



## Facebook Postings can Support Just Cause Termination



### A Labour & Employment Law Update

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In a recent decision, which has been reported as Canada's first "Facebook firing", the British Columbia Labour Relations Board held that an employer had just cause to dismiss two employees who had, while off-duty, posted derogatory comments on their respective Facebook pages about their employer and co-workers.

In *Re Lougheed Importers Ltd.*, BCLRB No. B190/2010 ("*Lougheed*"), the employer operated an automotive detailing and accessory shop. In August 2010, the Union applied for certification. Subsequently, during a period of time where there were some growing pains with the Union, two employees posted derogatory comments about their employer on their Facebook page. One of the employees went as far as to continue posting these comments for a period of several weeks.

Many of the comments were of a very offensive, defamatory and even violent nature. For example, suggesting that two supervisors were engaging in sexual acts in the bathroom; stating that the employer was out to "hose" people with their products and services; and one comment going as far as to suggest that an appropriate way to relieve the work-related stress of the employee would be to engage in a series of vigilante killings akin to those depicted on the television show *Dexter*.

One major detail the employees managed to overlook in this case was that one of them was "Facebook friends" with his supervisor, who received updates on these postings through his own Facebook account. As a result, the employer immediately became aware of the comments that were being made. Growing concerned over these comments the employer started to monitor the postings and kept a file, tracking what was being said.

Eventually, the employer called an investigatory meeting with the two employees to address their concerns. During the meeting, the employees were untruthful and rather than admitting to having made the comments, one of them went as far as to assert that a computer hacker may have been responsible for them. As a result of the investigation, both employees were terminated.

The Union advanced an argument that the terminations were conducted with anti-union animus as one of the employees was a known union supporter, but the Board dismissed this part of the complaint for lack of evidence and further held that the employer had just cause to terminate these two employees.

Interestingly, the Board went on to hold that the employees did not have an expectation of privacy in making these comments despite the fact that access to their postings was effectively limited by their Facebook privacy settings (which limited access to these comments to "friends" of the employees).

Further, the Board found that because these comments were visible on Facebook to the employees' supervisor, current employees, as well as former employees, they were akin to having been made directly on the shop floor, which greatly compounded the offensive nature of the postings. The employees' dishonesty during the employer's investigation was also taken into account by the Board to find that the terminations were justified as they damaged the reputation of the employer and created a poisoned work environment.

The *Lougheed* decision serves as a reminder to employers of the well accepted principle that

discipline (including termination) can be a consequence where an employee engages in off-duty conduct that detrimentally affects the employer's reputation or inhibits the ability of the employer to effectively manage the workplace. As such, even where an employee is posting comments to his own private Facebook account, using his own computer on his own time, the nature of the comments could well turn into a workplace issue.

**Labour & Employment** - This update is a general overview of the subject matter and cannot be regarded as legal advice. Please contact [Teresa Haykowsky](#) in Edmonton, [Tom Ross](#) in Calgary, [Glenn Tait](#) in Yellowknife, or any member of our [Labour & Employment Practice Group](#) for advice on this or any other labour & employment law topic.



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