

Supreme Court of Canada rules on privacy rights in schools

21 juin 2024

In *York Region District School Board v. Elementary Teachers' Federation of Ontario*, [2024 SCC 22](#), the Supreme Court of Canada held that the Charter right against unreasonable search and seizure applies to employees of publicly-funded school boards.

Key takeaways

- The Supreme Court confirmed that all activities of school boards are subject to the Charter of Rights and Freedoms, as they are governmental in nature. This includes the actions of its principals, when they are acting in their official capacity as agents of the board.
- When determining the validity of school board rules involving privacy interests or **the freedom of expression**, in addition to applying the traditional “KVP Test” from *Re Lumber & Sawmill Workers' Union, Local 2537, and KVP Co. Ltd.*, [1965 CanLII 1009 \(ON LA\)](#), we expect that arbitrators will often employ a Charter rights analysis.
- Subject to board policies, school board employees may have a reasonable expectation of privacy with respect to content on their board-issued electronic devices, including laptops.

On the advice of their union, two teachers maintained a password-protected log on Google Docs, via a personal Gmail account, where they recorded their concerns regarding another teacher. The principal entered one of their classrooms to return some teaching materials after classes had ended. The teacher was not present. The principal **saw that her board-issued laptop was open and touched its mousepad. A document called “Log Google Docs” opened on the screen. The principal read what was visible on the screen and then scrolled through the document. He used his cellphone to take screenshots of the document. When the principal had finished taking photos, he shut down the laptop.**

The principal informed his superintendent. The Board seized the teachers’ board-issued laptops, and gave the teachers written reprimands.

A labour arbitrator dismissed the resulting grievance. Applying the arbitral “balancing of interests” framework, the arbitrator held there was no breach of the teachers’ reasonable expectation of privacy when balanced against the school board’s interest in managing the workplace, set out in section 265 of the Education Act.

Supreme Court of Canada decision

After the matter made its way through the courts, the Supreme Court of Canada set aside the arbitrator’s decision. According to the Supreme Court, the arbitrator had failed to address the teachers’ constitutional rights under section 8 of the Charter, which states: “Everyone has the right to be secure against unreasonable search or seizure.”

The Supreme Court of Canada held that teachers are protected by section 8 of the Charter in the workplace, because publicly-funded school boards are inherently governmental, and section 8 does not solely apply in the criminal law context. The arbitrator’s failure to address the section 8 concern was an error of law that required her decision to be quashed.

The Supreme Court of Canada also held in a concurring opinion that the arbitrator’s decision was unreasonable because, based on the Board’s policies and practices, the teachers had a reasonable expectation of privacy. As with any Internet-connected device, the information contained on the teachers’ board-issued laptops had the potential to reveal their “specific interests, likes, and propensities,” which is personal, biographical information protected by section 8 of the Charter.

Next steps for school boards

School boards should consider reviewing their acceptable use of technology policies and their practices concerning the use of board-issued laptops. In light of the Supreme Court of Canada’s conclusion that the Charter applies to school boards, boards may also wish to consider their Code of Conduct policies and investigation procedures for students, including board-issued devices, lockers, and board property.

A more detailed review of the Supreme Court’s decision – including the Charter analysis and the administrative and privacy law issues raised by this decision – is forthcoming in a companion bulletin that will be accessible here when published.

If you have any questions about this important decision, please contact [John-Paul Alexandrowicz](#) and [Melissa Eldridge](#), the Co-Chairs of BLG’s National School Boards Practice.

Par

[John-Paul Alexandrowicz, Melissa L. Eldridge, Callum Hutchinson](#)

Services

[Éducation, Conseils scolaires et écoles privées, Gouvernement et secteur public](#)

BLG | Vos avocats au Canada

Borden Ladner Gervais S.E.N.C.R.L., S.R.L. (BLG) est le plus grand cabinet d'avocats canadien véritablement multiservices. À ce titre, il offre des conseils juridiques pratiques à des clients d'ici et d'ailleurs dans plus de domaines et de secteurs que tout autre cabinet canadien. Comptant plus de 725 avocats, agents de propriété intellectuelle et autres professionnels, BLG répond aux besoins juridiques d'entreprises et d'institutions au pays comme à l'étranger pour ce qui touche les fusions et acquisitions, les marchés financiers, les différends et le financement ou encore l'enregistrement de brevets et de marques de commerce.

blg.com

Bureaux BLG

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000, rue De La Gauchetière Ouest
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

Les présents renseignements sont de nature générale et ne sauraient constituer un avis juridique, ni un énoncé complet de la législation pertinente, ni un avis sur un quelconque sujet. Personne ne devrait agir ou s'abstenir d'agir sur la foi de ceux-ci sans procéder à un examen approfondi du droit après avoir sopesé les faits d'une situation précise. Nous vous recommandons de consulter votre conseiller juridique si vous avez des questions ou des préoccupations particulières. BLG ne garantit aucunement que la teneur de cette publication est exacte, à jour ou complète. Aucune partie de cette publication ne peut être reproduite sans l'autorisation écrite de Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Si BLG vous a envoyé cette publication et que vous ne souhaitez plus la recevoir, vous pouvez demander à faire supprimer vos coordonnées de nos listes d'envoi en communiquant avec nous par courriel à desabonnement@blg.com ou en modifiant vos préférences d'abonnement dans blg.com/fr/about-us/subscribe. Si vous pensez avoir reçu le présent message par erreur, veuillez nous écrire à communications@blg.com. Pour consulter la politique de confidentialité de BLG relativement aux publications, rendez-vous sur blg.com/fr/ProtectionDesRenseignementsPersonnels.

© 2025 Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Borden Ladner Gervais est une société à responsabilité limitée de l'Ontario.