



CENTREPIECE

Workplace Surveillance

By Linda McKay-Panos and Mira Kunes

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Mira Kunes was a student-at-law articling with ACLRC at the time this was written. More information about privacy may be obtained from our publication Privacy Handbook for Canadians: Your Rights and Remedies by ACLRC.

Almost daily, we learn about another powerful development in technology that will permit us to invade the privacy of those around us. Existing workplace technology permits computer keystroke monitoring, Internet connection monitoring, monitoring application usage (e.g., which applications or programs a person is using on his or her computer), taking snapshots of a person’s computer screen at varying time intervals, e-mail monitoring and others. Closed circuit cameras, telephone recordings, use of Global Positioning System (“GPS”) tracking devices, and radio frequency identification devices to broadcast a worker’s exact location are also available to employers. It is perhaps understandable that some of this technology is attractive to employers. For example, employers may wish to prevent inefficiency by blocking internet access. Time spent repairing viruses incorporated into workplace computers during web browsing is also counterproductive. Other reasons for workplace surveillance include theft prevention, worker safety and security, prevention of offensive conduct, knowledge management, and worker productivity.

Robert Half Technology released a survey in 2007 of 270 Canadian Chief Information Officers working at firms

with 100 employees or more. Of these, 34% had corporate policies on acceptable web browsing by employees, 18% had guidelines as well as software that blocked certain internet content and 30% had no policy to limit web browsing (CBC News, “61% of companies monitor workers web surfing: survey” (19 April 2007) online: CBC News www.cbc.ca/technology/story/2007/04/19/work-websurfing.html).

The wide availability and use of technology raises the issue of invasion of privacy of workers. Leaving aside the morality of and effect of using such technology on worker morale, what does Canadian law currently say about worker privacy and surveillance? The analysis starts with the principle that privacy is a basic human right. This has been recognized in a number of United Nations international rights documents. For example, the *Universal Declaration of Human Rights* states in article 12 that:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

In *R. v. Dyment*, [1988] 2 S.C.R. 417 at 427-28, the Supreme Court of Canada recognized that “privacy is at the heart of liberty in a modern state” and “is essential for the well-being of the

individual.” The Court (at 428) recognized that each person has three “zones of privacy”: territorial (in our homes), personal (privacy of our bodies) and informational (information about ourselves). Thus, it is clear that privacy is a fundamental value and a basic human right in Canadian society.

In Canada, there are federal and provincial laws that provide privacy protection—applicable to the government and, in some cases, to private individuals and companies. While the *Canadian Charter of Rights and Freedoms* does not explicitly mention the right to privacy, sections 2, 7, 8, 10, 11, 13 and 15(1) have been interpreted by Canadian courts to include such a right. Workplace privacy is not directly addressed in any of the various provincial or federal employment standards or labour relations legislation, but Canadian personal privacy legislation has been applied to limit such surveillance (Levin, Foster, Nicholson, and Hernandez, *Under the*

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Staff and Volunteers

We have been busy these past few months. **Natalie Simpson** joined us for a four month article. We continue to work on a joint Anti-Racism Education project with the Committee on Race Relations and Cross Cultural Understanding: **Pamela Dos Ramos**, **Wilma Dawson** and **Brenda Johnston** are working on this. Education practicum student **Brendon Wood** joined us this fall also.

We are fortunate to be working with excellent volunteers for the last few months—including **Rose Geransar**, **Amina Oshua**, **Kelly Meier**, **Sonya Clark**, **Johanna Dias**, **Brenda Kwan**, and **others**. In addition, thanks to the following people who assisted us with our One Origin Conference in November: **Abeer Anwar Al-Saegh**, **Gwen Blue**, **Niklas Bobrovritz**, **Linda Carreiro**, **Deanna Cerny**, **Helene Childs**, **Kerry Cundal**, **Cassandra Fera**, **Gina Freeman**, **Julia Gounce**, **Stan Godlovitch**, **Jordan Hannah**, **Mary Hemmings**, **Jennifer Koshan**, **Chris Levy**, **Gina Loitz**, **Melissa Luhtanen**, **Tehmeena Malik**, **Linda McKay-Panos**, **Brie Mckenzie**, **Scott McLedon**, **Ndidi Metuh**, **Farah Mohamed**, **Carolina Niewola-Staszkowski**, **Noelle Orton**, **Amina Osuoha**, **Melanie Panos**, **Dave Pelton**, **Mireille Perron**, **Chris Powell**, **Melissa Pownall**, **Julie Quinn**, **Brandon Reid**, **Allison Russell**, **Aarti Shankar**, **Linda Shorting**, **Natalie Simpson**, **Oksana Suchowersky**, **Kenny Thompson**, **Thushanthini (Thushi) Thavaratnam**, **Stephanie Williscroft**, and **Michael Wylie**. Special thanks to the Faculty of Fine Arts, the Nickle Arts Museum, **Margo Clendening**, **Arthur Nishimura**, **Richard Smolinski**, and **Michelle Wong**.

-Linda McKay-Panos

UPCOMING EVENTS

Offensive Speech: What's Legal? What's Ethical?

Thursday, January 24, 2008 5:30 to 8:30 pm

2nd floor, Kahanoff Centre 1202 Centre Street S

Free Event: Supper Served

Panel: Alan Borovoy, Stephen Ward and Michael Vonn

Register by calling Elaine at 244-6666 (Chumir Foundation) or online at www.chumirethicsfoundation.ca

Round Table Discussion on Offensive Speech

Friday January 25, 2008 11:30 am to 2:00 pm

4365 Murray Fraser Hall

University of Calgary

By Invitation Only

For Information, call Elaine at 244-6666 or Stephanie at 220-2505

Centrepiece

c/o

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We would like to hear from readers!

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Radar? The Employer Perspective on Workplace Privacy (June 2006) Ryerson University, online: Ryerson College www.ryerson.ca/faculties/business/news/archive/UnderTheRadar.pdf ("Under the Radar"). Private sector rights are covered under the federal *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5 ("*PIPEDA*"). In addition, Alberta, British Columbia and Quebec have enacted legislation that is substantially similar to the *PIPEDA*, and which applies to private sector privacy in those provinces.

In general, Canadian law has recognized that employers in the private sector may monitor their employees. At one time, Canadian law provided that employers had the right to use surveillance so long as employees did not have a reasonable expectation of privacy in the context. Thus, if employees were notified that they were being watched, the surveillance would be legal. Legal scholars argue that Canadian law is gradually shifting from the workers' reasonable expectation of privacy to a determination of whether the surveillance was reasonable (Michael Geist, "Computer and E-mail Workplace Surveillance in Canada: The Shift From Reasonable Expectation of Privacy to Reasonable Surveillance" (2003), 82(2) *Canadian Bar Rev.* 151 at 154 ("Geist")). The idea of reasonableness first emerged in labour arbitration cases, and is now also contained in personal privacy legislation, which requires that privacy invasive measures be reasonable (Under the Radar, at 22). In Quebec and Europe, legislators use a dignity approach to workplace surveillance: the human right to dignity manifests itself as the right to a private life. This right exists in an employment relationship and is considered violated if worker surveillance for productivity purposes is implemented (Under the Radar at 21-2).

There are a number of Canadian legal decisions and labour arbitration cases involving workplace surveillance that illustrate the development of the law. Summaries of some of these decisions follow.

Labour Arbitration Boards

One of the first labour arbitrations to consider the issue of workplace privacy rights was a British Columbia decision, *Re Doman Forest Products Ltd*, Local

1-357 (1990), 13 L.A.C. (4th) 275. The arbitrator had to rely on principles developed under *Charter* cases (as *PIPEDA* was not yet enacted) to decide if videotape evidence was admissible in the case of an employee alleged to have abused sick leave. The arbitrator found that the right to privacy was not absolute and it must be judged against what would be reasonable in the circumstances and pointed to three considerations for determining reasonableness:

- 1) whether it was reasonable to request a surveillance;
- 2) whether the surveillance was conducted in a reasonable manner; and
- 3) whether any other alternatives to surveillance were available to the employer.

The arbitrator admitted the videotape surveillance evidence. The *Doman* decision was cited with approval in many future cases.

Another leading arbitration decision was *Re St. Mary's Hospital and H.E.U.* (1997), 64 L.A.C. (4th) 382. An electrician found a cable that led to a video camera above a ceiling tile in a room and reported it; the local union filed a grievance when it found out about this surreptitious surveillance. The arbitrator found that surveillance may be characterized in three ways:

- 1) benign surveillance – used in employee training sessions or similar circumstances, for the benefit of employees. This type of surveillance requires little justification from employers.
- 2) security surveillance – open cameras designed to protect the security of both employees and the employer, which are installed with the implicit consent of the workers and are apparent to all.
- 3) surreptitious surveillance – has the greatest effect on employee privacy and requires a strict justification from the employer, particularly if the surveillance is not targeted at specific individuals, but is general in nature.

This decision provides us with a sense of how competing employer and employee interests are balanced in Canadian labour arbitrations: surveillance will be allowed if a substantial problem is identified, the surveillance will solve the problem, alternate approaches have been unsuccessful, and surveillance was done in a fair and even-handed manner (Geist at 174).

Privacy Commissions (Federal and Provincial)

With the enactment of the *PIPEDA* in 2001, the opinions and decisions of the Privacy Commissioners (federal and provincial) have increased in significance because they are the first ones to deal with complaints under the legislation (Geist at 175). The current federal Privacy Commissioner, Jennifer Stoddart, set out four factors used to determine whether workplace surveillance is reasonable (Jennifer Stoddart, "Finding the right workplace privacy balance" (Address given by the Privacy Commissioner of Canada at the Ryerson University Workshop on Workplace Privacy, 30 November 2006), online: www.privcom.gc.ca/speech/2006/sp-d_061130_e.asp):

1. Is the monitoring demonstrably necessary to meet a specific need?
2. Is it likely to be effective in meeting that need?
3. Is the loss of privacy proportional to the benefit gained?
4. Is there a less privacy-intrusive way of achieving the same end?

In a 2003 complaint, this four-part test was used to find that the complaint about installation of video cameras at a company railway yard was well-founded (*PIPEDA Case Summary #114: "Employee Objects to Company's Use of Digital Surveillance Cameras"*, (23 January 2003), online: < http://www.privcom.gc.ca/cf-dc/2003/cf-dc_030123_e.asp)) Although cameras had been installed to reduce vandalism and theft, and increase staff security, the Commissioner found the company did not have a real problem, but only the potential for one. Therefore, in this case, the cameras were not necessary or particularly effective.

Similarly, in a case in 2004, the Federal Privacy Commissioner ruled that video surveillance was not justified where a railway company had used the zoom capacity on cameras to find out if two employees had been going off-site during work hours (*PIPEDA Case Summary #265: "Video cameras in the workplace"*, (26 April 2004), online: < http://www.privcom.gc.ca/cf-dc/2004/cf-dc_040219_02_e.asp). The employees were disciplined after the company used video cameras (used normally for

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- continued from page 3 operational purposes) to determine that they were leaving company property during regular working hours. The Commissioner found that no problem with unauthorized absences had previously existed with respect to the workers, and the company had not tried any less intrusive means to manage the matter.

In contrast, that same year, the Privacy Commission dismissed a complaint, in part about video surveillance on a company's property where locomotives are repaired and overhauled (*PIPEDA Case Summary #264*: "Video cameras and swipe cards in the workplace", (26 April 2004), online: www.privcom.gc.ca/cf-dc/2004/cf-dc_040219_01_e.asp). The Federal Commissioner upheld the video surveillance because there was a problem with damage to company property, the cameras pointed only to access points within the workplace, recordings were stored only for a limited time, and there was no intent to use the surveillance to monitor productivity (S. Anderson, "Alberta's Statutory Privacy Regime and its Impact on the Workplace" (2006), 43 Alta. L. Rev. 647 at para. 73).

A recent case about GPS technology made it clear that the Privacy Commissioner's biggest concern was that the company used GPS as an employee surveillance tool rather than to manage workforce productivity, ensure safety and development, and to protect and manage assets as argued by the company (*PIPEDA Case Summary #351*: "Use of personal information collected by Global Positioning System considered", (9 November 2006), online: www.privcom.gc.ca/cf-dc/2006/351_20061109_e.asp). Several employees of a telecommunications company brought the complaint after they found out that their employer was installing GPS into their work vehicles. The Commissioner used the four-part test to assess the appropriateness of using GPS to meet the company's stated purposes. The Commissioner found that the test was satisfied, but stated that GPS should not be routinely used to monitor how well workers are doing their jobs. To address this, the company agreed to implement a policy; this satisfied the Commissioner.

Under *Alberta's Personal Informa-*

tion Protection Act (PIPA) S.A. 2003, c.P-6.5, surveillance may be permitted without consent if the means used are demonstrably necessary to solve a problem (like fraud, theft, or collections of a debt) or to investigate whether there has been a breach of a collective agreement or employment contract. Two 2005 cases dealing with investigations of theft are: *Hoffman Holdings (Report of an Investigation into Collection and Use of Personal Employee Information without Consent* (13 May 2005), P2005-IR-004 (*R.J. Hoffman Holdings Ltd.*), online: www.oipc.ab.ca/ims/client/upload/P2005_IR_004May13.pdf) and *Precision Drilling (Report of an Investigation into the Collection and Use of Personal Employee Information* (4 November 2005), P2005-IR-009 (Precision Drilling Corporation), online: www.oipc.ab.ca/ims/client/upload/Investigation%20Report%20P2005-IR-009.pdf).

The criteria for reasonableness of videotaping in the workplace was examined in *Hoffman Holdings*. An Alberta oilfield maintenance company installed video surveillance cameras (with no audio capability) in plain view in a truck yard, mechanical shop, and front counter (*Hoffman Holdings*, at paras. 5-11). The company had been the target of fire and theft by non-employees prior to the installation. An employee complained that *PIPA* had been contravened and that a private conversation between the employee and another had been intercepted. The Privacy Commissioner's report concluded that because there was no audio capability, there had been no collection of private communication (*Hoffman Holdings*, at para. 11). It also concluded that because there was a legitimate concern about theft and fire, the installation and use of cameras was reasonably necessary to address this concern (*Hoffman Holdings*, at para. 39). In coming to this conclusion, the Privacy Commissioner used a three-step test for reasonableness of the surveillance. He looked at: legitimate needs, effectiveness, and whether the surveillance was reasonably conducted (*Hoffman Holdings*, at para. 35).

Professor Greg Hagen criticized the conclusion on reasonableness in *Hoffman Holdings* because the simple existence of a legitimate concern does not

necessarily mean surveillance is required to address it (G. Hagen, "Surveillance in the Workplace: What is Reasonable?" (2005) 2(11) Can. Priv. L.R. 121 at 123). The Commissioner did not look at further factors such as proportionality or less intrusive means.

In the *Precision Drilling* investigation, an employee of an oilfield service provider submitted a complaint alleging *PIPA* was violated when his employer used data from his truck's "black box" (Event Data Recorder – EDR) to terminate his employment (*Precision Drilling*, at para. 1). The employee, on his way to a drilling rig, crashed the privately-owned truck which he was using for work purposes. The company alleged the employee gave his consent to obtain the black box data; the employee denied this. The Privacy Commissioner concluded that, after analyzing the facts, consent had been given (*Precision Drilling*, at para. 27). However, the Commissioner continued that, had consent not been obtained, the collection of data was still authorized under *PIPA* because the requirements of s. 15(2)(a-c) (dealing with when it is reasonable to collect personal employee information) had been fulfilled (*Precision Drilling*, at paras. 32-33, and 37). The Commissioner did not appear to apply a reasonableness test, and rather simply concluded that because the employee had signed the company's safety policy, "collection of the EDR data is therefore reasonable for the purposes of ensuring compliance with traffic laws and Precision safety policy" (*Precision Drilling*, at para. 32).

The 2005 decision of *Parkland Regional Library* (Order F2005-003 Parkland Regional Library (24 June 2005) Review Number 3016) is significant because it establishes principles that can be used by other tribunals in dealing with electronic surveillance. The case actually involved a complaint under *FOIPP (Alberta Freedom of Information and Protection of Privacy Act)*. The main issue was whether there had been reasonable cause to use surreptitious surveillance and whether there were less intrusive means (Kevin Marron, "Keeping an eye on big brother: Alberta's 'keystroke logging case' sends a clear message that employers must use the

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electronic surveillance of employees with great care, if at all” (2005), 29 (11) Can. Lawyer 50). The library had secretly installed keystroke logging software on the IT employees’ computer because of concerns that he was using it for personal reasons and that he was not being sufficiently productive (*Parkland Regional Library*, at para. 24). The employee had been given permission to do personal banking on his own time, and thus the software would have also collected sensitive banking information as well. The employee discovered the program, uninstalled it, and complained to Alberta’s Privacy Commissioner. Although the case arose under *FOIPP*, the Privacy Commissioner’s analysis included factors (such as necessity, intrusiveness, and legitimate concerns) used in the reasonableness test under *PIPEDA* and *PIPA* to find that the library’s surreptitious monitoring violated *FOIPP*.

Court Decisions

The first workplace surveillance court case, *Eastmond v. Canadian Pacific Railway* (2004), FC 852; 16 Admin. L.R. (4th) 275 endorsed the four-part test established by the Federal Privacy Commissioner. It is the only court case thus far to use the four-part reasonableness test, and only one of two court cases dealing with workplace privacy and surveillance.

The only other workplace surveillance case to reach the courts was that of *Morgan v. Alta Flights (Charters) Inc.* (2005), FC 421, affirmed by the Federal Court of Appeal (*Morgan v. Alta Flights (Charters) Inc.* (2006), FCA 121). The Federal Privacy Commissioner had found that a manager’s attempts to record workers’ conversations in a smoking room by taping a digital recorder under a table were not in contravention of the consent and knowledge sections of *PIPEDA* (*PIPEDA Case Summary #268*: “Electronic monitoring does not yield any information, but practice is strongly discouraged” (16 June 2004), online: www.privcom.gc.ca/cf-dc/2004/cf-dc_040412_e.asp). This was because no conversations had been recorded and the tape had been erased by the employees upon their discovering it. The employee applied for and was granted a judicial review in the Federal Court, which was

affirmed by the Federal Court of Appeal. The facts in this case are unique because it dealt with a failed attempt at collection of personal employee information. Both levels of Federal Court decided that attempts at collection without consent do not violate *PIPEDA*; the Act does not expressly prohibit attempts to collect personal information (*Morgan FCA*, at para.4).

Thus, at a minimum, employers must tell their employees very clearly what will and will not be monitored. However, notifying the employee of the surveillance is not likely to be sufficient; Canadian decision-makers are now looking at whether the surveillance was reasonable. Employers should also try to find the least intrusive way of getting the information they need. Recently, the Federal Privacy Commissioner recommended that consideration be given to adopting a reasonable purposes-based employee approach that incorporates Quebec’s dignity approach to protecting employee personal information (Privacy Commissioner of Canada, “The Privacy Commissioner of Canada’s Position at the Conclusion of the Hearings on the Statutory Review of the Personal Information Protection and Electronic Documents Act (PIPEDA)” (Submission Presented to the Standing Committee on Access to Information, Privacy and Ethics, 22 February 2007) (Office of the Privacy Commissioner of Canada) online: www.privcom.gc.ca/parl/2007/sub_070222_e.asp at 4 (“OPC”). The Commission believes that adopting this concept would enhance the ability to examine the context of a complaint, and thinks it would be valuable when investigating complaints to be able to contemplate broader consequences to more accurately assess the scope of the intrusion and the surveillance on employees. Then, the Privacy Commissioner would have the authority to look beyond the specific application of the technology to make an effective assessment of the intrusion on the employee’s dignity in the work environment as a whole (OPC, at 4). And, since privacy is a basic human right, the dignity approach makes sense.

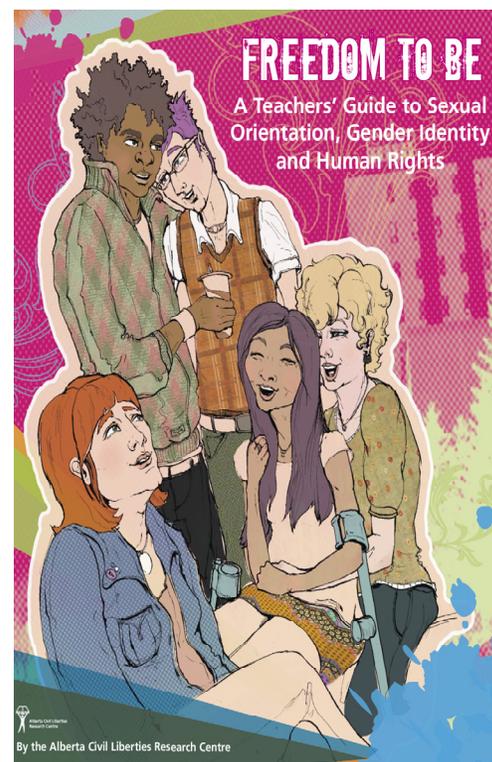
New Publications by ACLRC

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RECENT DVD ACQUISITIONS TO THE ACLRC VIDEO LIBRARY

by Stephanie Willisroft

We have recently acquired some National Film Board DVDs to bring our video library into the 21st century. Below are descriptions of these latest acquisitions. For a complete listing of our videos, visit our website: aclrc.com. If you would like to borrow these DVD's or any videos from our collection, please contact us at (403)220-2505 or via email at aclrc@ucalgary.ca. Descriptions summarized from NFB catalogue.

APPLES AND ORANGES (17:07)

Duration: 17 min.

Production Year: 2003

Apples and Oranges is designed to raise children's awareness of the harmful effects of homophobia and gender-related name calling, intolerance, stereotyping and bullying. In the course of a lively in-class discussion among elementary students and an equity educator, children's paintings magically dissolve into two short animated stories. The animated stories in the video will help students of all elementary grades explore name calling and bullying. The video in its entirety can be used with children aged 8-12 for learning about families, differences and respect.

BETWEEN: LIVING IN THE HYPHEN

Duration: 44 min.

Production Year: 2005

In Canada, diversity often means "one ethnicity + hyphen + Canadian," but what if you don't fit into an easy category? What if your background is a hybrid of ancestries and you live somewhere between, where cultural identities overlap? *Between* interweaves the experiences of a group of Canadians with one parent from a European background and one from a visible minority. They're all struggling to find a satisfying frame of reference. Cultural identity, it seems, is more complex than what our multicultural utopia implies. Seven individuals share stories of being multi-ethnic in a world that wants to put each person into a single category. The thought-provoking experiences of these Canadians come to life against an innovative visual landscape and soundscape. As globalization increasingly blurs borders, *Between* offers a provocative glimpse of what the future holds: a movement away from hyphens and "pure" bloodlines, towards a celebration of fluidity, hybridity and being mixed.

CRICKET AND THE MEANING OF LIFE

Duration: 51 min.

Production Year: 2005

Cricket...and the Meaning of Life explores identity, nationalism, race and a sport rich with history through the eyes of filmmaker Sanjay Talreja. Filmed in Toronto, Trinidad and India. Like most boys in his native city of Bombay, Talreja's childhood was filled with cricket. As an adult, Talreja struggled to adapt when he moved to Toronto. One day, during a surprise encounter, he discovers a thriving, yet underground, community of South Asian and Caribbean cricket players in the city. Coach Brian Hale not only teaches the rules of the game, he motivates and mentors the young cricketers transforming them from boys into men and from immigrants into Canadians. Hale and his team leave on a life-changing tour to Trinidad. By tapping into this vitality, Talreja finds that cricket is a sport crucial to the identity of many new Canadians, and helps to rekindle his passion for the game in his new country.

FOR ANGELA

Duration: 25 min.

Production Year: 1993

A dramatic story of racism and empowerment, inspired by the experience of Rhonda Gordon and her daughter, Angela. A bus ride changed their lives in a way no one could have foreseen. When three boys harass Rhonda and Angela, Rhonda finds the courage and determination to take a unique and powerful stand against ignorance and prejudice. A great discussion starter on racism and its impact.

ONE OF THEM

Duration: 25 min.

Production Year: 2001

Winner of the Blizzard Award 2001, Best Direction for Short Drama. Freedom from bullying, name-calling and violence motivates the high school seniors in this school-based drama. Jamie is shocked when she and her best friend become victims of homophobic name-calling. But she must face up to her own reactions as she realizes that her friend is "one of them" and needs her support. And Jamie's boyfriend must decide if he will support Jamie. Set firmly in the context of human rights and freedom from

discrimination, *One of Them* raises the questions that high school students talk about in school halls and washrooms. With a focus on homophobia and discrimination, not sexual behaviour, the dramatization prompts viewers to examine their own responses and promote a safe school environment for all students.

QALLUNAAT! WHY WHITE PEOPLE ARE SO FUNNY

Duration: 99 min.

Production Year: 2006

Funny? What's so funny about white people, otherwise known as Qallunaat to the Inuit? Well, among other curious behaviours, Qallunaat ritualistically greet each other with inane salutations, repress natural bodily functions, complain a lot about being cold, and seem to want to dominate the world. In its use of archival clips, *Why White People Are Funny* pokes as much fun at the illustrious history of NFB documentaries as it does at society in the south. *Why White People Are Funny* brings the documentary form to an unexpected place. Those who were holding the mirror up to Inuit culture finally have it turned back on themselves. The result is not always pretty, but it sure is amusing. *Why White People Are Funny* is a humbling portrait of what it must feel like to be the object of the white man's gaze. Fresh and original, this documentary has that rare ability to educate with wit.

RACE IS A FOUR LETTER WORD

Duration: 55 min.

Production Year: 2006

In *Race Is a Four-Letter Word*, director Sobaz Benjamin highlights Canadian contradictions and conflicts around race. Heroically, he exposes himself, too: a black man who grew up hating himself, trying to bleach his skin with chemicals, and then struggling to appreciate the meaning of his culture and heritage as an "Afro-Saxon" Briton, then Grenadian and now Haligonian-Nova Scotian-Canadian. Benjamin strips away the masks and armour of race, of blackness and whiteness, to reveal the vulnerable and human. Sobaz Benjamin showcases the stories of a white man who is culturally and psychologically black; of a black woman who wants to be considered ironically Cana-

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dian; of another black woman who retreats to England rather than continue to face Canada's racial cold war. This brave film forces us to unmask and to look unflinchingly at our real selves.

WALK A MILE: THE IMMIGRANT EXPERIENCE IN CANADA

Duration: 108 min. (4 videos Episode 1 – Identity Episode 2 – Language Episode 3 – Discrimination Episode 4 – Employment)
 Production Year: 1999
 This 4 part series reveals the challenges faced by immigrants who leave all they know behind to make a new home in Canada. The aim of this series, as the title suggests, is for viewers to walk that symbolic mile in the others' shoes and to more readily show understanding and tolerance of the immigrant experience in Canada.

WHY THEE WED

Duration: 50 min.
 Production Year: 2005
 In 2003, British Columbia became the second Canadian province to recognize same-sex marriage. Filmmaker Cal Garingan looks beyond the headlines and introduces the eight couples who challenged the law in court. Why did they plunge into a scorching debate that meant their lives would be publicly judged? What does it mean to them to exchange marriage vows? As controversy swirls around this issue worldwide, *Why Thee Wed?* offers surprising and diverse perspectives on what it means for gay and lesbian couples to walk down the aisle.

ZERO TOLERANCE

Duration: 80 min.
 Production Year: 2004
 Being young is tough, especially if you're Black, Latino, Arab or Asian. In a city like Montreal, you can get targeted and treated as a criminal for no good reason. *Zero Tolerance* reveals how deep seated prejudice can be. On one side are the city's young people, and on the other, its police force. Two worlds, two visions. Yet one of these groups is a minority, while the other wields real power. One has no voice, while the other makes life-and-death decisions. When a policy of zero tolerance to crime masks an intolerance to young people of colour, the delicate balance between order and personal freedom is upset. A blend of cinéma vérité and personal testimonies, this hard-hitting film will broaden your mind and change your way of thinking. In French with English subtitles.

ACLRC Celebrates 25th Anniversary

by Linda McKay-Panos

On December 5, 2007, ACLRC celebrated its 25th Anniversary at the Rozsa Centre, University of Calgary. The afternoon was activity-filled. First, the event was opened with drumming and singing led by Kerrie Moore. Second, we partnered with the Sheldon Chumir Foundation for Ethics in Leadership and the Calgary Committee on Race Relations and Cross Cultural Understanding to provide a panel discussion on why Canada did not sign the *Declaration on the Rights of Indigenous Peoples*. Panelists included University of Calgary Law Professor, Nigel Bankes, University of Saskatchewan Professor and Director of the Native Law Centre of Canada, James (sakej) Youngblood Henderson, and Director, International Relations at the Department of Indian and Northern Affairs Canada, Marilyn Whitaker. Third, ACLRC had its AGM, which included presenting the Civil Liberties Award to Ed Webking (see page 10). Finally, around 100 people helped us to celebrate our 25th Anniversary with a reception. All in all, it was a great day. Thanks to everyone who helped with this event! Below are some pictures of the event, taken by photographer DeAnna Cerny.



Sakej speaking with audience members



Audience listening to guest speakers



Drummer and singer Kerrie Moore



Marilyn Whitaker and Sakej answering questions

*Musicians:
 University of
 Calgary students
 Darryl Carmichael,
 Brennan Kouach,
 Dexon Munroe and
 Dustin Stirling*



**“One Origin, One Race, One Earth:
Genetics, Human Rights and the Next
Phase in Human Evolution”
November 15-17, 2007
University of Calgary**

BY BRIAN SEAMAN



More than 100 registrants representing seven countries (Canada, India, the Netherlands, New Zealand, Norway, the United Kingdom, and the United States) gathered at the University of Calgary November 15-17, 2007 to discuss current legal and ethical issues in the field of medical genetics. An underlying theme that emerged over the course of the 2 and 1/2 day conference was that of equality – equality in terms of access to new and emerging technologies and therapies, access to new diagnostic procedures, and access to prenatal genetic screening for conditions that may either be present at birth or may not manifest themselves until many years later when the person is well into adulthood.

A plenary discussion devoted to the privacy and consent issues that arise in human tissue banking and large-scale genetic research projects brought together speakers representing a large Norwegian biobank, a recently inaugurated biobank in Quebec, and Alberta's tumor bank. There are single genes within the genomes of individuals that are directly linked to diseases such as Huntington's disease. However there are other diseases or conditions such as certain types of diabetes or most, if not all, types of cancer that occur as the result of a combination of genetic and environmental factors. Delegates heard how populational genetic research projects that involve taking DNA samples from large cross-sections of particular ethnic groups or regional or national populations, can be hugely significant in the search for a better understanding of the complex relationship between environmental factors (such as personal lifestyle choices or the presence of toxins in the air we breathe) and our genes. Furthermore, as the head of Norway's largest human DNA bank stressed, findings from such projects can also be a

critical component in the formation of a national health care policy.

Genomics – the study of the entire genome of any carbon-based life forms including human – is about to revolutionize the delivery of health care. As delegates heard during a plenary discussion that centred on issues of ownership and control of human tissue and DNA samples collected for research purposes, the day of personalized delivery of drug therapies is probably no more than two or three decades away. The groundwork for this is being laid now. As the cost of sequencing a person's genome, i.e., decoding the entire genetic code of a single human, continues to decline because of advances in gene sequencing technology, mutations common to a person's ethnicity will be accounted for in the development of pharmaceuticals to enable the more effective delivery of drug therapies. As an organization dedicated to the principle of equal rights, the Alberta Civil Liberties Research Centre supports and welcomes such initiatives as they enhance the quality of human life.

The cap of the weekend for many delegates was a humorous and intriguing talk by author Margaret Atwood, who delivered the conference keynote speech at the closing banquet on November 17. With her characteristic wry wit, Ms. Atwood made allusions to a couple of the fictive genetic experiments she had set out in her 2003 bestseller *Oryx and Crake* and worked into her talk recent news from the field of genetic science, then challenged the audience to try to separate in their own minds the examples of her imaginative creations from actual stories out of the world of science. For those of us who have read *Oryx and Crake*, that was a difficult, if not impossible, task. Her point was made, and well-received by the geneti-

cists, health care professionals, bioethicists, academics and lawyers in attendance. In the world of contemporary genetic science, the line between where science fact ends and science fiction begins can be quite blurry. Ms. Atwood ended her talk with two admonishments: i) maintain a critical and ethical perspective to ensure the proper advance of scientific knowledge and biotechnology; and ii) remain vigilant against the misapplication or misappropriation of such knowledge.

One Origin, One Race, One Earth was the culmination of nearly two years of planning and countless hours of work that originated from discussions two years ago between Conference Co-chair Rose Geransar, a University of Calgary PhD (Health Sciences) student whose research interest lies in the ethical issues surrounding tissue banking for genetic and other health science research, and me.

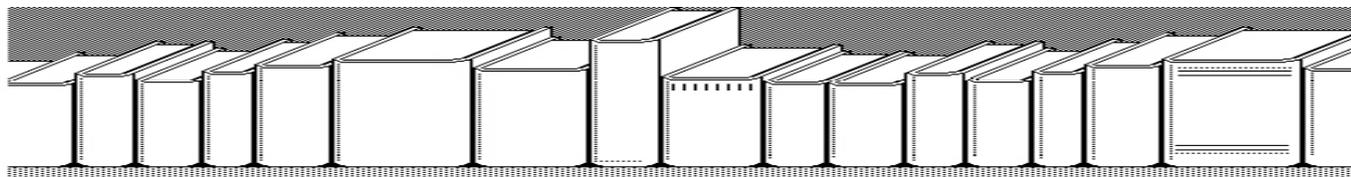
Dr. Gregory Hagen, who teaches law at the University of Calgary, Rose Geransar, and I are currently in the process of assembling a post-conference book that will include some of the papers presented at the conference, augmented by original works that other presenters were working on at the time of the conference.

We have provided a list of the wonderful conference volunteers on page 2.



Dr. Gregory Stock, Brian Seaman, Rose Geransar and Dr. Grant Gillett

Research Centre Publications



Freedom to Be: A Teachers' Guide to Sexual Orientation, Gender Identity and Human Rights. Background information and resources for teachers, and students on lesbian, gay, bisexual and trans-identified youth. Includes applicable laws, suitable for grades 9 and up. 138+ pages. 2008. ISBN# 1-896225-52-7. (\$25 + \$5 s/h)

Annotation of the Human Rights, Citizenship and Multicultural Education Act (2007 Edition). This publication contains the full text of the Alberta Act, as amended, by-laws, regulations, current caselaw and panel decisions. Includes table of concordance, glossary and other resources. 176 pages. 2007. ISBN# 1-896225-54-3. (\$25 + \$5 s/h)

Barriers and Borders: How Canada Manages National Security Through Immigration Legislation. Since 2001, many countries have rushed to implement new immigration and anti-terrorism legislation in the name of increased security, but often without due consideration to their effects on human rights and civil liberties. This study examines Canadian immigration law and the security certificate process in light of the new S.C.C. decision in Charkaoui. 65+ pages 2007. ISBN# 1-896225-31-4 (\$15 + \$5 s/h)

Anti- Racism Resource Kit. This Resource Kit is intended to promote and facilitate anti-racism education, at all levels of the formal education system. The goal is to ensure that every student receives appropriate and effective anti-racism education and support to address personal experiences of racism and enhance safety in self-affirming and productive ways. Includes books, websites and videos for teachers K-12. 130+ pages 2007. ISBN# 1-896225-50-0 (\$25 + \$5 s/h)

Techno-tonomy: Privacy, Autonomy and Technology in a Networked World. Teacher and student material on the nature and value of identity, anonymity and authentication, the constitutional and legal aspects of anonymity and the new technologies which have changed our world. Includes a CD-Rom with interactive student activities, handouts and overheads. Suitable for grade 9 and up. 76+ pages 2007. ISBN # 1-896225-48-9 (\$25 + \$5 s/h).

Refugees and Discrimination: Teacher and Student materials. Background information for teachers, and student activities on refugees in Canada. Includes applicable laws; suitable for secondary school students. 190+ pages. 2006. ISBN# 1-896225-43-8 (\$35 + \$5 s/h).

Family Law: Don't Get Lost in the Shuffle: Adult Handbook. Answers questions that young people have about separation and divorce. Intended to assist adults. Can be used alone or with Don't Get Lost in the Shuffle Cards which may be obtained from CLERC at 207-9029. 32 pages. 2005. ISBN# 1-896225-39-X (\$7 + \$3 s/h)

Adoption Handbook. Answers questions that young people have about adoption. Intended to assist adults. 28 pages. 2006. ISBN# 1-896225-41-1 (\$7 + \$3 s/h)

Religion in Public School— The Alberta Situation. Examines the unique situation in Alberta regarding constitutional protection for prayers in public schools. Looks at this issue in the context of the Charter of Rights guarantee of freedom of religion, which includes freedom from religion. 48 pages. 2004. ISBN# 1-896225-29-2. (\$12 + \$3 s/h)

Butt Out: Smokers and Anti-Smoking Bylaws in Alberta. Despite the fact that several municipalities have passed by-laws that restrict or prohibit smoking in public places, a number of persons continue to smoke. Examines the possible challenges to anti-smoking by-laws, the cases that have involved these challenges and whether there may be an argument that smoking is a disability under the Charter. 38 pages. 2004. ISBN #1-896225-33-0. (\$10 + \$3 s/h)

...but words DO hurt: Stories from GLBTT Youth Video. 30 mins. Young people who identify as GLBTT talk about identity issues, the media, coming out, their family, their experiences in school and their hopes for the future. Some of the biggest obstacles they face include discrimination and name-calling and they share some of these experiences. Includes guidebook. 2005. Order from Comm Media, buymedia@ucalgary.ca ; tel 403-220-3722.

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Dr. Edwin Webking Wins Civil Liberties Award

The following are notes from a speech given by board member Janet Keeping at our International Human Rights Day Event.

On behalf of the Board of Directors of the ACLRC, it is my great pleasure this afternoon to present Dr. Ed Webking with the Centre's 2007 Civil Liberties Award for outstanding leadership in promoting human rights through education and advocacy.

It is hard to imagine a more deserving recipient for the award.

Ed is originally from California, but came to teach in the Political Science Department at the University of Lethbridge in 1973 after working in California and Alaska. He has made Lethbridge and the University of Lethbridge home since then, although during his university career in Canada he has also taught at the University of Ottawa and University of Manitoba. He has also worked as a consultant to the Canadian Human Rights Commission.

Although Ed formally retired from the University of Lethbridge in 1997, he continues to teach there.

Ed's commitment to the advancement of human rights goes way back. I see from his CV that:

* In 1966-67 he worked on an advisory commission of the Governor of Alaska. He was responsible for advising the

Governor on Aboriginal employment needs and opportunities; and

*In 1968-69 Ed was on the Board of Directors of the Alaska Civil Liberties Union.

This commitment has continued through his life. Here are but some examples of the roles he has played with civil liberties and human rights organizations over the years:

*Ed has served as President of the Canadian Rights and Liberties Federation 1980 – 83;

*He has served on the Board of Directors of the Canadian Civil Liberties Association;

*He has served on the Executive of the Alberta Civil Liberties Association; and

*He has been a member of the Advisory Council of the Canadian Human Rights Education and Research Centre at the University of Ottawa.

Ed's support and advocacy for human rights is embedded in an equally profound commitment to the democratic process. It is not only that Ed is a political scientist, but he has had solid "on the ground" political involvement, for example, as campaign manager in the 1988 federal election for the NDP. He has also been on the executive of various NDP constituency associations in Lethbridge, and in 1986, he ran for the NDP provincially in Lethbridge West. For this alone he deserves some kind of



Ed Webking making his acceptance speech.

medal for outstanding public service, not to mention bravery!

Ed's advocacy for human rights and democracy are evident in his many publications and presentations to the public. They cover the gamut from gun control to the legal regulation of hate literature and other *Charter of Rights* issues to international law.

This award will hardly be Ed's first for human rights work. In 1988 he was named "Citizen of the Year" by the City of Lethbridge in recognition of his work in human rights, and in 1994 he was awarded the Province of Alberta Human Rights Award.

Ed and I have sat together on the Board of Directors of the ACLRC for a long time. Ed has invariably been good-humoured, tireless in his concern for the Centre and in his attention to the responsibilities of the job and always wise in his counsel.

We are proud to make this award to a fine person, a committed civil libertarian, human rights thinker and activist and a GREAT Albertan.

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