



Hamel-Smith

ATTORNEYS-AT-LAW, TRADEMARK & PATENT AGENTS

FORUM

VOLUME 11 ISSUE 3

The Lawyers Newsletter for Business Professionals

JANUARY 2020



SOMEBODY'S WATCHING YOU — SOCIAL MEDIA AND LITIGATION

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"I always feel like somebody's watching me".

That lyric has never felt more relevant than it does today, when so much of our everyday lives is catalogued on social media. If you happen to be involved in a lawsuit, one of the people watching you might be your opponent's lawyer. Here are just a few examples of how your social media activity can negatively impact you in Court.

Your Posts Can Be Used As Evidence Against You

In the recent case of *George v Allen and Others* (unreported, CV2007-02244) the Court had to consider whether to allow a claimant's Facebook posts to be used as evidence against her. The claimant had been involved in a motorcycle accident. She claimed that this accident had left her with long term injuries, and in particular that she could not walk, sit or stand for long periods of time and that she had been unable to work since the accident. Unfortunately, she posted pictures of herself on her Facebook page which appeared to be inconsistent with these claims. The defendant found these pictures and applied to the Court to use them in order to show that the claimant had exaggerated her injuries. The claimant argued that the defendant should not be able to use the pictures as they were intended for her private use and the defendant had obtained them without her consent. The Court disagreed.

The Court ruled that Facebook was a public platform and that it provided a public stage for sharing and communicating with others. In these circumstances, the claimant did not have any legal entitlement to or reasonable expectation of privacy. The pictures were relevant to the

Court's assessment of the claimant's injuries, and also reflected on her credibility. Moreover, as the pictures came from her own Facebook page, she could not claim any surprise or unfair disadvantage from their use in Court. The Court allowed the pictures to be admitted into evidence. It went on to caution users of social media platforms to take responsibility for the reach of any information that they choose to put online.

You Can Be Served With Court Documents

The Courts in the UK recently granted a claimant permission to 'serve' Court documents on a defendant through Instagram. The defendant was out of the country, and so could not be served with physical copies of the documents but was active on social media.

Normally, a Court claim must be served – i.e. delivered to a defendant – personally or, where the defendant is a company, by post. The service of a Court claim is extremely important as once the claim has been served, the defendant has only 8 days to file a document known as an 'Appearance' with the Court. If the defendant fails to file the Appearance, the claimant can then obtain a 'Default Judgment' against them. The claimant will obtain an official Order from the Court stating that the defendant is liable to pay the claimant's claim. This Order can then be enforced against the defendant's assets.

There have not yet been any cases in Trinidad and Tobago in which our Courts expressly allowed documents to be served through Instagram, Facebook or other social media platforms. However, our rules of Court do provide for service by 'alternative' methods. In theory, a claimant need only prove that a defendant would have been able to ascertain the contents of a Court claim served on them via social media, in order for such service to be considered valid. In practical terms, this means that any social media account that you have created - even the throwaway Instagram profile that you made years ago in order to check out your childhood friend's wedding pictures and then barely used again - could potentially be used to serve you with Court claim. If you don't check that account regularly or are not familiar enough with how the platform works to tell when you've received a direct message, and don't happen to notice the Court claim sitting in your inbox until after the 8 day period for filing an Appearance has passed, you risk having a Default Judgment entered against you. While you can apply to have that Judgment set aside, this can be an expensive and time-consuming process. It is therefore important that you carefully monitor any social media account that you own, or close ones that are no longer used, where possible.

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