



THE EMPLOYERS'Edge BULLETIN

Court Rules That A Party's Limited Access Facebook Profile May Need To Be Produced In A Civil Lawsuit

In the recent decision of *Leduc v. Roman*, the Ontario Superior Court of Justice found that the content posted on the plaintiff's limited access Facebook profile constituted relevant "documents" under the *Rules of Civil Procedure*. Accordingly, the defendant was allowed to cross-examine the plaintiff on the nature of the content posted on the Facebook site.

In the case, the plaintiff was injured in a motor vehicle accident and claimed that as a result of the defendant's negligent driving, he was entitled to damages for loss of enjoyment of life and limitations to his personal life. Most notably, the plaintiff underwent a psychiatric evaluation and informed the defendant's expert psychiatrist that "he did not have a lot of friends... although he had a lot on Facebook."

Some time later, the defendant's lawyer conducted a search of Facebook and discovered that the plaintiff had a Facebook account. However, the publicly available profile only revealed the plaintiff's name and picture since the plaintiff had restricted access to his site to his Facebook friends. Upon discovering this site, the defendant's lawyer requested an up-to-date affidavit of documents from the plaintiff's lawyer, including information relating to the Facebook profile. The plaintiff's lawyer refused this request, and the defendant sought a court order requiring production of the Facebook profile.

In deciding this issue, the Court rejected the approach taken in a previous court decision, and stated, "It is reasonable to infer that the plaintiff's social networking site likely contains some content relevant to the issue of how Mr. Leduc has been able to lead his life since the accident." According to the court, parties who are claiming substantial damages for loss of enjoyment of life should not be able to "hide behind self-set privacy controls on a website" as this may potentially deprive the opposite party of access to material that may be relevant to ensuring a fair trial.

This decision has far-reaching implications for parties involved in litigation, as it clearly signals that information contained on a social networking site constitute "documents" under the *Rules of Civil Procedure*. Accordingly they will need to be produced to the opposing party if they are relevant to a matter in issue in the court action.

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