

CANADA / JUDGMENT

R. v. Abo Zead

2020 BCSC 2145

COURT

Supreme Court of British Columbia

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2020 BCSC 2145 R. v. Abo Zead

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Abo Zead,

2020 BCSC 2145

Date: 20201113

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Registry: New Westminster

Regina

v.

Ayman Sobhy Abo-Bakr Abo Zead

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Corrected judgment: The text of the judgment was corrected on the front page where changes were made on August 12, 2021.

Before: The Honourable Madam Justice Sharma

Oral Ruling on Voir Dire regarding CCTV Footage

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Place and Date of Trial/Hearing:

New Westminster, B.C.

November 2-6, 2020

Place and Date of Judgment:

New Westminster, B.C.

November 13, 2020

I. INTRODUCTION

- [1] Mr. Abo Zead brings this application to exclude evidence pursuant to s. 24(2) of the Charter. The evidence at issue is CCTV video footage recorded in July 2017 and related information about his association with the building where the footage was recorded. The video and related information were obtained without a warrant or production order. This is my ruling regarding whether the warrantless search and seizure breached his rights as guaranteed under s. 8 of the Charter.
- [2] Mr. Abo Zead (the "applicant") faces five counts from an indictment dated April 9, 2020. The counts include trafficking in firearms (including trafficking a prohibited firearm) and ammunition, and conspiring to traffic in firearms and ammunition, contrary to ss. 99 and 465(1) of the Criminal Code. The incidents giving rise to the charges are alleged to have taken place in Surrey in the summer of 2017.

II. BACKGROUND

- [3] There is little to no dispute about the underlying facts. In addition, an admission of facts was entered into evidence for the purpose of this voir dire only.
- [4] A summary of the most pertinent facts from that admission follows:
- a) The Vancouver Police Department ("VPD") initiated an investigation called Task Force Tourniquet to suppress violence and further casualties that had resulted from gang conflicts in the Lower Mainland.

- b) Project Tariff was a subsidiary investigation under the Tourniquet umbrella. Project Tariff conducted undercover investigations aimed at Harjot Samra from mid-April to early August 2017. The applicant was not a target of Project Tariff.
- c) Initially the purpose of Project Tariff was to investigate allegations of extortion and drug trafficking. However, the investigation shifted in late June 2017 when undercover officers engaged in negotiations with Mr. Samra for the purchase of what they believed to be illegally-trafficked firearms.
- d) Ultimately, Mr. Samra transferred eight firearms to undercover officers on six different occasions. Details of those transactions are included in the admission, and the information relevant to this voir dire includes:
 - i. On July 4, 2017, Mr. Samra delivered a firearm to an undercover officer and indicated that "his buddy from Surrey" could supply more guns for sale.
 - ii. Other undercover officer purchases of firearms occurred on June 28; July 20, 21, 25, and 27, 2017.
 - iii. In the July 27 transaction, Mr. Samra and two other people delivered rifles and ammunition to a police drop vehicle, but then returned later and stole those items back. Police surveillance followed the men back to a residence associated with a person named F.J. Police executed a search warrant of F.J.'s residence and found the stolen rifles.
- e) All firearms involved in the undercover purchases functioning, and capable of causing death or serious bodily injury. Additionally, the shotgun involved in the July 21 transaction was a prohibited firearm.
- f) At no time did Mr. Samra have authorization for the possession or transfer of the firearms under the Firearms Act.
- [5] Four witnesses testified at the voir dire: three police officers and one civilian. The civilian was Adhiraj Brar, who, at the relevant time, was the manager of a complex of apartment buildings in Surrey. In early July 2017, he was contacted by a tenant of one of the buildings in the complex he managed. The tenant observed suspicious activity at one of the buildings located at 14950 105th Avenue in Surrey (the "building").
- [6] Mr. Brar responded to that complaint by reviewing the relevant CCTV video footage. After reviewing it, he contacted the RCMP because he believed a suspicious transaction had occurred. Constable Alexander Avram of the Surrey RCMP was directed to respond to Mr. Brar's call. He met with Mr. Brar on July 10. Mr. Brar showed him the CCTV video footage that captured what Mr. Brar and his tenant believed to be suspicious activity.

- [7] Mr. Brar testified that the building had four CCTV cameras. One camera captured images in the main lobby looking out towards the entry way. Cameras were also placed to capture images at two other locked entrances to the building: one on the west side of the building, and one on the south side. A fourth camera captured images from the mail room.
- [8] The cameras are activated by motion sensors and so do not record continuously. The seized footage consists of a series of clips, each relatively short in duration, often less than a minute.
- [9] Mr. Brar copied 10 clips from the CCTV captured video from July 5, 2017, onto a USB stick that Constable Avram had brought with him. Non-continuous images from seven of those clips were of most interest.
- [10] The clips cover a range of about seven minutes and show a male in a red shirt, later identified as probably being F.J., talking on a cellphone and walking up to one of the locked entrances. He knocks and waits and looks up towards where the camera is. He appears to wave a person over and an unidentified male walks over. The male in the red shirt points directly at the camera and the other man turns and looks directly into the camera. They have a conversation and the unknown man hands over cash. The man assumed to be F.J. counts the cash and then returns to his phone. Shortly thereafter, he is able to open the door and he and the other man step inside. Very shortly after that, the unknown man walks out carrying a long object concealed in fabric, followed by the person assumed to be F.J., and within seconds, a man identified by witnesses as the applicant rushes out of the same door.
- [11] Constable Avram testified that he recognized the applicant as the man rushing out of the building in the video clip. His recognition was aided by viewing another clip which showed what he believed to be the same person at the lobby entrance. He believed it to be the same person because he was dressed in the same clothing, but the clip from the lobby showed a better image of the person. By viewing both, Constable Avram identified the male in the black clothing as the applicant.
- [12] He recognized him because he had conducted curfew checks of the applicant at the building no more than five times before his attendance at the building. He specifically recalled that he checked on the applicant at Unit 311 in the building.
- [13] Constable Avram did not recognize the other two people depicted in the video. He confirmed that he formed the opinion that the activity was suspicious and may have been a transaction for the purchase of a firearm.
- [14] Mr. Brar voluntarily provided a copy of the relevant footage to Constable Avram.
- [15] Upon return to the detachment, the constable notified the supervising officer of the video obtained. It was also shared with the Criminal Intelligence Section. Surrey RCMP issued a real-time intelligence bulletin which contained stills captured from the seized CCTV video seeking identification of the man who appeared to buy the firearm.

- [16] The bulletin identified F.J. and stated that the location where the images were captured was associated with the applicant who was also named in the bulletin.
- [17] The information on that bulletin was discussed at Project Tariff's morning briefing on August 1, 2017 and, as a result, two officers were directed to attend at the building: Constable Robert Jaberg and Constable Michael Bal.
- [18] Both testified at the voir dire and confirmed the Surrey file was of interest because it contained information connected to their investigation - the depiction of F.J., who was a target. Constable Bal added that he understood the footage may be relevant or connected to an undercover gun purchase that had occurred prior to July 5.
- [19] The witnesses' testimony was consistent that Mr. Brar told them, while watching the footage, that the applicant was depicted in the video and that he lived in the building. Before he attended at the building, Constable Jaberg was aware of the applicant's name and that he was possibly captured in the videos, but he did not know that the applicant lived in Unit 311 until Mr. Brar, without prompting, told him.
- [20] Mr. Brar gave the officers nine clips from July 5 which were nearly identical to what he had given to Constable Avram.
- [21] Constables Jaberg and Bal returned on August 8, 2017, to review CCTV footage from other dates. Specifically, they looked at footage on three of the dates associated with known undercover gun transactions: July 20, 25, and 27. Nothing of interest occurred on July 20 and 27, but they did see information of interest in the video clips from July 25 and so seized 14 clips from that date. Briefly stated, the images of most interest depicted a man, who the officers believed was F.J., and the applicant walking awkwardly out of one of the locked doors. The officers believed the two men were concealing something in the pockets of their shorts, which accounted for their awkward gait.
- [22] Constable Bal confirmed that he asked for any documents related to Unit 311 and Mr. Brar voluntarily turned over the tenancy agreement and an ICBC document, both of which related to the applicant's mother.
- [23] The police officers did not have a warrant or court order to search or seize any of the video entered into evidence at this voir dire, thus giving rise to the application.

III. LEGAL PRINCIPLES

- [24] There is no dispute about the general legal framework applicable to this application, but the parties differ on the significance of the analysis and conclusions in an unpublished decision of Justice Ker, which is currently the subject of a publication ban. I will first review what I understood to be the undisputed legal principles.

- [25] Section 8 of the Charter of Rights and Freedoms guarantees everyone the right to be secure from unreasonable search or seizure. As set out in *R. v. Plant*, [1993] 3 S.C.R. 281 at 291, the purpose of s. 8 is to protect against state intrusion on an individual's privacy. Section 8 protects people, not property. Therefore, it is unnecessary for an applicant to establish any proprietary interest in anything that has been seized.
- [26] In *R. v. Tessling*, 2004 SCC 67 at paras. 17-18, the Supreme Court of Canada commented on the balance that needs to be struck in s. 8 jurisprudence between citizens' reasonable expectations of privacy and the public's interest in law enforcement. The Court went on to note at para. 19 that it has long since adopted "a purposive approach to s. 8 in which privacy [is] the dominant organizing principle." Drawing on comments in *R. v. Edwards*, [1996] 1 S.C.R. 128, the Court also confirmed that a principled approach is necessary to determine whether s. 8 has been breached because of the wide array of different techniques available to police for searching and seizing items. In other words, the analysis will necessarily be sensitive to the factual context of each case.
- [27] Furthermore, privacy is not an all-or-nothing proposition within the s. 8 analysis: *R. v. Duarte*, [1990] 1 S.C.R. 30; *R. v. Wong*, [1990] 3 S.C.R. 36; *R. v. Jarvis*, 2019 SCC 10 at paras. 38-41.
- [28] Three categories of privacy have been recognized: personal, territorial, and informational. Although they are distinct, the court recognized the privacy interest in any particular circumstance may overlap those categories.
- [29] With regard to informational privacy, Justice Binnie, writing for the court, stated in *Tessling* at para. 23:
- 23 Beyond our bodies and the places where we live and work, however, lies the thorny question of how much information about ourselves and activities we are entitled to shield from the curious eyes of the state (*R. v. S.A.B.*, [2003] 2 S.C.R. 678, 2003 SCC 60). Informational privacy has been defined as "the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others": A. F. Westin, *Privacy and Freedom* (1970), at p. 7 .
- [30] Whether a particular expectation of privacy is reasonable must be assessed in light of societal norms--"it is a normative rather than a descriptive standard" (*Tessling* at para. 42). As Justice Binnie notes (at para. 25), privacy is a "protean concept", meaning it is variable and can take many forms. The recognition in s. 8 of citizens' right to privacy is meant to foster the underlying values of dignity, integrity, and autonomy. Thus, with regard to informational privacy, s. 8 seeks to protect a "biographical core of information which individuals in a free and democratic society would wish to maintain and control over from dissemination to the state": *Plant* at 293.

- [31] Assessing a person's reasonable expectation of privacy turns on the totality of circumstances. In *R v. Cole*, 2012 SCC 53, the Supreme Court of Canada set out what has become the accepted test. It consists of four lines of inquiry meant to guide the consideration of whether a person's expectation of privacy has been engaged to attract the protection of s. 8:
- a) examining the subject matter of the alleged search;
 - b) determining whether the claimant had a direct interest in the subject matter;
 - c) inquiring whether the claimant had a subjective expectation of privacy in the subject matter; and
 - d) assessing whether this subjective expectation of privacy was objectively reasonable, having regard to the totality of the circumstances.
- [32] With regard to the first step--the subject matter of the search--the Supreme Court of Canada has cautioned against adopting an approach that is too narrow. Rather than focusing on physical acts or the physical space, the court should look to the nature of the privacy interests that the state action in question may be compromising: *Tessling* at paras. 34-36; *R v. Patrick*, 2009 SCC 17 at paras. 29-30; and *R v. Spencer*, 2014 SCC 43 at paras. 22-33.
- [33] As for the third step--the subjective privacy interest--the parties agree the threshold is low. This is because the normative importance of s. 8 transcends any individual's subjective expectations: *R v. Jones*, 2017 SCC 60 at paras. 19-21. As Justice Côté warns in *Jones*, a person's "subjective belief that Big Brother is watching should not, through the workings of s. 8, be permitted to become a self-fulfilling prophecy" (at para. 21). Therefore, the importance of the third step is attenuated in the s. 8 analysis, justifying the modest evidentiary foundation required to meet it. Direct evidence from the applicant is not required for the third step: *Jones* at para. 22. Instead, the court can draw an inference of the applicant's subjective belief from other facts. Specifically, an accused is allowed to rely on the Crown's theory to establish this aspect of the test: *Jones* at para. 19.
- [34] However, I also note Justice Ehrcke's comments in *R. v. Ali, Boparai & Malonga-Massamba*, 2020 BCSC 1309 at para. 100 that while inferences are permissible, there must still be a body of evidence from which that inference can be drawn. In that case the applicants argued they had a subjective expectation of privacy in information obtained by their travel through the Vancouver International Airport, including CCTV video, boarding pass data, and still images. Despite his misgivings, Justice Ehrcke acknowledged the low threshold and held whether the accused had a reasonable expectation of privacy in the Vancouver Airport should not be decided in that case on the basis of whether or not they had a subjective expectation of privacy (at para. 105).
- [35] Similarly, in *R. v. Law*, 2017 BCSC 1241, Justice Duncan concluded nothing in the facts before her permitted the inference to be drawn (at para. 86). The issue in that case involved CCTV footage of common areas of a building, specifically the parkade and lobby footage. In that

case, the applicant's image was not captured, although a vehicle associated with him was. What was significant to her conclusion was the fact that the applicant did not own the area and therefore had no ability to regulate access to the parkade or lobby beyond permitting his guests to enter.

- [36] With regard to the fourth step of the test--the objective reasonableness--the essential inquiry is whether a reasonable and informed person in the position of the applicant would expect privacy. In *Patrick*, the court elaborated on the fourth step, noting the "reasonable expectation of privacy can vary with the nature of the matter sought to be protected, the circumstances in which and the place where the state intrusion occurs, and the purpose of the intrusion" (at para. 38, citing *R. v. Colarusso*, [1994] 1 S.C.R. 20 at 53).
- [37] Justice Binnie set out a number of factors to be considered under the fourth step (at para. 27):
- a. the place where the alleged "search" occurred; in particular, did the police trespass on the appellant's property and, if so, what is the impact of such a finding on the privacy analysis?
 - b. whether the informational content of the subject matter was in public view;
 - c. whether the informational content of the subject matter had been abandoned;
 - d. whether such information was already in the hands of third parties; if so, was it subject to an obligation of confidentiality?
 - e. whether the police technique was intrusive in relation to the privacy interest;
 - f. whether the use of this evidence gathering technique was itself objectively unreasonable;
 - g. whether the informational content exposed any intimate details of the appellant's lifestyle, or information of a biographic nature.
- [38] The applicant bears the burden to establish that in relation to the place or items that were searched, he had a reasonable expectation of privacy that engaged the protection of s. 8 of the Charter. If, after applying the test articulated above, the court determines there was no reasonable expectation of privacy, the application will be dismissed.
- [39] However, if the court comes to the opposite conclusion, then the court must consider whether the reasonable expectation was violated by the police conduct because a warrantless search is *prima facie* unreasonable. The burden would then shift to the Crown to justify the search. To do so, the Crown has to establish on a balance of probabilities that the search was authorized by law, that the authorizing law itself was reasonable, and that the search was conducted in a reasonable manner.
- [40] If I conclude the Crown cannot meet those factors, then s. 8 would have been breached and the parties would then need to address whether, under s. 24(2) of the Charter, the evidence should be excluded.

IV. ANALYSIS

[41] As noted in *R. v. White*, 2015 ONCA 508, assessing a reasonable expectation of privacy is context-specific, not amenable to categorical answers (at para. 44, citing *Edwards*). Particularly relevant to the facts before me, the Ontario Court of Appeal in that case specifically noted that applying the preceding concepts to multi-unit buildings brings into consideration a number of other factors unique to those types of residences, including (at para. 45):

- a) the degree of possession or control exercised over a common area;
- b) the size of the building, in that the larger the building, the lower the degree of the reasonable expectation of privacy;
- c) whether there is a security system or locked doors that function to exclude the public and regulate access, and;
- d) ownership of the property.

[42] The parties disagree on the relevance of *R. v. Latimer*, 2020 BCSC 488, and associated cases on the weight and significance of the preceding factors when assessing a reasonable expectation of privacy in multi-unit residential buildings. Before turning to implement the four-step test, I will address that particular disagreement.

A. Does *Latimer* apply to the facts of this case?

[43] As I understand it, the Crown's position is that the analytical approach and framework adopted by the court in *Latimer* is inconsistent with the prevailing case law regarding s. 8. Although the Crown takes the position that *Latimer* was wrongly decided, it submits it is unnecessary for me to address that directly because the case is distinguishable, in any event.

[44] Defence counsel takes the opposite view, submitting the facts before me are sufficiently analogous to those in *Latimer* that I ought to be bound, or at least persuaded to follow the analytical framework and reasoning in that case. More generally, defence's position is that *Latimer* is a considered, comprehensive decision that ought to apply any time the court is considering the reasonableness of a warrantless search and seizure of CCTV at a residential multi-unit building. Defence counsel also submits that contrary to the Crown's position, *Latimer* is consistent with the case law in this area.

[45] I appreciate counsel's diligence and thorough examination of *Latimer* and related cases in support of their position about its consistency with prior cases.

[46] It is not clear to me that I need to draw any general conclusions about *Latimer* and its impact on the proper analytical framework to employ when someone challenges, under s. 8 of the Charter, admission of CCTV footage from a multi-unit dwelling.

- [47] I return to basic principles. Assessing whether s. 8 is engaged is a highly fact-specific, nuanced analysis that requires the court to look at the totality of circumstances. Accordingly, no matter how eloquent or considered any particular judgment may be, ultimately the similarity of the underlying facts will be the most relevant factor in determining the degree to which that judgment ought to impact my analysis.
- [48] I find the factual underpinnings to Justice Ker's analysis in *Latimer* differ significantly from the facts before me such that it is sufficient to distinguish the case.
- [49] The matters considered in *Latimer* and related judgments arise from an ongoing and interrelated series of investigations dealing with overlapping prosecutions.
- [50] *Latimer* was preceded by Justice Devlin's decision in *R. v. Kim*, 2019 BCSC 2150 [Kim No. 1]. In *Latimer*, Ker J. relies on and adopts portions of Devlin J.'s discussion in Kim No. 1. Then in *R. v. Kim*, 2020 BCSC 1064 [Kim No. 3], Devlin J. held that the rule from *Re Hansard Spruce Mills Ltd.*, [1954] 4 D.L.R. 590 (B.C.S.C.) applied and she had no reason to depart from Justice Ker's reasoning and analytical framework in *Latimer*. It appears the Crown raised before Devlin J. many of the same arguments argued in this case as to why that framework analysis Ker J. adopts in *Latimer* is flawed for being inconsistent with prior case law.
- [51] Underscoring that reliance is the fact that the two applicants before Devlin J. were the subject of information seized by police at one of the same locations discussed in *Latimer*. In other words, the cases are closely related. Apart from the rule in *Hansard Spruce Mills*, those circumstances provide a very compelling case for strong judicial comity.
- [52] Likewise, the facts before Devlin J. in *Kim* were markedly different than those before me. The police had identified a suspected stash house of drugs in a multi-unit dwelling. The police had a general warrant, but also installed a covert camera in a hallway near the unit in question. The camera ran continuously, recording video to a hard drive which the police could access remotely in real time. The police observed the accused over the course of many days. While the building had its own CCTV, Devlin J. rejected Crown's argument that the existence of the building's CCTV tempered the reasonable expectation of privacy the accused had vis-à-vis the police's covert recordings.
- [53] However, key to her conclusion was the distinction she drew between video recordings by building management to ensure the safety and security of the building and its residents, "with perhaps some ancillary use to law enforcement if necessary" as evidenced, and the police's surreptitious surveillance (para. 53). There is no surreptitious police-installed CCTV recording at issue before me.
- [54] Similarly, other facts distinguish *Latimer* from this case. The information challenged in Ker J.'s decision was obtained when, without warrant or production order, police officers requested and received information from concierges at two different multi-unit residential building locations. Notably, however, production orders were obtained for information from other residential locations involved in the same investigation. Justice Ker inferred that strata

management at those other locations refused to provide information without a production order (para. 6).

- [55] The CCTV video at issue captured images from the parking garage, parking garage elevator lobby, elevators, and lobby areas. However, the police also sought and received key fob access records for certain units in the building. The accused argued the warrantless search and seizures of the CCTV and key fob data breached s. 8. Ultimately, Justice Ker agreed and the evidence was found to be inadmissible at trial. The Crown did not seek to justify those searches.
- [56] I find it highly relevant that the concierge at the first location considered by Ker J. stated he would not have shown the police the CCTV footage until there was an official request and he was authorized to release the materials. He believed he had that authorization. However, Ker J. found otherwise, concluding from the totality of the evidence he clearly did not have authorization, notwithstanding his belief that he had adhered to the strata bylaws and policies in place in providing information to the police. Thus, all of the material given to the police from that one location on two occasions was provided contrary to and in clear breach of the strata plan bylaws and policies.
- [57] This differentiates Latimer from the facts here. There is no evidence to suggest that there was any impediment to Mr. Brar's providing the information to police officers. Indeed, certainly in relation to the RCMP video, it was within Mr. Brar's responsibility as building manager to report the suspicious activity he viewed on the CCTV footage.
- [58] I also find the scope and type of information seized by the police in Latimer to be markedly different than the information at issue here. Specifically, the police were able to seize key fob data that revealed "movements of the fob associated to an owner or tenant", data that included the "time, date, and area of access by the registered fob". Justice Ker noted that information was even more "powerful when cross referenced with CCTV footage of the area accessed, and [collectively the CCTV and fob data could] establish a comprehensive record of the lifestyle choices within the complex -who went where, when, with whom, and what they were carrying, wearing, and doing" (para. 154).
- [59] Some of the other indicia illustrating the scope of information obtained and the use the police were able to make of it, being far more extensive than the facts before me, are the following:
- a) key fob access records of fobs associated with a particular unit for a period of over a month (para. 64);
 - b) 17 different occasions when officers reviewed and obtained CCTV footage and Form K information regarding particular residences over a three-week period (para. 65);
 - c) 11 separate CCTV recordings watched and seized from one location (para. 67) and about 93 video clips seized from another (para. 71), and;

- d) police's acknowledgment in that case that the surveillance conducted was used by them in an "effort to identify the routines of various targets and associates" in order to provide "fuller circumstantial picture of the individuals, including gestures, clothing, tattoos, activities, and associations (para. 75).
- [60] Overall, my view is that Ker J.'s analytical framework must be seen as firmly rooted in the facts before her.
- [61] Two somewhat related decisions aptly demonstrate that point.
- [62] In *R. v. Kang*, 2020 BCSC 1616 [Kang No. 2], Justice Winteringham considered an application by one of five accused that he had a reasonable expectation of privacy in CCTV footage seized from a multi-unit residential building (it is my understanding it is the same building at issue in both *Kim No. 3* and *Latimer*). However, the applicant in front of Winteringham J. was neither a resident nor a tenant. In a previous decision, *R v. Kang*, 2020 BCSC 1474 [Kang No. 1] she had to decide the standing of an accused to challenge production orders granted for CCTV footage at a different location. It is my understanding that both cases stem from the same closely-related overarching investigations at issue in both *Latimer* and *Kim*.
- [63] In both decisions, Winteringham J. relied on *Latimer* and *Kim No. 3*. In doing so, however, she did not overstate their conclusions. In *Kang No. 1*, she stated the "*Latimer* and *Kim [No. 3]* decisions decide the Charter claimant may have a reasonable expectation of privacy in common areas of multi-unit building", but the analysis is contextual and demands a purposive and normative approach to privacy, having regard to the totality of circumstances", noting that it may be relevant, but not necessarily determinative, whether they were residents of the building, or controlled access to the building (para. 105). The latter two points come from, among others, the *White* decision.
- [64] In *Kang No. 2*, she considered whether someone who is neither a tenant nor resident had an expectation of privacy in CCTV footage seized from a multi-unit dwelling. The video apparently revealed that the applicant was in a vehicle driving into the building's parking garage, parked in a stall for several minutes, had limited interaction with two people who in other court proceedings were found to have had a reasonable expectation of privacy in the same footage. She concluded, however, the applicant before her did not.
- [65] Again, she referred to *Latimer* at paras. 151-161 and noted Ker J.'s remarks that one cannot assume that owners and tenants of a multi-unit residential building and their guests, who may be required to enter common areas under CCTV surveillance, have waived all privacy interests in their movements, images, and information with regard to the state (para. 39). Justice Winteringham noted that the CCTV footage at issue in *Latimer* was of the same parking garage at issue before her.
- [66] However, it was material that the applicants in *Latimer* had a stronger connection to the complex. Accordingly, Winteringham J. turned to the "authorities focussing more limitedly on privacy interests in common areas of multi-resident buildings, including parking garages

(para. 41). Among others, she referred to the following cases: *R. v. Wilson*, 2017 BCCA 327; *R. v. Drakes*, 2009 ONCA 560; *R. v. Webster*, 2015 BCCA 286; *R. v. Yu*, 2019 ONCA 942; and *R. v. Pipping*, 2020 BCCA 104. Ultimately, she concluded that the applicant had not established a reasonable expectation of privacy.

[67] In my respectful view, as the preceding discussion demonstrates, one cannot conclude that Latimer stands for a categorical proposition that there is always some degree of reasonable expectation of privacy in common areas of multi-unit dwellings, notwithstanding the broad nature of the wording in some passages in Latimer. Thus, to the extent that defence counsel argued that portions of Latimer are either binding or persuasively supportive of his position, with respect, I disagree. More to the point, I do not regard Latimer as articulating an analytical framework for assessing an assertion of reasonable expectation of privacy in common areas of multi-unit dwellings that is a marked departure from prior case law.

B. Subject Matter of the Search

1. CCTV Footage

[68] I turn now to the four-step totality of the circumstances test, with the first step being the subject matter of the search.

[69] The subject matter of the search in this case relates to two categories of evidence. The first category is images of the applicant and people associating with him captured in the CCTV footage of three entrances to the building. The second is information Mr. Brar voluntarily provided, both verbally and as contained in documents he gave to Constable Bal.

[70] Looking first at the CCTV footage, the applicant emphasizes that the court should not approach this issue narrowly. Instead, he asserts the subject matter must be defined by what information the police were looking for and hoping to find. He submits the subject matter is properly characterized as any and all available CCTV footage of the applicant and his activities at the building that police believed had investigatory value. He also says the fact that the CCTV video captured images at the three entrances to the building favours a conclusion that he had a high expectation of privacy, because he had no choice but to use one of those entrances in order to access the unit he lived in.

[71] The Crown disagrees and submits the proper analytical approach is to frame the analysis around what was actually searched and seized. Therefore, the Crown submits the subject matter is images of people potentially involved in firearms trafficking activity which took place on dates associated with known undercover gun purchases. Crown emphasizes the images were captured from common areas viewable by the public and therefore I ought to conclude there was no expectation of privacy.

[72] The characterization of the subject matter must be discerned in part with reference to the purpose of the police's search. That is because the inquiry is focused on what the police were after: Yu at para. 76, citing *R v. Marakah*, 2017 SCC 59 at para. 15.

- [73] The purpose of Constable Avram's attendance at the building and search and seizure of the CCTV footage by the RCMP was to respond to Mr. Brar's call to the non-emergency number. Thus, the subject matter was images captured at one of the entrance or exit points of the building depicting suspicious activity, primarily involving two non-residents of the building, and possibly implicating a person Mr. Brar believed was a resident--the applicant. The suspicious activity was consistent with the purchase and sale of a firearm.
- [74] I note that, in my view, the areas captured by two of the CCTVs are not "common areas," as that term is used in many of the authorities or commonly understood with reference to apartment buildings or strata buildings. Instead, they are entry and exit points and, in this case, they are all open to public view. The camera in the building's lobby also captured an entry and exit point, in addition to the lobby itself, which would be considered a common area.
- [75] With respect to the RCMP seizures of the CCTV, the search was not initiated by the police. The police were responding to a complaint and the focus was on the allegedly criminal activity. In attending at the building and requesting to see the footage, the police did not know ahead of time what the CCTV video would show or who might be captured in it, or even whether the people captured were residents. I find in those circumstances the applicant has no reasonable expectation of privacy in the CCTV video capturing suspicious activity near a locked, publicly-viewable entry to the building.
- [76] The situation is somewhat similar to Drakes. In that case, the superintendent attended at a unit because of a flood and, while there, noticed suspicious activity and gave that information to the police. The Ontario Court of Appeal upheld the trial judge's conclusion that the police's access to that information arose from the superintendent's normal response to the flood and therefore s. 8 was not engaged.
- [77] However, the purpose of the VPD's attendance and subsequent search and seizure was different, in that it was not prompted by Mr. Brar's complaint. The VPD search was prompted instead by the identification by Surrey RCMP of one of Project Tariff's targets--F.J.--in that footage. Constables Jaberg and Bal were directed to attend at the building to review and ultimately seize the footage because it contained information about F.J.'s activities at a location that was believed to be consistent with information gained from undercover operations. Thus, before viewing the footage, the officers were already aware that the CCTV potentially captured suspicious activity consistent with a gun purchase and that F.J. and the applicant had been identified in the video. In that sense, the seizure was confirming information already obtained from the RCMP. The subject matter of the RCMP-viewed footage, therefore, was the suspicious activity captured on July 5, the identities of the people involved in the activity, and their association with one another at that location.
- [78] The purpose of the VPD's attendance on August 8 was similar to what it was on August 1, but with a further refinement. Rather than being prompted by the Surrey police file information, the VPD were looking for and hoping to retrieve images that might reveal

further activities, possibly associated with the undercover gun transactions that had been undertaken within Project Tariff. In particular, they wanted to find out if F.J. and/or the applicant were involved in other suspicious activity at that location on dates when they knew undercover gun transactions took place. The police searched footage from three days but only found relevant footage in the July 25 CCTV video.

- [79] Accordingly, I characterize the subject matter of the VPD-viewed footage as being images of suspicious activity consistent with known undercover firearms transactions on three particular dates that would aid the police in identifying people who may be associated with their target and/or the applicant on those dates, at the location where they now knew the applicant lived.
- [80] In *White*, the Ontario Court of Appeal concluded there was no reasonable expectation of privacy in CCTV images of garage entries, but there was a modest one on video capturing hallways. However, the expectation of privacy in the hallway footage was not in the fact that one resided in the building, but in the resulting observations of the applicant's "comings and goings, whether they were at home, who visited them, who they visited, what they were carrying, and how long they stayed" (paras. 77). It was this subject matter that the court found raised a modest reasonable expectation of privacy.
- [81] In this case, the CCTV footage was not of the hallways or near Unit 311 at all. With the exception of the camera that captured the lobby, the CCTV footage was only of an entry point and only captured what occurred outside of the building. While the door was locked to restrict access to people who had keys, the cameras were clearly visible and there to enhance security. Police were not conducting long-term surveillance or even reviewing large amounts of CCTV, and therefore they were not looking for or able to gather more general comings and goings of the residents.
- [82] Defence counsel emphasized that the footage was taken at entrances and exits that residents, including the applicant, had no choice but to use to access their home, and thus it had the potential to reveal lifestyle information. However, this concern belongs more properly under the fourth step of the analysis as one of the factors identified in *Patrick*. While it may be potentially relevant here under the first step, it should not overwhelm the analysis.
- [83] Thus, to the extent defence counsel argued that the applicant had an expectation of privacy in the subject matter because his coming and going from the building can reveal significant personal lifestyle information, I find that is more relevant to the fourth step and so will consider it there.
- [84] The applicant next argued the subject matter of the CCTV searches is most consistent with a high degree of privacy because of what police hoped to achieve with the information. He submits the police were looking for the identities of those captured in the footage, their association to the building and to one another, and the details of their activities at the building. He argues the ultimate purpose was to assist the police in identifying suspects

previously unknown to them, including the applicant. As such, the recordings had a high investigatory relevance and necessarily a high expectation of privacy.

- [85] It is on these points that the applicant relies most heavily on the Latimer case, especially at paras. 172, 175, and 176. With respect, I do not agree those passages are applicable. In Latimer, the subject matter was very different because the information involved not just CCTV footage, but also key fob data, and it was the ability to connect those two that not only had high investigatory value, but was also more revealing about the activities of the people whose images were captured.
- [86] In this case, the July 5 VPD footage was discrete and focused on information already received from the bulletin issued by Surrey RCMP. Moreover, the footage from the side entry shows the exchange of money and what could be a gun. It does not show the applicant directly involved in this activity, although I acknowledge that his appearance seconds later is something upon which the Crown may ask the court to draw inferences.
- [87] The July 25 footage has a broader possible use for the police. It has interest because the police were looking for other suspicious activity that had not yet been reported possibly involving F.J. and/or the applicant at the entrances of the building. Therefore, they were not interested in just any suspicious activity that may be captured, but in information related to known firearm transactions, including the identity of the participants and the exact nature of the transactions.
- [88] It is important to note that there was no other source of information that could be correlated to the CCTV footage, such as the key fob data in Latimer.
- [89] Nevertheless, I do find that with regard to the July 25 footage, the broader range of information sought and the use potentially made of it does suggest that there was at least some degree of expectation of privacy, although it may have been low.

2. Information provided by Mr. Brar

- [90] I turn now to the information provided Mr. Brar. Although this falls into a different category than the CCTV clips, they are inextricably linked, particularly in light of how the two were obtained. Specifically, the information that the applicant lived in the building was an inference that could be drawn from the CCTV video showing that he had a key that apparently allowed him to unlock the front entry door. In addition, the witnesses' testimony was consistent that while the officers were viewing the July 5 footage, Mr. Brar, without prompting, pointed to the image of the applicant and said he was a resident. This information was voluntarily provided in conjunction with the CCTV video.

- [91] It would be unreasonable to suggest Mr. Brar would not make that comment when he was the person to make the complaint to the RCMP in the first place. Accordingly, I find the information that the applicant lived in the building should not be treated in an isolated manner from the July 5 CCTV video and for that reason, I do not find the subject matter is suggestive of a reasonable expectation of privacy.
- [92] Furthermore, I agree with the Crown that the fact a person resides at a particular residence or has a connection to it is not the type of personal information that attracts Charter protection: *Drakes* at para. 10; *R. v. Saciragic*, 2017 ONCA 91 at paras. 29-34; and *Law* BCSC at para. 98.
- [93] Even in those cases where the court has found that a person had some expectation of privacy in a multi-unit building common areas, the privacy right attached to what was observed inside the building rather than the mere fact the person lived there: see *Yu* at paras. 82-87; *White* at paras. 41-52; and *Pipping* at paras. 20-33.

C. Direct Interest

- [94] The Crown conceded the applicant had a direct interest in the contents of the CCTV images and in the information that he lived in the building. However, Crown submits the applicant cannot assert an expectation of privacy in the information contained in the documents Mr. Brar handed over to Constable Bal. As noted above), neither the tenancy agreement nor the ICBC document contained any information about the applicant.
- [95] While that is true, the tenancy agreement was not completely unrelated to the applicant. It provided confirmation of Mr. Brar's information that the applicant's mother was the tenant of Unit 311. However, beyond that, I have difficulty accepting that the information in that form or the other one would impact the applicant's privacy rights in any way. In my view, this cannot be a significant consideration in the overall determination of s. 8.

D. Subjective Expectation of Privacy

- [96] The applicant emphasizes that the threshold on this step is low and the court can draw inferences about the applicant's subjective belief from other facts or even based on the assumption that the Crown's theory is true.
- [97] The Crown submits there is an insufficient factual basis upon which I should infer the applicant had a subjective belief in privacy in his image or activities captured by the CCTV video.
- [98] I find the visibility of the cameras is consistent with Crown's position. Mr. Brar's and Constable Jaberg's testimony was consistent that the cameras were easily visible. More telling, however, are images captured in the July 5 CCTV video. In one clip, F.J. very clearly points to the camera, at which point the unidentified male turns and looks directly into it. Defence counsel suggested all I conclude was that the people looked in the direction of the

camera. I disagree. Having viewed those clips, it strains common sense and logic to conclude anything other than F.J. and that unknown male were clearly aware of the presence of the camera.

- [99] The applicant is a tenant and therefore more familiar with the entrance and exit. He is probably also familiar with the camera. This evidence runs counter to drawing an inference that defence counsel asks me to draw.
- [100] I also find it of some relevance that the suspicious activity captured by the July 5 CCTV was first observed in real time by another tenant and brought to Mr. Brar's attention. Mr. Brar testified the other tenant was able to observe what happened from his or her balcony.
- [101] It is difficult to conclude in these circumstances that the accused could subjectively believe that he enjoyed any degree of privacy at that entry or exit way. Therefore, this particular step in the test does not support the applicant's position.
- [102] The defence argued I could infer that the applicant had a subjective belief in the privacy of the information that he lived with his mother in Unit 311. It is not clear to me what other facts exist to support drawing that inference. However, it is true that the Crown's theory of the case is that the fact the applicants lives with his mother had some value to the investigation.
- [103] Accordingly, given the low threshold that needs to be met, I am prepared to assume that the applicant had some subjective belief that Mr. Brar would not turn over to the authorities the fact he was living there in the unit rented by his mother.

E. Objectively Reasonable Expectation of Privacy

- [104] The question in this step is whether, in reviewing the totality of circumstances, the applicant's subjective expectation of privacy was objectively reasonable. The approach is contextual and while one must consider the factors from Patrick (at para. 27; see above at para. 37), they do not necessarily carry the same weight.
1. The place of the search and whether the police trespassed
- [105] The police had express permission from Mr. Brar on behalf of owners of the property to be present. Accordingly, they were not trespassing. They did not conduct any independent search, and what they did was limited to viewing past CCTV video recordings. They made no attempt to observe any other areas in the building. Specifically, they did not seek to make observations of anything around Unit 311 or try and find or observe the applicant.
- [106] In my view, this factor favours Crown's position.
2. Public View

- [107] The second factor is whether the informational content of the subject matter was in public view. Defence counsel accepts that with respect to the images captured on the CCTV, the subject matter was in public view. I agree. The evidence from Mr. Brar and Constable Jaberg was consistent on that point and it accords with the CCTV images viewed in court, as well as the exhibit that had the satellite image of the complex.
- [108] However, defence counsel asserts that the information gathered, as opposed to the images, was not publicly viewable. Specifically, the applicant argues the fact that the applicant lived in the building in his mother's unit and that she was a tenant was information the police were only able to obtain because Mr. Brar told them.
- [109] I do not agree completely. Among the clips captured is an image of the person alleged to be the applicant using a key to unlock the lobby door and walk in. Mr. Brar confirmed only tenants or people living with them have keys to the building. Therefore, there is at least some basis that his residence was observable by others.
3. Abandonment
- [110] The parties agree this topic has no relevance to the analysis.
4. Information in hands of third party and whether it was subject to an obligation of confidentiality
- [111] With regard to this, a number of other issues may also be raised that affect the analysis, such as whether there is a contractual relationship between the applicant and the third party, and whether the third party was subject to any privacy legislation: Plant, para. 19; Spencer paras. 54-65.
- [112] The applicant again refers to Latimer, where Justice Ker stated that an individual's privacy in their own personal details would have no significance if it could be waived simply by the police asking for it. She also commented the fact that the information is in a third party's hands without an obligation of confidentiality does not mean that there is no expectation of privacy (paras. 211 and 212). This follows from Marakah where Chief Justice McLachlin said that control over information is not an absolute indicator of an expectation of privacy, just as a lack of control is not fatal (paras. 38). In Marakah, it was important to analyze control in relation to the subject matter of the search, which was an electronic conversation.
- [113] However, Justice Ker's comments in Latimer must be understood in light of her conclusion that the concierge in that case provided information contrary to the bylaws and policies of the strata corporation. In this case, the CCTV footage was made by management on behalf of owners of the building for the purpose of enhancing the security of the residence. There was no evidence of any contractual relationship that provided tenants any aspect of control over that footage, nor was there evidence that there was an obligation of confidentiality over its use or dissemination.

- [114] The RCMP footage was given to police because of a specific complaint. There is no basis to conclude that turning over that footage was contrary to any aspect of Mr. Brar's job or tenants' expectations.
- [115] The VPD footage, on the other hand, was requested by the police as part of a valid investigation. Despite the fact that this request was based on different considerations than that above, as well as my conclusion above that the subject matter of the search was different, I see no analytical difference between the VPD footage and the RCMP footage with respect to confidentiality. Mr. Brar did not violate any duty of confidentiality in turning over the videos requested by the VPD.
- [116] This issue was examined at length in *Latimer*, because that was a strata corporation specifically subject to the provisions of the Personal Information Protection Act, S.B.C., c. 63 [PIPA], as well as bylaws and policies regulating the use and distribution of CCTV.
- [117] I did not understand there to be similar factors constraining a landlord's use of CCTV on the facts before me. However, if I am wrong and PIPA does apply, I find that the surveillance was turned over in compliance with s. 18 of that legislation.
- [118] In any event, I find Judge Howard's comments in *R v. Wilson and Nguyen* (26 February 2016), Vancouver Registry 217835-1 (B.C.P.C.) [Wilson BCPC] at para. 58 to be apposite. It is reasonable to assume that residents would expect that CCTV video gathered for their safety could be shared with law enforcement when it captured activity that has the potential to threaten that security. The Provincial Court judgment was upheld by the Court of Appeal in *R. v. Wilson*, 2017 BCCA 327 [Wilson BCCA] (see also *Drakes*).

5. Intrusiveness of police conduct

- [119] I do not find this factor favours the applicant's position. The police conduct was not intrusive. The initial contact was initiated by Mr. Brar and the following interactions were reasonable and rationally flowed from the initial meeting. Mr. Brar contacted the police as part of his normal job duties. He was cooperative and eager to assist the police because of the nature of the suspicious activity that he observed.
- [120] Defence counsel suggested that Mr. Brar was also motivated because he found the applicant and possibly the applicant's brother to be troublesome. That is not what prompted his phone call to police, and therefore I do not find it relevant.
- [121] However, I should add that even if I am wrong and it has some relevance, I do not see anything improper in Mr. Brar's actions. It was his job to monitor and assess the suitability of tenants in the building. It is beyond the scope of this court's inquiry on this application to second guess his judgment in the absence of any clear indication that he was acting in bad faith or with mal-intent, and I do not find that he was or there was no evidence that he was.

6. Unreasonable technique for gathering evidence

[122] My conclusions are the same as they were under the fifth factor.

7. Nature of the information

[123] The applicant argues the informational content had the potential to strike at the very core of his lifestyle and biographical information. He submits the images captured his entry and exits into the place he lived. Given the cameras were at every entrance, he had no choice but to be subject to their recording his movements in order to access his home. He argues that implicates both territorial and informational aspects of his privacy interests.

[124] He relies on several passages from Latimer that he says are directly on point. As with my comments above, I have found already that Wilson BCPC is very helpful on this point. In Latimer at para. 136, Justice Ker preferred not to follow that case (my emphasis):

[136] In my view, respectfully, this is not the appropriate way to approach common area property in the context of objective expectations of privacy. The density of any particular strata property should not create a diminishing scale for objective reasonableness such that the larger the complex the less likely it is that there can be any objectively reasonable expectation of privacy: White at paras 48 and 51. Rather, the analysis should be conducted from the perspective that all residents of a multiunit complex, regardless of size, retain an expectation of privacy in their personal information, be it their images or documents about their tenancy, that is objectively reasonable such that they remain protected from random and unregulated disclosure of this information to outside organizations, including law enforcement agencies.

[125] She goes on to that the exclusivity of common areas "really only speaks to the degree of the expectation of privacy, not whether it extinguishes it" (para. 137). In addition, she refers to Yu:

141. In my view, there is a world of a difference between fleeting physical surveillance observations and preserved CCTV footage married with fob access records that provide both play-by-play and playback capabilities from which considerably more information can be harvested. Accordingly, although Yu is informative, it is not determinative of whether any subjective expectation of privacy in the parking garages and common areas in the case at bar are objectively reasonable.

[126] At paras. 152-161, Justice Ker referred to what she called the technological and digital revolution, as well as the larger societal shift to living in multi-unit buildings monitored by CCTV. After reviewing those circumstances, she made the following comments:

[161] Certainly, individuals can continue to make choices about whether they will enter truly public spaces such as shopping malls, bars, hotels, airports, train stations and the like notwithstanding the presence of CCTV surveillance cameras. However, owners and tenants of multiunit residential buildings, and their guests visiting them, have no choice but to travel through common areas - crossing lobbies, using elevators, accessing hallways and parking their vehicles in secure parking lots. Although they may implicitly consent, or

acquiesce, to the surveillance of their movements for the sake of the security of the building in the other occupants, it does not mean that they have consented to or waived the residual privacy interest in their movements, images and information vis-à-vis the state. In an era where the trend in residential living is rapidly moving away from detached family homes and towards multiunit residences, the legal concept of privacy must be flexible and adaptive in order to ensure that it is not being videoed out of existence.

[127] With the greatest of respect to my colleague, it is not clear to me whether these conclusions were supported by evidence, specifically as to whether there is a trend to living in multi-unit dwellings. If not, it is not clear to me whether that is something that could or ought to have been the subject of judicial notice.

[128] In any event, I return to the specific facts in this case. Unlike the sweeping range of surveillance obtained and instigated by the police in Latimer, the police in this case viewed footage on four different dates. They were interested in activity that might be of interest to crimes or potential crimes that had already been committed during undercover operations. They did not attempt to obtain an understanding of the general routine, gestures, or day-to-day activities of the applicant or anyone else.

[129] Justice Ker's comments do appear to strike a different tone than other cases with regard to what constitutes a reasonable expectation of privacy in common areas. Regardless, I find the factual context of the following cases to be closer to the facts before me and therefore more relevant:

- a) Wilson BCPC: the police, on requesting it from the building manager, obtained a DVD containing CCTV footage of the accused in the common areas of the building, including the front lobby, elevator and parkade. Judge Howard observed that the video clips were of common areas that the applicant did not have control of and that the purpose of that system of CCTV was for building security. Also, he was a short-term tenant who had no ownership interest (para. 51). She concluded disclosure of footage relating to alleged criminal activity would be perfectly natural and rational, and that she did not find that the police actions were intrusive (at paras. 58 and 65).
- b) Webster: The Court of Appeal affirmed the trial judge's finding that the accused did not have a reasonable expectation of privacy in the common areas of the building and thus that a warrant was not required. The primary factor in the Court of Appeal's decision was the lack of exclusive occupation of the common areas, noting that members of the public were regularly in the common areas of the building.
- c) R. v. Bourdeau, 2019 BCSC 1181: the police, on information from a confidential informant, requested and subsequently reviewed CCTV footage from the prior night of the hallway outside the unit associated with the accused (they did not obtain a copy). This was a four-storey building and the camera was not hidden or surreptitious. Justice Steeves found there was no reasonable expectation of privacy in the hallway outside the unit, noting that "the threshold of the entry door [to the unit] is the dividing line between common and private

space" (at para. 18). The CCTV did not capture images within the unit.

- d) *R. v. Zekarias*, 2018 ONSC 4752: the police, at the consent of the building manager, obtained CCTV footage of the building's main lobby and two elevators. Justice Brown found the accused did not have a reasonable expectation of privacy in that footage. The factors in support of his finding included that the video was non-intrusive, the building was large (246 units), the cameras were visible, and the accused had no ownership interest in the common areas of the building as a tenant (at para. 25).

[130] I note that Justice Ker appears to question the precedential value of *Wilson BCCA*, which affirmed *Wilson BCPC*, because it was a brief endorsement-style judgment and was released before *Marakah* (Latimer, para. 131). To the extent those comments were intended to reflect a view that *Wilson BCCA* is not binding on this court, I must respectfully disagree. I do find it binding. In any event, the factual circumstances in it and the other cases listed above more closely match the facts in this case than those in *Latimer*; therefore, those cases are of more use to me.

[131] I also note that while a reasonable expectation of privacy in common areas was found in *Yu* and *Pipping*, I view their analytical approaches consistent with the above-noted case law. In *Yu*, the police entered into common areas, including parking garages and hallways. While there, they made observations via a digital camera and in person, in certain hallways. While there was no expectation of privacy in the parking garage, the court did conclude there was one with regard to the hallways. Still, the expectation of privacy there was low, although it did increase somewhat the closer it was to one's particular unit (at para. 84). The court also noted other factors that are relevant, such as whether the residents knew there was surveillance, whether the cameras were visible, the size of the building, the fact that the security system was designed to exclude non-occupants, and the normal operations of the building (at paras. 81-94). Ultimately, while there was a reasonable expectation of privacy, the search was found to be reasonable.

[132] In *Pipping*, the police sought permission to enter the premises from building management, but the request was denied. The police obtained a general warrant allowing them to enter the property and observe the accused. The trial court determined that there was a reasonable expectation of privacy in the common areas--albeit a low one--and therefore he had standing to challenge the warrant. The Court of Appeal upheld the trial judge's conclusions and referred to a number of factors that are consistent with prior case law.

[133] Thus, I do not understand *Pipping* or *Yu* to depart from the normal analytical framework that has been adopted in the cases noted above.

[134] Overall, on the seventh factor, I am not satisfied that the applicant established, on a balance of probabilities, that the informational content did expose intimate details of his lifestyle or any core biographical information.

[135] I repeat also that in my view the area being captured in at least two of the cameras was not the same as common areas, such as a lobby or garage, in that it only captured images outside of an entry or exit point. Therefore, overall in the fourth step of the test, I agree with Crown that, to the extent the applicant may have had a subjective expectation of privacy, it was not objectively reasonable.

V. CONCLUSION

[136] Taking into account the totality of circumstances, and with regard to the preceding analysis, I do not find the applicant has met the burden that he had a reasonable expectation of privacy in any of the footage obtained or the information obtained. It is important to remember that privacy is not a freestanding right specifically mentioned in the Charter. That is why the case law under s. 8 allows that some warrantless searches will not run afoul of the Charter. Were it otherwise, the rule would be absolute, which it clearly is not.

[137] For all those reasons, I dismiss the application.

"Sharma J."

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