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## **Tech Employee Fired for Egregious Computer Use – Termination Justified**

By: Maria Giagilitsis | Toronto

Along with the extraordinary benefits accompanying today's rapidly advancing technology, comes an increasing vulnerability for employers who strive to hire the "best of the best" information technology groups. On the one hand, "wizard like" computer skills are an invaluable asset – they can lead a company's growth while sharpening its competitive edge. On the other hand, these advanced skills can also be a source of weakness as management struggles to predict the numerous and complex ways in which a technology employee might abuse his or her position and even cause harm to the business. On December 3, 2010, Ontario arbitrators released a decision in [\*Sheridan College Institute of Technology and Advanced Learning v. Ontario Public Service Employee Union\*](#), in which they agreed with the termination of an employee for unauthorized computer use as well as an insolent Facebook posting.

### **Mere Technical Wrongdoings?**

The grievor, Steve Rowe, was the consummate techy – at 36 years old, he was considered a technical wizard at the College, having been employed as an Infrastructure Analyst for 13 years. He occupied one of the highest paid bargaining unit positions at the College and, until the date that his employment was terminated, he had a clean disciplinary record and was provided with access to the College's most secure servers. What happened? Like many employees, Mr. Rowe blurred the boundary between his personal life and his professional life.

More specifically, the grievor adopted a surplus College computer as his own, even naming it "Numb". Numb was hooked up to one of the College's most powerful network servers, which facilitated over \$20 million in online transactions each year. Using the powerful system, the grievor was able to download thousands of copyrighted materials, including TV shows, movies, music, and games, all of which he stored on Numb. The grievor also downloaded pornographic videos and engaged in online chats with his girlfriend about their various sexual encounters, some of which purportedly took place on College premises.

In an ever bolder move, the grievor installed his own programming, which granted access to numerous colleagues and employees of the College as well as several family members and friends, none of whom were granted security clearance by the College to access the server. Essentially, the grievor was a bootleg entertainment dealer for a wide circle of colleagues, family and friends.

When a third party audit revealed some of the grievor's behaviour, the College conducted an investigation. The results of the investigation confirmed that the grievor had been engaging in the unauthorized activities for the better part of this decade. Not surprisingly, the grievor's employment was terminated.

That same day, the grievor posted a picture of the rear of a mountain climber on his Facebook page, adding an arrow pointing to the climber's buttocks with a caption inviting his manager to "kiss this". The grievor later apologized for the Facebook posting but only after being advised to do so by the union.

### **Grievance**

The union grieved the termination of the grievor's employment, claiming that the College overreacted. According to the union, the discipline was too harsh given Mr. Rowe's previously clean discipline record and his apology for the Facebook posting. The union also relied heavily on the fact that the College had previous knowledge of the grievor's personal use of College computers for the purposes of downloading and storing music and other personal media.

### **Termination Justified**

The arbitrators agreed that an employer's previous knowledge of an employee's wrongdoings may sometimes impact the appropriate level of discipline. In this case, however, the arbitrators found that the termination was justified for a number of reasons:

- Though the College had some knowledge of the grievor's personal computer use, the College had no idea of the extent to which the grievor abused his privileges.
- The College did not have any knowledge that the grievor programmed the computer to grant remote access to other employees of the College as well as the grievor's family and friends. Those other employees were also disciplined for their unauthorized access to the College server, thus demonstrating the severity with which the College perceived the grievor's conduct.
- The grievor was provided with an opportunity to explain his conduct during the investigation process. Rather than being candid about his activities, the grievor attempted to surreptitiously delete the personal contents from Numb just before the investigation meeting and was evasive during the investigation meeting itself.
- The grievor was employed in a position of trust, having access to highly sensitive information and enjoying a high level of security clearance. The arbitrators said that a person employed in this capacity is expected to exercise better judgement.
- The grievor's Facebook posting illustrated poor judgement and a total lack of remorse for his egregious conduct.
- The employer's evidence showed that the grievor had signed the College handbook, which specifically set out the College's rules and expectations about personal computer use.

## Conclusions

Information technology employees often enjoy access to highly sensitive employer data and it seems that courts and arbitrators are becoming increasingly sensitive to the threats these skills can pose to an employers' business interests. The decision in *Sheridan College* demonstrates that an employee's lack of remorse, coupled with his or her disregard for the employer's business and financial interests, can justify firing even a highly paid employee with a long and clean service record. Although this decision arises in Ontario, it may well have application across the country.

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