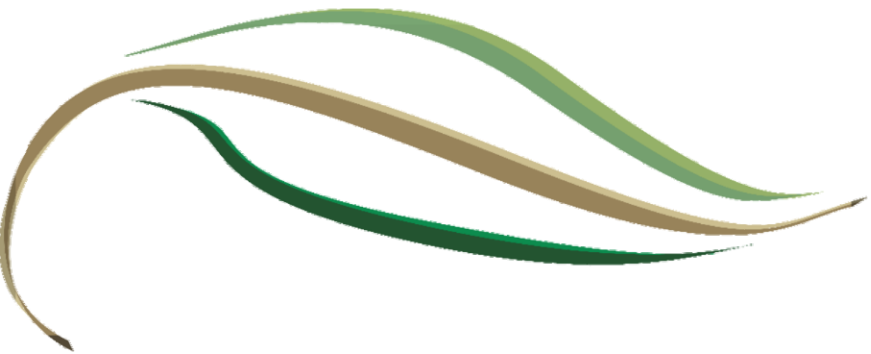


# Use of Video Cameras in Residential Care

Presented by Al Jina, Park Place Seniors Living



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# Balancing Technology, Care, and Ethics

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

Presenter Al Jina is both a lawyer and the Founder/President of Park Place Seniors Living, which has more than 20 years of experience in seniors residential care.

This presentation will examine the use of surveillance in elder care from two significant perspectives:

1. What are the ethical implications?
2. What are the legal/regulatory implications?
3. When and Where should this technology be utilized?

# 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.

# Issues to be considered:

- Ethics governing surveillance and monitoring
- Governing legislation in B.C., including the B.C. Residents Bill of Rights for seniors in residential care
- Criminal Code of Canada prohibitions
- Recent Case Law in Canada
- United Kingdom: Administrative Guidance from the Care Quality Commission
- U.S. Legislation – 2001 to the present
- Draft policy issued by Alberta Health Services in April 2016
- Reasons for and against electronic surveillance/monitoring

# 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

# Ethical For Residents

Video Surveillance & Monitoring is only ethically justifiable if it provides:



- Improved Quality of Life;
- Improved Quality of Care;
- Freedom from abuse and/or neglect; while also
- Preserving personal privacy; and
- Preserving confidentiality.

# Ethical for Professional Staff

Video Surveillance & Monitoring is only ethically justifiable for professional medical staff and consultants, including visiting doctors, if it provides:



- Reliable, valid data which can be used to guide assessment and improve treatment;
- Protection from malpractice or wrongful allegations; yet maintains
- Confidentiality of medical records; and
- Personal privacy for residents, staff and consultants.

# Ethical For All Staff

Video Surveillance & Monitoring is only ethically justifiable for all staff, including housekeepers, care aides, and dietary staff, if it provides:



- Protection from wrongful allegations;
- A tool for improved monitoring of residents for their safety;
- Proof of the provision of quality care; while maintaining
- Privacy for Residents & Staff



# Ethical For Home Administration

Video Surveillance & Monitoring is only ethically justifiable for the administrators of a care home if it provides:



- A means to maximize the Quality of Life and Quality of Care for residents;
- A fiscally responsible tool to improve monitoring of the physical plant, including improved security for staff and residents at exits and entrances; and
- Reduced legal risks for the care home.

# Ethical For Families/Friends

Video Surveillance & Monitoring is only ethically justifiable for the families and friends of residents if it provides:



- A means to maximize the Quality of Life and Quality of Care for their loved ones; yet still maintains
- Privacy for residents, their families and friends.

# Ethical For Visitors & Volunteers

Video Surveillance & Monitoring is only ethically justifiable for visitors and volunteers if it provides:



- Improved security for those visiting the care home;
- Protection from wrongful allegations; yet maintains
- Privacy for visitors and volunteers.

# Ethical For Employee Unions

Video Surveillance & Monitoring is only ethically justifiable for the unions representing employees if it provides:



- Improved workplace security for staff;
- Minimized risk of malpractice or wrongful accusations; yet maintains
- Privacy for staff.

# Ethical For Regulatory Agencies

Video Surveillance & Monitoring is only ethically justifiable for regulatory agencies if it provides:



- Reliable, valid Quality of Life and Quality of Care data to support licensing/re-certification/contract renewals;
- A means of quickly and accurately investigating complaints or allegations of wrongdoing; yet maintains
- Privacy for residents and staff.

# Ethical For Provincial Funding Authorities

Video Surveillance & Monitoring is only ethically justifiable for provincial funding authorities – usually a health authority – by providing:



- Proof that the care given meets the Quality of Life and Quality of Care standards of the contract;
- Information on the level of care required; yet still maintaining
- Privacy for residents and staff.

# 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 & Monitoring cannot contravene the following regulations.

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

- Section 7 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*, 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.

# Provincial Regulations: Protecting Privacy

Further privacy protection for seniors in residential care ~ and also for staff or any individuals within and outside a residential care setting ~ is provided within the provisions of the:

- *Freedom of Information and Protection of Privacy Act [RSBC 1996]*
- *Personal Information Protection Act [SBC 2003]*
- *Ombudsperson Act [RSBC 1996]*
- *Patient Care Quality Review Board Act [SBC 2008]*
- *Patient Care Quality Review Board Act: External Complaint Regulation B.C. Reg. 305/2008*
- *Seniors Advocate Act [SBC 2013]*

# 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.**

## Alberta Provincial Court: Video Evidence

On October 21, 2015, in *R. v Dumo*, 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

## Statement 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.*

# Ontario Court of Justice: Video Evidence

In December 2014, in *R v Lamsen*, the Ontario Court of Justice sentenced a caregiver to five months in jail based on video evidence of abuse captured by a camera installed by the victim's daughter.

The Court noted that the offender had “quite direct control over the quality and dignity of [the victim's] life” and that she “betrayed this trust.”

# Ontario Court of Justice: Video Evidence

The Ontario Court also noted:

- [The victim's] value as a human being was much diminished in [the caregiver's] eyes.
- [The victim] had become a troublesome, frustrating task which the caregiver conducted roughly, quickly, and with contempt.
- In [the caregiver's] eyes, [the victim's] hair required brushing, but also served as a handle for the caregiver to wrench about the victim's frail body.
- [The victim's] cries at her harsh treatment evoked no sympathy, only irritation.
- [The victim's] feeble resistance to [the caregiver's] assaultive behaviour attracted no shame, only further abuse.

# Ontario Court of Justice: Video Evidence

The Ontario Court ruling further found that:

- Of course, this assaultive conduct stopped immediately when others were present. This change in conduct betrayed [the caregiver's] guilty mind.
- [The caregiver] was working with someone who could not fight back, whose complaints if voiced would not likely be believed.
- [The victim] no longer had power over her life and treatment.

## 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.*”

## Quebec Case Law: Appeal supports video

The Quebec Court of Appeal will be ruling on this appeal of an earlier court decision dis-allowing video cameras in a long-term care home. The details are:

- The son of a resident installed a video camera in his mother's room. The mother suffers from Parkinson's Disease and the son wanted to monitor her condition. Upon being advised of the camera, staff protested to the union. Staff members argued the video camera violated their privacy.
- The Quebec Services Employees Union filed an objection to the Quebec Superior Court. The court ruled in favour of the union on August 3, 2015.

That decision is now being appealed by the long-term care home. In 2010, a Quebec judge ruled that staff working in long-term care do not have the same right of privacy as they would have elsewhere.

# Who's Watching? Spy Ware Everywhere

Advances in technology have put affordable surveillance within reach of everyone. At the same time, some governments have enacted more legislation to protect personal privacy.

In the U.S., some states have passed legislation to allow video surveillance in nursing homes.





# United Kingdom: Administrative Guidance from the Care Quality Commission

In October 2014, the Care Quality Commission (CQC) issued its principles on surveillance in order to provide guidance to the general public. The Commission neither encouraged nor discouraged the use of surveillance. The purpose of the principles was to provide information so individuals could make their own informed decisions. Under these principles:

- Whether to use surveillance or not is decided by individuals and/or families;
- The CQC reserves the right to use surveillance information to decide on follow-up action, including forwarding to police should there be evidence of a criminal offence.
- Privacy, dignity, human rights and consent should all be considered when using recording equipment.

Source: <https://www.cqc.org.uk>

## United Kingdom: Public Education

To further support the principles issued in October 2014, the CQC issued a brochure in February 2015 entitled: Thinking about Using a Hidden Camera or Other Equipment to Monitor Someone's Care?

In simple, effective language, the brochure discussed the issues surrounding use of electronic surveillance equipment. The clarity of the text earned the approval of the Plain English Campaign.

But the brochure does not address the position of care professionals and/or administrators who must also navigate between increased access to surveillance and personal privacy protections.



## 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.

# U.S. Regulations: State by State

The following states now permit surveillance cameras to be installed in the rooms of nursing home residents: Maryland (2003); New Mexico (2004); Washington (2008); Oklahoma (2013); and Illinois (2016).



Several states have also rejected the passing of such legislation.

# Alberta: Draft Policy on Use of Video Recordings

On April 27, 2016, Alberta Health Services released an extensive draft policy and procedure to provide guidance on the use of both audio and video recordings.

Under the Albert Health Service Draft Policy:

- Use of a recording device to collect information relating to quality of care should only occur after other reasonable options for addressing the concern have been considered.
- The use of any type of recording device is not permitted without prior authorization from Management and the agreement of those “who are captured in the recording.”

# Surveillance? Pro or No

## Reasons cited for installing surveillance

- Suspicion of Abuse
- Families concerned that they are not receiving regular updates about their loved one
- Concerns about understaffing in a care home
- A history of violations at a care home, leading to a lack of faith in the care provided
- A belief that known surveillance will result in more attentive care

## Reasons for not installing surveillance

- Respect for the personal dignity and privacy of a resident. An in-room camera will film the resident in their most intimate moments, including bathing, toileting, clothing, transferring, feeding etc.
- Belief in the care provided by the home, based on personal contact
- Legality issues, including privacy statutes and validity of consent from a cognitively impaired resident
- Negative reaction by caregivers

## 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 more than 20 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. and Alberta.

Park Place was recently chosen by Alberta Health to construct and operate a new assisted living home and a care home. The company was also the successful applicant to provide new care beds in Campbell River.

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 seven regional health authorities in Alberta and British Columbia.

***Enriching the Lives of Seniors***