

HOW CCTV SURVEILLANCE CAN SERVE US IN COURT

by Elliott Goldstein, B.A., LL.B.

Physical surveillance is one of the most time consuming and, perhaps, tedious activities that security personnel can perform. Considerably less time and effort is required to conduct electronic visual surveillance.

Closed circuit television (CCTV) cameras are found in the lobbies, elevators, and underground parking areas of office and apartment buildings. Banks, trust companies, and credit unions have installed security cameras for identification and deterrence purposes. Department and convenience stores use CCTV surveillance cameras to observe the actions of their customers (to prevent shoplifting) and staff (when handling money or inventory). Some factories use CCTV surveillance — indoors — to monitor worker performance, and — outdoors — to prevent vandalism to their buildings, vehicles, and other property.

CCTV technology

Present day sophistication in the field of electronic visual surveillance arises from recent advances in CCTV camera technology. Low light level cameras can operate with only moonlight. Infra-red cameras can operate in total darkness. Motion activated cameras mean a security guard no longer needs to stare endlessly at a CCTV monitor; the camera alerts him. CCTV surveillance cameras can be operated by remote control or triggered automatically. They may be hidden or in plain view, and protected from the elements by a weatherproof housing.

A CCTV surveillance camera can be connected to a videotape machine to record the events seen on the CCTV monitor screen by security or investigation personnel. The recorded videotape may be tendered in court to present evidence of such crimes as assault; break-and-entry, robbery, theft, trespass, vandalism, etc.

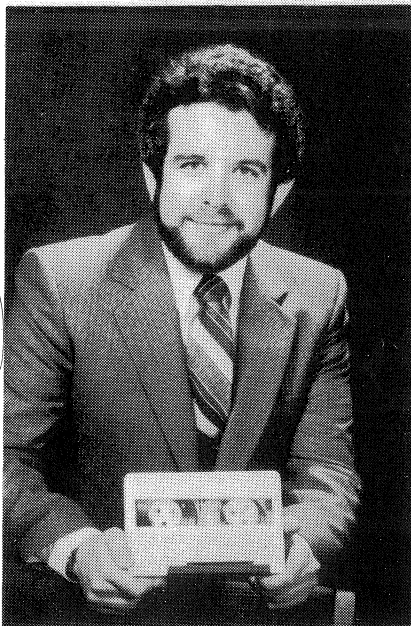
The authenticating witness

Before a CCTV surveillance videotape will be admitted in court, it must be pro-

ven relevant to an issue at trial, a true and accurate reproduction, and fair (*i.e.*, not misleading). In addition, the videotape has to be verified on oath by a capable witness (someone present at the scene of the event, someone who saw the event on the CCTV monitor as it took place, or an expert witness).

An *eyewitness* testifies, from memory, about what he saw, and whether what he now sees in the courtroom during a screening of the videotape is the same as what his memory tells him occurred during the event.

A *qualified witness* is someone who sees an event on a CCTV monitor simultaneously with its occurrence. A security guard would be a person qualified to state whether the videotape recording (of that event) shown in the courtroom is an accurate representation of what he saw on the CCTV monitor when the recording was made.



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This witness could also testify that the CCTV equipment was functioning reliably on the recording day and establish the location of the surveillance camera.

A qualified witness authenticated a surveillance videotape in the recent Ontario case of *R. v. Peterson*.¹ The police suspected that a men's public washroom near a city park was being used as a meeting place for male persons to engage in acts of gross indecency. The police, with the permission of the appropriate public authority, installed a video camera in the ceiling above the washroom cubicles. Police officers watched on a monitor screen what was being captured by the hidden camera, and the events shown on the screen were simultaneously recorded.

The videotape was tendered in evidence and authenticated by a police officer who testified that what he saw on the videotape's playback monitor in the courtroom was the same as what he saw on the CCTV monitor on the day of the alleged offence.

The expert witness

An *expert witness* may be called to authenticate a videotape that has been recorded automatically by a CCTV surveillance camera connected directly to a videotape machine. This witness did not see the event occur because he was not present at the scene, nor was he able to view the event on a CCTV monitor when it happened.

Nevertheless, the expert witness is able to authenticate the videotape by testifying how the CCTV surveillance camera was activated and the manner in which it recorded.

In *R. v. Taylor*,² an expert witness was called to authenticate a videotape recorded by a surveillance camera activated by a motion detector. The police had installed the hidden surveillance camera to monitor the interior of a public library. The camera was connected to a recorder and time date generator. The recorded videotapes showed the accused,

The videotape was admitted into evidence after being verified by a police officer qualified as an expert on video surveillance equipment.

Accidental erasure

Accidental erasure of a videotape does render inadmissible testimony of a witness about what it contained. There is an effective legal distinction between a direct view of the action of an alleged offender by a security guard and a view of these activities by a security guard on the video display unit of a camera or a view of those activities on a videotape of what the camera recorded. It is relevant evidence provided that what is seen on the videotape is connected by sufficient evidence to the actions of the alleged offender at the time and place in question. The weight and reliability of the evidence depends upon assessment of all relevant considerations, including the quality of the recording, its length and, where identification is in issue, the witness' prior knowledge of the person to be identified³.

Glitches and interruptions caused by the camera operator turning the video camera on and off without explanation will result in the videotape being excluded from evidence because it does not truly and accurately portray the incidents alleged or the entire "transaction".

Protection against interference

Great care must be taken to ensure that video equipment is operating properly and is not exposed to radio frequency or electromagnetic (EM) interference. This point is well illustrated in a recent British Columbia case⁵.

A major Vancouver department store alleged that thefts of money were occurring from the cash registers in its cafeteria. To discover who was stealing the money, store security officers installed sixteen CCTV surveillance cameras to monitor the cafeteria's cashiers as they worked. One such camera was installed on the ceiling of the cafeteria directly above the No. 1 cash register. A second surveillance camera was placed in the ceiling above the aisle just to the right of this register.

The cameras were linked by a coaxial cable to a CCTV monitor in the store's security office. Security officers could watch, both directly and observe what each camera was "seeing". The cameras transmitted signals to VTRs, and a time/date stamp was superimposed on the current time

At trial, a senior security officer of the store testified that while he was watching the monitor of camera No. 1, he saw the accused cafeteria cashier place her left hand in the \$20 slot of the cash drawer, place her right hand underneath her left hand, make a pulling motion with her right hand, and slide a bill into the palm of her hand. She then removed both hands from the cash drawer and closed the drawer. This witness then observed the CCTV monitor of camera No. 2 and saw the same accused move from the cash desk, bring her right hand out of the pocket of her smock and make a flattening motion against that pocket.

The trial judge stated that, while watching the playback of the videotape on a television set in the courtroom, he did not see the removal of the \$20 bill from the slot in the drawer of the cash register. He stated that all he could see was two hands and much static.

The officer, under questioning by the trial judge, admitted that the videotape did not present to the court an accurate picture of what that witness observed on the CCTV monitor in the department store. Since the defence had already consented to the admission of the videotape, the trial judge could not rule it inadmissible. Instead, His Honour gave little weight to it.

It is important to note that the videotape did not show the alleged theft from the cash register. At the "vital moment", interference caused by the senior security officer using a UHF radio, broke up the video picture⁶. Since there was no evidence of the alleged theft, the trial judge found the accused not guilty.

Static distortion caused by RF or EM interference renders a videotape an inaccurate reproduction of the event it purports to depict. Such distortion may affect the admissibility or weight given to the recording if that distortion arises at a vital moment in the event being shown.

The instruction manuals that accompany professional videotape recorders explain the steps that can be taken to prevent such interference (e.g., proper grounding and shielding of the recorder, and proper filtering of its power supply). More information on how to prevent radio interference can be obtained from the local office of the Department of Communications (Canada) or the Federal Communications Commission (U.S.A.).

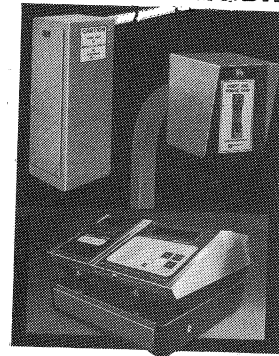
Caveat

This article reflects the law of Canada as of March, 1987. New cases now being decided, especially those dealing with the

above. Security and investigation personnel who are interested in any legal issue discussed in this article should consult their legal advisor or district Crown Attorney.

1. *R. v. Peterson* (November 4, 1985, Ont. Co. Ct.), County of Wellington, unreported decision of Higgins, J.
2. *R. v. Taylor* (June 8, 1983), 10 W.C.B. 303, (1984), 4 C.R.D. 425.60-08 (Ont. Prov. Ct.).
3. *Taylor v. Chief Constable of Cheshire*, (1987) Crim. L.R. 119.
4. *R. v. Cynthia Miller* (October 29, 1986), 17 W.C.B. 382 (B.C. Co. Ct.).
5. *R. v. Lunsted* (February 21, 1984, B.C. Prov. Crim. Ct.), Vancouver Registry Information No. 42449, unreported decision of Davies, Prov. Ct. J.
6. *It is not clear from the court transcript whether the source of the static interference was RF or EM. Regardless, any time a radio or other electrical device is used in close proximity to an unshielded videotape recorder interference is likely to occur.*

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