Top Tips to Avoid Liability for Blogs and Other Online Publications

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Many companies encourage employees to blog or otherwise engage customers through social media. While at times providing effective means of marketing to or educating customers and would-be customers, this practice exposes those writers and their sponsoring companies to a wide range of potential liability, particularly in the realms of intellectual property and defamation.

While these areas of law are highly technical and complicated, and are changing every day, common sense and prudence will generally steer you clear of liability. While you cannot eliminate the risk of a lawsuit entirely, here are a few high-level tips to help try to avoid a lawsuit and, in the unfortunate event that you are sued, put you in a better position to successfully defend your company and your authors. We invite you to circulate these tips amongst your blogging employees and webmasters.

- **Correct or retract your mistakes:** If you discover an error, or someone asks you to correct something that you have written, swiftly investigate the allegation. If the topic is particularly controversial or potentially harmful, consider taking it offline while you investigate. If the statement was in error, act responsibly in providing a brief and neutral retraction or correction, in a timely fashion. Apologize if appropriate, but obtain legal advice before doing so: you might be admitting liability.
- **General is safer than specific:** Avoid mentioning specific businesses or persons if possible. In most cases, you can constructively criticise specific business practices or industries or financial products without naming names.
- **Be as accurate as possible:** Truth is a complete defence to a defamation claim. Double-check all potentially controversial statements against other sources. Carefully document and preserve your due diligence as future evidence if needed.
- **Follow good journalistic practices:** Be accurate, thorough, and fair. Quote rather than paraphrase. Give the entire context. Where appropriate, give both sides' story.
- **Document your research:** Keep a record of your interviews, investigations, and fact-checking. Preserve your documents and emails as valuable evidence.
- **Careful about repetition:** It is no defence to a defamation claim to say "*I'm not sure if this is true, and only repeating what I was told…*". If you repeat a defamatory statement, you will likely be liable for it. You may be protected if you

provide the source, and present the controversial statement in a balanced and fair manner.

- **Fair comment:** The defence of fair comment, or opinion, offers broad protection in Canada. But the statement must truly be a comment (as opposed to an assertion of fact) AND the facts on which the comment is based must be true. For example, "*Mr. Snook's public statements on immigration are racist and unCanadian*" will not be protected if Mr. Snooks has never made a public statement on immigration, or if there is nothing in those statements that could objectively be considered racist.
- **Be cautious when writing about businesses and competitors:** Business will be more likely to sue, based on their resources and ready access to lawyers. You are of course free to criticize, and the defence of responsible communication on a matter of public interest will likely protect, at the end of the day, writers following proper journalistic practices. But be extra-vigilant in writing in this area, especially when writing directly or indirectly about a competitor. Publishing untruths about a competitor may take away ordinary defamation defences or result in an award of special costs.
- **Beware of user comments:** The writer and website owner may be liable for defamatory statements contained in reader comments, just as would a newspaper for a defamatory letter to the editor. If possible, screen comments, and do not publish defamatory or otherwise tortious statements. Treat complaints about defamatory or inaccurate statements in reader comments just as you would a similar allegation about content written by a representative of or blogger for your company.
- **Malice:** Avoid writing about people or companies that you personally dislike, or that you would like to see do badly financially (such as competitors). Malice, which has a broad definition in law, will defeat many defamation defences.
- **Hyperlinks:** You will likely not be liable for providing a bare hyperlink to a defamatory website. Be careful, however, in endorsing or encouraging readers to click on the hyperlink. If you must hyperlink to a controversial or potentially defamatory webpage, do so in a neutral, brief manner.
- **Give credit where credit is due:** As best as you can, indicate the source(s) or author(s) or photographer(s) or website(s) from which you have reproduced any content or images or quotations. If at all possible, obtain written consent or permission. Move swiftly to investigate and, if appropriate, comply with take-down requests.
- **Quote briefly:** You can make "fair use" of otherwise copyrighted materials by quoting briefly, and providing full credit. Be careful about more extensive use. If at all possible, obtain written consent or permission from the original author and/or publisher.
- **Get consents:** For any images or personal information that might raise privacy or copyright concerns, try to obtain a brief confirmation by email or otherwise that the person consents to its use.
- **Green-light any controversial statement:** Your employer will likely be liable for anything defamatory or otherwise tortious that you publish on a workplace blog. Before making such a statement, seek the input and clearance of the appropriate persons in your organization.
- **Obtain pre-publication advice:** All prudent media outlets (traditional and electronic) vet controversial stories or statements before publishing. BLG's David Crerar, Michael Skene, Bradley Freeman, or another member of the BLG Team can assist.

By

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Expertise

Defamation & Media Law

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