

# EMPLOYERS' ALERT

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## WHAT'S NEW at RUBIN THOMLINSON LLP

### WELCOME HENA SINGH!

Clarity of purpose. Some people strive for it their entire lives. Toronto employment lawyer Hena Singh had begun a promising and fulfilling career after completing her Masters degree in Psychology. She was pursuing her dream: helping people by listening to their issues and problems, identifying the solutions, and helping them achieve resolution.



Suddenly it became clear to her that there was another channel through which to fulfill this passion—the legal profession. Faced with the choice of beginning a PhD., in clinical psychology or pursuing a law degree, she chose the latter, and has never looked back.

As soon as she entered the University of Windsor's law school, Hena knew she was in the right place. Although she was initially drawn to civil litigation, she took one course in employment law, and was hooked. She instantly knew she was on the right path, and others knew it too; among the awards she received in her final year of law school was the top award for excellence in employment and labour law.

Hena developed a particular interest in alternative dispute resolution (ADR). She was drawn to it instantly, as it involved human interaction and behavior, seeing and understanding both sides of an issue, and a quick resolution of conflict, all of which makes her psychology background invaluable to her employment law practice.

Hena was called to the Bar in June 2008. Prior to joining Rubin Thomlinson, Hena worked in downtown Toronto as a labour and employment lawyer at a major Canadian law firm.

At Rubin Thomlinson Hena provides counsel to employers and employees on all areas of employment law, including employment contracts, wrongful dismissals, workplace policies, employment standards, workplace investigations and human rights in the workplace.

Hena is also committed to volunteerism. Her volunteer experience belies her age; she's already devoted a lifetime of volunteer hours to causes ranging from legal aid to organizing fundraising events.

You can reach Hena at Hena@rt-law.ca or (416) 847-1814 x110.

An Ontario Judge recently ruled that an employer who secretly installed a hidden camera in an employee's office without her knowledge and without a plausible explanation had constructively dismissed the employee. This is the first case in Ontario where a judge ruled that an employer was liable for constructive dismissal of an employee based on a privacy violation.

## Hidden Cameras: A Violation of Privacy Amounting to Constructive Dismissal

The case, *Colwell v. Cornerstone Properties Inc.* 2008 CanLII 66139 (ON S.C.) involved a commercial manager ("Ms. Colwell") who learned that a hidden camera was installed in her office by her immediate boss at Cornerstone Properties Inc., ("Cornerstone"). Ms. Colwell found out about the existence of the camera when she saw the image of her office on a monitor in the presence of her immediate boss and the vice-president of Cornerstone.

Ms. Colwell confronted her immediate boss, who indicated to her that the camera had been installed approximately nine months prior to her being aware of its existence. He also indicated to her that she was not considered to be involved in any alleged thefts – either as a victim or a suspect. The camera, she was told, was to assist in detecting theft by the

maintenance staff. However, even though Ms. Colwell was the person directly responsible for the maintenance staff, she was never advised of any thefts or the camera set up to capture them. The camera in her office was the only hidden camera installed in Cornerstone's office area, yet there was no plausible explanation given as to why her office was thought to be most likely the subject of a theft.

It was unclear to the trial judge why the only camera installed was in her office, without her knowledge. The judge stated in his reasons, "A secret camera installed in a trusted manager's office without her knowledge, although perhaps acceptable employer conduct in itself, coupled with a totally implausible explanation, renders the actions unacceptable." The judge found that Ms. Colwell's contract of employment contained an implied term of good faith and fair dealing,

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**"It was unclear to the trial judge why the only camera installed was in her office."**

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This alert is prepared as a service for our clients and other persons dealing with employment issues. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavour to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered, and without seeking the advice of legal counsel. No part of this publication may be reproduced without prior written permission of Rubin Thomlinson LLP. This has been sent to you courtesy of Rubin Thomlinson LLP.

## Hidden Cameras: A Violation of Privacy Amounting to Constructive Dismissal

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**“Ms. Colwell’s contract of employment contained an implied term of good faith and fair dealing ... which was breached by the actions of her employer.”**

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throughout the existence of the contract, which was breached by the actions of her employer. As such, the judge held that Ms. Colwell was constructively dismissed and was accordingly justified in leaving her position at Cornerstone. She was ultimately awarded seven months pay in lieu of notice (she had been employed by Cornerstone for in excess of seven years).

As a result of her treatment at Cornerstone and the stress related medical issues that flowed from it, she was not obligated to continue her employment with Cornerstone to mitigate her damages, as the work atmosphere was no longer conducive to a healthy working relationship.

Despite the trial judge’s disdain for Ms. Colwell’s treatment at Cornerstone prior to her departure, he found that her immediate boss’ actions were not sufficiently egregious so as to warrant punitive or aggravated (moral) damages.

### What does this mean for employers?

- While there continues to be no privacy legislation which addresses an employee’s privacy rights in the workplace, this case demonstrates that there is an implied right of privacy as a part of good faith and fair dealing in an employment contract.
- Surveillance cameras which are set up without employees’ knowledge and without plausible explanation may amount to constructive dismissal, especially if cameras are set up for a direct view into an employee’s office.
- Even if an employer has a plausible explanation (e.g., a need to investigate inappropriate activity), employers should consider all other less intrusive means of combating workplace issues before secretly invading employees’ privacy. •

## UPCOMING EVENTS

### September 15 and 16

The next session of **Conducting Internal Workplace Investigations** will take place on September 15 and 16. We are accepting registrations for this session. If you are interested in attending please contact us at (416) 847-1814 or [seminars@rt-law.ca](mailto:seminars@rt-law.ca) to register.

### September 23

**Janice Rubin** will be speaking at the 2009 Atlantic HR Conference in Halifax on September 23. Janice will be discussing what human resource professionals need to know about workplace investigations.

### September 29

Our next breakfast seminar will take place on September 29. The topic for the morning will be, “Legal Implications of Social Networking”. If you would like to attend, please contact us at (416) 847-1814 or [breakfast@rt-law.ca](mailto:breakfast@rt-law.ca) to register.

We work with employer clients to provide optimal legal solutions to their challenging workplace issues. If you would like to know more about our practice, please do not hesitate to contact us at (416) 847-1814 or via e-mail at [contact@rt-law.ca](mailto:contact@rt-law.ca).