



Practice Direction #10

Surveillance Evidence

1.0 This Practice Direction

- defines surveillance
- explains how a party can introduce surveillance into evidence
- explains how to authenticate surveillance evidence

2.0 Definition of Surveillance

2.1 “Surveillance” commonly involves a person discreetly observing another

- person
- situation
- object

It may involve the use of

- audio recording
- video recording
- film
- photographs

Surveillance evidence is any record of audio or visual observations.

3.0 General Practice on How a Party May Introduce Surveillance into Evidence

3.1 The WSIAT has the authority to accept any oral or written evidence that the WSIAT considers appropriate. This is whether it would be admissible in a court or not.

- 3.2 Parties are allowed to use surveillance evidence in WSIAT proceedings if the evidence
- is relevant
 - is of sufficient probative value to help a Vice-Chair or Panel without warranting exclusion

4.0 Procedure for Authenticating Surveillance Evidence

- 4.1 Parties who want to rely on surveillance evidence in WSIAT proceedings must provide
- a copy of the surveillance evidence
 - the surveillance report
 - an affidavit authenticating the evidence

The affidavit must be signed by the person that conducted the surveillance. This is the “Investigator” or the person that prepared the evidence.

- 4.2 The affidavit authenticating the evidence should include confirmation
- of when (date and time) and where the recording was made
 - that the recording was not altered and is a true representation of its subject
- 4.3 A party or the Vice-Chair or Panel may request that the Investigator attend the hearing. So the party that submits the surveillance evidence must be prepared to call the Investigator as a witness. If the Investigator is asked to attend the hearing, they can expect to testify about how the evidence was made. The Investigator will be asked to authenticate the surveillance evidence. They will need to answer questions from the parties, the Vice-Chair or Panel.
- 4.4 The signed affidavit authenticating the evidence may be acceptable if
- the Investigator is not called as a witness to authenticate the evidence
 - a party or the Vice-Chair or Panel does not request the Investigator’s attendance at the hearing

- 4.5 The Vice-Chair or Panel may not admit the audio or visual recording evidence or may give it less weight if
- the Investigator is not called as a witness
 - the surveillance evidence has not been authenticated
- 4.6 If a party wants to object to the surveillance evidence being submitted, the party should object before their scheduled hearing date, if possible. The Vice-Chair or Panel will decide whether to admit the evidence. This will usually happen at the start of the hearing. For more information about admitting surveillance evidence or the weight given to surveillance evidence, review Practice Direction #9 – Evidence.
- 4.7 Surveillance evidence ordered by the Workplace Safety and Insurance Board (WSIB) is sometimes received as a part of a worker’s claim file. In these cases, the WSIAT cannot require the Investigator to attend as a witness at the hearing. But the WSIAT would expect that the surveillance evidence would be authenticated by affidavit and section 4.4 would apply.
- 4.8 Surveillance evidence will be considered in context. It will be considered with all other evidence on record.

5.0 References and Resources

5.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 131 (the WSIAT can determine its own practice and procedure), 132 (the WSIAT’s powers regarding proceedings) and 180 (rules regarding the compellability of witnesses)

5.2 Related Practice Directions

#8 – Disclosure

#9 – Evidence

#33 – Role of the Vice-Chair Registrar at the WSIAT