



BULLETIN

Video surveillance

July 1, 1999

The Report: July 1999 vol.20 num.1

by SARAH O'LEARY and JUDITH McCORMACK



PICTURE THIS. Your employers private investigator is hidden outside your home, holding a video camera and taping your every move. Sound ridiculous? Unfortunately, some workers have become unwitting home movie stars, thanks to employers who think they are faking illness or disability.

Usually these cases involve workers who are absent from work because they are injured or sick. An employer decides they are shirking and hires a private detective to videotape their movements at home or in the neighbourhood. Then the worker is fired and a grievance is filed on the basis that the discharge was unjust. Lets say the grievance goes to a hearing in front of an arbitrator. Can the employer use the videotape against the grievor at the hearing?



The answer to this question is a resounding -maybe." Some arbitrators have allowed videotape evidence only if the employer has shown that there is no other less intrusive way to find out whether the workers absences were legitimate. If, for example, the employer could have requested a medical exam by an independent doctor, or could have confronted the worker with their suspicions, these arbitrators would nix the use of video evidence.

In this way, arbitrators say, they are balancing the privacy rights of workers with other concerns, such as the need to prevent abuse of sick leave.

Other arbitrators have said they will allow videotapes in an arbitration hearing if the decision to spy on the worker was reasonable and the videotaping or other surveillance was done in a reasonable way that is not unduly intrusive.

The idea that an employer stake-out could ever be unintrusive is an interesting one. What could be more intrusive than filming someone without their knowledge?

Its not only employers who may be -watching." LTD companies and the WCB also use secret surveillance to try and disprove claims for disability benefits. HSA recently had a case of a visually impaired member whose privacy was seriously abused when a surveillance report documented the comings and goings of her two children from her home. In a situation of this sort where the investigated employee is unable to see the strangers watching her children, the surveillance can become the realization of a parents worst nightmare. Unfortunately, the limitations on insurance companies and the Workers Compensation Board are even less stringent.

HSA vigorously defends against any actions which invade the privacy of our members. We do not accept encroachment on the basic principle of the security and integrity of the person, as much at the worksite as at home. If you become aware of any kind of intrusive surveillance in your workplace, contact your steward as soon as possible.

Judith McCormack is a lawyer with Sack Goldblatt Mitchell in Toronto and former chair of the Ontario Labour Relations Board. Sarah OLeary is legal counsel for HSA, specializing in WCB and LTD issues.

Type:

[The Report](#)

- [Print](#)
- [PDF](#)

180 East Columbia
New Westminster, BC V3L 0G7

Website
www.hsabc.org

Telephone 604-517-0994
1-800-663-2017