


Legal Issues in Use of Technologies

Elaine Gibson
Associate Director
Dalhousie Health Law Institute

Issues to be Discussed

- Who owns the electronic health record?
 - Potential liability:
 - info intermediaries
 - suppliers of info
 - reliance on manufacturers
 - Privacy and surveillance
- 

Who owns the EHR?

- ???
- 2 aspects:
 - custodian/steward responsibilities & rights
 - patient right of access/control



Data Stewards



- Proper security/retention
- Use for purpose collected
- Use/disclose for other purposes with consent
- No consent:
 - Ensure within law
 - Disclose minimum amount necessary for purpose
- Ensure accuracy of record

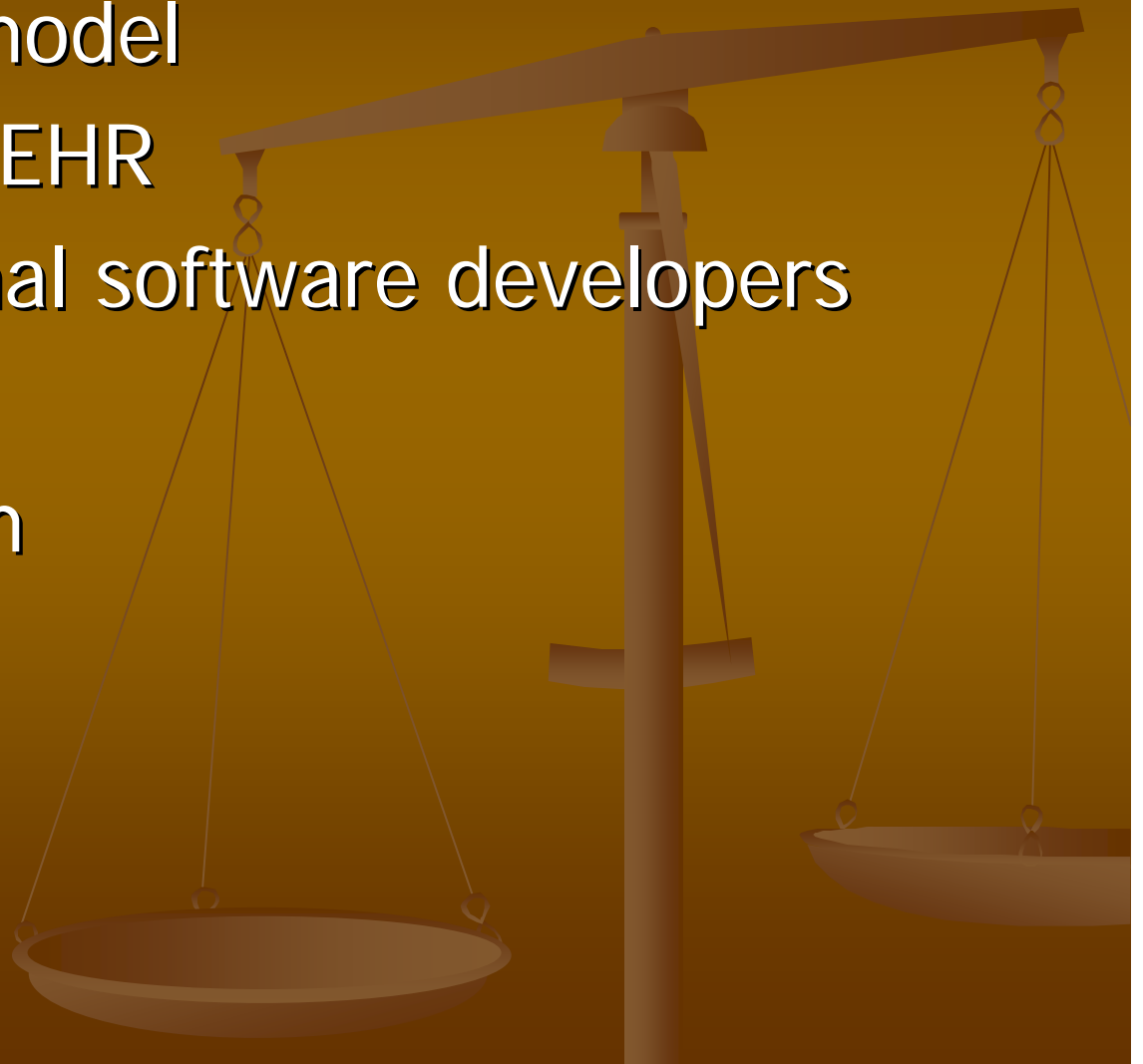
Patients

- Right to know what info held
- Right to access info
- Right to have corrections on record



Remaining Issues

- Control v. risk model
- Value added to EHR
- Extrajurisdictional software developers
- Lock boxes
- Access by whom
- Etc....



Liability

- Information intermediaries
- Suppliers of online information
- Healthcare providers' reliance on negligently designed equipment



Potential Areas in Law

- Contract
- Tort/negligence



Contract

- Offer and acceptance
- Consideration for services
- Reasonable expectations implied



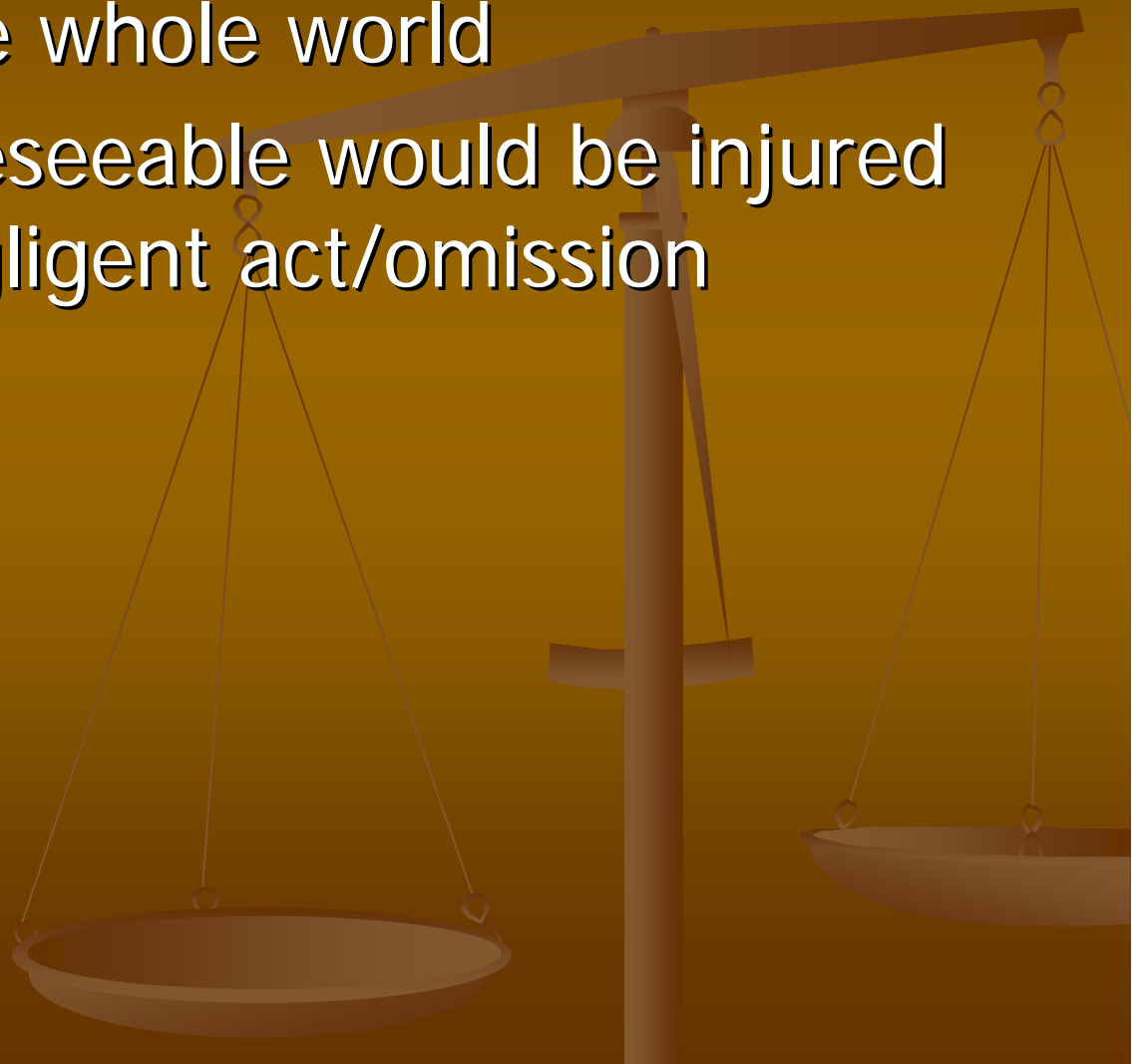
Tort/Negligence

- Duty of care
- Injury
- Causation
- Lapse in standard of care
- Lack of remoteness



Duty of Care

- Not owed to the whole world
- Reasonably foreseeable would be injured due to your negligent act/omission



Injury

- Not emotional distress



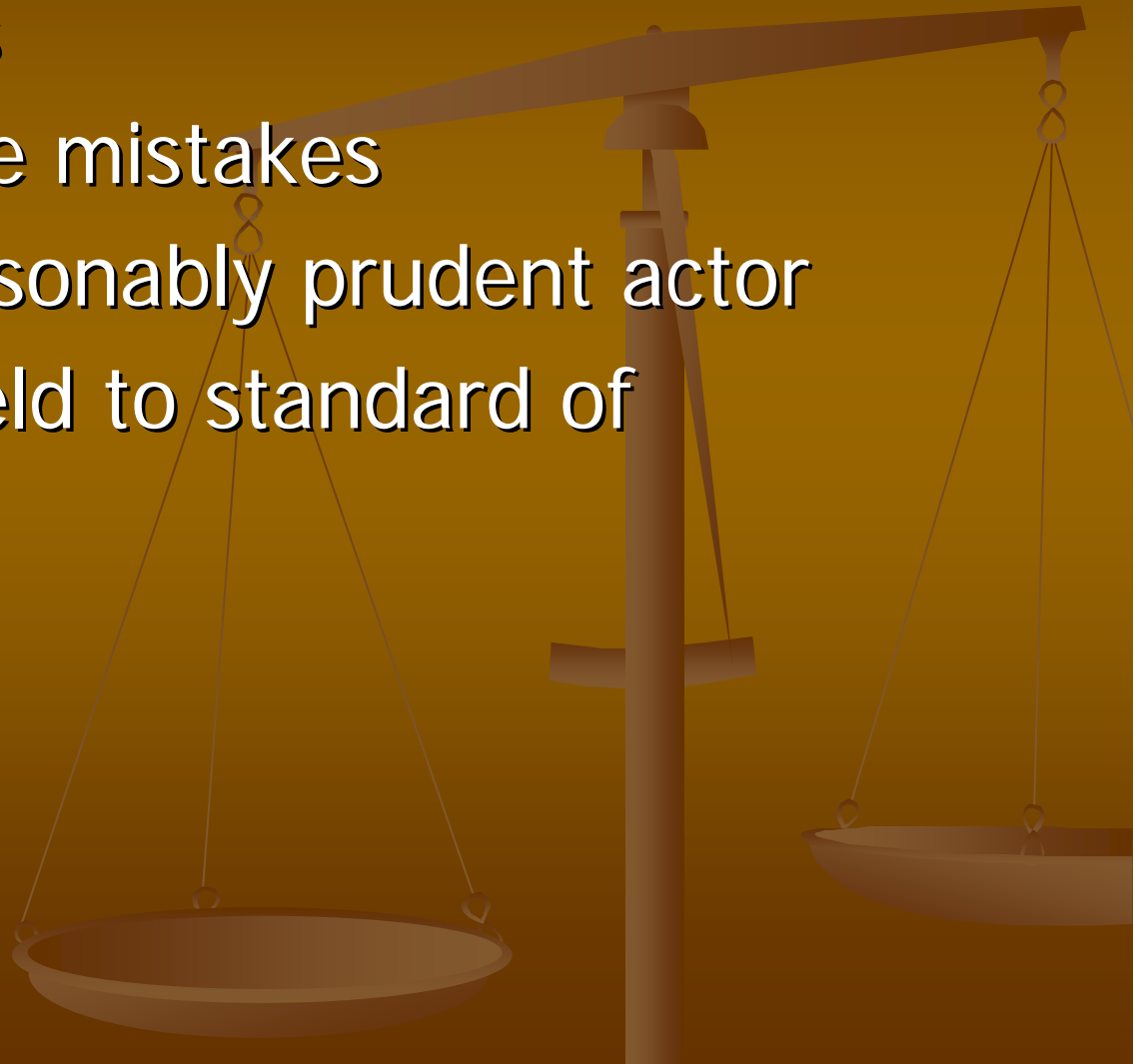
Causation

- Action/failure to act must lead to injury



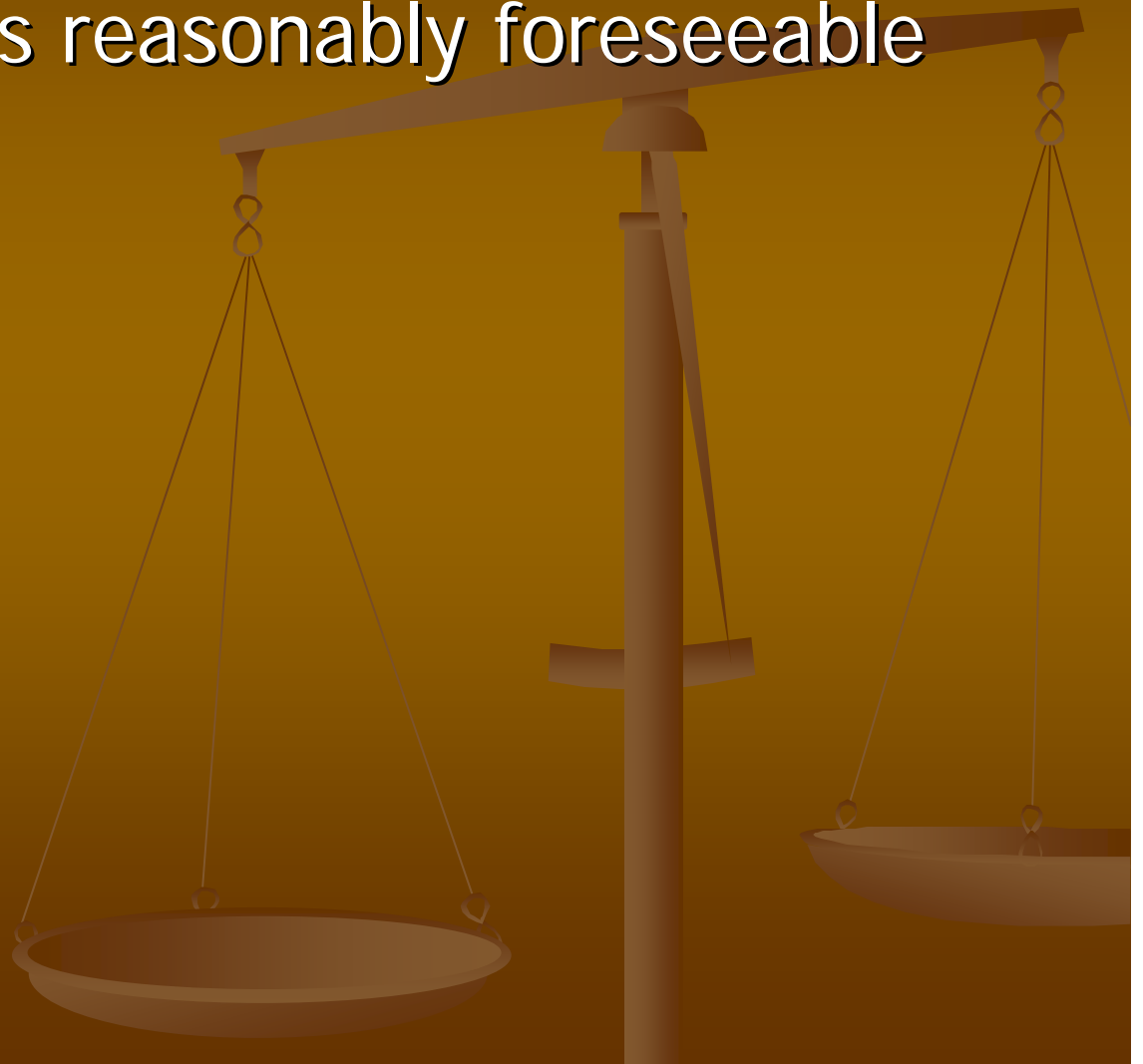
Lapse in Standard of Care

- Reasonableness
- Allowed to make mistakes
- Standard of reasonably prudent actor
- Professionals held to standard of profession



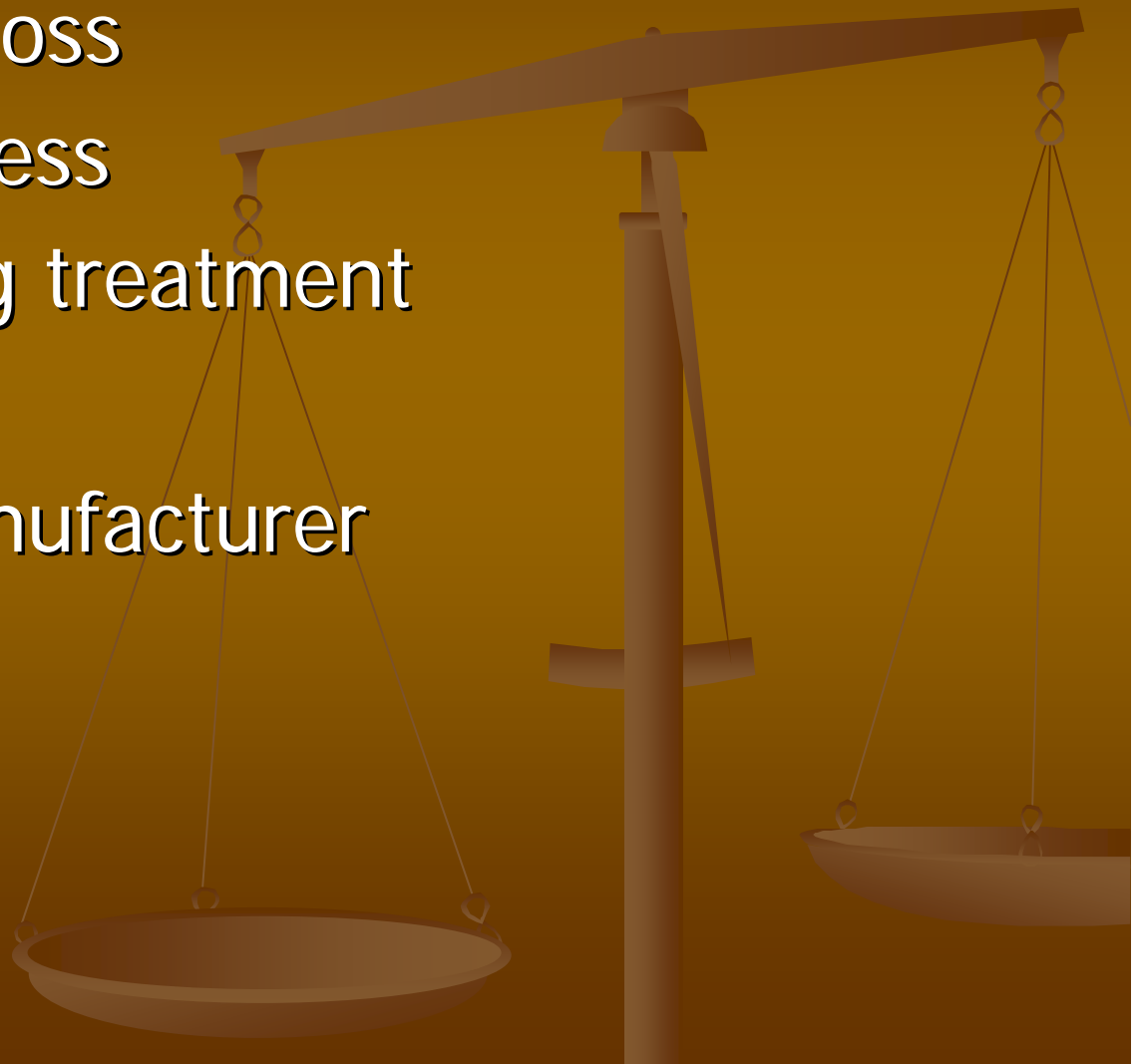
Lack of Remoteness

- Course of events reasonably foreseeable



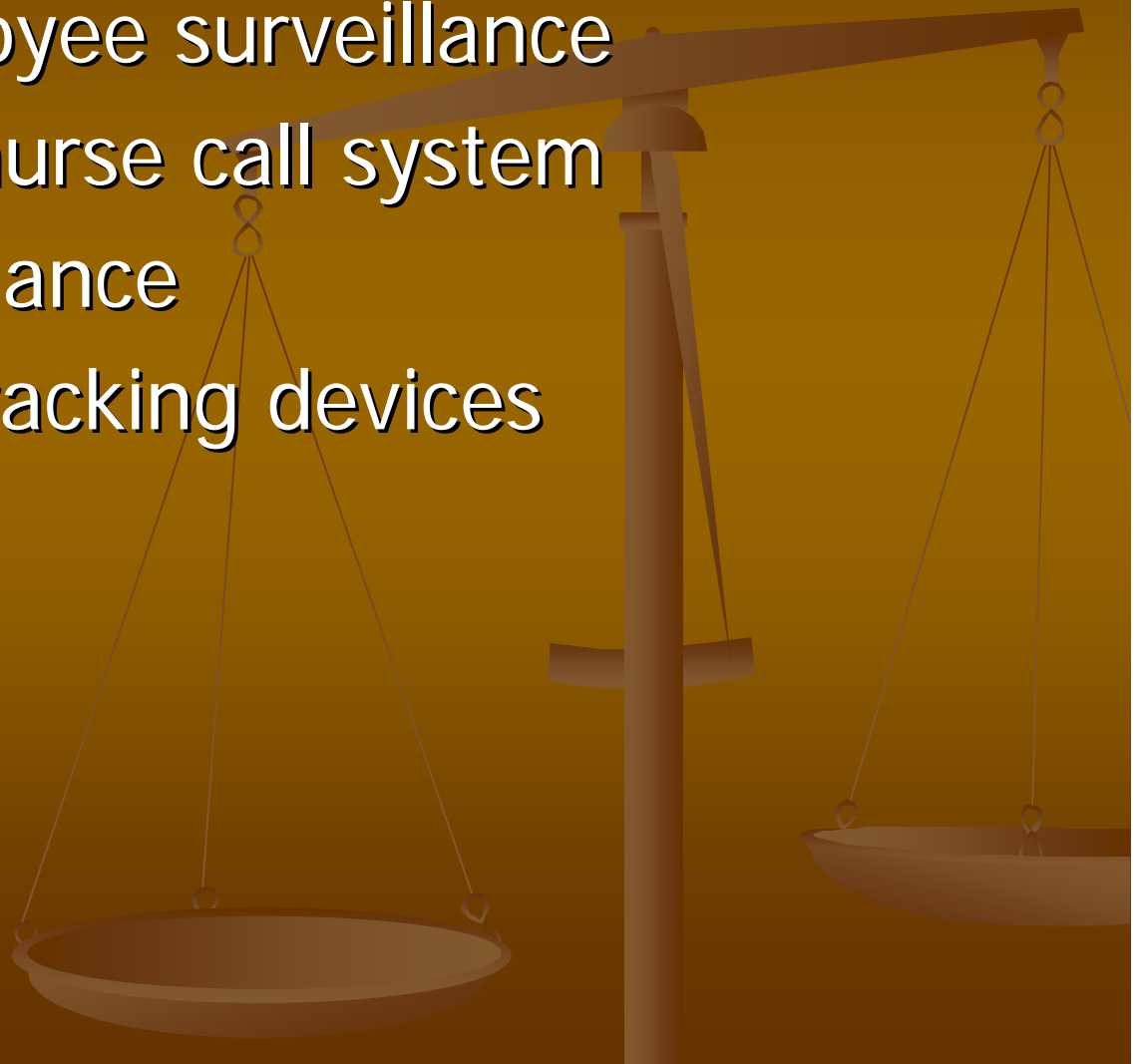
Other Issues

- Pure economic loss
- Psychiatric distress
- Delay in seeking treatment
- Disclaimers
- Reliance on manufacturer



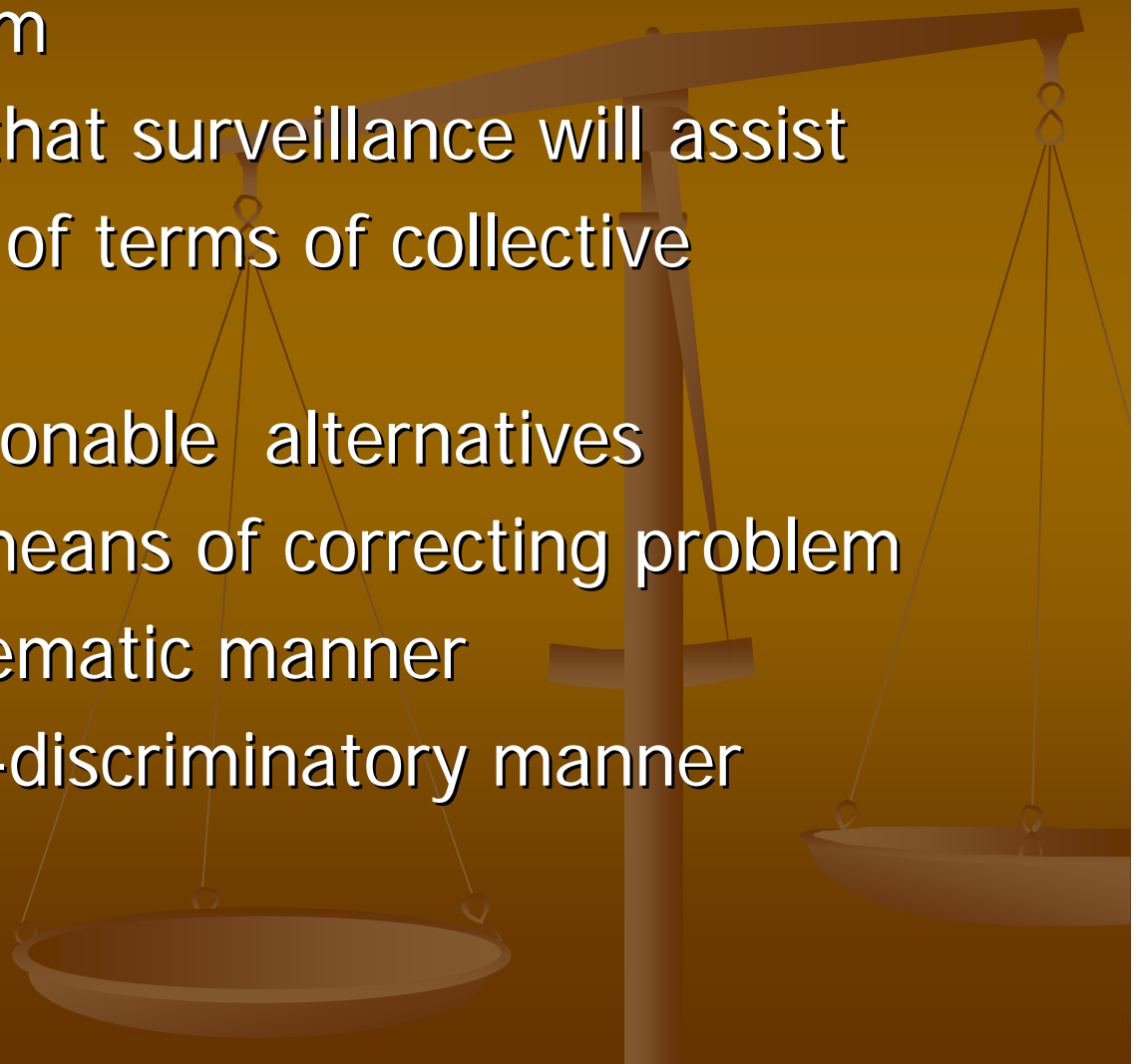
Privacy and Surveillance

- Employer/employee surveillance
 - e.g. wireless nurse call system
- Systems surveillance
 - e.g. cookies/tracking devices



Factors re Workplace

- substantial problem
- strong possibility that surveillance will assist
- not contravention of terms of collective agreement
- exhausted all reasonable alternatives
- no less intrusive means of correcting problem
- conducted in systematic manner
- Conducted in non-discriminatory manner



B.C. Privacy Act

- s. 1(2) The nature and degree of privacy to which a person is entitled in a situation or in relation to a matter is that which is reasonable in the circumstances, giving due regard to the lawful interests of others.
 - (3) In determining whether the act or conduct of a person is a violation of another's privacy, regard must be given to the nature, incidence and occasion of the act or conduct and to any domestic or other relationship between the parties.
- 