

# Censorship, Bullying and Mental Health in Business Office

Examination based on a Labour Case

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# Case and Facts

- The Japanese Supreme Court (the highest court of Japan) ruled a labour case in 24 of April, 2012.
- The plaintiff of the case is an employee of Hewlett-Packard Japan (HP Japan).

- The plaintiff claimed:
  - (1) employer (HP Japan) has performed **targeted monitoring and inspection** of his behaviour in his office room;
  - (2) he has recognized the inspection, due to **burring** by his colleagues who suggested to the employee that the colleagues had been watching the plaintiff everyday, every time;
  - (3) after those, he was **ill in mental sick** caused by the monitoring and inspection as well as everyday bullying by his colleagues; and
  - (4) the employer (HP Japan) **fired** the plaintiff.

- The plaintiff filed his court case against HP Japan at the Tokyo District Court in 2009.
- He argued that his dismissal was unlawful and invalid.
- However, the District Court dismissed his case in 2010 and said that the dismissal of the plaintiff was **lawful and valid**.
- The plaintiff appealed to the Tokyo High Court (appeal court).

- The Tokyo High Court judged in 2011 and mentioned:
  - (1) the plaintiff's claimed facts (monitoring and bullying etc.) were **not satisfactory proofed** based on presented evidences including stealthily recorded colleagues' voice in his IC recorder device and electronic mail messages;
  - (2) such plaintiff's recognition might be a **delusion** created based on his mental illness; and
  - (3) despite these, the dismissal of the appellant (plaintiff) was unlawful and invalid because HP Japan had to complete more **adequate medical care** for him before the decision of his dismissal.

- HP Japan final appealed to the Supreme Court.
- Finally, the Supreme Court judged against HP Japan's final appeal.

# Important Elements

- Censorship
  - Requirements under the Japanese Government's **Guidelines** based on the Personal Information Protection Act of Japan.
- Bullying
  - **Tort** by Business Colleagues.
  - **Legal Obligations** of Employee of Business Corporation to protect its Employees against Risks in the Office (Tort Law and Labour Law).
- Mental Disease
  - **Medical Care** before an Employee Dismissal under the Labour Standards Act and relating Governmental regulations of Japan.



# Discussions (1) – Privacy Issues

- Censorship without any consent is substantially **Illegal**.
- Exceptions:
  - Consent by an **individual employee**.
  - Agreement between the employer and **labour union**.
  - Other general exceptions (e.g. a law enforcement operations under a legitimate **wiretap warrant** issued by adequate court).
- Issues
  - An individual consent on monitoring is very rare.
  - In fact, a labour union might be an **agent of the employer** but not standing at the side of an individual employee.
  - An employee can never expect to have any **choice to disobey** the agreement between the employer and labour union.

# Discussion (2) – Evidential or Forensic Issues

- In general
  - **Availability** as an evidence
    - Electronic record can be a valid evidence in the civil court cases in Japan.
    - Electronic record can be treated as a similar evidence as written documents in the court.
- Value as an evidence
  - **Confidentiality** as an evidence
  - **Integrity** as an evidence
- Issues
  - The plaintiff provided his electronic recording device to the internal inspection committee, due to his personal reliance on the committee.
  - The committee had retrieved and examined the recorded voice in the device.
    - The committee had possibility of removing or modifying the electronic record in the device.

# What is truth?

- I don't know.
- The courts ruled that the plaintiff's claim was a **delusion**, because the record voice was very ambiguous and never identified such a bullying as his claim.
- Only the God know.

# Comparison with Olympus Corporation Case

- Facts:
  - Facts A (Employee Case):
    - An employee of Olympus Corporation discovered some illegal head hunting from some competitive business corporations to get trade secrets;
    - He informed the matters to his boss by emails;
    - However, the employee was berried and excluded from his own section to a slave like special section by the Olympus Corporation's directors board.
    - He filed a labour case to confirm his position and to compensate his damages.
  - Facts B (Financial Crime Case):
    - On the other hand, former Olympus President Woodford recognized some illegal financial window-dressing in Olympus;
    - Mr. Woodford pointed out the problem and argued that detailed examination on Olympus's accounting operation should be done;
    - Mr. Woodford was excluded from the directors board;
    - However, the Public Prosecutors Office investigated Olympus Corporation as a financial window-dressing case.

- Court rulings

- Employee Case findings and ruling

- Directions by director boards and boss to the employee were illegal.
    - The employee has a valid position in Olympus Corporation.
    - Olympus Corporation has to compensate his damages.

- Financial Crime Case

- The defendants (former Japanese board members) were charged as criminals who committed illegal financial window-dressing.
    - They plead guilty at the court.

# Some Similarities

- Labour Issues

- Common Evidential issues

- Availability of electronic evidence
    - Confidentiality of the evidence
    - Integrity of the evidence

- Trust basis issues

- Is the labour union enemy of a specific employee?
    - Is the boss in office a criminal or tortuous person?

- Who can save employee's human soul?

- Financial Issues

- Olympus – financial crimes.

- HP - accounting failure issue in UK.

# Mental Health in Business Office

- Excess censorship and monitoring may not only unreasonable but also harmful to mental health in business offices.
  - Detailed censorship may be one of the main cause of human mental diseases (e.g. psychotic depression).
  - Censorship and monitoring in business offices may include management operations on BYOD (By Your Own Device) , as well as email monitoring and key-logging of employee and so on.
- Important points are to adopt or build:
  - **Reasonable assessment of information assets** in accordance with the business purpose and relevant laws ;
  - **Less injuring measures and technologies** to achieve good conditions on information security of the business; and
  - **Reasonable consensus and agreements** between the employer and its employees.

# Guidelines of the Japanese Government

(December 20, 200)

- Prohibition to obtain any information on:
  - Human DNA; and
  - HIV positive or not.
- Prohibition of using Lie Detection Devices.
- Limitation of Purposes:
  - To ensure employee's health and safety; or
  - To build adequate security of information assets.
- However, we also have to examine about:
  - Biometric authentications;
  - Implanted electronic devices in human body; and
  - Total health care management of employees.



# In addition

(a bit like science fictions – Am I a mad professor?)

- Next or future human generation may become...
  - A hybrid of human and electronic device or bio computing equipments including artificial bio cell components; or
  - An android or Cybernetic organism (Cyborg).
- They may be able to be controlled completely by computer systems via information networks.
- In such an era
  - What is privacy?
  - Bio-robots has its (his/her) own privacy?
  - Robots in non-human factory is a same existence as an employee in his/her business office?

Thank you