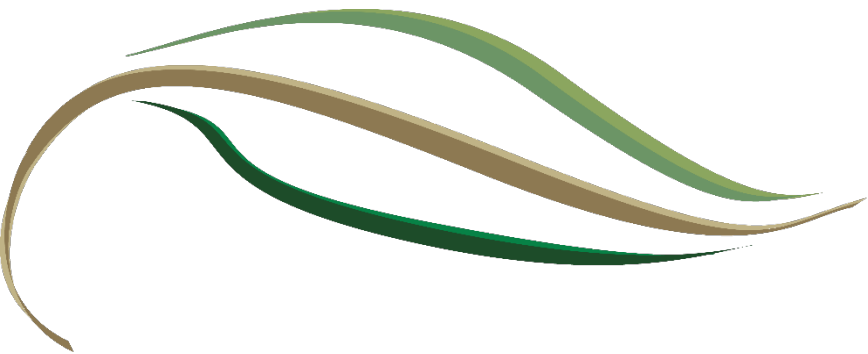


Use of Video Cameras in Residential Care

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Balancing Technology, Care, and Ethics

Advances in technology make it increasingly easy to incorporate ongoing surveillance into elder care.

Reasons for Surveillance in Residential Care

- Optimize the use of available staff on the floor by providing digital monitoring of spaces beyond visual range, such as building entrances/exits.
- Ensure standards of care are maintained to meet company policies and licensing requirements.
- Providing an accurate record of interactions between vulnerable and possibly non-verbal residents, including interactions with staff and with each other.
- After the pandemic, there are increasing requests by families to install cameras as a convenient way to check in on loved ones.

Ethical Issues arising from Video Surveillance and Monitoring in Residential Care

This issue affects the following stakeholders:

Residents

Professional staff (Doctors, RNs, LPNs etc.)

Housekeeping/Care Giving/Dietary Staff

Care Home Administration

Families/Friends of residents

Visitors and Volunteers

Employee Unions

Regulatory Agencies – Licensing & Health Authorities

Provincial Funding Authorities

Provincial Regulations: Protecting Privacy

The Province of B.C. has developed a substantial body of legislation governing privacy in residential care homes. Therefore, any utilization of video surveillance and monitoring cannot contravene the following regulations.

Community Care and Assisted Living Act, S.B.C. 2002, c. 75

- S. 7(1) includes the following Standards for any community care home, which includes seniors' residential care. According to this section, a licensee must:
 - (b) operate the community care facility in a manner that will promote
 - (i) the health, safety and dignity of persons in care, and
 - (ii) in the case of adult persons in care, the rights of those persons in care;

Provincial Regulations: Protecting Privacy

To ensure the Rights of Persons in Care are observed, the Act further provides that anyone licensed to operate a community care facility must:

- (c.1) display the rights of adult persons in care
 - (i) in a prominent place in the community care facility, and
 - (ii) in a form and in the manner acceptable to the minister;
- (c.2) make the rights of adult persons in care known, orally and in writing, to persons in care and their families and representatives;

Provincial Regulations: Protecting Privacy

The B.C. Residents Bill of Rights includes the following provisions under the Rights to Health, Safety and Dignity:

2. An adult person in care has the right to the protection and promotion of his or her health, safety and dignity, including a right to all of the following:

(a) to be treated in a manner, and to live in an environment, that promotes his or her health, safety and dignity;

(d) to have his or her personal privacy respected, including in relation to his or her records, bedroom, belongings and storage spaces;

(e) to receive visitors and to communicate with visitors in private;

Use of video surveillance and monitoring cannot contravene the rights to privacy established under the rights of adult persons in care.

Provincial Regulations: Protecting Privacy

As established in the *Hospital Act* and the *Patients' Bill of Rights Regulation (B.C. Reg 37/2010)*, the rights of adult persons in care also apply to and must be posted in hospitals/extended care facilities.

B.C. Residential Care Regulations (B.C. Reg. 96/2009) further establishes:

Privacy

(Section) 53: A licensee must, to the greatest extent possible while maintaining the health, safety and dignity of all persons in care, ensure respect for the personal privacy of each person in care, including the privacy of each person in care's bedroom, belongings and storage area.

Federal Law: Criminal Code of Canada

Canada's Criminal Code addresses unauthorized videotaping under Section 162: Voyeurism

- *162. (1) Every one commits an offence who, surreptitiously, observes – including by mechanical or electronic means – or makes a visual recording of a person who is in circumstances that give rise to a reasonable expectation of privacy.*

However, there is a defence...

(6) No person shall be convicted of an offence under this section if the acts that are alleged to constitute the offence serve the public good and do not extend beyond what serves the public good.

Federal Law: Criminal Code of Canada

Section 183.1 of the Criminal Code addresses the interception of private communication, which could occur during videotaping or monitoring in a care home.

- *184. (1) Every one who, by means of any electro-magnetic, acoustic, mechanical or other device, wilfully intercepts a private communication is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.*

However, there is also a conditional defence...

183.1 Where a private communication is originated by more than one person or is intended by the originator thereof to be received by more than one person, a consent to the interception thereof by any one of those persons is sufficient consent for the purposes of any provision of this Part.

Federal Law: Criminal Code of Canada

To ensure there is no 'expectation of privacy' which could lead to inadvertent contravention of Federal law, any use of video surveillance or electronic monitoring in residential care **must** be publicly posted. In addition, the operator **must** also ensure all residents, staff, visiting professionals, family members, friends, visitors, and volunteers are aware that video surveillance/electronic monitoring are being utilized.

Acknowledging use of video surveillance/electronic monitoring does not remove the operator's responsibility to respect individual privacy, as required under provincial statutes and the Rights of Adult Persons in Care.

The courts will readily rely on video evidence even though it may be surreptitiously obtained.

I will present two examples:

Alberta Provincial Court: Video Evidence

On October 21, 2015, in *R. v Dumo*, (2015 ABPC219), the Alberta Provincial Court made a key decision on charges of abuse against three care aides at a Calgary care home, finding all three guilty and sentencing them to jail. The case hinged on video footage obtained by the son of a care home resident.

Details are:

- The resident was a 92 year old man in palliative care who had limited mobility and early dementia. The resident complained of abuse at the care home and begged family members not to leave him there alone.
- In response, the resident's son installed a hidden motion-activated camera in his father's room.

Alberta Provincial Court: Video Evidence

- The three care aides were found guilty and sentenced to 60 days in jail each. Based on the video evidence, all three care aides were immediately terminated by their employer. The actions of all three violated the Care Plan established by the care home operator.
- The Court ruled that sentences could be served intermittently, in order to allow each of those convicted to maintain employment.
- In rendering his decision, Judge Bascom reiterated comments from an earlier Ontario court decision. His comments underscored the importance of care givers living up to the trust placed in them by care home residents, their families, and their employers.

Alberta Provincial Court: Video Evidence

Ruling by Judge J.D. Bascom

- *Fundamental to my decision is the recognition that Canada has an aging population. Each year increasing numbers of elderly persons are being placed in long term care facilities. Many of these care facilities have locked wings for patients suffering from Alzheimer's disease and dementia... Studies filed by the Crown demonstrate that elder abuse is a growing problem in our society that must be seriously addressed.*
- *Caregivers of the elderly, particularly those suffering from Alzheimer's disease and dementia, hold tremendous power. That power cannot be abused.*
- *Caregivers must know that if they abuse their position of trust and authority over vulnerable individuals, the court shall deal with them harshly.*
- *In my view, the only way to ensure that this bond of trust remains intact is for the courts to determine that caregivers who breach that trust will be sent to jail.*

B.C. Coroner's Report: Video Evidence

A 2011, well-publicized coroner's investigation utilized video footage from a North Vancouver Care Home. An 88-year-old male resident of the care home had died: the care home reported the resident had not shown signs of distress and had died after breakfast while alone in his room.

A family member contacted the B.C. Coroner's Service with a conflicting report that the resident had died after choking on food while being fed breakfast by a staff member. The family had set up a 'nanny cam' in the room and had a video of the incident, which was turned over to the Coroner.

B.C. Coroner's Report: Video Evidence

Based on the video, a forensic autopsy, and medical charting seized from the care home, the death was attributed to choking. An investigation found that floor staff had falsified the report to the Care Home administrators.

Deficiencies in the Care Home's operation and staff training were also identified and remedial measures/increased oversight implemented.

The coroner's report concluded:

“[The victim] was a challenging patient to care for, and staff was ill prepared and incapable of dealing with his issues – issues known to exist in the elderly and vulnerable population that facilities such as ----- cater to. *If not for the video brought forward by the family, [the victim's] accidental death would not have surfaced.*”

U.S. Law: Texas First

In 2001, Texas became the first U.S. state to pass legislation that expressly permitted installation of surveillance cameras in the rooms of care home residents. According to the legislation, the nursing home “shall permit a resident or the resident’s guardian...to monitor the room of the resident through the use of electronic monitoring devices.”

Prior to installation of the cameras, express written consent is required from the resident or the resident’s guardian.

Notice of the surveillance must be posted both at the entrance to the care home and at the entrance to the resident’s room.

In response to increasing demand by families for video surveillance, the Park Place Seniors Living clinical leadership team carried out an extensive review and developed a formal video surveillance policy.

The key points in the policy are as follows:

1. Audio and/or video recording devices for the purposes of surveillance will only be considered after all other reasonable interventions have been tried and implemented.
2. There must be a genuine bona fide reason for such surveillance. Mere suspicion is not a sufficient reason.
3. The use of covert surveillance is not acceptable. The Administrator must be informed and provide consent to audio and/or video surveillance.

4. An ethical consult will occur and a clear rationale for conducting audio and/or video surveillance has to be agreed to.
5. A managed risk agreement will be signed and placed in the Resident's chart. Under the agreement, surveillance information will not be provided to the public with the exception of licensing.

Here is a sample poster on the door of an individual resident room where video surveillance has been permitted.



About Park Place Seniors Living

Park Place Seniors Living is family owned company, founded, owned and operated by Al & Jenny Jina. Al is a lawyer by profession and Jenny is a nurse who specializes in geriatrics and adult education.



Owner Al Jina (left) with a Park Place resident and her husband.

The company was founded 30 years ago with one private Care Home in Nelson B.C. Since then, the company has steadily grown and now operates homes in B.C., Alberta, and Ontario.

Park Place provides a continuum of care from independent living to assisted living to complex care, dementia care and palliative care. All complex care homes are accredited. All sites are owned and operated by the company from a small head office in Vancouver, B.C.

Park Place Seniors Living works in partnership with ten regional health authorities in Alberta, British Columbia, and Ontario.

Enriching the Lives of Seniors