



Objects of Objection

Looking at PIPEDA's impact on employee objections to video surveillance in the workplace

By Elliott Goldstein

Section 5(3) of the *Personal Information Protection and Electronic Documents Act* (PIPEDA) provides that "an organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances."¹

PIPEDA has recently been used as the basis for a complaint by a railway employee against his employer. The employee alleged that the employer was using video cameras to collect personal information of its employees without their consent. The complaint was made to the Federal Privacy Commissioner of Canada and is reported on its Web site.²

The method of collection was by "digital video recording cameras" installed at various locations in the rail yard. The cameras were fixed (that is, not pan/tilt/zoom) and connected to a central console capable of recording for 48-hour periods.

The railway company employer told its employees that the system was installed to "reduce vandalism and theft, liability for property damage, and minimize threats to staff safety." Employees were specifically told of the cameras' locations and that "the cameras were not intended to be used for productivity issues and that they were positioned away from work areas and trained on areas of access."

To its credit, the railway company did change the position of certain cameras and install shields on others to protect the privacy of its employees when it learned some of the cameras were "inadvertently trained on certain areas where either there was a reasonable expectation of privacy or where employees were working." But this was not good enough for the complaining employee.

Federal Privacy Commissioner George Radwanski, upon receiving the complaint, first decided that he had jurisdiction to hear it because PIPEDA applies to any "federal work, undertaking, or business"; and a railway company was within that definition. Next, the commissioner considered the appropriateness of the railway's purposes for collecting personal information and the circumstances surrounding those purposes.

The commissioner acknowledged that the company's stated purposes, namely, to reduce vandalism and theft, improve staff security, and limit the potential liability for damages, would seem to be appropriate. However, to ensure compliance with the intent of section 5(3), the commissioner stressed that the circumstances must also be considered. In determining whether the company's use of the digital video cameras was reasonable in

this case, he found it useful to consider the following questions:

- Is the measure demonstrably necessary to meet a specific need?
- Is it likely to be effective in meeting that need?
- Is the loss of privacy proportional to the benefit gained?
- Is there a less invasive way of achieving the same end?

Given that the incidents of vandalism were relatively minor – with the most significant damage occurring to the cameras themselves – the actual threat to security was in question, and the risk from liability claims was unclear – the commissioner determined that the company had not demonstrated the existence of a real, specific problem, only the potential for one.

Similarly, he was not convinced that the digital system was in fact effective. Although there had been no incidents since the cameras were installed, he noted that this could equally be explained by the fact that the signs warning people entering the site also serve as a deterrent to would-be vandals.

While acknowledging that the system provided poor picture resolution and was not trained on areas where there was a reasonable expectation of privacy, the commissioner determined that it might be possible to identify an individual during the day. He also noted his concern that the mere presence of these cameras may have given rise to the perception among employees that their comings and goings were being watched, even if that was not objectively the case. He added that the adverse psychological effects of a perceived privacy invasion might have been occurring. And he noted that the company did not appear to have evaluated the cost and effectiveness of less privacy-invasive measures, such as better lighting in the parking lots, which could address the issue of employee

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security, with no effect on employee privacy.

Based on this analysis, the commissioner did not believe that a reasonable person would consider these circumstances to warrant taking such an intrusive measure as installing digital video cameras. Therefore, the company's use of this type of video surveillance for the stated purposes was deemed inappropriate and the company was found to be in contravention of section 5(3). The commissioner concluded the complaint was well founded and recommended the railway company remove the digital video cameras.

Note that the commissioner also commented upon the operational cameras, which rotate and have zoom capacity but do not record: "They are used by managers to monitor train movements and to inform crewmembers of train locations. They are not trained on areas where there is a reasonable expectation of privacy, such as changing facilities or washrooms. The company and the union agree that these camera systems are need-

ed, provided they are used for operational purposes only."

While noting that the purposes for these systems were appropriate in the circumstances, he was concerned about an incident that had come to light during the course of the investigation, in which information collected from one of the systems was used in a disciplinary action against two employees. The commissioner stated that had this incident formed part of the complaint, he would have been strongly inclined to look upon such usage of this system with disfavour. He then cautioned the company that using its operational camera systems for purposes other than the stated ones of efficiency and safety, without employee consent, would likely put the company in a situation where it would be in contravention of the act.

This decision, albeit under federal legislation, should be noted, as it will become relevant to any province that has not passed legislation similar to PIPEDA by January 2004. 🍁

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Author's Notes

- 1 Statutes of Canada 2000.
- 2 See PIPED Act Case Summary #114 found at www.priv-com.qc.ca/cf-dc/2003/cf-dc. Special thanks to René Beaulieu of SOS Services in London, Ontario, for bringing this case to the author's attention. All quotes are from this decision unless otherwise indicated.

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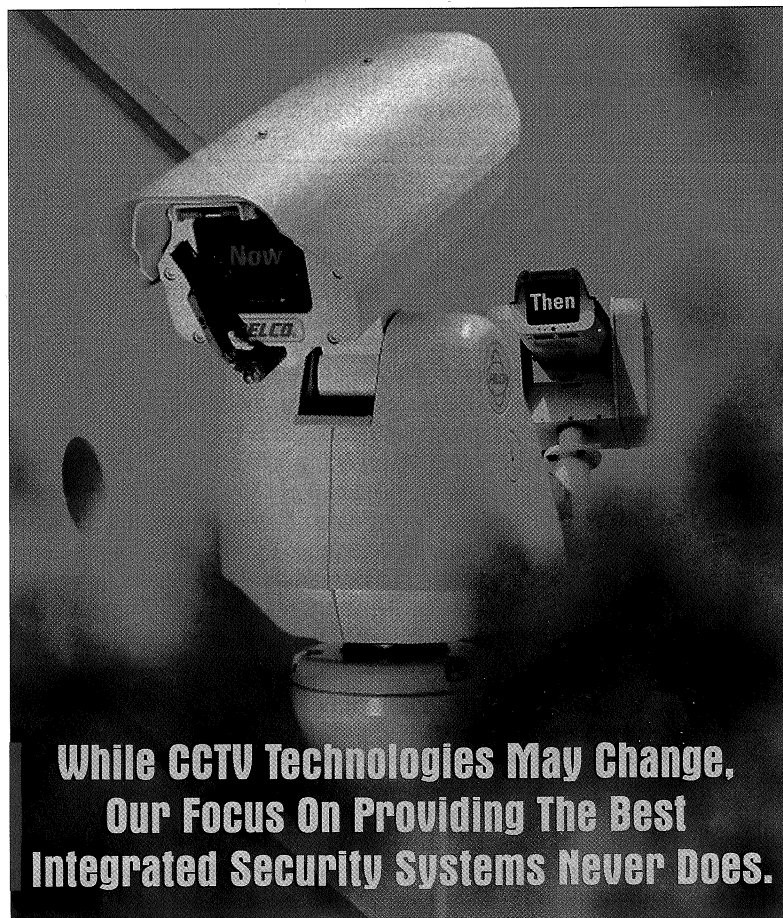
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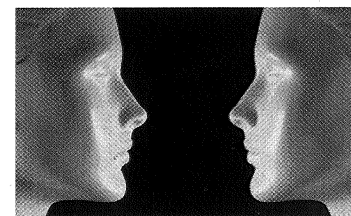
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