

Common Short Assignment 2
To be done by all students, regardless of major
Due: Sept. 27

As part of the discussion on workplace rights and responsibilities, we saw that rules around surveillance in the workplace often come down to ‘expectation of privacy’. This can lead to differences of opinion on when employers can surveil employees without their knowledge - and subsequent legal action.

Your assignment is to find two examples (news reports are fine) of legal action (criminal or civil) around issues of workplace surveillance that have occurred in Canada or the USA. These should be examples of resolved cases – i.e. ones where the issues have been resolved by the courts. For each example you should provide a summary of the issues involved, the position taken by both sides in the disagreement, and the conclusion of the court. You must provide working links to the reports you base your work on. I expect this assignment to be 1-2 pages long in total, with 2-3 references per example.

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Workplace surveillance frequently leads to legal and ethical dilemmas regarding privacy.. Often organizations put forth the idea that such monitoring can enhance efficiency and security. This paper will analyze two court cases related to workplace surveillance, showing how various courts have provided judgment between an employer's entitlement to oversee their employees and an employee's right to privacy. These cases highlight the changing legality pertaining to surveillance in professional environments.

The first case we'll examine is *Colwell v. Cornerstone Properties Inc.*, 2008. In this case the plaintiff Colleen Colwell found a camera was installed within her office without her knowledge. When questioning her supervisor Trent Krauel he stated he had installed it to investigate suspected theft by the maintenance staff. Mrs. Colwell however was in charge of the maintenance staff yet was not informed of the camera installation, and was aware of some but not all the thefts. Mr. Krauel additionally stated that it was his right to install the camera within her office. Mrs. Colwell then escalated the issue to her superiors and stated she believed it was grounds for "constructive dismissal".

The positions taken by Mr. Krauel were that he had every right to install a "secret" camera and did not need to inform Mrs. Colwell of its existence. As a result Mrs. Colwell took the position that she was constructively dismissed. To the court's citation "since *Wallace v. United Grain Growers Ltd.*, 1997 CanLII 332 (SCC), [1997] 3 S.C.R. 701 imposed an obligation of 'good faith' and 'fair dealing' on an employer for events surrounding the 'manner of dismissal'" (*Colwell v. Cornerstone Properties Inc.* [29]). It was determined the employer was acting in "bad faith" and "unfair dealing" by the inability for Mrs. Colwell to trust her supervisor. As a result the final ruling of the court was an order of \$15,279.17 in damages to be paid to Mrs. Colwell.

The next case we'll examine is *R. v. Cole*, 2012. In this case high school teacher Richard Cole was found to have child pornography on his work issued laptop. The illicit material was found by the maintenance staff performing routine maintenance on all school issued laptops and computers. After which the maintenance technician informed his superiors who instructed him to create hard disk copies for evidence which was then submitted to the police.

When the matter was taken to court, Mr. Cole maintained the position that there should have been an expectation to his privacy even on account that the computer was work issued. Mr. Cole's attorney repeatedly cited *R. v. Morelli*, another case of similar nature, which stated that privacy should be expected on a personal computer. Cole's attorney argued further that this should apply to his work computer as personal activities were permitted (Mathe). The court argued in this case that the possession of child pornography fell under unauthorized use of a computer under *Criminal Code*, R.S.C. 1985, c. C-46, ss. 163.1(4), 342.1(1)., and that there was "diminished rights of privacy since it was a work issued computer" (*R. v. Cole* [3]). In the end

end the court ruled that due to the diminished rights of privacy, coupled with the allowance for a maintenance technician to have access to work issued computers, and the unauthorized use of a computer, that Mr. Cole had no reasonable expectation of privacy and his appeal was dismissed.

To conclude, workplace surveillance presents a complex topic of discussion. In both *Colwell v. Cornerstone Properties Inc.* and *R. v. Cole* we can examine the varying approaches courts take when evaluating these issues. While the *Colwell* case focused on the employer's obligation to act in good faith, reinforcing employees' expectations of trust and transparency, the *Cole* case shows how diminished privacy rights can be present in the context of work-issued equipment, especially when criminal activity is involved. Together, these rulings show the balance between ensuring workplace security and respecting individual privacy, a balance that continues to evolve.

References

Colwell v. Cornerstone Properties Inc., 2008 CanLII 66139 (ON SC),

<<https://canlii.ca/t/21wpm>>, retrieved on 2024-09-25

MacKillop, Malcolm. "Video Surveillance of an Employee Can Constitute Constructive Dismissal." *SOM Law*, 30 Sept. 2009,

www.somlaw.ca/blog/blog-post/blog/2009/09/30/video-surveillance-of-an-employee-can-constitute-constructive-dismissal.

Mathe, Julie. "Supreme Court of Canada Rules Employees Have Reasonable Expectation of Privacy in Workplace Computers." *Emond Harnden Law*, Emond Harnden, 12 Jan. 2012, ehlaw.ca/1211-focus1211/.

R. v. Cole, 2012 SCC 53 (CanLII), [2012] 3 SCR 34, <<https://canlii.ca/t/ft969>>, retrieved on 2024-09-25