

# CCTV Helps Both Patients And Staff

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

Elliott Goldstein is a Toronto area lawyer who specializes in civil and commercial litigation and visual evidence research. He has written a number of articles for *Canadian Security* and other periodicals and is the author of *"Visual Evidence: A Practitioner's Manual"* (published by Carswell/Thomson Professional Publishing, a division of Thomson Canada Limited, in 1991 and updated at least twice yearly).



their visitors, medical and hospital staff, delivery persons, and, of course, intruders.

*The Criminal Code*, which governs audio surveillance, makes it a crime to intercept the communications of persons without their consent.<sup>2</sup> However, where private security officers conduct video surveillance without recording audio, there is no contravention of the law.<sup>3</sup>

Public security officers (i.e., "peace officers" as specifically defined in *The Criminal Code*) are required to obtain a warrant before "observing, by means of a television camera or other similar electronic device, any person who is engaged in activity in circumstances in which the person has a reasonable expectation of privacy..."<sup>4</sup> Unlike their counterparts in the public sector, private security officers are not required to obtain a warrant or judicial authorization to conduct video surveillance.

The hospital security officer plays an important role in the legal system when he or she is called upon to authenticate a videotape recorded by a hospital surveillance camera. While under oath, the officer will be asked to state whether the image shown on the playback monitor in the courtroom is a true and accurate reproduction of what that officer observed. Either that officer was an eye witness to the event or a qualified witness who viewed the event on the security monitor as it happened.

The hospital security officer will also be called upon to prove the chain of custody of the videotape. This involves testifying that the surveillance camera was in operation when the event occurred and that after the recording was made, the videotape was removed from the recording unit (VCR) and kept safe until given to the police.

In a recent decision of the Ontario Court of Appeal it was held that a trial judge should not rely solely on his or her own comparison between the appearance of the person in the videotape and the

appearance of the accused in the courtroom to reach a conclusion that the accused was the person shown committing the crime in the videotape. Instead, the Crown should call a person sufficiently familiar with the accused (e.g., the hospital security officer) to convey to the judge or jury information that would not otherwise be available to it.

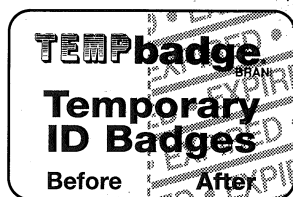
Hospital security officers should also be aware that video surveillance of a scene of suspected criminal activity is fully justified and not a violation of the *Charter of Rights and Freedoms*. However, monitoring the conduct of a specific individual, uncovering his or her idiosyncratic behavior, or intruding upon his or her privacy infringe that person's right to privacy. Violation of privacy results in the videotape being excluded from evidence and a possible acquittal of the accused. Similarly, if a person has a reasonable expectation of privacy, video surveillance may be an intrusion and a violation of the person's right to protection against unreasonable search or seizure.

Depending upon hospital policy and union agreements, hospital staff washrooms and changing areas may be off-limits to surveillance cameras. Before installing any surveillance cameras, a prudent, careful hospital security officer will obtain clearance/permission from his or her superiors and the hospital administration, where appropriate.

Video surveillance of patients and medical/hospital staff poses some interesting problems for hospital security officers. During medical examinations, treatment, and therapy, patients uncover parts of their bodies that they would not reveal in public. Patients are similarly exposed while attending to personal hygiene.

While the presence of a visible surveillance camera will certainly deter any physical or sexual abuse of the patient, it may also cause the patient personal embarrassment and perhaps even humiliation. In such situations, it is recommended that a hidden surveillance camera be

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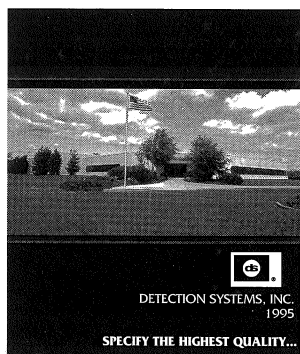
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used and that any videotape recorded,  
which does not reveal any improper  
behavior, be immediately erased.

Certain areas should be under constant  
video surveillance. For example, the  
emergency department and the pharmacy  
or any other area where drugs are stored.  
In these areas, visible surveillance cam-  
eras may prevent assaults on hospital  
staff and theft of drugs. Likewise, infant  
nurseries should have visible cameras to  
deter infant kidnapping and switching of  
infants.

Psychiatric wards and geriatric wards  
should also be monitored by cameras to  
detect and prevent violent behavior or  
persons going missing. Sometimes arrest-  
ed persons suspected of being mentally  
unstable are remanded to hospitals for  
psychiatric evaluation; and if they know  
they are being watched, they may be  
deterred from trying to escape or taking  
hostages.

Elderly patients in geriatric wards fre-  
quently suffer senile dementia,  
Alzheimer's disease, and other conditions  
brought on by old age which may cause  
the elderly to lose their memory. Sur-  
veillance video cameras can be used  
to track these individuals and return them  
to their rooms before they get lost in, or  
wander away from the hospital.

Psychiatric and geriatric patients com-  
monly suffer pain, anxiety, and depres-  
sion. Some become suicidal. Hospital  
security officers should be aware that rel-  
atives or friends of such persons have  
been charged and convicted of coun-  
selling or aiding suicide.<sup>5</sup> This actually  
happened in the British case of *R. v. McShane*<sup>6</sup> wherein the trial court admitted  
a surveillance videotape (including pic-  
ture and soundtrack) of the accused  
attempting to counsel or procure her  
mother's suicide.

The facts of the case are bizarre to say  
the least. The accused, Yolanda  
McShane, had a very wealthy grandmoth-  
er who died leaving the bulk of her estate  
in trust for Yolanda, but giving Yolanda's  
mother the income from it for her (the  
mother's) life. For years, Yolanda's  
mother suffered from fantasies and  
threatened to commit suicide. In 1975  
Yolanda's mother suffered a bad fall and  
broke her hip and was placed in a conva-  
lescent home to recover. There she was  
visited three times by her daughter,  
Yolanda. After the second visit,  
Yolanda's mother was found in a coma  
induced by drugs that the police believe  
Yolanda gave her. Without the knowl-  
edge of either Yolanda or her mother, the  
police set up a hidden surveillance cam-  
era and microphone in the room of  
Yolanda's mother and recorded the third  
and last visit.

At trial, the jury viewed grainy black

and white videotapes which showed  
Yolanda giving sleeping pills to her  
mother and helping her hide them in her  
clothes so the nursing staff would not  
find them. Yolanda then staged her own  
temporary exit from her mother's room  
thus providing herself with an alibi.

On the basis of the videotape evi-  
dence, the jury convicted Yolanda of  
attempting to counsel or procure her  
mother's suicide and the judge sentenced  
Yolanda to two years in prison. Ironi-  
cally, shortly after the trial  
Yolanda's mother died in her sleep – of  
natural causes, of course!

The most inculpatory part of the  
videotape was not its picture portion, but  
its soundtrack. The microphone recorded  
Yolanda discussing suicide with her  
mother and telling her the number of  
sleeping pills it was necessary to take.  
Yolanda told her mother that she  
(Yolanda) must not be connected with the  
taking of the pills or she (Yolanda) would  
not inherit under her grandmother's will.

What absolutely convinced the jury of  
Yolanda's guilt was when she told her  
mother "Don't let's make a mess of it  
(the suicide) this time. We thought we  
had done so well before!" (*Legal cases  
are indeed stranger than fiction.*)

Surveillance cameras alone are not the  
only answer to hospital crime. Vigilant  
hospital staff play a vital role in protect-  
ing patients, staff, and property. In addi-  
tion, and this should come as no surprise,  
the mere presence of uniformed hospital  
security officers has been shown to ease  
the minds of hospital staff, patients, and  
visitors.<sup>7</sup>

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pitals – Canada)" (Spring, 1990), 11 *Health Law in Canada*  
38-40; and Snapp, J. "The unsafe workplace: A hospital's  
perspective." (Spring, 1990), 11 *Health Law in Canada* 41-  
42.
2. See Part VI – Invasion of Privacy, section 183 of *The  
Criminal Code*, R.S.C. 1985, Chap. C-46 (as amended).
3. See *R. v. Biasi et al* (No. 3), 66 *Canadian Criminal Cases*  
(2d) 566.
4. See section 487.01, especially subsection 487.01 (4) and (5)  
of *The Criminal Code*, R.S.C. 1985, Chap. C-46 (as amend-  
ed).
5. See section 241 of *The Criminal Code*, R.S.C. 1985, Chap.  
C-46 (as amended). This section makes it an offence to coun-  
sel the act of suicide or to assist in such an act.
6. (1978) *Criminal Appeal Reports* 97 (Eng. Div. Ct.)
7. See Winfree, L.T. & Williams, L.E.: "Call Security: the  
effects of fear and public image on staff-security contacts in  
a public hospital" (1985), 13 *Journal of Police Science and  
Administration* 310-320.



**EDITOR'S NOTE:** The author wishes to  
thank Daniel D. Eustace of Carecor  
Security Services Inc. for his assistance;  
and also suggests that readers interested  
in hospital security may wish to receive  
information about the International  
Association for Healthcare Security &  
Safety from Rick Kedzierski, director of  
security services for The Toronto  
Hospital and chairman of the associa-  
tion's Greater Toronto Chapter.

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OUR COVER: The multitude of CCTV equipment sources shown in this montage will give an indication of the dimensions of the marketplace available to those who plan, install, and make use of security systems. All the more reason to keep up to date by reading every issue of *Canadian Security*.

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