

# Table of Contents

## VOLUME 1

<i>Dedication</i> .....	iii
<i>Foreword</i> .....	v
<i>Preface</i> .....	vii
<i>Acknowledgments</i> .....	ix
<i>Table of Cases</i> .....	TC-1

### PART I — VIDEOTAPE AND PHOTOGRAPHIC EVIDENCE

<i>Chapter 1</i>	<b>Introduction to Visual Evidence</b> .....	1-1
	1.1 Guide to the Use of this Manual .....	1-1
	1.2 The Purposes of Visual Evidence .....	1-2
<i>Chapter 2</i>	<b>Admissibility and Weight in Canada</b> .....	2-1
	2.1 Introduction .....	2-1
	(a) Contrasting the Media .....	2-1
	(b) Which Medium is the Best to Use? .....	2-4
	2.2 Basis for Admissibility .....	2-4.2
	(a) The Illustrative Theory .....	2-4.2
	(b) The Silent Witness Theory .....	2-6
	2.3 Criteria for Admission .....	2-14
	(a) Photographs and Motion Picture Films .....	2-14
	(b) Videotapes .....	2-16
	(i) Relevancy .....	2-17
	(ii) Accuracy in Truly Representing the Facts .....	2-17
	(iii) Fairness and Absence of Any Intention to Mislead .....	2-18
	(iv) Verification on Oath by a Capable Witness .....	2-19
	(v) Probative Value Must Exceed the Prejudicial Effect .....	2-20.36
	(c) Digital Images Recorded on CDs and DVDs .....	2-22.15
	(d) The Requirement of a <i>voir dire</i> .....	2-23
	2.4 Weight .....	2-25
	(a) Distortion in Videotape .....	2-27
	(b) Chain of Custody Requirement .....	2-27
	(c) Use at Preliminary Inquiry .....	2-28

## TABLE OF CONTENTS

2.5 Checklist .....	2-30
Bibliography .....	2-31
<i>Chapter 2A</i> <b>Crown Disclosure and Public Access</b> .....	2A-1
2A.1 Introduction .....	2A-1
2A.2 Crown Disclosure of Videotapes .....	2A-1
(a) Duty to Disclose Videotapes Held by Provincial Government Department Other than that of the Attorney General .....	2A-1
(b) Inadvertent Destruction or Loss of Videotapes Recorded by Police .....	2A-5
(c) Compelling Production of Unedited Transcript of Videotape .....	2A-13
(d) Videotapes Seized by Police from Accused .....	2A-23
2A.3 Public Access to Videotape Exhibits .....	2A-33
(a) Rights of Victims Depicted in Videotapes .....	2A-33
(b) Rights of Accused Depicted in Videotapes .....	2A-64
(i) Videotapes Ruled Inadmissible at Trial .....	2A-64
(ii) Videotapes Ruled Admissible At Trial .....	2A-64
(iii) Use of Videotaped Exhibits Pending Appeal .....	2A-81
(iv) Use of Videotaped Exhibits Pending Trials of Co-Accused .....	2A-83
(v) Use of Videotaped Exhibits Filed in a Preliminary Inquiry .....	2A-99
(vi) Use of Videotaped Exhibits Filed in A Judicial Inquiry .....	2A-118
<i>Chapter 3</i> <b>Admissibility and Weight in the United Kingdom and Ireland</b> .....	3-1
3.1 Introduction .....	3-1
3.2 England .....	3-2
(a) Historical Background .....	3-2
(b) Criminal Courts .....	3-3
(i) Photographs .....	3-3
(ii) Motion Picture Films .....	3-4.1
(iii) Videotapes .....	3-5
(c) Civil Courts .....	3-10
(i) Motion Picture Films .....	3-10
(ii) Videotapes .....	3-10
3.3 Scotland .....	3-15
(a) Civil Courts .....	3-15
(i) Photographs .....	3-15
(ii) Videotapes .....	3-16
(b) Criminal Cases .....	3-17

## TABLE OF CONTENTS

	(i) Photographs.....	3-17
	(ii) Videotapes .....	3-17
	3.4 Ireland .....	3-19
	Bibliography.....	3-21
<i>Chapter 4</i>	<b>Admissibility and Weight in Australia and New Zealand .....</b>	<b>4-1</b>
	4.1 Australia .....	4-1
	(a) Introduction.....	4-1
	(b) Criminal Courts .....	4-1
	(i) Photographs.....	4-1
	(A) Photo-Identification Evidence .....	4-1
	(B) Photographs of Injuries to Victim or Complainant .....	4-5
	(C) Photographs of the Accused for Non- Identification Purposes.....	4-9
	(D) Re-enactments and Reconstructions .....	4-11
	(ii) Motion Picture Films.....	4-15
	(iii) Videotapes .....	4-16
	(c) Civil Courts.....	4-16
	4.2 New Zealand .....	4-17
	(a) Introduction.....	4-17
	(b) Criminal Courts .....	4-18
	(i) Photographs.....	4-18
	(A) Probative Value versus Prejudicial Effect .....	4-18
	(B) Photo-Identification .....	4-19
	Bibliography.....	4-21
<i>Chapter 5</i>	<b>Other Jurisdictions .....</b>	<b>5-1</b>
	5.1 Hong Kong .....	5-1
	5.2 South Africa and Rhodesia .....	5-3
	(a) Photographs — Civil.....	5-3
	(b) Photographs — Criminal .....	5-4
	(c) Videotapes — Criminal .....	5-8
	5.3 United States — Admissibility .....	5-12
	5.4 United States — Foundation .....	5-126
	Bibliography.....	5-199
<i>Chapter 6</i>	<b>Admissibility and Weight in Military Courts .....</b>	<b>6-1</b>
	6.1 Introduction.....	6-1
	6.2 American Military Courts .....	6-1
	6.3 Potential Use in Canadian Military Courts.....	6-5
	(a) Testimony by Graphic Media.....	6-5
	(b) Evidence on Commission.....	6-6
	(c) View by Court Martial .....	6-7
	(d) Confessions of Suspects.....	6-8

## TABLE OF CONTENTS

	6.4 Conclusions.....	6-9
	Bibliography.....	6-10
<i>Chapter 7</i>	<b>Technical Objections to Admission</b> .....	7-1
	7.1 Introduction.....	7-1
	7.2 Editing.....	7-1
	(a) Video Editing .....	7-6.4
	(i) Lack of Continuity; Sequence and Chronology Disruption .....	7-6.4
	(ii) When to Edit — Before Trial or At Trial.....	7-6.7
	(iii) Fast-forwarding versus Compilation.....	7-6.9
	(b) Audio Editing.....	7-6.11
	(i) Failure to Reproduce Entire Conversation.....	7-6.11
	(ii) Original Versus Copies.....	7-7
	7.3 Soundtrack Distortion.....	7-8
	(a) Background Noise Level.....	7-8
	(b) Inaudible Soundtrack.....	7-9
	(c) Audio Filtering .....	7-9
	(d) Use of Transcript .....	7-10
	7.4 Tape and Film Speed Distortion .....	7-11
	(a) Fast Motion.....	7-12
	(b) Slow Motion .....	7-13
	(c) Stop Motion/Freeze Frame.....	7-14.1
	7.5 Colour Distortion .....	7-15
	(a) Colour Inaccuracy.....	7-15
	(b) Light Distortion .....	7-18
	7.6 Optical Distortion.....	7-19
	(a) Introduction.....	7-19
	(b) Lens Type and Angle of View .....	7-20
	(c) Proper Perspective — Use of the Perspective Grid.....	7-21
	7.7 Distortion — Other Forms .....	7-25
	(a) Electronic Distortion — Production Weaknesses .....	7-25
	(b) Size and Context Distortion .....	7-25
	(c) Static Distortion.....	7-26
	7.8 Checklist.....	7-26
	Bibliography.....	7-30
<i>Chapter 8</i>	<b>Non-Technical Objections to Admission</b> .....	8-1
	8.1 Introduction.....	8-1
	8.2 Prejudicial Effect .....	8-1
	(a) Sympathy Arousing Pictures .....	8-3
	(b) Gruesome Pictures .....	8-5
	(c) Over-Emphasis .....	8-6.56
	(d) Innuendo of Suspicion.....	8-6.57

## TABLE OF CONTENTS

8.3 Hearsay.....	8-7
(a) Exceptions to the Rule Against Hearsay.....	8-8
(b) Audio Narration.....	8-9
(c) Video Depiction.....	8-22
8.4 Best Evidence Rule.....	8-23
8.5 Self-Serving and Cumulative.....	8-24
Bibliography.....	8-28

## VOLUME 2

<i>Chapter 9</i>	<b>Detecting Misrepresentation and Distortion</b> .....	9-1
	9.1 Introduction.....	9-1
	9.2 Photographs.....	9-2
	(a) The Contact Sheet.....	9-2
	(b) The Effect of Light Source and Viewing Conditions ....	9-3
	(c) Kinds of Distortion .....	9-4
	(i) Mechanical Alteration.....	9-4
	(A) The 'Flipped' Image.....	9-4
	(B) The 'Cropped' Image .....	9-6
	(C) The 'Shifted' Image .....	9-7
	(d) Optical Distortion.....	9-9
	(i) 'Normal', Wide Angle and Telephoto Lenses .....	9-9
	(ii) Parallel Lines.....	9-11
	(iii) Point of View.....	9-12
	(e) Fabrication and Falsification .....	9-12
	(i) Multiple Printing Technique.....	9-12
	(ii) Retouching.....	9-13
	(f) Checklist for Detecting Distortion and Misrepresentation in Photographs .....	9-13
	(i) Overcoming Objections to the Admission of Photographs .....	9-14
	9.3 Figures.....	9-15
	(a) Figure 1 — Contact Sheet .....	9-16
	(b) Right-left Reversal .....	9-17
	(i) Figure 2 .....	9-17
	(ii) Figure 3 .....	9-18
	(c) Up and Down Reversal .....	9-19
	(i) Figure 4.....	9-19
	(ii) Figure 5.....	9-20
	(d) The 'Cropped' Image .....	9-21
	(i) Figure 6.....	9-21
	(ii) Figure 7.....	9-22
	(e) The 'Shifted' Image .....	9-23

## TABLE OF CONTENTS

(i) Figure 8 .....	9-23
(ii) Figure 9 .....	9-24
(f) 'Normal', Wide Angle and Telephoto Lenses .....	9-25
(i) Figure 10 — 135 mm lens .....	9-25
(ii) Figure 11 — 50 mm lens .....	9-26
(iii) Figure 12 — 35 mm lens .....	9-27
(iv) Figure 13 — 20 mm lens .....	9-28
(v) Figure 14 — 50 mm lens .....	9-29
(vi) Figure 15 — 20 mm lens .....	9-30
(g) Parallel Lines.....	9-31
(i) Figure 16 .....	9-31
(ii) Figure 17 .....	9-32
(h) Point of View.....	9-33
(i) Figure 18 .....	9-33
(ii) Figure 19 .....	9-34
<i>Chapter 9A Special Photographic Techniques .....</i>	<i>9A-1</i>
9A.1 Introduction .....	9A-1
9A.2 Infrared Photography .....	9A-1
Bibliography.....	9A-44

## PART II — VISUAL EVIDENCE IN CIVIL PROCEEDINGS

<i>Chapter 10 Ex Parte Events.....</i>	<i>10-1</i>
10.1 Introduction.....	10-1
10.2 Views by Videotape.....	10-2
(a) Inspection of the Scene.....	10-8
(i) Accident Scene Views.....	10-8
(ii) Views of Vehicles.....	10-17
(iii) Views of Manufacturing Processes and Facilities .....	10-18
(iv) Views of Route Taken.....	10-20
(v) Views of Picket Lines .....	10-21
(vi) Marine Views.....	10-22
(vii) Aerial Views .....	10-26
(viii) Terrain Views.....	10-27
(ix) Views and Invasion of Privacy.....	10-32
(x) Views of Commercial Activity .....	10-37
(xi) Views of Poor Workmanship .....	10-38
(xii) Views of Loading Ramp.....	10-39
(xiii) Views of Federal and Provincial Parks.....	10-39
(xiv) Views of Land Development Site .....	10-40
(xv) Views of Drowning Site .....	10-41
(xvi) Views in Landlord and Tenant Matters .....	10-42

## TABLE OF CONTENTS

(xvii) Views of Animals .....	10-45
(b) Preservation of Property .....	10-49
(c) Summary .....	10-51
10.3 Reconstructions and Re-enactments .....	10-51
(a) Definition.....	10-52
(i) Reconstruction .....	10-52
(ii) Re-enactment.....	10-52
(b) Objections to Reconstructions or Re-enactments .....	10-52
(i) Depiction not Sufficiently Similar.....	10-53
(ii) Misleading .....	10-53
(iii) Ultimate Issue Doctrine .....	10-54
(c) Motor Vehicle Accident Reconstructions .....	10-54
10.4 Demonstrations .....	10-55
(a) Substantial Similarity Test .....	10-55
(b) Scene-based Demonstrations .....	10-56
(c) Substantially Similar Circumstances.....	10-57
(d) Medical Examinations .....	10-58
(i) Ontario Decisions .....	10-58.1
(ii) Alberta Decisions.....	10-58.22
(iii) British Columbia Decisions.....	10-58.27
10.5 Tests and Experiments.....	10-59
(a) Out-of-Court Testing .....	10-59
(b) In-Court Experiments .....	10-60
10.6 Other <i>Ex Parte</i> Uses for Videotapes and Photographs .....	10-61
(a) Rebutting a Presumption of Death .....	10-61
Bibliography.....	10-63

<i>Chapter 11</i>	<b>Photographs and Videotapes of Plaintiffs</b> .....	11-1
	11.1 Pictures of Plaintiff’s Injuries .....	11-1
	(a) Introduction.....	11-1
	(b) Prejudicial Effect .....	11-2
	(c) Use on Discovery and at Trial.....	11-4
	(d) Preparation and Presentation — Guidelines for Photographing, Filming and Recording Plaintiff’s Injuries .....	11-6
	(i) Pictures of Plaintiff at the Hospital .....	11-6
	11.2 Day-in-the-Life Documentaries.....	11-8
	(a) Definition and Purpose .....	11-8
	(b) Reported Use.....	11-9
	(c) Objections to Admission.....	11-12
	(d) Preparation and Presentation .....	11-13
	11.3 Planning and Producing a “Day-in-the-Life” Videotape in a Personal Injury Lawsuit .....	11-13
	11.4 Using or Challenging a “Day-in-the-Life” Documentary in a Personal Injury Lawsuit .....	11-69

## TABLE OF CONTENTS

	Bibliography.....	11-124
<i>Chapter 12</i>	<b>Surveillance of Suspected Malingering Plaintiffs .....</b>	<b>12-1</b>
	12.1 Introduction and Reported Use .....	12-1
	(a) Introduction.....	12-1
	(b) Reported Use.....	12-1
	(i) Surveillance Motion Picture Films .....	12-1
	(ii) Surveillance Videotapes.....	12-5
	12.2 Strategy and Tactics .....	12-10.3
	(a) Pre-trial.....	12-10.3
	(b) Techniques of Surveillance .....	12-10.4
	(c) Trial .....	12-10.6
	(d) Caveat to Defendant's Counsel.....	12-12
	12.3 Disclosure of Surveillance Evidence .....	12-13
	(a) Ontario .....	12-14
	(i) Scope (or Extent) of Disclosure — Ontario .....	12-14
	(ii) Affidavit of Documents — Rule 30.03.....	12-16
	(iii) Using Privileged Document to Impeach a Witness — Rule 30.09 .....	12-17
	(iv) Is the Information Contained in Surveillance Documents Privileged? .....	12-38.9
	(v) Examination for Discovery — Rule 31 .....	12-38.9
	(vi) What Information Should be Disclosed?.....	12-45
	(vii) Timing of Disclosure — At What Stage Should Disclosure be Made?.....	12-54.3
	(viii) Use of Surveillance Films or Tapes at Trial.....	12-60
	(ix) Use of Surveillance Films or Tapes at Arbitration.....	12-62
	(x) Costs .....	12-68
	(b) British Columbia.....	12-69
	(c) Alberta.....	12-70.8
	(d) Saskatchewan .....	12-100.5
	(e) Manitoba.....	12-105
	(f) New Brunswick .....	12-120
	(g) Nova Scotia.....	12-121
	(h) Newfoundland and Labrador .....	12-121
	(i) Prince Edward Island .....	12-129
	(j) England .....	12-133
	Bibliography.....	12-135
<i>Chapter 13</i>	<b>Surveillance in the Workplace .....</b>	<b>13-1</b>
	13.1 Introduction.....	13-1



## TABLE OF CONTENTS

13.2 Authentication .....	13-1
13.3 Effect of the Criminal Code .....	13-6.1
(a) Video Signage — Wording and Placement .....	13-6.2
13.4 Privacy Rights under the Charter .....	13-6.4
(a) Under the <i>Charter of Rights and Freedoms</i> .....	13-6.4
(b) Under Provincial Legislation .....	13-6.6
(i) British Columbia.....	13-6.6
(ii) Manitoba.....	13-6.9
13.5 Wrongful Dismissal Actions.....	13-6.10
13.6 Surveillance of Suspected Malingering Employees .....	13-14.2
(a) Refuting alleged disability .....	13-14.2
(b) Jurisdiction of Civil Court and Arbitrator .....	13-14.5
(c) Workers' Compensation Decisions.....	13-14.9
13.7 Technical Issues.....	13-14.20
13.8 Procedures.....	13-14.23
13.9 Testifying in Court.....	13-19
(a) Authenticating Witnesses .....	13-19
(b) Trial Transcript of Examination of Security Manager.....	13-20
Bibliography.....	13-26
<i>Chapter 13A</i> <b>Surveillance in Labour Arbitrations</b> .....	13A-1
13A.1 Introduction .....	13A-1
13A.2 Admissibility and Weight.....	13A-1
13A.3 Evidentiary Use at Arbitration Hearings .....	13A-2
(a) Surveillance in (or at) the Workplace.....	13A-2
(i) Video Surveillance at Entrance Gates.....	13A-3
(ii) Video Surveillance of Picket Line Activity .....	13A-4
(iii) Video Surveillance in Work Areas.....	13A-5
(iv) Video Surveillance of Union Activities .....	13A-8.31
(v) Other Surveillance Issues.....	13A-8.47
(b) Surveillance Outside the Workplace.....	13A-8.54
13A.4 Code of Labour Law - Quebec .....	13A-54
13A.5-13A.8 <i>Reserved for Future Use</i>	
13A.9 Bibliography.....	13A-55
<i>Chapter 14</i> <b>Deposition, Commission and De Bene Esse Evidence</b> .....	14-1
14.1 Introduction .....	14-1
14.2 Canada — Provincial Rules .....	14-2
(a) Ontario Rules .....	14-3
(i) Former Rules — Pre-1985 .....	14-3
(ii) New Rules — 1985 to Present .....	14-4
(b) British Columbia Rules .....	14-12.32
(c) Saskatchewan Rules .....	14-12.35

## TABLE OF CONTENTS

14.3 Canada — Federal Courts Rules.....	14-12.40
14.4 Foreign Jurisdictions .....	14-16
(a) England .....	14-16
14.5 Checklist.....	14-20
Bibliography.....	14-21

### *Chapter 15*

<b>Standards and Guidelines for Recording Evidence on Videotape</b> .....	15-1
15.1 Introduction.....	15-1
15.2 The Recording Environment .....	15-2
15.3 Picture Composition.....	15-3
15.4 Recording Equipment.....	15-4
15.5 Selecting and Acquiring Video Equipment .....	15-5
15.6 Checklists.....	15-6
(a) Video Camera Checklist .....	15-6
(b) Videocassette Recorder (VCR) Checklist.....	15-7
(c) Camera/Recorder Checklist .....	15-8
(d) Pre-recording Checklist.....	15-9
15.7 Video Production Notes.....	15-10
(a) Camera Techniques and Movements .....	15-10
(i) White Balance and Black Balance (Camera Colour).....	15-10
(ii) Colour Temperature .....	15-11
(iii) Aperture and Depth of Field .....	15-12
(iv) Zoom.....	15-13
(v) Focus.....	15-13
(vi) Composition and Perspective.....	15-14
(vii) Framing .....	15-14
(viii)Panning.....	15-15
(ix) Tilting.....	15-15
(x) Dollying and Trucking .....	15-16
(xi) Tripods .....	15-16
(xii) Lighting .....	15-16
(b) Scriptwriting Tips .....	15-17
(c) Easy Tips for Better Camera Techniques.....	15-17
(d) Client's Needs Analysis and Profile.....	15-19
15.8 Video Technical Notes .....	15-21
(a) Technical History of Television.....	15-21
(i) The Standard — NTSC .....	15-21
(ii) Signal Quality.....	15-23
(b) Video Test Instruments.....	15-24
(i) Video Waveform Monitor.....	15-24
(ii) Vectorscope.....	15-25
(c) Colour Bars.....	15-26

## TABLE OF CONTENTS

	(d) Selecting a Colour Monitor .....	15-26
	(e) Colour Monitor Set-Up.....	15-27
	(f) Colour Test Signals .....	15-28
	(g) Video Formats .....	15-29
	(i) Introduction.....	15-29
	(ii) 8mm Format.....	15-30
	(iii) ½ Inch Format .....	15-30
	(iv) Inch Format .....	15-31
	(v) One Inch Format .....	15-32
	(vi) Two Inch Format.....	15-33
	(vii) Camcorders.....	15-33
	(viii)Signal Architecture.....	15-34
	(ix) Composite versus Component .....	15-34
	(x) Limitations of Composite Formats.....	15-35
	(xi) Digitization of Video Signals.....	15-36
	(h) Audio.....	15-37
	(i) Overview .....	15-37
	(ii) Impedance.....	15-38
	(iii) Audio Level Measurements .....	15-38
	(iv) Phasing .....	15-39
	(v) Microphones .....	15-40
	(vi) Lavalier Microphones .....	15-41
	Bibliography .....	15-43
<i>Chapter 16</i>	<b>Medical Demonstrative Evidence .....</b>	<b>16-1</b>
	16.1 Introduction .....	16-1
	16.2 Anatomical Charts, Models, and Exhibits .....	16-1
	(a) Introduction.....	16-1
	(i) Anatomical Charts .....	16-2
	(ii) Anatomical Models.....	16-2
	(iii) Anatomical Exhibits and Specimens .....	16-3
	(b) Preparation .....	16-3
	(c) Advantages over other Methods.....	16-4
	(d) Case Law Review.....	16-4
	16.3 X-Rays, Ultrasounds and Other Scans .....	16-5
	(a) X-Rays.....	16-5
	(b) Ultrasound Scans .....	16-6
	(c) PET Scans.....	16-9
	16.4 Medical Thermography .....	16-10.6
	(a) Introduction.....	16-10.6
	(b) Medical Uses.....	16-10.7
	(c) Preparation .....	16-11
	(d) Advantages over other Methods.....	16-13
	(e) Case Law Review.....	16-13

## TABLE OF CONTENTS

16.5 The Preparation of Customized Medical Illustration	
Exhibits for Use In the Courtroom .....	16-18
(a) Introduction .....	16-19
(i) What is a Medical Illustrator? .....	16-19
(ii) Medical Illustration in the Courtroom.....	16-20
(iii) Qualifications of an Illustrator .....	16-21
(A) Education .....	16-21
(B) Certification .....	16-21
(C) Experience — Curriculum Vitae .....	16-21
(iv) Hiring a Student or Inexperienced Illustrator	16-22
(b) Medical-Legal Exhibits.....	16-22
(i) Existing Images .....	16-22
(A) Textbook Illustrations .....	16-23
(B) Anatomy posters .....	16-24
(ii) Custom-Made Exhibit Panels .....	16-24
(iii) Range of Custom-Made Legal Exhibits .....	16-25
(A) Pre-Trial (Settlement) Illustrations.....	16-25
(B) Courtroom Illustrations.....	16-25
(C) Other Graphics .....	16-26
(c) Illustration Considerations .....	16-26
(i) Elements of a Good Illustration .....	16-26
(A) Tailored to the Audience.....	16-26
(B) Overview/Context.....	16-26
(C) Emphasis .....	16-26
(D) Rendering .....	16-26
(E) Labels/Titles/Leader Lines.....	16-27
(ii) Nature of Depictions.....	16-27
(A) Diagramatic/Schematic.....	16-27
(B) Idealized Depictions v. High Realism .....	16-27
(C) Overlays.....	16-28
(D) Moving Components.....	16-28
(iii) Conventions/Techniques used by the Illustrator.....	16-28
(A) Visualizations .....	16-28
1. Transparent “see-throughs” .....	16-29
2. Cross-sections.....	16-29
(B) Colour .....	16-29
(d) Preparation of Courtroom Exhibits .....	16-30
(i) Production Process.....	16-30
(A) Timing .....	16-30
(B) Stages of production .....	16-30
(ii) Presentation of Images .....	16-34
(e) The Role of the Medical Illustrator .....	16-34
(i) Expert Witness v. Educator .....	16-34

## TABLE OF CONTENTS

(ii) Support/Defence of Work .....	16-34
(f) Conclusion .....	16-34
Medical Illustrations (Notes on Illustrations and Figure Legends) .....	16-36
16.6 Medical Illustration — Case Law .....	16-38
Bibliography .....	16-48
Medical Illustrations .....	MI-1

*Chapters 17 to 19 Reserved for future use.*

## VOLUME 3

### PART III — VISUAL EVIDENCE IN CRIMINAL PROCEEDINGS

<i>Chapter 20</i>	<b>Crime Scenes</b> .....	20-1
	20.1 Introduction .....	20-1
	20.2 Crimes-in-Progress .....	20-1
	(a) During Televised Sports Events .....	20-5
	(i) Reported Use .....	20-5
	(ii) Grounds for Exclusion .....	20-6
	(b) Robberies, Thefts, and Mischief .....	20-6
	(c) Picket Line Disturbances and Political Demonstrations .....	20-10.16
	(i) Picket Line Disturbances .....	20-10.16
	(ii) Political Demonstrations .....	20-10.20
	(d) Radar Camera Pictures of Speeders .....	20-14
	20.3 Views of Crime Scenes .....	20-22
	(a) The Criminal Code View .....	20-22
	(b) Crime Scene Pictures .....	20-23
	(c) Objections to Crime Scene Pictures .....	20-26
	20.4 Preservation of Crime Scene Evidence .....	20-31
	(a) Photographs of Seized Property .....	20-31
	(i) Law Reform Commission Recommendation ..	30-32
	(ii) Criminal Code Provisions .....	20-33
	(b) Photographs of the Accused .....	20-34
	(i) Effect on Accused's Charter Rights .....	20-34
	(ii) To Rebut an Allegation of Police Assault .....	20-37
<i>Chapter 21</i>	<b>Re-enactments and Confessions</b> .....	21-1
	21.1 Introduction .....	21-1
	21.2 Re-enactments and Reconstructions of Crimes .....	21-1
	(a) Definition and Admissibility .....	21-1
	(b) Severance of Trials of Co-accused .....	21-14.2(15)

## TABLE OF CONTENTS

(c) Accused's Right to Counsel.....	21-7
(d) Re-enacting the Crime on Advice of Defence Counsel.....	21-11
(e) Re-enactments and Views of Crime Scenes .....	21-20
(f) Re-enactment or Confession.....	21-20.18
(g) When is a Re-enactment Not a Re-enactment?.....	21-20.20
21.3 Experiments .....	21-21
21.4 Confessions of Accused Persons .....	21-24.11
(a) Definition and History .....	21-24.11
(b) Law Reform Commission Project.....	21-24.19
(c) Reported Use.....	21-25
(d) Use of Typed Transcript of Videotaped Confession .....	21-31
21.5 Statements of Criminal Suspects.....	21-31
21.6 Cross-examination by Reference to a Videotape .....	21-35
(a) Canada Evidence Act, sections 9, 10 and 11 .....	21-35
(b) Amendments effective February 15, 1995 .....	21-36.1
Bibliography .....	21-36.3
 <i>Chapter 22</i> <b>Surveillance of Criminal Suspects</b> .....	 22-1
22.1 Introduction — Definition and Purpose .....	22-1
22.2 Authentication .....	22-4
(a) Eye-witness .....	22-4
(b) Non-Eye-witness .....	22-5
(i) Qualified Witness .....	22-5
(ii) Expert Witness.....	22-9
(c) Summary (Authentication) .....	22-12
22.3 Identification.....	22-12.1
(a) Videotape Lineups.....	22-12.1
(b) Opinion Evidence.....	22-12.5
(c) Summary (Identification).....	22-40.5
22.4 <i>Criminal Code</i> Privacy Provisions .....	22-43
(a) Pre-1973.....	22-44
(b) The <i>Protection of Privacy Act</i> (1973 to July 31, 1993).....	22-44
(c) <i>The Protection of Privacy Act</i> (August 1, 1993 to present) .....	22-53
(i) Unlawful interception.....	22-53
(ii) Evidentiary Rule .....	22-53
(iii) Unlawful Possession, etc. of intercepting device.....	22-54
(iv) Forfeiture.....	22-54
(v) Disclosure of Information Offence .....	22-55

## TABLE OF CONTENTS

	(vi) Damages to person harmed .....	22-55
	(vii) Information for General Warrant.....	22-55
	(viii) Video Surveillance .....	22-55
	(ix) Reasonable expectation of privacy .....	22-56
	(d) Summary ( <i>Criminal Code</i> Privacy Provisions) .....	22-57
	Bibliography.....	22-69
<i>Chapter 23</i>	<b>Casino Surveillance</b> .....	23-1
	23.1 Introduction .....	23-1
	23.2 Authentication of Surveillance Videotapes .....	23-1
	23.3 Canadian Cases.....	23-2
	(a) Crown Obligation to Disclose Surveillance Videotapes .....	23-2
	(b) Identification of Accused Persons From Surveillance Videotapes .....	23-6
	(c) Cheating At Play and Other Gaming Offences .....	23-10
	23.4 Labour Relations Cases .....	23-19
	<b>23.5 to 23.9</b> <i>Reserved for Future Use</i>	
<i>Chapter 24</i>	<i>Reserved for future use</i>	
<i>Chapter 25</i>	<b>Video Links: CCTV and Video Conferencing</b> .....	25-1
	25.1 Introduction .....	25-1
	25.2 Testimony Outside the Courtroom Via CCTV .....	25-2
	(a) Sexual Offence Cases — S. 486(2.1), (2.2) .....	25-2
	(b) Ontario Evidence Act — S. 18.4 .....	25-5
	(c) Bibliography.....	25-6
	25.3 Judicial Interim Release — S. 515(2.2) .....	25-7
	(a) “Show Cause” Hearings — Alternative to Physical Presence.....	25-7
	25.4 Accused to be Present at Trial — S. 650.....	25-9
	(a) Pre-1995 Amendment.....	25-10
	(b) 1995 Amendment — S. 650(1.1) “ <i>Video Links</i> ” ....	25-10.3
	(c) 1997 Amendment — S. 650(1.2) “ <i>Video Links</i> ” ....	25-10.3
	25.5 Disposition Hearing — S. 672.5(13) — “ <i>Video Links</i> ” .....	25-10.9
	25.6 Criminal Appeals by Video Conference .....	25-10.9
	25.7 Federal Court of Canada.....	25-11
	25.8 Reported Case Law — Criminal.....	25-13
	25.9 Reported Case Law — Civil .....	25-17
	(a) Ontario .....	25-17
	(b) Alberta.....	25-32.25
	(c) British Columbia.....	25-36
	(d) Saskatchewan .....	25-42

## TABLE OF CONTENTS

	(e) New Brunswick .....	25-49
	25.10 Witnesses In and Outside of Canada.....	25-49
	(a) <i>Criminal Code</i> — 1999 Amendments .....	25-50
	(i) Section 700.1.....	25-50
	(ii) Sections 714.1 to 714.8 .....	25-50
	(b) <i>Canada Evidence Act</i> — 1999 Amendments .....	25-84
	(i) Section 46.....	25-84
	(ii) Section 50.....	25-85
	(iii) Section 51.....	25-85
	(c) Other Amendments to the <i>Criminal Code</i> — s. 131 and 136.....	25-85
	Bibliography.....	25-86
Chapter 26	<b>Family Law Proceedings</b> .....	26-1
	26.1 Introduction.....	26-1
	26.2 Child Custody & Child Access Proceedings .....	26-2
	26.3 Child Welfare & Child Protection Proceedings .....	26-16
	26.4 Family Law Property on Marriage Breakdown.....	26-26
	26.5 to 26.7 <i>Reserved for Future Use</i>	
	26.8 Other Uses for Videotape in Family Law Proceedings.....	26-28
	Bibliography.....	26-29
Chapter 27	<b>PIPEDA and Video Surveillance</b> .....	27-1
	27.1 Introduction.....	27-1
	27.2 Decisions of the Federal Privacy Commissioner.....	27-3
	(a) Surveillance in Public Places - Centurion Security in Yellowknife.....	27-3
	(b) Surveillance Photos of the Wrong Person Given to Police .....	27-10
	(c) Surveillance in the Workplace -The CP Railway Case .....	27-12
	(i) The Federal Privacy Commissioner’s Report.....	27-12
	(ii) The Federal Court’s Ruling.....	27-14
	(d) Video Cameras and Swipe Cards in the Workplace...27-20	
	(e) Video Cameras in the Workplace - “Not Workin on the Railroad” .....	27-23
	(f) Video Surveillance of Employee by Private Investigator .....	27-26
	(g) Developing a Policy for Using Surveillance Cameras in the Workplace.....	27-30
	(h) Using Web Cameras to Monitor the Performance of Employees .....	27-32



## TABLE OF CONTENTS

	(i) Video Surveillance Cameras at Food Processing Plant .....	27-38
	(j) Surveillance by an Insurer's Private Investigator of an MVA Plaintiff .....	27-42
	(k) Photographing of Tenant's Apartments Without Consent by Property Management .....	27-43
	(l) Personal Relationship Between Two Employees Triggers Covert Video Surveillance by Employer ..	27-49
	(m) Video Surveillance of Employees at a Bus Terminal .....	27-56
	(n) Mother and Daughter Videotaped During Covert Surveillance of Another Individual .....	27-64
	(o) Condo Resident Alleges Misuse of Condo Security Camera System .....	27-70
	(p) Private Investigation Firm Photographs Individual.....	27-74
	(q) Retail Store used in-store surveillance cameras to collect personal information .....	27-84
	(r) Webcam Monitoring of Daycare Centre .....	27-89
	27.3 Guidelines From the Federal Privacy Commissioner...27-97	
	(a) OPC Guidelines for the Use of Video Surveillance of Public Places by Police and Law Enforcement Authorities .....	27-97
	(b) Guidelines for Overt Video Surveillance in the Private Sector.....	27-101
	(c) Guidance on Covert Video Surveillance in the Private Sector.....	27-104
	27.4 to 27.9 <i>Reserved for Future Use</i>	
<i>Chapter 28</i>	<b>Wireless Video Surveillance</b>	
	28.1 Introduction .....	28-1
	28.2 Reported Decisions .....	28-3
	28.3 Bibliography .....	28-8
<i>Chapter 29</i>	<b>Other Uses for Video Technology in Criminal Proceedings ...</b>	29-1
	29.1 Introduction .....	29-1
	29.2 Videotaping Assessments and Psychiatric Interviews....	29-1
	(a) Assessments under <i>Criminal Code</i> .....	29-1
	(b) Videotaping Psychiatric Interviews by the Defence .....	29-4.3
	(c) Bibliography .....	29-7
	29.3 Evidence on Commission .....	29-7
	29.4 Preliminary Inquiries .....	29-10
	29.5 Videotaped Evidence and Sexual Offences .....	29-15

## TABLE OF CONTENTS

	(a) Evidence of a Complainant .....	29-15
	(b) <i>Ontario Evidence Act</i> — S. 18.3 .....	29-17
	(c) Bibliography .....	29-18
29.6	Sentencing Hearings .....	29-19
	(a) Surveillance Videotapes .....	29-19
	(b) Videotape Impact Statements .....	29-20
29.7	Coroners' Inquests .....	29-21
29.8	Videotape Recording of Intoxicated Drivers .....	29-23
	(a) Introduction .....	29-23
	(b) The Canadian Experience .....	29-24
	(i) Sobriety Testing .....	29-24
	(ii) Failure to Record Condition of Accused .....	29-36
	(iii) Loss or Destruction of Videotape .....	29-46
	(c) Bibliography .....	29-68
<i>Chapter 30</i>	<b>Computer-Generated Visual Evidence in Civil Cases</b> .....	30-1
30.1	Introduction .....	30-1
	(a) Definition .....	30-3
	(b) History of Forensic Imaging .....	30-4
30.2	Applications .....	30-12.12
	(a) Motor Vehicular .....	30-12.13
	(b) Mechanical Failure .....	30-13
	(c) Product Liability .....	30-13
	(d) Medical Injuries and Malpractice .....	30-13
	(e) Patent Infringement .....	30-14
	(f) Catastrophe (Fire, Explosion, Toxic Spill) .....	30-14
	(g) Aviation Accidents .....	30-14
30.3	Keys to Admissibility .....	30-15
	(a) Planning Stage .....	30-15
	(b) Relevancy .....	30-15
	(c) Ensuring and Proving Accuracy .....	30-15
	(d) Allowing for Possible Variations .....	30-16
	(e) Making Necessary Modifications .....	30-16
	(f) Forensic Animator as Expert Witness .....	30-17
	(g) Disclosure to Opposing Counsel .....	30-17
30.4	Production Considerations .....	30-18
	(a) Production Time .....	30-18
	(b) Storyboarding .....	30-18
	(c) Cost & Duration of the Animation .....	30-18
	(d) Use of Colours .....	30-19
	(e) Incorporating videos, photos, films, x-rays .....	30-19
	(f) Replication of the Human Form .....	30-19
	(g) Courtroom Presentation .....	30-20
30.5	Technical Requirements .....	30-21

## TABLE OF CONTENTS

	(a) Software.....	30-21
	(b) Hardware .....	30-22
	Bibliography.....	30-26
	Notes on Illustrations and Figure Legends Followed by Computer-Generated Images .....	30-28
	Figure Legends.....	30-29
<i>Chapter 31</i>	<b>Computer-Generated Visual Evidence in Criminal Cases .....</b>	<b>31-1</b>
	31.1 Introduction.....	31-1
	(a) Definition.....	31-3
	(b) History of Forensic Imaging.....	31-4
	31.2 Traditional Methods of Scene Documentation.....	31-6
	(a) Scale Diagrams.....	31-7
	(b) Photographs.....	31-7
	(c) Videotapes .....	31-8
	(d) Scale Models.....	31-9
	31.3 3D Reconstruction & Animation — Case Applications.....	31-9
	(a) Scene Documentation .....	31-9
	(b) Firearm Related Incidents .....	31-11
	(c) Vehicular: Fail to Remain, Vehicular Homicide .....	31-11
	(d) Replication of Lighting.....	31-12
	(e) Fire & Explosion .....	31-13
	31.4 Keys to Admissibility.....	31-13
	(a) Planning Stage: Use & Admissibility .....	31-13
	(b) Relevancy .....	31-13
	(c) The Forensic Animator as an Expert Witness.....	31-14
	(d) Allowing for Possible Variations .....	31-14
	(e) Making Necessary Modifications .....	31-15
	(f) Ensuring and Proving Accuracy .....	31-15
	31.5 Production Considerations.....	31-16
	(a) Production Time .....	31-16
	(b) Storyboarding .....	31-16
	(c) Cost & Duration of the Animation.....	31-16
	(d) Use of Colours .....	31-17
	(e) Incorporating Videos, Photos, Films, X-Rays.....	31-17
	(f) Replication of the Human Form .....	31-18
	(g) Courtroom Presentation .....	31-18
	31.6 Case Profiles .....	31-19
	(a) <i>R. v. McMahon</i> .....	31-19
	(i) Overview .....	31-19
	(ii) Source Data.....	31-20
	(iii) Reconstruction .....	31-20
	(iv) Animation .....	31-20
	(v) Conclusion .....	31-21

## TABLE OF CONTENTS

	(b) <i>R. v. Suzack</i> .....	31-21
	(i) Overview .....	31-21
	(ii) Victim Injuries.....	31-21
	(iii) Source Data.....	31-22
	(iv) Reconstruction.....	31-22
	(v) Presentation at Trial .....	31-23
	(c) <i>R. v. De Castro</i> .....	31-23
	(i) Overview .....	31-23
	(ii) Source Data.....	31-24
	(iii) Reconstruction.....	31-24
	(iv) Conclusion .....	31-24
	31.7 Technical Information.....	31-24
	(a) Software.....	31-25
	(b) Hardware .....	31-25
	(c) Sample Covering Letter Sent to Forensic Animator...	31-27
	(d) Curriculum Vitae of David M. Robson .....	31-28
	31.8 Bibliography.....	31-30
	31.9 Notes on Illustrations Followed by Computer-Generated Images.....	31-31
<i>Chapter 32</i>	<b>Forensic Video Analysis</b> .....	32-1
	32.1 Introduction.....	32-1
	32.2 Procedure — Satisfying the Chain of Custody Requirement.....	32-3
	(a) The “Before” and “After” Rule .....	32-3
	(b) Downloading from a DVR or Computer Hard Drive .....	32-4
	32.3 Case Law — Civil.....	32-5
	32.4 Case Law — Criminal.....	32-11
	<b>32.5 to 32.7 Reserved for Future Use</b>	
	32.8 Certification of Forensic Video Analysts .....	32-30
	Bibliography.....	32-32
<i>Chapter 33</i>	<b>The Sedona Canada Principles and Digital Images</b> .....	33-1
	33.1 Introduction.....	33-1
	33.2 Metadata .....	33-3
	The Sedona Canada Principles .....	33-5
<i>Chapter 34</i>	<b>Use in Small Claims Courts</b> .....	34-1
	34.1 Introduction.....	34-1
	34.2 Statutory Framework and the Rules .....	34-2
	34.3 Admissibility and Weight .....	34-5
	34.4 Laying the Foundation.....	34-11
	35.4 Checklist for Judges and Deputy Judges.....	34-11

## TABLE OF CONTENTS

### **34.6 to 34.10** *Reserved for Future Use*

<i>Chapter 35</i>	<b>Judges' Checklists</b> .....	35-1
	35.1 Introduction .....	35-1
	Criteria for Admission of Photos and Videos .....	35-2
<i>Chapter 36</i>	<b>Use in Federal Courts</b> .....	36-1
	36.1 Introduction .....	36-1
	36.2 Statutory Framework and the Rules .....	36-1
	(a) Remote conferencing and Technological assistance .....	36-2
	(b) Examinations out of Court .....	36-7
	(c) Discovery .....	36-9
	(d) Deposition .....	36-10
	(e) Demonstrative Evidence .....	36-10
 <i>Chapters</i>		
<i>37-39</i>	<i>Reserved for future use</i>	
<i>Chapter 40</i>	<b>Alarm and Security Industry Issues</b> .....	40-1
	40.1 Introduction .....	40-1
	40.2 Liability for Inadequate or Defective Security .....	40-1
	40.3 'Failure to Respond' and Resulting Legal Liability .....	40-5
<i>Chapter 41</i>	<b>Private Investigators: Evaluating Their Services</b> .....	41-1
	41.1 Introduction — 'Investigation Protocol' .....	41-1
	41.2 Due Diligence: The Client's Role in the Investigation Process .....	41-3
	41.3 Vendor Selection — "Who ya gonna call" .....	41-3
	(a) Determining your Criteria .....	41-3
	(b) Sample Criteria .....	41-4
	(i) Licensing and Insurance .....	41-4
	(ii) Business Practices .....	41-5
	(iii) Investigative Conduct .....	41-5
	(c) Creating an Application Form .....	41-5
	41.4 Preparing an Investigation Assignment .....	41-7
	(a) Determining Possible Outcomes .....	41-7
	(b) What is an Investigative Vendor? .....	41-7
	(c) Assigning Investigative Work .....	41-8
	41.5 Evaluation of Investigative Results .....	41-9
	(a) Reconciliation of Invoice .....	41-9
	(b) Screening for Protocol .....	41-11
	(i) Notes .....	41-11

## TABLE OF CONTENTS

(ii) Reports .....	41-11
(iii) Videotapes .....	41-12
(iv) Photographs.....	41-12
(c) Screening Reports for Assumptions .....	41-13
(d) Screening for Conclusive Documentation .....	41-13
41.6 Avoiding Pitfalls — “The Best Laid Plans . . .”.....	41-14
(a) “The Investigator Didn’t Get the Goods!” .....	41-14
(b) “I’ve Been Over-billed by the Vendor!” .....	41-14
(c) “The Vendor Went Over Budget!” .....	41-15
(d) “The Report was Poorly Written” .....	41-15
(e) “The Assignment took too long to complete” .....	41-16
(f) “The Investigator Didn’t Show Initiative”.....	41-16
(g) “The Investigator Lost Claimant or Followed Wrong Person or ‘got Burnt’” .....	41-17
<b>41.7-41.8 Reserved for Future Use</b>	
41.9 Sample Forms.....	41-17
<i>Issues in Focus</i> .....	IF-1
Principles developed in relation to ss. 714.1 and 714.2 of the <i>Criminal Code</i> in order to Permit or Refuse the Giving of Testimony by way of a Video Link .....	IF-3
Waiver of Litigation Privilege with respect to Surveillance Evidence .....	IF-15
Reasonable Expectation of Privacy in Video Surveillance by the Government .....	IF-27
Production of a Written Transcript of a Verbal Audio Track of Video Recording as a Pre-condition to Admissibility.....	IF-39
Assessment and Admissibility of Expert Evidence in Context of Novel Science .....	IF-55
Admissibility Requirements with respect to Electronic Evidence, specifically, Social Media Evidence .....	IF-67
Disclosure of Surveillance Evidence in Labour Arbitration.....	IF-81
Production of Facebook Profile in Tort Cases.....	IF-93
<i>Words &amp; Phrases</i> .....	WP-1
<i>Selected Legal Literature on Visual Evidence</i> .....	SLL-1
<i>Appendices</i> .....	Blank
<i>Index</i> .....	I-1