

## ***Secret Videotaping Catches Employees in a Compromising Position***

A British Columbia Fire Chief suspected employees of going through a locked cabinet in his often unlocked office and decided to catch the responsible party in the act.

To do so, he installed motion activated video surveillance equipment in his office. He would turn on the camera upon leaving for the day and reviewed the footage the following day. The footage was deleted after he reviewed it.

Upon reviewing the footage one day, the Chief discovered 2 employees engaging in sexual relations in his office; the employees were interviewed and terminated on the grounds of workplace misconduct. The employees grieved the termination, arguing, with the Union's help, that the footage wasn't admissible as it breached their privacy rights. They further argued that less intrusive means should have been used to catch the responsible party.

The employer argued that given the suspicion of misconduct in the workplace, the invasion of privacy was justified, and that the collection was limited to one office, there was no expectation of privacy in the Chief's office and there were no other effective means to catch the apparent thief.

To determine whether the collection of personal information through surveillance is necessary and reasonable, the following factors will be considered:

1. The reason for the surveillance;
2. Efforts made to address the problem in other ways and the availability of other sources of information;
3. Employee expectations of privacy at the time and place of surveillance;
4. The scope of personal information collected;
5. The extent of intrusion into privacy (constant or intermittent); and

Based upon the above, the Board ruled in favour of the employer, finding that the video evidence was permissible given it was a reasonable exercise of management's authority. The Board found that the surveillance did not represent an unauthorized collection of personal information under *British Columbia's Freedom of Information and Protection of Privacy Act*, rather that

the indirect collection of personal information was necessary in this situation and was done in a reasonable manner. They found there was a genuine suspicion that led the employer to conduct the surveillance in this manner and that given the culture of the workplace, no reasonable alternative was available.

## Takeaways

Video surveillance in the workplace must strike a balance between employee privacy rights and the employer's legitimate interest in collecting their personal information. The onus is on the employer to demonstrate that the balance fell in favour of the employer's legitimate interests.

Privacy legislation, where applicable, and the type of workplace (union vs. non-union) should always be considered prior to implementing surveillance in the workplace. Employers should also be prepared to show less intrusive methods were not available to address the identified problem.

If you have any questions regarding privacy and surveillance in the workplace, please schedule a call with an e2r® Advisor.