

Chapter 4

Teaching in the Internet and Social Media Age

While the use of social media tools by teachers can assist in numerous ways to support student learning, personal relationships remain central to student achievement. The foundation of successful educational experiences for students is built upon the trusting, caring and respectful relationships they have with teachers. It is therefore important that school boards empower teachers to use social media effectively, in a manner which supports the student relationship.

The actions and communications of teachers are subject to the common law, legislative requirements, standards for the profession, and employer policies and procedures. It is against the expectations identified in these sources that the use of social media by teachers, both in and out of the classroom, is evaluated.

1. COMMON LAW REQUIREMENTS

In the mid-1990s, the Supreme Court of Canada decided a trilogy of cases that recognized that teachers hold a special place in society as educators of our children and youth, and that Canadians place great trust and authority in them. As a result of the impact they can have on the growth and development of young people, teachers' work in the classroom as well as their off-duty behaviour can be considered in determining whether they have upheld the standards of the profession, and whether they have the right to hold a teaching position.

(a) *R. c. Audet*

One of the three cases decided by the Supreme Court of Canada involved Mr. Audet, a young teacher who had a chance encounter over the summer holiday at a nightclub with a fourteen-year-old student who attended the school where he taught. After socializing with the student and others at the nightclub, the group went back to a cottage, where he engaged in oral sex with the student. Mr. Audet was charged pursuant to s. 153(1) of the *Criminal Code*,¹ with

¹ *Criminal Code*, R.S.C. 1985, c. C-46 [*Criminal Code*], at s. 153(1) states:

Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who

(a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or

(b) for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.

touching a young person for a sexual purpose while in a position of trust or authority towards the young person.²

The Supreme Court of Canada considered whether Mr. Audet could be deemed a person in a position of trust and authority with respect to the student during the summer months, when he was not her teacher. The majority of the court found that:

. . . no evidence is required to prove that teachers play a key role in our society that places them in a direct position of trust and authority towards their students. Parents delegate their parental authority to teachers and entrust them with the responsibility of instilling in their children a large part of the store of learning they will acquire during their development.³

The court found that Mr. Audet's position of trust and authority with respect to the student remained, despite the fact that he was not teaching at the time. The court stated for emphasis that, "it cannot be concluded that a teacher is not in a position of trust and authority towards his or her students without going against common sense".⁴

(b) *Attis v. New Brunswick School District No. 15*

In *Attis v. New Brunswick School District No. 15*,⁵ the Supreme Court of Canada had further opportunity to consider the off-duty conduct of a teacher. The court was asked whether the school board was required to provide a discrimination-free education to its students, and if so, whether in order to do so it had a responsibility to terminate a teacher responsible for expressing anti-Semitic views while off-duty.

Over the course of many years, Mr. Ross wrote and disseminated various racist and discriminatory statements. For example, he stated that "Christian civilization was being undermined and destroyed by an international Jewish conspiracy."⁶ He also appeared on public television to express his views. His opinions were therefore well known by his peers, students and parents in the school community.

The decision of a Board of Inquiry established pursuant to New Brunswick's human rights legislation was ultimately considered by the Supreme Court of Canada, which acknowledged the special place in society occupied by schools and teachers:

A school is a communication centre for a whole range of values and aspirations of a society. In large part, it defines the values that

² *R. c. Audet*, [1996] 2 S.C.R. 171 (S.C.C.) [*Audet*].

³ *Ibid* at para 41.

⁴ *Ibid* at para 43.

⁵ [1996] 1 S.C.R. 825 (S.C.C.) [*Attis*].

⁶ *Ibid* at para 3.

transcend society through the educational medium. The school is an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate. As the Board of Inquiry stated, a school board has a duty to maintain a positive school environment for all persons served by it.

Teachers are inextricably linked to the integrity of the school system. Teachers occupy positions of trust and confidence, and exert considerable influence over their students as a result of their positions. The conduct of a teacher bears directly upon the community's perception of the ability of the teacher to fulfill such a position of trust and influence, and upon the community's confidence in the public school system as a whole . . .

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By their conduct, teachers as "medium" must be perceived to uphold the values, beliefs and knowledge sought to be transmitted by the school system. The conduct of a teacher is evaluated on the basis of his or her position, rather than whether the conduct occurs within the classroom or beyond. Teachers are seen by the community to be the medium for the educational message and because of the community position they occupy . . .⁷

The order imposed by the Board of Inquiry had included a ban from teaching if Mr. Ross continued to communicate his views publicly, so the Supreme Court of Canada also considered his right to freedom of expression protected by s. 2(b) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*").⁸ The court found that Mr. Ross's writings constituted expression protected by the *Charter* because they conveyed meaning, regardless of their truthfulness.

The Supreme Court then proceeded to consider whether or not the ban from teaching should be upheld pursuant to s. 1 of the *Charter*, in accordance with the three-part test previously established in *R. v. Oakes*:⁹

1. Is the limit prescribed by law?
2. Is there a pressing and substantial objective to the limit imposed?
3. Were the means "proportional" in that they were:
 - (a) rationally connected to the objective;
 - (b) impaired the right as little as possible; and
 - (c) there was proportionality between the infringement and the objective?

⁷ *Ibid* at paras 42-44.

⁸ *Part I of The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11 [Charter]*, s. 2: "Everyone has the following fundamental freedoms: (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication."

⁹ [1986] 1 S.C.R. 103 (S.C.C.).

In the first step of the three-part test, the court found that the communications by Mr. Ross were contrary to the values protected by the *Charter*, and that the objective of the order by the Board of Inquiry was “pressing and substantial”. In the second step of the test, the court found that the Board of Inquiry’s order preventing Mr. Ross from teaching minimally impaired his right to freedom of expression, and was proportional to the goal to be achieved.¹⁰

The final step of the s. 1 *Charter* analysis considered the proportionality between removing Mr. Ross from a teaching position and the objective of remedying the discrimination and its impact on students. The court found that the objective outweighed any negative impact on Mr. Ross and his freedom of expression, which was not restricted, provided he was not a teacher in the publicly funded education system.¹¹

The decision of the Supreme Court of Canada in the *Attis* case provides a caution to teachers engaged in posting, blogging and Internet publishing on their own time. The Internet today facilitates vastly greater and faster dissemination of ideas than the means available to Mr. Ross. Thus, published ideas identified as belonging to a teacher can have a much greater negative impact on students than commentary published in a pamphlet or local paper, weighing against the right to freedom of expression.

(c) *Toronto (City) Board of Education v. O.S.S.T.F., District 15*

The third case in the Supreme Court of Canada trilogy is *Toronto (City) Board of Education v. O.S.S.T.F., District 15*,¹² which involved a disgruntled teacher who had applied thirty-nine times for a position as a vice-principal without success. Following a dismissal of his complaint to the Human Rights Commission, he sent two letters to the Director of Education, which he copied to the trustees and many others. He was dismissed from his position, which the Ontario Secondary School Teachers’ Federation grieved, and ultimately appealed to the Supreme Court of Canada.

In assessing the impact of the letters, the court stated that:

. . . the letters did not simply express dissatisfaction with working conditions; they were threats of violence. The fact that they may have been written outside the hours of teaching duty cannot either excuse or alleviate the seriousness of the misconduct.¹³

The responsibilities of teachers as outlined in the legislation at s. 264(1)(c) were reviewed by the Supreme Court:

¹⁰ *Attis*, *supra* note 5 at para 82.

¹¹ *Ibid* at para 108.

¹² [1997] 1 S.C.R. 487 (S.C.C.) [*Board of Education*].

¹³ *Ibid* at para 53.

It is the duty of a teacher and a temporary teacher, to inculcate by precept and example respect for religion and the principles of Judeo-Christian morality and the highest regard for truth, justice, loyalty, love of country, humanity, benevolence, sobriety, industry, frugality, purity, temperance and all other virtues.¹⁴

The court commented that the language in the *Education Act*¹⁵ was “that of another era”, but that, “the section does indicate that teachers are very properly expected to maintain a higher standard of conduct than other employees because they occupy such an extremely important position in society”.¹⁶

Consistent with its rulings in *Attis* and *Audet*, the court confirmed the special role that teachers hold in society, and that as a result they may be disciplined for off-duty conduct:

In their position of trust, teachers must teach by example as well as by lesson, and that example is set just as much by their conduct outside the classroom as by their performance within it. Thus misconduct which occurs outside regular teaching hours can be the basis for discipline proceedings.¹⁷

Moreover, the court stated that:

. . . it is essential that arbitrators recognize the sensitivity of the educational setting and ensure that a person who is clearly incapable of adequately fulfilling the duties of a teacher both inside and outside the classroom is not returned to the classroom. Both the vulnerability of students and the need for public confidence in the education system demand such caution.¹⁸

The teacher’s dismissal was also upheld because there was no evidence that upon his return to a classroom he would behave any differently.

2. LEGISLATIVE REQUIREMENTS

In Ontario, Regulation 298, *Operation of Schools — General*¹⁹ outlines expectations for the performance of a teacher’s instructional duties, and as noted in *Toronto (City) Board of Education v. O.S.S.T.F., District 15*,²⁰ s. 264(1)(c) of the *Education Act*²¹ describes a teacher’s duty to exemplify good character:

264. (1) It is the duty of a teacher and a temporary teacher,

¹⁴ *Ibid* at para 51.

¹⁵ R.S.O. 1990, c. E.2 [*Education Act*].

¹⁶ *Board of Education, supra* note 12 at para 52.

¹⁷ *Ibid* at para 54.

¹⁸ *Ibid* at para 57.

¹⁹ R.R.O. 1990, Reg. 298.

²⁰ *Supra* note 12.

²¹ *Supra* note 15, s. 264.

- (c) to inculcate by precept and example respect for religion and the principles of Judaeo-Christian morality and the highest regard for truth, justice, loyalty, love of country, humanity, benevolence, sobriety, industry, frugality, purity, temperance and all other virtues.

Character development is taught explicitly through programs that promote the values identified in the *Education Act*, and implicitly in the way that teachers model appropriate behaviour and engage in positive relationships with their students.

3. PROFESSIONAL AND ETHICAL STANDARDS

The Ontario College of Teachers regulates the teaching profession, and has developed Standards of Practice for the Teaching Profession, consisting of the Standards of Practice, and the Ethical Standards, both of which are included at **Appendix 10**, and which collectively set out the values and character traits that teachers are responsible for imparting and embodying.

The College of Teachers describes the purpose of the Standards of Practice for the Teaching Profession as follows:

The Standards of Practice for the Teaching Profession provide a framework of principles that describes the knowledge, skills, and values inherent in Ontario's teaching profession. These standards articulate the goals and aspirations of the profession. These standards convey a collective vision of professionalism that guides the daily practices of members of the Ontario College of Teachers.

The Ethical Standards for the Teaching Profession are of particular importance in outlining the expectations of teachers in their relationships with not only students, parents and colleagues, but also the community in which they teach. The Ethical Standards state:

The Ethical Standards for the Teaching Profession represent a vision of professional practice. At the heart of a strong and effective teaching profession is a commitment to students and their learning.

Members of the Ontario College of Teachers, in their position of trust, demonstrate responsibility in their relationships with students, parents, guardians, colleagues, educational partners, other professionals, the environment and the public.

The Purposes of the Ethical Standards for the Teaching Profession are:

- to inspire members to reflect and uphold the honour and dignity of the teaching profession
- to identify the ethical responsibilities and commitments in the teaching profession
- to guide ethical decisions and actions in the teaching profession

- to promote public trust and confidence in the teaching profession.

The Ethical Standards are:

CARE: The ethical standard of *Care* includes compassion, acceptance, interest and insight for developing students' potential. Members express their commitment to students' well-being and learning through positive influence, professional judgment and empathy in practice.

RESPECT: Intrinsic to the ethical standard of *Respect* are trust and fair-mindedness. Members honour human dignity, emotional wellness and cognitive development. In their professional practice, they model respect for spiritual and cultural values, social justice, confidentiality, freedom, democracy and the environment.

TRUST: The ethical standard of *Trust* embodies fairness, openness and honesty. Members' professional relationships with students, colleagues, parents, guardians and the public are based on trust.

INTEGRITY: Honesty, reliability and moral action are embodied in the ethical standard of *Integrity*. Continual reflection assists members in exercising integrity in their professional commitments and responsibilities.

The Ethical Standards for the Teaching Profession describe the attributes and expectations of healthy, meaningful relationships between teachers and their students, which extend to all forms of communications, including email, texting, social media tools, blogs posts, and by pen and paper.

4. ADVISORIES REGARDING SOCIAL MEDIA USE BY TEACHERS

Given the significance of relationships between teachers and students, it is not surprising that the Ontario College of Teachers, as well as several teachers' federations, have created special advisories specifically designed to assist teachers with their interactions on social media.

The Ontario College of Teachers issued a Professional Advisory in 2011, updated in September 2017, titled *Maintaining Professionalism — Use of Electronic Communication and Social Media*, and included as **Appendix 11**.

In a paper prepared for the 2011 Conference for the Canadian Association for the Practical Study of Law in Education (CAPSLE), the Ontario College of Teachers identified that social media can create difficulties for some teachers to maintain appropriate relationships with students:

There is, in other words, an important boundary that teachers must maintain between themselves and their students. But social media and electronic communication, by their very nature, may obscure that boundary. Interaction through such sites and by means of e-communication, with all of its attendant abbreviations and lingo, encourages

causal exchanges that suggest for of “let’s-be-friends” tone than a professional teacher-student tone.²²

The College described the purpose of its original 2011 Advisory as follows:

[T]he advisory recognizes that social media and electronic communication may have value in the classroom as an educational or communications tool, but counsels that College members use caution when using them — whether they are used to communicate with students, colleagues, supervisors, parents and/or guardians, school boards or family and friends. Its purpose is to identify potential dangers associated with the use of both and to offer College members practical suggestions about how to avoid those dangers, keeping in mind the unique societal position teachers occupy and the vulnerable position in which they may find themselves where social media or electronic communication are used inappropriately, albeit inadvertently. It outlines possible criminal and civil law repercussions. It also provides a discussion of potential disciplinary consequences, based on actual cases.²³

In addition to providing information to assist teachers in minimizing the risk that their communications might be construed as inappropriate, the Advisory also provides guidance regarding both criminal and civil law infractions, such as defamation, the disclosure of private information, copyright violations, harassment, luring a minor for sex, pornography or prostitution and the exchange of inappropriate photographs, video or audio recordings.

The Ontario English Catholic Teachers’ Association (“OECTA”), the Elementary Teachers’ Federation of Ontario (“ETFO”) and the Ontario Secondary School Teachers’ Federation (“OSSTF”) have also published materials to assist teachers with respect to using online communication tools. For example, the OECTA has provided its members with the following:

Cyber Safety Tips:

- Make sure your online accounts are secure.
- Use caution when joining and using networking websites.
- Consider the following when on social media:
 - o Would you drink, swear or use inappropriate humour in the classroom?
 - o Who will see it and how does it reflect on you as a teacher?
 - o What is the implication if the posting cannot be removed or can be accessed in the future?

OECTA advises that the following actions can also lead to discipline from your employer:

²² Ontario College of Teachers, CAPSLE Paper 2011, *Electronic Communication and Social Media — The New Frontiers* at 34.

²³ *Ibid* at 36.

- Accessing inappropriate websites on a school board's computer.
- Sending offensive jokes.
- Violating copyright by downloading audio, video or text-based materials.
- Using employer equipment for another occupation.
- Posting inappropriate pictures of yourself on the Internet.
- Posting criticism of administrators, colleagues, trustees, students or parents on social media sites.

Reflect on your practices and examine your teaching style. You must be careful and professional, but do not let undue fear undermine your effectiveness as a teacher.²⁴

ETFO warns its members that,

While the use of technology has changed dramatically over time, the standards of professionalism have not changed. Interactions must be respectful, courteous, professional and boundaries must be maintained. Members are expected to be friendly, but not “friends” with their students.²⁵

ETFO also provides the following tips for its members:

1. Communication with parents, students and other members of the education community is best done verbally or face to face in a professional and structured manner.
2. Casual, off hand, joking remarks or expressions of support via electronic media are easily misconstrued.
3. Pictures of you, chat discussions you initiate or participate in, and email or text messages between you and others create a permanent record. Reflect on your electronic postings.
4. Advise friends and family not to post pictures of you on social media sites without first asking for your consent.
5. Slow down. Don't press “send” until you evaluate whether or not your postings, texts, emails will be considered professional and appropriate in the education community.
6. You are not your students' “friend”. You are their teacher and must maintain a professionally appropriate relationship. If in doubt, call to find out.²⁶

A Professional Advisory can be considered “soft law” in that it does not hold the same weight as legislation in establishing a teacher's legal duties. However, while its provisions may not be strictly enforceable in a College of Teachers

²⁴ Ontario English Catholic Teachers' Association, “On Thin Ice: Maintaining Professional Boundaries” (2011) at 9, online: < http://www.catholicteachers.ca/OECTA/media/pdfs/Publications/on_thin_ice.pdf > .

²⁵ Elementary Teachers Foundation of Ontario, “Electronic Communication and Social Media – Advice to Members” (2011) 59 PRS Matters, online: < <http://www.etfo.ca/SupportingMembers/Employees/pages/prsmattersbulletins.aspx#/> > .

²⁶ *Ibid.*

Discipline Proceeding, or by an arbitrator or a court, it can be referenced as a summary of what professional bodies have identified as best practices.

In addition to creating a standard against which teacher behaviour can be measured, a Professional Advisory can also be used as a tool for school boards in developing appropriate policies, procedures, training and monitoring of the use of social media by its teachers.

While the focus of these advisories is the communication between teachers and students and parents, school board policies and procedures should also address expectations regarding social media communications by teachers in their personal capacity. As identified by the trilogy of cases discussed in this chapter, the “off-duty” communication of teachers can reflect upon their employer and the profession, and affect their employment relationship. This does not mean that school boards can or should restrict or prevent teachers from engaging in appropriate debate and expression when they are off-duty. However, school boards can require that all communication from teachers, whether oral or written, in person, or over social media, on- or off-duty, should be professional, courteous and respectful of boundaries and responsibilities.

5. FREEDOM OF EXPRESSION

When evaluating a teacher’s use of social media, school boards must consider that teachers have a constitutionally protected right to express themselves, pursuant to s. 2(b) of the *Charter*.²⁷

Blatantly discriminatory writings by a teacher, such as those that were examined by the Supreme Court of Canada in *Attis*, discussed at Section 1(b) in this chapter, provide examples of communications which were readily identifiable as harmful and unacceptable. However, there have also been cases where teachers have expressed their personal political opinions about the provincial curriculum or the Ministry of Education on a social media site, where the potential for harm to students was less obvious.

Cases heard before the use of electronic communications became quite so ubiquitous are still pertinent in examining a teacher’s right to freedom of expression in a digital environment. For example, the “Cranbrook Freedom of Expression Grievance”, as it came to be known in 2011, considered the right of teachers in British Columbia when a school board attempted to prevent them from wearing buttons at school, and posting materials on classroom doors and bulletin boards, which carried the message “When Will They Learn”.²⁸ The buttons and materials were part of a political campaign by the British Columbia

²⁷ *Charter*, *supra* note 8, s. 2(b).

²⁸ *BCTF v. British Columbia Public School Employers’ Assn.*, Mark Thomson, arbitrator heard May 9 and 10, 2011 [*Cranbrook*], citing *British Columbia Public School Employers’ Assn. v. B.C.T.F.* (2008), 172 L.A.C. (4th) 299, [2008] B.C.C.A.A.A. No. 51 (B.C. Arb.) [*Kinzie*] and *British Columbia Public School Employers’ Assn. v. B.C.T.F.* (2011), 206 L.A.C. (4th) 165, [2011] B.C.C.A.A.A. No. 25 (B.C. Arb.) [*Burke*] at 43-44.