

Reasonable Expectations of Privacy: Sociological Perspectives

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Privacy as a Social Value

- Given the socially hyperactive role privacy plays in contemporary controversies about personhood, there may be some benefit in not striving for verbal precision in defining privacy...

Schoeman, Privacy and Social Freedom, 1992

Privacy as a Social Value

- Identity
- Dignity
- Autonomy
- Social Freedom
- Democracy

Privacy as a Legal Value

- Identity
- Dignity *Schreiber (1998)*
- Autonomy *Dagg (1997)*
- Social Freedom *Schreiber (1998)*
- Democracy *Dymont (1988)*

From *Plant* to *Tessling*

- An informational model neglects the importance of privacy as a social value and the inter-relationship between privacy and social equality

Agenda

- What do we know about online social behaviour?
- Do *Plant & Tessling* fit the social context of online spaces?
 - DRA cases
- Can an informational model capture and protect the social significance of privacy?

Online Social Behaviour

Young Canadians in a Wired World, 2005

- Online space is social space
- One of key attractions of the Net is ability to express oneself and try on new identities
- Many young people chose online technologies because they are perceived to be **more** private

Online Social Behaviour

Young Canadians in a Wired World, 2005

- Online environments are structured by seamless surveillance
- Third party collection is perceived to be less intrusive because it is outside of social networks

e-Tessling: Objective Reasonableness in Wired Spaces

- Place
- Public view
- Abandonment
- Third party control
- Reasonableness of technology
- Nature of information revealed

DRA cases

- ... the Load Profile Device does not reveal anything other than fluctuations in overall electrical consumption. The device measures, at time intervals, the flow of electricity through the power line leading to a residence. The measurements recorded by the device are then "downloaded" onto a computer and displayed in the form of a graph with the assistance of a software program supplied by the manufacturer of the device.

R. v. Haskell [2004] A.J. No. 804; 2004 ABQB 474 (Alberta Court of Queen's Bench)

DRA cases

- ... the more detailed nature of the data produced by the DRA and the nature and extent of the inferences that can be drawn from that data ... relate to the extent to which the technology allows inferences as to the nature of activities within the premises in which the accuseds have a reasonable expectation of privacy.

R. v. Cheung [2005] S.J. No. 474; 2005 SKQB 283 (Saskatchewan Court of Queen's Bench)

Protecting the Social Context

- Computers may and should be private places, where the information they contain is subject to the legal protection arising from a reasonable expectation of privacy. Computers may contain a wealth of personal information. Depending on its character, that information may be as private as any found in a dwelling house or hotel room.

McLachlin J. in *R. v. Plant*, [1993] 3 S.C.R. 281