

## Canadian Supreme Court Finds Reasonable Expectation of Privacy in Work Computer

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The Canadian Supreme Court recently held (in *Her Majesty the Queen v. Cole*) that an employee had a reasonable expectation of privacy in his employer-issued work computer. The case began when a school teacher with administrative rights accessed a student's email account. The teacher did this from his work computer, and found that the student had nude images of another student in an email. Instead of reporting the inappropriate content, the teacher downloaded the images to his work laptop and stored them in a hidden folder. A school technician charged with maintaining the integrity of the school's network remotely accessed the teacher's laptop, and discovered the explicit images. The technician reported this to the principal, who informed the school board and police. The police, without a warrant, created a mirror image of the hard drive and arrested the teacher for possession of child pornography. The teacher challenged the use of the computer evidence taken without a warrant. At issue before the Canadian Supreme Court was whether the teacher had a reasonable expectation of privacy in his work computer. The Court concluded that he did have such an expectation, after looking at the totality of the circumstances. Of particular importance was the fact that the school's policies allowed teachers to conduct personal business and store private information on their computers, and there was no policy putting employees on notice that the school would monitor computer content.

**TIP: Although this case involved a police search of a public employee's work computer under Canadian law, it serves as another reminder to all employers about the importance of a well written monitoring policy. Courts look at the totality of the circumstances in determining whether an employee has a protected privacy interest, and companies need to take steps, such as putting employees on notice of monitoring practices, to have the flexibility to monitor employees' computer usage.**

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