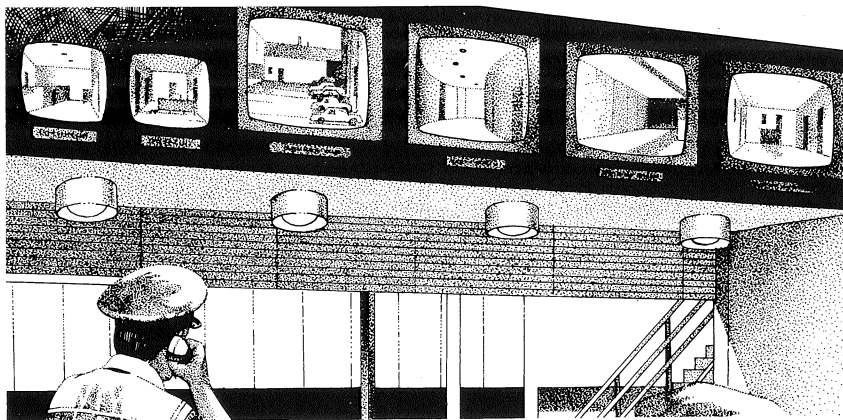


Unless a union contract says 'no,' closed-circuit cameras can be used for workplace surveillance. However, there are still guidelines to note.

CCTVS ARE ON THE JOB



t Goldstein

Contrary to any popular belief, there is no Canadian criminal law prohibiting the use of closed-circuit television cameras for surveillance and recording of workers.

However, the Canadian Charter of Rights and Freedoms has been interpreted to provide a right-of-privacy in some instances. *Section 7* "Everyone has the right to life, liberty and security of the person"

For example, an accused worker argued at his criminal trial that a right-of-privacy had been infringed upon in such a way as to bring administration of justice into disrepute. The worker could then ask the court to exclude from evidence videotape which showed him committing theft, or damage to plant.

If there was no other evidence to link the worker with the crime, the worker would be found as innocent.

Surveillance may infringe on a worker's privacy where the equipment is installed to:

• monitor the conduct or efficiency of employees, or
• monitor idiosyncratic behavior or
• monitor upon the privacy of a particular employee.

When installed as an investigative aid at a scene of suspected criminality, then the CCTV surveillance is fully justified and does not

constitute an infringement of anyone's privacy. The legal reference is *R. versus Kathleen Mary Taylor* (June 8, 1983), 10 W.C.B. 303, (1984) 4 C.R.D. 425.60-08 (Ont. Prov. Ct.).

Certain unions, such as the Canadian Union of Postal Workers, have negotiated clauses into their collective bargaining agreements which prohibit management from using CCTV systems to watch and observe employees.

In the absence of such clauses in employment agreements, the employer has the right to:

- maintain surveillance of its employees;
- investigate employee theft and damage. But, an employer can only search an employee's person or property with that employee's consent. Searches are also permitted upon arrest or if conducted pursuant to a search warrant.
- arrest and detain employees caught stealing or damaging plant equipment. (The powers of arrest of a private citizen or corporation are limited to situations where the employee is found committing a criminal offence on or in relation to property owned by, or in the lawful possession of, that private citizen or corporation. See S. 449 of the Criminal Code of Canada.)
- and dismiss those employees.

Note that it is illegal to record certain conversations on videotape (or audiotape). In fact, to "wilfully inter-

cept a private communication" without judicial authorization or the consent of one of the communicating parties is an indictable offense. (See S. 178.11 of the Criminal Code of Canada.) Therefore, it is *not* legal for an employer to record the conversations of his employees. It *is*, however, legal for the employer to record his own conversation with his employees without those employees' knowledge.

Canadian criminal laws which prohibit electronic and audio surveillance (i.e. "wiretapping" and "bugging") apply only to voice communications and are inapplicable to videotape not having any soundtrack. Here, the legal reference is *R. versus Biasi et al.* (No. 3) C.C.C. (2d) 566 (B.C.S.C.).

CAVEAT

This article is not a legal opinion. It reflects the law of Canada as of October 1988. New cases being decided and those under appeal may overrule those discussed above.

Employers and plant security officials concerned about the legality of monitoring workers in the workplace should consult their lawyers or a Crown Attorney. □

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