



Social media and family law - Just don't do it!

Social media - Facebook, Instagram, Twitter, Snapchat and the like - can be a lot of fun and have become an accepted part of modern life. Many of us use such forms of electronic communication to share the exciting, as well as the banal events in our lives, to express our views and to stay in touch with loved ones. But what happens when people going through a relationship breakdown take to social media? Usually little good comes of it, and sometimes quite a lot of bad can result.

Social media as evidence

If you are going through a separation, you should expect your former partner, their lawyer or the children's lawyer to search social media to see if they can find out anything damaging about you that could be used as evidence. For example, if you are involved in a financial dispute and might be claiming that you cannot afford to pay spouse maintenance or increased child support, it would probably not be a good idea to share on Instagram photos of your latest holiday or new car.

Similarly, when involved in a parenting dispute, you would be wise not to post to Facebook about your latest "big night out", especially if the children were in your care at that time.

When making a decision about where children are to live and with whom they are to spend time, the Court can take into account the ability of the parents to communicate and cooperate with one another. So, it is not likely to be helpful if the Court is shown evidence of abusive or derogatory posts you have made on social media about your former partner.

Of course, many people have social media privacy settings which limit the information that can be seen by non-"friends". If you haven't set your social media privacy in that way, you would be wise to do that while you're sorting out the issues arising from your relationship breakdown. However, even with tight privacy settings, it's still better to be very careful about what you post, or just don't do it at all.

Social media and prosecution

The law prohibits the publication, including by electronic means, of information relating to family law proceedings which identifies the parties involved, people associated with those parties or any witnesses. Anyone who breaches that rule is guilty of an offence, the maximum penalty for which is 12 months imprisonment.

That prohibition has not prevented some people involved in family law proceedings from using social media as a weapon against their former partner, by carrying out a campaign of cyber-bullying against their former partner, his or her lawyers, the children's lawyers and the judicial officers involved in the case.

In two recent cases involving such unlawful social media publication, the Court focused primarily on two things.

Firstly, the Court invoked its child protection jurisdiction and concerned itself with the harm that might befall the children if, as a result of social media publication of information relating to family law proceedings, members of the public could identify the children involved, such that the children might then be exposed to ridicule, curiosity or notoriety.

Secondly, the Court considers it in the public interest to preserve public perception of the integrity and impartiality of the Courts and judicial system, which some litigants have used social media to attack.

In both cases, the Judges commented on the difference between unlawful publication of information about family law proceedings in a one off newspaper article, for example, and publication on the internet, which is and remains available for quick and easy access by anyone, anywhere, at any time.

In one of those cases the offending parent was ordered to remove all references to the parties and the proceedings from the website he or his family had set up to cyber-bully the mother and to expose the lawyers and judges involved in the case as "corrupt". In addition, the Court ordered the Federal Police to investigate whether the father had committed an indictable offence.

Similar orders were made in the other case in which the offending party, again the father, had used Facebook to denigrate the mother and her lawyers, the Court, the Department of Community Services and the children's lawyer.

Can social media be good?

The cases referred to above involved ongoing bitterness and acrimony between the separated couple. Happily, that isn't always the case, and some separating parents can respectfully communicate and cooperate with each other for the benefit of their children. In such a situation, tech savvy parents may find a way to use electronic communication or social media to their mutual advantage, for example privately sharing necessary information about the children and their activities.

Conclusion

Unless you and your former partner can find a way to privately use electronic communication to help you co-parent your children after separation, the general guideline when it comes to social media and family law disputes is just don't do it.

Not only would you not want to find your Facebook posts being used as evidence against you in court proceedings, you could even expose yourself to prosecution by the Federal Police for breaching the law against publication of information relating to family law proceedings.

If you or someone you know wants more information or needs help or advice, please contact us on 03 9387 2424 or email info@rrrlawyers.com.au.