



Wanders Office Park  
Pavilion Building Second Floor  
52 Corlette Drive  
Illova

PO Box 78662 Sandton 2146  
Docex 264 Randburg

e-mail: [law@elawnet.co.za](mailto:law@elawnet.co.za)  
website : [www.gji.co.za](http://www.gji.co.za)  
tel: +27 (11) 595 2300

## **The Importance of a Bring Your Own Device (BYOD) Policy**

21 January 2013 - In his excellent article Lessons from Naked Pictures Michael Schmidt writes as follows:

“Sometimes you can find great employment law lessons in the craziest places and lawsuits, and even non-employment law lawsuits. This month, a decision was issued by a Family Court Judge in Brooklyn, New York that, while an apparent nightmare for the family involved, could nevertheless breed some worthwhile takeaways for you and your company as we near the year end.

In *In re: CW v. CYR*, NN-026283-6/13 (Sup. Ct., Kings Co. 12/2/13), the Administration for Children’s Services (“ACS”) filed a Family Court Act application seeking the emergency removal of four children from the custody of their parents. So far, nothing to do with social media or employment law, right? Here’s the social media part: According to the decision, the father had lost his Blackberry a few months earlier, and the person who found the device “also found photographs of naked children and turned the phone into the police.”

The photos included one of a child wearing nothing but boots, one of a child “asleep on her stomach with her buttocks visible”, one of a “full frontal nude picture of a child covered almost completely in soap bubbles”, and one showing a child “with her legs spread and her vagina visible.” According to the parents, the pictures were taken with no bad motives to simply record various family-related activities and strange poses of the parents’ children and cousins. However, charges were brought against the parents, and the “issue before the court was whether or not the [parents] had photographs that constituted child pornography indicating they sexually abused their children.”

A hearing was held, at which there was a lot of testimony from ACS, the parents, and various other fact and expert/medical witnesses. Fortunately for the parents, the court ordered the return of their children, finding that the photographs and videos presented did not meet the various definitions of unlawful conduct under the New York Penal Law. The judge added: “Any parent knows that you cannot raise a child without making a mistake in judgment from time to time. And unless that mistake endangers your child or you violate a statute you have the right to correct your mistake without government interference in your family lie. Ms. R learned a difficult lesson.”

Employer Take Away: What should you as an employer take away from this development? Here’s the employment law part:

1. A picture, or an act, might be viewed very differently by two different, yet reasonable, people. As we are now in the thrusts of holiday party season, employees (particularly with the aid of alcohol) feel free to use social media to send jokes and pictures of all types and content to recipients they think will enjoy it. Not always. What one might view as funny or appropriate, may not be viewed that way by the first recipient. Or, the ultimate recipient of continuous clicks and sends. Do your

company's harassment and discrimination policies – and the appropriate training that should take place – sufficiently address these issues?

2. Remember, this case started with a lost Blackberry and the finder looking at the content of the Blackberry (likely innocently to try to determine the owner's identity). Was there no password or lock feature? One can certainly see how easy it would be for someone to find a lost Blackberry or other smartphone and be in a position to view your company's trade secrets or other company or customer proprietary information. Does your company have a sufficient electronic devices policy and bring your own device (BYOD) policy, particularly when you allow access to company e-mails and systems on an employee's mobile device?"

The above excellent article again so eloquently underlines the importance of a carefully and professionally crafted BYOD Policy for each and every entity failing which in the event of loss to the entity I believe that the directors and prescribed officers could find that they are in breach of their statutory obligations in terms of section 76 of the Companies Act of 2008, as amended, with the resultant Draconian consequences provided for in that section.

*Prepared by Michael Judin of Goldman Judin Inc.*

*Michael may be contacted on +27 (0) 83 300 5000 or at [michael@elawnet.co.za](mailto:michael@elawnet.co.za)*

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