Working professionals and the landmines of the social media

For working professionals who are also employees, social media activities create two separate and distinct minefields through which the professional must tiptoe:

- Discipline and sanction as an employee (through the collective agreement); and
- Discipline and sanction as a professional (through legislation and regulation).
Social media landmines in the workplace

- Insubordination
  - “Public” comments on workplace issues or management activities

- Dishonesty
  - Providing the employer with “proof” of dishonesty

- Misconduct
  - Violating policies enforced by employer.
When off-duty means on-line

The existing test for whether off-duty behaviour can justify workplace discipline is whether or not there is a nexus between the behaviour and the workplace.

Eg. Two people stand in front of Sears holding signs that say “Shop at the Bay”. Neither is breaking the law, but the one who works at Sears could probably be disciplined.
Social media landmines at work

So Mr Graham, how do you explain that on the same day you called in sick, your Twitter status was “great weather for rollerblading today”...
Bell Technical Solutions v CEP, 2012 CanLII 51468: A tale of 3 co-workers

- Mr. A, Mr. S & Mr. W all worked for the same employer. They engaged in a number of ongoing discussions regarding their workplace on each other's “public” Facebook pages.

- Considered “public” even though none had their privacy setting to “public”. Their postings were visible to each other's FB friends, which meant hundreds of people.

- The three individuals were disciplined as a result of their posts and the Union grieved.
Tale of three disciplines – Mr. S

Mr. S posted such comments as:

In response to a posting from Mr. W. about being bored at work, he posted: “Go see if Uncle Jimmy wants to play "kick the crap outta the temp!"”

When another co-worker complained of being broke, he posted: "If you're short on cash, I'm sure Uncle Angryman will shoot ya a few bucks". (Reference to a supervisor)

When Mr. W. posted that he was returning to work after a holiday, Mr. S commented: "Well you can ease into it, with a gorilla-free week.” (reference to same supervisor.)
After being asked by the company to stop making posts of this nature, he posted:

“Apparently, we must be careful what is said. It seems some people... have sibling spies creeping Facebook, making sure nobody has any fun and certainly making sure free speech and freedom of opinion are not a right. Funny how the tables have turned and certain people forget their roots and where they came from. How truly sad and immature this is. Lmao (lmao means "laughing my ass off")”

Mr. S was disciplined with a 5-day suspension, which the union grieved.
Tale of three disciplines – Mr. W

Mr. W posted comments such as:

After being overlooked for some extra work out-of-town:
I am trying to get on the list. If I had of known the process was soo easy I woulda applied but I got told it was like applying for another job cuz noone knows what the f* there talkin about lol
You f* better have a good time in Montreal since I got f* and can't go cause noone knows how to run business properly so make sure you have a drink on me.

On Labour Day he posted a photo of a gorilla at a desk and commented: “Hard Day at the Office Working on Labour Day Weekend” (supervisor was working that weekend)
When asked to stop posting such comments: “Rob W will put whatever he wants on Facebook, if ya don't like it, don't read it!! Haha”

Mr. W. was terminated, which the union grieved.
Tale of three disciplines – Mr. A

Mr. A. posted comments such as:

Beneath a photo of a gorilla riding a bicycle: “the Keen Gorilla RIDES AGAIN!!! Bambi careful crossing the ROAD !!!”. (the supervisor lived in Keene, ON.)

After being told by Mr. S that their boss was on holiday (previous slide): Merciful ... what do you MEAN to FLY TO ITALY i HAVE to TRAVEL in a CAGE ???? Someone is gonna get a BAG TAP!!! There better be a LOTT of BANANAS ON THIS FLIGHT!! OR I'LL RIP A DOOR OFF THE HINGES or SMASH A PRINTER !! OR MAYBE I'LL JUST VERBALLY ABUSE A TEMP OR TWO !

Mr. A was terminated, which the union grieved.
Tale of 3 disciplines - outcome

**Mr. S:** Of the dozens of offensive postings, he was only responsible for 6. His comments did not attack the company, simply his manager. He eventually showed remorse but was guilty of insolence and insubordination. 5-day suspension upheld. (Minimum!)

**Mr. W:** Comments made over 16 months. Deliberate and pre-meditated. Termination upheld.

**Mr. A:** No comments about company, just supervisor. Mr. A had history with supervisor that served as provocation. Termination overturned and replaced with one-year suspension.
City of Calgary employee. Co-worker complains that he spends too much time on computer on non-work related activities. Investigation finds that he spends inordinate amount of time on sites related to snooker. Terminated for time theft.

On day of termination, he sent a message out to some co-workers via Facebook very critical of his supervisor.

Three months later he sent a second message attacking the supervisor, this time with more vulgar and derogatory language, calling her “a F* loose-lipped corrupt witch".
Arbitrator wrote:

“Given that the Grievor was terminated without just cause, typically he would be reinstated. However, I find that the Facebook messages he sent after his termination completely destroyed the possibility of re-establishing a viable employment relationship with the City. As a result I decline to reinstate.”

Left it for Union and City to work out compensation for grievor.
Social media – as a professional

Members of regulated professions have more than just their bosses looking over their shoulders. Members of professions are also held accountable to their professional regulatory body, which is empowered by the provincial governments to police the profession and protect public.

Because social media is a relatively new phenomenon, it is often done by applying dated language to the professional's online activity.
Ontario College of Teachers v Halliday, 2014 ONOCT 47
The Minnie Mouse that roared

Teacher owned a home and rented a room to a male roommate.

Through a social organization to which they all belonged, the roommate became friends with a female high school student. The student was not a student of Halliday's nor did she attend at the school where Halliday taught.

On the roommate's birthday, members of the social organization organized a “Dirty Disney” themed birthday party. Alcohol was served at the party. The student attended the party at the invitation of the roommate and slept over.

During the party, the teacher posted a picture of herself in a revealing Minnie Mouse costume while holding a cigarette and glass of wine. The bio information next to the picture identified her as a teacher for the local school board.
Minnie Mouse faces professional discipline

The teacher was charged by the College with:

(a) failing to maintain the standards of the profession;
(b) failing to comply with the Education Act;
(c) committing acts that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
(d) engaging in conduct unbecoming a member.

Note: nothing specific to social media
Minnie Mouse faces professional discipline

On top of the 20-day unpaid suspension imposed by her employer, the College further sanctioned her by:

- Publicly reprimanding her;
- Publishing her reprimand in “Professionally Speaking”, the publication of Ontario teachers;
- Requiring her, at own expense, to take a course on ethics, boundaries, and social media;
- That she provide the course provider with a copy of an agreed statement of facts of her discipline hearing; and
- That she provide the College of proof that she has completed the course and provided the instructor with details of her case.
Social media landmines with professional regulator

- For SK nurses, particularly broad because of vague language in legislation and Code of Ethics.
- Registered Nurses Act defines unprofessional conduct as:
  - “any matter, conduct or thing, whether or not disgraceful or dishonourable, that is contrary to the best interests of the public or nurses or tends to harm the standing of the profession of nursing is professional misconduct within the meaning of this Act.”
More regulatory landmines

- The language of the Code of Ethics and Standards documents are equally vague, meaning that they may be applied to a social media posting for reasons that appear insubstantial or unjustified.

- In a recent high profile decision, the SRNA Discipline Committee found that the nurse had offended seven separate provisions of the Code.
Code of Ethics landmines

- A.1 Nurses have a responsibility to conduct themselves according to the ethical responsibilities outlined in this document and in practice standards in what they do and how they interact with persons receiving care as well as with families, communities, groups, populations and other members of the health-care team.

- A.3 Nurses build trustworthy relationships as the foundation of meaningful communication, recognizing that building these relationships involves a conscious effort. Such relationships are critical to understanding people’s needs and concerns.

- B.3 Nurses collaborate with other health-care providers and other interested parties to maximize health benefits to persons receiving care and those with health-care needs, recognizing and respecting the knowledge, skills and perspectives of all.
D.1 Nurses, in their professional capacity, relate to all persons with respect.

D.10 Nurses treat each other, colleagues, students and other health-care workers in a respectful manner, recognizing the power differentials among those in formal leadership positions, staff and students. They work with others to resolve differences in a constructive way.

F2. Nurses refrain from judging, labelling, demeaning, stigmatizing and humiliating behaviours toward persons receiving care, other health-care professionals and each other.

G1. Nurses, as members of a self-regulating profession, practise according to the values and responsibilities in the Code of Ethics.
Standards and Foundation landmines

The registered nurse:

• 1. Is accountable and accepts responsibility for own actions and decisions.
• 5. Consistently identifies self by first and last name and professional designation to clients and co-workers.
• 8. Demonstrates effective collaborative problem solving strategies, including conflict resolution.

STANDARD III – ETHICAL PRACTICE

• The registered nurse:

• 62. Practices in accordance with the current CNA Code of Ethics for Registered Nurses and the accompanying responsibility statements.
Standards and Foundation landmines

- **STANDARD IV – SERVICE TO THE PUBLIC**
  - 76. Participates and contributes to registered nursing and health care team development by:
    - a. promoting interprofessional collaboration through application of principles of decision-making, problem solving and conflict resolution;
    - f. using appropriate channels of communication;
  - 78. Uses established communication policies and protocols within and across health care agencies, and with other service sectors.
Yet another trap: when your patients and clients find you on social media

For those of us who work in “high-temperature” occupations, our privacy is often critical. We often need a barrier between our work lives and our private ones.

In some cases, any information at all – even a first name – can be considered a risk by an employee.
Prairie North Health Region v. CUPE Local 5111, [2015] SLAA No 17

In 2012, the health region implemented a name tag policy that all employees would wear a tag indicating their first and last name, job title, and a photo mug shot.

The Union grieved the new policy, claiming that:

1) Including last names violated employee privacy rights under the province’s LAFOIPA;

2) Inclusion of last names increased personal risk, violating employee rights to a safe workplace pursuant to the occupational health and safety provisions of the Saskatchewan Employment Act; and

3) the rule requiring last names was an unreasonable exercise of management rights and inconsistent with the collective bargaining agreement.
Evidence was led at the hearing that the health care employees were concerned because patients would be able to easily track them down on Facebook.

Further evidence was provided that it would be possible to track down and individual on Facebook simply by a search of “first name” and “place of work”.

Workers provided evidence of being contacted via Facebook by patients seeking to become their “friend”.

Names tags as gateway to Facebook
Arbitrator ruled that the name tag policy:
1. violated OH&S laws and policies by increasing risk to employees;
2. violated LAFOIPA by disclosing the employee's last name without consent; and
3. violated collective agreement.

Employer was ordered to re-issue name tags with only first name.
Social media shortlist

- Don't! Don't! Don't! post comments about your workplace on Facebook, Instagram, etc. Seriously, not even positive comments. (At the very least, say the words “Don’t! Don’t! Don’t!” three times before posting.)

- Check your privacy settings and make sure that they are what you think they are. Once you “share” something, the privacy of that item changes. Comments you make on other people's pages are visible beyond your “friends”.

- Do not include your profession and workplace in the bio section of your profile. Facebook searches can include workplace, so you may be less anonymous than you think.
And of course, always consider the potential future audience.