



INAPPROPRIATE COMPUTER USAGE IN THE WORKPLACE

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There are substantial risks to employers from the misuse of their equipment and computer systems by employees for improper purposes. An employer is entitled to not only prohibit the use of its computer systems for pornographic purposes, but also to monitor an employee's use to ensure compliance.

A published rule against inappropriate Internet use is not always necessary before an employer can discipline an employee for inappropriate computer use. It is often common sense that prevails.

In the 2009 decision of *Poliquin v. Devon Canada Corp.*, the Alberta Court of Appeal found that the cumulative misconduct of the Plaintiff gave Devon just cause for termination and accordingly, the Plaintiff's claim had no chance of success. The Plaintiff was hired in 1980, and held supervisory positions until his dismissal in 2006. Devon discovered that the Plaintiff had accepted free services from Devon's suppliers, which was a breach of Devon's Code of Conduct. In further breach of the Code of Conduct, he viewed and sent pornographic and racist materials to company employees using his workplace computer, even when he had previously been warned in writing about his misconduct. The Court of Appeal also noted that the Plaintiff's misconduct was more serious given his responsibilities as a senior supervisor.

Similarly, in the 2009 New Brunswick Court of Appeal decision of *Backman v. Maritime Paper Products Ltd.*, the Plaintiff, after more than 14 years working for Maritime Paper Products, first as a structural designer and then as a structural design supervisor, was dismissed for repeatedly viewing pornographic websites while at work. At the time of his hire in 1992, the Plaintiff was informed of Maritime's policy regarding inappropriate electronic mail and Internet use. In 2002, an internal audit revealed that the Plaintiff had made inappropriate use of the Internet while at work. He was warned on two occasions, but continued to access pornographic websites at work, resulting in his dismissal in 2006. The Court of Appeal dismissed the Plaintiff's wrongful dismissal action, and held that he had engaged in a pattern of behavior that destroyed Maritime's trust in him as a supervisor.

It seems from the case law that one instance of misconduct relating to inappropriate computer usage is likely not enough to justify dismissal. However, the circumstances of each case need to be reviewed closely, including the seriousness of the incident, the employee's history and seniority and his or her conduct after the incident. It is important that employers make it clear that inappropriate Internet and email use is against company policy, and ensure that incidents of misconduct are addressed and documented.