Ontario court awards over $22 million in landmark clinic surveillance privacy class action

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In *J.C. et al. v. Jugenburg et al.*, 2026 ONSC 3061, the court found that a plastic surgeon breached his duties to patients and intruded on their privacy by installing surveillance cameras throughout his clinic. This is the first time a court has found that recording footage alone, even if it was not viewed or shared, can result in liability for the tort of intrusion upon seclusion. The court awarded $21.5 million in aggregate damages for the class of roughly 7,000 patients for intrusion upon seclusion, and $1 million in punitive damages.

Key takeaways: privacy risks and legal exposure from surveillance in patient care areas

- For healthcare facilities, the standard of care is to not have cameras where patients are receiving care, disrobing or being examined, unless the cameras are required for a medical purpose, such as patient observation, or supporting treatment and quality of care. The court in the Jugenburg case provided examples of possible exceptions, without going into the details. Health care facilities should carefully consider where they place cameras in patient care areas.
- Recording footage of intimate or private interactions can constitute an intrusion upon seclusion, even if the footage was not viewed, used, or disclosed.
- Aggregate damages can be awarded for intrusion upon seclusion, even if some class members were not upset or offended by the intrusion.

Background

Dr. Jugenburg installed 24 security cameras throughout his private clinic, including in consultation rooms where his patients would disrobe, as well as in the operating room and the pre- and post-operative areas.

Although the cameras were not hidden, they were not readily noticeable, and the court found that the two signs in the clinic did not adequately alert patients to the surveillance. The court rejected Dr.Jugenburg's claim that the cameras were installed for security purposes, finding instead that they were intended to allow him to review footage in

response to patient complaints and to protect his own interest. The court accepted there was no evidence of voyeurism or disclosure of the footage to anyone.

There were many proceedings and investigations into this matter before the common issues trial. A CBC Marketplace investigation brought this issue to light in 2018. The Information and Privacy Commissioner of Ontario investigated the Clinic's use of cameras and found that it contravened the *Personal Health Information Protection Act, 2004.* The College of Physicians and Surgeons of Ontario, after considering the matter, suspended Dr. Jugenburg's license for six months.

Dr. Jugenburg breached the standard of care and his fiduciary duties to patients

The court held that the standard of care prohibits having cameras in clinic spaces where patients receive care or consult with their healthcare providers, unless the cameras are required for a medical purpose, such as patient observation, or supporting treatment and quality of care. The court noted that the standard of care is not necessarily met by informing patients of the presence of cameras, or obtaining consent, because patients are often in a vulnerable position when seeking care, raising concerns about whether their consent would be truly valid.

The court also concluded that Dr.Jugenburg breached his fiduciary duty after finding that the surveillance was for his sole benefit, and not for security of the clinic or the benefit of patients.

The court did not decide if liability flowed from these breaches because causation and damages could not be established on a class-wide basis.

Dr. Jugenburg intruded upon the seclusion of his patients

The court found the 3-part test for the tort of intrusion upon seclusion was made out. The first element of the tort is that the invasion must be into the plaintiff's private affairs and without lawful justification. The court held that patients had a reasonable expectation of privacy in consultation rooms and treatment areas and that recording patients in those spaces constituted an intrusion into their private affairs.

The court found that the second element of the tort, that the invasion was intentional or reckless, was satisfied. The court was unconvinced by Dr. Jugenburg's evidence that he did not believe there was anything unlawful about his surveillance system so long as he maintained the confidentiality of the footage and did not disclose it to anyone else, finding instead that he "knew exactly what he was doing and that it was wrong". Going further, the court held that it is not necessary for a defendant to know that the invasion was unlawful for the second element to be proven.

The court also found that the third element of the tort, that the invasion would be highly offensive to a reasonable person was met, since a reasonable person would regard the conduct as being highly offensive, causing distress, humiliation or anguish. Although most of the footage was never viewed, and it was automatically deleted after several

months, the court concluded that recording intimate patient interactions in a medical clinic without a patient's knowledge or consent, and for no medical purpose, was a serious and highly offensive intrusion.

The court awarded over $22 million in damages

The court awarded $21.5 million in aggregate damages for intrusion upon seclusion.

Although some patients testified that the cameras did not upset or offend them, the court did not find that evidence persuasive or inconsistent with an aggregate damages award. The court held that intrusion upon seclusion relies on an objective test and that aggregate damages are based "not on what's accurate but what's reasonable".

The court fixed damages at $5,000 per person for those who attended surgical appointments and who likely had to disrobe, and at $500 per person for those who attended non-surgical or injectable appointments.

Finally, finding that Dr. Jugenburg abused a position of trust and betrayed his patients, the court awarded $1 million in punitive damages.

It is not known yet if Dr. Jugenburg will appeal this decision.

For more information on the potential impact of this decision, or on privacy class actions in the healthcare context more generally, please reach out to any of the key contacts listed below.

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