

Technology in the Workplace: The Legal Risks

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Who we are



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Objectives for today

Awareness

-  **Technology & E-Business risks**
-  **Risk management**
-  **Privacy issues**

Technology & e-business risks

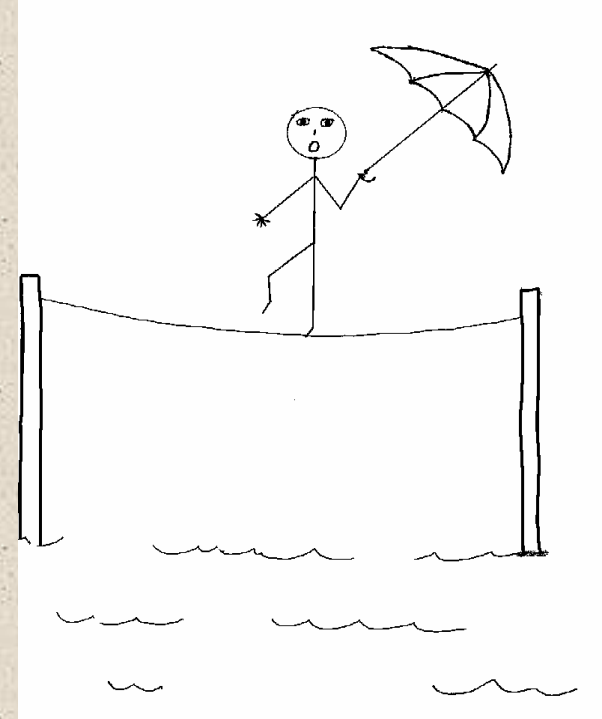
What we will cover

-  **Who's at risk?**
-  **What's at risk & why?**
-  **Risk management**
-  **Summary**

A Wake Up Call!!

COULD THIS BE YOUR COMPANY!:

**“Massive identity theft feared:
Hard Drive with Reams of
Personal Data Stolen from (IBM)
Canada Unit”**



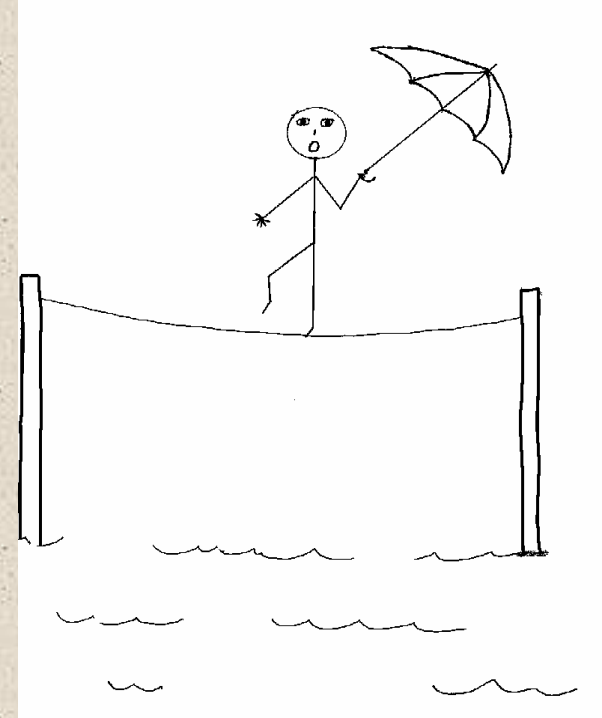
National Post, 01/30/03

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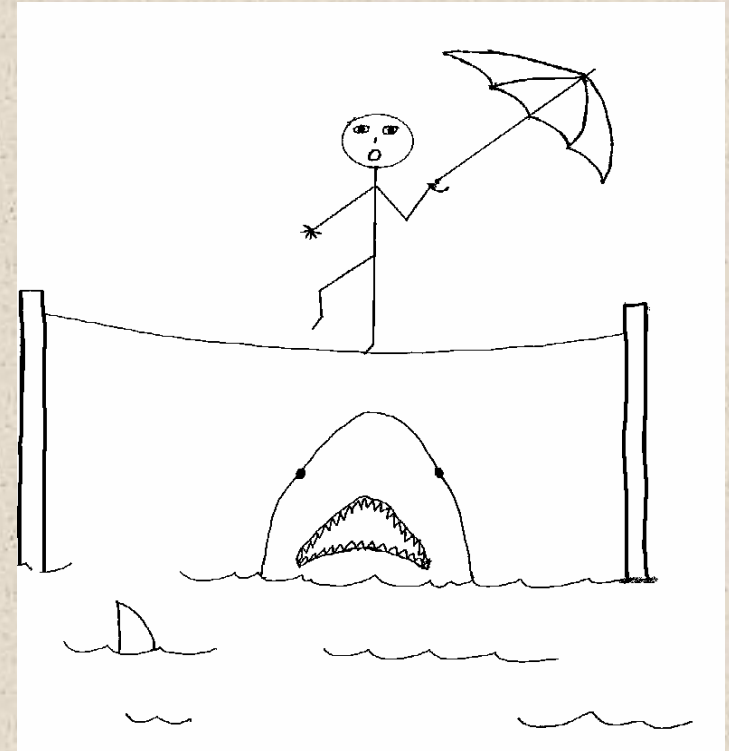
Who is at risk?

- ☐ **Shareholders**
- ☐ **Directors/Officers/Sr. managers**
- ☐ **Employees**
- ☐ **Suppliers**
- ☐ **Customers**








What's at risk & why?

- ☐ **Your business**
- ☐ **Profits**
- ☐ **Legal exposure**
- ☐ **Bad publicity/goodwill**
- ☐ **Regulatory compliance**
- ☐ **Insurance premiums**
- ☐ **Competitive advantage**
- ☐ **Internal risks**
- ☐ **External risks**



What's at risk & why?

Legal Exposure

-  **Lawsuits: Civil & criminal**
-  **Employee contracts**
-  **“Other” contracts**
-  **Employment issues**
-  **Termination management**

What's at risk & why?

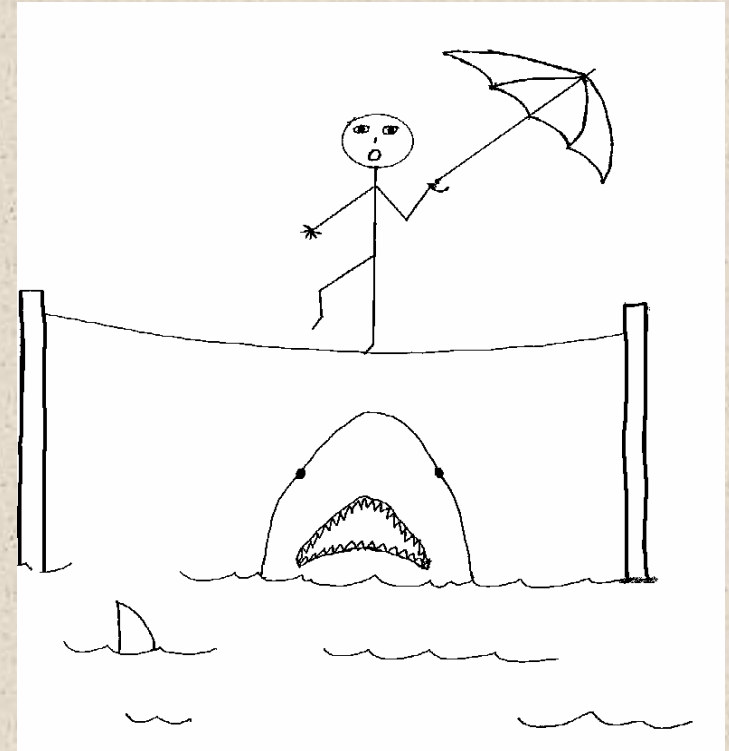


Termination management

- ❑ **** High Risk/High Cost****
- ❑ **Legal, I.T., and H.R. issue**
- ❑ **Procedures:**
 - **Pre-hire**
 - **Hire**
 - **Pre-termination**
 - **Termination**
 - **Post-termination**

What's at risk & why?

- ❑ Your business
- ❑ Profits
- ❑ Legal exposure
- ❑ **Bad publicity/goodwill**
- ❑ **Competitive advantage**
- ❑ Regulatory compliance
- ❑ Insurance premiums
- ❑ Internal Risks
- ❑ External Risks



What's at risk & why?

Bad Publicity / Goodwill

-  **Bad news is *BAD NEWS!***

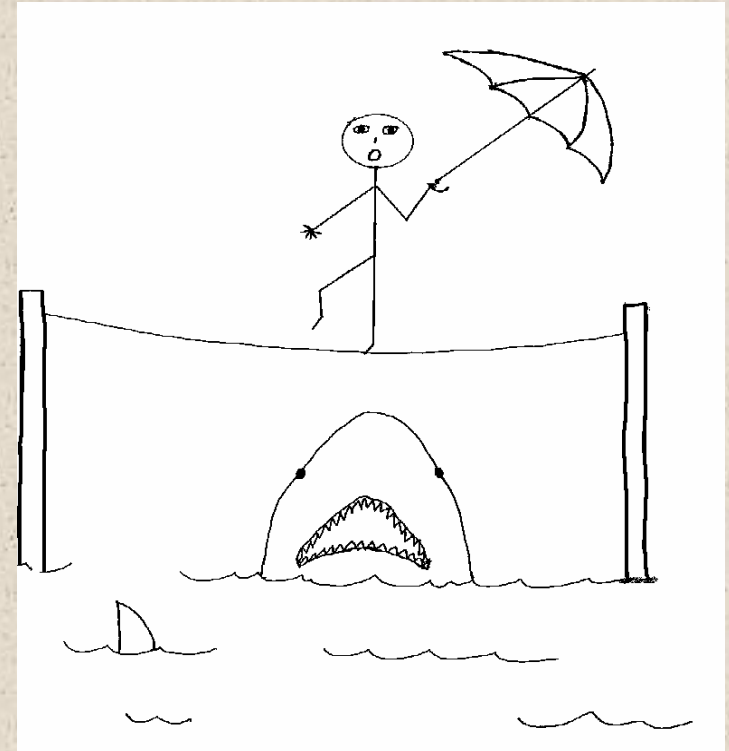
Competitive Advantage

-  **Do better than your competitors**
-  **Customer relationships/loyalty**

***“Using the Law for Competitive Advantage”* George J Siedel**

What's at risk & why?

- ❑ Your business
- ❑ Profits
- ❑ Legal exposure
- ❑ Bad publicity/goodwill
- ❑ Competitive advantage
- ❑ Regulatory compliance
- ❑ Insurance premiums
- ❑ **Internal Risks**
- ❑ External Risks



What's at risk & why?



Internal Risks

 ****High Risk/High Cost****

 **Your Employees!**

- **Theft**
- **I.P. & confidential information**
- **Poisoned/"Hostile" workplace**
- **Employee productivity (CyberSlacking)**
- **Moonlighting**
- **Sabotage**

What's at risk & why?



Employee Productivity (CyberSlacking)



Neilson Media Research:

- **1996 - IBM, Apple & AT&T employees visited Penthouse website 12,823 times in one month**
- **Average 13 minutes per visit => 347 person days lost**

What's at risk & why?

- **Spamming**
- **Improper E-Mail Use**
- **Copyright/Licensing Breach (“Pirating”)**

What's at risk & why?



Spamming



****Low Risk/High Cost****



E-Mail Use

What's at risk & why?

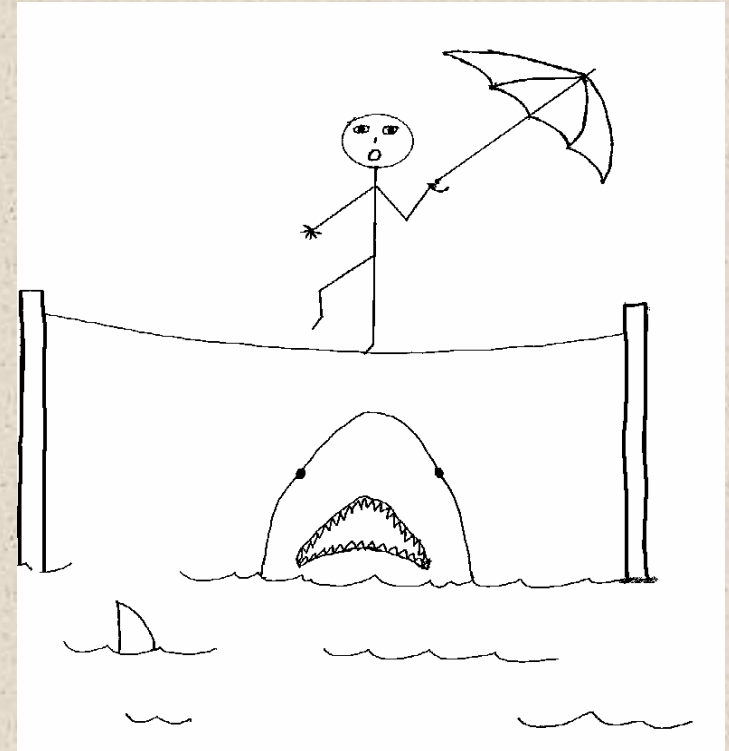
Copyright/Licensing Breach (“Pirating”)

Anti-piracy enforcement:

- ***** High Risk/High Cost*****
- **New initiatives by Microsoft, Autodesk**
- **CAAST (www.caast.org)**
- **Bad publicity**
- **Penalties**
- **Costs**

What's at risk & why?

- ▣ Your business
- ▣ Profits
- ▣ Legal exposure
- ▣ Bad publicity/goodwill
- ▣ Competitive advantage
- ▣ Regulatory compliance
- ▣ Insurance premiums
- ▣ Internal risks
- ▣ **External risks**



What's at risk & why?



External risks

-  **Business interruption**
-  **Natural disasters**
-  **Denial of service (DoS)**
-  **Corporate espionage**
-  **Security breaches**
-  **Theft of Intellectual Property**

What's at risk & why?



Calculating the cost of downtime



*****High Risk/High Cost*****



****Labour Lost (cost per hour) = (# of employees) * (average cost per hour per employee (salary, benefits, overhead) * (percent not able to work on other tasks)**



IT Impact = (# of hours repairing or resolving issues) * (average cost per hour)



Revenue Impact = (Gross Yearly Revenue) / (Business Hours per year) * Impact Percentage (0 – 100%) (PGI)

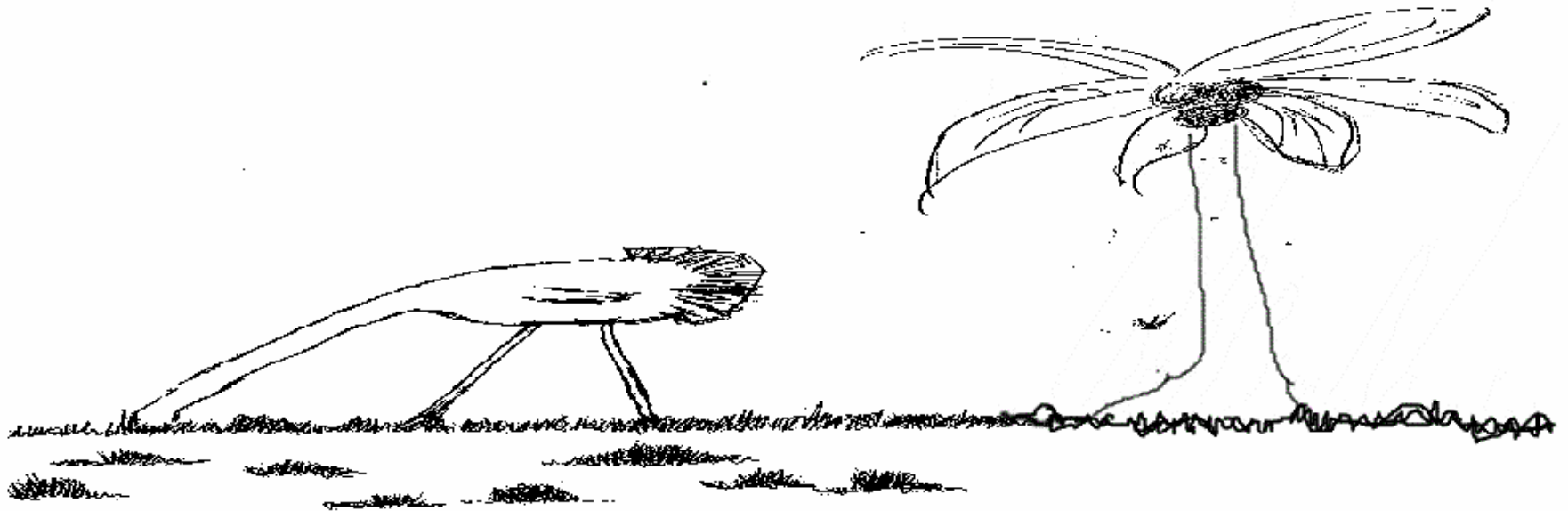
What's at risk & why?



External risks

- ❑ **Corporate Espionage**
- ❑ **E-security breaches cause more than \$15 BILLION worth of damage worldwide annually**
- ❑ **Theft of I.P. & Confidential Information**

**Ignore it or deal with it!
(Inaction is a decision!)**



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Risk management



Due diligence!



Be aware



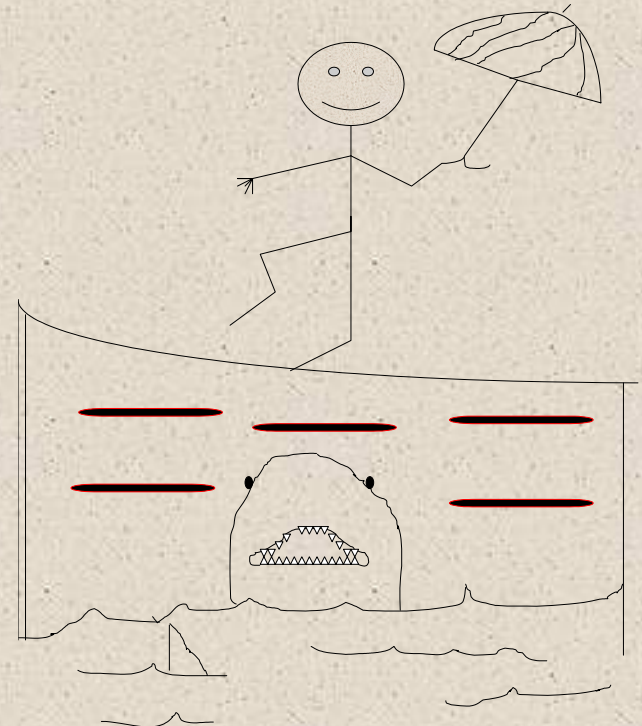
What's at stake?



Assessment



Action

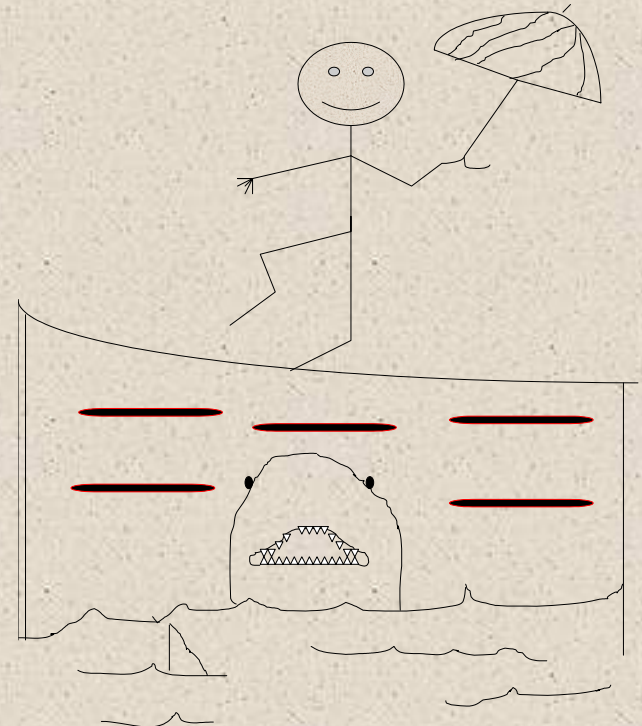


Risk management



Proactive steps

- Practice 'Safe' Computing
- (Employment) contracts
- AUP's
- Business continuity plan
- Disaster recovery plan
- Use of professionals



Business Continuity & Disaster Recovery



Plan for it



***** High Risk/High Cost *****



Recovery of valuable business information



Ensures an organization can continue to function through an operational interruption



More than an I.T. Matter!



Competitive Edge

Privacy issues



Specific focus today

- **Monitoring/surveillance of employee I.T. use**
- **Other H.R. issues in the workplace**

Privacy issues





“Obviously, employers have a legitimate interest in knowing what their employees are doing. They pay their employees to work, they’ve got responsibilities for their employees’ Health and Safety, they’ve got liability for what their employees do on the job.”

George Radwanski, Privacy Commissioner of Canada

Privacy issues

Two Questions Arise:

-  **May employers monitor employee e-mail & internet use?**
-  **If so, under what circumstances?**

American Decisions

-  **Yes. Employers may monitor**
-  **Anytime & in anyway they want**

Privacy issues



Reasons underlying the American position



Employees have no reasonable expectation of privacy when using company email and internet facilities



Golden Rule: Those who have the gold, make the rules



As long as the employer owns the work tools, he can monitor their use anyway he wants



Is this the position in Canada?

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Privacy issues

Canadian position

-  **Charter of Rights and Freedoms**
-  **Criminal Code of Canada**
-  **Privacy legislation**
-  **Common law**
-  **Competing interests**

Privacy issues



Charter of Rights

- ❏ **Section 8 of the *Charter*: protects individuals against unreasonable search and seizure**
- ❏ **Section 32(1): states that the *Charter* only applies to government action**
- ❏ **Charter values**

Privacy issues



Criminal Code of Canada



Section 184(1) of the Code: “...every one who, by means of any electro-magnetic, acoustic, mechanical or other device, willfully intercepts a private communication is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.”



What is a “private communication”?

Criminal Code of Canada (cont)

- **Section 183 of the Code states that a “private communication” means “any oral communication, or any telecommunication ... made under circumstances in which it is reasonable for the originator to expect it will not be intercepted by any person other than the person intended by the originator to receive it.”**
- **How do you assess if a communication is private?**

Privacy of Personal Information Act (Federal)

- **Based on 10 principles for Federally regulated businesses**

Subject to provincial legislation, by January, 2004 all business in Canada must comply with the legislation

- **Core elements:**

- **an individual's consent is required for the collection, use or disclosure of personal information (some exceptions)**
- **mandates that organizations designate compliance officers**
- **must give individuals access to personal info held**
- **individuals can file complaints to be investigated by Privacy Commissioner**

Privacy Commissioner of Canada George Radwanski's proposed 4-part test.

In a November 25, 2002 letter to Ministers Martin Cauchon, Wayne Easter, and Allan Rock, Radwanski made the following comments on the federal "Lawful Access" proposals

- 1. it must be demonstrably necessary in order to meet some specific need;**
- 2. it must be demonstrably likely to be effective in achieving its intended purpose. In other words, it must be likely to actually make us significantly safer, not just make us feel safer;**
- 3. the intrusion to privacy must be proportional to the security benefit derived; and**
- 4. it must be demonstrable that no other, less privacy-intrusive measure would suffice to achieve the same purpose.**

Privacy of Personal Information Act (Ontario) [PPPIA]



Based on the PIPEDA - 10 principles

- ❑ **would have applied to activities by businesses and non-profit organizations and to the collection, use and disclosure of personal health information**
- ❑ **Ontario legislation has not yet been enacted.**
- ❑ **in the absence of provincial privacy legislation by January 1, 2004, PIPEDA will apply to all businesses in Ontario commencing January 1, 2004**








Canadian position

Common law

-  **Ontario courts have held that the tort of invasion of privacy exists in common law**




Competing interests

Employer interests

-  **Confidentiality of corporate information**
-  **Employee infidelity & productivity**
-  **Intellectual Property (IP) protection & 3rd party infringement**
-  **“Just cause” dismissal**
-  **Poisoned workplace**
-  **Non-competition**
-  **Non-disclosure/solicitation**




Competing interests

Employee interests

-  **Personal Privacy**
-  **Trust & Big Brother Syndrome**
-  **Human Rights Violation**
-  **Arbitrary decision by Employer**
-  **Employer *Criminal Code* violation**
-  **Poisoned workplace**

Competing interests

How to balance these rights








-  **ensure that employers adopt a lawful, fair & reasonable E-mail & Internet Use Policy (“AUP’s”)**
-  **Radwanski’s 4-part test**
-  **ensure that employees consent to AUP’s prior to use of employer computer systems**

Other issues to consider

- ❏ **CSA Model Code for Protection of Personal Information;**
- ❏ **The bottom line;**
- ❏ **Privacy Impact Assessment (PIA);**
- ❏ **Privacy-enabling technologies (PET);**
- ❏ **Enterprise Privacy Manager (EPM);**
- ❏ **Union contracts;**

Acceptable use policies

How to make your AUP effective

-  **Use Radwanski's 4-Part Test**
-  **“Joint” Creation;**
-  **Implementation;**
-  **Publishing and Displaying**
-  **Sign-on**
-  **Enforcement**
-  **Update it**

Wrap up



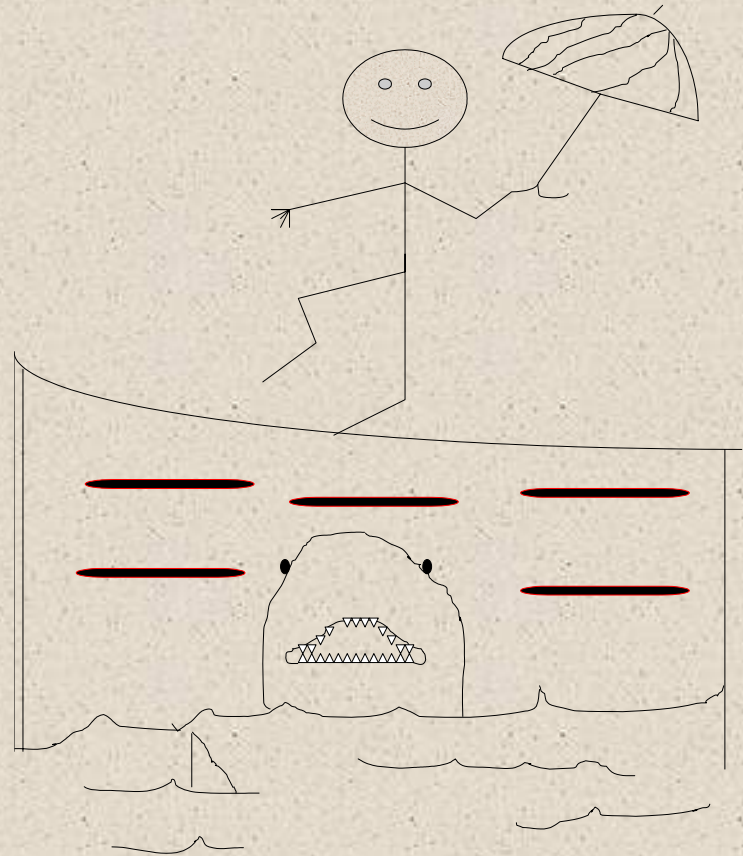
Assess!



Plan!



Act!



Action

- ❏ **As a result of what you learned today, what one action can you take when you get back to your office that will have a positive impact on your H.R. Department, your business, Senior Management & the Board of Directors?**
- ❏ **Write it down**
- ❏ **DO IT!**

Surprise!

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Questions & answers

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Thank you

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