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Every summer, DSF has the good fortune to welcome several talented students. These students bring enthusiasm, energy and make an enormous contribution to the life of the firm. We are very thankful for them. Leonard Bernstein, Michael McCluskey and Igor Poroger are three of this year’s students. They have prepared the articles for this edition of the newsletter, focused on online privacy. They have done an exceptional job!

Facebook Friends: The Weakest Link

by Michael McCluskey

In this electronic age, privacy is routinely sacrificed for accessible information. This makes it impossible to completely guard yourself against the possibility of damaging Facebook content being made public. For example, even if you were to adhere to the strictest personal privacy settings, other people—friends or not—can still post potentially damaging pictures or comments on your (or their) Facebook profile. While simply not participating in these “types” of activities may be the best option, this may be unrealistic—and boring.

Another way to mitigate the potential harm is to disable all aspects of your Facebook profile that you don’t immediately control—for example, your “photo comments” or “wall.” This prevents others from posting anything directly on your profile.

Recent cases have highlighted that facebook “wall comments” can have great consequences. In *Alberta Distillers Ltd. v. U.F.C.W. Local 1118*, a man was fired because of third party comments on his “wall” disparaging a female co-worker (claiming she had “Cankles”—ankles that extend straight down from the calf). Although he was reinstated after a tribunal hearing, the case illustrates how serious Facebook comments can be. IP photos that friends post of you on their own profile can also be problematic. In a recent Nova Scotia case, *R. v. Huxford*, a shooting victim was able to identify the gunman on Facebook after the shooter’s girlfriend uploaded pictures of him wearing the same outfit he wore during the shooting—including the bandana and jacket that were found at the scene. He was charged with attempted murder thanks in large part to this evidence.

These are examples of the problems associated with Facebook that are simply beyond the control of the individual. The most you can do is tighten up the security settings—and if participating in behavior that might get you in trouble, leave the camera at home!

Michael McCluskey hails from beautiful New Brunswick. Having graduated with a Bachelor of Arts from St. Thomas University, he is in his last year of law school at University of Western Ontario.



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Better Safe Than Sorry

by Leonard Bernstein

My five-year-old cousin chats to me on MSN, my mom loves reading anonymous blogs and my grandma recently “friended” me on Facebook. The internet isn’t new, and social networking is commonplace for young and old alike. But if the idea of your sweet old grandma seeing the debauchery of your recent weekend doesn’t make you cringe, the idea of being fired for it should.

In the 2007 *Chatham-Kent (Municipality) v. CAW-Canada, Local 127* case, if an employee had taken the reasonable step of clicking “private” instead of “public,” her job likely would have been saved. Voicing her distaste for individuals she worked with—on what she believed to be her private Facebook page—ended up in her eventual dismissal. More often than not, when you sign an employment contract, you’re signing a confidentiality agreement. These provisions should not be taken lightly, and the unfortunate employee’s carelessness and plea of ignorance over her

blog and its contents met no sympathy from either her employers or the courts.

Facebook has come under incessant fire for the increasing complexity and confusion related to its privacy settings. In response, it recently updated its settings, and the simplified language and user-friendly format has led to an easing of criticism.

Although the options are not as basic as simply clicking “private” or “public,” Facebook lets you choose a different privacy setting for each application or one universal setting. Taking a minute to learn the settings, and perhaps two minutes to implement the cautionary steps that could save you future grief, is undoubtedly time well spent.

Leonard Bernstein is entering his third year at the Faculty of Law at the University of Calgary. From Toronto, Leonard has an undergraduate degree from the University of Western Ontario.



PIPEDA Amendments Bill and Online Privacy

by Igor Poroger



Igor Poroger is from Toronto and will be finishing his last year of law school at Queen’s University. He has an undergraduate degree from the University of Waterloo.

Just because you set the privacy settings of your Facebook page to only allow “friends”—or “friends of friends”—to have access to certain or all components of your online profile doesn’t mean you’re protected from unwarranted intrusions. Parliament has recently introduced Bill 29, an Act to amend the *Personal Information Protection and Electronic Documents Act* (PIPEDA).

The proposed amendments would strengthen the government’s already powerful investigative tools and their ability to force organizations to release personal user information without having to notify users. Amendments to Section 7(3) of PIPEDA would allow the government to force “gag orders” on organizations such as Facebook, preventing them from notifying users that their private information has been made available to government investigatory bodies. While

organizations can request the government to allow them to tell affected users when their privacy has been breached, the government would have veto power to refuse such requests.

What’s troubling about this proposed amendment is that it signifies a departure from the direction that privacy law was heading, as illustrated in a fairly recent Federal Court case, *Lawson v. Accusearch Inc.* In that decision, it was held that the Privacy Commissioner of Canada had lawful jurisdiction to investigate and sanction a US company that collected and used personal information of Canadians without their knowledge or consent.

The proposed amendments to PIPEDA still allow individuals and organizations to make complaints through the office of the Privacy Commissioner, but the Commissioner would have no power against the government’s veto against disclosure. All the more reason to limit the amount and type of information you choose to share with your “friends” and whoever else happens to be looking online.

PERSONAL INJURY UPDATE

Changes to Auto Insurance: Know Your Options

by Marc Spivak and Cory Schneider



Marc is the managing partner of DSF's personal injury group. With a practice restricted to representing accident victims and disability claimants, he is a graduate of McGill University's National Programme, was called to the bar in 1992 and has frequently appeared before a number of courts and tribunals in Ontario. His direct line is 416-446-5855.

On September 1, 2010, a new *Statutory Accident Benefits*

Schedule (SABS) came into effect in Ontario, reducing basic benefits available to car accident victims. This will particularly affect those whose impairments don't meet the statutory requirements of a "catastrophic" injury.

Here are some of the important changes to the basic minimum coverage:

- Medical/rehabilitation expenses payable for minor injuries have been capped at \$3,500, including assessment costs. However, compelling evidence of pre-existing medical conditions that prevent the victim from achieving maximal recovery with only \$3,500 could increase the cap to \$50,000 (as opposed to the \$100,000 under the old regulation).
- Attendant care benefits have been reduced from \$72,000 to \$36,000 for non-catastrophic impairments.
- Housekeeping and home maintenance benefits have been completely eliminated from basic coverage for non-catastrophic injuries. (Under old regulations, victims could receive \$100 per week for 2 years).
- Caregiver benefits have been completely eliminated from basic coverage for non-catastrophic injuries. (Previously, victims could get \$250 per

week plus \$50 per week for each additional person in need of care for at least two years).

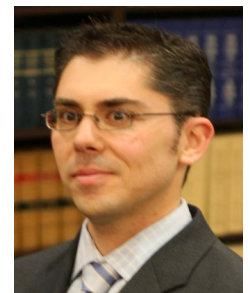
To make up for these reductions in basic coverage, insurers have expanded the scope of "optional benefits." While most people understandably cringe at the thought of paying *more* for their car insurance, it is important to keep in mind that much of the coverage that will be considered optional after September 1 is now standard.

Here are some of the optional benefits insurance companies will be required to offer:

- Optional housekeeping and home maintenance benefits for those suffering non-catastrophic impairments.
- Optional caregiver benefits for those suffering non-catastrophic impairments.
- Optional medical/rehabilitation benefit of up to \$100,000 for non-catastrophic impairments.
- Optional attendant care benefit of \$72,000 for non-catastrophic impairments.

When it comes time to renew your car insurance, be informed! Before opting to pay lower premiums, consider how much more you may be required to pay out of your own pocket for rehabilitation, attendant care, housekeeping and caregiver expenses if you're ever in an accident. Don't be penny-wise and pound-foolish.

Cory is a graduate of Osgoode Hall Law School and has undergraduate and graduate degrees in engineering from McGill University and the University of Toronto. He has a broad practice, stretching from intellectual property to personal-injury litigation. His direct line is 416-446-5818.



PERSONAL INJURY UPDATE

Attention Pedestrians: You shouldn't have to wear skates to get around in the Winter! The City owes you a duty of care

by Esther Cantor and Igor Poroger



Esther is a partner in our personal injury group. Called to the bar in 1997, she has spent several years acting for defendants in personal-injury actions before deciding to dedicate her experience and talent to the representation of accident victims. Her direct line is 416-446-5840.

A recent Ontario Court of Appeal decision has rein-

forced the reasonable duty of care owed by municipalities to patrons of city sidewalks, the everyday pedestrian. In *Crinson v. City of Toronto*, a pedestrian slipped and fell while walking over an icy patch of a publicly managed sidewalk in Toronto, on a typically frigid February evening. In the morning preceding the fall, City of Toronto employees had been monitoring weather conditions, and had determined that a gradual drop in temperatures would create the need to plough and/or salt city streets and sidewalks.

The City had previously retained an independent contractor to manage this service, and told them of the need to begin salting city sidewalks. The Court of Appeal found that the contractor had not yet reached the sidewalk in question at the time of the accident, and that this failure resulted in the slip and fall.

The City of Toronto was found to be grossly negligent, as they had given their contractor too wide a window of time (2 p.m. until 2 a.m.) to deal with sidewalk. This was not sufficient to ensure the safety of pedestrians. Accordingly, the plaintiff was awarded \$300,000 (including court costs).

As well, while s.44(10) of the *Municipal Act* requires that victims of such accidents must report them within 10 days in order to bring a claim against a municipality, the Court of Appeal found that the plaintiff's late notice (almost five months after the accident) was saved by s.44(12) of the *Municipal Act*.

This provision allows for a "reasonable excuse" to justify late notices, such as in this case. The plaintiff was found to be severely incapacitated due to the medication he was prescribed post-accident, consequently his state of mind was such that he was unable to attend to matters requiring competent judgment; so s.44(12) applied.



Online Anonymity: Does it really exist?

by Michael McCluskey



The idea of online anonymity is appealing. It lets people voice honest opinions behind usernames, anonymous blogs, and Facebook profiles.

Recent litigation points to a trend towards online accountability, a move that has already had a profound impact on online blogs and Facebook. There have been cases of people getting in trouble for posting harassing status updates and comments on Facebook. People have been charged with uttering threats (*R. v. Sather*), fired from their jobs (*Alberta Distillers Ltd. v. U.F.C.W., Local 1118*), and charged as parties to first degree murder (*R. v. Todorovic*) as a result of using their real names in online conversations and updates. On anonymous blogs and opinion sites, it is

assumed that anonymity will protect you from this. Recent litigation suggests otherwise. “Lawbuzz.ca,” the Canadian online legal blog, was forced to shut down after being named in a libel suit by a competing online blog, “Advicescene.com.”

As part of the settlement, Lawbuzz released the names of some of its registered anonymous contributors. One of these was identified as an Ontario lawyer whose practice could now be in jeopardy following his being identified in making libelous comments on the site. This lawyer was subsequently brought into the libel action as a private party.

In this case, the blogger mistakenly believed that his identity would remain protected. Online anonymity, it seems, may be nothing more than a myth. Be aware of these recent policy considerations, and blog with caution.

Devry, Smith & Frank LLP and the Community

Contributing to the community is important to Devry, Smith & Frank LLP. Every year, the firm and its members contribute time, money and expertise to a wide range of programmes, charities and not-for-profit organizations, including the following:

- The Dr. Jay Charitable Foundation
- Vaughan Vikings
- The Heart and Stroke Foundation
- The Toronto — Calcutta Foundation
- Toronto Sanskriti Sangstha
- Toronto City Blues Pee Wee ‘AA’
- Daily Bread Food Bank
- North America Bengali Conference
- York Central Hospital Foundation
- Urban Promise Toronto



On June 6, 2010, DSF participated in THE BIG BIKE RIDE fundraising event organized by Heart and Stroke Foundation. We had an amazing time riding through our neighbourhood in an effort to raise money for this great cause.

More professionals join the team!

Denielle Boyer, a sports and travel enthusiast, is a graduate of Durham College and is our newest family law clerk.

Pradeep Chandrashekar is from Halifax. He secured his LL.B. at the University of Ottawa and he is a graduate of Dalhousie University (B.Sc. and MBA). Having just been called to the bar, Pradeep will be practising in all areas relating to insurance defence litigation.

Christopher Girardo is the newest addition to DSF's insurance defence group. Christopher graduated from York University (B.A. in Philosophy) and received an LL.B. from Queen's University. He was called to the bar in 2010.

Rachel Healey joins our family law group. Rachel earned both Canadian and American law degrees (University of Windsor (LL.B.) and University of Detroit (Juris Doctor)) and was called to the bar in Ontario in 2007. Rachel has an undergraduate degree in English and History from Mount Allison University in New Brunswick.

Kerri Parslow also joins our family law group. Having earned undergraduate and law degrees from Queen's University, Kerri articulated with a prominent international firm in Toronto. She was called to the bar in 2005.

Flora Poon graduated from the University of Toronto (B.Com.) and completed the joint J.D./LL.B. program at the University of Windsor and the University of Detroit Mercy. Flora was called to the bar in 2008.

Marty Rabinovitch joins our insurance and commercial litigation teams. A graduate of both Queen's University (B.A. in Political Science) and the University of Windsor Faculty of Law (LL.B.), Marty spent several years as a summer student at DSF, where he completed his articles. He was called to the bar in 2010.

Christopher Statham began his articles with DSF this summer. He obtained both an undergraduate and a graduate degree from the University of Toronto (B.A.H. and M.A. in Philosophy), and recently completed an LL.B. at the University of New Brunswick.

Alexandra Tratnik has also started her articles. Alexandra graduated from the University of Western Ontario and received her law degree from the University of British Columbia.

Mison Yoon graduated from the University of Toronto, where she majored in English and Criminology. Mison is a senior law clerk in the commercial litigation group.



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From its genesis in 1964, Devry, Smith & Frank *LLP* has grown to a professional corps of 39 lawyers, four licensed paralegals, 24 law clerks and a complement of highly skilled and dedicated staff, offering a broad range of legal services to our individual, business and institutional clients.

To learn more, please visit our website at www.devrylaw.ca, our Facebook page, or call us at 416-449-1400.

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