



**Notebook on Ethics, Legal Issues, and  
Standards for Counsellors and  
Psychotherapists:  
Can the Use of Social Media by Health  
Practitioners Result in Findings of  
Professional Misconduct?**

Glenn Sheppard

There continues to be changes to the social media landscape with platforms being added and pleas to regulate the content on them. Whether it is Facebook, Twitter, LinkedIn, Instagram or some other media forum use of them is increasing and is widespread as people search for and share information, opinions, insight and experiences. Of course, health practitioners and other professionals use social media both in their private lives and in ways related to their professional positions and activities. Professional associations and regulatory colleges are challenged to keep up with the use of social media by their members and how such use might need to be regulated and what guidelines should inform its use. For example, how do professional codes of ethics and standards of practice apply to social media activities by health professionals? How can complaints of unethical online conduct be addressed?

Of course, professional health care regulators have long had the ability to discipline members for off-duty conduct. How does this authority extend to activities in social media? What behaviour then might constitute professional misconduct and what should be the sanctioning consequences? For this Notebook, I have chosen to examine a number of actual cases that will help to provide some answers to these questions.

In October 2020, the Saskatchewan Court of Appeal issued a decision in the case *Strom v. Saskatchewan Registered Nurses' Association*. Nurse Strom had been disciplined for her comments posted on Facebook. An ethics tribunal had con-

*“Whether it is Facebook, Twitter, LinkedIn, Instagram or some other media forum use of them is increasing and is widespread as people search for and share information, opinions, insight and experiences.”*

cluded that her comments had harmed the reputation of the nursing staff at a care home she had criticized on Facebook and had undermined public confidence in the nursing home facility. Also, she was accused of failing to determine the facts about care at the home, and had relied only on reports by family members. In one post, she identified herself as a registered nurse thus undermining her claim that her posts were only a private matter. Nurse Strom had posted critical comments on Facebook about the level of care her grandfather had received at the care home in Saskatchewan. She said the care he received did not meet a modern-day standard of care and that it was delivered without compassion. However, she did not name any staff at the home and

praised some for their compassionate care. She urged those with loved ones at the home to also express their concerns and she tweeted her posts to the provincial Minister of Health and to the Leader of the Opposition.

The Court of Appeal concluded that the ethics panel

had failed to take a “contextual” approach in determine whether this off-duty conduct by Nurse Strom was unprofessional. Also, it held that the panel failed to address in its decision whether its finding achieved an appropriate balance to the infringement of her freedom of expression rights under the *Canadian Charter of Rights and Freedoms*.

The Court highlighted the following contextual factors:

*Ms. Strom posted as a granddaughter who had lost one grandparent and was concerned for the future of another. That fact was front and centre for a reader of the posts. Although she identified as a nurse and an advocate, she was not and did*

*not purport to be carrying out her duties as a nurse. She was on maternity leave and spoke to the quality of care provided by a distant facility with which she had no professional relationship. The private aspect of the posts was made clear and was significant. Further, and as has been noted, the posts have not been shown to be false or exaggerated and, on the face of it, would appear to be balanced.*

Despite the decision in this case, the Court suggested that when regulators take a contextualized approach to findings of professional misconduct against practitioners for their social media activities they are more likely to be viewed favourably. It stated the following:

*It is entirely legitimate for a professional regulator to impose requirements relating to civility, respectful communication, confidentiality, advertising, and other matters that impact freedom of expression. Failing to abide by such rules can be found to constitute professional misconduct.*

In February 2019, a teacher employed by the Vancouver School Board (VSB) was reprimanded for making what was judged to be “insulting” comments toward Islam and other religions made his Facebook posts. The VSB reported the teacher’s social media activity to the BC Commissioner of Teacher Regulation (BCCTR). After a review of this case the BCCTR said the following:

*In January 2019, Open Mosque Day BC had placed a public advertisement on Facebook which invited people to “explore BC’s major Mosques as we open doors to welcome everyone”.*

*In response, Yetman wrote intemperate and insulting comments about religion. Members of the public saw Yetman’s post, and some reported feeling concerned that a teacher would display this level of intolerance.*

*On February 6, 2020, Yetman entered into a consent resolution agreement with the Commissioner*

*in which he agreed that his conduct constituted “professional misconduct and conduct unbecoming and is contrary to Standard #2 of the Standards of the Education, Competence and Professional Conduct of Educators in British Columbia.”*

*· Yetman’s behaviour raises the concern that students in his classroom may not be treated in a respectful fashion.*

*· The language Yetman used to express his views was discourteous and disrespectful.*

*· Yetman expressed himself in a public fashion and indicated he was a member of the teaching profession in the Vancouver public system.*

*· Yetman acknowledges that these posts were not appropriate and could undermine his efforts to provide an inclusive learning environment for his students.*

*“You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession....”*

In February 2020, the England and Wales High Court denied an appeal of a finding of professional misconduct against a UK barrister for his racially and sexually offensive tweeting. He was apparently very upset with students at Cambridge University advocating for “the Faculty to decolonize its reading lists and incorporate postcolonial thought alongside its existing curriculum and not be so arrogant that civilization began with the writings of white man and should be the basis of our learning.” The barrister was judged, because of this tweeting, to have violated Core Duty 5 of the Bar Standards Board which states:

“You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession....”

In September 2018, a general surgeon in Ontario was found liable for professional misconduct when he used his Twitter account to insult two female physicians with whom he was having a professional disagreement. He referred to his two colleagues using “a slang term for the female genitalia”. This physician had his medical practice suspended for one month and was ordered to pay \$6000.00 to the College for the costs of the hearing.

On another case involving a physician a UK doctor was suspended for four weeks for a number of posts in his social media account about terrorism, pedophilia and race.

Given the political climate in the United States and the extensive use of social media there to promote conspiracy theories and references to the “Deep State” the outcome of a social media-related decision in Australia seems unusual. Because a psychiatrist there was posting what was seen as bizarre and disturbing content he was believed to be mentally ill. He was posting bizarre “alt-right” conspiring theories about President Trump and the “Deep State” on his practice website. After a psychiatric assessment he had his professional registration revoked. His response was to call his regulator a “pedophile protection agency.”

From this brief overview of a number of cases in which health professionals and others engaged in professional misconduct in their use of social media we can reach a number of conclusions.

Firstly, regulators of the professions have the authority and responsibility to investigate and adjudicate complaints against members for their alleged misconduct on social media. This duty also extends to the use of social media by members of self regulatory associations like the *Canadian*

*Counselling and Psychotherapy Association (CCPA)*.

Secondly, the sanctioning consequences for professional misconduct on social media can be very severe. However, when judging alleged misconduct on social media ethics adjudicators should take the contexts for the behaviour into account.

Thirdly, professionals should not behave on social media in a manner that will contribute to a negative view of the profession of which they are a member and, in a way, likely to diminish public trust and confidence in it.

Some proposed guidelines for the use of social media by members of CCPA are the following:

- CCPA expects its members to be vigilant in avoiding online activity which may be harmful to clients, professional colleagues, members of the public, the reputation of the counselling profession, and which could contribute to a lack of public trust or confidence in it.
- Posts on a member’s private social media site may not insulate them from a complaint of professional misconduct particularly if the posting is directed towards an individual or a group in an offensive, disrespectful manner or in a prejudicial way because of their racial, sexual or religious identity, and/or if a member can be identified by users of the site as a CCPA member
- When a member reveals their professional identity in their social media activity, such as by use of their CCPA membership or CCC designation, or by use of their practice website it increases their level of accountability for the views expressed. Members of the public may reasonably assume that any views expressed are informed by their professionalism and could be acceptable to the profession of which they are a member.
- Fundamentally, the behaviour of CCPA members in their use of social media must be con-

sistent with the principles, obligations and practice standards expressed in the **Code of Ethics** and **Standards of Practice** and their commitment to them. This includes to their commitment to these fundamental principles: *respect the dignity of all persons and honour their right to just treatment uphold responsibility to act in the best interests of society* **Code of Ethics p.1)**

[CLICK HERE FOR FULL REFERENCES](#)