P., Levin, A. and Del Riego, A. (2012), "Blurred boundaries: social media privacy and the twenty-first-century employee", *American Business Law Journal*, Vol. 49 No. 1, pp. 63-124.

- Sherman, M. (2011), "Does your Sarbanes-Oxley Act compliance program reflect your social media presence?", available at: www.lexology.com/library/detail.aspx?g=ff91ba95-055c-4e08-b7ef-1d7f4d1890ca (accessed 27 February 2015).
- SHRM (2012), "Managing and leverage workplace use of social media", available at: www.shrm.org/templatestools/toolkits/pages/managingsocialmedia.aspx (accessed 2 September 2015).
- SHRM (2013), "Social networking websites and recruiting/selection", available at: www.shrm.org/research/surveyfindings/articles/pages/shrm-social-networking-websites-recruiting-job-candidates.aspx (accessed 10 September 2015).
- Slovensky, R. and Ross, W.H. (2012), "Should human resource managers use social media to screen job applicants? Managerial and legal issues in the USA", *Info*, Vol. 14 No. 1, pp. 55-69.
- Statista (2015), "Statistics and facts about social networks", available at: www.statista.com/topics/1164/social-networks/ (accessed 29 January 2015).
- Strumwasser, L.M. (2014), "Phishing on Facebook: do you ask job applicants for their social media passwords?", *The Computer & Internet Lawyer*, Vol. 31 No. 1, pp. 6-11.
- Suddath, C. (2012), "Big brother wants your Facebook password", *Bloomberg Businessweek*, 27 March, p. 1, available at: www.bloomberg.com/bw/articles/2012-03-27/big-brother-wants-your-facebook-password (accessed 2 February 2015).
- The ePolicy Institute (2009), "2009 Electronic Business Communication Policies & Procedures Survey", available at: www.epolicyinstitute.com/2009-electronic-business-communication-policies-procedures-survey-results (accessed 2 September 2015).
- Thorntwaite, L. (2013), "Social media, unfair dismissal and the regulation of employees' conduct outside work", *Australian Journal of Labour Law*, Vol. 26 No. 2, pp. 164-184.
- Walton, R.E. (1985), "From control to commitment in the workplace", *Harvard Business Review*, Vol. 63 No. 2, pp. 77-84.
- Warner, B. (2012), "Dawning of the age of social media jobs", available at: www.recruiter.co.uk/archive/part-28/Dawning-of-the-age-of-social-media-jobs/ (accessed 4 March 2015).
- Weiss, M. (2011), "The use of social media sites data by business organizations in their relationship with employees", *Journal of Internet Law*, Vol. 15 No. 2, pp. 16-27.
- Winston & Strawn LLP (2012), "National Labor Relations Board general counsel issues: third report on employer social media policies", available at: <http://cdn2.winston.com/images/content/1/1/v2/1188.pdf> (accessed 7 March 2015).
- Zide, J., Elman, G. and Shahani-Denning, C. (2014), "LinkedIn and recruitment: how profiles differ across occupations", *Employee Relations*, Vol. 36 No. 5, pp. 583-604.
- Zurbrigg, T.S. and Cote, A. (2012), "Intrusion upon seclusion: Ontario recognizes tort for invasion of privacy", *Privacy Press: A Newsletter of Field Law's Privacy Group*, available at: www.fieldlaw.com/articles/PrivPress_Jan2012.pdf (accessed 4 March 2015).

Corresponding author

Professor Helen Lam can be contacted at: helen.lam@fb.athabascau.ca

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