Case In Point

Supreme Court of Canada Renders Decision on Reasonable Expectation of Privacy in Workplace Computer

Date: October 19, 2012

The Supreme Court of Canada rendered R. v. Cole in which it unanimously held that employees have a diminished but reasonable expectation of privacy in the use of their workplace computers.

This case involved a warrantless police search of the accused's workplace computer, which contained materials alleged to be child pornography. That evidence was excluded from trial, affirmed by the Court of Appeal for Ontario, under section 24(2) of the *Charter* as the accused's section 8 *Charter* rights had been infringed. The majority of the Supreme Court of Canada agreed that his section 8 rights had been infringed, but overturned the finding on section 24(2), holding that the unconstitutionally obtained evidence should not be excluded.

We are currently reviewing the decision, which does not preclude employers from accessing information stored on their work systems for a range of legitimate business purposes. Though the terms of employer policies will not be determinative, increased attention to those terms, however, is essential in light of the Court's finding.

An *FTR Now*, containing a detailed discussion of the decision and its implications for employers, will be available on our website upon completion of our review.

In the meantime, for practical guidance on computer use policies, see our *FTR Now* dated January 23, 2012, "Ten Questions and Answers about Computer Use Policies."