

Current Workplace Issues: Video Surveillance

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When can an employer use video surveillance in the workplace? Recent decisions and guidelines have addressed this thorny issue.

Surreptitious Video Surveillance: Breach of the employment contract?

In *Colwell v. Cornerstone Properties*, Ms. Colwell, a property manager, discovered that her supervisor had placed a surreptitious video recording device in the ceiling of her office. Ms. Colwell questioned the explanation given of theft-deterrence as she knew that no thefts had occurred in her office and as she was the person directly responsible for the supervision of maintenance staff. Ms. Colwell's supervisor stressed that the reason for the surreptitious nature of the video surveillance was that it was "secret" and refused to apologize.

The Ontario Superior Court held that Ms. Colwell had been constructively dismissed. The employment contract's implied term of good faith was breached when the video surveillance was undertaken without notice to Ms. Colwell and without plausible explanation. While the facts of this decision are extreme and its reasons are brief, it does provide a caution that entirely ill-considered video surveillance may lead to a claim that the employment contract has been breached.

Video Surveillance in Private Sector Workplaces

Privacy legislation also governs the use of employee video surveillance. Alberta's private sector privacy legislation, the *Personal Information Protection Act* ("PIPA") permits an employer to collect, use and disclose personal employee information without the employee's consent if the purpose for collection, use and disclosure is explained and sufficient prior notice is given. The employer's obligation is generally to inform the employee of the purposes for which information is being collected, used and disclosed, and to ensure that these purposes are reasonable.

Recent privacy decisions in Alberta have concluded that video recordings collect personal information where the persons being recorded would be "identifiable" to persons who know them. Because video surveillance intrudes on employee privacy, employers will have to establish that their video surveillance is being used for reasonable purposes.

The Alberta Office of the Information and Privacy Commissioner ("OIPC") considered workplace video surveillance in *Investigation Report P2005-IR-004*, a case in which an employer installed video cameras throughout its oilfield maintenance shops after experiencing theft and property damage. In order to address the reasonableness of the video surveillance, the OIPC asked whether there were legitimate issues that the organization needed to address; whether the surveillance was likely to be effective in addressing these issues; and whether the surveillance was conducted in a reasonable manner. The OIPC determined that video surveillance was acceptable for the purposes of addressing loss prevention, safety, and security. However, without demonstrating specific concerns about performance, video surveillance for the purpose of employee performance management was not permitted. The OIPC directed the employer to develop a written policy to be acknowledged by the employees which notified them of the purposes of collection and use. The employer was also directed to post a written notice regarding video surveillance in a conspicuous location.



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In conjunction with the Privacy Commissioners of Canada and B.C., the Alberta OIPC has introduced *Guidelines for Overt Video Surveillance in the Private Sector* which discusses general considerations, such as the need to limit viewing range, as well as the need for education of camera operators regarding privacy concerns and the need to secure the collected images. Employers must carefully consider not only the advisability of using video surveillance, but also the specific parameters of its use in the context of the workplace. ▲

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