Privacy And Employment

York Region District School Board v. Elementary Teachers' Federation of Ontario, 2024 SCC 22

Read the case details

Facts

The appellant, the York Region District School Board, represents an Ontario public school. The respondent, the Elementary Teachers' Federation of Ontario, represents two teachers employed by an Ontario public school.

Two teachers recorded their private communications regarding workplace concerns on a shared personal, password-protected log stored in a cloud. The school principal entered the classroom of one of the teachers and, in her absence, scrolled through the document and took screenshots with his cellphone. These communications then formed the basis for the school board to issue written reprimands. The teachers' union grieved the discipline, claiming that the search violated the teachers' right to privacy at work. An arbitrator concluded that there was no breach of the teachers' reasonable expectation of privacy when balanced against the school board's interest in managing the workplace.

The issue of whether employees have a right against unreasonable search and seizure in a workplace environment pursuant to section 8 of the *Canadian Charter of Rights and Freedoms*, Part I of *The Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982, c. 11 (Canadian Charter) was brought before the Ontario Court of Appeal. The Court of Appeal held that the search was unreasonable under section 8 of the Canadian Charter. The appellant appealed this decision, mainly on the basis that the Canadian Charter does not apply to Ontario's public school boards.

Decision

The Supreme Court dismissed the appeal.

According to the majority of the Supreme Court, Ontario teachers are protected by section 8 of the Canadian Charter and thus have a right against unreasonable search and seizure in their workplace.

Section 32 of the Canadian Charter sets out the scope of its application. The Canadian Charter applies to the government but can also be extended to other

entities. It is the case when an entity either by its very nature, or, in virtue of the degree of governmental control exercised over it, can be characterized as "government" within the meaning of section 32 of the Canadian Charter.

The majority of the Supreme Court concluded that the Canadian Charter applies to Ontario public school boards because they are considered as inherently governmental for the purpose of section 32. This is so because public education, by its very nature, is a governmental function and Ontario public school boards are manifestations of government. It follows that all actions carried out by Ontario public school boards are subject to the Canadian Charter.

The concurring judges agreed with the applicability of the Canadian Charter to public school boards.

Key Takeaway

The Supreme Court confirmed that the Canadian Charter applies to Ontario's public school boards. However, it left open the question of the applicability of the Canadian Charter to public schools in other provinces.

Pelletier c. Transvrac Montréal Laval inc.,2024 QCCAI 102

Read the case details

Facts

Pelletier, the petitioner, submitted an access request to her former employer, Transvrac Montréal Laval Inc., seeking access to her personal emails and contacts stored in her professional email account. Prior to her departure, an automatic transfer rule had been set up that forwarded her personal emails to her professional email account.

This led to a mixture of personal and professional emails in her work inbox. After her employment ended, Transvrac migrated her professional email account to the general manager's Outlook account.

Transvrac raised concerns about the burden of processing the request, requiring the review of over 5,000 emails. The company also raised that the contact list contained third-party information that should be protected under the *Act respecting the protection of personal information in the private sector*.

Transvrac asked the Commission to dismiss the petitioner's access request on the grounds that it was abusive.

Decision

The Commission concluded that Transvrac was indeed required to review all emails in the petitioner's former professional email account, which had been transferred to the general manager's account.

However, the Commission ultimately granted Transvrac's request to be exempted from processing the access request. It found that, while made in good faith, the petitioner's request was abusive due to the extensive volume of documents involved, and the effort required to separate personal from professional communications. The Commission considered the company's limited resources, noting that requiring the general manager to manually review over 5,000 emails and 2,000 contacts was unreasonable given the company's small size and workforce.

Key Takeaway

When employees use their professional email accounts for personal communications, it can complicate a company's obligations when responding to access to information requests. In deciding the company's obligations in that regard, the court might consider the volume of documents involved, the effort necessary to separate personal and professional emails and the company's resources.

Martineau c. Telus, 2024 QCCAI 200

Read the case details

Facts

Martineau, the petitioner, requested access to several documents from her former employer, including her payroll records, time sheets, and the final report from a psychological harassment investigation. The investigation had been conducted under the *Canada Labour Code* and the *Work Place Harassment and Violence Prevention Regulations* (the Regulations). Of particular importance was subsection 30(2) of the Regulations, which require that the investigator's report must not reveal, directly or indirectly, the identity of persons who are involved in an investigation or the resulting resolution process.

Telus provided some documents but withheld others. In particular, it redacted portions of the final harassment investigation report on the basis of section 40 of the *Act respecting the protection of personal information in the private sector* (Private Sector Act), arguing that the redacted information contained personal data about third parties, and its disclosure could cause significant harm to those individuals.

Decision

The Commission d'accès à l'information (Commission) clarified that its jurisdiction did not extend to enforcing section 30 of the Regulations.

On the basis of section 40 of the Private Sector Act, the Commission ruled that Telus was justified in withholding portions of the report that contained personal information about third parties, as disclosing such information could lead to serious harm, including reputational damage and workplace retaliation. However, the Commission ordered Telus to release the parts of the report that contained Martineau's own personal information, as these did not fall under the protection of section 40.

Key Takeaway

Organizations can be justified to redact personal information regarding third parties under the exception of section 40 of the Private Sector Act when there is a risk of significant harm, including reputational damage and workplace retaliation.

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