

**Civil Litigation****Smart doorbells and invasion of privacy, part one**By **Barb Cotton** and **Christine Silverberg**

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In a recent Alberta Court of Queen's Bench case, *Lupuliak v. Condominium Plan No. 8211689*, 2022 ABQB 65, Justice Colin C.J. Feasby considered a matter arising when one condominium owner installed a Ring brand doorbell ("smart doorbell"), surveilling her neighbour and all who walked down a common hallway. The neighbour felt that the doorbell, in particular its video function, was an invasion of her privacy, a violation of the *Alberta Personal Information Protection Act, SA 2003, c P-6.5*, and further she felt harassed and intimidated by the surveillance.

Although Justice Feasby reviewed cases constituting "tortious nuisance," where security cameras have captured activity on another's property resulting in "a substantial and unreasonable interference with the use and enjoyment of land" (paras. 82 to 84), and despite the privacy breaches asserted by her neighbour, Justice Feasby resolved the matter within the context of condominium law and the bylaws of the condo corporation, without relying on the common law tort of invasion of privacy, or, in its narrower application, the tort of intrusion upon seclusion, or the tort of nuisance.

Although there are cases giving rise to court attention with respect to private homeowners using smart doorbells or video cameras, such an analysis has seldom occurred in the context of condominiums, which makes *Lupuliak* of interest. In this two-part series of articles we will discuss two recent cases with very different results, both of which responded to claims of breach of privacy by neighbours living

in a condominium complex — the Alberta case of *Lupuliak* (part one) and the recent Manitoba case of *Zeliony v. Dunn* 2021 MBQB 136 (part two).

In *Lupuliak*, the offending condominium owner claimed she had installed the smart doorbell because her unit had been broken into. She installed surveillance cameras on the exterior of the building, which captured video and audio from her patio, and installed the Ring doorbell on the door to her unit which led to the common hallway. The smart doorbell was motion activated and allowed her to take video and audio recordings of all those coming and going in the hallway, and in particular the unit owner right across the hallway.

As characterized in the case, *Lupuliak* “weaponized” the smart doorbell by sending captured videos of her neighbour to Alberta Health Services, claiming she was in breach of health orders, which resulted in the neighbour being investigated. Videos of her neighbour were also sent by *Lupuliak* to the Calgary Police Service and the Alberta Privacy Commissioner. At one point, the neighbour “saluted” the camera in the smart doorbell with an offensive gesture. *Lupuliak* posted this video to the Internet and joined the employer of the videotaped neighbour in a hashtag.

The matter was brought up at the annual general meeting of the condominium corporation, and in a unanimous vote the condo residents agreed that *Lupuliak* should be asked to remove the Ring doorbell. *Lupuliak* refused. A letter was sent by a lawyer representing the condo board requesting the removal of the Ring doorbell, which was followed up by a letter from the property manager of the condo giving *Lupuliak* a deadline within which to remove the smart doorbell. One day before the deadline was to expire counsel representing *Lupuliak* applied to the court by way of Originating Application for a declaration that she need not remove the doorbell.

*Lupuliak* claimed that the condo board was acting oppressively towards her in that they had selectively enforced their bylaws over the years, leading to her reasonable expectation that she could install the Ring doorbell.

The condo bylaws required that a unit owner:

1. not make any additions or alterations to the exterior of their unit without first obtaining board approval;
2. not unreasonably interfere with the use and enjoyment of the common property by other owners; and
3. not use their unit to cause a nuisance or a hazard to any occupant of another unit.

Over the years other unit owners had altered their front doors to put in peepholes and keypads, without prior board approval.

In Alberta there is only a statutory remedy for invasion of privacy in the context of distribution of intimate images on the Internet without the other party's consent. In many other provinces there is a general statutory remedy for invasion of privacy. In many provinces there are the common law torts of intrusion on seclusion and nuisance.

Justice Feasby was able to fashion the effective remedy of enjoining Lupuliak to remove the Ring doorbell within the context of enforcing the bylaws of the condominium and, in accordance with the condominium bylaws, full legal costs were also awarded to the successful neighbour.

Justice Feasby stated:

[85] Ms. Lupuliak's conduct in using the video footage captured by the doorbell to bolster her complaints about the Respondents to the Calgary Police Service, Alberta Health Services, and the Alberta Privacy Commissioner, along with her posting video footage from the doorbell on social media, was improper. The weaponizing of the doorbell in this fashion validates all of the concerns expressed by the Respondents and is not conducive to peaceful co-existence in the context of a condominium complex such as Riverhill Gardens.

In view of Lupuliak's legitimate security concerns, Justice Feasby suggested the following approach by condo boards:

[90] [I]n the present case, the better course for Ms. Lupuliak after the attempted break-in at her unit would have been to petition the Condominium Board for increased security measures for the building, including in its common areas. Had she raised this concern, the Condominium Board should have taken her suggestion seriously. For instance, a security system with video, operated by the property manager and paid for by the Corporation, would not have raised the same privacy concerns and would have cost much less for everyone involved, both emotionally and monetarily, than this litigation.

In part two of this series, we will review a recent decision from Manitoba that examined the privacy torts in addition to basic condominium law in assessing the repercussions of an installation of a Ring doorbell, but nonetheless came to the opposite conclusion.

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**Civil Litigation****Smart doorbells and invasion of privacy, part two**By **Barb Cotton** and **Christine Silverberg**

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In part one of this two-part series, we discussed a recent Alberta case, *Lupuliak v. Condominium Plan No. 8211689*, 2022 ABQB 65, wherein a breach of privacy by the installation of a Ring doorbell ("smart doorbell") to surveil a common hallway in a condominium by the offending unit owner was enjoined as a breach of the condominium bylaws.



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In another case of alleged breach of privacy by the installation of a Ring doorbell to surveil a common entryway, *Zeliony v. Dunn*, 2021 MBQB 136, the action was dismissed, seemingly because the surveilled parties had largely brought it on themselves by vandalizing the other party's property. The installation of the smart doorbell was found to be reasonable as an exercise of the defendant's lawful right to

defend his property.

In *Zeliony*, the plaintiffs and defendant shared a common entranceway. The plaintiffs — husband and wife — apparently took it upon themselves to tamper with the porch light of the defendant so that the husband could smoke outside undeterred by insects, which were attracted to the light. The defendant installed a security camera inside his storage locker in the common entryway and installed a smart doorbell to learn who was vandalizing his porch light.

The security camera installed by the defendant was vandalized and the Ring camera taped over on several occasions. The property manager at the condo building

attempted to mediate the situation and, at his request, the defendant disabled the motion control feature of the surveillance and limited the range of the video surveillance. The decision suggests that the plaintiffs were caught on the video vandalizing the property of the defendant.

Although the plaintiffs eventually moved out of the building, they sued the defendant for invasion of privacy under the *Privacy Act* of Manitoba, for the torts of intrusion upon seclusion and nuisance and claimed damages for wilful infliction of nervous shock. They also sued the condo corporation in negligence for not addressing the issue of surveillance. The plaintiffs claimed non-pecuniary damages in the amount of \$20,000 and for the diminished sale price of their condo unit, as they felt they had to sell on a rushed basis.

In the result the judge, Associate Chief Justice Shane I. Permutter, found that the plaintiffs had vandalized the property of the defendant and that the defendant was justifiably defending his property in installing the smart doorbell: “[His] evidence is uncontradicted and his explanation about why he installed the doorbell camera is sensible in the circumstances” (para. 21).

The plaintiffs’ claims were summarily dismissed and damages provisionally assessed at \$2,000. The court noted that the plaintiff wife had waited for over two years before she sought medical help for her alleged anxiety and insomnia caused by the surveillance. In the court’s view, the evidence did “not support a non-pecuniary damage award beyond a nominal amount whether for invasion of privacy, intrusion upon seclusion, nuisance, wilful infliction of nervous shock or negligence” (para. 56). The claim against the condo corporation was also summarily dismissed.

In *Lupuliak*, which we discussed in part one, the claims before the court appeared to directly relate to breaches of condominium bylaws and not specific claims of civil wrongs (torts) for which the court can impose liability. In *Zeliony*, however, the plaintiff sought damages for invasion of privacy, intrusion upon seclusion,

nuisance and wilful infliction of nervous shock arising from the installation of the smart cameras.

With the growth in availability of smart cameras and doorbells, and an increasing focus on privacy, it is highly likely that there will be a growth in litigation between condominium unit owners as a result of equipment installed capable of surveilling on common property, and potentially violating the rights of others by invading or interfering with their privacy. It is also likely that there will be increased scrutiny on the policies of condominium corporations governing such installations and in a broader sense, ensuring the property is secure and policies contribute to the safety of residents.

This is the second of a two-part series. Read the first article: Smart doorbells and invasion of privacy, part one.

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