# *Facebook Postings May Warrant Termination*

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With the widespread use of social media, employers frequently have to discipline employees for inappropriate content on the Internet.

A recent Alberta Arbitration decision, *Canada Post Corp. v. Canadian Union of Postal Workers,* [2012] CLAD No 85, held that termination may be warranted when an employee posts on Facebook inappropriate and offensive comments that are tied to the workplace.

## FACTS

The Grievor, a postal clerk at Canada Post, was terminated in 2009, after management became aware of derogatory postings she had made on Facebook. The postings specifically named two supervisors and the Grievor's employer.

More than 30 postings were made to Facebook over a one-month period. Some of the postings made fun of the supervisors' appearance and age. Other postings were violent, describing the voo doo dolls the Grievor had made of each supervisor and threatening harm to them. The most threatening posts alluded to the death of the supervisors.

The named supervisors became emotionally distressed as a result of the comments and required a significant amount of time off work. Upon their return to work, both supervisors were placed in different positions within the company.

The termination was grieved. The Union acknowledged that the postings were inappropriate and warranted discipline. However, they argued that termination was too harsh a penalty. The Grievor was in her early 50's, close to retirement and had more than 30 years of service with Canada Post. The Grievor believed a toxic work environment had provoked the postings. Further, the Grievor believed the postings were only available to a select group of people.

## ARBITRATION DECISION

The issue before the Arbitrator was whether the Grievor's conduct warranted termination.

The Arbitrator concluded the postings were abusive and intimidating. Furthermore, they identified two supervisors and the employer. The Grievor was unapologetic thus there was no evidence that her behaviour was likely to change.

The Union offered three defences:

1) The Grievor did not intend her postings to be seen by management;

2) The Grievor was drinking when she made many of the postings and therefore should have diminished responsibility; and

3) The Grievor was provoked because of management's bullying and belligerent behaviour.

The Arbitrator rejected all three defences. He held that the Grievor brought the postings into the workplace by having co-workers as Facebook friends. The Arbitrator explained that diminished responsibility due to drinking would only be considered a factor under exceptional circumstances which were not present in this case. Finally, the Arbitrator found that while the supervisor's management style was aggressive, the postings were a grossly disproportionate response and could not be justified. No provocation was found to exist.

## WHAT THIS MEANS FOR EMPLOYERS

Although the Arbitrator upheld the termination in this case, inappropriate postings on social media websites will not always warrant termination. When evaluating whether termination is warranted, arbitrators will consider whether:

- the posting was publicly available;
- the posting specifically identified the employer and/or employees;
- the posting caused any harm and if so, the extent of the harm; and
- the employee has shown any remorse for his or her conduct.

Where the social media content is not so extreme as to warrant termination, other forms of discipline may be imposed.

## LEGISLATION UPDATE

On May 31, 2012, the New Brunswick Government introduced Bill 63, *An Act to Amend the Pensions Benefits Act*.

This legislation introduces a new type of pension plan called a "Shared Risk Pension Plan." The new pension scheme is a variation on a defined benefit plan and is based on the Dutch model now used in Holland and a number of other countries.

The new plan is available to both the public and private sector.

A number of unions have agreed to convert their defined benefit plan to a Shared Risk Pension Plan, including a number of public sector unions. The Government of New Brunswick has stated that the conversion from a defined benefit plan to a Shared Risk Pension Plan will result in the following changes:

- Increased contribution levels;
- Cost-of-living increases will be conditional on the plan performance;
- Pension eligibility will be moved from age 60 to age 65 – this will be implemented during a 40-year transition period; and
- Benefits will be based on career-average earnings rather than an employee's best years.

All changes as a result of the new plan will be incremental and on a go-forward basis. The new plan will not decrease benefit levels currently in place for retirees.

This Act will come into force on July 1, 2012.

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