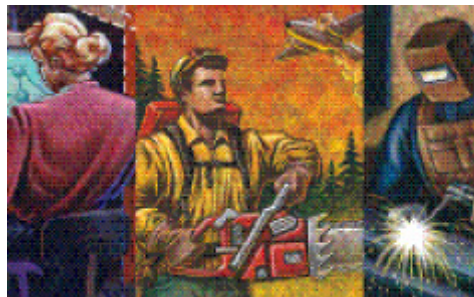


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SUPREME COURT OF CANADA DECISION DEMONSTRATES THE IMPORTANCE OF WORKPLACE COMPUTER POLICIES

In *R. v. Cole*, 2012 SCC 53, the majority of the Supreme Court of Canada ruled that it was unconstitutional for the police to search the workplace computer of a high school teacher without a warrant. The Supreme Court held that the school board - Cole's employer - was not so constrained, as it had a statutory duty to maintain a safe school environment, and a reasonable power to seize and search the school-issued laptop based on a reasonable belief that the computer contained compromising photographs of a student.

Cole, a high school teacher, stored nude photographs of a student on a laptop computer provided to him by the school board. These illicit photographs were discovered by a technician in the course of regular network maintenance. The technician notified the principal, who seized the laptop, and copied the photographs and the temporary internet files onto separate discs. The principal then gave both the laptop and the discs to the police, who proceeded to search this material without a warrant.

The issue before the Supreme Court was therefore whether Cole's rights under s. 8 of the *Charter* were breached when the police searched his laptop and the temporary internet files without a warrant. The legality of the employer's initial search was not at issue, and the Supreme Court expressly stated that it would "leave for another day the finer points of an employer's right to monitor computers issued to employees".¹

So what does the **Cole** decision mean for employers? The Supreme Court's finding that the school board's Policies and

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Procedures Manual created a diminished expectation of privacy demonstrates the importance of computer use policies in the workplace. These policies play a crucial role in establishing “the rules of the game” in terms of an employee’s use of, and privacy expectations in, workplace computer technology. Employers can use these policies to communicate their expectations about personal use, and to assert ownership over, as well as their ability to access, any data stored on the technology. These policies can diminish an individual’s expectation of privacy in a workplace computer even where some personal use of the workplace computer is permitted. In addition, though **Cole** did not discuss workplace discipline, workplace computer use policies can also specify that contravention of the policy will be grounds for discipline up to and including termination. Employers should take steps to ensure that computer use policies are applied and enforced in a consistent manner in order to preserve their ability to rely on these policies for discipline purposes.

For additional guidance on what information should be covered in these policies, please see Field Law’s previous article http://www.fieldlaw.com/articles/WW45_Winter2012.pdf. Field Law can assist employers with the preparation of policies relating to the use of computer technology in the workplace.

1. At para. 60

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