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UNITED STATES AND CANADA SURVEILLANCE COMPENDIUM

Surveillance can be a powerful tool for the resolution of claims, but rules governing the proper use of surveillance and admissibility at trial differ by jurisdiction. Harmonie and Canadian Litigation Counsel (CLC) firms have gathered basic rules concerning surveillance issues for the US and Canada. The use of surveillance in pre-suit investigation, post-suit discovery, or at trial, may very well vary. This abbreviated guide is not intended to be an exhaustive review, but is provided as a quick resource to highlight certain issues. Please note that following publication of this compendium, laws, statutes, rules, and case law, may in fact affect these entries. Your only safe course is to consult an attorney before making decisions on these issues. Harmonie and CLC firm lawyers in the location you are involved with can help.

STATE	CONSENT	AUTHORITY	EXPLANATION/ADDITIONAL INFORMATION	IS DISCLOSURE OF VIDEO REQUIRED?
ALABAMA **THOMAS A. KENDRICK** **NORMAN, WOOD, KENDRICK & TURNER** **(205) 259-1032**	One party consent required	Ala. Code § 13A-11-30(1) & Ala. Code § 13A-11-31 Eavesdropping forbidden without consent of one party	Alabama Statute defines eavesdropping as to "overhear, record, amplify or transmit any part of the private communication of others without the consent of at least one of the person engaged in the communication	The existence of a surveillance videotape is discoverable under Ala. R. Civ. P. 26. However, the surveillance videotape would be protected under the attorney work-product privilege if prepared in anticipation of litigation or for trial. *See* Ala. R. Civ. P. 26(b)(3); *See also Ex parte Doster Constr. Co.*, 772 So. 2d 447 (Ala. 2000). Once a party decides to use a videotape as evidence, it should be produced within a reasonable time before trial so as to afford the other party the opportunity to test its validity and authenticity. *See Ex parte Doster Constr. Co.*, 772 So. 2d 447 (Ala. 2000).
ALASKA **REBECCA J. HOZUBIN** **HOZUBIN, MOBERLY & ASSOCIATES** **(907) 276-5297**	One party consent required	AS § 42.20.310 Eavesdropping forbidden without consent of one party	AS § 42.20.310 defines "eavesdropping" as "means any device capable of being used to hear or record oral conversation whether the conversation is conducted in person, by telephone, or by any other means; provided that this definition does not include devices used for the restoration of the deaf or hard-of-hearing to normal or partial hearing."	The existence of a surveillance videotape is discoverable under AK. R. Civ. P. 26. There has been no ruling from the Alaska Supreme Court on whether surveillance videotapes must be produced in advance of use at trial for impeachment purposes. For now, it is determined on a case by case basis by the trial court judges.
ARIZONA	One party consent required	A.R.S. § 13-3019	Photographing, videotaping, recording an individual where they have an	Under Ariz. R. Civ. P. 26.1, parties are required to promptly

CASSANDRA V. MEYER AND KELTON G. BUSBY **THE CAVANAGH LAW FIRM, PA** **602-322-4000**			expectation of privacy is unlawful without his or her consent. Similarly, that person's permission is required to disclose or publish such information.	disclose the "existence, location, custodian, and general description of any tangible evidence, relevant documents, or electronically stored information that the disclosing party plans to use at trial." *Id*. at 26.1(a)(8). Under Arizona law, materials prepared in anticipation of litigation are work product. *Brown v. Superior Court In and For Maricopa County*, 137 Ariz. 327 (1983). However, Arizona Courts do not consider surveillance material, whether by statements of an observer or by film, work product; therefore they are not subject to the privilege. *Zimmerman v. Superior Court In and For Maricopa County*, 98 Ariz. 85 (1965). Regardless of the stage or form of discovery, surveillance evidence must be disclosed. *Id*.
ARKANSAS **CARTER FAIRLEY** **THE BARBER FIRM** **(501) 372-6175**	One party consent required	A.C.A. §5-60-120 Unlawful to record another's conversation without consent of at least one party to the conversation *There is currently no statute in place in Arkansas that specifically instructs as to the discoverability or admissibility of surveillance in the civil litigation context.	"It is unlawful for a person to intercept a wire, landline, oral, telephonic communication, or wireless communication, and to record or possess a recording of the communication unless the person is a party to the communication or one (1) of the parties to the communication have given prior consent to the interception and recording."	**Admissibility** Discoverability and admissibility of evidence are two very different creatures, however in terms of admissibility, the courts of Arkansas have made determinations as to the admissibility of surveillance videos. While not always clear, it seems as though the basis of the court's decisions regarding whether to admit or deny surveillance into evidence rests primarily upon a Rule 401 and 403 analysis. See *National Bank of Commerce v. McNeill Trucking Co., Inc.,* 828 S.W.2d 584 (Ark. 1992); *Utley v. Heckinger,* 362 S.W.2d 13 (Ark. 1962); *Ponder v. Cartmell,* 784 S.W.2d 758 (Ark. 1990). **Discoverability** Neither the Arkansas Supreme Court, nor the Court of Appeals has yet weighed in on this issue, there is a question concerning the discoverability and admissibility of surveillance when the surveillance is conducted by an opposing party in preparation for trial. In *Dritt v. Morris,* 357 S.W.2d 13 (Ark. 1962), the Arkansas Supreme Court concluded that it was "vastly unfair to require an attorney, who perhaps has worked diligently in interviewing witnesses and obtaining statements, to turn his file of

				statements, his 'work product', over to his adversary, who is then able to obtain the same amount of information with but a minimum effort."
CALIFORNIA **DAVID R. REEDER** **MANNING & KASS ELLROD RAMIREZ TRESTER, LLP** **(213) 624-6900**	One party consent required	C.C.P. 2018.030, C. Penal Code 632.	Timing of disclosure of subrosa footage is tricky, as the purpose of discovery rules is to eliminate surprise, and afford the other side an opportunity to examine the footage/person taking the footage. Though there is no bright line standard, trial courts will generally grant discovery motions to compel production of surveillance, over privilege objections. Surveillance obtained after deposition, or after discovery is closed, and before trial, or even during trial – even if intended to be used only for impeachment -- will still need to be disclosed prior to introduction, with leave of court.	Surveillance is discoverable, if opposing counsel makes a valid request for same (CA Judicial Council Form Interrogatory 12.4, followed by Request for Production). It is well settled that while the decision to procure subrosa footage is work-product under CCP 2018.030, the footage itself is not automatically deemed to be work-product privileged, and the trial court has discretion under discovery rules to compel production of same. Suezaki v. Superior Court of Santa Clara County, 58 Cal.2d 166 (1962)
COLORADO **JEREMY L. SWIFT& ROBERT J. ZAVAGLIA, JR.** **TREECE ALFREY MUSAT P.C.** **(303) 292-2700**	One party consent required	C.R.S. § 18-9-304 Any person not visibly present during a conversation or discussion commits eavesdropping if he: (a) Knowingly overhears or records such conversation or discussion without the consent of at least one of the principal parties thereto, or attempts to do so; or (b) Intentionally overhears or records such conversation or discussion for the purpose of committing, aiding, or abetting the commission of an unlawful act; or (c) Knowingly uses for any purpose, discloses, or attempts to use or disclose to any other person the contents of any such conversation or discussion while knowing or having reason to know the information was obtained in violation of this section; or (d) Knowingly aids, authorizes, agrees with, employs, permits, or intentionally conspires with any person to violate the provisions of this	Formal Ethics Opinion 112 of the Colorado Bar Association prohibits attorneys from engaging in surreptitious recording except in two circumstances: (a) in connection with actual or potential criminal matters, for the purpose of gathering admissible evidence; and (b) in matters unrelated to a lawyer's representation of a client or the practice of law, but instead related exclusively to the lawyer's private life. The lawyer may also not direct or even authorize another, including an investigator, legal assistant, or the client, to engage in surreptitious recording of a conversation. This rule does not apply to conversations recorded lawfully pursuant to C.R.S. § 18-9-304 by the client or client's representative, if done independently and without the lawyer's knowledge. If the lawyer learns that the client has engaged in unlawful surreptitious recording, the lawyer may not use the unlawful recording. If the client asks if prospective recording by the client would be permissible, the lawyer may advise of the legal (not ethical) rules that apply and leave the matter to the client's discretion.	Surveillance is discoverable. *Crist v. Goody*, 507 P.2d 478 (Colo. App. 1972). There is even a pattern interrogatory approved by the Colorado Supreme Court related to discovery of surveillance materials. *See* Pattern Interrogatory 13.1. The difficult question involves the timing of disclosure of surveillance. On the one hand, surveillance may properly be treated as attorney work product, subject to claim of privilege under C.R.C.P. 26(b)(3). *See Martino v. Baker*, 179 F.R.D. 588 (D. Colo. 1998). If a party receives a discovery request to disclose surveillance and fails to timely disclose the same, the party may be barred from using the surveillance at trial or may be sanctioned. *See Lascano v. Vowell*, 940 P.2d 977 (Colo. App. 1996); *Middleton v. Beckett*, 960 P.2d 1213 (Colo. App. 1998). The Federal Courts will generally permit the party conducting surveillance to wait until after the Plaintiff's deposition to disclose the same. *See Martino* at 590. In state court, if the party awaits trial and claims that the surveillance is impeachment evidence, the court must grant a continuance or declare a mistrial. *Crist* at 480. On the

		section. (2) Eavesdropping is a class 1 misdemeanor.		other hand, disclosing the existence of ongoing surveillance could ruin the effectiveness of the same. The best practice is to conduct surveillance early on, before any discovery requests for the same have been submitted, or conduct surveillance after discovery requests have been submitted and then timely supplement discovery responses to disclose the surveillance after the Plaintiff's deposition but prior to the discovery cutoff, thus permitting the Plaintiff sufficient time to rebut the evidence if necessary. If surveillance will be provided to an expert for review, the surveillance should be disclosed with the expert's file material.
CONNECTICUT **ROBERT C. E. LANEY, ESQ.** **RYAN RYAN DELUCA LLP** **(203) 357-9200**	One party consent required.	Conn. Gen. Stats. §53a-189: One party consent required for eavesdropping via mechanical overhearing of a conversation. Conn. Gen. Stats. §§ §31-48b and 31-48d: Employers shall not conduct electronic surveillance of employees in areas designated for the health or personal comfort of the employees.	Conn. Gen. Stats. § 53a-187 defines "mechanical overhearing of a conversation" as "the intentional overhearing or recording of a conversation or discussion, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment." Conn. Gen. Stats. §31-48d provides that employers who engage in electronic monitoring must give prior written notice to all employees who may be affected. Prior notice is not required, however, when an employer believes an employee may be engaging in unlawful activity and monitoring may produce evidence of such misconduct.	Disclosure is required under Connecticut P.B. § 13-3(c): A party may obtain information regarding the existence of the video prior to the deposition of the party who is the subject of the recording, but the party from whom discovery is sought is not required to produce the video until 30 days after the completion of the subject's deposition or 60 days prior to the trial date, whichever is earlier.
DELAWARE **ROBERT J. KATZENSTEIN** **SMITH, KATZENSTEIN & JENKINS LLP** **(302) 652-8400**	At least one party's consent required for in-person communications and electronic communications	Del. Code Ann. tit. 11, § 2402(c)(4) Del. Code Ann. tit. 11, § 1335(a)(4)	Delaware prohibits the installation of a recording device in any private place. 11 *Del. C.* § 1335(2).	"Surveillance recordings and related materials in person injury cases are substantive evidence that is directly relevant to the parties' claims and defenses. Those materials should, therefore, be produced when properly requested through timely discovery." *Hunter v. Bogia*, 2015 WL 5050648, at *6 (Del. Super. July 29, 2015) (granting motion to compel production of surveillance materials prior to plaintiff's deposition).
DISTRICT OF COLUMBIA **STANLEY P. WELLMAN** **HARMAN CLAYTOR CORRIGAN & WELLMAN, P.C.** **(804) 747-5200**	One party consent required	D.C. Code § 23-542; see Thomas v. United States, 171 A.3d 151, 154 (D.C. 2017). Interception of communications illegal without consent of one party	Under the District of Columbia Code, it is illegal to (1) "willfully intercept[] . . any wire or oral communication; (2) willfully disclose[] . . . to any other person the contents of any wire or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication; or (3) willfully use[] . . . the contents of any	The District of Columbia does not have case law specifically addressing the disclosure of surveillance video in civil cases. But this issue would likely be analyzed under the Superior Court Rules of Civil Procedure Rule 26, which allows parties to generally seek discovery of non-privileged material relevant to a party's claim or defense.

			wire or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire or oral communication." D.C. Code § 23-542(a). But it is legal for a person "to intercept a wire or oral communication, where such person is a party to the communication, or where one of the parties to the communication has given prior consent to such interception . . . ," unless the interception is carried out for some other illegal purpose. D.C. Code § 23-542(b)(3).	A surveillance video may be protected as work product under Civil Rule 26(b)(3), if it was prepared in anticipation of litigation, but a party who can show "substantial need for the materials" and is unable to get the materials through other means without "undue hardship," may still be able to get a surveillance video through discovery.
FLORIDA **DAVID A. CORSO, ESQ.** **FISHER RUSHMER, P.A.** **(401) 843-2111**	Consent of the party being audio-recorded is required	§§934.01 – 934.50, Fla. Stat. Fla. Stat. 934.03, Interception & Disclosure of Wire, Oral, or Electronic Communications Prohibited	Except as otherwise specifically provided in the statute, in Florida it is illegal to intentionally intercept, disclose, or otherwise use contents of any wire, oral, or electronic communication. It is illegal to record someone without their knowledge in an area where they have "a reasonable expectation of privacy," including bathrooms, fitting rooms, and anywhere a person might remove his or her clothes. §934.02, Fla. Stat. A person's reasonable expectation of privacy in the communication triggers the application of section 934.02 limiting disclosure of wire, oral, or electronic communications. *McDonough v. Fernandez-Rundle*, 862 F. 3d 1314 (Fla. 11th Cir. 2017). For instance, the recording of public speeches or public meetings does trigger a reasonable expectation of privacy that would prevent citizens from recording public speeches or public communications.	The existence of surveillance video is discoverable; however, the surveillance videotape is protected work product and not subject to discovery until such time as the surveillance video is identified as an exhibit for trial. Once identified as a trial exhibit and produced, discovery regarding the surveillance videotape and process of obtaining the surveillance videotape is within the scope of discovery. Dodson v Persell, 390 So. 2d 704 (Fla. S. Ct. 1980)
GEORGIA **RANDY MOODY** **DREW ECKL & FARNHAM, LLP** **(404) 885-1400**	Generally, it is not unlawful for one party to a conversation to audio record the conversation even if the other party to the conversation is not aware of the recording.	Consent of all parties required before a person may use a device "to observe, photograph, or record the activities of another in any private place and out of public view" with certain statutory exceptions contained in subsections (A) through (D). Official Code of Georgia § 16-11-62 (2). The consent of all parties is not required for an owner or occupier of real property to use a device to observe, photograph, or record the activities of persons who are on the property or an approach thereto in areas where there is no reasonable expectation of privacy for purposes of security. Official Code of	The one-party-consent rule only applies to intercepted wire, oral, or electronic communications, and does not authorize the creation of any secretly produced photograph or video of observed activities without the consent of all persons being photographed or video recorded in a private place and out of the public view. State v. Cohen, 807 S.E.2d 861 (Ga. 2017).	a. The existence of surveillance videotape is subject to the rules of discovery O.C.G.A. § 9-11-26 b. Production of video i. While the neither Georgia Court of Appeals nor Georgia Supreme Court has addressed the issue of whether a video is discoverable prior to plaintiff's deposition the following federal cases are persuasive on the issue. *Pinkney v. Winn-Dixie Stores, Inc.,* CV214-075 (S.D. Ga. Sept. 15, 2014) holding that defendant should have the opportunity to depose plaintiff based on his own independent, unrefreshed recollection of the

		Georgia § 16-11-62 (2)(A). Georgia's one-party-consent rule is codified in Official Code of Georgia § 16-11-66(a) which provides "[n]othing in Code Section 16-11-62 shall prohibit a person from intercepting a wire, oral, or electronic communication where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception."		incident before defendant produces surveillance video *Pate v. Winn-Dixie Stores, Inc.,* No. CV213-166, 2014 WL 12623793, at *1 (S.D. Ga. Feb. 20, 2014) (holding Defendant should have the opportunity to depose Plaintiff based on her own independent recollection of the incident giving rise to this action. Plaintiff will not suffer any prejudice by delaying the production of the video. If Plaintiff has limited recollection and is uncertain as to details of the incident, she may testify to that.) *Bahrami v. Price*, No. 1:11-CV-4483-SCJ-AJB, 2013 WL 3800093, at *7 (N.D. Ga. July 19, 2013) (holding that impeachment value of a recording was greater than its substantive value so it could be withheld until after witness' deposition). c. Work Product protection A defendant may object to Plaintiff's requests for production of documents to the extent that they seek information regarding materials prepared by or for the defendant or defendant's representative in anticipation of litigation or for trial, on the grounds that plaintiffs have not made the required showing for the discovery of such work product material under O.C.G.A. § 9-11-26(b)(3).
HAWAII	One Party Consent	Haw. Rev. Stat. § 803-42(b)(3)(B) (2016). It is not unlawful for a person to intercept wire, oral or electronic communications if one of the parties to the communication has given prior consent to the interception. Haw. Rev. Stat. § 803-42(a)(8) (2016). One may install or use a mobile tracking device if the device is installed by or with consent of the owner of the property on which the device is installed.	Illegal interception of communications without the consent of the parties is a Class C Felony. Haw. Rev. Stat. § 803-42(a) (2016). A person commits the offense of violation of privacy in the second degree if the person intentionally peers or peeps into a window or other opening of a dwelling or other structure adapted for sojourn or overnight accommodations for the purpose of spying on the occupant thereof. Haw. Rev. Stat. §711-1111(1)(b) (2016).	Hawaii Rules of Civil Procedure 26 permits discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. In criminal cases, Hawaiian courts have found that surveillance video is discoverable. *State v. Augafa.*, 992. P.2d 723, 725-26 (Haw. Ct. App. 1999). Hawaii recognizes the work product privilege, but the courts have not decided if surveillance video is protected. Plaintiffs can obtain the video if there is a showing of a substantial need. Haw. R. Civ. P. 26(b)(4). Hawaiian courts have not ruled whether and when surveillance video must be disclosed.

				However, the courts have admitted into evidence video prepared in anticipation of litigation. *See Tamashiro v. Control Specialists, Inc*., 34 P.3d 24, 26 (Haw. Ct. App. 2001) (discussing several videos taken by insurers private investigator). The fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any party's discovery. Haw. R. Civ. P. 26(d). If the surveillance video is going to be introduced at trial, it likely will need to be turned over after a discovery request unless the court orders otherwise.
IDAHO **JAMES S. THOMSON** **POWERS TOLMAN FARLEY, PLLC** **(208) 577-5100**	Interception of wire, electronic or oral communication lawful when one party has given prior consent	Idaho Code § 18-6701, et seq. Addresses communication security, including interception and disclosure of wire, electronic or oral communications, as well as the use of pen registers and trap & trace devices	The Idaho Code, with certain enumerated exceptions, generally prohibits willfully intercepting, endeavoring to intercept, or procuring any other person to intercept or endeavor to intercept, any wire, electronic or oral communication.	The full extent to which video surveillance may be discoverable has not been settled under Idaho law. However, it appears Idaho would likely follow a rule requiring disclosure of at least the existence of a surveillance video in response to a proper discovery request, and require production of the video within a reasonable time prior to trial, particularly if the video will be used at trial. *See Perry v. Magic Valley Reg'l Med. Ctr.*, 995 P.2d 816 (Idaho 2000) (rejecting argument that undisclosed video could be used for impeach-ment)
ILLINOIS **ANDREW P. RICE, ESQ.** **SANCHEZ DANIELS & HOFFMAN LLP** **(312) 641-1555**	No consent needed.	Shields v. Burlington Northern & Santa Fe, 818 N.E.2d 851, 855-56 (1st Dist. 2004). Warrender v. Millsap, 304 Ill.App.3d 260 (2nd Dist. 1999	In Illinois the controlling statute governing discovery controls disclosing surveillance evidence. Illinois Supreme Court Rule 201 governs the scope of discovery. The First District in *Shields* found that surveillance evidence is not protected from discovery as attorney work product. *Shields v. Burlington Northern & Santa Fe*, 818 N.E.2d 851, 855-56 (1st Dist. 2004). The Court found that Illinois has a narrower definition of work product from the federal court's definition. Furthermore, the Court found that the disclosure of surveillance evidence cannot be withheld prior to Plaintiff's deposition. Surveillance evidence, the Court stated, is comparable to statements from witnesses or data collected to recreate the accident. Pursuant to Illinois Supreme Court Rule 214 surveillance evidence needs to be disclosed in a timely manner. The Second District affirmed the trial court's decision to bar surveillance evidence for failing to timely disclose the evidence. Warrender v. Millsap, 304 Ill.App.3d 260 (2nd Dist. 1999). In that case the evidence was not disclosed until the trial had commenced. Therefore, a Defendant must disclose surveillance evidence within either the time frame set forth in a written discovery request or 28 days of being	Yes

			served the written request if no time period is specifically stated. Furthermore, Defendants are under a duty to update discovery in a timely manner.	
INDIANA **MICHAEL E. BROWN** **KIGHTLINGER & GRAY, LLP** **(317) 968-8119**	One party consent required.	Pursuant to I.C. 35-33.5-5-5, a person who knowingly or intentionally intercepts a communication is guilty of a Class 5 Felony. I.C. 35-31.5-2-176. Under I.C. 35-33.5-5-4, a person whose communications are intercepted, disclosed, or used in violation of the Statute has a civil cause of action against the violator(s) for damages equal to the greater of 1) actual damages; 2) liquidated damages of $100 per day of violation; or 3) $1000. In addition, the plaintiff may recover punitive damages and attorney fees.	Interception is defined as ". . . the intentional recording or acquisition of the contents of an electronic communication by a person other than a sender or receiver of that communication, without the consent of the sender or receiver, by means of any instrument, device, or equipment."	In Pioneer Lumber, Inc. v. Bartels, 673 N.E.2d 12 (Ind. Ct. App. 1996), the Indiana Court of Appeals held that a surveillance video is attorney work product and, for that reason, is not discoverable unless the party in possession of the video intends to use it at trial. In that case, the defendant was allowed to take the plaintiff's deposition without having to produce the video, but was required to produce it prior to trial if the defendant intended to introduce the tape into evidence or otherwise use it at trial. The plaintiff file a petition to transfer but the petition was denied by the Indiana Supreme Court. There are no other Indiana appellate decisions addressing the issue.
IOWA **ANDREW T. TICE** **AHLERS & COONEY, P.C.** **(515) 246-0317**	One party consent required	Iowa Code §§ 808B.2 and 727.8	Iowa Code § 808B.2 prohibits the interception of wire, oral, or electronic communications unless the person is a party to the communication or has the prior consent of a party to the communication. Similarly, Iowa Code § 727.8 prohibits the listening to, recording, or interception of a communication unless the person is the sender or recipient or is one who is openly present and participating or listening in on the communication.	It is clear that surveillance materials are documents or tangible things, prepared in anticipation of litigation, by or for another party or that party's representative. We therefore agree with the prevailing view in jurisdictions following the federal definition of work product that surveillance materials are protected, lower-tier materials, at least initially. In the lower tier, work product containing or consisting of relevant facts may be discoverable upon a showing of substantial need and undue hardship. … The consensus also seems to be that surveillance loses the status of protected work product once a determination is made that the surveillance will be used at trial. Iowa Ins. Institute v. Core Group of Iowa Ass'n for Justice, 867 N.W.2d 58 (Iowa 2015).
KANSAS **JOHN M. ROSS** **WALLACE SAUNDERS** **(913) 752-5573**	One party consent required	Kan. Stat. Ann. § 21-6101(4) Kan. Stat. Ann. § 21-6101(1) Kan. Stat. Ann. § 21-6101(6)	A person may not secretly use any device to listen to, record or amplify a private conversation in a private place, whether that device is used inside or outside the private place, without the consent of at least one party. A person may not "intercept by telephone, telegraph, letter or other means of private communication" the contents of any message sent without the consent of either the sender or receiver. A person may not, with the intent to invade the privacy of a person and	Case law supports that the video surveillance of a party is not protected from disclosure by the work product privilege. The *Glendora* court also said that the surveilled party was not entitled to the video until after their deposition so the surveilling party could lock in testimony. *Glendora Russell v. Bank of America, NA*, 2004 WL 1810318 (Kan.Work.Comp.App.Bd. 2004) and *Koser v. Atchison, Topeka and Santa Fe Railway*

			without that's person's consent, use a hidden camera to film or photograph a person who is nude or in a state of undress without the person's consent in a place where the person has a reasonable expectation such filming would not take place.	*Company*, 928 P.2d 85 (Kan. 1996). A person may not divulge the existence or contents of any type of private communication if the person knows the message was intercepted illegally. Kan. Stat. Ann. § 21-6101(2). A person may not disseminate any videotape, photo or film image taken with a concealed camcorder used to take nude images of another person without their consent. Kan. Stat. Ann. §§ 21-6101(a)(7), -(b)(3).
KENTUCKY **BRUCE PAUL** **STITES & HARBISON, PLLC** **(812) 218-1701**	One party consent required to record or view communica-tion (written or oral). Class D felony	KRS § 526.020, *et al*	Installing recording device without consent of at least one party to the conversation's consent is additional class D felony. KRS § 526.030. Possession of recording device a class A misdemeanor. KRS § 526.040.	Videos properly requested during discovery are discoverable; videos that do not record oral conversations no subject to eavesdropping statute
LOUISIANA **JIM SUTTERFIELD** **SUTTERFIELD & WEBB, L.L.C.** **(504) 596-2440**	Consent of one of the parties does not "invade the privacy" of the parties in the conversation within the meaning of both the state and federal constitutions, and therefore the warrant requirement does not attach. La. R.S. 15:1301, *et seq.*;" State *v. Young*, 2018 WL 458156 (La. App. 2nd Cir. 2018); *State v. Reeves*, *on rehearing*, 427 So.2d 403 (La. 1982), (interpreting Article 1, § 5 of the 1974 Louisiana Constitution).	*O'Dwyer v. Our Lady of the Lake Nurse Anesthesia Program ex rel. Our Lady of the Lake Coll.*, 2013-0703; (La. 5/17/13), 117 So. 3d 1252. *Bell v. Treasure Chest Casino, L.L.C.*, 2006-1538 (La. 2/22/07); 950 So. 2d 654. *Wolford v. JoEllen Smith Psychiatric Hospital*, 96-2460 (La. 5/20/97) ; 693 So. 2d 1164, rehearing denied (La. 6/20/97).	Surveillance is not "work product," and, thus, it is not protected from disclosure by La. Code Civ. Proc. Art. 1424, which governs the scope of discovery.	Yes, if asked for in discovery and / or if intended to be used as an exhibit at trial. However, surveillance, as opposed to video that captured the accident / incident sued upon, can be withheld until after conducting the plaintiff's deposition. Video footage of the accident / incident sued upon is not "surveillance" and production thereof cannot be delayed until after plaintiff's deposition. The Louisiana Supreme Court has adopted a general rule giving preference to post-deposition disclosure of surveillance materials so the surveillance can be used for impeachment purposes during the deposition. There is exception for special circumstances such as the surveillance having been used for improper purposes (coercion, manipulation) prior to the deposition.
MAINE **ROBERT LANNEY** **SULLOWAY & HOLLIS, PLLC** **(207) 253-5141**	Surveillance-All parties must consent.	17-A M.R.S. § 511	Installing or using a device that transmits sounds or images of persons entitled to privacy without consent is a violation of privacy.	Maine's Rules of Evidence do not distinguish a video from other evidence as to requiring disclosure.

MARYLAND **PATRICIA MCHUGH LAMBERT, ESQ.** **PESSIN KATZ LAW, P.A.** **(410) 339-6759**	Two party consent required	The Maryland Wiretapping and Electronic Surveillance Act ("the Act") prohibits any recording of communications without the consent of both parties. Evidence obtained in violation of this statute will not be admissible in court and the person recording may be held civilly liable. Md. Code Ann., Cts. & Jud. Proc. §§ 10-401 to -414.	Maryland is in the minority as a state that requires two-party consent. Because of this, the laws of two differing states often clash when, for example, a citizen of Maryland converses with a citizen of the District of Columbia (a one-party consent state). Generally, under these circumstances, the stricter state law will Apply. In *Mustafa v. State,* the Maryland Court of Appeals held that when an out-of-state informant recorded a conversation with a Maryland resident, the recording was inadmissible as evidence in a Maryland court. The opinion emphasized, "We recognize that Maryland may not ordinarily proscribe conduct occurring outside its boundaries. Quite plainly, however, it may regulate the admissibility of evidence in its courts." *See Mustafa v. State,* 323 Md. 65, 75 (1991).	Video surveillance is not within the scope of the Act, and therefore does not require both parties' consent. *See Ricks v. State,* 213 Md. 11, 27-28 (1988). Thus, it is admissible as evidence pursuant to the relevant hearsay exception. Improper video surveillance may, however, give rise to criminal charges in Maryland. *See* Md. Code Ann., Crim. Law § 3-901 to -907 (prohibiting visual or video surveillance in areas such as private residences, dressing rooms, or restrooms). Video surveillance may also give rise to a tort action for invasion of privacy, but if it "is conducted in a reasonable and non-obtrusive manner, it is not actionable." *See Pemberton v. Bethlehem Steel Corp.,* 66 Md.App. 133 (1986).
MASSACHUSETTS **BRIAN P. VOKE** **CAMPBELL CAMPBELL EDWARDS & CONROY PROFESSIONAL CORPORATION** **(617) 241-3042**	All parties	MGL ch. 272 §99	It is unlawful to engage in wiretapping, intercepting, assessing or electronically overhearing a conversation without the consent of all parties to the conversation. An employer may record a telephone conversation between employees or between an employee and a third party in Massachusetts only if the employer is a party to the conversation and all parties to the conversation consent. Eavesdropping on employee phone calls is permissible only if justified by business necessity. Once an employer determines that a communication is private, the employer is required to stop listening.	Disclosure of the existence of a surveillance video and its production can be sought by way of written discovery requests under the Massachusetts Rules of Civil Procedure. See Mass. R. Civ. P. 34(a)(1)(A)(allowing production of electronically stored information, including photographs, sound recordings, images and other data or data compilations); MASS. R. CIV. P. 26(b)(1) (allowing discovery of "tangible things"). In responding to written discovery requests, if a party withholds materials, such as a surveillance video, on the grounds of the work-product doctrine, the party is required to produce a privilege log identifying the materials withheld. MASS. R. CIV. P. 26(b)(5); MASS. R. SUP. CT. STANDING ORDER 1- 09. Strict adherence to these rules, therefore, would seem to require that at least the existence of a surveillance video (by way of a privilege log) would need to be disclosed to a requesting party. Also, failure to list he surveillance witness pursuant to pretrial orders can result of the exclusion of the surveillance evidence during trial.
MICHIGAN	One party consent	Private investigators are	Although an "all party consent" state	Generally, video evidence is

MARK SHREVE **GARAN LUCOW MILLER P.C.** **(248) 641-7600**	required for video surveillance in public areas.	authorized to obtain information with reference to any of the following: (i) Crimes or wrongs done or threatened against the United States or a state or territory of the United States.(ii) The identity, habits, conduct, business, occupation, honesty, integrity, credibility, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of a person.(iii) The location, disposition, or recovery of lost or stolen property.(iv) The cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or property.(v) Securing evidence to be used before a court, board, officer, or investigating committee. MCL 338.822(b)	for wiretapping law, it is not unlawful for one party to a telephone conversation to record even though the other party is unaware. An eavesdropper must be a third party who is not otherwise involved in the conversation.	admissible at trial for impeachment purposes. The work product privilege applies, but cases reflect that the failure to produce surveillance video in discovery on the basis of work product privilege was not fatal to introduction of the video as impeachment evidence at trial. Trial court has discretion to admit the evidence. However, if the video is to be used in any other part of the defendant's case, the video is likely discoverable and could be excluded if improperly withheld in discovery. Beard v. Horton, 2010 Mich. App. LEXIS 2113 (2010). Fodera v. Van Lobbs, 2006 Mich. App. LEXIS 283 (2006)
MINNESOTA **BRADLEY M. JONES** **MEAGHER & GEER, PLLP** **(612) 347-9196**	One party consent	Minn. Stat. § 626A.02 subd.2(c)	A party to the conversation can either record themselves or consent to a third party recording the conversation. This is limited by the provision that no recording can be made for the purpose of committing any criminal or tortious act in violation of State or Federal laws. There are two exceptions to the general rule above. First, when in a location where there is a reasonable expectation of privacy (e.g., bathroom, bedroom, changing room, tanning room) all parties must consent. Second, when the recording will interfere with police or emergency personnel.	An initial disclosure must be made of a "copy – or a description by category and location – of all * * * electronically stored information … ." Minn. R. Civ. P. 26.01(a)(1)(B). Upon service in discovery, a party must produce any "electronically stored information (including * * * photographs, sound recordings"). Minn. R. Civ. P. 34.01.
MISSISSIPPI **ART SPRATLIN** **BUTLER SNOW LLP** **(601) 948-5711**	Video surveillance without consent is permissible when the subject is videoed in a location where he or she has no reasonable expectation of privacy.	In 1999, the Mississippi Attorney General's office offered an opinion stating "[w]e know of no law that would prohibit you from video recording actions taking place in a public place such as justice court. However, we do not believe that you may record conversations or actions to which the participants would have a reasonable expectation of privacy." AG Op. No. 1999-0685, Myers, December 28, 1999.	Other rules apply with regard to eavesdropping and "bugging" phones. See, e.g. Brown v. State, 226 So. 3d 102, 109 (Miss. Ct. App. 2017) ("[E]lectronic surveillance, 'bugging,' does not tread upon the constitutional rights of the Fourth Amendment when the consent of one of the parties is first obtained." (internal quotation marks and citation omitted)); Miss. Code Ann. § 41-29-507 (with regard to the interception of wire or oral communications, "[n]o person, agency of the state or political subdivision of the state, other than the Bureau of Narcotics, is authorized by this article to own, possess, install, operate or monitor an electronic, mechanical or other device"). See also Miss. Code Ann. § 41-29-501(f) (defining "electronic, mechanical or other device" as "a device or apparatus primarily designed or used for the nonconsensual interception of wire, oral or other communications").	Video surveillance is discoverable when requested through a proper discovery request. Neither classifying surveillance footage as rebuttal evidence nor continuing surveillance after a trial begins changes a party's duty to seasonably produce surveillance obtained and properly requested in discovery. See State Hwy. Comm'n of Miss. v. Jones, 629 So. 2d 201 (Miss. 1995).

MISSOURI **BILL THOMAS** **PITZER SNODGRASS, P.C.** **(314) 335-1360**	For oral communications, **one party's consent** is required to intercept or record any "wire, oral, or electronic communication" For photographing or videotaping, **consent is required by the subject of the recording** if: (1) the person being viewed, photographed or filmed is in a state of full or partial nudity and is in a place where one would have a reasonable expectation of privacy; or (2) a concealed camera is surreptitiously being used to record for the purpose of viewing the body of or the undergarments worn by the person	RSMo § 542.402 – Penalty for illegal wiretapping, permitted activities RSMo § 565.253 – Crime of invasion of privacy, second degree, penalties	An individual who is a party to a wire communication, or who has the consent of one of the parties to the communication, can lawfully record it or disclose its contents. The statute defines "wire communications" as those made "in whole or in part through the use of "wire, cable, or other like connection between the point of origin and the point of reception." RSMo § 542.400(12). Thus, RSMo § 542.402 does not apply to communications not involving wired devices. See *State v. Martinelli*, 972 S.W.2d 424, 431 (Mo. App. E.D.1998); *State v. King*, 873 S.W.2d 905, 909 (Mo. App. S.D.1994).	Under Missouri Supreme Court Rule 56.01(b)(3), video surveillance is discoverable as a "statement" concerning the action or its subject matter previously made by that party. For the purposes of this rule, "a statement previously made is: (a) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, audio, video, motion picture or other recording, or a transcription thereof, of the party or of a statement made by the party and contemporaneously recorded." *See State ex rel. Feltz v. Bob Sight Ford, Inc.,* 341 S.W.3d 863, 868 (Mo. Ct. App. 2011).
MONTANA **MICHAEL J. MILODRAGOVICH** **MILODRAGOVICH, DALE,SSTEINBRENNER, P.C.** **(406) 728-1455**	Consent from all participating parties is required for audio recording.	Mont. Code Ann. § 45-8-213.	Montana does not have a law restricting video surveillance, only audio surveillance. The statute provides, in pertinent part, that a person "commits the offense of violating privacy in communications if the person knowingly or purposely: . . . (c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation."	While the broad discovery parameters set by Mont. R. Civ. P. 26 allows for the discovery of video surveillance, the admissibility of such evidence remains an open question that depends upon the facts and circumstances of the case and the purpose for which it is offered.
NEBRASKA **JERALD L. RAUTERKUS** **ERICKSON & SEDERSTROM, P.C., L.L.O.** **(402) 390-7113**	When one party consents, the conversation is not an oral communication within the meaning of the intercepted communications statutes. Neb. Rev. Stat. § 86-290(2)(c). *State v. Strohl*, 255 Neb. 918, 923, 587 N.W.2d 675, 680 (1999).	Neb. Rev. Stat. § 86-290(1). As a general rule, it is unlawful to intercept any wire, electronic, or oral communication.	Intercept is "the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device" Neb. Rev. Stat. § 86-280. Oral communication is "uttered by a person (1) who has a subjective expectation of privacy and (2) whose expectation is objectively reasonable under the circumstances." *State v. Strohl*, 255 Neb. 918, 923, 587 N.W.2d 675, 681 (1999)	Disclosure of the existence of the video is discoverable, but production of the video is protected under attorney work product if prepared in anticipation of litigation or trial. The court may require the video to be disclosed if it is to be used in the party's presentation of evidence, but disclosure is not required if the video is to be used as impeachment.
NEVADA **MICHAEL E. STOBERSKI** **OLSON, CANNON, GORMLEY, ANGULO &**	Two-party consent required except in an emergency situation where it is impractical to obtain court order	NRS § 200.620	Nevada statute defines "Wire communication" as the transmission of writing, signs, signals, pictures and sounds of all kinds by wire, cable, or other similar connection between the points of origin and reception of such transmission, including all facilities and services incidental to such	Surveillance is discoverable pursuant to Nev. R. Civ. P. 26(b)(1) as long as they are "relevant to the subject matter involved in the pending action," or whether they "relate to the claim or defense of the party seeking discovery or to the claim

STOBERSKI **(702) 384-4012**			transmission, which facilities and services include, among other things, the receipt, forwarding and delivering of communications. NRS § 200.610(2) Gaming regulations – nonrestricted gaming licensees are required to maintain operable video surveillance. NV Gam Reg 5.160	or defense of any other party." Discovery commissioners in Nevada have ruled, and been affirmed by the district court, that general surveillance must be disclosed pursuant to Nev. R. Civ. P. 16.1, and sub rosa surveillance is typically treated on a case-by-case basis. Timing for disclosure is also typically treated on a case-by-case basis, but there is a suggestion by the courts that production can be delayed until the Plaintiff's deposition is taken.
NEW HAMPSHIRE **ROBERT LANNEY** **SULLOWAY & HOLLIS, PLLC** **(603) 224-2341**	Surveillance-All parties must consent.	RSA 644:9	Installing or using a device that in any way transmits sounds or images of persons entitled to privacy without consent is a class A misdemeanor.	Disclosure of relevant surveillance videos required subject to the attorney-work product doctrine. *See generally Cromeenes v. Pease*, 2006 WL 6113108 (N.H. Super. 2006).
NEW JERSEY **IAN MARK SIROTA, ESQ.** **MARGOLIS EDELSTEIN** **(856) 727-6026**		It is a crime in NJ to intercept or record an in-person or telephone conversation unless one party to the conversation consents. N.J. Stat. §§ N.J.S.A 2A:156A-1, et seq., see also N.J.S.A. 2C:14-9.		Videoing generally in public places, especially outdoors, is generally allowed (unless the person would have a reasonable expectation of privacy, e.g., public rest room), N.J.S.A. 2C:14-9. Disclosure of video evidence is required. See also *Dong v. Alape*, 824 A.2d 251 (App. Div. 2003). In the matter of *Jenkins v. Rainner*, 350 A.2d 473 (N.J. 1976), the Court held production of video surveillance (of the plaintiff, taken by the defendant's insurer) was mandated so that all parties were on an equal footing at the time of trial. *Jenkins* was recently affirmed and the court further held disclosure of any video should take place after deposition of plaintiff has been completed. See *Mernick v McCutchen*, 121 A.3d 905, at 910 (App. Div. 2015).
NEW MEXICO **DAVID W. BUNTING** **RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.** **(505) 766-7545**	One party consent required	NMSA § 30-12-1(C): Interference with communications consists of knowingly and without lawful authority …. reading, interrupting, taking or copying any message, communication or report intended for another by telegraph or telephone without the consent of a sender or intended recipient thereof.	See *State of New Mexico v. Eric Coyazo*, 1997-NMCA-029, ¶ 12, cert. denied April 16, 1997. "The provisions of the Abuse of Privacy Act evince a clear showing that the Legislature intended to restrict the interception of telephone or other electronic communications where there has been no "prior consent" by one of the parties thereto, or where there has been no court authorization for the interception. Section 30-12-1; Under the express provisions of § 30-12-1(C) or (3), however, where the consent of one of the parties to the communication has been obtained, the	NMRA 2018, 1-026 does not specifically address whether a surveillance videotape is discoverable. It is likely that, subject to any applicable privileges, such a videotape would be discoverable.

			monitoring and use of such communications by authorities is permitted. In construing the statutory requirement of "consent" contained in § 30-12-1 of the Abuse of Privacy Act, we believe our Legislature, like Congress in its enactment of the Federal Act, intended that proof of an individual's consent may be shown by circumstantial evidence.	
NEW YORK **ALICE SPITZ & ROBERT A. VON HAGEN** **MOLOD, SPITZ & DESANTIS, P.C.** **(212) 869-3200**	One party consent required.	NYS Penal Code Article 250 defines and criminalizes both eavesdropping and unlawful surveillance.	The crime of eavesdropping or unlawful surveillance generally will not apply in the context of civil litigation. The discoverability or admissibility of video or audio evidence is not governed by the Penal Code	Video Surveillance must be disclosed pursuant to NY CPLR §3101(i). Such materials must be disclosed at the time they are demanded and a failure to timely disclose can result in preclusion. *See*, Tran v. New Rochelle Hosp. Med. Ctr., 99 N.Y.2d 383 (2003). Any surveillance created before depositions, must be disclosed prior to the deposition. Also, destruction of or failure to preserve surveillance can result in discovery "spoliation" sanctions. *See.e.g*, Duluc v. AC&L Food Corp., 119 A.D.3d 450 (1st Dep't 2014); Zubulake v. UBS Warburg, LLC, 382 F.Supp2d 536 (Dist. Court SDNY 2005).
NORTH CAROLINA **ROB GRIFFIN & STEPHANIE GASTON POLEY** **CRANFILL SUMNER & HARTZOG LLP** **(919) 828-5100**	One party consent required	N.C. Gen. Stat. § 15A-287(a) Intercepting oral or electronic communications forbidden without consent of one party	North Carolina's Electronic Surveillance Act [NC General Statutes, Chapter 15A Article 16] creates a Class H felony if a person, without the consent of at least one party to the communication, "[w]illfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication." Intercept is defined as the "aural or other acquisition of the contents of any wire, oral, or electronic communication through the use of any electronic, mechanical, or other device." Oral communication is limited to only those communications "uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but the term does not include any electronic communication" N.C. Gen. Stat. § 15A-287 criminalizes the mere endeavor to intercept such a communication N.C. Gen. Stat. § 15A-296 creates a civil cause of action for persons whose communications were intercepted, disclosed, or used in violation of the Electronic Surveillance Act against the person(s) violating the act, however, the civil action requires actual interception, disclosure, or use of the communication as a prerequisite	Videotaping is not within the Electronic Surveillance Act unless the video also includes an audio recording The existence of surveillance video is discoverable under N.C. Gen. Stat. §1A-1, Rule 26. A surveillance video would be protected under the attorney work-product privilege if prepared in anticipation of litigation or for trial by an attorney or agent of the attorney, such as a private investigator. *See* N.C. Gen. Stat. §1A-1, Rule 26(b)(3); *See also Berens v. Berens*, 791 S.E.2d 651, 652 (N.C. Ct. App. 2016). The videos may be obtained if the party seeking discovery has a substantial need for the materials and the party is unable, without undue hardship, to obtain the substantial equivalent of the materials by other means. *Id.*
NORTH DAKOTA	One party consent	N.D. Cent. Code § 12.1-15-	While generally any party to a	Subject to the work product

BRADLEY M. JONES **MEAGHER & GEER, PLLP** **(612) 347-9196**		02.	conversation or event can consent to its recording, the recording of an individual in a private space (e.g. bedroom or dressing room) cannot be done without the consent of the individual.	doctrine, video surveillance is discoverable in North Dakota to the extent that it is relevant. In *Simpson v. Chicago Pneumatic Tool Co.*, 657 N.W.2d 261 (N.D. 2003), the court held that the District Court did not abuse its discretion by refusing to compel the production of video surveillance when the videos were not of the plaintiff. North Dakota's Supreme Court has further said (more than once) that its district courts have "broad discretion regarding the scope of discovery." *Johnson v. Mark*, 834 N.W.2d 291 (N.D. 2013).
OHIO **KEVIN P. FOLEY, ESQ.** **REMINGER CO., L.P.A.** **(614) 232-2416**	One party consent required	O.R.C. 2933.52	A law enforcement officer is permitted to intercept a wire, oral, or electronic communication, if the officer is a party to the communication or if one of the parties to the communication has given prior consent to the interception by the officer. A person who is not a law enforcement officer and is permitted to intercept a wire, oral, or electronic communication, if the person is a party to the communication or if one of the parties to the communication has given the person prior consent to the interception, and if the communication is not intercepted for the purpose of committing a criminal offense or tortious act in violation of the laws or Constitution of the United States or this state or for the purpose of committing any other injurious act. Notably, O.R.C. 2933.51 dictates that "no person or entity that provides electronic communication service to the public shall purposefully divulge the content of a communication, while it is in transmission on that service, to a person or entity other than an addressee or intended recipient of the communication or an agent or an addressee or intended recipient of the communication."	The existence of a video recording is generally discoverable under Ohio Civ. R. 26. However, the content of the video, its origination, and its intended use at trial will dictate whether the contents of the video must be disclosed. Video content that would be considered attorney-client privilege, attorney work product, and/or contain otherwise privileged material may be withheld and disclosed only through a privilege log. Video surveillance that is being withheld under Ohio's work product doctrine may be discoverable for good cause shown. Civ. R. 26(B)(3*) See Sutton v. Stevens Painton Corp*., 8th Dist. No. 95143, 193 Ohio App.3d 68, 76, 91, 2011 -Ohio-841 (Holding correspondence, reports and surveillance of defense counsel and company engaged to conduct surveillance and investigation activities in civil case for invasion of privacy and intentional infliction of emotional distress constituted work product; thereafter Plaintiff demonstrated good cause for the disclosure).
OKLAHOMA **MATTHEW B. FREE** **BEST & SHARP** **(918) 582-1234**	One party consent required for wire, oral or electronic communications.	13 O.S. §176.4(5)	No laws regulate video surveillance *per se* (i.e., without audio). *E.g., Thompson v. Johnson County Comm. College*, 930 F. Supp. 501 (D. Kan. 1996), *aff'd*, 108 F.3d 1388 (10th Cir. 199); *Williams v. City of Tulsa*, 393 F.Supp.2d 1124, 1132 (N.D. Okla. 2005). Oklahoma makes it unlawful to use video surveillance in a clandestine manner for illegal, illegitimate, prurient, lewd or lascivious purposes. 21 O.S. § 1171(B). However, no law prohibits video surveillance in civil cases.	The existence of a surveillance videotape is likely discoverable under 12 O.S. § 3226(B). However, video surveillance can be protected by the work product doctrine, unless the party seeking the surveillance shows "substantial need for the materials" and that the party "cannot, without undue hardship, obtain their substantial equivalent, by other means." 12 O.S. § 3226(B)(3)(a); *see also Gant v. Otis Elevator*,

				199 F.R.D. 673 (N.D. Okla. 2001) (video surveillance protected by work product doctrine, but did not contain opinion work product and was discoverable upon proper showing). If a party intends to use the video surveillance at trial, the evidence "must be disclosed." *Groden v. Trustmark Ins. Co*., 2013 WL 3189112 (N.D. Okla. 2013). In *Groden*, the Court held that the video should be produced prior to the plaintiff's deposition.
OREGON **STEPHEN P. YOSHIDA** **MB LAW GROUP** **(503) 224-3113**	One party consent is required for recording telephone conversations. When videotaping one or more persons with audio, the party taking the video must inform all persons being filmed that their conversations are being obtained.	ORS 165.540	Oregon law distinguishes between telephone recordings (one party consent) and video recordings with audio (all parties must be informed). There is generally no prohibition against or disclosure requirement with respect to videotaping a person in public places, so long as there is no accompanying audio.	There is no appellate case law in Oregon on the issue of whether surveillance video is discoverable. However, several counties have adopted guidance in the form of "Civil Consensus Statements" stating surveillance video of plaintiffs by defendants is work product and not subject to production absent a substantial need. Oregon is a "trial by ambush" jurisdiction that does not require pretrial disclosure of experts. It also does not require pretrial disclosure of impeachment evidence. Therefore, the general practice is not to produce or disclose impeachment videos prior to trial. There is no appellate case law on this issue, however.
PENNSYLVANIA **PAUL F. WEISBEIN, ESQ** **MARGOLIS EDELSTEIN** **(215) 931-5841**		It is a crime in PA to intercept or record a telephone call or conversation unless all parties to the conversation consent. See 18 Pa. Cons. Stat. § 5703. PA is a "two-party consent" venue. Pa. Wiretap Laws Forbid Use of Smart Phone Apps to Record Conversations.		Videotaped surveillance is discoverable in Pennsylvania as it does not involve the mental impressions and opinions of a legal team, *Dominick v. Hanson*, 753 A.2d 824, 825 (Pa. Super. 2000), and their existence must be disclosed by a party regardless of how they were acquired.
RHODE ISLAND **BRIAN P. VOKE** **CAMPBELL CAMPBELL EDWARDS & CONROY PROFESSIONAL CORPORATION** **(617) 241-3042**	1-party consent	R.I. Gen. Laws. Ann. § 11-35-21; RI Gen. Laws Ann. §12-5-1	It is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication unless the person is doing so for the purpose of committing a tortious or criminal act. An individual may also disclose the content of any electronic or inperson communication that is common knowledge or public information.	Generally Discoverable. Surveillance materials that are protected by the work product privilege may still be discoverable "with a showing of injustice or undue hardship." Cabral v. Arruda, 556 A.2d 27, 49-50 (R.I. 1989). In noting that it would create an undue hardship on the plaintiff to introduce previously undisclosed surveillance materials at trial, the Cabral court held that parties are entitled to discover whether surveillance video or photographs exist. Id. at 50. Any

				videos or photographs that will be introduced at trial are discoverable and must be disclosed. Id. Surveillance materials that will not be introduced at trial are protected work product and do not need to be disclosed: "the mere existence of such materials alone does not constitute a showing of undue hardship." Id. at 51. The burden of proving undue hardship and the need
SOUTH CAROLINA **STEVEN J. PUGH** **RICHARDSON, PLOWDEN & ROBINSON, P.A.** **(803) 576-3721**	One party consent required	S.C. Code Ann. § 17-30-20 and -30 Title 17, Chapter 30 is generally cited as the "Wiretap Act".	In South Carolina, it is not unlawful for an individual who is a party to, or has consent from a party of an in-person, oral, wire, or electronic communication to record and/or disclose the content of that communication. An electronic communication is defined as "any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature."	Neither the discoverability nor the admissibility of recorded communications have been addressed by the South Carolina Supreme Court or Court of Appeals. However, recorded communications are likely discoverable pursuant to S.C. R. Civ. P. 26(b)(1) as long as they are "relevant to the subject matter involved in the pending action," or whether they "relate to the claim or defense of the party seeking discovery or to the claim or defense of any other party."
SOUTH DAKOTA **J. CRISMAN PALMER** **GUNDERSON, PALMER, NELSON & ASHMORE, LLP** **(605) 342-1078**	One party consent required	SDCL § 22-21-1 SDCL § 23A-35A-20	Under SDCL § 23A-35A-20, it is unlawful for a person to eavesdrop or record an oral communication without the consent of either the sender or receiver of the communication. An individual must have a justified expectation of privacy for the oral communication to be subject to unlawful interception. Under SDCL § 22-22-1, it is unlawful to trespass upon property with the intent to subject anyone to eavesdropping or other surveillance in a private place. "Private place" is defined as "a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access[.]" SDCL § 22-1-2(33).	In South Dakota, a party may discover any matter, not privileged which is relevant to the subject matter involved. SDCL § 15-6-26(b)(1). Documents and other tangible materials prepared in anticipation of litigation are protected by the work product doctrine. SDCL § 15-6-(b)(3). Work product is discoverable only upon a showing of: 1) a "substantial need of the materials in the preparation of the party's case"; and 2) "that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means." *Id.* Surveillance video created in anticipation of litigation is protected by the work product doctrine. In *Lagge v. Corsica Co-op*, the South Dakota Supreme Court addressed the issue of surveillance video used as impeachment evidence. The Court stated "most jurisdictions hold both the existence and contents of surveillance tapes to be freely discoverable[,]" and most courts hold a party must disclose the surveillance video prior to trial. *Lagge*, 2004 S.D. 32, ¶ 23.

				If surveillance video is going to be used as evidence, the surveillance likely must be disclosed prior to trial. However, if the surveillance video is not going to be used as evidence, it is likely protected by the work product doctrine. It is only if the surveillance video is going to be used that it must be disclosed, and even then, it may be disclosed after the deposition of the adverse party. *Lagge*, 2004 S.D. 32, ¶ 23.
TENNESSEE **BUCK LEWIS** **BAKER DONELSON** **(901) 577-2256**	Tennessee Code Annotated 39-13-601 provides that any person who is a party to a communication can record it unless they have criminal or tortious intent. Under Section 603, consent of the other party is generally not required. Recording or disseminating an illegal communication is a felony. Tenn. Code Ann. 39-13-604. Someone whose communication has been unlawfully intercepted can file a civil suit for actual damages or liquidated damages up to $10,000. The statute of limitations is two years. Tenn. Code Ann. 39-13-603. But note, there may be a choice of law issue when the communications are between persons in different states.	Tennessee Code Annotated 39-13-601 Tenn. Code Ann. 39-13-604. Tenn. Code Ann. 39-13-603.	Note also that the rule is different for lawyers. The Tennessee Board of Professional Responsibility has ruled that it is unethical for a lawyer to record a conversation with a witness without disclosing the fact that she is recording it.	No
TEXAS **MICHAEL D. WILLIAMS** **BROWN SIMS, PC** **(713) 351-6250**	One party consent required	Texas Penal Code (Sec. 16.02) does not make it a wiretapping offense if one of the parties has consented/is aware of being recorded	The Texas Penal Code applies to "intercepting any wire, electronic or oral communication" including images. Trial court should generally view video before ruling on admissibility under Rule 403. Probative value of video is not outweighed by concerns over cumulativeness, misleading or unfair prejudice. *Diamond Offshore v. Williams*, (Tex. 2018)	Video is discoverable, but the work product privilege (TRCP 192.5) applies. The surveillance video must be timely disclosed before trial if it is to be used for any purpose. *In re Weeks Marine, Inc.*, (31 SW3d 389 (Tex. App, - San Antonio 2000)
UTAH	One party consent required.	UTAH CODE ANN. § 77-23a-4 &	Utah law provides criminal penalties for installation or use of a "device for observing, photographing, hearing,	The Utah Court of Appeals has held that any surveillance

ANDREW M. MORSE **SNOW CHRISTENSEN & MARTINEAU** **(801) 322-9183**		UTAH CODE ANN. §§ 76-9-402–76-9-403	recording, amplifying, or broadcasting sounds or events in [a] private place[,]" as well as the installation or use of any such device outside of a private place for the purpose of "observing, photographing, hearing, recording, amplifying, or broadcasting sounds or events originating in the private place which would not ordinarily be audible, visible, or comprehensible outside the private place, without the consent of the person or persons entitled to privacy in the private place." UTAH CODE ANN. § 76-9-402(1). Utah law also prohibits the "intercept[ion], without the consent of the sender or receiver, a message by telephone, telegraph, letter, or other means of communicating privately." UTAH CODE ANN. § 76-9-403; *see also id.* § 77-23a-4(1)(b) (providing criminal penalties for any intentional or knowing interception, attempt to intercept, or procurement of another person to intercept or attempt to intercept "any wire, electronic, or oral communication"). However, a person "may intercept a wire, electronic, or oral communication if that person is a party to the communication or one of the parties to the communication has given prior consent to the interception[,]" provided that the communication is not "intercepted for the purpose of committing any criminal or tortious act in violation of state or federal laws." UTAH CODE ANN. § 77-23a-4(7). Additionally, any person may lawfully "intercept or access an electronic communication made through an electronic communications system" so long as the system itself is "configured so that the electronic communication is readily accessible to the general public[.]" *Id.* § 77-23a-4(8). Per Utah State Bar Ethics Opinion No. 96-04, it is not unethical for an attorney to record "conversations to which an attorney is a party without prior disclosure to the other parties" so long as "the act, considered within the context of the circumstances, does not involve dishonesty, fraud, deceit or misrepresentation." USB EAOC Opinion No. 96-04.	information "prepared in anticipation of introduction at trial is clearly discoverable under Utah Rule of Civil Procedure 26(b)(1)." See Roundy v. Staley, 1999 UT App 229, ¶ 14, 984 P.2d 404. The court implicitly acknowledged, however, that surveillance information not prepared for introduction at trial may be protected as attorney work product. See id. (citing State v. Koehr, No. 62252, 1992 WL 230232 at *3 (Mo. Ct. App. Sept. 22, 1992)).
VERMONT **DAVID POCIUS** **PAUL FRANK + COLLINS P.C.** **(802) 658-2311**	No Statute or Definitive Case Law	Vermont is the only state with no statute regulating the interception of telephone conversations. Case law indicates that Vermont therefore defaults to federal law, and is thus a one party consent state; however, case law in the civil context is extremely limited.	In the civil context, the Vermont Supreme Court has acknowledged that a recording of a conversation in which one party consented "did not violate federal or state law." Winfield v. State, 779 A.2d 649 (Vt. 2001). Cases in which the Vermont Supreme Court has otherwise addressed this issue have arisen in the context of criminal cases and issues such as the admissibility warrantless recordings. As such, they have no bearing on whether Vermont is a one or two party consent state.	It is generally accepted that surveillance video is discoverable if it will be used at trial, and a party must produce it when requested in discovery. Vermont courts, however, have yet to specifically address whether surveillance videos are protected by the attorney work-product privilege. Under Vermont Rule of Civil Procedure 26(b)(4), trial preparation materials such as "tangible things," which presumably includes surveillance video, are

				discoverable upon a showing of actual need and potential hardship. Accordingly, it is accepted that surveillance videos must be disclosed in Vermont if the video will be used at trial and is not otherwise available to the opposing party.
VIRGINIA **STANLEY P. WELLMAN** **HARMAN CLAYTOR CORRIGAN & WELLMAN, P.C.** **(804) 747-5200**	One party consent required	Va. Code Ann. § 19.2-62 Interception of communications illegal without consent of one party Va. Code Ann. § 18.-386.1 Video recording illegal when (1) nonconsenting person is nude, wearing only undergarments, or partially undressed exposing specific areas of the body; or when (2) the recording device is placed directly beneath or between a person's legs for purpose of capturing image of intimate parts or clothing covering intimate parts when not otherwise visible to the public; and (3) the person being recorded would have a reasonable expectation of privacy.	Under the Virginia Code, "any person who: . . . [i]ntentionally intercepts, endeavors to intercept or procures any other person to intercept or endeavor to intercept any wire, electronic or oral communication; . . ." uses a device to intercept oral communications; intentionally discloses or uses the contents of wire, electronic, or oral communications, "knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication," shall be guilty of a Class 6 felony." Va. Code Ann. § 19.2-62(A). But "[i]t shall not be a criminal offense under this chapter for a person to intercept a wire, electronic or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception." Va. Code Ann. § 19.2-62(B)(2).	Although trial courts take different approaches, the majority approach in Virginia is that surveillance video is discoverable and therefore must be produced when requested in discovery because it is likely not protected as work product. See Fare v. Doe, 66 Va. Cir. 61, 2004 WL 3431687, at *1 (Chesterfield County 2004) (citing Fender v. Norfolk Southern Ry., 55 Va. Cir. 344, 2001 WL 34037318, at *2 (2001) (City of Norfolk 2001)). Depending on the facts, some courts require that surveillance of the plaintiff be produced only after the plaintiff's deposition has been taken. See Fender, 55 Va. Cir. 344, 2001 WL 34037318, at *2; Runions v. Norfolk & W. Ry. Co., 51 Va. Cir. 341, 2000 WL 1186265, at *3 (Roanoke City 2000).
WASHINGTON **LAURA E. KRUSE** **BETTS, PATTERSON & MINES, P.S.** **(206) 268-8655**	Two party consent required to electronically intercept or record any private conversation. Consent not required to perform video surveillance only (without sound), provided it does not violate an individual's right to privacy.	RCW 9.93.030 (consent required of all participants is general rule).	Washington State's Privacy Act, generally provides that it is unlawful for any private individual or governmental agency to intercept or record by any electronic device any private conversations, or any private communications, transmitted by telephone or radio, without first obtaining the consent of all participants in the communication Whether or not a conversation is private under the privacy act, the court must consider the intent or reasonable expectations of the participants as manifested by facts and circumstances of each case. *Kadoranian by Peach v. Bellingham Police Dept., a Div. of City of Bellingham*, 119 Wn.2d 178, 829 P.2d 1061 (1992) (whether particular communication or conversation is "private" and protected from intrusion under state Privacy Act, is question of fact).	Whether surveillance materials are protected from production is an unanswered question in Washington. *Dean v. Fishing Co. of Alaska, Inc.*, 166 Wn. App. 893, 903, 272 P.3d 268, 273 (2012), reversed on other grounds, 177 Wn.2d 399, 300 P.3d 815 (2013). The work product doctrine protects both materials prepared by an attorney, and also those materials prepared by or for a party or representative of a party. *Doe v. Gonzaga University*, 99 Wn. App. 338, 992 P.2d 545, 141 Ed. Law Rep. 359 (Div. 1 2000), decision aff'd on discovery issues, 143 Wn. 2d 687, 24 P.3d 390, 154 Ed. Law Rep. 963 (2001), judgment rev'd on other issues, 536 U.S. 273, 122 S. Ct. 2268, 153 L. Ed. 2d 309, 165 Ed. Law Rep. 458 (2002) Indeed, the phrase "prepared by a … representative" is broad enough to include materials written or compiled in anticipation of litigation by investigators, consultants, photographers, and others employed on the party's behalf. *Heidebrink v. Moriwaki*, 104 Wn. 2d 392, 706 P.2d 212 (1985)

				(recorded statement by an insured defendant to an insurance investigator, shortly after the harm occurred, was protected by the work product rule). Under this premise, the work product doctrine is likely broad enough to include and protect from disclosure work performed and prepared by an investigator, including surveillance footage and investigative reports. Although surveillance is most likely protected work product, it may also be discoverable if the party seeking its production can demonstrate "substantial need" to justify its production. Indeed, a recent Washington State case venued in King (Seattle) County Superior Court (Washington's trial court), granted plaintiff's motion to compel and ordered the production of defendant's surveillance; it also held that, to the extent the surveillance was protected by the work product doctrine, the plaintiff demonstrated substantial need to justify production of the evidence given that it is both unique in time and character. *Colyn v. Standard Parking Co*., 2016 WL. 7478029 (Wash. Super, July 22, 2016).
WEST VIRGINIA **JONI M. MANGINO** **ZIMMER KUNZ, PLLC** **(412) 281-8000**	One party consent is required under West Virginia's Wiretapping and Electronic Surveillance Act (W. Va. Code Ann. § 62-1D-1 et seq.)	W. Va. Code Ann. § 62-1D-3 ("It is lawful under this article for a person to intercept a wire, oral or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or the constitution or laws of this state.")	In West Virginia, evidence "obtained, directly or indirectly, by the interception of any wire, oral or electronic communication shall be received in evidence only in grand jury proceedings and criminal proceedings in magistrate court and circuit court." W. Va. Code Ann. § 62-1D-6. Evidence obtained in violation of West Virginia's Wiretapping and Electronic Surveillance Act Is not admissible in any proceeding. W. Va. Code Ann. § 62-1D-6. West Virginia's Wiretapping and Electronic Surveillance Act also creates a private right of action for any person whose wire, oral, or electronic communication is intercepted in violation of the Act. W. Va. Code Ann. § 62-1D-12. This private right of action allows for attorneys' fees, litigation expenses, and punitive damages (if found to be proper).	Surveillance video is ordinarily discoverable, although the Court of Appeals has not definitively ruled whether such video is protected work product under W. Va. R. Civ. P. 26(b)(3). In a 2017 non-precedential decision, the Court declined to reach the question. *See Hanson v. Keeling*, No. 16-0799, 2017 WL 4231835, at *6 (W. Va. Sept. 25, 2017) ("Although the petitioner argues that surveillance is protected by work product, we need not decide whether surveillance is work product for purposes of our decision.") The Court concluded, instead, that the petitioner-defendant had waived any claim to the work-product privilege by voluntarily producing surveillance video in supplemental discovery responses. One trial court has concluded that surveillance video obtained by a defendant is protected work product under W. Va. R. Civ. P. 26(b)(3), and denied a plaintiff's motion to compel production of such video before the plaintiff's deposition. The Court, however, ordered the defendant to produce any

				surveillance video after the plaintiff was deposed. *Mills v. Saxton*, No. 96-C-0322, 1996 WL 34388724 (Cir. Ct. of Cabell County, Oct. 17, 1996)
WISCONSIN **CLAYTON L. RIDDLE** **VON BRIESEN & ROPER, S.C.** **(414) 221-6640**	One party consent required.	Wisconsin State Statutes ("Wis. Stat.") §§968.27-968.37 addresses one party consent required for recorded communications. Wis. Stat. §804.01(2)(c)1 and State ex rel. Dudek v. Circuit Court for Milwaukee County, 34 Wis.2d 559, 150 N.W.2d 387 (1967) address the work-product privilege and the discoverability of an opponent's trial preparation materials.	Wis. Stat. §804.01(2)(a) addresses the scope of discovery in Wisconsin, and provides: "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." The purpose of the work-product doctrine is to protect "the enterprise—either analytical or entrepreneurial—by a party or by the party's agent." Ranft v. Lyons, 163 Wis.2d 282, 297, 471 N.W.2d 254 (Ct. App. 1991). Work-product "consists of the information [an attorney] has assembled and the mental impressions, the legal theories and strategies that he/she has pursued or adopted as derived from interviews, statements, memoranda, correspondence, briefs, legal and factual research, mental impressions, personal beliefs, and other tangible or intangible means" in anticipation of litigation. Dudek, 34 Wis.2d at 589. The work-product doctrine is generally codified in Wis. Stat. §804.01(2)(c)1, which governs the discovery of tangible items, and it provides that "…a party may obtain discovery of documents and tangible things otherwise discoverable under par. (a) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative…only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the party seeking discovery is unable without undue hardship to obtain the substantial equivalent of the materials by other means."	The Wisconsin Courts of Appeals have held in two published decisions that, in response to discovery inquiring of the existence of videotaped surveillance materials, a defendant may refuse to either confirm or deny the existence of or contents of surveillance videotapes by invoking the work-product privilege. Ranft, 163 Wis.2d 282; Martz v. Trecker, 193 Wis.2d 588, 435 N.W.2d 57 (Ct. App. 1995). In Ranft, the Wisconsin Court of Appeals adopted what was acknowledged as the minority rule, holding that to require defendants to disclose the existence of or contents of surveillance materials before trial would force such a revelation of defense counsel's mental impressions and strategies as to impinge on the very core of the work-product privilege. Ranft, 163 Wis.2d at 301. The Ranft rule is the same whether a plaintiff seeks to learn if such surveillance materials exist or seeks an actual opportunity to view the videotape. Id. at 297, n. 6. The Ranft rule was subsequently applied in Martz. It is worth pointing out that the Ranft rule has a discretionary element and, therefore, is not automatic. Both the Ranft and Martz decisions noted the trial court had discretion in ruling on such discoverability and admissibility questions. The trial courts are to balance the interests protected by the work-product doctrine against the interests that would be advanced by disclosure. The work-product privilege is overcome if the plaintiff can demonstrate that "good cause" for discovery exists or that nondisclosure would "unnecessarily frustrate" the discovery process. Before evidence of a surveillance videotape can be presented to the jury, the defense must disclose the videotape's existence outside

				the jury's presence under circumstances that allow the court to conduct a hearing to determine admissibility. Before ruling on admissibility of surveillance evidence, the trial court will provide the plaintiff a reasonable opportunity to argue against admissibility and to prepare a response to the evidence. Ranft, 163 Wis.2d at 302 (allowing the plaintiff a reasonable opportunity to challenge videotape surveillance material before its use at trial); Martz, 193 Wis.2d at 595 (allowing plaintiff reasonable opportunity to challenge videotape surveillance materials by reviewing materials overnight).
WYOMING **RICHARD MINCER** **HIRST APPLEGATE, LLP** **(307) 632-0541**	One party consent required	WYO. STAT. ANN. § 7-3-702 It is unlawful to intercept any oral, wire, or electronic communication except when the person intercepting the communication is a party to the communication or when one of the parties has provided prior consent.	Wyoming courts have not addressed the discoverability of surveillance video or when a party must disclose surveillance collected by parties or their representatives. The issue of surveillance discoverability would be reviewed in the context WRCP 26, which is virtually identical to the FRCP. Some jurisdictions require disclosure of surveillance video, but only after deposition so a party may impeach exaggerated injuries. Other courts, however, hold surveillance should be turned over prior to deposition in order to reduce gamesmanship during discovery. Wyoming courts generally favor lay-down discovery, i.e. show all of your cards.	Disclosure is likely required, if requested. We anticipate Wyoming state and federal courts will require disclosure if requested in discovery. If not requested, it may potentially be held back for impeachment purposes at trial.
ONTARIO **VAN KRKACHOVSKI & JIM TOMLINSON** **MCCAGUE BORLACK** **(416) 860-0001**	Consent of plaintiff is not required	Rule 30.03; *Iannarella v Corbett*, 2015 ONCA 110 Rule 31.09(1)(b); *Iannarella v Corbett*, 2015 ONCA 110 Rule 30.06, 30.07(b), 31.09(1)(b); *Iannarella v Corbett*, 2015 ONCA 110 *Dumaliang v Cheng*, [2006] OJ No 4314 (Ont. Master); *Aherne v Cheng*, 2011 ONSC 3846, 337 DLR 4th 593.	Rule 30.03 contains a positive obligation on each party to swear and serve an affidavit of documents. Despite claiming privilege, a party must still provide particulars of the surveillance (e.g. time, place, and description of activity) typically at an examination for discovery. Despite claiming privilege, a party must still provide particulars of the surveillance (e.g. time, place, and description of activity) typically at an examination for discovery. The consequence of voluntarily disclosing surveillance evidence to a medical expert, which the defendant is not obliged to do, is the waiver of litigation privilege.	A party must serve an affidavit of documents on the opposing party and is required to disclose the existence of surveillance. This rule is mandatory. If privilege is claimed over the surveillance, it must be listed in the appropriate schedule in the affidavit of documents. If new surveillance is conducted after the original affidavit of documents is served, the new surveillance report must be disclosed in a supplementary affidavit of documents. Particulars of the surveillance can be disclosed in the form of correspondence. Defence counsel should be mindful of the obligation to produce to opposing counsel all documents made available to their medical expert if counsel provides surveillance to a medical expert for a defence

				medical assessment.
	Consent	**Authority**	**Explanation/Additional Information**	**Surveillance as Evidence at Trial for Impeachment**
	Consent of plaintiff is not required	Rule 30.09; *Iannarella v Corbett*, 2015 ONCA 110	Impeachment evidence is solely used to attack the credibility of the plaintiff during cross-examination.	Surveillance that is intended to be used as impeachment evidence only need not be produced but must be disclosed in the appropriate schedule of the affidavit of documents.
	Consent	**Authority**	**Explanation/Additional Information**	**Surveillance as Evidence at Trial for Substantive Evidence**
	Consent of plaintiff is not required	Rule 30.09; *Iannarella v Corbett*, 2015 ONCA 110	To make substantive use of the surveillance, the complete surveillance must be disclosed, including all reports, photographs, and unedited videos. This allows counsel to put the surveillance to any of the witnesses testifying at trial, most notably the plaintiff's treating and medical experts.	In order to use the surveillance at trial as substantive evidence, the party must abandon its claim of privilege over the surveillance **90 days** before trial.
	Consent	**Authority**	**Explanation/Additional Information**	**Failure to Comply with the Rules**
	Consent of plaintiff is not required	Rule 53.08; *Iannarella v Corbett*, 2015 ONCA 110	Although the non-compliant party is exposed to the risk of evidence being excluded at trial, "leave shall be granted on such terms as are just and with an adjournment if necessary, unless to do so will cause prejudice to the opposite party or will cause undue delay in the conduct of the trial."	If a party fails to comply with the disclosure rules mentioned above, a party can seek leave of the court to introduce the evidence at trial, unless it would prejudice the other party or cause undue delay. That being said, the court is loath to reward non-compliance.
NEW BRUNSWICK **TERRENCE L.S. TEED, Q.C.** **BINGHAM LAW** **(506) 857-8856**	Consent of Plaintiff is not required	The Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5. (PIPEDA)	In the Decision of State Farm Mutual Automobile Insurance Co. v. Canada (Privacy Commissioner) 2010 FC 736, it was held: "I conclude that, on a proper construction of PIPEDA, if the primary activity or conduct at hand, in this case the collection of evidence on a plaintiff by an individual defendant in order to mount a defence to a civil tort action, is not a commercial activity contemplated by PIPEDA, then that activity or conduct remains exempt from PIPEDA even if third parties are retained by an individual to carry out that activity or conduct on his or her behalf. […] I therefore rule that the investigation reports and related documents and videos concerning Mr. Gaudet and prepared by or for State Farm or its lawyers to defend Ms. Vetter in the civil tort action taken against her by Mr. Gaudet are not subject to PIPEDA." Accordingly, PIPEDA has little application to the collection of surveillance.	Rule 31.02 of the New Brunswick Rules of Court provides that every document relating to a matter in issue in an action and that is in the possession or control of a party shall be disclosed as provided in that Rule, whether or not privilege is claimed in respect of that document. Rule 31.03 (4) requires that a party include a list of such documents in their Affidavit of Documents and Rule 31.03 (5) requires that the party provide a description sufficient for identification thereof. Rule 31.09 describes the circumstances under which a party that has claimed privilege may use the document at trial. Rule 31 does not abrogate litigation privilege, specifically 43.1 of the Evidence Act. In the New Brunswick Court of Appeal decision of Main v. Goodine 1997 CarswellNB 354, the Court concluded that litigation privilege attaches to surveillance video prepared at the request of a party's solicitor in order to assist him or her in

				the conduct or defence of an action. The preparation of the video surveillance for the dominant purpose of being submitted to a solicitor for use in litigation would fall within s. 43.1 of the Evidence Act, supra. The Court further held that the Affidavit of Documents must contain a "description sufficient for identification" which description would include the name of the person who made the video as well as, the date, time and place on which the video, or any segment thereof, was made.
SASKATCHEWAN **GARY ZABOS** **MCDOUGALL GAULEY LLP** **(306) 653-1212**	It is a tort, actionable without proof of damage, for a person to wilfully and without claim of right, to violate the *privacy* of another person <u>without the consent, express or implied, of the person or some person who has the lawful authority to give the consent.</u> Prima facie evidence of a violation of the privacy of the person first mentioned includes: (a) Auditory or visual surveillance of a person by any means including eavesdropping, watching, spying, besetting or following and whether or not accomplished by trespass (b) listening to or recording of a conversation in which a person participates, or listening to or recording of messages to or from that person passing by means of telecommunications, otherwise than as a lawful party thereto Parameters of obtaining implied consent in an investigation	ss. 2, 3 & 4 of *The Privacy Act,* c P-24 RSS 1978 Rule 5-5 & 5-6 of the *Queen's Bench Rules* *Simair v Manufacturers Life Insurance Co*., 2007 SKQB 477 (*Simair*) *Auchstaetter v Froese*, [1995] SJ No 65, [1995] 4 WWR 716 (*Froese*) *Bigstone v St. Pierre*, 2011 SKCA 34 (*Bigstone*)	Exceptions to violation of privacy: a) It is consented to, either expressly or impliedly by some person entitled to consent hereto; b) It was incidental to the exercise of a lawful right of defence of person or property c) It was authorized or required by or under law or by a court or any process of a court The *QB Rules* contain a positive obligation on each party to swear and serve an affidavit of documents and must disclose the existence of all relevant and pertinent documents in the power and control of a party. For investigation and surveillance, consent can be implied or at least the surveillance is not immediately actionable as an intrusion into privacy.	A party must serve an affidavit of documents on the opposing party and to produce documents for the inspection of the other party upon request. This duty is subject to legitimate claims of privilege. Para 26 of Simair: "Reports and related documents prepared by a private investigator for the dominant purpose of obtaining legal advice and aiding in the conduct of litigation are privileged and excluded from inspection….Surveillance records which the plaintiff wants produced are privileged and excluded from inspection." Froese: Surveillance reports and videotapes prepared for the dominant purpose of litigation after litigation commences are subject to litigation privilege. Para 57 of Bigstone: "It is not the intention of the [Privacy] Act to make merely investigating, seeking to find out, accessing, or gathering information about a person an actionable violation of that person's privacy, in the absence of the conduct described in <u>s. 3</u>, or other unusual circumstances. Certainly s. 3 is not itself this broad. Such an interpretation would subject all authors of an unauthorized biography to liability."
	Consent	**Authority**	**Explanation/Additional Information**	**Surveillance as Evidence at Trial for Substantive Evidence**
	Implied or express	*Simair*	There are 2 distinct thresholds for	Para 26 of *Simair: "[*I]f a decision

	consent required unless exception	*Froese*	surveillance materials: 1) Disclosure of surveillance is subject to litigation privilege; 2) If surveillance is to be used as evidence, it must be produced to the opposing party.	is taken to enter any of the [surveillance] materials into evidence at trial, then they must be disclosed and produced in a timely fashion." *Froese*: If surveillance records are to be used as evidence, they must be produced. Para 21 of *Froese*: The author of any privileged documents intended for use at trial must choose between using the material and protecting their zone of privacy.
	Consent	**Authority**	**Explanation/Additional Information**	**Failure to Comply with the Rules**
	Implied or express consent required unless exception	Rule 5-14 of the *Queen's Bench Rules* *GL v Canada (Attorney General)*, 2004 SKCA 137	Party in non-compliance means a party who neglects or refuses to serve an affidavit of documents or produce for inspection any document for which notice to produce documents has been given. If 1 party believes another has not complied with disclosure requirements, the usual practice is that party demands of the other that the document be disclosed and produced.	A party in non-compliance is liable to have the party's action dismissed (if they are a plaintiff) and have their defence struck out and be placed in the same position as if the party had not defended (if they are a defendant) If demand not met, application made to judge to enforce compliance via Rule 5-12 and 5-14.
NEWFOUNDLAND/ LABRADOR **DAVID BUFFETT, QC** **BENSON BUFFETT PLC INC.** **(709) 570-7227**	Not required- note it is a tort to violate the privacy of a person without consent.	Privacy Act, RSNL, c. P-22 Rule 32.01	An exception is if it is incidental to the exercise of a lawful right of defence of a person or property. Notwithstanding this legislation surveillance is routinely done without consent. Rule 32.01 places an obligation on each party to serve a List of Documents and give the other side copies of the documents relevant to the proceeding including surveillance reports, photos and video. If litigation privilege is asserted over surveillance material while production to the other side is not required, the material must be noted in the privileged document section of the List of Documents.	Disclosure in the sense of production is required if the material is going to be used as substantive evidence, and must be listed in the List of Documents, but not if it is only going to be used for impeachment purposes.
		Barrett v. Butler, [2002] N.J. No. 232, 217 Nfld. & P.E.I.R. 259		Disclosure is not required if the material is not going to be used and counsel does not have to confirm/deny the existence of surveillance material unless it is going to be used.
	Consent	**Authority**	**Explanation/Additional Information**	**Surveillance Evidence for Impeachment**
		Rule 32.01 Rule 46.14(2)		One need not produce it to the other side.
ALBERTA **RON R. NELSON**	Consent of party is not required if information is part of a court action/proceeding.	*Alberta Rules of Court*, Alta Reg 124/2010 ["*Alberta Rules*"] *Freedom of Information and Protection of Privacy*	Generally speaking, disclosure of personal information is not a violation of privacy if: 1. It is consented to by the person; or	Rule 5.5 of the *Alberta Rules* requires each party to the action to swear and serve an affidavit of records. Rule 5.6(1) of the *Alberta Rules*

BROWNLEE LLP (EDMONTON) **(780) 497-4800** **DAVID M. PICK** **BROWNLEE LLP (CALGARY)** **(403) 232-8300**	Consent of party is not required if use of the information is reasonable for the purposes of an investigation or legal proceeding (*PIPA*, s. 17(d)).	*Act*, RSA 2000, c F-25 ["*FOIP*"] *Personal Information Protection Act*, SA 2003, c P-6.5 ["*PIPA*"] *McDonnell v Lopuch,* 1993 ABQB 7027 (Alta Master) ["*McDonnell*"]	2. It is authorized by an Act of Alberta or Canada. Note further and more specific exceptions can be found in ss. 16-29 of *FOIP* and ss. 14, 20, and 21 of the *PIPA*. The *FOIP* will apply when public bodies are involved. Public bodies include all provincial government departments, agencies, boards and commissions. It also includes local public bodies such as municipalities, universities, school boards and others. Under s. 4(1)(a) of the *FOIP* and s. 4(1)(k) of the *PIPA*, the rules regarding disclosure do not apply to information in a court file or that is otherwise in possession of the Court of Appeal, Queen's Bench, the Provincial Court of Alberta Also note that s. 27(1)(a) of *FOIP* prevents a public body from disclosing information that is subject to legal privilege. The *PIPA* applies to private businesses, non-profit organizations, and professional regulatory organizations operating in Alberta. As per s. 4(5) of the *PIPA*, the *PIPA* does not apply to legal privilege or to otherwise limit the collection, use or disclosure of information available by law to a party in a legal proceeding. *McDonnell* at para 8: "In the present case it is clear the dominant purpose of the surveillance was for the purpose of litigation and in my opinion the documents (including the video tape) are privileged and the defendant does not have to produce them."	requires the party to disclose all records that are material to the issues in the action and that have been or are currently under control of that party. This rule is subject to claims of privilege. Rule 5.6(2)(b) of the *Alberta Rules* requires the party to identify what records the party objects to produce and the grounds for the objection. Rule 5.7(1) of the *Alberta Rules* provides that the party must list all the records in the affidavit of records, number them in a convenient order, and briefly describe them. Should a party discover or otherwise come into the possession of other material and relevant records regarding the litigation, they are obliged to produce these to the other parties of the action – Rule 5.10, *Alberta Rules.* **Thus, a party must provide all records material to the action; however a party can assert privilege over certain records (such as surveillance footage). Should privilege be asserted over surveillance footage, the grounds for objecting to production of the surveillance footage must be appropriately identified in the party's affidavit of records.**
		Authority	**Explanation/Additional Information**	**Surveillance Evidence for Impeachment**
		Pfeifer v Westfair Foods Ltd, 2004 ABCA 422 ["*Pfeifer*"]	*Pfeifer*, para 31: "where… the document has been withheld on the basis that it is to be used for impeachment of a witness, that has been treated as a permissible basis for admissibility of the evidence at trial notwithstanding its non-disclosure prior to trial." *Pfeifer*, para 32: "… where a party seeks to admit evidence properly withheld on the basis of privilege, [this] can be met by an adjournment of the trial, and if the court determines it was not proper for the party to wait until trial to waive privilege, a costs award can be made."	If the surveillance evidence is to be used for the purposes of impeachment, it does not need to be disclosed to other parties before trial. Should a party introduce nondisclosed evidence during trial for impeachment purposes, other parties to the action can ask for an adjournment, or an award of costs.
		Authority	**Explanation/Additional Information**	**Surveillance Evidence as Substantive Evidence at Trial**
		O'Scolai v Antrajenda, 2008 ABQB 77 ["*O'Scolai*"]	*O'Scolai* at para 30: "When [the video surveillance] will be relied on by a party, any privilege claimed over it will almost certainly be waived to comply with fairness and consistency."	If the surveillance is to be relied on by a party as evidence at trial, it no longer retains privilege. While there are no explicit Rules in the *Alberta Rules* that

				mandate timelines for when a party seeking to introduce privileged records into evidence is required to provide the same to other parties in the action, Alberta courts will consider whether fairness dictates that an adjournment should be granted, or costs awards against the party introducing the privileged evidence.
		Authority	**Explanation/Additional Information**	**Failure to Comply with the *Alberta Rules***
		Alberta Rules: R. 1.4, R. 1.5, R. 5.5, R. 9.15 and R. 9.16	Rule 5.12 of the *Alberta Rules* imposes a costs penalty on a party, who without sufficient cause, does not file and serve an affidavit of records in accordance with Rule 5.5.	Generally speaking, failure to comply with any procedural requirements or irregularities could result in the action being dismissed, set aside, or otherwise disposed of – Rule 1.4 and Rule 1.5 of the *Alberta Rules.* Under Rule 9.15, a party can apply to have the Court set aside, vary or discharge a judge or order.
NOVA SCOTIA **MURRAY J RITCH, QC** **RITCH WILLIAMS & RICHARDS** **(902) 429-3400**	Common law	Not required		
	NS Rule 14.08 NS Rule 15.02 Common law	No Presumption of full disclosure General duty to disclose of relevant, non-privileged documents No obligation to disclose documents subject to litigation privilege (document created for dominant purpose of actual or reasonably contemplated litigation)	General duty to disclose includes the disclosure, to the extent possible without infringing the privilege, of information about a document that is subject to claim of privilege: Rule 15.02(2)(b) Rule 51.02(2)(e) allows for the introduction, at trial, of a privileged document that was withheld despite the disclosure obligations (below) *See also* Rule 94.09 – withholding information solely to impeach (below)	
	Authority	**Surveillance as Evidence at Trial for Impeachment**	**Explanation / Additional Information**	
	NS Rule 94.09	For the sole purpose of impeaching credibility, a party may withhold a document or information that is otherwise subject to disclosure	Some uncertainty as to whether a party invoking Rule 94.09 must assert a claim for privilege	
	Authority	**Surveillance as Evidence at Trial for Substantive Evidence**	**Explanation / Additional Information**	
	NS Rule 51.02(2)(e)	Without diminishing the general disclosure obligations, and no later than the finish date, parties to give notice of decision to offer		

		"evidence that was the subject of a claim of privilege made by the party, but which the party decides to use as evidence in the proceeding"		
	Authority	**Failure to Comply With the Rules**	**Explanation / Additional Information**	
	NS Rule 51.03	Exclusion of evidence for non-compliance: if Rule 51.02 notice of evidence required but not given, or if evidence was required to be disclosed but was not, trial judge must exclude it unless party offering the evidence satisfies judge it would be unjust to do so	A trial judge that admits evidence despite non-compliance with the Rules must consider ordering indemnification for expenses caused by introduction of the evidence	
PRINCE EDWARD ISLAND **MURRAY J RITCH, QC** **RITCH WILLIAMS & RICHARDS** **(902) 429-3400**	PEI Rules 30, 31 and 53 *Llewellyn v Carter et al*, 2008 PESCAD 12 *Iannarella v Corbett, 2015 ONCA 110*		Prince Edward Island adopted Ontario's Civil Procedure Rules in 1990	
QUEBEC **JEAN-FRANÇOIS BILODEAU** **ROBINSON SHEPPARD SHAPIRO LLP** **(514) 393-7490**	The communication of personal information may be disclosed by an enterprise, without the consent of the person concerned on various ground as required by law as outlined at section 18 of the *Protection of Personal information in the private sector Act*, P-39.1. Personal information held by a public body may be disclosed to individual upon request: *Access to Documents Held by Public Bodies Act*, A.2.1, and art.9.	Quebec Civil Code of Quebec, 1991, c. 64, art 35 and Charter of Human Rights and Freedom, C-12, art 5. *Quebec Civil Code of Quebec,* 1991, c. 64, art 36. Charter of Human Rights and Freedom, C-12, art 49.	Every person has a right to the respect of his reputation and privacy. The privacy of a person may not be invaded without the consent of the person or without the invasion being authorized by law. The following acts, in particular, may be considered as invasions of the privacy of a person: (1) entering or taking anything in his dwelling; (2) <u>intentionally intercepting or using his private communications</u>; <u>(3) appropriating or using his image or voice while he is in private premises;</u> (4) keeping his private life under observation by any means; (5) using his name, image, likeness or voice for a purpose other than the legitimate information of the public; (6) using his correspondence, manuscripts or other personal documents. The unlawful interference with any rights of freedom recognized by the Charter entitles the victim to obtain the cessation of the interference and compensation resulting therefrom as well as punitive damages.	The Civil Code of Quebec provides for the administration of evidence and our courts will allow the video or camera surveillance if warranted by the circumstances. In Veilleux c. Compagnie d'assurance-vie Penncorp, 2008 QCCA 257, the Quebec Court of Appeal summarized certain principles: 1. The surveillance is admissible if justified on serious grounds. 2. The insurer or claimant must have factual elements before proceeding with the surveillance 3. The surveillance has to be as less intrusive as possible 4. Surveillance in public areas or outside a home is considered less 5. If surveillance has to be conducted it should come after other means have been used such as documentation or record research In this regard, the Quebec Court of Appeal in *Syndicat des travailleuses et travailleurs de Bridgestone/Firestone de Joliette (C.S.N.) v. Trudeau*, 1999 CanLII 13295 cited with approval an

				Alberta tribunal: "**In suspicious circumstances surrounding the medical condition of the grievor, the employer has every right to conduct a full investigation but only as a last step should it choose the intrusive alternative of invading the employee's privacy by conductiong surveillance. (Re Alberta Wheat Pool and Grain Workers' Union, Local 333 , 48 (L.A.C.) (4th) 341, p. 345, Referee B. Williams)"**
		Authority	**Key Topic/Issue**	**Explanation/Additional Information**
BRITISH COLUMBIA **KIM WIGMORE** **WHITELAW TWINING LAW CORPORATION** **(604) 891-7215**		ss. 1-5 of the *Privacy Act,* RSBC 1996, c. 373. *Unifor, Local 433 v Crown Packaging Ltd. (Giesbrecht Grievance),* [2014] BCCAA No 43 [*Unifor*]	Breach of privacy statutory cause of action (s. 1): s. 1(1) It is a tort, actionable without proof of damage, for a person, wilfully and without a claim of right, to violate the *privacy* of another. s.1(4) The Act does not define or provide examples but a violation of privacy need not involve trespassing; s. 1(4) of the Act. Collecting personal information by observing and filming can be a violation of a person's privacy rights in BC under the *Privacy Act*.	Exceptions to violation of privacy under s. 2(2) An act or conduct is not a violation of privacy if: (a) it is consented to by some person entitled to consent; (b) it was incidental to the exercise of a lawful right of defence of person or property; (c) it was authorized or required under a law in force in BC, by a court or by any process of a court; (d) it was that of (i) a peace officer acting in the course of his or her duty to prevent, discover or investigate crime or to discover or apprehend the perpetrators of a crime, or (ii) a public officer engaged in an investigation in the course of his or her duty under a law in force in BC, and was neither disproportionate to the gravity of the crime or matter subject to investigation nor committed in the course of a trespass.
		Privacy Act, RSC 1985, c P-21. *Freedom of Information and Protection of Privacy Act,* RSBC 1996, c 165 [*FOIPPA*].	Surveillance of the general public by Public Authorities involves collection of information about individuals and must be carried out in accordance with the federal *Privacy Act* and BC's *FOIPPA* when it is carried out by public authorities.	FOIPPA prohibits the collection of personal information by a "public body" or "local body" unless it is authorized by or under an Act or is done for the purposes of law enforcement, or relates to and is necessary for an operating program or activity of the public body (s. 26). Use is restricted to purpose for which it was obtained and had received consent. Disclosure by public body is prohibited except for the purposes set out in ss. 33.1 and 33.2.

		Personal Information Protection and Electronic Documents Act [*PIPEDA*] *Personal Information Protection Act,* SBC 2003 c 63 [*PIPA*] *Eastmond v Canadian Pacific Railway,* (2004) 254 FTR 169 [*Eastmond*].	Surveillance of public areas by Private Persons If video surveillance inherently concerns the collection of information about individuals (i.e. the fact of their presence and behaviour in a particular place at a particular time), then the restrictions of the *PIPEDA* and in BC, the *PIPA* are engaged. In *Eastmond*, Federal Court of Canada ("FCC") appeared to accept the proposition that video surveillance does amount to a collection of personal information for the purpose of *PIPEDA*, at least if video images are actually viewed at some point.	PIPEDA and PIPA are the federal and provincial Acts that govern the collection, use and disclosure of personal information by the private sector and requires that the collection of personal information takes places only with the knowledge and consent of the individual to which it relates except in specific cases. However, with regard to video surveillance in the workplace, one case in BC by the BC Information and Privacy Commissioner, *Schindler Elevator Corp. (Re),* [2012] BCIPCD No 25, states that the Office of the Information and Privacy Commissioner of BC has not adopted the factors applied in *Eastmond* or in decisions of the federal Privacy Commissioner, differentiates *PIPEDA* from *PIPA*, and concludes that the approach taken under *PIPEDA* should not be applied under PIPA (para 138).
		Personal Information Protection Act, SBC 2003 c 63 [*PIPA*] as explained in *Unifor*	*PIPA* allows organizations to "collect, use or disclose personal information [including video surveillance evidence] for purposes that a reasonable person would consider appropriate in the circumstances" (s. 2 Purpose and s. 4 Compliance with Act). Consent not required when reasonable for an investigation or proceeding under s. 12(1)(c) Collection of personal information without consent.	A claim of right can arise under *PIPA* if it satisfies the statute's provisions allowing it to invade a person's privacy. Normally, an organization must not collect personal information unless the individual consents or the statute authorizes the collection (s. 6 Consent required). However, collection without consent is authorized if, among others, "it is reasonable to expect that the collection with the consent of the individual would compromise the availability or the accuracy of the personal information and the collection is reasonable for an investigation or a proceeding" under s. 12(1)(c) of *PIPA.* An "investigation" can be undertaken "if it is reasonable to believe that [a] breach, contravention, circumstance, conduct, fraud or improper trading practice in question may occur or may have occurred" (s. 1 "investigation").
		R v Creemer and Cormier, [1968] 1 CCC 14 (NSCA) [*Creemer*]	Admissibility of video surveillance evidence depends on 3 factors: (1) its accuracy in truly representing the facts; (2) fairness and the absence of any intention to mislead; and	

			(3) verification of the video evidence on oath by a person capable of doing so	
		Adamson v Charity, 2007 BCSC 671 [*Adamson*] as cited in *Chong*. (disclosure required) Rule 12-5(10) of the BC *Supreme Court Civil Rules,* Reg 168/2009	3 arguments against the admissibility of video surveillance evidence: (1) the failure to meet the three-part test from *Creemer*; (2) late disclosure of its existence in its List of Documents; and (3) failure to comply with Rule 12-5(10) Opportunity to Inspect Exhibit of the BC *Supreme Court Civil Rules*	Full Disclosure of video tapes required for plaintiff's inspection Rule 12-5(10) Opportunity to Inspect Exhibit of the BC *Supreme Court Civil Rules* states that "Unless the court otherwise orders or the parties of record otherwise agree, no plan, photograph or object may be received in evidence at the trial of an action unless, at least 7 days before the start of the trial, the parties of record have been given an opportunity to inspect it." *Adamson* is binding authority for the proposition that the provision of surveillance logs and notes of the investigators is not a requirement or condition for the admissibility of the video surveillance evidence under Rule 12-5(10).
		Oates v Burton, 2016 BCSC1428 [*Oates*] See paras 16-21.	Rule 12-5(10) only applies to privileged documents Non-privileged documents are captured by general disclosure principles under Rule 7-1 (para 10)	Rule 12-5(10) requires counsel for a party to decide whether he or she wishes to waive the privilege associated with a "plan, photograph or object" and make it available for inspection at least 7 days before trial so it can be used at trial. Therefore a judge or master of the court must first determine whether an item is "privileged" before relying on Rule 12-5(10) to dismiss an application for production.
			Some core principles relevant to determining whether a certain evidence enjoys litigation privilege: (1) litigation privilege is a narrow exception to the principle of full disclosure (2) the onus generally lies with the party asserting litigation privilege to establish that privilege (3) litigation privilege is established on a document-by-document basis a. was litigation in reasonable prospect at the time the document in dispute was created? and; b. if so, was the dominant purpose for the document's creation for use in litigation? (4) each document must be assessed at the time it was created if a document is created for a dual purpose, one of which is not for use in litigation, it must be produced	