

Employer Breached Employee's Right to Privacy by Reviewing Private Messages sent from Work Laptop

Arbitration | Canadian Charter of Rights and Freedoms | Litigation | Litigation & Dispute Resolution

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Employees frequently use laptop computers provided to them by their employer for personal matters as well as employment-related tasks. To what extent can an employer review private messages sent from an employee's personal social media accounts if they are available on the shared computer?

In November, 2019, a reporter working under a temporary contract for the CBC took offence at the notorious remarks of Don Cherry on *Hockey Night in Canada* (which led to Mr. Cherry's firing), and expressed his opinions on his personal Twitter account. His superiors at CBC learned about the tweets and asked him to delete them, which he did, but he contacted other Canadian media outlets about what had occurred, using his CBC-provided laptop computer for his communications. A fellow CBC reporter found out about the messages, alerting CBC management, and the reporter was fired for cause by the CBC on the basis that he had violated his duty of loyalty and placed CBC's reputation at risk.

This led to a grievance filed by the reporter's union, the Canadian Media Guild, claiming violation of the collective agreement, the [Canada Labour Code](#), the federal [Privacy Act](#), the [Canadian Human Rights Act](#), and the [Charter of Rights and Freedoms](#), and an arbitration.

In January 2021, the Arbitrator released his Award, finding that the CBC had acted improperly by dismissing the reporter for cause: *Canadian Broadcasting Corporation v Canadian Media Guild*, 2021 CanLII 761 (CA LA). It was determined that the grounds cited by the CBC for termination amounted to, at most, a minor indiscretion, which were far overshadowed by the breach of the reporter's privacy that enabled the CBC to discover those activities.

The Arbitrator's decision addresses the tension between the privacy rights of an employee and an employer's right to monitor the use of its own computer equipment. The Supreme Court of Canada has previously ruled that Canadians may reasonably expect privacy in the information contained on their work computers where personal use is permitted or reasonably expected: *R. v. Cole* 2012 SCC 53 (CanLII), [2012] 3 S.C.R. 34 at paras 1-3; *R. v. Morelli*, 2010 SCC 8, [2010] 1 S.C.R. 253. Whether the employee had a reasonable expectation of privacy for use of their work computer depends on assessing the "totality of the circumstances": *R. v. Cole*, at para. 40.

In the case at hand, the reporter's colleague had taken the reporter's laptop from his desk, and reviewed messages sent by the reporter from his private Twitter and WhatsApp accounts, before alerting CBC management. Evidently the reporter had not logged out of the laptop before leaving it on his desk for the day.

The Arbitrator found that the reporter had a reasonable expectation of privacy for his messages sent using his CBC laptop, and reasonably believed that if a co-worker discovered that he had not logged off his personal Twitter and WhatsApp accounts, that co-worker would log off the accounts before taking the computer rather than comb through his personal messages. The reporter would also not expect such messages to be forwarded by his colleague to management without any discussion with him beforehand.

As a result, the Arbitrator ruled that the reporter was entitled to be reinstated to a reporter/editor position with no discipline on his record, for a minimum of four months, which reflected the time that he missed from his prior temporary position, or four months of compensation if the reporter declined a reasonable offer of reinstatement. The issue of what other damages the reporter may be entitled to as a result of the breach of his privacy rights was remitted to be heard at a future time.

The decision reflects the types of issues that may arise from what is not an uncommon situation for the use of workplace computers. CBC's policy permitted employee personal use of corporate computers within limits, and the use of social media, including private conversations with sources, was an accepted part of a reporter's job. It was therefore not surprising that the reporter had logged in to his personal Twitter and WhatsApp accounts on the CBC's laptop, and such accounts were clearly meant to be private. The Arbitrator reasoned that another user of CBC's laptop should be expected to log out of the reporter's private accounts. The reporter's failure to log out was not an invitation to inspect his private messages, even those that showed up immediately on the screen, let alone those that may be revealed only by a search. The entire process that led to the reporter's firing was therefore tainted by the breach of his right to privacy. A PDF version is available to download [here](#).

For more information please contact: **James Cook** at **416.865.6628** or jcook@grllp.com

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Author



James R.G. Cook

Partner

416.865.6628

jcook@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com