

Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. <i>Distribution List</i>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

VISUAL EVIDENCE

Elliott Goldstein

Release No. 1, March 2026

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 25: Family Law Proceedings.

Thomson Reuters®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

HIGHLIGHTS

Visual Evidence in Criminal Proceedings—Family Law Proceedings—The Rise of Electronic Communication in Family Law—In *Patel v. Patel*, the Court expressed concerns regarding the effect that electronic evidence can have on the nature of family law proceedings, and questioned their ultimate utility:

- Admitting recordings into evidence takes time. In this case, the recordings were numerous, and some were lengthy. One was thirty-eight minutes long. Determining admissibility would have required an undue proportion of trial. Once the trial began, it could not exceed five days without spreading it over several months. That would have entirely undermined its expedited nature. In a family law case, core evidence is given *viva voce*. That is particularly so in a trial about parenting and decision-making. The parties’ evidence, subjected to cross-examination, is the soundest basis on which to make findings about the best interests of the children.
- Surreptitious recordings poison relationships. Admitting them condones a person’s deceit pursued to obtain a litigation advantage. The Court of Appeal has recognized “the sound public policy of trying to discourage the use of secretly recorded conversations in family proceedings”: *Sordi v. Sordi*, 2011 ONCA 665 at para. 12.
- Even non-surreptitious recordings can inject mistrust and suspicion into a trial. Here, the parties, especially Aslam, have an unhealthy preoccupation with recording their children and each other. This behaviour is not in the children’s best interests, and merits judicial disapproval. I am satisfied that, given the extensive testimony from the parties and other witnesses, the tendered recordings did not serve a useful purpose. Admitting them would have detracted from the orderly and fair progress of the trial. *Patel v. Patel*, 2025 ONSC 2458 (Ont. S.C.J.).

Visual Evidence in Criminal Proceedings—Chapter 25—Family Law Proceedings—Child Custody and Child Access Proceedings Disclosure of Surveillance Evidence—In *K.F.M. v. K.G.T.*,¹ where the Court declined to order that a parent not make audio or video recordings of a child, without first obtaining the child’s consent, in circumstances where a recording had allowed him to demonstrate his innocence when he was wrongfully accused of assault, and the child indicated that he would be willing to lie again, if necessary. However, the Court noted that the practice of recording the child was damaging to the parent-child relationship in that it eroded trust and incentivized evidence-gathering and self-serving parental behaviour. *K.F.M. v. K.G.T.*, 2023 BCSC 1347 (B.C. S.C.).

¹ *K.F.M. v. K.G.T.*, 2023 BCSC 1347 (B.C. S.C.).