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Personal Injury

Keep social media posts private during litigation

By Kirsten McMahon, Associate Editor



Triple checking your social media privacy settings is of the “utmost importance” when involved in litigation, Windsor personal injury lawyer [Gino Paciocco](#) tells [AdvocateDaily.com](#).

“We always strive to have our clients ‘get back to normal’ after an accident. For many, this involves viewing and posting on social media,” says Paciocco, a founding partner of [Paciocco & Mellow](#). “While we don’t discourage the use of social media, we do caution of the risks.”

He says he encourages clients to “triple check” their security settings, not allow friends of friends to view their profiles, and never accept friend requests from people they don’t know. Additionally, he advises clients to go through their friend list and delete anyone they don’t know personally.

“The less information that is publicly available about a client, the less a judge and jury can assume to know about that person’s life,” Paciocco says.

A recent Ontario Court of Justice [decision](#) involved a defendant seeking an order requiring the plaintiff to produce her Facebook account activity, including profile posts and comments from five years prior to the accident to present.

The defendant submitted that because the plaintiff’s public Facebook profile contains “information relevant to her social, volunteer, family, and enjoyment of life activities, the public posts are relevant and therefore the private posts and comments are relevant too,” the decision states.

Paciocco says courts have been very hesitant to order plaintiffs to reveal their private social media posts.

“There needs to be an evidentiary basis to request the information, and usually this is done by showing that some of their public posts were relevant and making the claim that private posts will, therefore, also be relevant.”

The judge concluded there was no evidence that the posts were relevant to the case because the activities depicted didn’t address the extent of the plaintiff’s physical limitations since the accident.

As well, the court noted that just because a person shares their Facebook account with a number of their “friends” doesn’t mean they don’t have privacy interests.

“Users have the option of keeping their Facebook accounts entirely public. The plaintiff in this case did not,” the judge wrote.



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Paciocco says this type of request for private activity is not something he often sees in his practice.

“Generally, clients are asked to confirm whether or not they have and actively use Facebook. Insurance companies will then view any information that is publicly available as an investigation tool and submit it as evidence, but rarely do you see a request to disclose private posts.”

While the case at hand doesn't prevent defendants from making similar relevance arguments, it does emphasize what is and isn't relevant on a plaintiff's page.

“While social media is predominantly used for organizing social events and staying connected with people, the court found these activities were not a sufficient basis for requesting private posts,” Paciocco says.

“The post must contain evidence of the plaintiff's physical limitations since the accident. The request must also demonstrate that the private social media information is more important to the defendant's case than the plaintiff's privacy interests.”

Given the quantity of very personal information people are willing to share with their friends on social media, this can be a difficult claim to make, he says.

“Thankfully, a willingness to share with a group of friends on social media is not the same as posting publicly for the world to see,” he adds.

Paciocco says that people tend to portray the best versions of themselves on social media. They want their family and friends to think that everything in their life is going well, even if that is not necessarily the case.

“The problem is when this use of social media overlaps with a claim based on physical or mental injuries,” he says. “If part of a plaintiff's claim is that they have been suffering from depression or anxiety as a result of the accident but their social media posts are filled with nothing but smiles and depictions of fun activities with family and friends, it can be difficult for a judge or jury to believe their claim.

“A plaintiff might have had weeks of depression and anxiety followed by a single day of doing fun activities with friends, but when this is solely what is posted, it could cause a judge or jury to focus on this aspect of a plaintiff's life,” Paciocco says.

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