

Introduction

On January 2nd, 2004 I started employment with Parkland Regional Library as a
“Computer Technician”. At that time I signed a copy of the “Engagement Letter” which
5 included a job description titled “Schedule A”

**Refer to “Letter of Engagement” [Copy enclosed].*

These duties included the following, as well as others:

- 10 • Hardware troubleshooting and maintenance
- Routine server duties, including backup
- Data telecommunications troubleshooting
- Software licensing
- Software (primarily operating system and server processes) troubleshooting
- 15 • Network troubleshooting

I was also provided with a copy of the “Human Resources Manual – Personnel Policy
Regulations” dated January 2004. I was asked to read the contents of the “Human
Resources Manual” and was given time to do so before continuing with 'Orientation
20 Interview'. As concerns this inquiry the heading titled “Security” should be noted.

Excerpt from page 18 of the Parkland Regional Library's Human Resources Manual:

Security

25 All employees are required to alert the Director regarding any security concerns.
Employees working in the building during off hours are responsible for
maintaining the security of the building during their stay and for leaving the
building secure. Employees who are authorized to have access to the building
30 security code are responsible for knowing how to arm and disarm the security
system.

Employees are cautioned against sharing building or computer security codes with
fellow employees.

35 There will be at least one fire drill and discussion of emergency and security
procedures for the building with all employees each year.

40 Computer security is everyone's responsibility. It is essential that no unauthorized
people have access to PRL's computer system. Everyone should password protect
their computers and log off when not at their station. Licensing of software is for
PRL an PRL employees only. Anyone else using the computer is in violation of
the licensing agreement. PRL staff may not use unauthorized programs for
personal use or bring materials on disk from outside the office. Prudent care shall
45 be taken of computer equipment. Staff have no right to retrieval of information or
e-mail from the PRL computer system on termination of employment. In order to
protect the Parkland's computer environment, employees are prohibited from

50 downloading or opening JPG and GIF files that are not work-related and from
subscribing to List Servs unrelated to work. In order to protect Parkland's
investment in employee time, employees are expected to limit their use of PRL
Internet access for personal correspondence to non-work hours, such as before or
after work or during lunch hour. Employees are expected to restrict their work-
time Internet-searching to work-related sites and their searches outside of work
but through the Parkland access to sites which would not generally be considered
55 embarrassing to Parkland in the area of legality or morality.
**Refer to "Human Resources Manual" [Copy enclosed]*

It was understood and stated in the "Letter of Engagement" that, "Notwithstanding
anything to the contrary contained herein, the period of January 2, 2004, until March 31,
60 2004, shall be deemed to be a period of probation (the "Probationary Period"). With that
in mind I was careful to avoid any 'incidents' construed to be worthy of 'summary
dismissal'. Immediately following the 'Orientation Interview' with the Director, Patricia
Silver I was given an 'Orientation Tour' of the Parkland Regional Library facilities and
was told by the Network Administrator, Michael Silver, at that time that one of my first
65 duties would be to set up a "Trouble Ticketing" solution in the form of the 'Open Source'
product, "Request Tracker" from the firm "Best Practical".

I was told by Michael Silver that, "...the full resources of the Parkland Regional Library
at your disposal. Go ahead and download what every you need. If you need hardware just
70 ask and I will make a formal request to the Board of Directors. If there is any other
software solutions that you know of that may be of benefit to PRL feel free to set it up in
a test environment. We're not adverse to the use of 'Open Source Software' around here."

75 Pretty much everything I did while performing my duties at PRL was done from my
workstation which was physically located no more than ten feet away from my immediate
supervisor, Michael Silver. It was not unusual to log in and out of the servers from my
workstation and it was made abundantly clear to me that if any of the passwords used
where compromised as a result of my negligence it would be "grounds for immediate
dismissal". Michael Silver even went so far as to 'sign' my copy of the "password list" so
80 that it could be identified as mine should it ever be discovered in an insecure manner.

With that in mind I immediately put to good use a "Password Safe" that stored it's
contents in a encrypted form and physically destroyed the signed copy of the "password
list" that was given to me by Michael Silver. There was no possible way I would
85 dismissed for compromising the passwords protecting sensitive information on the
various servers used by PRL. It should be noted that by the end of May, 2004, I still
hadn't had my "Probationary Appraisal" so I was being careful not to provide any
opportunity to be a victim of "Summary Dismissal".

90 As the months passed I felt that I was giving Parkland Regional Library the best I had to
offer. When the "Probationary Appraisal" was finally conducted in early June 2004, there
was absolutely nothing to indicate that my assessment of my performance had in the least
been misguided. I couldn't have been more wrong!

95 **Discovery of STARR Keystroke Logger on Workstation**

The incident that precipitated the complaint to the Privacy Commissioner and ultimately this Inquiry is detailed in the “Grievance”. For the sake of brevity I will only summarize the details here and clarify, or put into perspective anything I feel may not be adequately
100 addressed in the original “Grievance”.

Thursday June 17th, 2004

- 105 • During routine maintenance on my workstation I discover a 'keystroke logger'.
- On cursory examination I determine the 'keystroke logger' has been installed on my workstation since May 20th, 2004.
- I am certain that all 'username / password' pairs used from my workstation have been compromised.
- 110 • In addition, I realize that my online banking information has been compromised.
- Initially I'm uncertain where the 'keystroke logger' came from.
- As the Network Administrator, Michael Silver and the Director, Patricia Silver are away for the day I make, what I am certain to this day was the right decision and remove the 'keystroke logger' from my workstation.
- 115 • After securing my workstation I feel the prudent next move would be to determine if any of the servers themselves have been compromised.
- On cursory examination of the Windows server it comes to light that the 'keystroke logger' has been installed by Michael Silver and Virginia Clevette.
*Refer to “Grievance” [Copy enclosed]

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In my “Grievance” I consciously omitted the fact that while I was trying to determine if the server had been compromised I opened a 'keystroke log' with my web browser. The reason for omitting this was that the content I observed was of a delicate nature and I couldn't quite figure out how to bring it up. Initially I couldn't figure out what it was I was
125 seeing but it didn't take much scrolling of the screen before I realized it was a log of Michael Silver's keystrokes. Initially I was somewhat puzzled and my immediate thought was that the Network Administrator, Michael Silver had been targeted as well. At that point I made a note of what I had seen and decided to terminate my session with the Windows server for fear of compromising any potential forensic evidence. I saw plenty
130 enough to conclude that the people responsible for the installation of the STARR 'keystroke logger' on my workstation were Michael Silver and Virginia Clevette. It should be noted that folder containing the 'keystroke logs' on the server was not password protected nor was it encrypted. It was potentially available to at least every person on the Parkland Regional Library staff if not the world at large.

135 *Refer to “Grievance” [Copy enclosed]

I was initially puzzled as to why the only 'keystroke logs' that I saw were mine and Michael Silver's. After reviewing my notes I came to the conclusion that when Michael Silver and Virginia Clevette initially attempted to install the 'keystroke logger' on my
140 workstation they tried to do so remotely from Michael Silver's workstation. It appears this

attempt didn't go quite as planned and Michael Silver had inadvertently installed the 'keystroke logger' on his own workstation and been unaware that 'his' keystrokes had been logged for close to a month. I'm sure he would have removed the software from his workstation and the 'keystroke log' from the server had he been aware of his mistake. The
145 'keystroke log' that I had examined contained potentially embarrassing personal information of a somewhat sensitive nature that I'm certain he wouldn't want logged.

Michael Silver claimed that the STARR 'keystroke logger' was deployed on a rotating basis and that everyone, at one time or another would have their keystrokes logged. From
150 what I saw of the 'keystroke logs' on the server this was blatantly misleading. The only 'keystroke logs I witnessed were Michael Silver's and mine. I am quite certain that the reason my keystrokes were being logged has something to do with the following.

On or about Wednesday, May 19th, I was asked to look into a problem that one of the staff
155 members at Parkland Regional Library, Wendy Crews, was having with her e-mail. There was some deadline the staff were trying to meet so I was asked to do the troubleshooting during Wendy Crews lunch break. To coordinate this troubleshooting effort I made arrangements with Virginia Clevette to cover any incoming 'help desk' calls and she agreed to do so. As I would be under pressure to rectify the e-mail situation without
160 interrupting the work flow I was happy to have the distraction of a 'help desk' call covered. Unfortunately all didn't go as planned.

About halfway through the troubleshooting process the phone rang and it was a 'help desk' call that Virginia Clevette accepted. I continued on with the e-mail troubleshooting
165 of Wendy Crews workstation and didn't pay much attention to the 'help desk' call. Next thing I know Virginia Clevette calls across the room and asks me to pick up 'line one'. The procedure for such 'hand offs' would be to put the caller on hold and brief your colleague concerning who was on the phone and where the troubleshooting process had stalled. When I took the 'help desk' call Virginia Clevette foisted on me I was not sure
170 who was calling or why. Although I don't remember the exact details of the call I do remember that it was pretty insignificant and should have been easy for Virginia Clevette to solve. Furthermore the 'help desk' call was 'low priority' and could have waited. As a result of the distraction Wendy Crews returned from lunch and I was still troubleshooting her e-mail problem with her now standing over my shoulder.

175 Virginia Clevette observed this and came over and in a very brusque tone said, "How long is this going to take? You're holding up production!"

I was somewhat taken aback as I had just finished taking over a 'help desk' call that she
180 could have easily handled and consequently the e-mail troubleshooting of Wendy Crews workstation was now running into 'overtime'. I believe my answer was something to the effect of, "Who knows this is a Microsoft Windows machine and will likely require more than a few reboots. If I can continue without interruption it will go much quicker."

185 I now have Wendy Crews and Virginia Clevette standing over me and Michael Silver, who is just returning from lunch decides to stop by and see what's happening. Virginia Clevette immediately starts complaining to Michael Silver and says to him, "Why can't

these things be scheduled when staff are gone for lunch so that we're not interrupting the work flow and overall production?"

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I couldn't believe what I had just heard so before Michael Silver had a chance to respond I said, "I thought I made arrangements with you no more than an hour ago to cover any 'help desk' calls and then you turn around and dump a low priority, easy to solve 'help desk' call in my lap."

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Michael Silver, to his credit, defuses the situation quickly by saying, "OK..., it's not that important. Next time you get a chance you can continue troubleshooting Wendy's e-mail problem. In the meantime she can access her e-mail through the 'web interface'"

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Virginia Clevette and Michael Silver walk away and Virginia Clevette is obviously bristled and makes a point of letting me know that she is by glaring back over her shoulder as she leaves. I remember thinking to myself, "Wow..., she's sure having a bad day!" and pretty much brush off the incident as being rather insignificant overall. Everybody has a bad day from time to time.

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The next morning, Thursday May 20th, 2004, I don't show up at the Parkland Regional Library facilities as I have a scheduled service call at the Olds Library. I was there for a good part of the day and didn't get back to the Parkland Regional Library facilities until around 3:00 in the afternoon. I headed straight to my workstation as I wanted to write up the 'trouble ticket' concerning the service call at the Olds Library. Everyone else is in the lunch room or outside smoking. My workstation is turned on so I go to 'log in' but I'm denied access. Thinking I must have typed in my password incorrectly I try again and get the same error message. It's then that I notice the default username is not mine, "darmer" but "vclev", Virginia Clevette's username on the PRL system. I find this significant enough to enter a note in my 'day-timer' saying, "VC logged into my comp???"

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**Refer to "Daytimer" [Copy enclosed]*

What I have just relayed about this incident is pretty insignificant until it's tied to the discovery of the 'keystroke logger' on my workstation and my observation that the 'time stamps of STARR 'keystroke logger' and 'screen capture' installation reveal that the program was installed on Thursday, May 20th, 2004, the day after the incident with Virginia Clevette. Without a forensic analysis of the hard drives in question it's merely a theory that the two events are intimately connected but I can't help but think that the relationship is somewhat more than coincidental.

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The day after discovering the 'keystroke logger' on my workstation, the morning of June 18th, 2004, I'm a bit apprehensive about arriving at work as I don't know what to expect. It's soon evident that Michael Silver has noticed the 'client' half of his 'keystroke logger' is missing from my workstation. He is just way too interested in what I'm doing on my workstation to the point he finally pulls his office chair alongside mine and asks what I'm doing. I'm a bit nervous about the whole situation as I'm not sure how he's 'setting up' to ask me about the 'keystroke logger'. For one thing it was very unusual for him to wheel his chair to within inches of mine. That alone made me uncomfortable.

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235 Michael Silver keeps badgering me to explain what it is I'm doing even though he's
looking at the contents of dual monitor desktop configuration. I tell him that I'm
evaluating the "Thunderbird" e-mail client for possible deployment on the PRL network
due to it's enhanced 'spam filtering' features. When he asks why I tell him that it seemed
240 to be the prudent course of action seeing as our monthly staff meeting just a couple of
days earlier was completely dominated by complaints of 'spam' e-mail.

Michael Silver then asks me if there isn't something else I should be doing instead so I
ask him what he would like me to do but he ignores that question and again asks what's
245 on my screen and why. The whole time he's within inches of me and not backing off so I
ask him, "What exactly is it you want?" I'm not liking the way the situation is unfolding
and I'm pretty much boxed in by an L-shaped desk and Michael Silver's office chair.

He answers back in a somewhat 'curt' manner, "I want you to tell me what it is you're
250 doing on your computer!"

I again tell him that I'm evaluating the "Thunderbird" e-mail client for it's enhanced 'spam
filtering' capabilities and add that it also has superior security features. Michael Silver
jumps on that statement immediately and says, "So you have security concerns with the
network do you? I want you to tell me what they are." This was said in a 'raised' voice all
255 the while only inches away. By this time I'm sure that others in the office have overheard
although I'm not sure who as I have my eyes fixed on Michael Silver and more than a bit
concerned the situation may get physical.

About this time I refuse to answer any more questions and tell him I'm not saying
260 anything more until he settles down. That really seems to annoy him and he says, "As
your immediate supervisor I demand to know what security concerns you have. This is
about the STARR program isn't it?"

I told him that yes it was and he cuts me off mid sentence and blurts out, "We're
265 authorized by the board of directors to use that software."

I honestly couldn't believe he would say that and my response was, "For Christ's sake
Michael, do they have any idea what keystroke logging software is? What on earth were
you thinking when you installed STARR on my computer? Not only that but it was only a
270 week or so ago that I asked you if I could do some online banking from my workstation
as I had some bills to pay and my dial-up connection at home was down while Telus had
the ditch dug up. You told me to go ahead as long as it was on my time and you knew full
well there was a 'keystroke logger' installed on my workstation. Under the circumstances
you leave me with little choice but to file a formal grievance as per the procedure laid out
275 in the "Human Resources Manual."

By this time the 'conversation' is beginning to get loud and I would say that others in that
part of the building have heard part of it at least. It should be noted that the Director,
Patricia Silver was away from the office that day and wasn't due back until Monday, June
280 21st, 2004. By now Michael Silver was standing and had at least moved around to the
other side of a piece of office furniture that was boxing me in. That in itself put me a bit

more at ease even though Michael Silver was, by now, on a rant. He said, "According to the Human Resources Manual the first step in lodging a grievance is to discuss it with your supervisor and because that's me I demand that we continue this discussion in Patricia's office."

He was actually wrong about that as page 13 of the "Human Resources Manual" clearly states:

An employee having a complaint or grievance arising from the interpretation, application, operation, or alleged violation of the Personnel Policy, or other matter relating to his/her employment, should first discuss the subject of the proposed complaint or grievance with the Director. A full written record of the complaint should be made.

**Refer to "Human Resources Manual" [Copy enclosed]*

When I tried to point this out to him he cut me off saying, "I know what the Human Resources Manual says, I wrote it!"

I responded that the only way I would meet him in Patricia's office was if there was an impartial third party present. He asked Donna Williams, an American like himself and the Director of Finance to sit in. I was somewhat thankful for her presence even if she wasn't entirely impartial.

Once everyone was seated in Patricia Silver's office Michael Silver started off with, "I think we need to go over the immediate events that have led up to this meeting. I'm going to cover what Dan said and what I said." He then acknowledged me and said, "Feel free to correct me if anything I say is not correct."

I tried a number of times to correct what he was saying but it just made him mad and he would cut me off saying, "I'm not done yet!". It was quite obvious that Michael Silver was more than a little agitated.

When I was finally given the opportunity to speak I said, "Not only have you crossed the line on privacy you have compromised the security of the whole network. Just where and how are these keystroke logs being stored. They're likely sitting on some insecure Microsoft box that would be trivial to breach especially for anybody on the local network. It takes no effort at all to view a 'hidden share' on any Microsoft computer." I then said, "Installing a 'keystroke logger' is right down there with installing a 'potty cam'"

When I said that Donna Williams really started paying attention and asked, "What the hell is a 'potty cam'?" and at the same time directed what she said next to Michael Silver even though she was in essence responding to what I said. What she said was, "You mean to say that with the thousands of dollars we have invested in firewalls and security software anybody can just waltz right in and see the financial data on my computer?"

Michael Silver wasn't saying too much at this point so I answered, "For anybody on the local network it would be a trivial matter and likely wouldn't be that difficult from the

330 outside. Now that Michael has all my keystrokes logged and saved on some probably insecure computer who knows what kind of damage has been done. I wouldn't trust the security of this network if my life depended on it and I don't think you should either!"

335 Nobody responded so I directed what I said next to Michael Silver. "Just what exactly were you thinking when you installed a 'keystroke logger' on my computer knowing full well that I was logging in and out of servers everyday? I guess it's obvious you weren't thinking!"

340 I sensed that he didn't get what I had just said because his reply was, "I guess we're going to have to decide who really needs to have the 'administrator' passwords for all the computers and servers here. I'm going to be making some immediate changes to passwords and group memberships but don't think it's going to be just a retaliatory thing on my part. From now on all information is going to be categorized on a 'need to know' basis."

345 Donna Williams must have been responding to something that had been said earlier because what she said next was a not in direct response to what either I or Michael Silver had just said. What she said was, "The STARR software was approved by the Board of Directors a couple of years ago after we had a bad experience with an employee wasting a bunch of time. I guess we really didn't understand what a 'keystroke logger' was capable of."

350 I responded to what Donna Williams said by saying, "Michael for sure would have known what it was capable of. Michael was likely the one that evaluated it and submitted the requisition." Michael Silver did not respond to this comment.

355 Throughout the meeting Michael Silver attempted to pry out of me what I had discovered the day before but I steadfastly refused saying, "Anything more I have to say on the matter will be when I lodge my grievance with Patricia on Monday." The fact of the matter was that his prying for information was filling in a lot of blanks from what little I really had discovered. Although I don't remember exactly what it was he said it was beginning to be obvious that he was trying to determine if I knew that Virginia Clevette had been involved in installing the STARR 'keystroke logger' on my workstation.

360 By now it was ten minutes after noon and Michael Silver said, "It's ten minutes past the start of your lunch break, why don't you head off now. Right after lunch I want you to phone Myra at the Penhold Library and cancel the service call you have scheduled for Monday. I'm going to check "Calcium" and schedule a meeting with you and Patricia first thing Monday morning."

370 I said, "OK, whatever you think is necessary." as I got up and left Patricia Silver's office.

As I was leaving the office I heard Donna Williams say, "I think we need to have an emergency management meeting."

375 I was back at my workstation around 12:30 when Michael Silver stopped by his

workstation to retrieve something before heading off to lunch. I looked up and watched him as he went around my desk and over to his. He avoided making 'eye contact' and even made a detour around a coworker on his way out to further accomplish this. I really didn't think there was anything unusual about this but when he returned from lunch he was definitely acting unusual.

When Michael Silver returned from lunch it was as if he just returned from a complete personality makeover. Gone was his usual arrogance and air of superiority to be replaced with what was nothing short of the "Friendly Giant's" personality. For the rest of the afternoon Michael Silver was overly talkative to the degree that one of my coworkers commented as we were leaving for the day, "I wonder what the hell he was smoking for lunch?" I guess I wasn't the only one that noticed he was acting completely out of character.

I spent most of my time between Friday after work until Monday morning preparing for the "Grievance" I was about to lodge with the Director, Patricia Silver. I did manage to get through to Michael Geist, Canada Research Chair in Internet and E-commerce Law, University of Ottawa Law School, Common Law Section. He insisted I file a complaint with the Office of the Information and Privacy Commissioner for the Province of Alberta and told me it was extremely important that I do it as soon as possible. Being the weekend there was little I could do until the beginning of the week. He also told me about a report he did for the Canadian Bar Review titled, "Computer and E-mail Workplace Surveillance in Canada: The Shift From Reasonable Expectation of Privacy to Reasonable Surveillance." This is a well done report, totally relevant to the issues before us and should be read by everyone connected to this inquiry. I have included a copy for the perusal of all.

**Refer to "Michael Geist Report" [Copy enclosed]*

Lodging Formal Grievance with Parkland Regional Library

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On Monday, June 21st, 2004 I arrived at Parkland Regional Library and found Patricia Silver sitting in the staff room which is just off the staff entrance at the rear of the building. I stopped to say good morning and she said, "I understand you have something you would like to see me about."

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I replied, "It was not scheduled by me, it was scheduled by Michael and it's something I would rather avoid if I could although that prospect looks remote at the moment." I added, "Before we get started though I need to print out the 'grievance' as my home printer ran out of ink."

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She told me to go ahead and log into my workstation and do it from there and when I was ready I could come up to her office. I noticed when I went to my workstation that Michael was not around and that the last user to log in to my workstation was the user "administrator". As there were few of us at Parkland Regional Library that were authorized to have the "Administrator password" I assumed that it must have been Michael Silver that had last logged in. After I finished printing out a copy of the 'grievance' I logged out of my workstation and proceeded to Patricia Silver's office.

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Upon arrival at Patricia Silver's office I asked her, "Are you sure you want to hear this "Grievance"? After all it directly concerns your husband Michael so you may want to have the Personnel Committee hear it so that any 'conflict of interest' issues might be avoided."

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Her response was, "No, the grievance procedure says that presenting it to me is the first step in the process." At this point I took a seat and handed her a copy of the "Grievance". Before she even started to read the "Grievance" she said, "You really don't have a grievance here. The Board of Directors approved the use of the STARR program after we had an employee who wasted countless hours of Parkland's time doing personal things on the computer." as if this should somehow justified it's use. I thought this was a tad presumptuous on her part.

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I responded to that with, "I don't understand why you would ever think it was necessary to go to such extremes by using a 'keystroke logger' or 'screen capture' program to prove what sounds like a blatant misuse of 'company resources'. There are other, far less excessive, less intrusive, and less invasive means at your disposal and you wouldn't have even had to use those when you could have simply reviewed the cached web browser files to prove a misuse of the Parkland computers."

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I tried to explain to Patricia Silver that it was one thing to install a 'keystroke logger' on a 'company machine' but another matter entirely when it was installed on a computer where permission was explicitly granted, by way of the "Human Resources Manual", to use the computers for personal use with a rather vague description of 'acceptable use'.

Excerpt from page 18 of the Parkland Regional Library's Human Resources Manual:

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Security

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In order to protect Parkland's investment in employee time, employees are expected to limit their use of PRL Internet access for personal correspondence to non-work hours, such as before or after work or during lunch hour. Employees are expected to restrict their work-time Internet-searching to work-related sites and their searches outside of work but through the Parkland access to sites which would not generally be considered embarrassing to Parkland in the area of legality or morality.

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I went on to tell her, "What really concerns me is that I used the computer to do some 'online banking' which I never would have done had I been aware that a 'keystroke logger' or 'screen capture' program may be installed on my computer by my employer. In fact, if I had been made aware that 'keystroke loggers' and 'screen capture' programs were routine I would have likely reconsidered the 'Offer of Employment'. I think that the use of a 'keystroke logger' is a disturbing misuse of authority and now it looks as if it was used to compromise my bank account and PIN information." If it wasn't intentional it was most certainly an example of gross negligence.

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Patricia Silver responded to this by saying something to the effect of, "I don't know why you would be doing any online banking on a Parkland computer in the first place."

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I replied that because I lived in the country where the only Internet connection that was available was an unstable dial-up account it sometimes made it necessary to find alternate access. Although I would be reluctant to use a 'public access' computer for fear of a planted 'keystroke logger' I really didn't think I would ever find one 'employer installed' on a workplace computer. I then told Patricia Silver, "The whole point is that I did use the computer for online banking and it was authorized. I even asked Michael if I could and he told me to go ahead as long as it was on my own time. He said that knowing full well there was a 'keystroke logger' installed on my computer. I just find the whole thing hard to believe."

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Patricia Silver's immediate response was, "Do you really think Michael would have used any of that information for anything illegal?"

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My answer was, "Who knows what he planned to do with the information. As long as I was unaware of it's presence he could have easily have logged into my computer with my username and password performing all sorts of mischief and causing me no end of grief. Furthermore the 'keystroke logs' were stored in a totally insecure manner. The folder I looked at on the server was not password protected or encrypted. It would have been easy for anybody in the building to access the 'keystroke logs' and use the information found for all sorts of nefarious schemes. Just imagine the mayhem a disgruntled employee could cause using a username and password combination from the 'keystroke logs' to break into the whole system. If you're going to use a 'keystroke logger' or 'screen capture' program the last place you want to install it is on a machine used by someone who has the

passwords for every machine in the organization. Somebody obviously didn't think this one through very well.”

500 Patricia Silver's answered , “I guess these are a couple of things the Board of Directors neglected to take into consideration and I suppose we didn't understand what this software was capable of.”

505 All I could say was, “Michael for sure would have known exactly what that software was capable of. It astounds me that you would even consider the use of a 'keystroke logger' on my workstation, or anybodies for that matter, without first assessing the potential liability.”

510 It was pretty obvious by now that she had been discussing the incident of Friday, June 18th, 2004, with her husband Michael and quite likely Donna Williams as well. The reason I say this is that her comments about the Board of Directors were almost word for word what Donna Williams had said during the Friday meeting.

515 It was at this point that Patricia Silver read through the “Grievance” I had handed her. She went through it pretty quick and then said, “You've asked for a lot here.”

To which I replied, “I've offered a lot as well. There are some valid suggestions on how you could avoid similar situations in the future. I was just trying to cover all the bases. I've never had to lodge a grievance before and I tried to look at it from all angles.”

520 She then changed the subject by saying, “I have a report from the librarian at Rocky Mountain House that said you made some changes to a server and when you left they were unable to access the Internet for the rest of the day.”

525 I was somewhat puzzled by this and couldn't help but wonder why Patricia Silver would bring this up as it was completely unrelated to the “Grievance” she had just read. Not only that but what she had just said was completely inaccurate. I said, “The server at the Rocky Mountain House Library was not even in plugged in when I was there and in fact they asked me to bring it back here so that it could be set up for use as a 'public access' computer in the 'teen section' of the library. Apparently they sent us another computer for
530 the same purpose and Loretta has already set it up. As far as I know they're both sitting on the shelf waiting for the next 'van run' to Rocky. In any event what on earth has this got to do with the “Grievance” you just read?”

535 Patricia Silver's response was, “We obviously need to rethink the 'paper trail' process.”

540 My response to that was, “I try and keep track of everything I do by taking notes and marking things down in my 'day-timer'. From what I can see you don't have any kind of 'paper trail' or tracking mechanism around here. At least I haven't seen any evidence of it for as long as I've been here. In fact Michael keeps saying we should put something in place.”

Patricia Silver again tried to deflect the conversation away from the topic of the

“Grievance” by saying, “Your supervisor informs me you were downloading an unauthorized e-mail program.”

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Again it was obvious that Patricia Silver had been discussing the Friday meeting with her husband Michael so I said pretty much the same thing I had said Friday, “I was evaluating the 'Thunderbird' e-mail program as it has enhanced security and spam filtering capabilities. Wasn't that the dominant topic at the staff meeting a few days ago, eclipsing all other topics?”

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She tried to keep the topic moving by interjecting, “Why would you think we would need anything different than the e-mail program we use now?”

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To which I replied, “I have seen more than one e-mail program in use around here. There's three different ones I can think of right now that I've run across since I've been here. I have never seen a list of 'authorized' e-mail programs. If Michael has a list of 'authorized' e-mail programs you can rest assured he has never shown it to me. What I was doing was taking the initiative to evaluate a potential solution to a spam problem that your staff said was out of control. What I was doing was work related and has nothing to do with this “Grievance”. But, be that as it may, that's what I've been doing since the day I started. My first task, on the day I started was to set up and evaluate an 'open source' 'trouble ticketing' program which is now in use at Parkland. You know that! I set that up on an old machine that Michael provided and it worked just perfect until Michael botched an upgrade that wasn't even required. Right from the beginning Michael has essentially given me 'carte-blanc' to evaluate any software I think may be useful around here. Both Michael and I tested an 'open source' 'instant messaging' product called “Jabber” for possible use so he was well aware of what I was up to on any given day. Hell, he sat only a few feet from me were it was easy for him to glance over his shoulder to look over mine. If this was a problem that necessitated something as drastic as a 'keystroke logger' then I'm surprised it wasn't brought up when I had my probationary performance review just a couple of weeks ago.”

560

565

570

I realized I had finally managed to get the topic of the “Grievance” back on track when she said, “Since there is no way we can meet all your demands I guess I have no choice but to put you on paid leave until such time that I can assemble the 'Personnel Committee' to address your concerns. I don't know how long it will take to assemble the 'Personnel Committee'. As you know they are spread out all over Central Alberta. It could take some time.”

575

580

I protested, “Why are you putting 'me' on paid leave? Don't you think Michael and Virginia should be the ones put on paid leave?”

585

She said something to the effect of, “It's just more practical to put you on paid leave until we can get everything worked out. Under the circumstances I don't think it would be wise to have you working alongside Michael and Virginia.”

I finally agreed with her and then I said, “I guess I should get you to sign a copy of the “Grievance” for my records and I guess I should sign your copy.” at which point I signed

590 a copy and waited for her to sign one for me.

She signed my copy of 'the grievance' [Copy enclosed] with the following:

595 I received this document June 21/04
I have put Dan on paid leave until the matter can be dealt with by the Personnel
Committee and/or whatever other groups relevant.
Dan was informed by me of steps PRL has taken to address his concerns.
Patricia Silver

600 The only thing I recall her saying in reference to any 'concerns' was that she said her
husband, Michael Silver had spent all weekend removing the 'STARR program' from the
'PRL computer system'.

605 It was apparent the meeting was about to wrap up and I still had something to say but I
wasn't too sure how to go about it. There was some uncomfortable silence while I
mentally prepared what I was about to say. I finally said, "I'm a bit uncomfortable saying
this but I saw enough evidence on the Windows server to know that I was the only
employee at Parkland Regional Library that was under surveillance. I also find it
610 disturbing that the time stamps on the STARR installation files show that it was installed
on my computer the day after I had, what I thought was a minor misunderstanding with
Virginia. I believe it was on May 19th that I was attempting to solve an e-mail problem on
Wendy Crews workstation. The details will be recorded in "Request Tracker" in any
case."

615 I went on to relate the incident I talked about earlier starting on Page 4, Line 154 of this
document.

620 Patricia Silver didn't really respond to what I had just said and it appeared she was
thinking about something else entirely. She hesitated for a bit and when she finally spoke
she said, "I don't know how long it's going to take to gather the Personnel Committee.
These things can take time. I guess you'll just have to sit tight and you likely won't hear
from me before the end of the week. In the meantime I'm going to have to ask you for
your key. At least the weather is nice so you may as well enjoy your paid leave." With
that I was escorted to the rear door and sent home. I phoned my wife from the vehicle to
625 tell her what happened and that I was on my way home because I knew she would be
worried.

630 There was something about the whole meeting that made me uneasy but I couldn't quite
put my finger on it. When I got home there was an e-mail waiting for me from Michael
Geist. He basically said that the incident was far too important to ignore and that I should
immediately contact the Privacy Commissioner for the Province of Alberta. He had also
included contact information for a colleague at the University of Calgary Faculty of Law
so I called him and we talked for about an hour. He too urged me to file a complaint with
the Privacy Commissioner for the Province of Alberta. As soon as I got off the phone I
635 called the Privacy Commissioner's office and the 'intake officer' I talked with told me it
was extremely important to fax her as many details as possible and as soon as possible.

I faxed the Privacy Commissioner's Office a copy of the "Grievance" which ultimately formed the basis of my complaint, culminating in this inquiry.

640

For the next two days I mulled over the meeting I was supposed to have with the 'Personnel Committee' to air my "Grievance". Apparently Patricia Silver had an abrupt change of heart as on June, 23rd, 2004, I received the following letter:

645

Dear Dan:

650

Further to our conversation this morning, I spoke with the Chairman of the PRL Board and the chairman of the Personnel Committee, and have taken legal counsel. As a result of these conversations, I regret to inform you that we are terminating your employment with us immediately. This action is taken under clause (2) of the section on summary dismissal in the Human Resources Manual in response to your unauthorized deletion and modification of the STARR application files on your computer and on the server, and under clause (7) which supports the prohibition against mounting unauthorized software, such as Nmap and Sygate personal firewall, on the Parkland system.

655

Please find attached a cheque and explanation of how the amount was arrived at by the accounting department.

660

We are returning to you under separate cover your mug. Please return to Rimbeey Public Library any material you may have belonging to Parkland, such as your binder. Thank you for your co-operation in this matter.

665

Best wishes for the future.

Sincerely

<signature of Patricia Silver>

670

Patricia Silver
Director

**Refer to "Letter of Termination" [Copy enclosed]*

675

Unfortunately I am still unemployed and the circumstances surrounding my termination are difficult to explain to potential employers. I would hope that some day Parkland Regional Library will acknowledge their errors and offer me an apology, although I'm not holding my breath.

Arguments

680 As you can understand I am not a legal expert in any way, shape or form but I am going to attempt to present, what I feel are blatant violations of the “Freedom of Information and Protection of Privacy Act” for the Province of Alberta.

The issues as I see it are:

685

1. Was personal information collected by Parkland Regional Library?
 - a) Yes it was as defined in Section 1, clause (n) of the Act.
 - b) In addition to information collected by the Human Resources Department they admit to using a 'keystroke logger' and 'screen capture' application, in the form of the STARR program from iOpus.

690

**Please refer to the “Letter of Termination” [Copy enclosed]*

2. Was the collection of personal information by way of a 'keystroke logger' authorized?
 - a) No it wasn't. I think Section 33, clause (a) and Section 33, clause (b) of the Act state that quite clearly.

695

- b) I had no knowledge of, and did not give my consent to have personal information collected by way of a 'keystroke logger' or 'screen capture' program. I believe that violates Section 34, Subsection (1) of the Act.

700

3. Was the personal information properly collected?
 - a) By collecting personal information 'indirectly' by way of the STARR 'keystroke logger' and 'screen capture' program I believe Parkland Regional Library has violated Section 34, Subsection (1) of the Act. I claim the information was improperly collected and I say so in the “Grievance” that was lodged with Parkland Regional Library.

705

**Please refer to “Grievance” [Copy enclosed]*

4. Was the personal information collected done so to make a decision concerning myself?
 - a) I would have to believe it was. The only other reason I could see for collecting 'keystrokes' would be to try and capture financial information for fraudulent purposes.

710

- b) To avoid a violation of Section 35, clause (a) and (b) Parkland Regional Library should be able to make the information available for my perusal. I have requested the information but have not yet received it.

**Please refer to the “Request for Personal Information Letter” [Copy enclosed]*

715

5. Was the personal information collected by Parkland Regional Library through the use of the STARR 'keystroke logger' adequately protected?

- a) No it wasn't. The personal information was sitting in a 'folder' on the Windows server that was neither password protected or encrypted. I did not have to 'hack into' or otherwise 'force' my way into the folder named “c:\STARR” on the Windows server named “prlw2k”. A simple 'null session' to “c\$” would be sufficient to view the full contents of the “c:\STARR\” 'folder'. This violates Section 38 of the Act. My discovery of the 'keystroke logs' on the Windows server, as described in the “Grievance” explains this.

720

**Please refer to “Grievance” [Copy enclosed]*

725

6. Did Parkland Regional Library have the authority to use the personal information collected by way of the STARR 'keystroke logger'?
- a) No they didn't. Section 39, Subsection (1) clause (a) and (b) as well as Subsection (4) of the act would lead me to conclude that a violation has occurred here as well.
- 730 b) There was nothing that I signed granting permission to use the personal information collected by way of the STARR 'keystroke logger' nor was I made aware of it's use.
**Please refer to "Human Resources Manual" [Copy enclosed]*

735

7. Did Parkland Regional Library take adverse employment action as a result of a complaint lodged with the Office of the Information and Privacy Commissioner?
- a) Although the "Letter of Termination" indicates other reasons for dismissal it would appear there is a definite relationship between the 'complaint' to the Privacy Commissioner and the termination of my employment. I believe this is covered under Section 91, Subsection (1) of the Act.
- 740 b) Although the "Letter of Termination" is dated June, 21st, 2004, it was not delivered to me until June, 23rd, 2004. The 'receipt' of my 'complaint' to the Privacy Commissioner is stamped "Received – June 21st, 2004."
**Please refer to "Privacy Complaint Receipt" [Copy enclosed]*
**Please refer to "Letter of Termination" [Copy enclosed]*

745

8. Was the collection of personal information by use of the STARR 'keystroke logger' and 'screen capture' program a reasonable way of collecting this information?
- a) No it wasn't. Michael Geist's report explains this better than I could ever hope to.
**Refer to "Michael Geist Report" [Copy enclosed]*

750

9. Was the STARR 'keystroke logger' installed with 'criminal intent'?
- a) Although I was unable to determine any criminal activity that doesn't mean there wasn't an intent to commit a crime be that anything from financial fraud to blackmail. In any event the installation of the STARR 'keystroke logger' is almost certainly
- 755 'ethically questionable' by any measure.

760

I'm not certain everything has been covered here and I hope I haven't overlooked anything. I'm not even certain the format of this "Brief" is what is expected of me but all I expect from it is that it presents my version of the privacy complaint in a way that anyone could understand. I would like to think I have succeeded in doing so.

765

I would also like to take the opportunity to acknowledge the assistance of Michael Geist and through him, the assistance of Philippa Lawson of the "Canadian Internet Policy and Public Interest Clinic (CIPPIC), University of Ottawa, Faculty of Law. Michael Geist was kind enough to direct me to a report he presented to the Canadian Bar Review concerning workplace surveillance and Philippa Lawson was kind enough to offer the assistance of a staff member, April Brousseau in preparing a 'research memo'. Both documents turned out to be a big help in preparing this brief. They convinced me it would be for the future good of others who find themselves in a similar situation.

770

**Refer to "Michael Geist Report" [Copy enclosed]*
**Refer to "Research Memo" [Copy enclosed]*

In closing, I would like to offer this description of the STARR 'keystroke logger' as it is described to viewers at the following URL (Universal Resource Locator):

775

http://www.pcworld.com/downloads/file_description/0,fid,22390,00.asp

Where it says:

780

Big Brother is here and he is you?! He is if you use iOpus STARR. This crafty little devil lets you keep a watchful eye on all activity on your computer. Spy on your kids and other loved ones by monitoring their e-mail, chat sessions, browsing, or anything else they do on the computer. STARR will generate searchable text logs and screenshots of activity, including both sides of chat sessions. The program will then send you a report directly to your e-mail. Buy the Pro Edition and spy across your network. When good old-fashioned trust and

785

compassion fail, STARR comes through for you.

Just what every amateur “Inspector Clouseau” needs to round his 'spy kit' don't you think!

List of Documents

- 790 This is a list of supporting documents that I am making available for the purpose of this inquiry.
1. Copy of “Human Resources Manual” referred to in this document as “Human Resources Manual”.
- 795
2. Copy of “Letter of Engagement” referred to in this document as “Letter of Engagement”
3. Copy of the “Grievance” referred to in this document as “Grievance”
- 800
4. Copy of “Page from Daytimer” referred to in this document as “Daytimer”
5. Copy of “Receipt of Complaint” referred to in this document as “Privacy Complaint Receipt”
- 805
6. Copy of “Letter of Termination” referred to in this document as “Letter of Termination”
7. Copy of “CIPPIC Research Memo” referred to in this document as “Research Memo”
- 810
8. Copy of Michael Geist's article in the Canadian Bar Review referred to in this document as “Michael Geist Report”
9. This document referred to as the “Brief”