

E-Professionalism: The Global Reach of the Lawyer's Duty to Use Social Media Ethically

Kylie Burns and Lillian Corbin*

We live in an age where technology is revolutionizing the practice of law.¹ The recent American Bar Association Commission on the Future of Legal Services' Report on the Future of Legal Services in the United States ("ABA Future of Legal Services Report") published in August 2016, noted that "technology, globalization, and other forces continue to transform how, why, and by whom legal services are accessed and delivered."² To meet the public's legal needs for access to justice "the profession must leverage technology and other innovations."³ Despite resistance to change,⁴ the legal profession is adopting technology, including social media, at a "staggering rate"⁵ as part of legal services delivery. Apart from physical interactions, lawyers now communicate electronically on social media sites such as Facebook, YouTube, and Twitter, with other lawyers, clients, and the public more generally in relation to their practice. They also use social media for private communication in their private spaces. The 2015 ABA Legal Survey Technology Report found that 76 percent of respondents' firms participated in social media or online communities.⁶ The Report

* Dr. Kylie Burns is a Senior Lecturer at Griffith Law School and Law Futures Centre, Griffith University, Queensland Australia (K.Burns@griffith.edu.au, @snailsinbottles). Lillian Corbin is an Associate Professor at the University of New England School of Law, Armidale, New South Wales, Australia (lcorbin@une.edu.au). The authors wish to acknowledge the contribution of their research assistant, Heath Burton, a student of Griffith University supported by a summer research bursary from the Griffith Honours College. We also acknowledge the useful comments provided by the editors.

1. Catherine J. Lanctot, *Becoming a Competent 21st Century Legal Ethics Professor: Everything You Always Wanted to Know About Technology (But Were Afraid to Ask)*, J. PROF. LAW. 75, 76 (2015); Michelle Pistone, *Law Schools and Technology: Where We Are and Where We Are Heading*, 64 J. LEGAL EDUC. 586, 589-91 (2015); RICHARD SUSSKIND & DANIEL SUSSKIND, *THE FUTURE OF THE PROFESSIONS* (2015).

2. ABA COMMISSION ON THE FUTURE OF LEGAL SERVICES, *REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES* 8 (Aug. 2016) [hereinafter COMMISSION ON THE FUTURE OF LEGAL SERVICES REPORT], available at <http://abafuturesreport.com/#download-full-report>.

3. *Id.* at 9.

4. *Id.* at 5, 18.

5. Brittany Stringfellow Otey, *Millennials, Technology, and Professional Responsibility: Training a New Generation in Technological Professionalism*, J. LEGAL PROF. 199, 215 (2013).

6. Allison Shields, *ABA Tech Report 2015: Blogging and Social Media*, AMERICAN BAR ASSOCIATION <http://www.americanbar.org/publications/techreport/2015/SocialMedia.html> (last visited Sept. 22, 2016).

found even higher use of social media by lawyers for personal reasons, with 84.5 percent of respondents having a presence on Facebook.⁷ Law students, too, are heavy users of technology including social media.⁸ Courts across the world use social media to communicate with the legal profession and the general public.⁹ In this article we particularly address the use of social media by the legal profession. Social media “includes an Internet-based service allowing people to share content and respond to postings by others.”¹⁰ Social media “may be viewed via websites, mobile or desktop applications, text messaging or other electronic means.”¹¹ Examples of popular forms of social media include Facebook, Twitter, LinkedIn, Instagram, Snapchat, and other social media sites.¹²

This increased use of social media by the legal profession, law students, and courts has many potential benefits, including the improvement of public access to legal information and access to justice. Using technology as a means to enhance public access to justice was a key concern of the recent ABA Future of Legal Services Report.¹³ Use of social media, however, has also increased the range of situations where lawyers may potentially breach the standards of professional and ethical conduct and blur their “private identity” and their professional persona. In this article, we argue that the increasing adoption of social media by the legal profession has significant implications in relation to ethical and professional conduct for lawyers across the world. The last several years have seen some global progress in relation to the development of expectations of professional technological competency (particularly in the United States); social media guidelines; and training for lawyers and law students. Much remains to be done in many jurisdictions, however, to encourage e-professionalism and ethical use of social media by the legal profession. In Part 1 of this article, we define the concept of e-professionalism and consider how it relates to the traditional understanding of professionalism in the legal profession. In Part 2, we discuss the benefits and risks of social media use by legal professionals and briefly identify a range of ethical issues that may arise when lawyers use social media. Finally, in Part 3, we discuss approaches taken by the legal profession to address these ethical and professional issues, and suggest a range of courses of action that

7. *Id.*

8. See discussion in Stringfellow Otey, *supra* note 5, at 204-206.

9. See, e.g., UK SUPREME COURT TWITTER ACCOUNT, https://twitter.com/UKSupremeCourt?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor (last visited Aug. 22, 2016); U.K. SUPREME COURT YOUTUBE CHANNEL, <https://www.youtube.com/user/UKSupremeCourt> (last visited Aug. 22, 2016).

10. NYSBA SOCIAL MEDIA ETHICS GUIDELINES OF THE COMMERCIAL AND FEDERAL LITIGATION SECTION OF THE NEW YORK STATE BAR ASSOCIATION 33 (June 9, 2015) [hereinafter NYSBA SOCIAL MEDIA ETHICS GUIDELINES], available at <http://www.nysba.org/socialmediaguidelines/>.

11. *Id.*

12. *Id.* The NYSBA guidelines also refers to other examples such as YouTube, Google+, Foursquare, Pinterest, Yik Yak and Reddit.

13. COMMISSION ON THE FUTURE OF LEGAL SERVICES REPORT, *supra* note 2.

the legal profession, law firms and legal educators may consider to further develop “e-professional” ethical lawyers.

I. E-Professionalism and Legal Professionalism

Although the legal profession is now regulated by independent bodies in some countries, it is still primarily responsible for crafting the rules of professional conduct. Legal educators, too, have an important role. They are charged with preparing law students for their entry into the legal profession, including introducing students to the concept of “professionalism”—the idea that those in the profession have shared norms, high standards of competency and conduct, and the ability to exercise professional judgment, and have a sense of public obligation. Traditionally, this called for a focus on the physical lawyer/client, lawyer/lawyer, or lawyer/court communications. However, the concept of legal professionalism must now also encompass e-professionalism. E-professionalism can be defined as “the development of an online persona that is congruent with the values and ethics of the profession and portrays use of self in a way that is respectful and demonstrates professional integrity”;¹⁴ as “the attitudes and behaviours that reflect traditional professionalism paradigms but are manifested through digital media”;¹⁵ or, alternatively, as “the way you engage yourself online in relation to your profession, including your attitudes, actions and your adherence to relevant professional codes of conduct.”¹⁶ While “e-professionalism” is a label that refers to expectations of professional conduct on electronic media, including social media, in the context of the legal profession it can be considered as a manifestation or aspect of legal professionalism itself.¹⁷ The standards by which a lawyer’s conduct is judged are those of legal professionalism.

In general, authors suggest that the term “professionalism” is difficult to define.¹⁸ However, as suggested in the definitions of e-professionalism included above, an indication of the behavior required can be gleaned from the terms “profession” and “professionalism”—terms that are often used interchangeably. Pound famously described a profession as “a group . . . pursuing a learned art

14. LESLEY CHENOWETH & DONNA MCAULIFFE, *THE ROAD TO SOCIAL WORK AND HUMAN SERVICE PRACTICE* 306 (4th ed. 2015).

15. Jeff Cain & Frank Romanelli, *E-professionalism: A New Paradigm For a Digital Age*, 1 *CURRENTS IN PHARMACY TEACHING & LEARNING* 66, 66 (2009).

16. INSTITUTE OF ACADEMIC DEVELOPMENT, *MANAGING YOUR DIGITAL FOOTPRINT: E-PROFESSIONALISM*, <https://uoedigitalfootprint.wordpress.com/category/eprofessionalism> (last visited Sept. 21, 2016).

17. Joseph M. Kaczmarczyk et al., *E-Professionalism: A New Frontier in Medical Education*, 25 *TEACHING & LEARNING IN MEDICINE: AN INTERNATIONAL JOURNAL* 165, 166 (2013) make the same argument in relation to the relationship between medical professionalism and e-professionalism.

18. ABA Comm’n on Professionalism, “. . . *In the Spirit of Public Service*”: *A Blueprint for the Rekindling of Lawyer Professionalism* 10 (1986), cited in Jerry van Hoy, *Intraprofessional Politics and Professional Regulation*, 20 *WORK & ORGANIZATIONS* 96, 101 (1993).

as a common calling in the spirit of public service. . . .”¹⁹ So the conduct of someone who is a member of a profession is professionalism. According to Cohen, writing about the medical profession, professionalism is conduct that is capable of “sustaining the public’s trust.”²⁰ These sentiments are now expressed in ethical codes for lawyers across the world. A lawyer’s behavior, either in practice or in her or his personal life, in the physical setting or online, that impacts adversely on the legal profession and undermines the public’s trust in the administration of justice should be evaluated. For instance, Rule 3 of the Australian Solicitors’ Conduct Rules²¹ states that a lawyer’s paramount duty is to the Court and the Administration of Justice; and Rule 5 requires lawyers to ensure that their conduct does not bring the profession into disrepute.²² The ABA Model Rules of Professional Conduct are similarly worded. For instance, Rule 3.3 “Candor Toward the Tribunal” Comment 2 explains that this rule identifies lawyers as officers of the court who have a duty “to avoid conduct that undermines the integrity of the adjudicative process.”²³ Rule 8.4 (d) “Misconduct” describes misconduct as behavior where a lawyer engages “in conduct that is prejudicial to the administration of justice.”²⁴

Across the world, these general ethical principles are generally considered to encompass conduct in both physical and electronic realms.²⁵ However, in the United States following the ABA’s Commission on Ethics 20/20, the ABA Model Rules of Professional Conduct were amended to make some specific clarifying references to the use of technology.²⁶ For instance, Rule 1.1, Comment 8 specifies that competent representation includes keeping abreast of “the benefits and risks associated with relevant technology.”²⁷ This extension of competency to specifically include technological competency has been adopted in over 20

19. ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 5 (1953).

20. Jordan J. Cohen, *Professionalism in Medical Education, An American Perspective: From Evidence to Accountability*, 40 *J. MEDICAL EDUCATION* 607, 607 (2006).

21. *Australian Solicitors’ Conduct Rules*, LAW COUNCIL OF AUSTRALIA (2015), available at <http://www.lawcouncil.asn.au/lawcouncil/index.php/divisions/legal-practice-division/australian-solicitors-conduct-rules>. The rules have been adopted in New South Wales, Victoria, Queensland and South Australia.

22. *Id.*

23. MODEL RULES OF PROF’L CONDUCT R. 3.3, para. 2 (2016).

24. MODEL RULES OF PROF’L CONDUCT R. 8.4 (d) (2016).

25. For example the *Australian Solicitors’ Conduct Rules*, *supra* note 21, are expressed broadly and do not generally specifically delineate between ethical expectations in a physical versus digital environment. The Canadian Federation Model Code of Professional Conduct, available at <http://flsc.ca/national-initiatives/model-code-of-professional-conduct/>, also does not specifically refer to competence in relation to technology.

26. ABA COMMISSION ON ETHICS 20/20, http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html; http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20.html (last visited Sept. 22, 2016).

27. MODEL RULES OF PROF’L CONDUCT R. 1.1, para. 8 (2016).

states.²⁸ Recommendation 3 of the recent ABA Future of Legal Services Report²⁹ also specifically refers to the model rule, recommending that “all members of the legal profession should keep abreast of relevant technologies.”³⁰ We suggest that even in the absence of specific reference to technological competency in ethical rules,³¹ “competency” in relation to a legal professional’s use of social media includes an appreciation of both the benefits and risks of using social media. We discuss these benefits and risks in the next section. While the benefits of social media for the legal profession may be well known, we suspect that the ethical and professional risks of social media may not always be immediately evident to lawyers.³²

II. Benefits, Risks, and Ethical Implications of Social Media

The legal profession, traditionally reticent to adopt technology,³³ has recognized the value of adopting new technologies, including social media.³⁴ In Australia, a 2012 report on 80 Australian law firms noted that 91 percent of firms used LinkedIn, 55 percent of firms used Twitter, and 36 percent of firms used Facebook.³⁵ However, another 2012 survey of 103 senior Australian legal practitioners found evidence of lack of strategy, policy, and training in law firms in relation to social media.³⁶ Barriers to use of social media in legal firms were

28. See discussion in Robert Ambrogi, *25 States Have Adopted Ethical Duty of Technology Competence*, LAW SITES (Mar. 16, 2015), <http://www.lawsitesblog.com/2015/03/11-states-have-adopted-ethical-duty-of-technology-competence.html>. He notes that as of Sept. 30, 2016, 25 states have adopted the ethical duty of technological competency.

29. COMMISSION ON THE FUTURE OF LEGAL SERVICES REPORT, *supra* note 2, at 43.

30. *Id.*

31. As is the case in the *Australian Solicitors’ Conduct Rules*, *supra* note 21, Rule 4.1.3, and in other jurisdictions where the requirement for competency is broadly expressed and does not specifically refer to technological competency.

32. See Lanctot, *supra* note 1; Allison Shields, *Legal Ethics and Social Media*, LAW TECHNOLOGY TODAY (Aug. 30, 2013), <http://www.lawtechnologytoday.org/2013/08/legal-ethics-and-social-media/>; Richard Ambrogi, *This Week in Legal Tech: Ethics and Technology Competence*, ABOVE THE LAW (July 11, 2016), <http://abovethelaw.com/2016/07/this-week-in-legal-tech-ethics-and-technology-competence/>.

33. See COMMISSION ON THE FUTURE OF LEGAL SERVICES REPORT, *supra* note 2; Stringfellow Otey, *supra* note 5, at 202.

34. Stringfellow Otey, *supra* note 5, at 215. See also ABA LEGAL TECHNOLOGY RESOURCE CENTER, http://www.americanbar.org/groups/departments_offices/legal_technology_resources/about_us.html, which has been in existence for more than twenty years.

35. Emily Rich, *Why Lawyers Must Embrace Technology*, LEGAL INSIGHT, Oct. 2, 2013, <http://insight.thomsonreuters.com.au/why-lawyers-must-embrace-technology/> (last checked Sept. 28, 2016)

36. Emma Sorenson & Alicia Paterson, *Tweeting to the Top: The Lawyer’s Guide to Social Media*, THE LAW SOCIETY OF NEW SOUTH WALES, <http://www.lawsociety.com.au/ForSolicitors/CareerHub/EssentialSkills/CareerSkills/Articles/Tweetingtothetop/index.htm> (last visited Sept. 22, 2016).

identified as including risk adversity, time pressures, and lack of technical skill.³⁷ Almost half of those surveyed had seen inappropriate tweets or posts by colleagues, contacts, or peers.³⁸ In the United Kingdom, a 2014 survey conducted by the Solicitor's Journal found 45 percent of law firms used Twitter, 28 percent LinkedIn, and 17 percent Facebook.³⁹ The survey also found, of individual lawyers using social media in a professional capacity, 45 percent used LinkedIn and 18 percent Facebook.⁴⁰ The 2016 Social Media Marketing Survey by the Attorney at Work Website⁴¹ found 88 percent of lawyers who responded used social media.⁴² Facebook, LinkedIn and Twitter were the most popular sites, however a "generation gap" in use of social media emerged. LinkedIn was far less popular in under-30s compared with over 30s, while Twitter was far more popular with younger lawyers and far less with older lawyers.⁴³ The most recent ABA Technology Report for 2015 found that 57 percent of US firms surveyed had a presence on LinkedIn and 35 percent had a Facebook presence.⁴⁴ Individual lawyers used social media sites for professional purposes at much greater rates with LinkedIn and Facebook being the most popular.⁴⁵ The rates of personal social media use was found to be much higher with 84.5 percent of individual respondents using Facebook for "non-professional purposes," 29 percent using LinkedIn, 27.7 percent using Twitter, 14.4 percent using Google Plus and 5 percent

37. THOMSON REUTERS SOCIAL MEDIA USAGE AMONG LARGE AUSTRALIAN FIRMS (2012), *available at* <http://legal.thomsonreuters.com.au/about-us/pdf/social-media-usage-firms.pdf>.

38. *Id.*

39. Susan Gunelius, *UK Attorneys Prefer Twitter and LinkedIn*, ACI (Jan. 10, 2015), <http://aci.info/2015/01/10/u-k-attorneys-prefer-twitter-and-linkedin/>.

40. *Id.* See also John van der Luit-Drummond, *UKs Top-50 Firms Lack Social Media Clout, Survey Finds*, MANAGING PARTNER (Mar. 4, 2015), <http://www.managingpartner.com/news/business-development/uk%E2%80%99s-top-50-law-firms-lack-social-media-clout-survey-finds>, which refers to a recent analysis of the top 200 UK firms showing large UK firms in particular are failing to make an impression on-line or use their social media presence to 'make progress in the 'new age of social media'. Smaller firms are doing much better.

41. *Survey Results: Truths About Lawyers and Social Media*, ATTORNEY AT WORK (Mar. 4, 2016), http://www.attorneyatwork.com/survey-results-truths-lawyer-social-media/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+AttorneyAtWork+%28Attorney+at+Work%29.

42. *Id.* Only 68% of respondents used social media as part of a marketing strategy. The survey response rate is not reported.

43. *Id.* For example, 71% of under 30s said they tweeted while only 45% of older lawyers tweeted. Instagram was also much more popular with young lawyers with 43% using it, compared to only 17% of over 30s.

44. Shields, *supra* note 6. There were a number of other social media sites used less than these, for example Google Plus. Only 24% of firms used no social media. The survey collected responses from 966 lawyers from across the United States of diverse size and practice area.

45. *Id.* Interestingly the report notes 'Twitter remains a mystery to many lawyers who simply cannot wrap their minds around the concept of Twitter or how it could be useful to them. It is a platform which remains difficult to explain—most people won't "get" Twitter until they begin using it, and many don't see the value in putting in the effort to do so'.

Blogs.⁴⁶ The ABA report found, however, despite substantial use of social media by lawyers and law firms for both professional and personal reasons, there were major gaps in both the existence of and education about policies on professional use of social media:

[M]any firms still have not adopted firm-wide policies on the use of these tools. Less than half of the respondents—45%—said their firms have policies on use of online communities and social networks, and even fewer have policies covering blogging (32%) or Twitter use (25%). Perhaps even more disturbing, over 50% of respondents overall did not know whether their firms had these policies in place—and this number was even higher for lawyers in small firms. Of those in small firms (2 and 9 lawyers), 61% were unaware of the existence of any such policies. These numbers have also remained relatively consistent over the past several years. Firms need to institute these policies and do a better job of educating their attorneys about the need for and existence of these policies.⁴⁷

This clearly raises issues in relation to the need to better educate members of the legal profession with respect to “professional” and ethical use of social media. We discuss our thoughts on this in Part 3.

There are many benefits to lawyers being actively involved on social media.⁴⁸ A 2012 survey conducted by the International Bar Association found that 75 percent of those international legal professional associations that participated considered that the advantages of online social networking outweighed the disadvantages.⁴⁹ Some countries specifically outlined what they thought were the advantages of using technology. For instance, those in the United Kingdom noted that lawyers use the opportunities provided by technology to get client feedback with respect to their services, and to advertise their products and materials through these sites which allow access to those beyond their physical location.⁵⁰ The Law Society of Scotland advised that social networking can expand a firm’s business, as it allows the sharing of legal knowledge, and the promotion of a firm’s expertise to a wider audience.⁵¹

Social media has clear business and marketing advantages for legal professionals, enabling them to “market their practices, develop relationships and im-

46. *Id.*

47. *Id.*

48. For example, *see* the discussion of benefits in INTERNATIONAL BAR ASSOCIATION, THE IMPACT OF ON-LINE SOCIAL NETWORKING ON THE LEGAL PROFESSION AND PRACTICE 29 (2012) [hereinafter INTERNATIONAL BAR ASSOCIATION], http://www.ibanet.org/Committees/Divisions/Legal_Practice/Impact_of_OSN_on_LegalPractice/Impact_of_OSN_Home.aspx.

49. *Id.* at 33.

50. *Id.* at 13.

51. *Id.* at 14.

prove professional competence.”⁵² Some authors suggest that social media has levelled the playing field for lawyers. Regardless of the size of the firms, lawyers have the same marketing opportunities;⁵³ can communicate with colleagues; prepare for trials by searching for information on jurors, opponents, and witnesses⁵⁴; assert their expertise to attract new clients given that they now access blogs and networking sites; and can use professional networking sites to access legal services.⁵⁵ Further, and of particular relevance to law students, law firms use social media to help them to choose their employees, which, as will be mentioned below, can be detrimental to some.⁵⁶ Employees, too, have benefited from technology. They are able to access their offices remotely, rely on smart phones, email, and social media to communicate with their clients, and store files using cloud technology.⁵⁷ In fact, all of these advances in technology have caused Lewinbuk to conclude that “[l]awyers can no longer safely practice law the ‘old way,’ . . . [and that they] have no choice but to get on board with the new legal environment and regulation.”⁵⁸

While there appears to be relatively widespread understanding and acceptance of the benefits of social media for the legal profession, many lawyers may fail to recognize the risks associated with using online technologies, specifically social media. As we discuss above, the results of the most recent ABA Technology Survey revealed widespread failure of legal firms to either have social media policies or guidelines, or to educate employed lawyers about the existence and content of these policies. There are many examples of lawyer misconduct in relation to social media, and both case decisions and news headlines “are replete with examples of alleged misconduct, imprudent conduct, and legal issues that arise because of content on Facebook and other social networks.”⁵⁹ These stories concern both practic-

52. Dane S. Ciolino, *Managing the Perils of Lawyer Social Networking* (2010), <http://daneciolino.com/wp-content/uploads/2013/07/2010-02-11-Ciolino-Article-re-Managing-the-Perils-of-Lawyer-Social-Networking.pdf>.

53. Kathleen E. Vinson, *The Blurred Boudaries of Social Networking in the Legal Field: Just “Face” It*, 41 U. MEM. L. REV. 355, 389 (2010).

54. *Id.* at 389-90.

55. Ciolino, *supra* note 52.

56. The International Bar Association noted in their report that legal employers access online social networking profiles to ‘evaluate potential work candidates.’ See INTERNATIONAL BAR ASSOCIATION, *supra* note 48, at 26.

57. Katerina Lewinbuk, *There Is No App for That: The Need for Legal Educators and Practitioners to Comply with Ethical Standards in the Digital Era*, 24 U. FLA. J. L. & PUB. POL’Y 321, 334-5 (2013).

58. *Id.* at 324.

59. Vinson, *supra* note 53, at 373. See also Lanctot, *supra* note 1; Anurag Bana, ‘Facing’ Social Media: Setting Principles for an Expanded Future, LEGAL ERA NEWS NETWORK (Aug. 2016), <http://www.legalera.in/articles/item/19514-facing-social-media-setting-principles-for-an-expanding-future.html>. Bana, Advocate and Senior Legal Advisor to the International Bar Association, notes that ‘legal journals and newspapers are rife with examples of misuse of social media websites’. This is a global phenomenon. For example, he refers to a case in Texas where a lawyer

ing lawyers and law students applying to be admitted to the legal profession.⁶⁰ They suggest that at least some lawyers (and law students) fail to recognize that poor behavior on social media can potentially bring the legal profession into disrepute and undermine the public's view of the justice system. Therefore, it is important to outline just what these ethical issues might be, i.e., how might lawyers in their use of social media fail to meet the required ethical standards?⁶¹

It is our view that many lawyers do not appreciate the ethical pitfalls they may confront in their use of social media, which can potentially reflect on their character and fitness to practice law. Lanctot has identified a number of these instances. These include racist posts, stalking posts, posting of inappropriate photos such as intoxication or sexual content and posts that bring the legal profession into general disrepute; posts that may inadvertently create attorney-client relationships on-line; posts which breach client confidentiality; using social media to gather evidence in litigation or information about potential jurors inappropriately; using social media to attempt to form inappropriate social relationships with clients; inappropriately dealing with third parties; and using social media for advertising that breaches professional advertising guidelines.⁶²

At first glance, these may seem like stupid mistakes on the part of lawyers,⁶³ as you would not expect them, for example, to make racial comments or distribute inappropriate photos. Yet many of the examples we see on social media result in cases where the comments have caused legal issues and findings of misconduct for the lawyers.⁶⁴ It has been suggested that this would probably not happen in a physical setting. Yet it seems people let their guards down when they are in the online space and write things that can be potentially offensive to others and that may breach professional expectations of conduct. It is suggested this occurs when "private" and professional boundaries become blurred, and people feel relatively disinhibited online such that they can more freely express their views and relax, and are less constrained by social inhibitions or expectations of professional conduct.⁶⁵

who had asked for a continuance due to a family death, had then posted pictures and updates in relation to drinking and partying; and cases in India in relation to on-line abuse of judges. For discussion of a recent situation in the United Kingdom involving a lawyer's posts on twitter see Neil Rose, *SRA to Investigate Law Firm Over "Offensive" Weekend Tweets to SEN Parents*, LEGAL FUTURES BLOG (June 13, 2016), <http://www.legalfutures.co.uk/latest-news/sra-investigate-law-firm-offensive-weekend-tweets-sen-parents>.

60. *Id.*

61. See discussion in Ciolino, *supra* note 52, for many examples of these forms of behavior.

62. Lanctot, *supra* note 1.

63. John G. Browning, *Keep Your "Friends" Close and Your Enemies Closer: Walking the Ethical Tightrope in the Use of Social Media*, ST. MARY'S J. LEGAL MAL. & ETHICS 204, 224-28 (2013) (discussing multiple examples of cases of lawyers exercising very poor "judgment" on social media).

64. Vinson, *supra* note 53, at 373; see also discussion in Lanctot, *supra* note 1.

65. Jeff Cain, Doneka R. Scott & Paige Akers, *Pharmacy Students' Facebook Activity and Opinions Regarding Accountability and E-Professionalism*, 73 AM. J. OF PHARM. EDUC., Art. 104, 4-5 (2009); Stringfellow Otey, *supra* note 5, at 202.

This can result in lawyers breaching the rules of competency, communication, and confidentiality, to name but a few. Competency is the most well-known duty and, as mentioned above, comments about the expected level of knowledge of technology have been included in the ABA model rule,⁶⁶ while in other jurisdictions the requirement for competency is expressed broadly only. There may be a breach if lawyers fail to use social media in a competent and positive manner to benefit their clients, e.g., failing to seek out information on an opposing client on a publicly available Facebook page.⁶⁷ Other everyday tasks that have the potential to constitute incompetence relate to accessing social media sites at the expense of attending to other matters and multitasking or using social media for both personal and in-office lawyering tasks. The informal environment of social media sites may result in lawyers providing “off-the-cuff,” ill-considered legal advice.⁶⁸

Honesty in communicating with others is also a basic expectation. In this regard, lawyers need to be aware of the rules in their own jurisdictions around “friending” others on Facebook or other social media sites and realize that no misrepresentations should attach to their activities. Their actions might also run counter to supervisory obligations if they involve an employee.⁶⁹ Lawyers may also breach rules of communication if they misrepresent their qualifications or contact opposing parties who are already legally represented without consent.⁷⁰ Lawyers might also be held guilty of discourtesy in relation to the content of their communications.

Lawyers are bound by very strict rules of confidentiality and therefore must be careful that they do not inadvertently post comments that can identify a client or their information.⁷¹ Issues may arise for example in relation to inadvertent disclosure of confidential material via social media.⁷² We suggest that there are also many instances where lawyers can breach the broader rule that reminds lawyers to be fit and proper people whose main duty is to the court and the administration of justice and do not bring the legal profession into disrepute. In fact, we argue that this is the main criterion by which to determine a lawyer’s conduct. The phrase “to ensure that they do not bring the legal profession into disrepute” is particularly important. We argue that many matters arising from unprofessional use of social media that are not specifically dealt with by the rules in a particular

66. See MODEL RULES OF PROF’L CONDUCT R. 1.1, para. 8 (2016).

67. John G. Browning, *Your Facebook Status-“Served”*: Service of Process Using Social Networking Sites, 2 REYNOLDS CTS. & MEDIA L.J. 159, 211 (2012).

68. Ciolino, *supra* note 52, at 2.

69. Bradley Nahrstadt & Brandon Rodgers, *Think Before You “Speak”*: What Lawyers Can and Cannot Say in the Digital Age, 80 DEFENCE COUNSEL J. 252, 259-60 (2013).

70. See, e.g., NYSBA SOCIAL MEDIA ETHICS GUIDELINES, *supra* note 10, Guideline No. 6 Researching Jurors and Reporting Juror Misconduct.

71. Thomas R. McLean, *EMR Metadata Uses and E-Discovery*, 18 ANNALS HEALTH L. 75, 104 (2009).

72. Browning, *supra* note 67, at 218-22.

jurisdiction as they stand, could be considered as a breach of this broad rule of professional conduct. For example, the broad rule could respond to derogatory posts by a lawyer about other lawyers or the judiciary,⁷³ or posts that potentially may prejudice a fair trial.⁷⁴

While this article does not specifically focus on law students, it is also useful to outline some issues that future lawyers may encounter by participating in social media. It is apparent that employer access to social media sites of potential employees is now widespread, and graduates who are seeking employment in the profession may be rejected because employers deem photos and comments on their social media sites to be inappropriate.⁷⁵ The 2012 IBA survey of global legal professional bodies found that 73 percent of bodies considered it “was acceptable for legal employers to consider . . . online social networking profiles in evaluating potential work profiles” with an additional 10 percent considering it acceptable in certain circumstances.⁷⁶ Matters that might be considered negatively are profanities, poor spelling and grammar, illegal drug references, sexual posts, and those about guns and weapons.⁷⁷ Posts that would likely be looked at approvingly would be those evidencing a person’s volunteerism, charity, and professional experience.⁷⁸ Graduates may also have difficulties arising from their online conduct when applying to be admitted as lawyers in relation to proving themselves to be of good character and fit to practice,⁷⁹ i.e., having the requisite characteristics to be legal professionals.⁸⁰ Graduates, like lawyers, often fail to

73. Christina Parajon Skinner, *The Unprofessional Sides Of Social Media and Social Networking: How Current Standards Fall Short* 63 S.C. L. REV. 241, 259 (2011-2012).

74. Lucy Williams & Julia Clemente, *Social Media and Your Practice: Playing It Smart* (Mar. 2016), http://www.lawcover.com.au/wp-content/uploads/2016/03/Williams-L-and-Clemente-J_LSJ-March-2016-Final-copy.pdf.

75. See INTERNATIONAL BAR ASSOCIATION, *supra* note 48, at 28.

76. *Id.*

77. Kimberlee Morrison, *Survey: 92% of Recruiters Use Social Media to find High Quality Candidates*, SOCIAL TIMES (Sept. 22, 2015, 12:00 PM), <http://www.adweek.com/socialtimes/survey-96-of-recruiters-use-social-media-to-find-high-quality-candidates/627040>; Kimberlee Morrison, *52% of Recruiters Check Social Media During the Hiring Process*, SOCIAL TIMES (Mar. 24, 2015, 4:10 PM), <http://www.adweek.com/socialtimes/52-of-recruiters-check-social-media-during-the-hiring-process-infographic/617525>; Linda Skates, *Job Applicants’ Social Media Profiles Now Checked by Companies as “Common Practice,”* ABC NEWS (Nov. 14, 2015, 6:20 PM), <http://www.abc.net.au/news/2014-11-15/social-media-profiles-of-job-applicants-checked/5888908>.

78. *Id.*

79. Lanctot, *supra* note 1, at 87-88; Vinson, *supra* note 53, at 358; Jessica Belle, *Social Media Policies for Character and Fitness Evaluations*, 8 WASH. J.L. TECH. & ARTS 107 (2012). See, e.g., *LSC v. Reichman* (2014), (Unreported, Magistrates Court of Queensland, Brisbane, 27 Aug. 2014) (Austl.), available at (https://www.lsc.qld.gov.au/__data/assets/pdf_file/0011/278516/LEGAL-SERVICES-COMMISSION-v-REICHMAN-20140827-DECISION.pdf) (involving a law student held to have held himself out as a solicitor on social media). This case also received some media attention.

80. In the American context, see NATIONAL CONFERENCE OF BAR EXAMINERS AND AMERICAN BAR ASS’N SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR

realize that their conduct must meet the required standard in both a professional and personal capacity. While the admission process is typically one that commences with applicant self-disclosure, further investigations can be carried out by admission authorities that may reveal inappropriate social media conduct impinging on the issue of character or fitness to practice. The Florida Board of Bar Examiners, for example, does have a policy to investigate social media sites of applicants that disclose a history of substance abuse, lack of candor, unauthorized practise of law, or “involvement in an organization advocating the overthrow of the government of the United States or of any state or political subdivision” in order to be certain that the applicant is rehabilitated.⁸¹ Lanctot notes that “as of early 2015 Florida appears to be the only jurisdiction to have adopted” such a specific policy.⁸² Nevertheless, it does put law students on notice of how admission authorities may treat publicly available social media postings made by applicants for legal admission. For example, in a recent case the Maryland Character Committee referred to a range of comments it located made by the applicant on his publicly available social media accounts.⁸³

III. Encouraging E-Professionalism and Ethical Use of Social Media

As we have discussed above, there has been increasing recognition of the challenges that social media use may present to members of legal professions, and students studying to enter the legal profession. In recent years, the challenges of e-professionalism have been discussed in other professional disciplines, in particular in health disciplines.⁸⁴ This has resulted in the development of professional guidelines and codes. For example, the Australian Health Practitioner Regulation Agency has released a social media policy that applies to members of registered health professions in Australia.⁸⁵ The Australian Medical Association

ADMISSION REQUIREMENTS 2015 (2015), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2015_comprehensive_guide_to_bar_admission_requirements.authcheckdam.pdf.

81. FLORIDA BOARD OF BAR EXAMINERS RE CONSIDERATION OF THE FINAL REPORT OF THE CHARACTER AND FITNESS COMMISSION (2009), available at http://www.floridasupremecourt.org/pub_info/documents/2009_FBBE_Character_Fitness_Response.pdf.

82. Lanctot, *supra* note 1, at 88.

83. See *In re Application of Otion Gjini to Bar of Maryland*, Misc. No. 32 (2015); see also *Could Your Social Media Posts Keep You From Becoming A Lawyer*, ASSOCIATE'S MIND, <http://associatesmind.com/2016/07/22/could-your-social-media-posts-prevent-you-from-becoming-a-lawyer/> (last visited Sept. 23, 2016).

84. See, e.g., Ana Coelho et al., *Medicine and Social Media—Ethical Challenges of the 21st Century*, 5 BRITISH J. APPLIED SCIENCE & TECH. 40, (2015); Matthew DeCamp, *Social Media and Medical Professionalism*, 172 ARCHIVES OF INTERNAL MED. 418 (2012).

85. AHPRA NURSING AND MIDWIFERY BOARD OF AUSTRALIA SOCIAL MEDIA POLICY, <http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Policies/Social-media-policy.aspx> (last visited Sept. 23, 2016).

Council of Doctors-in-Training, the New Zealand Medical Association Doctors-in-Training Council, the New Zealand Medical Students' Association, and the Australian Medical Students' Association released a detailed guide to online professionalism in 2010.⁸⁶ The UK General Medical Council has introduced a national Social Media Policy in 2013,⁸⁷ and guidelines were adopted by the American Medical Association in 2010.⁸⁸ Although these are positive steps forward, even in disciplines that have adopted detailed guidelines and social media policies, there has been no guarantee that issues of e-professionalism have been adequately addressed. For example, a recent study of social media use of Australian medical students found that exposure to guidelines on online professional online conduct did not prevent unprofessional conduct on social media by medical students.⁸⁹

While other professional disciplines have been considering professionalism issues arising from social media use for some time, the legal profession has only addressed these issues more substantively in recent years.⁹⁰ In 2012, the International Bar Association's report on the impact of online social networking in the legal profession found there was overwhelming support from international legal professional bodies to provide guidelines regarding the use of social networking sites, with over 90 bodies supporting the adoption of guidelines and standards.⁹¹ The International Bar Association therefore introduced its own principles on social media conduct in 2014.⁹² Legal professional bodies across the world have also released guidelines, formal opinions, practice notes, and model policies, including in Canada,⁹³ the United Kingdom,⁹⁴ and in some Aus-

86. Australian Medical Ass'n Council of Doctors In-Training, New Zealand Medical Ass'n Doctors In-Training Council, N.Z. Medical Students' Ass'n and Australian Medical Students' Ass'n, *Social Media and the Medical Profession: A Guide to Online Professionalism for Medical Practitioners and Medical Students*, available at https://ama.com.au/sites/default/files/Social_Media_and_the_Medical_Profession_FINAL.pdf (last visited Sept. 26, 2016).

87. General Medical Council, *Doctors' Use of Social Media* (2013), http://www.gmc-uk.org/static/documents/content/Doctors_use_of_social_media.pdf.

88. See American Medical Ass'n, Ethics Op. 9.124 Professionalism in the Use of Social Media, available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion9124.page> (last visited Sept. 23, 2016).

89. Christopher Barlow et al., *Unprofessional Behaviour on Social Media by Medical Students*, 203 MEDICAL J. OF AUSTRALIA 1 (2015).

90. Lewinbuk, *supra* note 57; Stringfellow Otey, *supra* note 5, at 215-223 .

91. INTERNATIONAL BAR ASSOCIATION, *supra* note 48, at 31.

92. *Id.*

93. See, e.g., *Practice Resource Model Policy: Social Media and Social Networking Model Policy*, THE LAW SOCIETY OF BRITISH COLUMBIA, http://www.lawsociety.bc.ca/docs/practice/resources/policy_social-media.pdf (last visited Sept. 23, 2016).

94. *Social Media Practice Note*, THE LAW SOCIETY (June 18, 2015), <http://www.lawsociety.org.uk/support-services/advice/practice-notes/social-media/>; *Division B: Social Media- Advice and Information for the Legal Profession*, THE LAW SOCIETY OF SCOTLAND, <https://www.lawscot.org.uk/rules-and-guidance/section-e-general-guidance/division-b-the-management-of>

tralian states.⁹⁵ As we note above, in most common law jurisdictions, the general regulatory approach has been that the normal professional and ethical conduct rules that govern conduct in the physical environment also have application in the online environment without specific amendment to specify technological competence. In the United States, following the ABA's Commission on Ethics 20/20, as we discuss above, there were some amendments made to the ABA Model Rules of Professional Conduct that have been adopted by some states, to particularly respond to and clarify issues raised by technology, which included the comment to Rule 1.1⁹⁶ that specifies that competency extends to technological competency. This focus on competency is a welcome development. We consider that in the modern legal environment the general requirement (in those jurisdictions where it applies) in relation to competency would likely extend to technological competency in relation to social media. In any event, the amendment does serve the function of clarifying that requirement for technological competency for legal professionals more clearly and specifically and, accordingly, may serve an educative function.

Varying state jurisdictions in the United States⁹⁷ and in other parts of the world have also issued formal ethics opinions and/or guidelines or notes relating to social media. These are also positive developments. Some debate still rages as to whether more explicit ethical rules that specifically address social media are required.⁹⁸ As we note above, the approach most commonly adopted by regulators across the world is to assume the broad ethical rules, discussed in Part 2, that govern the legal profession can equally apply to govern social media use.⁹⁹ In our view, as discussed above, broad ethical rules are generally applicable to profes-

files,-papers-and-information/advice-and-information/social-media-%E2%80%93-advice-and-information-for-the-legal-profession/?sender=az&letter=S (last visited Sept. 23, 2016).

95. See, e.g., *Guidelines on the Ethical Use of Social Media*, LAW INSTITUTE VICTORIA (2012), <http://www.liv.asn.au/PDF/For-Lawyers/Ethics/2012Guidelines-on-the-Ethical-Use-of-Social-Media.aspx>; Law Society of NSW Legal Technology Committee, *Guidelines on Social Media Policies* (2012), <https://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/587803.pdf>; *Ethical Issues When Using Social Media*, QUEENSLAND LAW SOCIETY (2015), http://www.qls.com.au/Knowledge_centre/Ethics/Resources/Confidentiality/Confidentiality/Ethical_issues_when_using_social_media; THE LAW SOCIETY OF WESTERN AUSTRALIA ETHICAL & PRACTICE GUIDELINES (2015), available at <https://www.lawsocietywa.asn.au/wp-content/uploads/1970/01/ethical-practice-guidelines-25-august-2015.pdf#page=51>.

96. MODEL RULES OF PROF'L CONDUCT R. 1.1, para. 8 (2016).

97. See, e.g., NYSBA SOCIAL MEDIA ETHICS GUIDELINES, *supra* note 10; *Social Media Ethics Opinions*, STATE BAR OF CALIFORNIA, <http://ethics.calbar.ca.gov/Ethics/EthicsTechnologyResources/SocialMedia.aspx> (last visited Sept. 23, 2016).

98. Elizabeth Colvin, *The Dangers of Using Social Media in the Legal Profession: An Ethical Examination*, 92 U. DET. MERCY L. REV. 1, 25-27 (2015).

99. See ABA COMMISSION ON ETHICS 20/20, INTRODUCTION AND OVERVIEW (Aug. 2012), http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20120508_ethics_20_20_final_hod_introduction_and_overview_report.authcheckdam.pdf, that notes the Commission's general view that general professional conduct rules and principles remain relevant and valid.

sional social media use. However, it is also clear that there is a need for very explicit guidelines that supplement ethical rules, so that lawyers can practically translate those ethical rules in the context of social media use to enable them to “navigate the pitfalls of social networking in the legal landscape.”¹⁰⁰ While it may well be the case that for many lawyers e-professional behavior on social media is a matter of “common sense,” it is clear from the emerging cases of inappropriate lawyer conduct on social media that is not the case for all lawyers. Such guidelines should also stress the positive aspects of social media use for lawyers as part of the requirement to be a “competent” lawyer. While many legal professional bodies across the world have adopted some form of guideline or policy in relation to the use of social media, there is great variation, with some being brief and perfunctory (or non-existent), and others more detailed with accompanying training material or websites.¹⁰¹ There is also a clear role for law firms to develop their own site-specific social media guidelines or policy and ensure they carry out appropriate staff development.

Even in jurisdictions where there are appropriate and detailed social media guidelines for practitioners, there may not be widespread practitioner understanding or knowledge in relation to the guidelines, or widespread adoption of the guidelines, for example through firm-specific social media guidelines and policies. The situation is further complicated by clearly different generational expectations and social media practices as between younger and older lawyers. Therefore, it is our recommendation that all lawyers receive continuing mandatory professional development that encompasses issues such as e-professionalism in an age of rapidly changing technology.¹⁰² The ABA Future of Legal Services

100. Vinson, *supra* note 53, at 405.

101. *See, e.g.*, ABA LEGAL TECHNOLOGY RESOURCE CENTER, http://www.americanbar.org/groups/departments_offices/legal_technology_resources.html (last visited Sept. 23, 2016); *see also* NYSBA SOCIAL MEDIA ETHICS GUIDELINES, *supra* note 10.

102. For example, in Australia see *Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015*, Rule 6.1.1, which provides that a solicitor must obtain yearly CPD points in ethics and professional responsibility and *Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015* r 9(1) (a). There appears to be very varying training available for lawyers dependent on jurisdiction. In some jurisdictions there is a large range of CLE courses offered in relation to the ethical and professional implications of social media for lawyers. *See, e.g.*, *Social Media Ethics Opinions*, STATE BAR OF CALIFORNIA, *supra* note 97; and N.Y. STATE BAR ASS'N CLE COURSES, http://www.nysba.org/CLE/CLE_Search/ (last visited Sept. 26, 2016). In other jurisdictions there appears to be far less CLE training in social media available for legal practitioners which may only be occasional one-off events. For more information regarding the U.S., *see generally* AMERICAN BAR ASSOCIATION MCLE INFORMATION BY JURISDICTION, http://www.americanbar.org/cle/mandatory_cle/mcle_states.html (last visited Sept. 26, 2016); *see also* THE LAW SOCIETY OF UPPER CANADA CONTINUING PROFESSIONAL DEVELOPMENT REQUIREMENT, <https://www.lsuc.on.ca/CPD-Requirement/> (last visited Sept. 26, 2016); and SOLICITORS REGULATION AUTHORITY CONTINUING PROFESSIONAL DEVELOPMENT, <http://www.sra.org.uk/solicitors/cpd-accreditation.page> (last visited Sept. 26, 2016) (noting the continuing development requirements for England and Wales).

Report also recommended that bar associations “should offer continuing legal education on technology¹⁰³ and educate their members through website content, e-newsletters, bar journal articles, meeting panels and speakers, technology mentoring programs, and other means.”¹⁰⁴ The Report noted that the Florida Bar Board of Governors “has approved a mandatory technology-based continuing legal education requirement.”¹⁰⁵

While there is clearly a primary educative role for legal professional organizations, such as bar associations, to enhance legal professional’s e-professionalism and competency, legal educators, too, have an important role. They are charged with preparing law students for their entry into the legal profession, including introducing students to the concepts of “professionalism” and “e-professionalism.” There has been relatively little attention given to e-professionalism or to technological literacy and competency in legal education.¹⁰⁶ There generally appears to be no significant explicit reference in the requirements of legal admission and professional bodies in relation to law school or practical legal training curriculum to the need for law students to develop any particular competencies in the use of technology more broadly, or in relation to professional use of social media. For example, in the United States, the ABA Standards and Rules of Procedure for Approval of Law Schools¹⁰⁷ Standards 302 (Learning Outcomes) and Standard 303 (Curriculum) have broad requirements in relation to matters such as values and responsibilities of the legal profession and professional and ethical responsibilities, but make no particular reference to professional and competent use of technology including social media. Similarly, where states require additional skills prior to admission, technology does not generally feature.¹⁰⁸ Similarly, in Australia, the Priestly 11 prescribed list of curriculum requirements adopted by Admission bodies across Australia¹⁰⁹ for a law degree refers to a broad requirement to teach ethics and professional responsibility. It makes no reference to any need to understand those matters in the context of technology including social media. The Threshold Learning

103. COMMISSION ON THE FUTURE OF LEGAL SERVICES REPORT, *supra* note 2, at 43.

104. *Id.* The Report notes that the ‘ABA Legal Technology Resource Center stands as a model for how technology resources and expertise can be made available to bar association members’.

105. *Id.*

106. *See* Stringfellow Otey, *supra* note 5, at 224-244; Lanctot, *supra* note 1, at 84-6. *See also* COMMISSION ON THE FUTURE OF LEGAL SERVICES REPORT, *supra* note 2, at 25-26 (noting the emerging and outstanding innovative work being done in some U.S. Law Schools) and Colvin, *supra* note 98, at 24-25.

107. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (2016-2017), available at http://www.americanbar.org/groups/legal_education/resources/standards.html.

108. *See* NATIONAL CONFERENCE OF BAR EXAMINERS AND AMERICAN BAR ASS’N SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2015, *supra* note 80 (specifically see additional requirements at 17).

109. Law Council of Australia, *Prescribed Areas of Knowledge* (2008), <http://www.lawcouncil.asn.au/LACC/images/pdfs/LACCPrescribedAcademicAreasofKnowledge-June2008.pdf>.

Outcomes for Law,¹¹⁰ developed to supplement the Australian Qualifications Framework (although not adopted by Australian Legal Admission bodies), include threshold learning outcomes TLO 1 (Knowledge), TLO 2 (Ethics and Professional Responsibility) and TLO 5 (Communication and Collaboration). Professional and ethical use of social media could come within each of those TLOs, however no explicit reference is made in the TLOs.¹¹¹ The Practical Legal Training Competency Standards for Entry Level Lawyers adopted by Australian Legal Admission authorities as the requirements for practical legal training,¹¹² similarly have no specific requirements in relation to competent, professional, and ethical use of technology and social media.¹¹³

Given the growth and importance of technology in modern legal practice, it is perhaps time for legal professional bodies and admission authorities in all jurisdictions to consider whether to include requirements for competent use of technology and e-professionalism as explicit requirements for law training, and admission to practice as a lawyer. This would clearly incentivise law schools to include appropriate training within law degrees and practical training courses. However, even in the absence of such requirements, we believe it is incumbent on legal education providers to prepare our students for what Lanctot has described as the “on-going technological upheaval in the legal profession.”¹¹⁴ The International Bar Association noted in its 2012 report that the majority of global legal professional bodies surveyed (85 percent) believed it was incumbent on law schools to inform their law students of the risks and disadvantages associated with online social networking.¹¹⁵ Similarly, the NYSBA’s Task Force on the Future of the Legal Profession Report in 2011 recommended that law schools begin or increase law student practical training in the use and implications of technology in the legal profession.¹¹⁶ The ABA Future of Legal Services Report

110. Australian Learning & Teaching Council, *Learning and Teaching Academic Standards Project: Bachelor of Laws Learning and Teaching Academic Standards Statement* (Dec. 2010), [http://www.cald.asn.au/assets/lists/Education/LLB%20TLOsKiftetalLTASStandardsStatement2010%20TLOs%20LLB\[2\].pdf](http://www.cald.asn.au/assets/lists/Education/LLB%20TLOsKiftetalLTASStandardsStatement2010%20TLOs%20LLB[2].pdf).

111. *Id.* The commentary to TLO2 (Ethics and Professional Responsibility) makes reference to the broad context in which issues of ethics and professional responsibility arise but does not specify the ‘technological’ context. The commentary to TLO 5 (Communication and Collaboration) refers briefly to ‘technology’ as one of the means by which lawyers and law students communicate however suggests that ‘many students are now proficient in such skills before they come to university.’

112. Law Council of Australia, *Law Admissions Consultative Committee: Practical Legal Training Competency Standards for Entry Level Lawyers* (Jan. 2015), http://www.lawcouncil.asn.au/LACC/images/Competency_Standards_for_Entry-Level_Lawyers_-_1_July_2015.pdf.

113. Again these might be encompassed within broad requirements such as Lawyer’s Skills, Business Skills and Ethics and Professional Responsibility, however are not specified.

114. Lanctot, *supra* note 1, at 76. See also Michelle Pistone, *supra* note 1.

115. INTERNATIONAL BAR ASSOCIATION, *supra* note 48, at 27.

116. REPORT OF THE NEW YORK STATE BAR ASSOCIATION’S TASK FORCE ON THE FUTURE OF THE LEGAL PROFESSION 99 (2011), available at <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26691>.

recently noted the importance of legal education responding to issues of technological competency, recommending that “law students also should graduate with this obligation firmly in mind . . . an increasing number of law schools include legal technology as part of the curriculum—a development that the Commission endorses as essential.”¹¹⁷

When issues of e-professionalism and the ethical and professional implications of social media and other technology have been taught, it appears this has most commonly occurred as “add-on” to existing ethics curriculum.¹¹⁸ While this is better than no coverage of e-professionalism, we do not believe it is adequate. We suggest that legal ethics and legal professionalism (including e-professionalism) need to become core academic requirements in all jurisdictions.¹¹⁹ There needs to be a whole of curriculum/whole of student lifespan approach taken to teaching e-professionalism.¹²⁰ There should be a clear focus on encouraging law students to adopt a reflective,¹²¹ thoughtful, deliberative approach to social media use to combat the inherent difficulties that arise from spontaneous, non-reflective social media posts that may characterize their private social media use.¹²² Law schools also need to develop social media guidelines/policies,¹²³ provide them to students, and provide training in relation to the policy/guidelines. We need to make our expectations and the legal profession’s expectations explicit and clear to students from an early stage of their journey to become a legal practitioner. Ideally, students should engage in positive and professional use of social media during their legal training as part of their experiential learning. Although we have some evidence of how legal professionals and law students use social media, much more empirical research is required to aid our development of e-professionalism education in law. For example, there may be very disparate expectations of what constitutes “professional” conduct

117. COMMISSION ON THE FUTURE OF LEGAL SERVICES REPORT, *supra* note 2, at 43.

118. This is the approach suggested by the International Bar Association, *see* INTERNATIONAL BAR ASSOCIATION, *supra* note 48, at 28.

119. Parajon Skinner, *supra* note 73, at 281.

120. Susan Swaim Daicoff, *Form Thyself: Professional Identity Formation Strategies in Legal Education Through “Soft Skills” Training, Ethics and Experiential Courses*, 27 REGENT U. L. REV. (2014-2105); *See also* Kate Galloway, *Legal Education in a Digital Context*, CURL (Jun. 15, 2014), <http://katgallow.blogspot.com.au/2014/06/legal-education-in-digital-context.html> (on the need for digital literacy in legal education); DAVID THOMSON, LAW SCHOOL 2.0 LEGAL EDUCATION FOR A DIGITAL AGE (2008) (on the need for legal education to respond to rapid technological advancement more broadly); *See also* David Thompson, LAW SCHOOL 2.0 (July 1, 2016), <http://www.lawschool2.org/>.

121. Colvin, *supra* note 98, at 24.

122. *See* P. Neville, *Clicking on Professionalism? Thoughts on Teaching Students about Social Media and Its Impact on Dental Professionalism*, 20 EUROPEAN J. OF DENTAL EDUC. 55, 58 (2016), who suggests teaching a ‘4 P’s approach’ which is “Pause, Privacy, Proactive and Professional.”

123. Parajon Skinner, *supra* note 73, at 283.

on social media between law students, legal professionals, and the public. The journey has begun, but there is far to travel.

IV. Conclusion

The use of technology, including social media, has radically changed legal practice, bringing with it a range of benefits and challenges. There are also potential benefits to the public, including improving access to legal information and access to justice. However, there are also risks, including the potential to damage the individual reputations of legal professionals and erode public confidence in the legal profession more broadly. We have argued that all types of behavior, whether on social media or in the physical setting, should be judged according to the standard of professionalism, which includes the concept of e-professionalism. Put simply, the test of the appropriateness of any sort of behavior by lawyers or law students is whether it calls their character into question; has the potential to bring the legal profession into disrepute; and consequently undermines the public's confidence in the administration of justice. In effect, we suggest that a person's online behavior "should be no different to how they conduct themselves both professionally and in social situations"¹²⁴ in physical interactions. However, given that communications on social media are often viewed less formally, lawyers and law students perhaps need to remember that they are being recorded and potentially monitored on social media sites, so it is important to take the lessons of e-professionalism seriously.¹²⁵ While the legal profession has begun to engage with the need for e-professionalism, particularly technological competency, there is more work to be done. As legal educators, we also suggest a significant role for law schools in the development of future "e-professional" technologically competent lawyers.

124. INTERNATIONAL BAR ASSOCIATION, *supra* note 48, at 13.

125. *Id.*