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VISUAL EVIDENCE Elliott Goldstein Release No. 3, October 2024
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This manual is both a reference text and practical how-to guide for lawyers, judges, legal academics, law students, law enforcement officers, corporate security, campus security, and loss prevention personnel, alarm and security professionals, security guards, and private investigators. Part I focuses on the admissibility and weight of visual evidence in the courts. Part II examines the specific issues related to the use of visual evidence in civil proceedings. Part III covers the many uses for visual evidence in criminal proceedings, with particular focus on crime scenes, re-enactments and confessions.

WHAT'S NEW IN THIS UPDATE:

This release updates Chapter 16 – Surveillance Evidence in Labour Arbitrations.

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HIGHLIGHTS

Surveillance Evidence in Labour Arbitrations — Divergent Approached — The Relevancy Test — In *LIUNA, Local 3000, v. City View Retirement Community Ltd.*, 2023 CarswellOnt 17534 (Ont. L.R.B.), reconsideration / rehearing refused, 2023 CarswellOnt 20722 (Ont. L.R.B.), an employee working as a cook in an assisted living facility was terminated after the employer received complainants concerning her food handling practices. The employer sought to introduce evidence of two videos recorded by the general manager on her cell phone of surveillance footage of the employee, as the original footage was unavailable due to being automatically erased every 30 days. The union objected to the admission of the videos on the bases that it could not cross-examine anyone who could attest to the reliability of the original video, that the videos only showed a small excerpt of a much longer surveillance video, and that a portion of the cell phone footage was recorded at 8x the normal speed. The Labour Relations Board confirmed that it had the residual discretion to exclude prejudicial and unreliable evidence, despite its relevancy, and held that the probative value of the evidence was not outweighed by the prejudicial effect. In the absence of the union’s ability to view the entire original video or someone who could attest to the reliability of the surveillance system and the accuracy of the video, the selectively edited cell phone videos could not be admitted into evidence. See additional discussion on this issue in § § 2:1 et. seq.

Surveillance Evidence in Labour Arbitrations — Privacy Concerned — The Decision in Vernon City — In *Metrolinx v. Amalgamated Transit Union, Local 1587*, 2024 ONSC 1900, 2024 CarswellOnt 4563 (Ont. Div. Ct.), where employees participated in a group chat on their personal cellphones. In the context of a workplace harassment investigation, the court held that the adjudicator focused too much on the employees’ right to privacy where their impugned conduct made its way into the workplace and became a workplace issue.