

# Employee off-duty conduct essay



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Damaging the employers reputation can be done by employees in several different ways, and can include many different forums. What should happen if an employee tweets negative things about their employer? What if they get in trouble outside of work? What if they do something at work that critically damages their reputation that is not part of their job duties? There are many ways that employees conduct inside and outside of work can affect an employer's reputation, the relationship as well as many consequences for the actions. This report is going to address off-duty conduct and defamation and show cases that are relevant.

Essentially anything that employees do outside of work hours should be their business, but is it? In the case *Kelly v. Linamar Corporation*, 2005 CanLII 42487 (Ont. SC): Mr. Philip Kelly had been working in Linamar for 14 years, and his position was manager which supervisors more than 10 employees and have daily touch base with suppliers and customers. His work record was impressive, and others knew him as a respectful manager. However, he was arrested for holding child pornography in his home computer on January 21, 2002 (Filsinger, 2010, p. 380).

His employer, Linamar Corporation started investigation in Mr. Kelly's conduct due to the shocking news came out. Linamar Corporation is the largest employer in the city of Guelph and has " a special emphasis on philanthropy directed towards young children including sponsoring their attendance at cultural events, sponsoring their sports teams and working with the local schools in innovative educational projects". Three days after his charge, Mr. Kelly received a termination letter from Linamar Corporation which stated Mr. Kelly was terminated with just cause and his conduct had

negative impact on the company's reputation. Mr. Kelly pleaded guilty to the charge.

On January 23, 2004, he sued Linamar Corporation for wrongful dismissal. The court found Mr. Kelly had failed his duty to maintain his off-duty activities did not cause harm on the company's reputation and well-being, so Linamar Corporation had the just cause to dismiss Mr. Kelly (Filsinger, 2010, p. 381). As the case shows, the judge ruled in favor of the employer. Linamar Corporation has been building its great reputation through years and plays a responsible role in supporting children and youth. However, Mr. Kelly's disgraceful conduct had damaged its employers' reputation.

Also, the local presses and medium had targeted Mr. Kelly as well as Linamar Corporation; it put the company's reputation in jeopardy. Moreover, when the incident happened, the company took its responsibility to investigate Mr. Kelly, and Mr. Kelly admitted his actions to the company. Even though Mr. Kelly raised point of the termination was more based on the moral judgment side instead of the business procedures, Linamar Corporation had enough and effective evidences to support its decision and showed that the termination was a necessary step to take.

In case – Hallwright v Forsyth Barr Limited, Mr. Hallwright was a senior investment analyst at Forsyth Barr Limited (defendant). On September 8th 2010, Mr. Hallwright was involved in an incident while driving his car, he and another motorist got into an altercation and Mr. Hallwright ran over the motorist as he was departing the scene, causing significant long term physical and likely psychological injuries. This event did not occur during the

course of Mr. Hallwright employment, but occurred during his time when he was transporting his daughter to an appointment.

Mr. Hallwright was charged on September 20th, 2010 with 188(2) of the Crimes Act 1961 grievous bodily harm with reckless disregard, an offence that carries a maximum term of imprisonment of seven years. After Mr. Hallwright was charged, he did not immediately tell Forsyth Barr the facts. He felt that there was no need to advise his employer because the issue to be related to his driving and not his employment. After his name suppression was lifted, he advised the managing director that he was facing criminal prosecution.

The managing director said that Mr. Hallwright was not adamant and that he became aware of the charges following an Internet blog, which had a link saying senior personnel at Forsyth Barr, had been charge with road rage a serious criminal offence. After hearing the case the court found that the decision to dismiss Mr. Hallwright was one that a fair and reasonable employer could have made in all the circumstances of the case.

The court found: there was a sufficient connection between Mr. Hallwright's out-of-work conduct and his employer stating that his involvement in the incident and subsequent conviction gave rise to significant negative publicity which impacted adversely on the company's reputation. The court also stated there was damaged caused to the employer as a result of Mr. Hallwright's conduct. The judge said evidence of negative media publicity and feedback from clients, staff, and members of the public had wrecked the

company's reputation and also that such damage is notoriously difficult for an employer to both quantify and establish.

Lastly the judge said that Mr. Hallwright's ability to perform his role was compromised. This was because of his Mr. Hallwright's role requiring regular contact with the media. Forsyth Barr believed that extensive media coverage has linked his offence with the company brand. In the last case we looked at in regards to off duty conduct is Hoff v The Wood Life Life Care (2007) Hoff was a senior caregiver at a retirement village who was terminated by her employer.

She was dismissed on May 3 2011; she claims that she was unjustifiably dismissed. On the day of the incident she entered the room of a recently deceased resident on the basis that she wanted to give the village gardener access to water of the deceased resident's plants. At the time this was going on the residents relatives were being shown around the village and came to find the room door unlocked and noticed someone who wasn't the village resident and later on described to be Hoff.

To make matters worse the gardener's glasses were found next to Hoff's keys. Mrs. Hoff claimed that she was unjustifiably dismissed but the employer denies that Mrs was unjustifiably dismissed for many reasons such as they discovered misconduct on Mrs Hoff part as she and the male staff member referred to as the gardener engaged in public displays of affection such as kissing and cuddling which could have potentially damaged the company's image of reputation.

Mrs Hoff had a master key which she used to open the studio 3 door that was unoccupied which she claims she gave the gardener access to go in there and water the plants but when the relatives of the residents came in the gardener look startled with his glass and keys on the bed and the belongings of Mrs Hoff next to them which was recognized by the receptionist. The family member pointed out to the receptionist that there was someone hiding behind the bathroom door described to be Ms. Hoff which made it even more suspicious.

Mrs Hoff had no defence she could not explain why she had hidden behind the bathroom door when she heard the studio door being opened. The Gardener's defense was the studio door was shut as he was supposedly watering the plants because he and Mrs. Hoff had been gossiping and Mrs. Hoff had hidden behind the bathroom door when she heard someone enter the room because she did not want to be found. The gardener rebutted that nothing took place in there between him and Mrs. Hoff.

Now with all this evidence against Mrs Hoff the Employment Relations Authority (ERA) ruled that Deborah Hoff was unjustifiably dismissed from her position at The Wood Retirement Village in May 2011 after nine years of employment. In a costs decision published today, ERA member David Appleton awarded Hoff costs of \$10,500 – three days at the usual daily tariff of \$3500 a day. He also ordered her employer, The Wood Lifecare, to pay disbursements of \$78.25 plus GST and a filing fee of \$71.56.

Hoff had succeeded in her personal grievance. Looking at all these cases certain things need to be done in order to be able to dismiss an employee

for off-duty conduct. To dismiss an employee an employer must prove misconduct and demonstrate nexus between misconduct and either employee's position or employers legitimate interests. You need to be able to show a substantial connection between what the off-duty conduct was to how it effects the employer's reputation.

If you can prove that then an employer has just cause to dismiss the employee; remembering each case is looked at case by case basis once it is taken to court for wrongful dismissal and it is up to the courts to decide whether it has been proven. Defamation according to Wikipedia " is communication of a false statement that harms reputation; can be broken down into slander which is spoken statements and libel which is published/printed statements. " Looking at defamation, you could also consider it off-duty conduct as well because employees could be speaking and publishing statements outside of the workplace but also inside the organization.

Whether the comments come inside or outside the organization it will make an impact on the relationship between the employee and employer and there are many ways an employee can damage an organizations reputation. In past years people would speak negatively about their employer if they weren't happy and there was a chance that the word could spread. In today's age of social and the constant flow instant information a company's reputation can take a large hit extremely quickly based on the comments and conduct of their employees.

“ Facebook says it now has 1. 11 billion people using the site each month, slightly more than the 1. 06 billion reported three months earlier. It represents a 23 percent growth from a year earlier. The figure is as of March 31 and was disclosed Wednesday in Facebook’s quarterly earnings report. Facebook also says it had 665 million active users each day on average in March, up 26 percent from a year earlier, and 751 million using Facebook from a mobile device each month, up 54 percent. ” (Yahoo. com The Associated Press, March 2013).

In the province of Ontario alone “ social media use is highest in Ontario with 71% usage. ” (Redbrick. ca 2012). It is extremely clear why companies have been much more protective of their reputation in recent years. If any employee makes a comment that is counterproductive to the brand or reputation of the employer it is not uncommon for the employer to react. Anything from a verbal warning to termination has been reported. In 2012 there was a case where an Ontario man was fired from his position at Mr. Big and Tall, a retail store, after making remarks about Amanda Todd the day after she committed suicide after being bullied online. A woman in Calgary came across his remarks and reported her findings to the Mr. Big and Tall head office. “ The man was fired from Mr. Big & Tall after using a derogatory term and writing the 15-year-old deserved to die in a post on the Amanda Todd memorial Facebook page. ” (National Post, 2012). Dave McGregor, the president of Grafton-Fraser, which owns Mr. Big & Tall, confirmed in an email the man no longer works for the company.



“ Our company ethics are based on tolerance, respect as well as fair and honourable treatment of all individuals, internally, with our customers and the population as a whole,” he said. “ We have zero tolerance for the mistreatment of others no matter what form it takes. ” (National Post, 2012). In my opinion with all of the different viewpoints as to whether ones conduct outside of the workplace should have any bearing on their employment is debatable.

If an employee is identifying themselves as an employee of a certain organization and then conducts themselves in an inappropriate manor than I do believe the company should have the option to take recourse because of the damage that will have been caused to their reputation. If when an employee is first hired is made to sign a code of conduct either stating that they will not align themselves with the organization on social media and is aware that any comments made that could have a negative impact on the company’s reputation will be dealt with accordingly then I do believe the company has the right to take action.

Although this case involves the union I thought it was worth mentioning and looking at. Porter Airlines has launched a \$4 million libel lawsuit against the union representing 22 striking fuel workers for comments made on Twitter. Porter alleges the libellous comments against the airline were made by the strike co-ordinator on behalf of the union.

The Statement of Claim was filed in the Ontario Superior Court in Toronto in and seeks \$3 million for general and special damages for defamation and \$1 million in punitive, aggravated and exemplary damages. The lawsuit names

the Canadian Office and Professional Employees Union Local 343 and its strike co-ordinator, Mary Stalteri, as defendants. According to court documents, Porter alleges libellous comments against the airline were made by Stalteri on behalf of the union through a Twitter account under the username @PorterStrike.

The airline alleges that it was defamed by a video depicting a fake crash with a Porter plane, a fake advertisement and comments it says were broadcast from the Twitter account between January 17, 2013 and April 8, 2013. Porter says the tweets used false and misleading information about safety protocols and training practices for the airline and its workers. Meanwhile, 22 employees who refuel planes for Porter Airlines are still off the job after walking out on January 10.

In the interim, Porter has trained replacement workers to fill in for the striking fuel workers during the labour disruption. Looking at both at these cases, we can safely say that today employees need to be extra cautious about what they say and where they publish it, and employer's need to be monitoring what is happening outside the organization that does or potentially could affect their reputation. As an employee if you say negative things about your employer you need to understand the consequences that could arise from them.