



**EMERGING TRENDS IN  
EDUCATION LAW 2017**

Avoiding Social Media  
Pitfalls: Why School  
Divisions Should Give a  
Tweet

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Presented by:



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- Recent Case Law
- Effective Social Media Policies
- Top Tips to Guide You

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**Overview**

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**Recent Case Law**

*Buck v Morris*, 2015 ONSC 35

*R v Elliott*, 2016 ONCJ 35

*Pritchard v. Van Nes*, 2016 BCSC 686

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***Buck v. Morris***

2015 ONSC 5632 (CANLII)

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***Buck v. Morris***

**Facts:**

- Councillor Buck blogged remarks disparaging town staff.
- Blog accused the CAO and town solicitor of doctoring meeting minutes.
- Insinuated that CAO was incompetent/ acting in excess of authority.

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***Buck v. Morris*****Facts:**

- Council obtained independent legal opinion that determined Buck contravened the Town Code of Conduct.
- Buck refuses to apologise and retract her statements, claiming she had a duty to inform the public.
- Buck publishes blog response to complaint and writes letter to editor of local newspaper accusing the Town of attempting to silence her.

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***Buck v. Morris*****Facts:**

- Town Council issues a statement outlining Buck's breach of the Town Code of Conduct, published on the Town's website and in the local newspaper.
- Buck commences a defamation action against her fellow Councillors in response to the publication of the statement.

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***Buck v. Morris*****Decision:**

- Buck's public criticism of Town staff on her blog and in the newspaper contravened section 4 of the Town's Code of Conduct, which states:  
"Members of Council shall refrain from publicly criticizing individual members of staff in a way that casts aspersions on their professional competence and credibility."
- Statement published by Town Council in response was true and published on an occasion of qualified privilege, without malice.

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### Edwards J. for the Court

- Politics... is not for the faint of heart. Some might say a thick skin is a prerequisite for any politician.
- A thick skin, however, does not mean that a politician is fair game for those intent on damaging their reputation with false, malicious, and defamatory statements.
- The right to freedom of speech in our society is not an absolute right. [The Town]...has a Code of Conduct that purports to codify parameters of reasonable conduct for elected Town officials.

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### Key Take-Away Points

- ✓ Publishing on a website is publishing to the world at large – blogs are not “local” and can be found by a search engine
- ✓ Truth is an absolute defence to a defamation claim.
- ✓ A properly drafted Code of Conduct is an important governance tool.

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11

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### *R v. Elliott*

2016 ONCJ 35 (CanLII)

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12

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**R v. Elliott****Facts:**

- Complainant, Stephanie Guthrie, a community activist and organizer
- Guthrie met with Elliott, a graphic designer, to discuss his design of a logo and poster for an event she was organizing
- After their initial meeting, the two struck up a Twitter relationship, often commenting on one another's tweets

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13

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**R v. Elliott****Facts:**

- Guthrie "blocked" Elliott, but he continued to communicate with her on Twitter through the use of hashtags he knew would appear on her newsfeed.
- Elliott charged with criminal harassment under s. 264 of the Criminal Code of Canada
- The charge was based on the volume of tweets Elliott had directed at Guthrie

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14

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**Communication on Twitter**

*"Twitter is a public forum. [...] If you simply tweet, anyone who follows you can read it and anyone who doesn't follow you can read it on the internet so long as they have a twitter account and yours is not private."*

*"[Twitter] is internet communication: a permanent written record of the conversation may be created..."*

*"Everything militates against using Twitter as private communication and in favour of using it as a public forum, which is how Twitter self-defines and what it is."*

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## Communication on Twitter

*"Twitter is a powerful medium and gives an individual the potential to communicate with many people as if that individual had access to the mass media. As such, the individual has certain responsibilities, and must act within the law..."*

*"Once someone creates a hashtag, anyone can use it."*

*"In one sense, creating a hashtag for an event on Twitter is similar to announcing a public meeting. Being public, it is not subject to restriction by the organizers as a private meeting would be; the only restriction is that those attending obey the law."*

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16

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## Key Take-Away Points

- ✓ "To subscribe to Twitter and keep your account open is to waive your right to privacy in your tweets."
  - Hashtags are public domain.
- ✓ Software can recover deleted tweets. No ability to control and limit access to content once it has been uploaded onto a social media site

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17

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## ***Pritchard v. Van Nes***

2016 BCSC 686 (CanLII)

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*Pritchard v. Van Nes***Facts:**

- Action for nuisance and defamation related to Van Nes operating fish pond waterfall in backyard
- On Facebook Van Nes called Pritchard “nutter”, “creep”; claimed he’s using cameras and mirrors for surveillance of her backyard

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19

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*Pritchard v. Van Nes***Facts:**

- Van Nes’ Facebook posts by innuendo imply Pritchard a paedophile
- She had more than 2000 “friends” and her privacy settings were “public”
- Third party public shaming; Email sent to Principal (Pritchard a teacher)

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**Three Modes of Defamation**

1. Ms. Van Nes’ own remarks published on her own Facebook page
2. Republication of Ms. Van Nes’ remarks through Facebook and through email
3. Remarks made by third parties in reaction to Ms. Van Nes’ posts

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21

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### Facebook Posts

*"Deletion apparently accomplished nothing in respect of the copies of Ms. Van Nes' posts that had by this time proliferated over Facebook [27 ½ hrs]."*

*"[A]nyone posting remarks to a [Facebook] page must appreciate that some degree of dissemination at least, and possibly widespread dissemination, may follow. This is particularly true in the case of the defendant who had no privacy settings in place and who had more than 2,000 'friends'. The defendant must be taken to have implicitly authorized the republication of her posts."*

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22

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### Pritchard v. Van Nes

#### Decision:

- [T]he potential in the use of internet-based social media platforms for reputations to be ruined in an instant, through publication of defamatory statements to a virtually limitless audience, ought to lead to the common law responding, incrementally, in the direction of extending protection against harm in appropriate cases
- \$50,000 damages for defamation claim
- \$15,000 in punitive damages
- Costs
- \$2,500 for nuisance and permanent injunction 10pm to 7am no waterfall

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23

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### Key Take-Away Points

- ✓ Words are powerful and can be a destructive force.  
"Vent" in private. Online defamation can aggravate damages.
- ✓ Default profile is public. Use privacy settings!  
Choose your "friends" wisely. You can be held responsible for what they post.

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24

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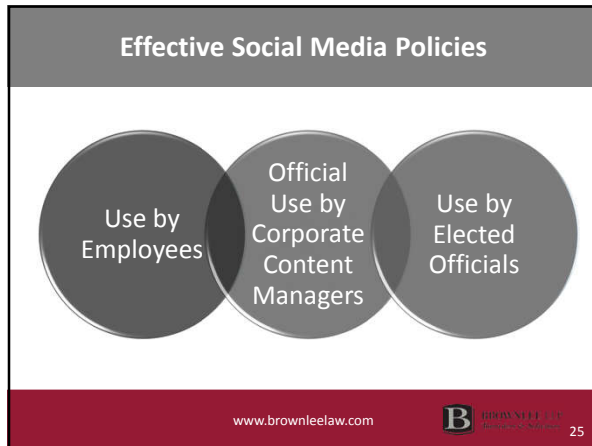
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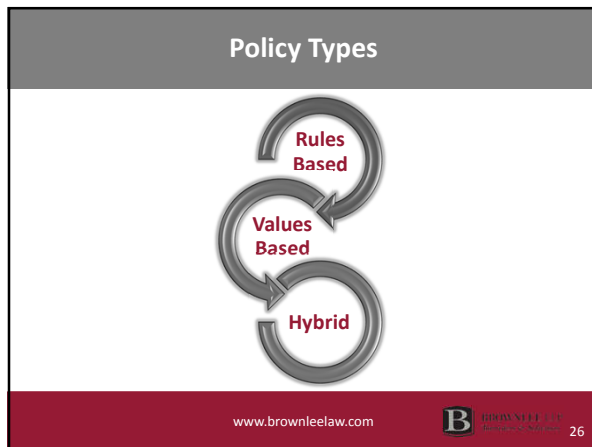
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- ### Employee Guidelines
- Personal use at work
  - Personal use outside of work hours
  - Harm employer's reputation grounds for discipline/dismissal
  - Only communicate on behalf of School Division if authorized
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### Board Guidelines

- Code of Conduct - civility and decorum
- Personal vs. official accounts - “@trustee”
- Duty to preserve confidentiality
- No Division resources for election purposes

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### Social Media Use in Board Meetings

Are electronic devices permitted during meetings?

What uses are acceptable? Is “live tweeting” updates during meetings ok?

Are electronic devices banned/required to be turned off during in-camera sessions?

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### Content Manager Guidelines

- Designated employees only (content managers)
- When and from whom approval to post required (contentious, sensitive issues)
- Prohibited posts (inappropriate, political, private interests)
- Purpose/Intent: Information, advocacy, citizen complaints; monitoring/blocking public posts on corporate pages)

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## Top Tips To Guide You

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**Top Tips**

- ✓ It's called "social" media for a reason. If you don't like people commenting then find another medium.
- ✓ Before you post, consider what "hat" you're wearing (trustee, corporate content manager, employee)
- ✓ Compartmentalize your private life and your professional life - use pages to create a digital wall and/or discrete accounts.

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32

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**Top Tips**

- ✓ Ask yourself what your mother/father/child/pastor would think about what you're about to post
- ✓ Ask yourself whether you'd be comfortable seeing your post on the front page of the local newspaper
- ✓ Mind the trolls. Don't take the bait or respond in anger.
- ✓ Check twice to avoid costly typos or private messages being sent publicly in error.

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33

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**Top Tips**

- ✓ Be cautious of who you “friend”, “like” and “follow”. Monitor for inappropriate posts and links to offensive content. Delete/Block immediately as required.
- ✓ Never repost or retweet offensive/defamatory content. You could be liable for the republication.
- ✓ Remember what you post online is preserved as a permanent record. You may delete a regrettable post, but likely not before it has been read, archived or republished elsewhere.

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## QUESTIONS?

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