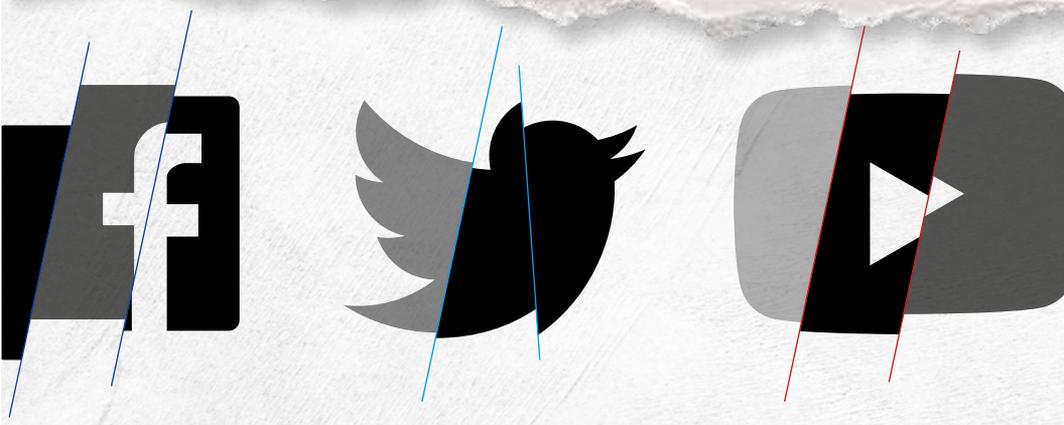


Guidelines on the use of
SOCIAL MEDIA
by **JUDGES**



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**Composition of the Social Media
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Ethics require a process of reflection, which aims to balance the judge's ethical obligation of reserve with the need to be knowledgeable about the society he or she serves, which includes social media.

Lucie Rondeau

President of the Conseil de la magistrature du Québec

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Preamble

Social media¹ have become modern means of communication,¹ changing the way information is collected, communicated, and disseminated. In fact, in 2020 there were 3.8 billion people worldwide using social media.²

Québec is no exception in this regard. A survey conducted by CEFRIO (Centre facilitant la recherche et l'innovation dans les organisations) in 2018 entitled *L'usage des médias sociaux au Québec* (The Use of Social Media in Québec)³ revealed that 83% of Québec adults used at least one social media platform as part of their personal Internet use. Similarly, 65% of them logged on at least once a day and 87% used the integrated or instant messaging available on these platforms to communicate with family and friends. Facebook, YouTube, and Instagram topped the list of the most used social media.¹¹



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- I For the purposes of this guide, the term “social media” is preferred to “social networks” depending on the context. The first concept encompasses the second. The term “social networks” refers to online sites whose primary purpose is to connect users with each other (networking), while the term “social media” encompasses all social features on the Web that serve as communication tools, such as articles, videos, PDF files, blogs, etc.
 - II For more information, see the glossary of the main social media on page 17.



Should judges steer clear of social media?

The issue has been the subject of thought and discussion in many jurisdictions around the world.⁴ In Canada, the Canadian Centre for Court Technology launched a discussion paper in 2015 entitled *The Use of Social Media by Canadian Judicial Officers*.⁵ In 2017, the National Judicial Institute (NJI) introduced its *Guidelines on the Use of Social Media*.⁶ Lastly, in June 2021, the Canadian Judicial Council (CJC) published a new version of its *Ethical Principles for Judges*.⁷ This document includes a number of rules on the use of social media by federally appointed judges. The main guideline is to encourage judges to be careful in their communications:

[...] Judges should exercise caution in their use of social media. Judges should strive to strike a balance between the expectations of judicial office and their personal lives.⁸

Social media activities are subject to the overarching principles that guide judicial behaviour. Judges should be aware of how their activities on social media may reflect on themselves and upon the judiciary and should be attentive to the potential implications for their ability to perform their judicial role.

Judges should also be attentive to and may wish to inform family members of the ways in which their social media activities could reflect adversely on the judge.⁹

What about information from social media that parties have not had an opportunity to comment on and that is not of judicial notice?

The rule of law expressed by the courts requires that in the course of their duties, judges must be careful not to obtain, attempt to obtain, or receive from external sources, particularly social networks, information about parties or about factual issues that must be decided in the context of the cases before them judicially. When such information is communicated to them, they are encouraged to share it with the parties for their comments.

The Conseil de la magistrature du Québec (CMQ) also looked at the issue of social media use by judges under its jurisdiction.^{III} First, it took part in the working group of Réseau francophone des conseils de la magistrature judiciaire (RFCMJ), which submitted its report¹⁰ at its annual symposium held in Brussels in November 2018. One of its recommendations is to authorize the use of social media, but with safeguards that preserve the impartiality and independence¹¹ of the judiciary. RFCMJ also recommends that judicial councils implement education, information, and support mechanisms for judges at the same time.¹²

At its meeting on March 20, 2019, the CMQ acknowledged the RFCMJ report and recommendations. It endorsed the idea of questioning and even intervening in the use of social media by judges under its jurisdiction. It commissioned two of its members, judges Scott Hughes and Claudie Bélanger, to lead an investigation, including the “creation of a working committee

III For the sake of brevity, the terms “judges” and “judiciary” are used to refer to judges of the Court of Québec, presiding justices of the peace, and municipal court judges, all of whom are under the jurisdiction of the CMQ (*Courts of Justice Act*, CQLR, c. T-16, s. 260).

to study the issue and recommend courses of action.” The committee began its work in May 2019. In its report to the CMQ, the committee recommended publishing a social media guide for the judiciary and creating a training and continuing education program on the subject (seminars, regional training, podcasts, digital audio or video files, etc.), with a view to supporting and guiding judges.

/ Introduction to the guide

This guide draws, in part, on statements of principles or guidelines issued on this topic by other jurisdictions, in particular the *Non-Binding Guidelines on the Use of Social Media by Judges*¹³ proposed by the Global Judicial Integrity Network. The guidelines, adopted in Washington, D.C. on November 6, 2019, were presented as follows:

Judges should, of course, be involved in the communities they serve, but the public benefit of such involvement and participation through social media must be balanced with the need to maintain public confidence in the judiciary, in the right to a fair trial, and in the impartiality, integrity, and independence of the judicial system.¹⁴

This guide is intended as a tool for judges to help them use social media appropriately. It is important to ensure a balance between the respect for privacy, the right to freedom of expression, and the obligation to be independent and impartial, which are essential to the performance of their duties. Similarly, as authors Pierre Noreau and Emmanuelle Bernheim have expressed, it's important to keep in mind that “there is inevitably a tension between judges’ duty of reserve and their obligation to maintain close ties with the society that has assigned it the role of public adjudicator.”¹⁵

Statements of principles^{IV}

- 1.** A judge, both as citizen and in their judicial role, may use social media in their personal and professional communications. However, they must at all times be ethical, follow the rules of judicial conduct that govern them, and maintain public confidence in the integrity of the judicial system.
- 2.** A judge must be aware of the security and privacy policies of social media and be cautious when using social media. If necessary, they should attend training and continuing education sessions on the benefits and pitfalls of social media.

IV Since the guide is addressed to each judge individually, the singular is preferred.

Identification or anonymity (pseudonyms)

- 3.** A judge may reveal their identity on social media. Using pseudonyms is neither recommended nor prohibited. A judge must follow the security and privacy rules and settings of social media platforms at all times.

Content and behaviour

- 4.** Online, a judge must avoid expressing views or sharing personal or professional information that could potentially undermine the independence, integrity, impartiality, or public confidence in the judicial system.
- 5.** A judge must not engage in private discussions on social media or messaging services with parties, their representatives, or the general public regarding any disputes or matters that are or may be before the administrative and judicial courts.
- 6.** A judge must be careful with the tone and language they use, act professionally, and exercise caution in all interactions on social media. A judge must treat other users with dignity and respect and not trivialize others' concerns.
- 7.** A judge must consider the potential impact that any type of content, such as posts, comments, status updates, photos, etc. may have on judicial dignity and integrity. The same caution is required when responding to content posted by other users. In other words, they should not post anything they don't want to see widely circulated.¹⁶

- 8.** A judge should consider whether the digital content of their social media accounts, whether or not it predates the judge's appointment to the bench, may undermine public confidence in the judge's impartiality and integrity or that of the judicial system. If necessary, they should seek the advice of the judicial ethics and conduct mentor judges available to them. If necessary, the judge should remove any content that may be potentially problematic.
- 9.** If a judge is subjected to derogatory or defamatory comments on social media, they must refrain from responding directly to such comments and instead refer them to the appropriate judicial authorities.
- 10.** A judge may use social media to follow institutions, groups, and individuals who can inform them about current issues or topics of personal or professional interest. However, they must be careful not to associate themselves with certain individuals or groups where this might undermine public confidence in their impartiality or that of the judicial system in general.
- 11.** A judge must be careful not to use social media to advance their own interests or those of others, whether financial, commercial, or otherwise.

Friendships, online relationships, and other connections

- 12.** A judge must exercise diligence and care when creating friendships and relationships or accepting friend requests online.
- 13.** A judge must remember that in social media, certain concepts, such as “friendship” or “associating” with a person or organization, may differ from conventional usage and be less intimate or involved. However, when the level of online interaction becomes more personal or intimate, the judge must continue to follow the rules of judicial ethics and conduct.
- 14.** A judge must periodically check both their old and new social media accounts and review the content. They must take care to remove or block subscribers or friends who may give the appearance of bias or prejudice. When in doubt about online relationships or content, the judge is encouraged to seek the advice of the judicial ethics and conduct mentor judges available to them.

Privacy and security

- 15.** A judge must not take a position on social media or make any comments that could violate the rules of judicial ethics and conduct. Some comments could be embarrassing or inappropriate if they became public. Nothing is truly private or deleted on the Internet.¹⁷

16. A judge must question the appropriateness of publishing certain personal information on social media, given the risks that this may entail, particularly in terms of privacy and security, such as revealing their location or any similar information, directly or indirectly.
17. A judge, whether or not they use social media, must pay particular attention to the fact that photos or audio or video recordings may be made without their knowledge and spread quickly on social media.

Training and continuing education

18. Judges are encouraged to attend online training sessions or participate in training and continuing education programs made available to support and guide them in their use of social media, particularly on the following topics:
 - Introduction to the main social media
 - Introduction to their operating rules and security and privacy settings
 - Educating judges about the benefits and risks associated with the use of social media
 - Advising judges on the best ways to use social media in accordance with the rules of judicial ethics and conduct
 - Supporting judges in educating those around them (family, friends, etc.) about the rules of judicial ethics and conduct.

Glossary of the main social media

Facebook



Facebook is an online social network founded in 2004 by Mark Zuckerberg and fellow Harvard University students and roommates Chris Hughes, Eduardo Saverin, Andrew McCollum, and Dustin Moskovitz. It allows users to post images, photos, videos, files, and documents, exchange messages, join and create groups, and use a variety of apps.¹⁸

Instagram



Instagram is an app, social network, and photo and video sharing service founded and launched in October 2010 by American Kevin Systrom and Brazilian Michel “Mike” Krieger. In 2012 Facebook acquired the app, which is available on mobile platforms such as iOS, Android, and Windows Phone as well as on computers, but with fewer features.¹⁹

LinkedIn



LinkedIn is an online professional social network founded in 2002 in Mountain View, California, by Reid Hoffman, Allen Blue, and three other entrepreneurs. It can be used for anything related to career and business development, such as finding a job, employers, or service providers or growing a business.²⁰



Pinterest

Pinterest is an American image sharing and social media website launched in 2010 by Paul Sciarra, Evan Sharp, and Ben Silbermann. It allows users to share their interests and passions through pinboards of photos found online. The name of the site is a combination of the words “pin” and “interest.”²¹



Reddit

Reddit is an American social news website and forum. It works through bookmark sharing, allowing users to submit their links and vote for links proposed by other users. The most popular trending links are displayed on the homepage. Founded in 2005, Reddit contained mainly content on programming and science at the time. Since then, it has continued to diversify and open up to content that reaches a wider audience.²²



Snapchat

Snapchat is a free photo and video sharing app available on iOS and Android mobile platforms. It was designed and developed by students at Stanford University in California. Each photo or video sent can be seen by the recipient for only one to ten seconds or, more recently, for one minute.²³



TikTok

TikTok is a video sharing and social networking mobile app launched in September 2016. It allows users to create short videos accompanied by music that last from three to sixty seconds. Its logo evokes a musical note.²⁴



Twitter

Twitter is a microblogging social network that allows users to post short messages called “tweets” free of charge directly on the app or via instant messaging or SMS. Messages are limited to 280 characters (140 characters prior to November 2017). Twitter was created on March 21, 2006, by Jack Dorsey, Evan Williams, Biz Stone, and Noah Glass.²⁵



WhatsApp

WhatsApp (or WhatsApp Messenger) is a cross-platform mobile app that provides free end-to-end encrypted instant messaging both over the Internet and mobile networks. It was created in 2009 by Jan Koum and Brian Acton, two former employees of the American company Yahoo!, with the aim of replacing SMS. In February 2014, WhatsApp was acquired by Facebook.²⁶



YouTube

YouTube is a video hosting website and social media platform where users can upload, watch, comment on, rate, and share streaming videos. It was founded in February 2005 by Steve Chen, Chad Hurley, and Jawed Karim, three former PayPal employees. It was acquired by Google in October 2006.²⁷

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Suggested viewings

- *The Social Dilemma*, documentary available on Netflix.
- *Du côté de chez Catherine* (Perrin), excerpt from the show: bit.ly/362bixc (Discussion with two former Twitter and Google employees).
- *Judges’ Use of Social Media* (podcast): apple.co/347meHv (iTunes) or youtube.com/watch?v=tSH1wYKpi_g (YouTube)
(Training by British judge Barry Clarke, who provides a summary [ins and outs] of the judiciary’s use of social media).

This guide is intended as a tool for judges to enable them to make appropriate use of social media.

A judge, both as citizen and in their judicial role, may use social media in their personal and professional communications. However, they must at all times be ethical, follow the rules of judicial conduct that govern them, and maintain public confidence in the integrity of the judicial system