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VIDEO SURVEILLANCE



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Camera surveillance is a growing phenomenon around the world, as the development of new technology facilitates access to this type of surveillance.

The Legality of Use of Video Surveillance by Québec Employers

Introduction

Camera surveillance is a growing phenomenon around the world, as the development of new technology facilitates access to this type of surveillance. Video surveillance cameras can be so small that they can be hidden almost anywhere, including in the workplace.

The *Commission de l'Accès de l'information* (the "CAI") (which is the local privacy commissioner in Québec) has done extensive analysis and policy development with regards to the use of video surveillance in the public sector in 2002 and 2004. As for the private sector, the CAI has developed no specific policy, but does recommend that the private sector apply the guidelines established for the public sector. *The Confédération des syndicats nationaux* (the "CSN") which is the National Union Confederation has criticized these guidelines because they are only recommendations (versus legal requirements) and also since the CAI has not yet precisely addressed video surveillance of employees.¹ Still, Québec courts have had to take a position in the last few years on the legality of employers' use of video surveillance to protect their property or in certain cases to monitor their employees' behaviour in the workplace or to test their employees' honesty with regards to disability claims by monitoring them outside of the workplace.

This article will discuss the Québec framework on video surveillance by employers. More specifically, it will first discuss the legal framework governing privacy in Québec and the admissibility of video surveillance tapes in courts.

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Second, an analysis of case law rendered on the issue of employees' video surveillance, in the workplace and outside the workplace will be made. Then, a working framework addressing how and when employers may use video surveillance and when they should agree to grant access to video surveillance tapes to employees requesting them will be discussed.

Legal Framework

The legal framework governing video surveillance in Québec includes laws governing privacy and the collection and disclosure of personal information, as well as the guidelines applying to the use of surveillance cameras adopted by the CAI in 2002 and 2004.

Québec Laws Governing Privacy

The Québec privacy law, *An Act Respecting the Protection of Personal Information in the Private Sector*,² (the "Québec Privacy Law") has been in effect since 1994. Section 2 of the Québec Privacy Law reads as follows: "Personal information is any information which relates to a natural person and allows that person to be identified".

The Québec Privacy Law applies to Québec employees and to personal information whatever the nature of its medium and whatever the form in which it is accessible, whether written, graphic, taped, filmed, computerized, or other. In the event that a surveillance video could identify an individual, it will be subject to the Québec Privacy Law.³

Privacy in Québec is also governed by the *Civil Code of Québec* ("C.C.Q"), at articles 3, and 35 to 41 inclusively. More specifically, article 35 states a general principle under which every person has a right to the respect of his reputation and privacy, and that no one may invade the privacy of a person without the consent of such person unless authorized by law. Article 36(4) states that keeping someone's private life under observation by any means may be considered an invasion of privacy of a person.

In addition, the Québec *Charter of human rights and freedoms* (*Charte des droits et libertés de la personne*), a statutory bill of rights adopted by the National Assembly of Québec in 1975 states, at article 5, that "[e]very person has a right to respect for his private life".⁴ Under the terms of article 46 of the Charter, which recognizes the right to fair and reasonable working conditions, an employer is prohibited from consistently monitoring his employees by means of video surveillance.⁵

CAI Policies Concerning Video Surveillance

In the last few years, the CAI has done extensive analysis and policy development with regards to the use of video surveillance in the public sector, first by adopting the *Minimum rules applying to the use of surveillance cameras* in May 2002 and then by adopting, in June 2004, its *Rules for use of surveillance cameras with recording in public places*⁶ by public bodies.⁷ The CAI has not developed any specific policy for the private sector, but it does recommend that the private sector apply the guidelines established for the public sector.

Although some of these rules may not apply to employers, others detailed hereunder may be used as a guide for employers looking to use video surveillance in the workplace or in order to follow their employee's whereabouts and actions outside the workplace.

- Factors to consider before opting for camera surveillance

Before opting for camera surveillance, organizations have to determine that camera surveillance will be necessary to achieve a specified, serious and important objective (the problem to be addressed being identified and recurring). A report on the specific, serious and concordant events that have occurred, clear identification of the problem to be solved, the places targeted for camera surveillance and the important, clear and precise objectives that have been identified shall be produced by the organization.

Alternative solutions less prejudicial to privacy should have been considered or tested and have proved difficult to apply or implement or are ineffective. The effectiveness of the measure to correct the situation shall be conclusive and the purpose of camera surveillance shall be transparent and explicit.

- Rules concerning collection of information

With regards to the collection of information, the organization shall designate from the outset a person responsible for the collection, retention and communication of data collected by means of camera surveillance. Camera surveillance shall be adjusted as needed and adapted to the situation. The periods of surveillance and eventually of recording, the area covered and the manner in which the operation will be conducted shall be designed to minimize the effects of camera surveillance and preserve the individuals' privacy as much as possible.

Camera surveillance shall be used only during critical events and for limited periods. Only necessary recordings shall be made and tape recordings shall be destroyed once they are no longer necessary.

The placement of the cameras and the type of technology used shall minimize the effects of camera surveillance on people's privacy. The angles of vision, the type of cameras, and the zoom or stop image function shall be evaluated according to the ends sought and the appropriate means of achieving these ends.

- Rules concerning management of information

Use of the recordings shall be limited and shall not be disclosed to third parties unless authorized by law. The

recordings should be erased or destroyed as soon as their retention is no longer necessary.

- The decision to resort to surveillance to be reviewed periodically

The organization shall periodically review the necessity of its decision regarding camera surveillance and whether a more appropriate alternative compatible with the right to privacy can at some point be envisioned.

Admissibility of videotaped evidence

Video surveillance of employees is permitted in certain circumstances. To decide on the admissibility of videotaped evidence, the courts have to balance the employees' interest in protecting their right to privacy against the right of employers to investigate suspected misconduct or protect their property.

Employees being monitored by video surveillance, in the event that they are dismissed, often oppose to the admissibility of the videotapes by claiming that the employer did not respect their privacy by using article 2858 of the C.C.Q. which specifies that the court must reject any element of proof obtained under conditions which undermine the fundamental rights and freedoms of an individual and if the use is likely to discredit the administration of justice.

Courts usually find that in the workplace, the employer has a right of monitoring and that the respect of its employees' private life is then less absolute than in public places. In *Société parc-auto du Québec et syndicat des travailleurs et travailleuses des stationnements de Québec (CSN)*,⁸ the arbitrator concluded that videotapes of employees consuming beer during the working hours was admissible. In this case, an employer had hired a private investigator to monitor employees for a few days because it suspected these individuals of consuming beer during work hours. The arbitrator concluded that nothing in the videotape touched the private life of the individuals concerned as it was taken during work hours and in the workplace.

Courts will examine the preponderance of the disadvantages for the employee and the employer and what kind of damages would the rejection of the evidence cause to the employer. It will usually take the position that it would cause an unquestionable injury if the employer otherwise would not have at his disposal any other means of evidence against the perpetrator of the damages caused to his property. In *Bombardier inc. Canadair and Association internationale des machinistes et des travailleurs de l'aérospatiale, loge d'avionnerie de Montréal, loge 712*,

CTC/FTQ,⁹ the arbitrator found to be admissible evidence from video surveillance tapes in the bathroom used by the employer to catch the employee who had been repeatedly clogging the toilet. Considering the recent renovation work made by the employer in the bathroom to repair the damages previously caused by the employee, the arbitrator felt that the employee was even less able to claim a violation of his right to privacy, knowing that the problem was being followed closely by his employer. A violation of privacy may be justified by a situation of need, that is to say impossibility of acting differently. The arbitrator considered the fact that the employer had no other means of proof at his disposal, unless it was to follow the employee each time he went to the bathroom, which would constitute an abuse of right. The presence of a camera constituted the only means of investigation making it possible to identify the individual which was the source of the problem and therefore the evidence was found to be admissible.

The courts have also found that the surveillance of an employee outside the place of work was justified and legal under the circumstances in *Syndicat des chauffeurs de la société de transport de la ville de Laval (C.S.N.) c. Me Gilles Ferland*.¹⁰ In this case, the surveillance was done periodically and not continuously; it was restricted to certain periods and was carried out in places and circumstances which did not in any way infringe the employee's right to his dignity.

Guidelines for Employers: When and How to Use Video Surveillance

The *Rules for use of surveillance cameras with recording in public places by public bodies* mention it is understood that these rules do not cover surveillance of employee work areas or hospital rooms, because these places are not community spaces generally accessible to the public. Rather, by definition, they are spaces where the individual reasonably expects more privacy and solitude than in public spaces as such. Therefore, an employer may use the rules as an initial guideline but an analysis of the jurisprudence rendered on the right of employers to use video cameras to watch their employees either in the workplace or outside the workplace shall be made.

Video Surveillance in the Workplace

In many cases in which the employer is the victim of acts of theft or vandalism, the courts have found that the employer has the right to install cameras in his establishment with a goal of dissuading the crimes by filming strategic places, and as long as that does not aim to supervise the employees or control their work or their productivity.¹¹ Employers have been justified to have installed cameras to monitor: the

cafeteria of an establishment after having been the target of many thefts and acts of vandalism;¹² a store where cameras were oriented toward strategic places (the cashier's section and the exit) to avoid thefts;¹³ a Basilica to avoid thefts and acts of vandalism;¹⁴ and a bathroom to catch the individual who had been clogging the toilet with toilet paper on many occasions.¹⁵

When authorized, the use of cameras by employers must be in direct and immediate relationship to an urgent need, such as to the prevention of thefts or acts of vandalism and the following principles must be followed:¹⁶

- The monitoring by surveillance cameras must be based on real and serious reasons. The employer must show that there is a real and current or contemporary problem, which is also substantial and continuous.
- A strong probability that the monitoring by surveillance cameras will help to regulate or elucidate the problem must exist.
- A direct correlation must exist between the problem which one seeks to solve and the use that one makes of a camera.
- The monitoring must infringe as little as possible upon the right of an employee to execute his functions without being constantly filmed by the surveillance camera.

The courts have also allowed an employer to hire a private investigator to monitor an employee that the employer suspected of consuming beer during work hours in *Société parc-auto du Québec et syndicat des travailleurs et travailleuses des stationnements de Québec (CSN)*.¹⁷ The fact that the employer had good reasons to be concerned with the plaintiff's behaviour since his duties always took him longer to achieve and, especially, since another employee complained that he did not want to work with the plaintiff anymore because he would force him to drink beer during working hours were taken into account.

In certain cases, the courts will find that the use of the cameras constitutes an unjust and unreasonable working condition if the employer does not show sufficient reasons justifying the constant filming of employees at work, monitoring their actions systematically.¹⁸ Also, a current and continuous problem requiring an investigation by video monitoring shall exist at the time that the surveillance starts.

In *L'union des routiers, brasseries, liqueurs douces et ouvriers de diverses industries, section locale 1999 c. La brasserie Labatt (Montréal)*,¹⁹ an employer was found to be at fault using video monitoring hidden in the locker room of the packing department following several events of sabotage which had occurred on February 18, 1997 during the negotiation of a collective agreement. The incidents of

sabotage finished with the conclusion of the collective agreement on February 26. The monitoring began only on March 17. The union plead that the employer, by installing video cameras hidden in the locker room of the packing department, acted in an abusive way and violated the rights and freedoms of the employees. The arbitrator put the emphasis on the necessity to have a direct link between the video monitoring and the investigation which the employer carried out. The arbitrator took the position that when the video monitoring started, there was not a current and continuous problem requiring an investigation by video monitoring as the collective agreement was already concluded and no more incidents of sabotage took place. Consequently, he concluded that the employer should not be using surveillance cameras since he did not establish that it was reasonable in the circumstances to carry out the monitoring of the employee locker room.

Video surveillance outside the Workplace

The video surveillance of daily activities of employees may sometimes be an effective and conclusive way of verifying the good faith of an insured who has filed a claim for disability insurance. Such surveillance can also be used in damage claims where the employee in an action for bodily injuries claims lost income as a result of alleged functional limitations which may appear doubtful. This method often allows employers to uncover fraudulent claims by discovering the performance of activities which are incompatible with the employee's complaints made during medical examinations carried out at the insurer's request. We have noticed in recent years that our courts are less and less reluctant to admit such evidence where the insured's credibility is in doubt.

In *Fraternité des policiers de Lachute inc. c. Ville de Lachute*,²⁰ the employer was entitled to film his employee without his knowledge during his sick leave, while he was devoted to certain personal activities at his place, outside his residence, but on his property. The arbitrator concluded that the videotapes should be admissible because it was not susceptible to discredit the administration of justice. The employee, even if he was on his property, was outside of his house and could be seen by neighbours and people passing by. The investigator did not hide himself but he filmed from his vehicle which was parked on the public street in front of the house.

In *Le syndicat des travailleurs (euses) de Bridgestone Firestone de Joliette (CSN)*,²¹ the Court of Appeal allowed into evidence video surveillance of the daily activities of an employee whose honesty was seriously questioned. The employee fell at work and consulted a doctor who provided him with a sick leave certificate after having been diagnosed with a contusion to the hip, although the

employer's nurse and the employer's doctor each did not notice any contusion or any physical anomaly. Sensing fraud, the employer decided to hire private investigators to conduct daily surveillance at regular intervals over a period of a few weeks. The results of the surveillance revealed that the employee was performing normal activities, although he continued to complain of significant functional limitations. The employee was suspended pending an investigation and eventually dismissed for having lied about his physical condition in order to extend his period of disability. The arbitrator's decision and the judgment of the Superior Court seized with a grievance for dismissal, the arbitrator had to rule on the admissibility in evidence of the surveillance: he allowed the videotapes to be used as evidence, given that the employee had been filmed in public, rather than in private places. Under judicial review, the Superior Court concluded that a surveillance of the employee did not constitute an abusive exercise of rights since, by filing a work-related accident claim, the employee had implicitly waived his right to privacy and allowed a reasonable investigation to be carried out. The Court of Appeal also confirmed that the videotapes were admissible in evidence since the surveillance may be justified on reasonable grounds and that not every instance of surveillance of an employee outside the workplace is illegal.²² In light of the principles set forth by the Court of Appeal in this case, a surveillance will, therefore, be justified if it satisfies the following criteria:

- there must be a link between the measure taken by the employer and what is necessary for the proper operation of the business;
- the decision to put an employee under surveillance must not be arbitrary;
- the employer must have serious grounds to question the employee's honesty before putting him under surveillance;
- the surveillance must appear necessary in order to verify the employee's behaviour; and
- the surveillance must be carried out with as little intrusion as possible.²³

In the 2001 case, *Syndicat des chauffeurs de la société de transport de la ville de Laval (C.S.N.) c. Me Gilles Ferland*,²⁴ the Superior Court was seized by a request for judicial review of an interlocutory judgment allowing the reception of proof of a video spinning mill of an employee during his sick leave. The employer wanted to confirm his doubts with regard to the real state of health of his employee. The company made the decision to proceed to use a video spinning mill only after having considered

several elements which raised important doubts with regard to the good faith of the employee. For instance, the employee had been absent from work on many occasions right before the incident; he had received the full amount of his wages during his work stop; the employee was claiming to be suffering from important symptoms; and the circumstances in which he inflicted himself a lumbar distortion were strange. The investigators monitored the employee and collected his image when he was outside his residence and thus likely to be seen by neighbours and passers by. Under these conditions, the employee could not reasonably expect the integral respect of his private life. The arbitrator thus concluded that the gravity of the violation of the right to private life was not particularly important.

As for the possibility of obtaining the proof sought by another means, the referee expressed the opinion that it would have been difficult for the organization to make this proof differently. The confirmation of the doubts of the employer could not be obtained differently than by the monitoring of the actions of the employee. The Court of Appeal applied the principle developed in the decision *Le syndicat des travailleurs(euses) de Bridgestone, Firestone de Joliette (CSN) c. Bridgestone/Firestone Canada inc.*,²⁵ that an evidence resulting from video surveillance outside the workplace of the employee can be admissible, in certain circumstances, if such surveillance is justified by rational grounds and if it is conducted in a reasonable manner and found that the employer had reasonable grounds to film his employee outside his workplace.

Management of Surveillance

(a) Adoption of Policy on Use of Camera Surveillance

Once a decision is made to use a surveillance system, the employer should create and implement a comprehensive written policy for the operation of the surveillance system which would govern the use of the system's equipment. The policy should address the location of the recording equipment, detail which personnel are authorized to operate the system, the times when surveillance will be in effect, and the location of reception equipment (the place where audio, visual or other signals received through the system will be monitored). Where the system creates a record, the policy should also deal with retention of the data. The policy should designate one, preferably senior person to be in charge of the system. Any power for that person to delegate his role should be limited, and should include only other senior staff. Employees and contractors (and contractor's employees) should sign written agreements as to their duties under the policy, which would include strict confidentiality provisions.

(b) The Layout of Camera Surveillance

In designing a surveillance system and installing cameras, an organization should identify the strategic areas which would minimize the risk of vandalism or theft if video surveillance is used to protect the property of the employer.

In order to respect the privacy obligations provided by the law, the employer has to monitor the area to protect in a manner which will violate as least as possible the rights of his employees.

If the camera is filming a different area than the area which the employer is attempting to protect following thefts or acts of vandalism, the employer will be prohibited to use video surveillance. In *L'association des techniciennes et techniciens en diététique du Québec and Centre hospitalier Côte-des-Neiges*,²⁶ the arbitrator took the position that the employer was faulty in the way that he had installed his camera as he was filming certain employees (the office of the technicians) instead of the safe where five thefts had occurred within a short period of time.

In another case, the arbitrator took into account the way in which the camera was installed prior to accepting into evidence the installation of surveillance cameras in a bathroom to catch the individual who has been clogging the toilet with toilet paper. In *Bombardier inc. Canadair and Association internationale des machinists et des travailleurs de l'aérospatiale, loge d'avionnerie de Montréal, loge 712, CTC/FTQ*,²⁷ the camera was installed in a way so that no one could ever see anyone using a lavatory, although it was possible to see the part where the roll of toilet paper was placed in the cabinet which caused problems.

In *Manufacture de Lambton Limitée c. Syndicat des salaires de manufacture Lambton*,²⁸ an employer was found justified to have installed cameras to monitor the cafeteria of his establishment after having been the target of many thefts and acts of vandalism. It was neither a continuous monitoring nor of an employee in particular. The cameras did not include a zoom and recorded in a sporadic manner. The cameras while being fixed were directed towards the entry and the exit legitimately aimed at preventing these thefts and at dissuading the criminals. The arbitrator came to the conclusion that the installation of the cameras was reasonable and justified in the circumstances.

In *Syndicat démocratique des employés de commerce Saguenay Lac-St-Jean c. Potvin & Bouchard inc.*,²⁹ cameras oriented toward the cashier's section and the exit were installed to visualize the strategic places and to avoid thefts. The arbitrator took the position that the employer had the right to install cameras in his establishment with

an aim of dissuading the crimes by filming strategic places. In this case, employees were not monitored continuously but only sometimes seen by the camera.

On the other hand, courts will usually refuse to allow employers use of surveillance cameras if their orientation does not target the safety of the installations, but rather, the control and the permanent and constant monitoring of the employees.³⁰

(c) Guidelines Regarding Surveillance Records

If the surveillance system creates a record, all tapes or other storage devices (such as computer disks or chips) that are not in use should be stored securely in a locked receptacle located in a controlled access area. Access to the storage devices should be possible only by authorized personnel. Logs should be kept of all instances of access to, and use of, the recorded material.

Recorded information should be routinely erased where no incident has been reported, or where viewing the recorded information reveals no incident, according to a standard schedule. When the recorded information reveals an incident that contains personal information about an individual, and the employer uses this information to make a decision that directly affects the individual, it may be prudent to keep this information for a period of three years after the decision is made.

The employer must securely dispose of old storage devices. The storage media should be shredded, burned or magnetically erased.

An individual who is the subject of surveillance has a right to request access to his or her recorded personal information under the Québec Privacy Law. Therefore, the employer's policies and procedures should be designed to accommodate this right to seek access.

(d) When to Grant Access to Video Surveillance Tapes

As a general rule, organizations should be granting access to videotapes which contain personal information of the requestor.³¹ Still, employers are not obligated to grant access to a video surveillance tape if the document (tape) has an effect or will be used in judicial proceedings according to s. 39(2) of the Québec Privacy Law. In *Morin Sylvio Jr. c. Assurance-vie Desjardins-Laurentienne*,³² the complainant requested various documents concerning a work accident, including a videotape. The defendant objected to producing these documents invoking the exception pursuant to s. 39(2) of the Québec Privacy Law. The CAI concludes that no proceedings were in place, and that the possibility of proceedings was not sufficient to

invoke this exception. As such the CAI ordered that the documents be produced. In *David Leroux c. Shermag*,³³ the complainant requested a videotape which contained footage of him in his daily activities. His employer held this tape and was intending to use it as evidence during a proceeding, regarding the complainant's status as an injured worker. The CAI felt that the employer was within his rights to withhold the tape in question pursuant to s. 39(2) of the Québec Privacy Law.

Conclusion

The CAI has done extensive analysis and policy development with regards to the use of video surveillance in the public sector. Upon the recommendation of the CAI, private sector organizations should also follow these guidelines when they consider using video surveillance in Québec. The guidelines do not cover surveillance of employee work areas. Therefore, an employer may use the rules as an initial guideline but an analysis of the case law rendered on the right of employers to use video camera to watch their employees either on the workplace or outside the workplace shall be made.

Video surveillance of employees is permitted in certain circumstances. To decide on the admissibility of videotaped evidence, the courts have to balance employees' interest in protecting their right to privacy against the right of employers to investigate suspected misconduct or to protect their property.

The use of cameras by employers must be in direct and immediate relationship to an urgent need such as to the prevention of thefts or acts of vandalism (and not aim at supervising the employees or controlling the work or the productivity of employees); the monitoring by surveillance cameras must be based on real and serious reasons, a strong probability that the monitoring by surveillance cameras will help to regulate or elucidate the problem must exist; a direct correlation must exist between the problem which one seeks to solve and the use that one makes of a camera; and the monitoring must infringe as little as possible upon the right of an employee to execute his functions without being constantly filmed by the surveillance camera.

The video surveillance of daily activities of employees may sometimes be an effective and conclusive way of verifying the good faith of an insured who has filed a claim for disability insurance. We have noticed in recent years that our courts are less and less reluctant to admit such evidence where the insured's credibility is in doubt and that such surveillance will be justified if: there is a link

between the measure taken by the employer and what is necessary for the proper operation of the business; the decision to put an employee under surveillance is not arbitrary; the employer has serious grounds to question the employee's honesty before putting him under surveillance; the surveillance appears necessary in order to verify the employee's behaviour; and the surveillance is carried out with as little intrusion as possible.

Once a decision is made to use a surveillance system, the employer should create and implement a comprehensive written policy for the operation of the surveillance system which would govern the use of the system's equipment. In designing a surveillance system and installing cameras, an organization should identify the strategic areas which would minimize the risk of vandalism or theft (if video surveillance is used to protect the property of the employer). The employer has to monitor the area to protect in a manner which will violate in the least possible way the privacy rights of its employees.

Recorded information should be routinely erased where no incident has been reported, or where viewing the recorded information reveals no incident, according to a standard schedule. The employer must securely dispose of old storage devices and access to the videotapes by the individual who is the subject of surveillance should be granted unless the tape has an effect or will be used in judicial proceedings.

¹ CSN (Confédération des syndicats nationaux), Mémoire présenté à la Commission d'accès à l'information dans le cadre d'une consultation générale à l'égard du document intitulé : « L'utilisation de caméras de surveillance par des organismes publics dans les lieux publics », September 4, 2003, <<http://www.csn.qc.ca/memoires/mem-camera-09-2003.html>> (last access on February 22, 2007).

² *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q., c. P-39.1.

³ *X c. Services Préhospitaliers Laurentides-Lanaudière Ltée*, AZ-97151060.

⁴ Sections 7 and 8 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982* (U.K.), 1982, c. 11 are also to the effect that privacy is a fundamental human and civil right that has constitutional dimensions.

⁵ Article 46 states the following: "Every person who works has a right, in accordance with the law, to fair and reasonable conditions of employment which have proper regard for his health, safety and physical well-being".

⁶ The public character of the place is due to its accessibility to the entire community. Streets, public parks, playgrounds, public transit systems, and common areas of educational institutions and hospitals will certainly be classified as "public places", to cite only these examples.

⁷ Public bodies are those defined in ss. 3 to 7 of the Québec Privacy Law respecting access to documents held by public bodies and the protection of personal information. For example, they in-

clude municipalities (including their police departments), school institutions, educational institutions and transit authorities.

⁸ T.A., September 1999, AZ-99141283.

⁹ [1996] T.A. 251, 1996-01-12, AZ-96141065, D.T.E 96T-375.

¹⁰ C.A., January 31 2001, AZ-01019038.

¹¹ See *Liberty Smelting Works (1962) et Syndicat international des travailleurs unis de l'automobile, de l'Aéronautique, l'aéronautique et des instruments aratoires d'Amérique*, s. 1470, S.A.G. 5430, August 23, 1972, Guy Dulude, arbitrator.

¹² *Manufacture de Lambton Limitée c. Syndicat des salaires de manufacture Lambton*, T.A. 2001-8493, AZ-50193783 (2003).

¹³ *Syndicat démocratique des employés de commerce Saguenay Lac-St-Jean c. Potvin & Bouchard inc.*, CG-11326-60-05, AZ-50347593, December 13, 2005, Carol Girard, arbitrator.

¹⁴ *Syndicat des travailleuses et travailleurs de la Fabrique Notre-Dame –CSN c. Fabrique de la Paroisse Notre-Dame*, T.A. 416, December 9, 2005, AZ-50347342.

¹⁵ In *Bombardier inc. Canadair and Association internationale des machinists et des travailleurs de l'aérospatiale, loge d'avionnerie de Montréal, loge 712, CTC/FTQ*, [1996] T.A. 251, 1996-01-12, AZ-96141065, D.T.E 96T-375. In this case, the presence of a camera constituted the only means of investigation making it possible to identify the individual which was the source of the problem.

¹⁶ These principles were set forth in : *Syndicat des cols bleus regroupés de Montréal, section locale 302 and Montréal (Ville de) (arrondissement Côte-St-Luc – Hampstead –Montréal Ouest)*, T.A. 2004-2269, April 14, 2005, D.T.E. 2005-507.

¹⁷ T.A., September 1999, AZ-99141283.

¹⁸ T.A. 2004-2269, April 14, 2005, D.T.E. 2005-507.

¹⁹ T.A. 99-00742, Ref. 99T-402 (Foisy).

²⁰ [1995] T.A. 95-02804, arbitrator Côté.

²¹ *Le syndicat des travailleurs(euses) de Bridgestone-Firestone de Joliette (CSN) c. Bridgestone/Firestone Canada inc.*, [1999] J.Q. no 3026 (QL), [1999] R.J.Q. 2229 (C.A.), Justices LeBel, Baudouin and Thibault.

²² In this regard, the court referred to decisions rendered by the Supreme Court with respect to unreasonable searches and seizures. For example, in the case of *R. v. Edwards*, [1996] S.C.J. No. 11 (QL), [1996] 1 S.C.R. 128, the Supreme Court stated that the right to challenge the legality of a search or seizure depends on whether or not the accused had a reasonable expectation of privacy. The Court further stated that a reasonable expectation of privacy must be determined on the basis of all the circumstances.

²³ Among other things, the measure must not infringe the employee's right to his dignity, as occurred in a case where the employee had been filmed while in his bedroom.

²⁴ C.A., January 31, 2001, AZ-01019038.

²⁵ [1999] J.Q. no 3026 (QL), [1999] R.J.Q. 2229 (C.A.).

²⁶ AZ-93145289.

²⁷ [1996] T.A. 251, 1996-01-12, AZ-96141065, D.T.E 96T-375.

²⁸ T.A. 2001-8493, 2003, AZ-50193783.

²⁹ CG-11326-60-05, December 13, 2005, Carol Girard, arbitrator, AZ-50347593.

³⁰ See *Syndicat national des travailleurs du papier façonné de Windsor inc. c. Atlantic. Produits d'emballage ltée, Windsor, Québec*, T.A. 2003-2877, D.T.E. 2004T-946, August 19, 2004, AZ-50270445; and *Syndicat des cols bleus regroupés de Montréal, section locale 301 and Ville de Montréal (Ville de) (arrondissement Côte-St-Luc – Hampstead –Montréal Ouest)*, T.A. 2004-2269, April 14, 2005, D.T.E. 2005-507.

³¹ *X c. Services Préhospitaliers Laurentides-Lanaudière Ltée*, AZ97151060 and *Boyer Martin c. Casino de Montréal*, AZ-97151306.

³² *Morin Sylvio Jr. c. Assurance-vie Desjardins-Laurentienne*, AZ-50002573.

³³ *David Leroux c. Shermag*, AZ-5031139 (2005).