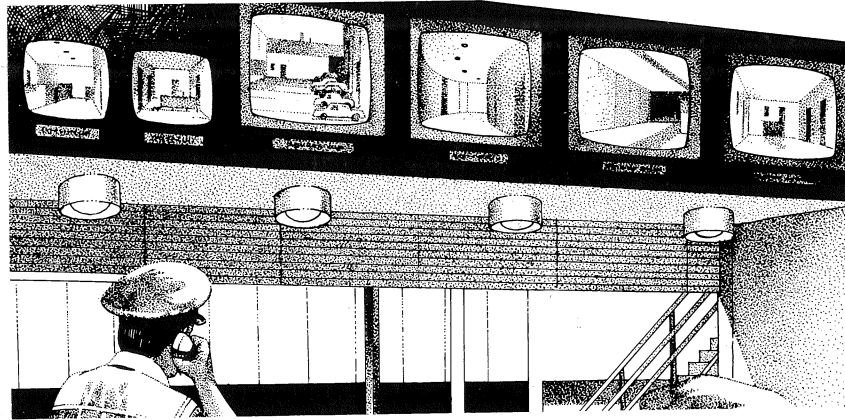


Unless a union contract says 'no,' closed-circuit cameras can be used for workplace surveillance. However, there are still guidelines to note.

CCTVS ARE ON THE JOB



By Elliott Goldstein

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

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

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

If there was no other evidence to link the worker with the crime, the accused worker would be found as not guilty.

CCTV surveillance *may* infringe upon a worker's privacy where the CCTV equipment is installed to:

- (a) monitor the conduct or efficiency of employees, or
- (b) uncover idiosyncratic behavior or intrude upon the privacy of a particular employee.

If installed as an investigative aid to monitor a scene of suspected criminal activity, 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.).

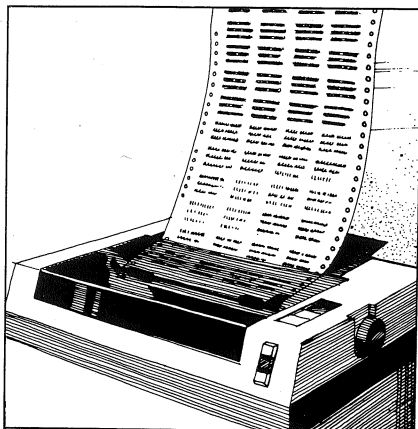
CAVEAT

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. □

Elliott Goldstein, B.A. LL.B. (Saskatchewan) practices law in Toronto. In 1986 he assisted the British Columbia Police Commission with a Report to the Attorney General on "The Use of Video Equipment by Police Forces in British Columbia."

Plant security



9 Get the security you need

There's quite a range of security equipment on the market which can be integrated such that an employer can build a system as demands change and grow. But make sure the components are compatible and the components serve your needs.

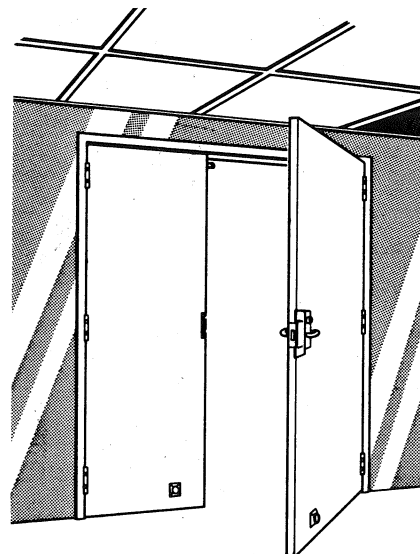
12 Check these fire safety guidelines

There's quite a bit of work, and responsibility, involved in fire safety audits. If you've been just giving your plant a "once over" to make sure the obvious hazards are not there, here's further details on what to look for and check.

17 Look but sometimes don't listen



"Can I monitor my employees or are there limits as to how and with what equipment I can use?" The employer who wants to start using closed-circuit television cameras will find this article useful. So will the employer who wants to add on conversation monitoring!



11 Line Up the door

Ordering an access control system for a door isn't just a matter of ordering another door lock. Without a doorway that's in "good shape," it's not likely the control will work for long, if at all. Here's basic information on how to avoid recalls out to the installer.

ALSO IN THIS ISSUE

End-users of security equipment certainly have a wide range of products to choose from. Two major organizations recently held conferences and exhibitions. The Canadian Alarm & Security Association (CANASA), Toronto, held its show in Ottawa and the American Society for Industrial Security, Arlington, Virginia, held its show in Boston. We've profiled some of the equipment shown at these shows.

Try an "EAP" what? Try an employee awareness program. Richard Leswick, a security management consultant explains how to use the influence of your personnel who do not act in a detrimental manner to reduce security hazards.