

New Uses for Motion Picture Films and Videotapes in Criminal Cases*

Elliott Goldstein**

- A. Admissibility and weight
- B. *Charter of Rights and Freedoms* decisions
- C. *Criminal Code* decisions
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In a Winnipeg courtroom, a Crown Prosecutor tendered surveillance motion picture films of a drug transaction, surreptitiously taken by an RCMP photographer stationed on a balcony across the street from the rooming house where the four accused lived. These films showed the actual arrest of three of the accused after police blocked their car's escape from Carlton Street with two moving vans parked at each end of the block. What is unique about this case is the fact that it occurred over thirty-five years ago, in 1950.¹

This case was not the first nor the last one in which motion picture films were admitted into evidence into Canadian courts.² However, in recent times, videotapes have become the more popular medium for presenting moving images with sound.

Videotapes have been admitted in Canadian criminal cases as evidence of drug trafficking³, picket-line disturbances⁴, assaults during hockey games⁵, reenactments of crimes⁶, an accused's interview with a psychiatrist⁷, mischief⁸, sobriety tests of suspected impaired drivers⁹, an experiment¹⁰, an accused's statements to a police¹¹, gambling¹²; an attack on a provincial legislature¹³, confession of a suspect¹⁴ and, theft of drugs from a police vault¹⁵. Its other uses include: recording the testimony of child abuse victims¹⁶, recording identification line-ups¹⁷, and preserving the appearance of court exhibits¹⁸.

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A. Admissibility and Weight

The admissibility of a videotape is governed by the same rules that apply to photographs and motion picture films. The following criteria must be met before a videotape will be admitted:

1. Relevancy and materiality to the issues in the case;
2. Accuracy in truly representing the facts;
3. Fairness and absence of any intention to mislead;
4. Verification on oath by a capable person.¹⁹

Who is called to authenticate a videotape, goes to the issue of its weight, not admissibility. The more direct a connection the witness has to the videotape, the more weight afforded that witness' testimony.²⁰

The authenticating witness need not be the video camera operator, but should be a person present at the time the videotape was recorded (eye-witness); a person qualified to state that the representation is accurate; or, an expert witness.²¹

In addition, the probative value of the videotape's contents must outweigh its prejudicial effect otherwise it may be excluded even though relevant. If the videotape tendered is of little probative value and would only serve to inflame the mind of the jury, the trial judge may, in his discretion, exclude it.²²

B. Charter of Rights and Freedoms Decisions

Two recent *Charter* cases are worthy of note: In *R. v. Taylor*²³ it was held that the phrase "security of the person" in s. 7 of the *Charter of Rights and Freedoms* may contemplate a right to privacy in some circumstances - and if that right is infringed in such a way as to bring the administration of justice into disrepute, then the accused could apply under s. 24 of the *Charter* to have the surveillance videotape evidence excluded.

This case is a landmark decision because it also establishes that:

1. A videotape from a non-monitored camera is admissible as real and demonstrative evidence to prove the scenes it purports to depict. A videotape can do more than merely illustrate the testimony of a witness; it can speak for itself; and,
2. The witness who authenticates a videotape need not be an eye-witness to the events recorded. An expert witness

can authenticate a videotape by testifying as to the operation of equipment used to record it.

In *R. v. Porter*²⁴ the Court dealt with the affect of s. 8 of the *Charter* on the admissibility of videotape evidence recorded during a surveillance operation. The Crown submitted that even if the installation (of the surveillance video equipment) was unlawful, the evidence thus obtained is admissible. The defence argued that the entry for the purpose of installing the equipment was unlawful and the evidence thus obtained is tainted by the illegal entry and search. The defence called the monitoring a " '1984' form of search" in that it captures or seizes images and reduces them to a videotape for presentation as evidence. The learned county court judge accepted the prosecution's submissions and admitted the video tapes.

"I do not agree that the installation of video equipment constitutes a search as that term has come to be understood, nor that the capture or seizure of images constitutes a seizure as that term is understood. Seizure, in my view, contemplates the taking of land or possessions of a person, forcible taking, grasping, holding, a fastening. I do not think recording of images falls within that definition."²⁵

In *Porter* the Court assumed that the protection guaranteed by s. 8 of the *Charter* is limited to searches and seizures of tangible property which involve a physical intrusion in the nature of a trespass. The learned county court judge applied the "protection against trespass theory" and concluded that "the surreptitious recording of images on video tape is neither a search nor a seizure,"²⁶ therefore, no right under s. 8 had been infringed.

C. Criminal Code Decisions

The audio (sound) portion of a videotape may be subject to the Privacy Provisions of the *Criminal Code*, but the video (picture) portion is not. This issue was decided in *R. v. Biasi*²⁷ where the Supreme Court of British Columbia dealt with the question of whether surveillance videotapes constituted interceptions of private communications contrary to s. 178 of the *Criminal Code*. The defense argued that the tapes were "telecommunications" which came within the meaning of private communication and were, therefore, inadmissible. The trial judge ruled that the tapes themselves had not been intercepted;

but rather that something else was intercepted by means of the tapes.

The Court also dealt with a second objection, "that an oral communication had been intercepted by means of an electromagnetic device" (i.e. the video camera which recorded the tapes). The trial judge reasoned that since there was no audio on the videotapes — no sound track had been recorded — there had been no interception of words transmitted by voice. "Physical acts and gestures, even those from which one may be able to infer what has been said, still do not by themselves constitute oral communication;" therefore the videotapes were admissible.²⁸

The implication of this case is that videotapes which contain no sound track do not infringe the (privacy) provisions of PART IV.1 of the *Criminal Code*.

Videotape may be used to record commission evidence under s. 637(b) of the *Criminal Code*. In *R. v. Pawliw*²⁹ the Crown applied for an order appointing a commissioner to take in the United States the evidence of a female person whose testimony was crucial to a murder case. Counsel for the accused submitted that the court should not make the order because s. 637(b) is unconstitutional and invalid as contrary to s. 7 of the Charter. The court held that the Charter does not confer a "right of confrontation", so as to render this section unconstitutional.

D. Videotaping Testimony of Child Victims of Sexual Assaults

Videotape has been used to record the testimony of child victims of sexual assault in the United States³⁰. In Canada, crown prosecutors and others concerned with protecting children from sexual assault and abuse are quickly realizing the advantages and great value of using videotape for this purpose.³¹

Videotaping of a child's version of the events in question can be conducted at one or more of three stages of the investigation and prosecution of the sexual assault case:

- (1) subsequent to an initial disclosure being made to a friend or relative or stranger — the investigator or child protection person videotapes the child recounting the facts as a formal complaint;
- (2) at some stage before or during the criminal trial — the child gives her testimony on videotape in lieu of testifying in open court;
- (3) during the actual criminal trial - the child testifies outside of the courtroom in a fully equipped "video" room and that child's evidence is contemporaneously transmitted by closed-circuit television to the trier of fact in the courtroom, and simultaneously recorded on videotape.³²

The advantage of videotaping interviews between children and child welfare workers is that it allows Crown counsel to determine if charges are warranted to avoid "repetitious" interviews. Those tapes also

could be used "to inform the accused and defence counsel of the case against the accused . . . and to increase the likelihood of early guilty pleas, thereby shortening the trial process."³³

A recent Toronto decision casts doubt on whether the courts are prepared to release such tapes to defence counsel. In *Metropolitan Toronto Catholic Children's Aid Society v. Rosa G. and Manuel G.*³⁴ the Society's interview with a 14-year-old girl, who alleged that she had been sexually abused by her father, was recorded on audiotape. Her parents, through their counsel, sought an order compelling the Society to produce a copy of the audio-tape or a typewritten transcript of it. Counsel also intended to use the tape or transcript in parallel criminal proceedings that had been instituted against the father. The Crown Attorney in that criminal proceeding refused a request for production. The parents' motion was opposed by counsel for the Society and child.

The Family Court judge hearing the motion³⁵ dismissed the parents' application because he was "less than satisfied" with the father's motive for wanting the tape to prepare for the child protection hearing. His Honour Judge Main reasoned that the only substantial benefit to be gained in listening to tape would be to make an independent assessment of the credibility of the girl and that credibility issue is best left to the criminal court.

The learned judge, noting that the girl herself did not want her parents to have a copy of the tape, commented:

"If the the child-victim, with or without the advice of legal counsel, opposes the release of the tape to the offender, then the child's wishes in this regard must be respected. If not, there is the risk that any confidentiality and trust which supported the making of the statement could be undermined."³⁶

The Family Court judge held that "it had not been demonstrated that sufficient particulars were not already within knowledge of parents and their counsel, or obtainable by them in another fashion as provided for in Rule 20."³⁷

Obviously, His Honour was not satisfied that the principal motive of the parents in seeking the audio-tape was production of that tape for the purpose of preparing to meet the Society's case or for the purpose of early resolution of the child welfare proceeding. The Court was quick to add, however, that:

"(T)he fact that the tape may be coincidentally or collaterally used by (defence) counsel in the criminal proceeding carries with it no impropriety. If, however, the primary utilization lies not here but in the criminal proceeding, then the request for an order for production from this Court is tantamount to an abuse of its process. Production for use in a criminal proceeding

ought to be made in that proceeding. The availability or lack thereof of such a procedure or a minimal prospect for the success of such a request do not constitute valid grounds for seeking the relief elsewhere."³⁸

The learned Family Court Judge concludes his decision with the following relevant comments:

"In whatever form it should assume, child abuse is most assuredly a blight upon the social fabric of a community. It is at one and the same time a complex, deep-rooted, abhorrent and more common phenomenon than most would care to believe. The nature and frequency of these cases, particularly those involving sexual molestation, coming before the child welfare courts of this Province since the 1978 revisions to the Act³⁹ incorporating a definition of 'abuse' bear witness to this . . ."

"Programmes designed to deal with and diminish the incidence of child abuse will of necessity consume a considerable amount of study, time and effort and will require the introduction of unorthodox and even radical procedures aimed at both the victim and the offender. The audio-taping of a child-victim's statement is representative of this programme and has resulted from a recommended guideline contained in the 1983 Protocol prepared by the Metropolitan Toronto Chairman's Special Committee on Child Abuse."⁴⁰

Note that the aforementioned case involved an audio-tape (sound only) recording of the child's interview. It is suggested that the learned judge's ruling would apply equally well to a video-tape (pictures and sound) recording of a child/worker interview.

E. Conclusions:

Videotape, like motion picture film, can reproduce motion and colour in pictures with sound, but videotape recordings do not require processing, may be viewed as soon as recorded (instant playback), can easily be duplicated, and do not require a darkened courtroom to view. These features as well as others, make videotape a powerful, convenient, cost-effective evidentiary tool.

Videotape offers a new method of communicating information to the trier of fact in a courtroom. No longer a fantasy of the future, the mixed media criminal trial is a reality of today. It is time that crown prosecutors take full advantage of this new innovative approach to presenting evidence in Canadian criminal trials, so that the interests of justice will best be served.⁴¹

F. Bibliography

- Goldstein, E., "Using videotape to present evidence in criminal proceedings" (1985), 27 *Criminal Law Quarterly* No. 3, 369.
"Using videotape to present evidence in civil proceedings" (1985), 6 *Advocates'*

- Quarterly No. 1, 89.
- ⁴"Videotaping: Re-enactment or statement plus actions" (Mar., 1985) 6 *The Toronto Criminal Lawyers' Association Newsletter* No. 5, 34.
- ⁵"Surveillance videotapes and the right to privacy", (Jan., 1985), 1 *Protection Officer Magazine* No. 4, 6.
- ⁶"Videotape in criminal courts: A review and update", (Dec., 1984), 6 *The (Toronto) Criminal Lawyers' Association Newsletter* No. 3, 6.
- ⁷"Detecting photographic misrepresentation and overcoming objections to the admission of photographs" (Mar., 1984). *TLABC Spring Seminar Handbook, Litigation Trends and Techniques*.
- ⁸"Video evidence in court" (1983), 4 *Professional Protection Magazine*, No. 4, 12.
- ⁹"The admissibility of and weight given to motion picture and videotape evidence in Canadian courts" (1981), 45 *Saskatchewan Law Rev.* No. 2, 319.
- Houlahan, Q.C., R.J., "The admissibility of demonstrations, productions and experiments" (1984), 4 *The Crown's Newsletter* No. 4, 1.
- MacFarlane, B. A., "Photographic evidence: Its probative value at trial and the judicial discretion to exclude it from evidence" (1973), 16 *Criminal L. Quart* 149, 5 *Manitoba Law Journal* 313.
- Maloney, A., "The admissibility of photographs in criminal cases and resultant prejudice to an accused's fair trial" (1967), 1 *C.R.N.S.* 167.
- ¹⁰Winnipeg, (CP), "Mounties use films as dope evidence: Alleged pedlar photographed as he hands over narcotics" (Wed., Oct. 18, 1950) *The Vancouver Sun*, p. 11. (Motion pictures were not admitted.)
- ¹¹See *Montreal Tramways Ltd. v. Beaugrand* (1939), 67 Que. K.B. 578 (Que.C.S. App. Div.); *Army & Navy Department Store (Western Ltd. v. Retail, Wholesale, [Department Store Union. Local No. 535 et al.]*, (1950), 97 C.C.C. 258, (1950) D.L.R. 850, 2 W.W.R. 999 (B.C.S.C.) (film of picketers in front of store); *Chayne v. Schwartz*, (1954) C.S. (Que.C.S.); *Niznick v. Johnson* (1961), 34 W.W.R. 101, 28 D.L.R. (2d) 541 (Man.Q.B.) (surveillance film of malingering plaintiff); *Nag et al. v. McKellar et al.* (1969) 1 O.R. 764, (1969), 4 D.L.R. (3d) 53 (Ont. C.A.) (film showing affect of injury on plaintiff); *Cruise v. Neilsen et al.* (Oct. 6, 1977) 2 A.C.W.S. No. 2, 908 (Man. C.A.) (aerial film taken from airplane of damage to crops); *Dupuis v. Melanson* 24 N.B.R. (2d) 312, 48 A.P.R. 2d 312 (N.B.S.C., Q.B. Div.).
- ¹²*R. v. Biasi et al.* (No. 3) (1981), 66 C.C.C. (2d) 566 (B.C.S.C.) (meetings of suspect drug traffickers); *R. v. Napoli and Loccisano*, before Parker, A.C.J. (July 2, 1981, Ont.S.C.), unreported decision, *The Saskatoon Star Phoenix*, July 3, 1981 (videotape of actual sale of drugs to police undercover agents showing at sentencing hearing); *R. v. Porter* (January 17, 1983, B.C. Co. Ct.) Victoria Registry No. 22911, ruling by His Honour Judge Murphy C.C.J. (surveillance of house containing drug laboratory).
- ¹³*R. v. Lewis*, unreported decision, *The Toronto Star*, Feb. 14, 1974 (assault on picket-line).
- ¹⁴*R. v. Maloney* (No. 2) (1976), 29 C.C.C. (2d) 431 (Ont. Gen. Sess. Peace); *R. v. Williams* (1977), 35 C.C.C. (2d) 103 (Ont. Gen. Sess. Peace) (players assaulting one another during televised hockey games).
- ¹⁵*R. v. Murphy* (1972), 8 C.C.C. (2d) 313 (Ont. Prov. Ct.) (strip-tease dancing routine re-enacted); *R. v. Tookey and Stevenson* (1981), 58 C.C.C. (2d) 421, 29 A.R. 175 (Q.B.) (murder re-enacted by two co-accused); *R. v. Steen*, before Hoyt, J., (June 6, 1984), Hampton, New Brunswick reported in *Kings County Record Newspaper*, Vol. 97, No. 41, p. 1 (N.B.Q.B.) (husband re-enacted murdering his wife); *R. v. Kelly*, before O'Driscoll, J., (April 9, 1984) Toronto, Ontario, (Ont. H.C.) (Crime-scene re-enactment).
- ¹⁶*R. v. Blackman*, (November 4, 1983, B.C.S.C.) New Westminster Registry No. X011455, before McKenzie, J. and jury; *Contra Bell v. Fantini* (1981), 23 B.C.L.R. 173.
- ¹⁷*R. v. Taylor* (June 8, 1983), 10 W.C.B. 303 (Ont. Prov. Ct.) (surveillance videotape of library employee committing acts of vandalism).
- ¹⁸*R. v. Dunn* (1978, B.C. Prov. Ct.), Reg. No. 78-02047; *R. v. Goeder*, (1978, B.C. Prov. Ct.) Reg. No. 78-02102 (videotapes of suspected impaired driver performing sobriety test).
- ¹⁹*R. v. Claire Lortie*, (August 18, 1983, Que. C.S.) unreported decision, *The Vancouver Sun*, October 18, 1983, p. A-14 (female persons same strength as accused performed tasks to prove she could have disposed of murder body as alleged).
- ²⁰*R. v. Simpson*, (Nov. 23, 1983, B.C.S.C.), New Westminster Registry No. X83-10665 (accused showed police how death of his victim occurred - statement of accused accompanied by certain actions - not a re-enactment);
- ²¹*R. v. Irwin and Sansone et al.* 32 C.R.N.S. 398.
- ²²*R. v. Denis Lortie*, (January 22, 1985, Que. C.S.) before Mignault, J. and a jury, *The Vancouver Sun*, January 22, 1985 (Que Sup. Ct.) (videotape of accused spraying the legislative chamber of Quebec's national assembly with machine gun fire and talking to the speaker of the house).
- ²³*R. v. Heathcote*, before Robinson, J., (June 25, 1985), Halton Judicial District, Burlington, Ontario (Ont. Prov. Ct.) (confession of suspect).
- ²⁴*R. v. Marchessault*, unreported decision of Ryan, J. (Nov. 10, 1983, Que. C.S.) Dossier No. 500 27-003670-835, Cause 01-3368-831, *The Vancouver Sun*, Nov. 16, 1983, *Maclean's* Feb. 13, 1984. (theft of drugs from police drug vault)
- ²⁵Lipovenko, D., "Tape victims' tales of child sex abuse, panel recommends" *The Globe and Mail*, July 25, 1983.
- ²⁶O'Farrell, E., "Police lineups: Video increasing success rate" (Wed. April 11, 1984) *The Vancouver Courier* B33.
- ²⁷Law Reform Commission of Canada, Working Paper 39, *Post Seizure Procedures* (Ottawa, 1985), pp. 67-69, 77.
- ²⁸*R. v. Creemer and Cormier*, (1968) 1 C.C.C. 14, 1 C.R.N.S. 146, 53 M.P.R. 1 (S.C.C.), as quoted in *R. v. Maloney*, *supra* footnote 3.
- ²⁹*R. v. Lorde and Johnson* (Dec. 14, 1978) 3 W.C.B. 92, (1978), 33 N.S.R. (2d) 376 (Co. Ct.).
- ³⁰*R. v. Bannister* (1936), 66 C.C.C. 38, (1936) 2 D.L.R. 795, 10 M.P.R. 391, (N.B.C.A.); *R. v. Taylor*, *supra* footnote 6.
- ³¹*Draper v. Jacklyn*, (1970) S.C.R. 92, D.L.R. (3d) 264. See also the articles by MacFarlane and Maloney, cited in the Bibliography.
- ³²*R. v. Taylor* (June 8, 1983), 10 W.C.B. 303 (Ont. Prov. Ct.).
- ³³*R. v. Porter*, (January 17, 1983, B.C. Co. Ct.), Victoria Registry No. 22911, ruling by His Honour Judge Murphy C.C.J.
- ³⁴*Ibid.*, Per Murphy, C.C.J., at p. 8 of the judgment.
- ³⁵Neither does the recording of words fall within that definition; see *R. v. Brent Taylor* (1984), 40 C.R. (3d) 222 (B.C.S.C.) regarding the interception of oral communications.
- ³⁶*R. v. Biasi* (No. 3) (1981), 66 C.C.C. (2d) 566 (B.C.S.C.).
- ³⁷*Ibid.*
- ³⁸*R. v. Pawliw* (December 10, 1984, B.C.S.C.), summarized in 13 W.C.B. 200.
- ³⁹Haas, D. A., "The use of videotape in child abuse cases" (1984), 8 *Nova Law Journal* 373.
- ⁴⁰See The Metropolitan (Toronto) Chairman's Special Committee on Child Abuse, *Child Sexual Abuse Protocol* (Guidelines and Procedures for a Coordinated Response to Child Sexual Abuse in Metropolitan Toronto), November 1983, Toronto, Ontario. This Protocol is discussed in Lipovenko, D., "Tape victims' tales of child sex abuse, panel recommends" (July 25, 1983), *The Globe and Mail*, at p. 5.
- ⁴¹Some of this material will appear in a chapter that of a forthcoming publication on videotape evidence. For more information write: Wendy Harvey, Barrister & Solicitor, 2050 Austin Avenue, Coquitlam, B.C., V3K 3R9, (604) 939-8741.
- ⁴²Ouston, R., "Cooperation urged to cut child abuse" (Friday, May 17, 1985) *The Vancouver Sun*.
- ⁴³*Metropolitan Toronto Catholic Children's Aid Society v. Rosa G. and Manuel G.* (1984), 47 O.R. (2d) 504; 42 R.F.L. (2d) 16 (Aug. 29, 1984, Ont. Prov. Ct.), discussed in Lipovenko, D., "Father sought access to allegation: Release of taped abuse charge refused" (Oct. 5, 1984), *The Globe and Mail*.
- ⁴⁴Judge David Main, Family Division, On-

tario Provincial Court, Judicial District of York. The author gratefully acknowledges the assistance of His Honour Judge Main in obtaining a copy of this case.

³⁶(1984), 47 O.R. (2d) 504, at 510; 42 R.F.L. (2d) 16, at 23.

³⁷Formerly O. Reg., 386/79, now R.R.O.

1980, Reg. 810, s. 20(1).

³⁸(1984), 47 O.R. (2d) 504, at 509; 42 R.F.L. (2d) 16, at 22.

³⁹See *The Child Welfare Act*, R.S.O., 1980, c. 66.

⁴⁰(1984), 47 O.R. (2d) 504, at 509; 42 R.F.L. (2d) 16, at 22.

⁴¹The author welcomes inquiries from crown prosecutors who require more information on specific uses of videotape in criminal trials. Please write the author care of: P.O. Box 40, Station "A", Vancouver, B.C., V6C 2L8. (604) 688-0970.

Perjury: A General Discussion

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The following is intended to be a general discussion concerning the law of perjury.

Applicable Sections

The appropriate sections concerning perjury in the *Criminal Code* are as follows:

Section 120

"Everyone commits perjury who, being a witness in a judicial proceeding, with intent to mislead gives false evidence, knowing that the evidence is false."

Section 121

- (1) "Everyone who commits perjury is guilty of an indictable offence and is liable to imprisonment for fourteen years, but if he commits perjury to procure the conviction of a person for an offence punishable by death, he is liable to imprisonment for life."
- (2) "Where a person is charged with an offence under section 120 or 124 a certificate specifying with reasonable particularity the proceeding in which that person is alleged to have given the evidence in respect of which the offence is charged, is evidence that it was given in a judicial proceeding, without proof of the signature or official character of the person by whom the certificate purports to be signed by the clerk of the court or other official having the custody of the record of that proceeding or by his lawful deputy."

Section 122.1

- (1) "Everyone who, not being specifically permitted, authorized or required

by law to make a statement by affidavit, by solemn declaration or orally under oath, makes in such a statement, before a person who is authorized by law to permit it to be made before him, an assertion with respect to a matter of fact, opinion, belief or knowledge, knowing that the assertion is false, is guilty of an offence punishable on summary conviction."

Section 123

"No person shall be convicted of an offence under section 121 or 122 upon the evidence of only one witness unless the evidence of that witness is corroborated in a material particular by evidence that implicates the accused."

Section 125

"Everyone who, with intent to mislead, fabricates anything with intent that it shall be used in evidence in a judicial proceeding, existing or proposed, by any means other than perjury or incitement to perjury is guilty of an indictable offence and is liable to imprisonment for fourteen years."

The Code, then, appears to provide for three perjury or perjury-related offences. The first, in Section 120 relates to perjury during the course of a judicial proceeding. The second offence is provided for by Section 122.1 and is punishable by summary conviction. The third such offence is committed when an individual fabricates anything with an intent that it will be used in a judicial proceeding. This offence, as well as that created by Section 120, is an indictable offence, and is punishable by fourteen years imprisonment.

The following discussion will relate to what is required to prove perjury under Sec-

tion 120 of the Code. It appears from the facts presented, however, that charges under Sections 122.1 and 125 may succeed. The latter point will be discussed in somewhat more detail below. At this point, however, the discussion will relate to the requirements of Section 120.

Judicial Proceeding

A requirement of perjury under Section 120 is that the statement be made during the course of a judicial proceeding.

The term "judicial proceeding" is defined by Section 107 of the Code as follows:

"In this Part 'judicial proceeding' means a proceeding

- (a) in or under the authority of a court of justice or before a grand jury,
- (b) before the Senate or House of Commons of Canada or a committee of the Senate or House of Commons, or before a legislative council, legislative assembly or house of assembly or a committee thereof that is authorized by law to administer an oath,
- (c) before a court, judge, justice, magistrate or coroner,
- (d) before an arbitrator or umpire, or a person or body of persons authorized by law to make an inquiry and take evidence therein under oath, or
- (e) before a tribunal by which a legal right or legal liability may be established, whether or not the proceeding is invalid for want of jurisdiction or for any other reason;"

The definition provided above is extremely wide and can even encompass proceedings which may otherwise be invalid. Both (a) and (c) of Section 107 are broad enough to cover the case at bar.

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