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Via email to chantelle.bowers@fca-caf.gc.ca and Via ordinary mail

February 17, 2012

Ms. Chantelle Bowers
Secretary to the Federal Courts Rules Committee
Federal Court of Appeal
90 Sparks Street
Ottawa, ON. K1A 0H9

Dear Ms Chantelle Bowers

Re: Information Technology and the *Federal Courts Rules*
Comments on a discussion Paper of the Federal Courts Rules Committee,
Sub-Committee on Technology

Comments on Global Review of the Federal Courts Rules

I am a practicing lawyer and the author of a two volume text entitled “*Visual Evidence: A Practitioner*” published by Carswell/Thomson/Reuters in 1991 and updated twice yearly. (See attached descriptive brochure.)

Prior to becoming a lawyer, I was a photographer and videographer. My book focuses on the use of photographic, video and digital technologies in Canadian courts (civil, criminal, military, etc.) and tribunals.

I read with great interest the discussion papers listed above, and I respectfully offer the following comments and suggestions for amendments to the *Federal Court Rules* (the “FCR”).

1. There could be one definition of “document” in the *FCR* and it could include a definition of ‘electronic document’, similar to that found in PIPEDA. However, please bear in mind that PIPEDA is aimed specifically at documents that are stored electronically. Whereas in the *FCR*, “documents” include things that are not electronically based, such as maps, graphs, plans, photographs, etc.

I would respectfully suggest that the definition of “document” specifically refer to digital images including digital still and digital video images. These differ from traditional paper based images and from traditional computer records. While, such digital images can be stored electronically on tape, DVDs, CDs, memory sticks (e.g., USB keys), memory cards (SD CF), and diskettes, they can also be outputted as prints or displayed on a monitor.
2. Rule 32 could be amended to specifically permit a “trial” to be conducted in whole or in part by means of a telephone conference call, video-conference or any other form of electronic communication. At present this rule applies only to “hearings” and it is not clear whether the word “hearing” includes the trial of an action. Similarly in Rule 33, the word “hearing” could include a trial.
3. Rules 249 and 377-378 deal with the inspection and preservation of property – they could be amended to permit the inspection to be recorded on video, and the property “preserved” be recorded on video. This would also apply to experiments being recorded on video. Such recordings are permitted in Ontario civil courts.

4. Rule 250 permits the medical examination of persons – the Rule could be amended to permit such examinations to be recorded on video under certain conditions. Such recordings are permitted in Ontario civil courts.
5. Rule 287 could be amended to specifically refer to video presentations, computer demonstrations, and Powerpoint™ type presentations that were “prepared or obtained for use at trial.”
6. Rule 288 to 291, which regulates the use of discovery evidence at trial, could be amended to permit the use any recorded examination of testimony.

I am presently working on a chapter on the use of video technology in the Federal Courts for my book. It will review case law in which video and photos were tendered as evidence in the Federal Courts.

I regularly make presentation to legal groups on the topic of using video technology and visual evidence in the courtroom. I welcome the opportunity to make a presentation to the Rules Committees.

Thank you.

Sincerely

A handwritten signature in black ink, appearing to read 'Elliott Goldstein', with a long horizontal flourish extending to the right.

Elliott Goldstein
Ltr re technology

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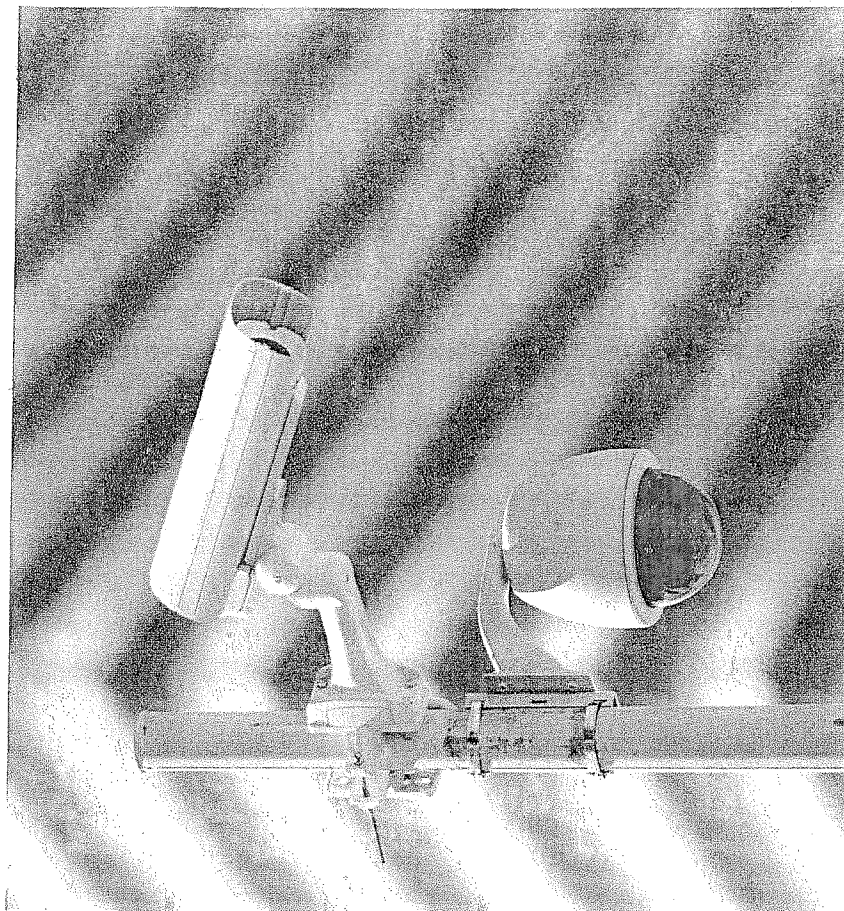
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Get a comprehensive explanation of the use of all types of visual evidence in Canadian civil, criminal, and family courts, workers' compensation tribunals and at labour arbitrations. **Visual Evidence: A Practitioner's Manual** is both a reference 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.

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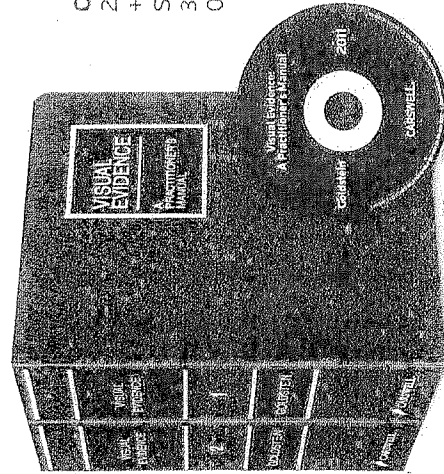
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Part III covers the many uses for visual evidence in criminal proceedings, with particular focus on crime scenes, re-enactments and confessions, video conferencing and video links, computer generated visual evidence (illustrated with prints from court-tendered videos), and surveillance of criminal suspects. It also includes chapters devoted to the discussion of privacy laws (e.g., *PIPEDA*), wireless video surveillance, casino surveillance, family law and the use of private investigators.

Recently added chapters cover forensic video analysis, the Sedona Canada Principles as they relate to Digital Images, and the use of videotapes and photographs in Small Claims Courts. The manual also provides lists of firms across Canada that offer video and photography services to lawyers.

ABOUT THE AUTHOR

Elliott Goldstein, B.A., J.D., is a Toronto area lawyer who practices civil, estate, and commercial litigation, and consults to the alarm and security industry and its various associations. He is also a deputy judge of the Ontario Small Claims Court. He attended law school at the University of Saskatchewan and was admitted to the British Columbia Bar in 1984, and to the Ontario Bar in 1988. Mr. Goldstein has written and published more than 150 articles and two books on the topic of videotape, photographic, and digital image evidence. These have been published in Canada, the United States, England and South Africa. Mr. Goldstein has lectured and presented throughout Canada and the United States to judges' groups, lawyers associations, alarm and security associations, private investigation associations, and police services on the evidentiary use of photographs, videos and digital images. He teaches the video law portion of the "Applied Forensic Videography Course" to Scene Of Crime Officers (SOCOs) at the Ontario Police College. He writes the "CCTV and the Law" column for *Canadian Security Magazine*.



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