



Case in Brief: **York Region District School Board v. Elementary Teachers' Federation of Ontario**

Judgment of June 21, 2024 | On appeal from the Court of Appeal for Ontario

Neutral citation: 2024 SCC 22

The Supreme Court rules that Ontario public school board teachers are protected from unreasonable search and seizure in the workplace under the Canadian Charter of Rights and Freedoms.

This appeal dealt with the question of whether the *Canadian Charter of Rights and Freedoms* (the *Charter*) applies to Ontario public school boards.

Two teachers employed by an Ontario public school board recorded their private communications regarding workplace concerns on a shared personal, password-protected log stored in the cloud.

The school principal, who had been made aware of the log, entered the classroom of one of the teachers to return some teaching materials after classes had ended. The teacher was not present. The principal noticed that the Board laptop used by the teacher was open and touched its mousepad. He saw the log that opened on the screen, read what was visible, then 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 filed a grievance against the written reprimands issued to the teachers, claiming that the search violated the teachers' right to privacy at work. They did not allege any breach of the *Charter*. A labour arbitrator, appointed pursuant to the collective agreement, dismissed the grievance. The arbitrator found there was no breach of the teachers' reasonable expectation of privacy when balanced against the school board's interest in managing the workplace.

The teachers' union asked the Divisional Court to review the arbitrator's decision. A majority of the Divisional Court held that the arbitrator's decision was reasonable. It said that the school principal's search did not raise any *Charter* issues because, unlike in a criminal context, an employee does not have the right under section of the *Charter* to be secure against unreasonable search or seizure in a workplace environment.

The teachers' union appealed to the Ontario Court of Appeal, which unanimously allowed the appeal and quashed the arbitrator's decision. It held that the majority of the Divisional Court made a mistake in concluding that section 8 of the *Charter* did not apply. The Court of Appeal held that school boards are subject to the *Charter* and that the school principal's search was unreasonable under section 8. The school board then appealed to the Supreme Court of Canada.

The Supreme Court dismissed the appeal.

The *Charter* applies to Ontario public school boards.

Writing for the majority, Justice Rowe said Ontario public school board teachers are protected by section 8 of the *Charter* in the workplace, as these boards are inherently governmental for the purposes of section 32 of the *Charter*. Section 32 identifies certain entities that are bound by the *Charter*, including federal and provincial legislatures and governments, as well as entities that are controlled by a government or that perform governmental functions. Consequently, the grievance at issue implicated an alleged violation of a *Charter* right, and section 8 of the *Charter* was a legal constraint bearing on the arbitrator's analysis.

On review, applying the correctness standard, the arbitrator erred by limiting her inquiry to the arbitral framework without regard for the legal framework under section that, as a matter of law, she was required to respect. This error was fatal and the arbitrator's decision should be set aside. For these reasons, Justice Rowe dismissed the appeal.

Breakdown of the decision: *Majority.* Justice [Rowe](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Côté](#), [Kasirer](#) and [Jamaal](#) agreed) | *Concurring.* Justices [Karakatsanis](#) and [Martin](#) agreed with the majority that the appeal should be dismissed but did not agree with how the majority reviewed the arbitrator's decision .

More information: [Decision](#) | [Case information](#) | [Webcast of hearing](#).

Lower courtrulings: [Decision on judicial review](#) (Divisional Court, Superior Court of Justice of Ontario) | [Appeal](#) (Court of Appeal of Ontario)
