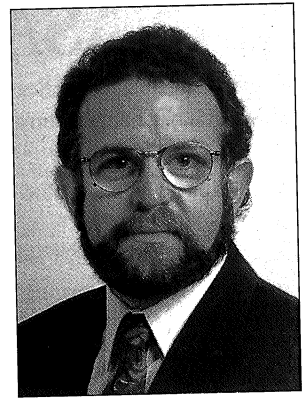


## CCTV and the Law

### Surveillance in the Unionized Workplace

*When using video cameras to record employees, you need to be sure your actions are reasonable*

By Elliott Goldstein



#### **Q: What is the test for the admissibility of video surveillance conducted in a unionized workplace?**

**A:** Labour arbitrators hear grievances launched by unions and have formulated the following three-part test for the admissibility of surveillance videotapes at arbitration hearings:

1. Was it reasonable, in all of the circumstances, to request surveillance?
2. Was the surveillance conducted in a reasonable manner?
3. Were other alternatives open to management to obtain the evidence sought?

It is not reasonable for an employer to engage in surveillance of an employee on the basis of rumours, gossip or innuendo that an employee is, for example, abusing sick leave or committing theft. There must be other circumstances that indicate that the employee's injury or disability may not be legitimate, or that money or inventory has gone missing. For example, medical reports may indicate an employee is capable of tasks that he or she claims to be unable to perform.

If the company can demonstrate that it took less intrusive steps to confirm its suspicions before resorting to surveillance of a particular employee, then the case for the surveillance videotape's admissibility will be strengthened. Such steps may include confronting the employee about suspicions, offering modified duties, demanding further medical proof of the disability, and identifying suspect transactions on cash register tapes, for example.

A decision to conduct surveillance on a particular employee is rendered

more reasonable if the employee has previous incidents of dishonesty on his or her employment record. Confronting the employee with suspicions may not be a realistic option where the employee has demonstrated a history of dishonesty and deceit.

In the case of abuse of sick leave or compensation benefits, the nature of the alleged injury may be relevant to the "reasonableness" of the surveillance. Some injuries (back or neck muscle injuries, for example) result in disabling pain but are difficult to demonstrate and to verify medically. Covert surveillance may be the only practical way to confirm suspicions of employee malingering.

The location and circumstance of the surveillance (that is, where it takes place) may also affect its "reasonableness." Surveillance videotapes of employees in public places performing acts in plain view of the public (for example, walking in a public park) are more likely to be admitted than videotapes of employees in a location where they have a reasonable expectation of privacy (such as in their homes or backyards).

Provincial privacy legislation may also have an impact on the admissibility of surveillance videotapes at labour arbitration hearings. Some provinces — such as British Columbia, Saskatchewan and Manitoba — have provincial civil statutes that create a statutory right to sue for "invasion of privacy." Labour arbitrators have analyzed cases differently because of the presence or absence of such priva-

cy legislation.

Public institutions, whether unionized or not, should ensure that the collection, retention, use and disclosure of video-recorded information is done in accordance with the provincial legislation that governs freedom of information and protection of privacy. In Ontario, the Information and Privacy Commissioner/Ontario (IPC) has issued a revised IPC Practices compliance letter (#10, dated September 1998) that lists 11 questions that an institution should answer before determining whether the use of video surveillance is appropriate (see "Are you being reasonable?" at right).

In light of all of the above, it is important to emphasize that the decision to conduct surveillance and the manner in which it is conducted, must be "reasonable in the circumstances."

**Elliott Goldstein, B.A., LL.B., is a barrister and solicitor in private practice. He is also author of *Visual Evidence: A Practitioner's Manual*, published by Carswell/Thomson Professional Publishing. To inquire about the manual, call 1-800-387-5164.**

If you have a legal question regarding CCTV, please send it to: CCTV and the Law, *Canadian Security*, 46 Crockford Boulevard, Scarborough, Ontario M1R 3C3; fax (416) 755-7487. Or e-mail us at [canadian.security@sympatico.ca](mailto:canadian.security@sympatico.ca).

# CANADIAN Security

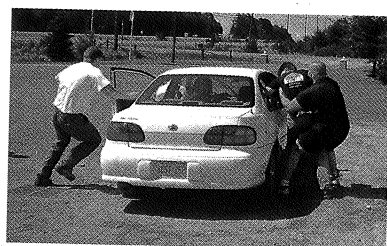
*The Journal of Protection & Communications*

## Contents

### Security Canada Central '98

28

An overview of the sessions being offered at this year's show, and a detailed look at the products vying for the 1998 Dealer's Choice Awards



### Up Close and Personal

32

What close protection specialists need to consider when dealing with executives, musicians, actors and other high-profile individuals

*By Sunil Ram and Paul Busuttill*

### Around the Globe in 90 Days

How to keep foreign visitors from stealing the trade secrets essential to the continued success of your organization

*By John Pyrik*



42

### Green Pages Product Directory

50

#### IN EACH ISSUE

**Editorial** .....4  
Talking to Strangers

**Letters** .....6  
Two opinions in defense of ex-police officers and ex-military personnel

**Industry News** .....8  
Helmet-mounted cameras capture criminals on film; getting through customs in seconds; CCTV not just for security surveillance; and more

**Alarm Industry News** .....16  
Marching for more than dimes; monitoring the monitoring industry; system alerts alarm conditions; and more

**Sales Tip** .....20  
How to Be a Lifesaver  
*By Al Montgomery*

**Tech Tip** .....22  
Through the Looking Glass  
*By Tim Hobbs*

**CANASA News** .....25  
Current CANASA News and events

**CCTV and the Law** .....26  
Video Surveillance in the Unionized Workplace  
*By Elliott Goldstein*

**CSIS/SCSI News** .....55  
A message from the past president, views on better securing our children at school, and congratulations to three new ASP designation recipients

**Book Review** .....60  
A review of Robert Gerden's new book, *Private Security: A Canadian Perspective*

**Appointments** .....62  
A look at some of the faces changing places in the industry

**Calendar** .....63  
Trade shows, workshops and other events of interest to security professionals

**Product News** .....64  
A look at some of the innovative new products making an appearance in the marketplace

**Advertisers' Index** .....73

**Q & A** .....74  
Speaking in Code  
An interview with Charles Palmer of IBM Research