The Use of Social Media in Bodily Injury Claims

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Introduction

Social media has become ubiquitous in our day-to-day lives. It is the communication medium for the younger generation. Advertisements declare that social media is the only way to "stay connected." For litigators, social media is a very useful tool for defending bodily injury claims - some plaintiffs literally put their lives online. Social media can obviate the need for surveillance and can be used to force a plaintiff's hand into equitable settlement of a claim or a dismissal without costs.

What follows is a brief synopsis of some initial considerations when a new claim arrives and some uses of social media in litigating bodily injury claims.

Initial Considerations

When a new claim is received, run a simple Google search using the Plaintiff's name. Conducting this search in even a perfunctory fashion is a great initial starting point. A Google search can identify typical items, such as Facebook accounts, Twitter accounts or LinkedIn profiles. Although these can be quite useful, there is a plethora of other information which may come up through a simple search.

The items that can be found can be extensive and reveal surprising and unknown aspects of a plaintiff's functionality. Some examples from my own litigation experience include:

- a Kijiji advertisement where the plaintiff has been advertising maid services;
- YouTube videos of a plaintiff who moonlighted as a reggae DJ;
- Photographs from a cricket league which depicted the plaintiff playing cricket; and,
- a martial arts blog, where the plaintiff posted photographs of himself doing karate.

These examples illustrate that, beyond the familiar avenues of investigation such as Facebook and Twitter, interesting discoveries can be made about a plaintiff who is not aware of the far-reaching capabilities of internet search engines.

Social Media

When searching social media, you should be mindful of the search parameters being used to track down a plaintiff. Using Facebook as an example, if the plaintiff's name is John Smith, it is prudent to search not only "John Smith," but also derivatives of his name: "Johnny Smith," "John S.," "Johnny S.," etc.

Facebook also provides modifiers to limit a search, such as by geographical location (e.g., "Burlington, Ontario") or by an institution (e.g., "York University"). This is where taking a detailed look at the records provided by counsel is important as they can provide insight into the search parameters to help track down a plaintiff. As an example again from my own experience, a doctor's clinical note made reference to the fact that a plaintiff was an aspiring hip-hop singer. Some digging on the internet revealed his hip-hop alias and this alias was his handle on Facebook and YouTube. A search of both revealed photographic and video evidence crushingly inconsistent with the plaintiff's alleged impairments.

When undertaking background research on a plaintiff through social media, be sure to use all resources available for maximum results. Be meticulous with the productions from counsel and the online searches are of crucial importance when attempting to track down a plaintiff's profile.

Lesser Known Social Media Outlets

Although most people are familiar with more popular social media outlets - Facebook, Twitter and Instagram - there are other lesser known sites which may be helpful:

Wayback Machine: This web site is essentially an internet archive of over 4 billion websites dating back to the 1990s. It allows a user to input a web address and select the point in time you would like to view. It is useful to find content which may have been modified since its inception.

Vine: Especially popular with younger generations, Vine is a site which allows users to upload short, usually 7 seconds or less, video clips. This site is popular for videos that go "viral" - i.e., popular videos that become internet sensations - but also hosts more mundane videos, some of which may have been posted by a plaintiff.

Pinterest: A social media site where users post items they enjoy or have interest in on their own board. The posted items can range anywhere from recipes for desserts to physical fitness pursuits and can provide useful insight into a plaintiff's hobbies or post-accident activity/functionality.

Tumblr: This site is similar to a blog, but it contains photographs which can be shared with other users. Users can follow like-minded users and post photographs about activities or hobbies.

Shots: This relatively new social media outlet is exclusively for "selfie-photographs" and users post pictures of themselves and friends doing various activities. Typically, the purpose of these photographs is to elicit other users to like or share the photographs, so they tend to be rather showy in nature.

Conclusions and Recommendations

Social media cannot be ignored. Courts have acknowledged that internet and social media are fair game for bodily injury actions. The information available to litigators who take the time to conduct thorough searches of that media can be quite significant and, in some circumstances, can significantly diminish the value of a claim.