

COURT RULES ON EMPLOYEE RIGHT TO PRIVACY

The Alberta Court of Queen's Bench has recently weighed in on the issue of employee privacy in the context of video surveillance. The Alberta Court ruled that neither the *Charter* nor any other right independent of the *Charter* provides employees with a general right to privacy.

Based on an analysis of the applicable *Charter* protections and the relevant jurisprudence, the Court held that "an invasion of privacy can only occur in relation to those activities or matters which an individual reasonably feels, wants or believes are or ought to remain private." As a result, even if the *Charter* applies (e.g. to public sector employers), it may be difficult for an individual to establish a reasonable expectation of privacy in a public place such as an open shop floor.

The Court also rejected the "right to privacy" promulgated by some arbitrators in the labour relations context, stating:

I agree with Arbitrator Welling's conclusion that employees in Ontario do not have a right to privacy. The right to privacy was a fiction created by arbitrators to remedy a perceived power imbalance. It is perhaps not surprising that the right to privacy was first recognized in cases involving the search of employees, imposed drug testing, and locker searches. Of course, the other option would have been to have left the parties to sort out their problems at the bargaining table as part of their collective agreement negotiations. After all, the jurisdiction of arbitrators is rooted in the collective agreements, which they are called on to interpret. In my view, to the extent that there is a power imbalance in employment situations, that imbalance is remediable by agreement or by statute.