


Tracking Plaintiffs Online: Surveillance in the 21st Century


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Tracking Plaintiffs Online: Surveillance in the 21st Century

A case study



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FACEBOOK



Tracking Plaintiffs Online: Surveillance Techniques in the 21st Century



- Kourtesis v. Joris 2007 CanLI 39367 (ON S.C.)
- Cikojevic v. Timm [2008] B.C.J. NO.72 (S.C.)
- Leduc v. Roman 2009 Can LII 6838 (ON S.C.)
- Schuster v. Royal & Sun Alliance Insurance [2009] O.J. No.4518
- Wice v. Dominion of Canada [2009] O.J. No. 2946 (S.C.)
- Bishop (Litigation Guardian of) v. Minichello [2009] B.C.J. No. 692 (S.C.)
- Carter v. Conners [2009] NBQB 317 (Q.B.)
- Kent v. Laverdiere, [2009] O.J. No. 1522
- Sparks v. Dubé 2011 NBQB 40



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Murphy v. Perger 67 C.P.C. (6th) 245

“Having considered these competing interests, I have concluded that any invasion of privacy is minimal and is outweighed by the defendant’s need to have the photographs in order to assess the case. The plaintiff could not have a serious expectation of privacy given that 366 people have been granted access to the private site.”



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Ottenhof v. Ross 2011 CarswellOnt1370

- “The pages at a social networking site or internet site ... are documents ...and should be listed in a party’s affidavit of documents, if relevant.”
- “The mere existence of a facebook account is insufficient to require its production on discovery.”



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- “..... the responding party is entitled to cross-examine on the affidavit of documents to determine firstly if it exists, secondly the relevance of the contents, and finally production of the relevant portions for which privilege is not claimed.”
- “Access to the party's facebook account through the party's password is overly intrusive unless the party is claiming ... a level of disability that inhibits his or her computer time.”



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Frangione v. Vandongen 2010 ONSC 2823

- “Courts have repeatedly used the analogy that a computer hard drive is the digital equivalent to a filing cabinet. A request to be able to search a party's filing cabinet in the hopes that there might be found a document in which an admission against interest is made would clearly not be allowed — and its digital equivalent should also not be allowed.”



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IN THE WORKPLACE



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Chatham-Kent v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 127 [2007] O.L.A.A. No. 135

"...insubordination in the workplace can involve behaviour other than simply a refusal to follow a direct order. Insolent, disrespectful, insulting or defiant words may... constitute a type of insubordination and be an employment offence."



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Roang v. Carrier Sekani Tribal Council 2011 CarswellNat 792

"It is clear from the APM (Administration Procedures Manual) that the computer in her office is company property and that Jason Morgan had a right to review the contents of her personal computer. Personal communications ought not to be made on the company computer. Not only is this a theft of CSTC time for which Roang was being paid to attend to CSTC's books, but personal usage during office hours which is prohibited by reason of Section 2.18(i) of the APM."



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Poliquin v. Devon Canada Corporation 2009 ABCA 216

- "...The workplace is not an employee's home; and employees have no reasonable expectation of privacy in their workplace computers. It therefore follows that while employers may permit employees limited personal use of workplace computers, the employer is entitled to restrict the terms and conditions on which that use may be permitted.
- ... Employers are not required to tolerate the misuse of their computers and Internet access any more than they are required to put up with serious incidents of dishonesty by employees..."



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R. v. Cole 2011 CarswellOnt 1766

“..... based upon the totality of the circumstances in this case the appellant had a reasonable expectation of privacy in the personal use of his work laptop. Although this was a work computer owned by the school board and issued for employment purposes with access to the school network, the school board gave the teachers possession of the laptops, explicit permission to use the laptops for personal use and permission to take the computers home on evenings, weekends and summer vacation. The teachers used their computers for personal use, they employed passwords to exclude others from their laptops, and they stored personal information on their hard drives. There was no clear and unambiguous policy to monitor, search or police the teachers' use of their laptops.”



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“Business and other institutions commonly engage technicians to service and maintain their networks. Users understand that a technician can access computers connected to the network to ensure the integrity of the system. The appellant's reasonable expectation of privacy was modified to the extent that the appellant knew that his employer's technician could and would access the laptop as part of his role in maintaining the technical integrity of the school's information network.”



Thank You

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