

Social Media and the Judiciary: A Challenge to Judicial Independence?

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I Introduction

Judicial independence is a fundamental feature of the Australian constitutional system. This has many facets, including an expectation that judges will act impartially, according to the law, and not in response to public opinion. Traditionally, this has been assisted by judges being insulated from community pressures, as reflected in the means adopted by courts for communicating with the broader world. For example, judges and judicial institutions have traditionally exercised considerable caution when engaging with the public and the media, with their dominant form of public communication being the delivery of judicial decisions, thereby limiting any risks to judicial independence.

However, this model of communication is changing, including through the willingness of courts to have their proceedings televised. Courts are also seeking to have greater influence on how others communicate about and report their decisions, by, for example, employing public information officers to prepare press releases on court activities and liaise with the media. Most recently, judges and courts have taken their engagement with the public one step further by experimenting with the use of social media. Social media such as Twitter and Facebook provide a new means by which courts can enhance their openness and accessibility. However, such technologies also come with a fresh set of challenges. In particular, unlike television or media reporting, social media is designed to foster dialogue and ongoing interaction between participants.

The implications of this need to be carefully considered, as the use of social media has the potential to affect not only the processes by which courts communicate, but also the nature and substance of court proceedings. While this latter effect could be positive, injudicious use of social media could compromise a court's ability to operate with independence and integrity. The growth of social media, and courts' increasing engagement with social media as a communication tool, may thus pose new challenges to judges' actual and perceived independence. More particularly, social media may expose courts and individual judges to new forms of criticism, and reveal linkages between the judiciary and other branches of government.

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