

**April 20, 2010**

## **With the Click of a Mouse: Employee Fired for Disseminating Inappropriate E-mail at Work**

Bv: Alix Herber

While many employees are allowed to access and use the Internet and email on company computers for "limited" personal use, it is not uncommon for them to misuse this privilege. In [\*Poliquin v. Devon Canada Corporation\*](#), the Alberta Court of Appeal was asked whether an employee could be fired for cause because he used his employer's computer and Internet access to view and disseminate pornographic and racist materials in violation of the employer's Code of Conduct. According to the Alberta Court of Appeal, the answer was yes.

### **Facts**

Mr. Poliquin worked for Devon Canada for 26 years supervising between 20 and 25 employees. When he was fired for using the company's computer to view and transmit pornographic and racist materials, he sued Devon Canada. The 881 pages of electronic material that were at issue had been accessed by Poliquin from the Internet, or had been e-mailed to him by others. They included "graphic photos" of nudity and "various sexual acts", and "racist material" that was "clearly derogatory of persons of other racial and ethnic backgrounds". On some occasions, Poliquin forwarded such emails to some of Devon's employees, suppliers and contractors. Poliquin had been previously warned in writing that he was not to access pornographic or racist material from his company computer.

Devon Canada's Code of Conduct allowed employees to use its computer for "limited" personal use but expressly prohibited sending pornographic, obscene, inappropriate or other objectionable messages or attachments via e-mail to anyone. Poliquin was found to have read, understood and accepted the terms of the Code of Conduct.

### **Trial Decision**

The trial judge decided that although Poliquin breached of the Code of Conduct, dismissal for cause was not appropriate.

### **Court of Appeal Decision**

Luckily for employers, the Alberta Court of Appeal reversed the trial judge's decision.

In deciding that Devon Canada had cause to fire Poliquin, the Court of Appeal relied on the following:

- Poliquin violated the Code of Conduct. In that respect, the Court of Appeal said the following:
  - Employers have the right to set the ethical, professional and operational standards for their workplaces. Doing so not only falls within an employer's management rights, it also constitutes an integral component of corporate good governance.
- Poliquin's viewing and exchanging pornographic and racist material was egregious and offensive to his obligation of honesty and good faith;
- the frequency of the emails;
- Poliquin failed to stop the receipt of emails;
- Poliquin's role as a senior manager; and
- the workplace is not an employee's home - "employees have no reasonable expectation of privacy in their workplace computers".

### **Conclusion**

This decision suggests that employers do not have to tolerate the misuse of their computers and Internet access. With a click of the mouse, the dissemination of harmful information can have a pervasive negative impact on the workplace. For these reasons, an employer is entitled not only to prohibit use of its computers for inappropriate purposes but also to monitor an employee's use of the employer's computer systems to ensure compliance (subject to any applicable privacy laws that say otherwise).

To that end, employers may wish to:

- have a well-drafted computer-use policy;
- regularly update such policies and apply them consistently;
- ensure employees receive copies of the policies and acknowledge in writing their acceptance and understanding of the policies; and
- set out clear terms and conditions regarding the limited use of workplace computers for personal use.

For more information on the subject of this bulletin, please contact the author.

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