# You're So Vain, You Probably Think This Song Is... About You?

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Two recent decisions out of Québec illustrate the extent to which social media usage has had an impact on the workplace. In both decisions, social media postings that occurred outside the workplace and outside of work hours were cause for discipline.

In a decision involving the Municipality of Weedon (2016 QCTA 165), arbitrator Nathalie Massicotte was asked to rule on the dismissal of an auxiliary employee who had posted a video on Facebook. The posting followed a long work stoppage between the Municipality and its unionized workforce.

Shortly after work stoppage came to an end, Mr. Grenier, the auxiliary employee, recorded himself singing a song containing lyrics that were clearly aimed at the mayor of the Municipality and Mr. Grenier's immediate supervisor. Although neither individual was named in the song, the lyrics composed by Mr. Grenier referred to events that left no doubt as to who was being referred to in the song. It is also worth noting that the lyrics to this song were crass and insulting. Mr. Grenier ended the song by showing his middle finger to the camera.

Evidence was presented by the employer demonstrating that, at the time of the posting, Mr. Grenier had 260 Facebook friends who could view the video. Furthermore, he had sent a link to a friend, asking him to view the video.

Arbitrator Massicotte noted that when the video was posted on Facebook, Mr. Grenier had been on layoff and was working for another employer. In fact, she noted that while Mr. Grenier originally denied that the song was about the Municipality, he later admitted that the lyrics referred to the mayor and his immediate supervisor. The arbitrator further noted that the video was 1 minute and 30 seconds long and was posted at 1:30 a.m.

The arbitrator concluded that Mr. Grenier had created the video on a whim and without much thought as to who would view it, whether they would be able to identify the individuals being described in the song and without considering the consequences that may result. The arbitrator also considered Mr. Grenier's prior postings on social media, which included other so-called "funny" videos on Youtube. The arbitrator therefore reinstated Mr. Grenier and substituted his dismissal with a 6-month suspension without pay.

A second decision from Québec, this one involving a Snapchat posting, also demonstrates how employers must be cautious about relying on a single social media post as cause for discipline. In Ambulance Abitémis Inc. (2017 QCTA 513), arbitrator Nicolas Cliche was called to rule upon the validity of a 3-month suspension given to an ambulance driver.

Ms. Lacroix-Vachon had been suspended for 4 days without pay by her employer for an unspecified infraction. Unhappy with her employer's decision, she posted a picture of herself on Snapchat. The picture showed her holding a large knife. Above her shoulder was a little purple devil, who was smiling and who was also holding a knife. The caption on that picture said: "[This is what happens] when your company tries to fire you for taking sick leave".

In this decision, the arbitrator focused on the fact that only 15 people had received the picture from Ms. Lacroix-Vachon's Snapchat account and that she had not actually sent the posting to her employer. Curiously enough, evidence was presented by the employer that most of her 15 Snapchat contacts were actually co-workers.

The arbitrator concluded that Ms. Lacroix-Vachon's Snapchat posting was "ridiculous bravado", meaning that her posting was an outright exaggeration and not meant to be taken seriously. That being said, Ms. Lacroix-Vachon's 3-month suspension was overturned and a 6-week suspension was instead imposed.

These two decisions reflect a trend in how arbitrators view social media postings by employees who are off-duty. Arbitrators are increasingly paying attention to how many people have viewed a social media posting, when the posting was made (shortly after an incident at work or in the middle of the night, for example), whether the posting was immediately taken down and whether the employee has expressed remorse for the contents of the social media posting. Employers must therefore be mindful of these factors when imposing discipline, particularly when the posting is made outside the workplace and outside of working hours.

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