

SOCIAL MEDIA: TEACHING TOOLS OR POTENTIAL PITFALLS?

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ENTREVUE



Social media are becoming increasingly popular, for personal as well as professional use. What are the pitfalls awaiting teachers who avail themselves of these methods of communication? Valérie BIRON answers our questions.

Ms. Biron, who was called to the Bar in 2001, has been legal counsel with the Fédération des CÉGEPs for eleven years. Specializing in labour law, she advises and represents the interests of Quebec's colleges before both administrative tribunals and courts of law. Having developed considerable expertise in the areas of disciplinary measures and social-media use, she has also acted as guest speaker and educator.

PÉDAGOGIE COLLÉGIALE:

Ms. Biron, what exactly are “social media”?

VALÉRIE BIRON:

Social media are blogs, chat rooms, photo- and video-sharing sites, and social-networking sites such as Facebook and Twitter—in short, vehicles that let people interact online.

What are the responsibilities of college faculty and non-academic staff as regards the use of social media?

vb The first is the duty of loyalty to their employer—i.e., the college, not the Ministère de l'Enseignement supérieur, de la Recherche et de la Science (MESRS).

That duty obliges employees to exercise restraint and not to air disputes with their employer in public. Employees must avoid deliberately conducting themselves in a manner that compromises the reputation or interests of their college or the students who attend that college. To comply with the duty of loyalty, any criticisms must be in good faith and worded objectively, and the message conveyed must be objectively defensible and respectful. Naturally, this duty continues to apply even outside of the workplace and working hours.

These limitations to employees' right to voice their opinions may come into conflict with their right to free expression. Despite the fundamental character of that freedom, which is entrenched in Quebec's *Charter of Human Rights and Freedoms*, to date the courts have given precedence to employees' duty of loyalty over freedom of expression where prejudice to the employer may result.

On the other hand, the duty of loyalty does not totally muzzle teachers; the role they play at their college entitles them to a certain amount of leeway. Given their knowledge and critical faculties, they are expected to take a position on

the social debates within their scope of expertise. Of course, the right to criticize must be exercised without needlessly compromising the college's interests and reputation.

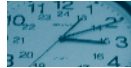
We must consider that Facebook posts belong to the public domain, given the amount of people who can access this content. Case law usually recognizes the public nature of information available on social media. It is easy to post negative comments on social media, but hard to control, once they have been published.

The second responsibility of employees is to respect the privacy and reputation of others. In Quebec, the legal framework guarantees individuals the right to their image and reputation. As concerns social media, this means a person's authorization must be obtained before his or her voice, picture, or even name can be used. Teachers must therefore be cautious when posting such information.

When someone's reputation is undermined, this may constitute defamation. The courts have ruled that teachers are not subject to public criticism, whether from students or their parents, even if the former are dissatisfied with their classes or the grading system. Social media are not to be used for “venting”. If they are, the college administration should be informed, so the appropriate corrective measures may be taken. In the event that remarks adversely affect a teacher's reputation, the injured party can ask that they be withdrawn.

If deemed a victim of defamation, a teacher can take civil action, but, as a person's right to his or her reputation is a personal right, the college will not be involved in any legal proceedings to obtain damages, or to have that right upheld. It is up to the injured party to go to court and obtain relief, should he or she choose to do so.

Obviously, this rule assumes that college employees are also not to defame anyone else. They are not entitled to criticize



a colleague by means of group e-mails, for example, where such personal criticism is clearly intended to harm that colleague; this could damage the latter's reputation. While e-mail is not a social medium per se, the same principles apply.

What is the impact of the personal use of social media on work relations?

vb One thing should be remembered about social media: action by the employer is not restricted to the place or time in which the means of communication is used. Regardless of whether inappropriate remarks are exchanged at home on a Sunday night via iPhone or during work hours on the college's computer, the employer can crack down where a breach of conduct has occurred. Intervention by the college is no longer limited to sanctioning the use of its equipment in regular working hours, for example on the basis of time theft or the inappropriate use of the employer's computers or other property.

Do teachers have the right to post their student "gems" on Facebook?

vb That depends on the tone in which any remarks are couched. If the instructor's remarks are intended to belittle (for example, "Look at this tripe. My students are SO dumb!"), of course, this is not allowed. But if the remark is meant kindly (e.g., "Take a look at how cute this is; when I read passages like this, I really love my work!"), there's nothing really to criticize. Obviously, the name of the student in question, or any information allowing the latter to be identified, should never be mentioned. By posting student "gems" on Facebook, teachers risk having their "friends" make inappropriate comments. If this were to happen, it would be a good idea to delete those comments, to avoid the perception that they have been approved by the teacher who posted them. It's hard to establish in advance what's right and what's not; everything depends on the context and the potential scope of Internet exposure.

You say faculty and staff must be "loyal to the college". Do students have the same responsibility?

vb Students have a broader right to criticize because the college is not their employer, which means they can publicly condemn its policies and strategies. When doing so, however, they must respect the reputation and dignity of the college and its employees. Students, like anyone else, are also not permitted to make defamatory statements. Defamation means the oral communication or publication

of anything that is injurious to the good name or reputation of another or tends to bring him or her into disrepute.

There are all sorts of sites and pages, such as RateMyTeachers¹ and Facebook Spotted,² that allow students to "vent". Given this state of affairs, what can teachers do to protect themselves?

vb RateMyTeachers is certainly bothersome, even when you know that anyone—including teachers themselves—can post ratings. Unfortunately, as the comments are anonymous and site administrators are located in the United States, defamation suits are difficult to file; the only recourse teachers have is to ask RateMyTeachers to remove any remarks that do not comply with the site's terms of use.

What is different about Facebook Spotted pages is that, while comments are posted anonymously, the site administrator, who is often a college student, knows the identity of the individuals who post the messages. Generally speaking, the college administration will take steps with page administrators to remind the latter of their responsibility as publishers not to post defamatory remarks, and remind them of college policies on harassment. If teachers notice that someone is "bad-mouthing" them on a Spotted page, they can also inform the college administration, which can have the page administrator withdraw any improper remarks.

More and more teachers are creating Websites and blogs, taking part in chat rooms, and uploading videos onto YouTube for their courses. While these practices can certainly constitute a plus for educators, what pitfalls await teachers wishing to use them?

vb There's a chance that the conversation will get derailed and the debate will spill over to things other than educational considerations. Teachers must tone down comments by students in blogs or chat rooms because they might be held responsible for any remarks on the pages they administer. If teachers have posted a warning announcing they reserve the right to remove any unseemly remarks, they must follow through. Of course, if the group is closed and content is accessible only with a password,

¹ RateMyTeachers.com is a site that lets students evaluate teachers from Canada and elsewhere. Anyone can create a page on a teacher and, whether a student or not, rate that teacher and enter comments.

² Facebook "Spotted" pages are usually created by students and associated with a particular institution. Although they initially allowed for anonymous, friendly contact among students of that institution, now they often contain uncalled-for insults, bullying remarks, and vulgar comments about students and teachers.



the extent of any damage will be reduced, as the potential for distribution is more limited—it's as though the discussion were taking place in the classroom.

If teachers decide to film their students in order to upload a demonstration to YouTube, they must have them sign a specific consent authorization that indicates, for example, how long the video will be available or stipulating for whom it is intended.

It is vital to know how to modify usage settings on Facebook and blogs to make them as private as possible, especially if using them in a course. By way of illustration, some teachers might not be over-pleased to see the answers to exam questions online, even if their colleagues had posted them to help their own students.

Is the situation different if the chat rooms or videos are hosted by OmnivoX, Moodle, or the college's intranet rather than YouTube?

vb No, it's the same. As soon as an excerpt is to be used virtually, whether on OmnivoX or some other site, the individual's specific authorization is required. Some colleges' communication policies contain explicit provisions in this regard.

Let's discuss Facebook. What are its dangers and pitfalls for teachers?

vb Over the past few months, the news has been full of stories of faculty and staff whose extra-curricular activities were totally incompatible with their duties as role models. Whether we're talking about the secretary at the Des Navigateurs school board who made pornographic movies in her spare time, or the teacher who had an intimate relationship with an underage male student, or the teacher at the Riverside High School in Jonquière whose students found a Facebook photo showing him smoking drugs (a picture that was then plastered all over the school), all these cases were the subject of considerable media coverage and caused all three individuals involved to lose their jobs.

Although the principles governing the type of role model society expects teachers to provide are definitely not new, means of communication such as social media, which allow information and photos to "go viral", make the issue a timely one.

Almost 20 years ago, the Supreme Court weighed in on teachers as role models and their duty to conduct themselves accordingly. In three separate decisions, Canada's highest court reiterated that society expects

teachers to demonstrate a high degree of integrity. To determine if a given behaviour is consistent with this role, teachers must analyze the repercussions their conduct could have on their reputation, on that of their college and the profession, on the public's trust in them, and on students' safety and security. Even outside of class time and the workplace, teachers are still obliged to maintain an image consistent with being role models.

In one of those cases, the Supreme Court held that an academic institution can dismiss a teacher who has made racist remarks, even if this is done out of school and the students and parents had no knowledge that such remarks had been made. Serving as a role model also constituted an aggravating factor in the case of a teacher who was dismissed for being perennially late, because he was expected to set an example for students, who would eventually be joining the work force.

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Given the speed and ease with which information and photos prejudicial to their image as role models can circulate, faculty and staff at academic institutions must redouble their prudence and vigilance when using social media. It is now extremely easy for students to find information on teachers if the latter have not been careful in configuring their Facebook settings, for example. And if students want revenge for a low grade, they can always find a way. The consequences, for teachers and colleges alike, may be disastrous.

The first rule to remember when using Facebook is not to "friend" students, and to configure your privacy settings so your account is as inaccessible as possible, for example by ensuring that friends of your friends don't have access to your content. Abuses can also be prevented by choosing the option necessitating your authorization for your photos to be posted on someone else's Facebook wall.

Now that smart phones are ubiquitous and everyone can capture anything on video, what can teachers do in class to discourage this practice? Teachers do not want to be recorded unawares.

vb In my opinion, as teachers, they are perfectly justified in forbidding students from bringing their cellphones into the classroom, and stating that anyone who fails to obey that rule will be asked to leave. They must also remind



students that they are not to forward photos or recordings taken unbeknownst to the subject, whether the latter is a teacher, a technician, or another student.

So, not only teachers, but all college employees, are affected by these duties and pitfalls?

vb Of course! Issues of loyalty, privacy, reputation, and defamation affect everyone. When it comes to the matter of role models, however, things aren't as cut and dried.

The jurisprudence is plentiful where teachers are concerned, but what about other college staff? Are they role models simply because they work in an environment full of young people? Perhaps, perhaps not. It would have been interesting to see the position of an arbitration board in the case of "Samantha Ardente", the secretary who was dismissed for making pornographic movies. This case involved out-of-school activities that were incompatible with the school's educational mission; at the same time, however, those activities were carried out by an employee who was not in a position of authority in relation to students. Since the case was settled out of court, though, no legal conclusions can be drawn. What we should remember is that caution is always the watchword.

Does the fact that college students are adults change that fact?

vb Just because most college students are of legal age doesn't mean we can be more indulgent as concerns teacher conduct. The public is entitled to demand that educators behave properly at all times.

For example, teachers having sexual relations with students, even adult students, cannot be tolerated. It isn't the relationship per se that's worrisome; it's the fact that one of the partners is in a position of authority. If it becomes known to the class that the teacher has had an intimate relationship with a student, questions about fairness will inevitably be raised.

The danger is that, once a message is "out there", it's hard to take back; it can be forwarded endlessly, and we have to live with the consequences.

Do you have any recommendations for teachers and employees in this regard?

vb First, be careful when using social media. And take your time! Access to the Internet and social media is so fast we often fail to think before sending messages. The danger is that, once a message is "out there", it's hard to take back;

it can be forwarded endlessly, and we have to live with the consequences. Writing something during the night is perhaps not the best idea, either; at the very least, we might be carried away by the emotions of the moment. Taking time to think is the best advice. It's better to wait till the next day to send a message, and ask ourselves if we can live with any repercussions it may have.

Next, we must always maintain a professional relationship with students. If they can see what we post on Facebook, for example, we may also be able to see what's on their pages... and we might not like it! Friendship, even on Facebook, works both ways: we should be careful with the "friend" requests we confirm and what our friends will see and read about us. ●

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