



# IN A FLASH

Quick Read Memos for Human Resource Professionals

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## **Employees May Have Diminished Expectation of Privacy in Workplace Computers**

In 2006, a teacher was charged with possession of child pornography and unauthorized use of a computer when a school board technician, performing routine maintenance, found nude and partially nude photos of a grade ten student on the teacher's laptop. The laptop was passed over to the police who reviewed it without a warrant, leading to a constitutional challenge on the admissibility of the evidence at trial.

As described in a [previous \*In A Flash\* article](#), the Ontario Court of Appeal held that the police had engaged in an unreasonable search and seizure, as the teacher had a reasonable expectation of privacy in the contents of the employer-owned laptop, and therefore excluded the evidence. The Supreme Court of Canada has just released its decision, ultimately concluding that although the evidence was not properly obtained, it would bring the administration of justice into disrepute to disallow the evidence.

To determine whether an employee has a reasonable expectation of privacy in the information stored on an employer-owned computer, the Supreme Court concluded, among other things, that the employee must have had a subjective expectation of privacy and this expectation must be reasonably and objectively held.

In assessing whether the expectation was reasonable, the Court noted that ownership of the computer is not determinative, as "*operational realities*" – including workplace policies and practices – may serve to diminish any expectation of privacy that a reasonable employee might otherwise have had. Consideration must also be given to the degree practice and policy permitted personal use of the computer and whether the employee had exclusive control and access to any personal information saved.

On the facts of the case, the Supreme Court held that the teacher had a diminished reasonable expectation of privacy which fell somewhere between the privacy expectations one might have in a home computer and no expectation of privacy whatsoever. However, while the Court's analysis provides some additional guidance on privacy expectations in the workplace, the Court expressly refused to comment on the finer points of an employer's right to monitor computers issued to employees.

A detailed review of this case, including its impact on employee privacy rights in the workplace, can be found in the upcoming edition of the *Employers' Advisor*. Previous

editions of our *Employers' Advisor* publications can be accessed electronically by clicking [here](#).

*If you have any questions about employee privacy rights, an employer's ability to monitor employee computers or email, or any other questions relating to workplace law, please do not hesitate to contact a Mathews Dinsdale lawyer.*

*For more information on new developments in Workplace Law, please refer to our website at: <http://www.mathewsdinsdale.com/news-events/in-a-flash/>*

