

## Lawyers turn online sleuths

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Many say they stake out social media sites to get 'evidence'

By Mavis Toh

LAWYERS are playing 'private eye' and snooping around Facebook postings, Twitter updates and blog entries for information to help support their cases.

Of the 30 lawyers The Straits Times spoke to, half said they now plough through social media sites. More than 10 have even produced social media evidence in court to bolster their cases.

The Supreme Court is also taking social media seriously. Last year, it issued a consultation paper on the use and impact of social media in litigation.

The paper talked about the increasingly widespread use and reach of social media. Among other things, it said that **social media will lead to the uncovering of important evidence** which may otherwise be unavailable, and so it is important to consider the reliability and credibility of such online information.

When contacted, a Supreme Court spokesman said the feedback is being finalised and a report will be released next month.

Lawyers believe that social media evidence will become more common as people spend more time online. Said criminal lawyer Shashi Nathan: 'It's becoming a bigger and bigger part of our daily lives. Once it's part of our routine, evidence from there is bound to crop up.'

Judges also seem open to such evidence, said lawyers, who added that they are not concerned about privacy issues as most of the information posted on social media sites is accessible to a wide audience.

The admissibility of such evidence in court follows the usual rules of evidence, said National University of Singapore law professor Michael Hor.

In other words, one must be prepared to defend the evidence if it is challenged by the other side.

Lawyers said it has become increasingly common to produce social media evidence in court, especially in divorce and custody cases.

Often, their clients come armed with screen grabs of racy photos and party updates on their spouses' Facebook and Twitter accounts, asking lawyers to use them as evidence of infidelity.

Family lawyer Koh Tien Hua of Harry Elias Partnership said such evidence is also tapped for custody cases – where one party claims to be homely but party pictures on Facebook indicate otherwise.

Social media evidence can also prove crucial in criminal cases. A 19-year-old boy in New York was released from jail after a Facebook update on his craving for pancakes showed that he could not have been at the scene of a robbery in another part of New York City on that day.

In Singapore, when lawyer Adrian Wee's client was accused of rape, he dug deep – online. The plaintiff had claimed to be suffering from post-traumatic stress disorder but entries on her blog painted a different story. His client's charge was subsequently reduced from rape to aggravated outrage of modesty – cutting the possible sentence of 20 years to half the length, at most.

Lawyer Chia Boon Teck used information from a blog to fight a woman's claim of molestation against his client. She claimed the act occurred during a job interview and that she left the office quietly, reporting the matter only

later.

On her blog, she portrayed herself as a feisty woman and also wrote about how she had fought with a pimp in Geylang.

Mr Chia used this information to challenge why she had not raised any alarm or created a scene in the office there and then, considering her feisty character.

'It is all too easy for a woman to act demure in court. Such social media evidence can at least give judges a different perspective of the witness,' said Mr Chia, whose client was fined \$5,000 on the molestation charge.

Though less common, social media evidence is also surfacing in commercial cases. Technology and intellectual property lawyer Jonathan Yuen cited a case where an employee posted on Facebook that her boss had approved a purchase because he was friends with a firm's representative. A colleague saw the post, word got around and a lawyer's letter was issued to the employee to retract her comments.

Said Prof Hor: 'Posting something on social media is no different from saying or distributing it anywhere else – you must always be aware that it can be used against you in the future.'

mavistoh@sph.com.sg

Additional reporting by Lim Jing Jing