

# News

## Awards

- Former prime minister **Brian Mulroney**, a senior partner at *Norton Rose Fulbright*, has been honoured with the Order of the Companions of OR Tambo in South Africa, in the Gold category. Mulroney was scheduled to receive the award in Pretoria April 27, "for his exceptional contribution to the liberation movement of South Africa," said a South Africa presidency press release.
- **Geoffrey Creighton**, president of In-House Counsel Worldwide and recently retired as general counsel for IGM Financial, has been honoured with this year's R.V.A. Jones Award, part of the Canadian Corporate Council Association's 2015 roster of awards. Also honoured at the CCCA's April 19 ceremony in Toronto: CIBC's legal contracting team (Innovation Award); **Adrian Lang**, BMO Financial Group (Community Builder Award); **Lawna Hurl**, Niska Gas Storage Partners LLC (Up and Comer Award); and the CCCA's Ontario chapter (Professional Contribution Award).

## Moves

- **Meaghan McCaw** and **Erin Best** have joined the St. John's office of Atlantic Canada law firm *Stewart McKelvey* as associates. McCaw's practice focuses on insurance and construction law, while Best, a registered trademark agent previously at Cox & Palmer, also focuses on litigation as well as intellectual property and media law.
- Former Clerk of the Privy Council **Wayne Wouters** has joined *McCarthy Tétrault* as strategic and policy advisor to the law firm. Wouters has spent more than 30 years in public service, and will advise in a wide range of areas including trade matters.

# B.C. privacy decision checks snooping

Keystrokes, e-mail monitoring of employee work stations out of bounds

**KIM ARNOTT**

A Vancouver Island municipality violated privacy rights by capturing keystrokes, screenshots and other data from computers used by municipal staff and politicians, British Columbia's privacy commissioner has found.

While the employee-monitoring software was installed as an IT security measure, Information and Privacy Commissioner Elizabeth Denham found that the detailed data it collected breached the province's *Freedom of Information and Protection of Privacy Act (FIPPA)*.

"Employees do not check their privacy rights at the office door," she noted. "There is a right to privacy in the workplace, which has been upheld by Canadian courts and must be respected by public bodies as they consider what security controls are necessary to protect information in government networks."

Using software known as Spector 360, the district of Saanich was able to record screenshots captured at 30-second intervals, as well as keystrokes, e-mail and other detailed user information from 13 employee work stations.

The surveillance software was installed without the knowledge of at least some of the users, including the municipality's newly elected mayor. His discovery of the software and subsequent public complaint during a press conference led the privacy commissioner to launch an investigation into the circumstances.

In her report (*2015 BCIPC No. 15*), the commissioner found that Saanich's municipal officials had a "disappointing" lack of knowledge about their privacy obligations under the 20-year-old legislation.

She added that information gathered through keystrokes log-



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**Kris Klein**  
nNovation LLP

ging and screenshot capturing provided an ineffective and "purely reactive" approach to IT security, and that such levels of employee surveillance "should be restricted to use in specific investigations, based on reasonable grounds for suspicion of wrongdoing, and only when other less privacy intrusive measures have been exhausted."

The report recommended removal of the monitoring software from the Saanich computers, destruction of any archived data collected, training of staff in privacy issues and the appointment of a privacy commissioner.

"I'm shocked that in today's day

and age, people can be in charge at such a high level and not be aware of their legal obligations when it comes to privacy issues," said Kris Klein, a partner with nNovation LLP who teaches privacy law at the University of Ottawa. "If you're in the IT world, every day the intersection between IT and privacy is at the forefront of what's going on."

Dan Michaluk, a partner with Hicks Morley in Toronto and an expert in workplace privacy issues, said the report provides useful commentary on issues of security and privacy around the monitoring of individual work stations, or "end points" on a computer network.

"(Saanich was) at the aggressive end of things and they did a poor job of planning and executing," Michaluk said. "(The commissioner) makes it loud and clear that if you're going to do this stuff you need to recognize there's a privacy issue and you've got to have a process of assessment that precedes your design and implementation."

While the report's criticism of the municipality wasn't surprising, Michaluk said he found it notable that it also appears to provide approval for a certain amount of end-point monitoring.

Logs of websites visited, files transferred or altered, and applications that connect to the Internet could "arguably assist" in investigating and responding to security breaches, the privacy commissioner found.

"Does that mean a duly diligent employer ought to be looking at this type of end-point monitoring at this point? I think that's at least a question to ask," said Michaluk.

"Sure, the general lesson is to be careful...but when you're looking at routine data security and generating logs that will help increase

response, she actually sets out something new here and says these are reasonable things to consider."

Klein agreed the commissioner appeared to sanction the use of this type of surveillance software for some purposes.

"She says that some of this software can be installed legitimately and used legitimately if there's proper notice given to the employees."

The ruling offers an interesting perspective on the balance organizations need to maintain between protecting information assets and protecting employee privacy, said Klein.

With constant development of new IT security solutions, he believes the issue will continue to be subject to complaints and rulings. "I think there are grey areas where we still need a fair amount of debate and guidance."

As basic as it may seem to those knowledgeable about privacy issues, the ruling may serve as a wake-up call to some employers, said Jillian Frank, head of the labour and employment group with Dentons in Vancouver.

"Yes, employers have a right to monitor their systems but there still is an expectation of privacy and you still need to have a policy that defines (employees') reasonable expectation of privacy," she noted. "The assumption can't be that you as an employer can just do what you want to do."

Frank added that the speed of the investigation and report, and the intent of the privacy commissioner to issue guidelines regarding employee privacy rights under FIPPA are helpful for clarifying the issues around such monitoring.

"It is a good indication that this isn't just a complaints-driven process, it's really meant to look at B.C.'s practices as a whole," she said.

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