

### Monitoring employee computers

1. R. v. Cole, 2012 SCC 53, [2012] 3 S.C.R. 34

*Per McLachlin C.J., and LeBel, Fish, Rothstein, Cromwell and Moldaver JJ.:* Computers that are reasonably used for personal purposes — whether found in the workplace or the home — contain information that is meaningful, intimate, and touching on the user's biographical core. Canadians may therefore reasonably expect privacy in the information contained on these computers, at least where personal use is permitted or reasonably expected. Ownership of property is a relevant consideration, but is not determinative. Workplace policies are also not determinative of a person's reasonable expectation of privacy. Whatever the policies state, one must consider the totality of the circumstances in order to determine whether privacy is a reasonable expectation in the particular situation. While workplace policies and practices may diminish an individual's expectation of privacy in a work computer, these sorts of operational realities do not in themselves remove the expectation entirely. A reasonable though diminished expectation of privacy is nonetheless a reasonable expectation of privacy, protected by s. 8 of the Charter. Accordingly, it is subject to state intrusion only under the authority of a reasonable law.

2. MacLeod Law Firm, *Does Monitoring Emails Breach an Employee's Right to Privacy?*

If an employer plans to monitor an employee's email or Internet use then ideally the employer should obtain the employee's written consent in advance via a computer-use policy. Such a policy tells the employee that the employer will be monitoring emails and Internet use and that the employee should have no expectation of privacy if he uses the company network to send or receive personal emails or use the Internet for personal purposes.

The employer can require all new employees to sign a computer use policy which obtains the employee's written consent as a condition of employment.

3. Rabbi Moses Maimonides (12<sup>th</sup> century Egypt), Mishneh Torah, Laws of Employment 13:7

כדרך שמוזהר בעה"ב שלא יגזול שכר עני ולא יעכבנו כך העני מוזהר שלא יגזול מלאכת בעה"ב ויבטל מעט בכאן ומעט בכאן ומוציא כל היום במרמה אלא חייב לדקדק על עצמו בזמן שהרי הקפידו על ברכה רביעית של ברכת המזון שלא יברך אותה...

Just as the employer must not steal the wages of a pauper, or delay them, so the pauper must not steal the work of the employer and waste a little here and a little there, wasting the whole day cunningly. Rather, he must be precise with his time, for the sages were so precise that they said not to recite the fourth blessing of *Birkat haMazon*...

4. Rabbi Yehudah he'Chasid (12<sup>th</sup> century Germany), Sefer Chasidim 310

אל ילך אדם לדבר עם מלמדי תנוקות בשעה שהוא מלמדם פן יבטלם בדבריו...

One may not speak with schoolteachers when they are teaching, lest he waste their time with his words...

### Apple and the FBI / Whistleblowing

5. A worthwhile read <https://theshc.org/fbi-vs-apple/>

6. Three approaches

- 1: Subvert individual privacy rights in order to protect our judicial system
- 2: Subvert individual privacy rights in order to protect his victims
- 3: Ignore the danger to his victims, in order to protect society's privacy rights

7. Leviticus 5:1

וּנְפֹשׁ כִּי־תִחַטָּא וְשָׁמְעָה קוֹל אֱלֹהִים וְהוּא עֵד אוֹ רָאָה אוֹ יָדַע אֶם־לוֹא יִגִּיד וְנִשְׁאַ עֲוֹנוֹ:

When a person sins, hearing the call of an oath, and he is a witness – he saw or knew – then if he does not tell, he bears his sin.

8. Leviticus 19:16

לֹא תֵעָמַד עַל־דַּם רֵעֶךָ אֲנִי ד':

You shall not stand by as another's blood is shed; I am Gd.

9. Rabbi Yisrael Meir Kagan (Chafetz Chaim) (19<sup>th</sup>-20<sup>th</sup> century Poland), Laws of Tale-Bearing 9:1

אם אחד רואה שחבירו רוצה להשתתף באיזה דבר עם אחד, והוא משער שבוודאי יסובב לו על ידי זה ענין רע, צריך להגיד לו כדי להצילו מן הענין הרע ההוא

One who sees that his friend wishes to partner with another, and who knows that this will definitely cause bad results, must tell him in order to save him from that bad fate.

10. Ontario's Personal Health Information Protection Act (2004)

A health information custodian may disclose personal health information about an individual if the custodian believes on reasonable grounds that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons. 2004, c. 3, Sched. A, s. 40 (1).

11. LSUC, Rules of Professional Conduct (2000), Rule 2.03(3)

Where a lawyer believes upon reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including serious psychological harm that substantially interferes with health or well-being, the lawyer may disclose, pursuant to judicial order where practicable, confidential information where it is necessary to do so in order to prevent the death or harm, but shall not disclose more information than is required.

12. Buckner & Firestone, *Where the Public Peril Begins*, Journal of Legal Medicine 21:2

[I]n 1987, the Council on Psychiatry and Law of the American Psychiatric Association (APA) developed a Model Statute as a resource for its district branch chapter members to use in stimulating legislative action. This Model Statute attempted to balance public safety with the needs and concerns of the mental health professions. It was approved by the Board of Trustees of the APA in June of 1987 and distributed to the membership. It stated, as follows:

Duty of [Physicians] to Take Precautions Against Patient Violence.

1. Scope of cause of action. Except as provided in paragraph 5, no cause of action shall lie against a [physician], nor shall legal liability be imposed, for breaching a duty to prevent harm to person or property caused by a patient unless a) the patient has communicated to the [physician] an explicit threat to kill or seriously injure a clearly identified or reasonably identifiable victim or victims, or to destroy property under circumstances likely to lead to serious personal injury or death, and the patient has the apparent intent and ability to carry out the threat; and b) the [physician] fails to take such reasonable precautions...

13. Rabbi Yosef Karo (16<sup>th</sup> century Israel), Shulchan Aruch Choshen Mishpat 28:1

כל מי שיודע עדות לחבירו וראוי להעידו, ויש לחבירו תועלת בעדותו, חייב להעיד, אם יתבענו שיעיד לו.

Anyone who knows testimony for another, and who is qualified to testify for him, and whose testimony would help the other, must testify if called upon to testify for him.

14. Rabbi Moses Maimonides (12<sup>th</sup> century Egypt), Mishneh Torah, Laws of Plaintiff and Defendant 5:7

האומר לחבירו "שטר שיש לי בידך זכות יש לי בו" וזה אומר "איני מוצא שטרי" או "איני יודע אם יש לך בו ראייה או לא", כופין אותו להוציאו.

When one person tells another, "The document you are holding for me has a benefit for me," and the other says, "I can't find my document" or "I don't know whether or not it has a benefit for you," we force him to produce it.

15. Rabbi Yosef Karo (16<sup>th</sup> century Israel), Shulchan Aruch Choshen Mishpat 16:4

אם הלה אומר שאין בידו שטר שיהא בו שום זכות לזה, אין מחייבים אותו להראות שטר לשום אדם. אבל אם ירצה זה להחרים חרם סתם על כל מי שיש בידו שטר שיש לו זכות בו, שיראנו, יחרים.

Where this one says he does not possess a document with a benefit for him, we do not obligate him to show the document to anyone. But where he wants to issue a broad ban upon anyone who holds a document that will help him, requiring that they show it, he may issue such a ban.

16. Rabbi Moses Maimonides (12<sup>th</sup> century Egypt), Mishneh Torah, Laws of Oaths 5:15

הנשבע לחבירו "שלא אעיד לך עדות זו שאני יודעה", או "שלא אעיד לך אם אדע לך עדות", הרי זה לוקה משום שבועת שוא, מפני שהוא מצווה להעיד

One who swears, "I will not offer the testimony I know for you," or "I will testify for you if I come to know testimony," he is lashed for an empty oath, for testimony is obligatory.

17. Rabbi Moshe Isserles (16<sup>th</sup> century Poland), Shulchan Aruch Yoreh Deah 228:33

אפילו נשבע על איזה דבר שלא לגלותו, ואחר כך נתנו עליו חרם, חייב להגיד.

Even if one swears not to reveal something, he must tell if they then issue a ban upon him.

18. Rabbi Yosef Shalom Elyashiv (20<sup>th</sup>-21<sup>st</sup> century Israel), cited in Shiurei Torah l'Rofim V 298

אם קיים חשש שפרנסתו תקופח, אינו חייב לעורר מהומה כשישנם כ-10% שמא הוא טועה, ואזי תקופח פרנסתו.

If there is concern that his livelihood might be destroyed, he need not create upheaval where there is a 10% chance that he is wrong, and this would destroy his livelihood.

19. Rabbi Yosef Babad (19<sup>th</sup> century Galicia), Minchat Chinuch 8

ובל"ת אינו מפורש אם רוצה לעבור ל"ת אם כופין אותו כדי שלא לעבור... אפי' אם עובר בשוא"ת מ"מ כופין. וזה נ"ל גם מצד הסברא...  
With a prohibition which someone wants to violate, it is not clear whether we compel him not to violate... Even if he violates by omission, we do compel. This appears to be logical, too...

#### Spying on a spouse

20. Rabbi Chaim Palaggi (19<sup>th</sup> century Turkey), Chikikei Lev 1:49

אם נאמר משום מ"ש ז"ל על פי "ואהבת לרעך עמוך" ... אפשר... יהיה מותר, כיון דאיכא חששא מגוזלו ומזיקו, ועל ידי כתב זה יתברר האמת...

If [the prohibition against opening mail] is as he wrote, because of "Love your neighbour as yourself"... perhaps... it is permitted because there is concern that someone will steal from him or harm him, and this letter could clarify it...

21. Rabbi Shlomo Daichovsky (21<sup>st</sup> century Israel), Techumin 11

יש מקום לסברא שבין בעל לאשתו אין לדבר על "פגיעה בפרטיות" שכן בכתב התנאים שעורכים לפני הנישואין נאמר "ואל יבריהו ואל יעלימו לא זה מזו ולא זו מזה כי אם ידורו באהבה ובחיבה"... גם אם לא מדובר בהתחייבות ממונית, יש לפחות התחייבות אישית שלא להסתיר ולהעלים דברים.

There is room for the view that there is no issue of "invasion of privacy" between spouses, for the *tenaim* text arranged before marriage says, "They will neither hide nor conceal, neither him from her nor her from him, but they will live in love and affection."... Even if this is not a financial obligation, there is at least a personal obligation not to hide or conceal things.

22. Canadian Federal Criminal Code (R.S.C., 1985, c.C-46) Section 184(2)(a)

(2) Subsection (1) does not apply to

(a) a person who has the consent to intercept, express or implied, of the originator of the private communication or of the person intended by the originator thereof to receive it;

23. Rabbi Shlomo ibn Aderet (13<sup>th</sup> century Spain), Responsum 1:557

כל כי האי גוונא חס ושלום שלא יתקן הרב ז"ל שלא יגרשנה. אדרבה הרב ז"ל מצריך לגרשה כדי שלא יהא רשעה בתוך ביתו.

Gd forbid, the master would not have enacted that he should not divorce her. Just the opposite – the master would have required that he divorce her, lest there be wickedness in his house.