

Porn at Work

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Previously I've commented on the Facebook phenomenon and concluded by recommending that employers address expectations with respect to Facebook and other aspects of Internet use by instituting appropriate policies.

On the subject of such policies, only a few days after that blog, the Ontario Court of Appeal rendered an interesting decision with respect to a high school teacher who maintained on his school laptop pornographic pictures of a Grade 10 student.



The laptop had been provided to the teacher by the school for the purposes of teaching communication technology and supervising a laptop program for students. As a supervisor, he had authority to remotely access the data stored in student computers. When he accessed a student's e-mail account, he found nude, sexually explicit pictures of another student and copied them on to the hard drive of his school-issued laptop.

A computer technician employed by the school had the responsibility to monitor and maintain the integrity and stability of the school network. He observed a significant amount of activity on the teacher's laptop and remotely accessed his hard drive to perform a virus scan. When he did so, he discovered a folder containing the pictures of the student.

The technician took screen shots to preserve the evidence and reported his discovery to the Principal, who ultimately reported it to the School Board. The teacher was suspended and ultimately arrested and criminally charged.

The Ontario Court of Appeal decision deals with admissibility of evidence in the criminal context; however, there are a variety of comments in the decision which reinforce for employers the desirability of instituting an appropriate terms of use policy.

In this case, the School had a "Policy and Procedures Manual". It permitted personal use of school computers by staff, but prohibited "inappropriate content", including sexually explicit material. Significantly, the policy did not explicitly provide for the review of the contents of the computers, nor did it address the issue of privacy.

The Ontario Court of Appeal concluded that, in light of the Policy, the teacher had a "reasonable expectation of privacy in the personal use of his laptop". As a result, certain of

the evidence was inadmissible in the criminal context.

Although a criminal case, these are important reminders for employers as a result of this decision:

1. Employers should issue written policies governing the use of computer equipment provided by employers;
2. Such policy must make absolutely clear that there should be NO expectation of privacy on the part of the employees with respect to any activities on that computer;
3. Such policy should clearly delineate permitted and prohibited uses of all employer equipment and make clear there will be random monitoring of all use;
4. As with any policy governing conduct, the policy should make clear that breaches of the policy may result in discipline, up to and including termination of employment.
5. In the event of suspected mis-use, the employee should be confronted and provided with a reasonable opportunity to offer an explanation.

Periodic reviews of such policies (and all other employee policies) should occur, to ensure that they remain current. When was the last time that occurred in your organization? As always, if you need us, we are here to help

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