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R. v. Latimer

2020 BCSC 1695

COURT

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2020 BCSC 1695 R. v. Latimer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Latimer,

2020 BCSC 1695

Date: 20201109

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Registry: Vancouver

Regina

v.

Kyle Latimer, Craig Latimer and Csongor Szucs

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Before: The Honourable Madam Justice Ker

Reasons for Judgment on Voir Dire #5 (Seasons on Kwantlen St.) and Voir Dire #6 (The Residences on West Georgia St.)

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Introduction

- [1] The accused, Kyle Latimer, Craig Latimer and Csongor Szucs, are charged with several offences under the Controlled Drugs and Substances Act, S.C. 1996 c. 19 [CDSA], as well as criminal organization, conspiracy and weapons offences under the Criminal Code, R.S.C., 1985, c. C-46 [Code]. Two other accused, Jacob Pereira and Anduele Pikientio, entered guilty pleas to possession for the purpose of trafficking and are no longer part of the proceedings on this indictment.[1]
- [2] The charges arise as a result of Project Territory, an investigation that was spawned from "Task Force Tourniquet" in the spring of 2017. Task Force Tourniquet was a proactive task force that the Vancouver Police Department (the "VPD") and other neighbouring police agencies commenced in the spring of 2017 to investigate a number of alleged criminal groups operating in the Lower Mainland of B.C. that were believed to be in conflict with one

another and responsible for numerous acts of violence across the Lower Mainland. Project Territory is the investigation of the alleged drug trafficking activities of two different groups - the Kang group and the Latimer group.

- [3] Three separate direct indictments charging a total of 12 individuals have been preferred in respect of Project Territory. A brief background overview to the investigation can be found in my reasons on an earlier application, *R. v. Kang et. al.*, 2019 BCSC 2109, at paras. 19-32, which I incorporate into these reasons by reference hereto.
- [4] Kyle Latimer and Csongor Szucs have filed applications challenging the obtaining of their images from CCTV video surveillance footage ("CCTV footage") of the common areas (parking garage gates and elevators) of two different residential locations - the Seasons residential complex on Kwantlen St. in Richmond, B.C. ("Kwantlen") and the Residences on W. Georgia St. in Vancouver, B.C. ("West Georgia").
- [5] The applicants also challenge the obtaining of key fob access records ("fob records") for certain condominium units in these two locations. When the fob records were cross-referenced with the CCTV footage, investigators were able to either directly observe and follow the movements of these two individuals in the common areas of the two residential complexes or infer where they moved.
- [6] The materials were obtained by officers with the VPD involved in the Project Territory investigations who requested the information from the building manager at Kwantlen and the concierge at West Georgia. Similar to the circumstances from two earlier voir dres in these proceedings addressed in my ruling in *R. v. Latimer*, 2020 BCSC 488 (the "Brighthouse Ruling") no judicial authorizations in the form of production orders were sought for the materials from these two locations.
- [7] Some of the information obtained by the investigators was relied upon in subsequent ITOs in support of an application for a general warrant for a covert search of suite #1901 at Kwantlen (April 18, 2018) and a search warrant for suite #3401 at West Georgia (July 19, 2018). In addition, the Crown intends to tender certain fob records, still images and video clips into evidence in the trial proper for both locations in respect of Mr. Szucs's attendances and for Mr. Latimer's attendances at Kwantlen.
- [8] Two separate voir dres were conducted, one for each location. However, counsel agreed that one ruling could cover both locations as the analytical framework is the same for each.
- [9] The issue before me on these applications is whether the applicants have established that they had a reasonable expectation of privacy in the information obtained from the two locations such that their s. 8 Charter rights are engaged.
- [10] The applicants maintain they had a reasonable expectation of privacy in their images and movements such that the state conduct in obtaining the information amounts to a search and seizure which engages their s. 8 Charter rights. As the information was obtained in the absence of prior judicial authorization, they contend that the searches and seizures were

warrantless and therefore presumptively unreasonable. The applicants argue that the circumstances from Kwantlen and West Georgia are indistinguishable from those addressed in the Brighthouse Ruling.

- [11] The parties agree that the applicants bear the burden of proof to establish on a balance of probabilities that they had a reasonable expectation of privacy in the materials obtained by the VPD investigators.
- [12] The Crown takes the position that the applicants do not have a reasonable expectation of privacy in the materials obtained and, as such, no search or seizure occurred that engaged s. 8 of the Charter. The Crown advances three alternative arguments.
- [13] The Crown's primary position is the same as that advanced in the Brighthouse Ruling - that *R. v. Wilson*, 2017 BCCA 327 [Wilson BCCA], aff'g *R. v. Wilson* (April 12, 2016) Unreported Judgment, Vancouver No. 217835 (B.C.P.C.) [Wilson BCPC], is dispositive of the issue and that there is no reasonable expectation of privacy in the circumstances of this case. Recognizing the inevitability that the Court would not accede to this argument in light of the Brighthouse Ruling and Madam Justice Devlin's adoption of it in *R. v. Kim*, 2020 BCSC 1064 (Kim #3) and the need to preserve its position for appellate purposes, the Crown simply outlined its position in its written argument but did not expand upon it in oral submissions.
- [14] If the Brighthouse Ruling is the framework to be applied, the Crown's alternative position is that the present circumstances are distinguishable from those considered earlier. Their point here is that there is no evidence that the applicants had a residential connection with either location and so they cannot have an objectively reasonable expectation of privacy in the seized materials.
- [15] The Crown's second alternative position is that if the applicants succeed in establishing a reasonable expectation of privacy in any of the materials, the search and seizures can nevertheless be justified as the materials were obtained with the consent of the strata corporations. The Crown bears the onus of proving that the warrantless searches were justified on the basis of a valid consent.
- [16] On October 19, 2020, by way of a Memorandum to Counsel, I advised of the result of these applications with reasons to follow. I advised that I was satisfied that the applicants had established a reasonable expectation of privacy in the materials obtained from Kwantlen and from 1200 W. Georgia St. but not in respect of 1288 W. Georgia St. I further advised that the Crown had not discharged its burden of justifying the warrantless searches on the basis of a valid consent. Accordingly, the materials obtained from Kwantlen and from 1200 W. Georgia St. were obtained in violation of the s. 8 Charter rights of Mr. Kyle Latimer (Kwantlen only) and Mr. Szucs (both locations). I also advised that in so far as the materials obtained from 1288 W. Georgia St. were concerned, Mr. Latimer had not satisfied the burden of establishing that he had a subjective expectation of privacy in the materials obtained from that location on July 19, 2018, and that even if he did have a subjective expectation of privacy in the materials he had failed to establish that any expectation of privacy in the

materials was objectively reasonable.

[17] These are my reasons.

Factual Background

[18] My summary of the facts is drawn from the information contained in the submissions from counsel as well as the evidence adduced on the voir dres. I will address the items by location.

[19] All of the materials obtained by Project Territory in respect of the two locations covered by these two voir dres post-date the issuance of P.2018/05F ("P5") - the wiretap authorization obtained by Project Territory. As outlined in *R. v. Kang*, 2020 BCSC 1151 ("Excision Ruling"), P5 was issued by Madam Justice Gropper on or about February 14, 2018 and the wire "went up" shortly after its issuance. Both applicants were named targets in P5 and the private communications of each of them and many others were intercepted. Thus, both applicants were known to Project Territory investigators when the materials in issue on these applications were seized.

[20] In addition, the former co-accused, Jacob Pereira and Anduele Pikientio, were also observed attending at Kwantlen on a number of occasions.[2] CCTV footage and fob records relating to their attendances at Kwantlen on March 27, 2018 and other dates thereafter were also seized. Although Mr. Pereira and Mr. Pikientio were co-applicants on the Kwantlen voir dire, following their guilty pleas, their joint application (Application #37) was withdrawn. Accordingly, the materials seized in relation to the attendances of Pereira and Pikientio at Kwantlen between March 14, 2018 and June 18, 2018 do not form part of the subject matter addressed in this ruling save for a brief reference to the dates of their attendances and the number of times they were observed at the location to provide the context for what the Project Territory investigators were doing.

Privacy Guidelines for Strata Corporations and Strata Agents

[21] The Privacy Guidelines for Strata Corporations and Strata Agents ("Privacy Guidelines") published in June 2015 by the Office of the Information and Privacy Commissioner ("OIPC") were included in the exhibits on both the Kwantlen and West Georgia voir dres. I previously addressed the importance of the Privacy Guidelines in the Brighthouse Ruling and repeat those observations in this section.

[22] The Privacy Guidelines provide detailed guidance to strata corporations and strata agents to assist them in discharging their duties under the Strata Property Act, S.B.C. 1998, c. 43 [SPA] in a manner that respects the privacy of owners and tenants under the B.C. Personal Information Protection Act, S.B.C. 2003, c. 63 [PIPA] and promotes transparency in the operation of strata corporations.

[23] The document is comprehensive in explaining what personal information PIPA allows organizations such as strata corporations to collect without consent and when strata corporations may disclose personal information to others. In so far as requests for personal information from law enforcement agencies is concerned, the Privacy Guideline document advises (at p. 10):

Strata corporations may receive requests for personal information from law enforcement agencies such as the police. If a strata corporation is asked to disclose personal information to a law enforcement agency without a warrant, subpoena or court order, it must satisfy itself that the request is a bona fide request in aid of an investigation in considering whether to disclose the information. The strata corporation needs to confirm that the disclosure is to a law enforcement agency in Canada, which concerns an offence under Canadian laws, and which would assist in their investigation or making a decision whether or not to undertake an investigation. The disclosure of personal information should assist the public bodies in determining whether the offence has taken place or whether charges should be laid or the offence should be prosecuted.

If a law enforcement agency makes an oral request to a strata corporation for an owner or tenant's personal information, it is advisable that the strata corporation request that the agency put its demand in writing, set out its statutory authority for making the request, and provide the agency's internal file number. For example, the police may request access to video surveillance or access records for their investigation into a criminal act.

[24] The Privacy Guidelines also contain a section entitled "Privacy Issues Relating to Audio or Video Surveillance and Monitoring Systems" (at pp. 19-20). This section outlines:

The recording of voices, the capture of images of people entering a strata corporation building, or the capture of owners' movements through a strata corporation building may result in the collection of personal information about an identifiable individual within the meaning of PIPA. Any audio or video surveillance systems or access control and monitoring systems, such as a key fob system, in strata corporation buildings must comply with PIPA. Key fob systems monitor the access by owners to the common areas throughout the strata corporation building. This section sets out some considerations for strata corporations in relation to surveillance and/or access control systems.

Strata owners, tenants and guests have the right to feel and be secure in their daily lives, but they also have the right to be free from excessive and unwarranted intrusion. PIPA does not prohibit the use of video surveillance by strata corporations, but because of their inherent intrusiveness, video surveillance systems should only be used after other less privacy-intrusive measures have failed to address a serious problem.

Before installing or operating either a video surveillance or an access control system, the strata corporation should pass a bylaw authorizing its installation and operation. In the alternative, if the strata corporation does not pass such a registered bylaw, then it should ensure that all owners consent to its use. In all cases, a strata corporation should have a comprehensive written privacy policy in place that governs the use of such systems and the personal information they collect.

PIPA also permits the reasonable collection, use and/or disclosure of personal information for the purpose of an "investigation" or "proceeding" (ss. 12(1)(c), 15(1)(c), and 18(1)(c)) as defined in PIPA. For example, the use of video surveillance footage to catch strata lot owners dumping waste into the wrong waste bin would not be a permitted use of such a privacy invasive system because such improper dumping would likely be considered a minor bylaw infraction.

Before installing video equipment or activating a surveillance system that was installed by the original developer, the strata corporation should be prepared to justify the use of a surveillance system on the basis of verifiable, specific concerns about the personal safety of people living in a strata corporation, or in order to protect personal and common property that other measures have failed to address.

The access control system should only monitor access to public parts of the strata corporation property and be required for the security of the owners. If the identities of the owners or tenants can be anonymized, such as issuing the same key fob to everyone on the same floor, then the system may be less potentially invasive to the privacy of individuals living in [sic] the strata corporation while providing a secure method of accessing the building.

[25] The above directions in the Privacy Guidelines clearly establish that the OIPC has significant concerns with respect to how the personal information of owners, tenants and guests in strata corporation buildings is collected, stored and disclosed through the use of video surveillance and fob records within residential settings, with the attendant impacts on their privacy interests. While not legislation and therefore not carrying the force of law, it is a clarion call to strata corporations and strata agents that they must take steps to implement policies and bylaws that protect the collected personal information and the privacy of owners, tenants and their guests and to safeguard against indiscriminate disclosure of same to outside organizations, including law enforcement agencies. The suggested approach for disclosure of personal information to law enforcement agencies as set out in the Privacy Guidelines strikes a careful balance with a transparent process that ensures law enforcement agencies are able to conduct investigations but at the same time preserves a zone of protection for the privacy interests of owners, tenants and their guests. In other words, strata corporations and strata agents are counselled and advised by the OIPC to have a process in place to deal with requests by law enforcement agencies for the disclosure of information contained in CCTV footage and fob access records.

[26] The bylaws for the strata corporations at Kwantlen and West Georgia provide little to no guidance with respect to the privacy concerns that arise from the recording and retention of CCTV footage and fob records and the disclosure of personal information contained therein. I will address the specifics of each when I address the features of each location and the bylaws in effect at the time of the attendances by the Project Territory investigators.

The Personal Information Protection Act

[27] The OIPC Privacy Guidelines handbook for Strata Corporations and Strata Agents makes it clear that that strata corporations and strata agents acting on their behalf must adhere to the privacy rules contained in PIPA.[3]

[28] Section 6(1)(c) of PIPA prohibits an organization from disclosing personal information about an individual. However, under s. 6(2)(b) of PIPA this prohibition does not apply if PIPA authorizes disclosure without the consent of the individual.

[29] Section 18(1)(j) of PIPA does authorize disclosure without consent in certain circumstances, including:

- s. 18(1) An organization may only disclose personal information about an individual without the consent of the individual, if
 - (j) the disclosure is to a public body or a law enforcement agency in Canada, concerning an offence under the laws of Canada or a province, to assist in an investigation, or in the making of a decision to undertake an investigation,
 - (i) to determine whether the offence has taken place, or
 - (ii) to prepare for the laying of a charge or the prosecution of the offence,

Attendances at Kwantlen and Materials Obtained

[30] The Seasons complex on Kwantlen consists of three residential towers, six townhouse units and a heritage home for a total of 290 units. The three towers are located at 5028, 5068 and 5088 Kwantlen St. and the townhouse complex is at 5168 Kwantlen St. All of the units in the three towers share a common secure underground parkade which has the street address of 5028 Kwantlen St.

[31] Project Territory first learned of the Kwantlen location through physical surveillance of the applicants entering its secure underground parkade in a red Mercedes on March 13, 2018. In addition, Project Territory investigators overheard intercepted private communications from Kyle Latimer's telephone indicating that he was going to attend "suite #1901" with a locksmith. Project Territory also had information in respect of a "Shaw bill" in Mr. Szucs's name for the suite; however, no time frame for the Shaw bill was established in the evidence.

- [32] Between March 14 and June 18, 2018, three investigators with Project Territory - Cst. Prince Opoku, Cst. Marco Shum and Sgt. Patrick Chow - attended at Kwantlen on 11 different occasions to review, copy and seize CCTV footage (or still photographs from the footage) and accompanying fob records for suite #1901 - 5068 Kwantlen St.
- [33] The applicants did not own the suite and were not listed as its tenants. Mr. Gim Lim, the building manager testified that a woman named Samantha rented the suite but he did not believe she lived there as he never saw her there during his working hours. Project Territory Investigators eventually learned the tenant to be Samantha Tso.

Gim Eng Lim - Building Manager at Seasons on Kwantlen

- [34] Gim Eng Lim was the building manager for Kwantlen at the material time. He was an employee of Rancho Management Services (B.C.) Ltd. ("Rancho"), a property management company that contracted with the strata corporation to provide services related to building maintenance, management and administration. Mr. Lim started his employment with Rancho in August 2017. His immediate supervisor was Nicole Huang, a senior strata agent with Rancho. Mr. Lim was not a member of the strata council at Kwantlen nor was he an owner or tenant. At all times he was simply an employee of Rancho. His work location was at the Kwantlen complex.
- [35] Mr. Lim's office at Kwantlen is located on the underground parkade level of the complex. The office is always locked and contains at least two computers and CCTV camera monitors. Mr. Lim's hours of work are Monday to Friday, 8:00 a.m. to 4:30 p.m. His general duties include maintaining the buildings, supervising the janitors, monitoring the CCTV video surveillance cameras, responding to complaints, issuing fobs, and providing enter-phone buzzer codes to owners and tenants.
- [36] Mr. Lim explained that entry to the complex is restricted for security reasons. Owners, tenants and occupants require electronic fobs to enter all the main entry levels and through the parkade. The alternate means of access into the complex is through telephoning a unit and being buzzed in by the occupant. Access to the residential floors requires either the use of a fob in the elevator to take the individual to the designated floor or a visitor being buzzed in by an occupant and having a certain timeframe to access the occupant's floor via the elevator. No fob is required to take the elevator down from a residential floor to the lobby.
- [37] Kwantlen maintains a database for the activity of all issued key fobs. The fobs have unique identifier numbers and usually there are four fobs issued per unit. Mr. Lim has access to the password protected electronic database for the fob records and frequently does access this database through his office computer.

- [38] Kwantlen has 35 CCTV surveillance cameras of varying size that are visible throughout the common areas of the complex including the main entry doors, the elevators, the lobby, the parkade entry, the entries to the mail room and the garbage room, the gym and other amenities. Signs are posted throughout the complex advising that there is CCTV video surveillance, although Mr. Lim was unable to recall their exact wording.
- [39] The monitors for the CCTV surveillance cameras are in Mr. Lim's office. He frequently uses the monitors and accesses the stored CCTV footage, especially when investigating complaints, e.g. issues with cars tailgating to access the parkade without the use of a fob or for issues regarding the mail or garbage rooms. Mr. Lim explained that the purpose of the CCTV cameras and footage is to assist in the investigation of bylaw infractions and illegal activities, and in the maintenance of the security of the building. This includes showing the footage to the police investigating complaints about such things as theft and break and enters.
- [40] On March 14, 2018, two police officers attended at Kwantlen and identified themselves as such by showing him their badges.[4] Mr. Lim said he was told that the officers were investigating a matter (he recalled being told it was a resident involved in a fraud) and that they wanted to see certain CCTV footage. Mr. Lim took the officers to his office, showed them how to use the CCTV camera system, assisted them in locating the areas of the building they were interested in, and showed them how to access the CCTV footage, review and copy it. Mr. Lim also provided them with the password for the computer, provided the fob number associated to the suite they were interested in and left them to search the system for what they wanted. Mr. Lim agreed that he allowed the officers to look at what they wanted and to copy it. After initially showing them how to access the system Mr. Lim did not monitor what they looked at or copied. He also allowed them to copy the fob records for the fob of the suite they were interested in.
- [41] In addition, Mr. Lim gave the officers a master fob for the building and permitted them to move unescorted through the areas they wanted to check. The only documentation that Mr. Lim recalled receiving was a business card from Cst. Shum when the master fob was provided to the officers.
- [42] It is clear from Mr. Lim's evidence, as well as the evidence of the officers, that no written request for the materials they were seeking was ever provided on any of their attendances at Kwantlen. Nor was there any record kept of what Mr. Lim specifically authorized the officers to look at or copy.
- [43] Mr. Lim explained that the nature of the event the officers were investigating was not relevant. As with anything illegal in the complex, the strata agent and its employees try to assist the police for the safety of the residents. Mr. Lim did not check with Ms. Huang prior to assisting the police as she always told him that if it was the police it was "okay" and to "go ahead".

- [44] Mr. Lim explained that whenever the police attended at Kwantlen seeking information for an investigation it was his responsibility to assist as he was the only person with the password to the computers that stored the fob records and the CCTV footage. Mr. Lim never sought any sort of authorization from the strata council to provide the information or assistance to the police in the course of his dealings with the officers between March and June 2018.
- [45] On March 28, 2018 Cst. Opoku again attended the complex and met with Mr. Lim, identifying himself as a police officer by showing his badge and stating he was following up on the earlier investigation with Cst. Shum. Cst. Opoku wanted to see the CCTV footage and fob activity for suite #1901. Mr. Lim assisted him by showing him how to access the CCTV system and the locations that were depicted on the CCTV monitors. He left Cst. Opoku to review the materials that he wanted to look at on his own.
- [46] Mr. Lim then had a series of meetings with Sgt. Patrick Chow when he attended Kwantlen on April 10, 16, 17, 18 and 24, 2018. On his first attendance, Sgt. Chow identified himself as a police officer and showed Mr. Lim his badge. Sgt. Chow advised that he was attending to continue to look at the CCTV footage. Mr. Lim assisted him in the same way he had the other officers, by providing the password for the computer, showing him how to operate the CCTV system and showing the locations captured by the CCTV footage. He left Sgt. Chow to review and copy what he wanted.
- [47] On April 17, 2018, Sgt. Chow asked Mr. Lim if he could use Mr. Lim's office overnight on April 18, 2018. Mr. Lim advised Sgt. Chow that he needed permission from his supervisor. This was the only occasion that he felt the need to have permission from someone else as the officer wanted to be in the building and using the system at a time when Mr. Lim would not be in attendance. Mr. Lim emailed his supervisor, Ms. Huang, who indicated she approved and he advised Sgt. Chow of this on April 18, 2018.
- [48] Mr. Lim explained that at the March 14 attendance of the investigators he eventually understood that the police were interested in suite #1901 in Tower B - 5068 Kwantlen St. The investigators also wanted the parking stall number as well as the names of the owners and tenants associated to the suite. He provided the officers with the information they were seeking.
- [49] Mr. Lim recalled that on one occasion he had a complaint from a resident about somebody breaking a door to suite #1901. When Mr. Lim went up to check on the situation, he met at least two men outside the door who advised they were the owners and were changing the lock. Mr. Lim called to check with the listed owner, Igor. He did not recall receiving a reply and so assumed that everything was okay. However, in cross-examination Mr. Lim indicated that he spoke with Igor and that then Samantha (the tenant) called him. Based on the information he received from her, Mr. Lim was satisfied that the men at the door were authorized to go into and use the unit. Had he not been so satisfied, he agreed he probably would have called the police. He had no recollection of being shown a Shaw cable bill for

the suite by one of the men.

- [50] On May 22, 2018, the listed tenant Samantha contacted Mr. Lim advising that she needed a new fob to suite #1901. Mr. Lim checked with the owner and eventually issued a new fob to Samantha.
- [51] In direct examination, Mr. Lim said his assistance to the police was voluntary in that he endeavoured to assist the police anytime there were illegal events occurring at Kwantlen. He explained he did so for the safety and security of the residents. Mr. Lim did not seek authorization from his supervisor, Ms. Huang, prior to providing the access to the investigators, explaining she had previously authorized him to do so. The only time he obtained prior authorization from Ms. Huang was when Sgt. Chow needed to be in the building overnight accessing the CCTV system.[5]
- [52] Cross-examination revealed that Mr. Lim did not truly appreciate the concept of "voluntary assistance" as he explained that he felt that he had to give the police access to what they wanted. Mr. Lim indicated that he did not feel he could say no to the police or require something more from them before providing the information, in part due to his experience with the police in his country of origin - Malaysia - where the police have the authority to do anything, and in part from his understanding with his supervisor, Ms. Huang, that he should cooperate with the police and provide them what they sought.
- [53] In cross-examination, Mr. Lim acknowledged he was unfamiliar with the bylaws of the strata corporation; the agency agreement between his employer, Rancho, and the strata corporation; the provisions of the SPA; PIPA; or the Privacy Guidelines. He had not reviewed any of them. He also was not aware whether Kwantlen had a privacy policy. When a copy of a draft privacy policy was shown to Mr. Lim in cross-examination he stated he had never seen it before.[6]
- [54] Mr. Lim recalled that sometime after the initial attendance he provided the police with a copy of the fob records for suite #1901 - 5068 Kwantlen St., that encompassed a broad time frame - August 2017 through March 2018. Mr. Lim appeared to acknowledge that while the police were only looking for a specific date, he printed all the fob records that he could that related to the suite, largely because the system kept records for up to a year. Later, when it was suggested to Mr. Lim that on March 14, 2018 the police were only looking for information in respect of suite #1901 for one day - March 13, 2018 - Mr. Lim could not recall. He then explained that he simply let the officers print or copy whatever they wanted.
- [55] Overall, when the police attended seeking information about suite #1901, Mr. Lim provided the officers with access to the computer to look for the CCTV footage of the people the police were interested in and access to the fob records for the fobs associated with suite #1901. In cross-examination, Mr. Lim agreed that he really did not know what the police were accessing after his initial assistance. He left the investigators to look at what they needed and only assisted if they were having difficulties with the system. Moreover, he never checked the fob records for the master fob he provided to the officers to determine the

frequency of their attendances and the nature of their use of the master fob.

- [56] When the police attended at night (April 18, 2018, for the execution of a general warrant), Mr. Lim gave Sgt. Chow his computer password so he could access the computer because Mr. Lim would not be present as the investigative steps were occurring outside his hours of work. He also gave Sgt. Chow three keys so the officer could access Mr. Lim's office and the computers therein, as well as the mechanical room and the common areas. In fact, Mr. Lim also provided Sgt. Chow with a fob to access the secure computer room so he could get in and out without Mr. Lim's assistance. Mr. Lim did not place any parameters on what Sgt. Chow could look at and access on the computers when he attended at night and accessed the CCTV security system. He never monitored the fob records for this fob either and so had no idea when Sgt. Chow was attending, where he was going or what he was doing apart from pursuing his investigation.
- [57] The last time Mr. Lim saw Sgt. Chow at Kwantlen was on or about April 24, 2018.
- [58] On May 2, 2018, Mr. Lim emailed Sgt. Chow to ask if he was still "working" at Kwantlen; if not, he wanted the fobs and keys he had provided to the officers returned. Sgt. Chow advised in an email that they were still working at Kwantlen and promised to return the fobs and the keys when they were done. Mr. Lim conceded he did not know what was going on with the fobs and that no one was sitting with the officers monitoring what they were accessing on the system. He took no steps to restrict the officers' access to materials and did not know what they were accessing.
- [59] Mr. Lim again emailed Sgt. Chow on May 17, 2018 enquiring whether he was still using the fob and keys and requesting their return if they were no longer being used. Sgt. Chow advised they were still using the items.
- [60] On May 22, 2018, Mr. Lim emailed Sgt. Chow asking that he call him urgently. Mr. Lim explained he wanted to know whether he could issue another fob to the tenant Samantha who was requesting one be issued. Although Samantha had a key to the unit and was a tenant, Mr. Lim was not prepared to buzz her up to the unit as the police were still investigating and he felt he needed to check with them first. After speaking to Sgt. Chow, Mr. Lim emailed him the name of the tenant. The email and telephone conversations continued with Sgt. Chow wanting to learn the last name of the tenant and obtain a copy of the Form K. Mr. Lim understood Sgt. Chow or another officer to also want confirmation that the tenant did not receive a new fob until the following day. Mr. Lim explained in re-examination that part of the reason he was reluctant to issue a new fob to Samantha was the suite already had four fobs issued, one for the owner and three for the tenant. The strata corporation's policy is that a suite have only four active fobs issued so that there are not too many fobs in circulation.
- [61] Sometime between May 22 and 23, 2018, Mr. Lim forwarded the Form K for suite #1901 to Sgt. Chow.

- [62] On May 23, 2018, the email conversation continued with Mr. Lim advising Sgt. Chow that the owner of suite 1901 (Igor) had asked to have the three tenant fobs deleted, to keep his own fob (26616) active and to issue a new fob to his tenant, Samantha.
- [63] Mr. Lim was taken through the agency agreement[7] between his employer, Rancho, and the strata corporation and agreed that the use and disclosure of personal information of owners (clause 3.23, discussed below) was restricted to the disclosure of owner information and that the agreement said nothing about tenant information. Mr. Lim was aware that the information and materials he provided to the investigators was tenant information.

Strata Bylaws for Seasons on Kwantlen[8]

- [64] The strata corporation initially enacted bylaws on May 16, 2006. Between May 2006 and September 2019, the bylaws were amended adding and varying a wide range of provisions addressing key fobs, occupancy, strata fees, security issues and all matters incidental to community living in a strata complex.
- [65] Overall, the SPA Standard Bylaws and the strata corporation's amended bylaws collectively outline the duties of owners, tenants, occupants and visitors; the powers and duties of the strata corporation and the strata council; the enforcement of bylaws and rules; and general matters such as noise control, rental and other accommodations, common areas, the use of common area CCTV surveillance and fob access records.
- [66] Raised as germane to the issues on this application were Bylaws 39 and 53.
- [67] Bylaw 39 addresses security in general terms:

Bylaw 39: Security

- (1) Strata Lot owners or residents are responsible for anyone they admit onto or about the common property, inclusive of agents, services, licensees, or invitees.
 - (2) The Strata Council shall form a Security Committee to provide guidelines for the security of the individual Strata Lots, and to establish a resident-based voluntary crime prevention program such as Block Watch.
- [68] Bylaw 53 was added as an amendment to the strata corporation's bylaws following the September 25, 2017, Annual General Meeting of the strata corporation. This bylaw addresses the collection and disclosure of personal information:

Bylaw Addition:

53(1) In addition to personal information that is collected, used and disclosed by consent or as otherwise provided by law, the strata corporation collects, uses and discloses personal information from owners, occupants, and tenants for the purpose of carrying out its duties and responsibilities under the Strata Property Act. The personal information collected and used includes the following:

- (a) banking or credit card information to allow pre-authorized payments ("PAP") to pay strata fees,
 - (b) information regarding pets in a suite
 - (c) personal information collected through the use of video surveillance equipment,
 - (d) names and contact information of all persons living in a suite, and
 - (e) information created by a computerized access key fob system.
- (2) The council shall develop and implement a privacy policy setting out the procedures for collecting, using, verifying and disclosing personal information. An up-to-date copy of the privacy policy shall be provided to each owner or registered tenant upon request.
- (3) The council shall designate a member of the strata council as the "Privacy Officer" for the strata corporation. The Privacy Officer will have the responsibility of ensuring that the strata corporation complies with the privacy policy as well as the Personal Information Protection Act.

[Emphasis added.]

- [69] A draft privacy policy for the strata corporation was filed as Ex. #2 on the Kwantlen voir dire. The author is unknown although counsel believed the author was either associated to or retained by the strata council. The policy was drafted sometime in 2019, thus subsequent to the investigation in this case, and it has yet to be enacted by the strata council.
- [70] Although the draft privacy policy was not in effect at the time of this investigation it is still relevant in understanding what was missing at that time. In its introduction, the draft privacy policy alludes to PIPA and acknowledges that PIPA "sets out the ground rules for how a strata corporation may collect, use and disclose personal information." It also contains a statement that the draft privacy policy is in compliance with PIPA and is a privacy commitment that ensures the accuracy, confidentiality and security of the owners' and residents' personal information. Finally, the introductory statement acknowledges that Rancho is the agent of the strata corporation and will deal with owner information in a manner compliant with the policy and privacy legislation.
- [71] The draft policy includes both images from CCTV footage and fob records in its definition of "personal information".
- [72] Kwantlen's draft privacy policy outlines the purposes for collecting owners', residents' and tenants' personal information (cl. 1.1 and 1.2). In so far as the CCTV footage is concerned, the purpose appears to be to ensure the safety of owners, residents and tenants, their guests and their property. The policy is drafted as a consent-based approach, that is, the strata corporation will obtain consent to the collection, use or disclosure of personal information, save for certain circumstances enumerated elsewhere in the policy (cl. 2.1).

- [73] Clause 2.5 of the draft privacy policy enumerates the limited circumstances where collection, use or disclosure of personal information can occur in the absence of consent. Germane to this case is use or disclosure to investigate an anticipated breach of an agreement or a contravention of the law.
- [74] The draft privacy policy contemplates disclosing personal information to law enforcement personnel but only to fulfill the purposes identified at the time of the collection or for a purpose reasonably related to those purposes such as during the course of a criminal investigation into vandalism, theft or assault or to investigate possible illegal activity (cl. 31.)
- [75] The draft privacy policy also contemplates retention periods for CCTV footage (approximately 30 days - cl. 4.3) and fob records (12 months - cl. 4.4).
- [76] Finally, the draft privacy policy for Kwantlen authorizes law enforcement to review the recorded and collected personal information upon submitting a written request (cl. 4.5).
- [77] I have outlined the provisions of the draft privacy policy as they are informative. However, the policy was not in operation at the time of this investigation and so it would be fair to say that the only provisions governing the strata corporation and its agent on the use and disclosure of personal information was Bylaw 53 and the provisions of PIPA.
- [78] PIPA broadly defines "personal information" as information about an identifiable individual but does not include contact information. The Privacy Guidelines suggest a broader definition to include contact information. Moreover, Bylaw 53, as outlined above, adopts the wider definition of personal information to include personal information collected through the CCTV system, information collected through the computerized fob access system and the names and contact information of all people living in the suite. What Bylaw 53 fails to include, however, is a process for the disclosure of personal information collected by the strata corporation. Accordingly, the governing provision here is PIPA which should, in my view, also be informed by the policy advice from the OIPC Privacy Guidelines, something that had been in circulation as far back as 2009 and revised and reissued in 2015.[9]

Agency Agreement between Rancho Management and the Seasons Strata Corporation

- [79] The agency agreement between Rancho Management and Seasons, executed on March 29, 2011, was included in Ex. #1 on this voir dire.[10] The agreement appoints Rancho as the strata corporation's agent providing strata agency services to the corporation on the terms and conditions contained in the agreement.
- [80] Rancho is the agent of the strata corporation, not the strata council. The two entities are distinct and defined terms with the agent being an agent of the strata corporation, not the strata council. Mr. Lim is merely an employee of Rancho. While he may be able to do certain acts for the strata corporation as an employee of the agent, he does not have free rein to undertake actions on behalf of the strata council. Indeed, the agency agreement restricts

the ability of Rancho as agent to act on behalf of the strata council in a variety of situations.
[11]

[81] Included in the agency agreement is a clause dealing with use and disclosure of personal information, wherein Rancho covenants:

cl. 3.23 Use and Disclosure of Strata Corporation Information and Personal Information of Owners - To collect, use and disclose information respecting the Strata Corporation, including personal information respecting any Owner for any and all purposes related to the management, maintenance and administration of the Strata Corporation and for such purposes as are appropriate in connection with the performance of the duties of the Agent respecting the affairs of the Strata Corporation, including the provision of documentation and information as required by the [SPA] to facilitate the sale of any strata lot which shall include its distribution to the Owners' real estate licensees, potential purchasers, purchasers and their conveyancers, governmental authorities, Owners' mortgagees or other authorized requestors in accordance with the [SPA]. [12]

[82] For its part, according to cl. 18 of the agency agreement, the strata corporation "consents to the collection, use and disclosure by the Agent of information about the Strata Corporation and personal information about the Owners, for all purposes consistent with the matters contemplated herein." Significantly, the agency agreement is silent on the issue of disclosure of personal information to law enforcement agencies. Personal information is not a defined term in the agency agreement but it is in Bylaw 53. However, "Owners" is and means all owners of strata lots included in the Strata Plan. The agency agreement is silent on the meaning of tenants and the disclosure provisions referred to above make no reference to disclosure of personal information of other types of occupants such as tenants or guests of owners and tenants.

[83] Finally, cl. 4 of the agency agreement is the agent's authorization provision which also contains limiting language in respect of the agent's authority:

Agent's Authorization:

The Agent shall be deemed the Agent of the Strata Corporation and to enable the Agent to effectively perform its services under this Agreement the Strata Corporation hereby appoints the Agent as its agent to perform the services set out in Section 3 hereof and to execute all documents and contracts for and on behalf of the Strata Corporation, as directed by the Strata Council, and to commence legal proceedings at the expense of the Strata Corporation as directed by the Strata Council and to perform all other duties provided for in this Agreement.

[84] What the evidence establishes in respect of the agency agreement for Kwantlen, when considered in light of the provisions of PIPA and Bylaw 53, is that there is no coherent direction on who has the authority to disclose personal information to law enforcement.

Project Territory Investigators Attendances at Kwantlen

[85] Three different Project Territory investigators attended at Kwantlen on a total of 11 different occasions.

Cst. Prince Opoku

[86] Cst. Prince Opoku, a general investigator with Project Territory, attended Kwantlen on two different occasions, March 14 and 28, 2018, to review CCTV footage and fob records.

March 14, 2018 attendance at Kwantlen

[87] On March 14, 2018, Cst. Opoku was tasked by Detective Constable ("DC") Annemarie Unheim, then one of the Project Territory File Coordinators ("FC") to attend Kwantlen and obtain CCTV footage and related fob records to corroborate the surveillance observations of the attendance of the applicants at Kwantlen in a red Mercedes the previous day - March 13, 2018. He was provided with a specific time frame (13:30 hrs.) that corresponded with surveillance observations of the applicants. From the morning briefing he knew about the surveillance observations, the "lines" information of Mr. Latimer speaking to someone else about attending suite #1901 with a locksmith and finally, that Project Territory understood there was a Shaw bill in Mr. Szucs's name associated to suite #1901.[13]

[88] Cst. Opoku attended at 5028 Kwantlen, identified himself as a police officer to Mr. Lim, showed him his badge and advised him that they were investigating suspicious activity in respect of the building. Cst. Opoku advised Mr. Lim that he wanted to review some of the CCTV footage and fob records. Mr. Lim took the officers to his office. Cst. Opoku told Mr. Lim that if they found what they were looking for, they would need a copy of the CCTV footage and the fob records. Mr. Lim agreed to provide the materials to him.

[89] Although trained in the importance of taking notes, Cst. Opoku did not make any notes - or recordings - of his request of Mr. Lim or of the specifics of Mr. Lim's permission to access the system and obtain the materials that he did take. He acknowledged that Mr. Lim was the only individual he dealt with from Kwantlen and that he did not speak with anyone from the strata council for the complex.

[90] Cst. Opoku told Mr. Lim he was interested in suite #1901 - 5028 Kwantlen (Tower A) and provided a time, 13:30 hrs. on March 13, 2018 - information he had received at the team's morning briefing. Upon reviewing the video associated to that suite, Cst. Opoku determined it did not match the targets he was tasked to find. As there were three complexes associated with the strata corporation, Cst. Opoku shifted his focus to suite #1901 - 5068 Kwantlen (Tower B). Once Cst. Opoku factored the time delay between the fob record times and the CCTV footage times, he located the applicants arriving in the parkade in a red Mercedes.

[91] Cst. Opoku testified that he observed the applicants and another person, who was carrying a tool box, enter the elevator. He believed the third person was the locksmith based on information from the morning briefing and the fact that the man was carrying a tool box.

- [92] Cst. Opoku observed them make several trips up and down in the elevator, to and from the 19th floor of 5068 Kwantlen St. He explained that he looked at all the CCTV cameras in the entire area for the time frame he had been provided. The CCTV footage showed the Mercedes leaving at 14:55 hrs.
- [93] Once Cst. Opoku located the CCTV footage for March 13, 2018, he copied still photographs from the footage for that day onto a USB stick. When Mr. Lim checked the fob records for suite #1901, Cst. Opoku could see that there was activity associated to the suite from August 2017 through to March 13, 2018. Although not tasked to obtain records for that entire time period, Cst. Opoku testified he contacted the FC, advised of what he learned and was told by the FC to get the fob records for the entire period. He conceded he made no notes about this contact with the FC. He asked Mr. Lim for a copy of the fob records he had seen and Mr. Lim provided them - eight months worth. Cst. Opoku also obtained the names of those who lived in the two different suites, #1901 - 5028 and #1901 - 5068 Kwantlen, but was unable to obtain a Form K.
- [94] Cst. Opoku agreed that the purpose of his attendance was not only to determine the accuracy of the information provided at the morning briefing but also to determine where the applicants went in the complex, whether they met with anyone there, how long they were there, whether they took anything with them, why they went there; essentially, all in aid of adding to the investigative information by building a profile of the targets.
- [95] While I accept that Cst. Opoku contacted the FC about whether he should obtain all the fob records (instead of just the records for March 13, 2018), his failure to record any aspect of the request to and direction from the FC to obtain more than what he was originally tasked to obtain reflects the seemingly casual attitude adopted by Project Territory with respect gathering CCTV footage and fob records - essentially, an attitude of 'just ask for it and see if the building will provide it' with no thought given to either the privacy concerns engaged or the need to fully document the specific request made and the parameters of the authorization granted by the building managers or concierges.
- [96] The incursion into the lives and movements of not only the targets but also unrelated third parties is apparent in how the CCTV footage had to be reviewed. As a fob was not required to take the elevator down from the 19th floor of 5068 Kwantlen, the officers had to triangulate movements by reference to when the records showed the fob's next use. Once they had two data points - fob entry and a second fob use - the officers would review all the CCTV video for the two elevators in between those two points to find when the targets left the 19th floor of Kwantlen. Cst. Opoku did not keep a log of all the videos he accessed but conceded that they would have included images of people not associated to the investigation.

March 28, 2018 attendance at Kwantlen

- [97] On March 28, 2018, Cst. Opoku returned to Kwantlen to see if he could see Mr. Pereira on CCTV footage from the previous day. At the morning briefing that day, the team learned that Mr. Latimer had been heard on the wire lines on March 27, 2018, asking Mr. Pereira to obtain \$10,000. Cst. Opoku attended at Kwantlen and advised Mr. Lim that he was still investigating the suspicious activity and needed to use the computer system and obtain copies of fob records.
- [98] Although Cst. Opoku was only tasked to review the materials to see if Mr. Pereira had attended after the March 27, 2018 conversation with Mr. Latimer, he asked Mr. Lim for and received the fob records for the March 14 through March 28, 2018 time frame. Cst. Opoku then used the fob records to watch the video and first saw Mr. Pereira on March 27, 2018 attending at Kwantlen and going to the 19th floor. He also looked at the CCTV footage between March 14, 2018 and March 28, 2018 and saw Mr. Pereira and / or Mr. Pikientio making several trips up and down the elevator to the 19th floor on March 18, 20, 21, 24, 26 and 27, 2018, sometimes carrying boutique bags or backpacks. Cst. Opoku saved still images from the CCTV footage he had viewed to a USB stick.
- [99] Again, Cst. Opoku made no notes of his discussions with Mr. Lim or the responses he received from Mr. Lim. Similarly, Cst. Opoku testified that when he saw there was more activity than just March 27, 2018, he contacted DC Unheim, advised there was more material and asked her if she wanted him to get it too. No notes were made of the conversations and no further tasks were added to the Task Action Report ("TAR") he prepared in relation to this attendance.
- [100] I accept Cst. Opoku spoke with the FC and obtained instructions to gather more materials than he was initially tasked to obtain. However, as before, he did not document the directions to expand the task, what permission he sought from Mr. Lim, when it was sought and what Mr. Lim authorized.

Obtaining a master fob for Kwantlen

- [101] Cst. Opoku did not recall receiving a master fob from Mr. Lim when he attended at Kwantlen on March 14, 2018. However, he testified that the general practice was that if an investigator received a master fob for a building involved in the investigation, the fob was kept in a central spot with all the other fobs investigators had obtained for other buildings of interest - much like a valet key service for patrons and their vehicles at some restaurants. The fobs were labelled and marked in a central location and investigators had to sign the fob out if they wanted to attend at a particular building.

Cst. Marco Shum

- [102] On March 14, 2018, Cst. Marco Shum attended at 5028 Kwantlen with Cst. Opoku to determine their targets' involvement with the location. They met with Mr. Lim. In identifying himself as a police officer, Cst. Shum said it was his practice to show his police badge and provide a business card if he had one. He could not recall what he showed Mr. Lim when he met him on March 14, 2018. He also could not recall whether he told Mr. Lim that they were there for a fraud investigation but conceded it would be a technique to name the wrong offence in order to preserve the integrity of the investigation. He agreed that if he had done that then he would have provided false information to Mr. Lim. Cst. Shum did not have any direct dealings with the strata council.
- [103] The officer's evidence about the access Mr. Lim provided them to the CCTV footage and fob records and about what he observed on them largely mirrored Cst. Opoku's.
- [104] Cst. Shum had one other attendance at Kwantlen, on May 16, 2018, when a warrant was executed at Kwantlen. He provided scene security. It was his impression that the suite did not appear to be lived in. It contained basic furniture but he did not notice personal items such as pictures or clothing.

Sgt. Patrick Chow

- [105] Sgt. Patrick Chow, also a general investigator with Project Territory, was tasked by the command triangle to attend at 5068 Kwantlen on several occasions to review CCTV footage and fob records for suite #1901 covering certain time frames.

April 10, 2018 attendance at Kwantlen

- [106] Sgt. Chow was tasked by DC Unheim to attend at Kwantlen on April 10, 2018, to review and obtain CCTV footage and fob records in relation to suite #1901 - 5068 Kwantlen St. for April 6, 8 and 9, 2018, as surveillance had observed two of the targets attending Kwantlen on those dates. Sgt. Chow was provided with specific time frames to assist him in his search. Additionally, tracker data from a tracking device installed in a particular vehicle placed it at the Kwantlen location at certain times. Sgt. Chow's purpose in attending Kwantlen was to determine what was going on and what the targets were doing at the location - where they went in the complex, whether they were carrying anything in or out of the complex and any other information that appeared to be of relevance to the investigation. Sgt. Chow contacted DC Unheim to obtain contact information for who on the investigative team had the master fob for Kwantlen but never received the fob.

- [107] Sgt. Chow met with Mr. Lim and advised him he was carrying on with Cst. Opoku's investigation and needed to access the building's fob and video records. Like Cst. Opoku and Cst. Shum, Sgt. Chow failed to record the details of the request made of Mr. Lim or the permission that Mr. Lim granted. Sgt. Chow explained that it was his practice to simply say he was involved in an investigation and to remain vague about it in order to protect the integrity of the investigation.
- [108] Mr. Lim escorted Sgt. Chow to his office and gave him access to the computer station located in the inner office. Mr. Lim showed him how to use the system and then Sgt. Chow started to look for fob activity and corresponding CCTV footage for the known active fob associated to suite #1901.
- [109] Sgt. Chow found CCTV footage from April 6 and 8, 2018 that showed Mr. Pereira and Mr. Pikientio using the elevator to attend and leave the 19th floor of the building. Sgt. Chow ran out of time to look for footage for April 9, 2018. He copied eight videos of the movements he observed from the April 6 and 8 activity and sequestered them in a folder on the computer to download at another time. He was unable to figure out how to copy the fob records and so he used his cellphone to take a picture of the computer screen showing the fob records he reviewed. He remained at Kwantlen reviewing the materials for approximately three hours.

April 16, 2018 attendance at Kwantlen

- [110] Sgt. Chow returned to Kwantlen on April 16, 2018 to review the CCTV footage and fob records for April 9, 2018. However, DC Russell, one of the primary investigators on the file, expanded the task and directed Sgt. Chow to review all video from April 9 through April 16, 2018 as it pertained to the known active fob for suite #1901 as tracker data from a tracking device installed in a Lexus associated to the investigation placed the vehicle there in that time frame. Sgt. Chow agreed that, in essence, he was tasked to go and see what was occurring at Kwantlen in respect of the targets of the investigation. The vast majority of the CCTV footage reviewed for this time frame depicted Mr. Pereira and Mr. Pikientio entering the lobby of 5068 Kwantlen, taking the elevator to the 19th floor and then later leaving the 19th floor and taking the elevator to the lobby.
- [111] Although tasked to review video from April 9 through 16, 2018, Sgt. Chow saw video of the applicants attending Kwantlen on April 8, 2018. The applicants, together with Mr. Pereira and Mr. Pikientio, travelled in the elevator from the lobby to the 19th floor at 13:00 hrs and then 11 minutes later, at 13:11 hrs., Sgt. Chow observed the applicants descend in the elevator from the 19th floor and return to the lobby. Similar to his steps on April 10, 2018, Sgt. Chow copied the CCTV footage to a folder on the computer to transfer to a USB stick at a later date. He did not recall whether he specifically asked Mr. Lim if he could do this but was able to make a copy based on what Mr. Lim had showed him on April 10. He remained at Kwantlen reviewing the materials for approximately five hours. In that time, Sgt. Chow (i) looked at videos beyond the time period of April 9 at 20:29 hrs - specifically videos at 22:23

and 22:26 hrs, and (ii) copied at least six videos for April 11.

April 18, 2018 attendance at Kwantlen

- [112] Sgt. Chow returned to Kwantlen on April 18, 2018, to assist in the execution of a general warrant on suite #1901 as it involved a covert entry. He was tasked to determine the likelihood of anybody actually being in the suite and to do so he reviewed the fob records and CCTV footage for the suite. He observed Mr. Pikientio leaving the 19th floor and from this concluded that the suite was empty.
- [113] Sgt. Chow's second task that day was to live monitor the CCTV cameras while the general warrant was being executed in case anyone arrived at the complex.[14] Sgt. Chow approached Mr. Lim to see if he could obtain a fob and a key to permit him to access Mr. Lim's office so he could use the computer system that evening when the general warrant was to be executed. Mr. Lim had to check with his supervisor to see if he could permit this and returned a short time later with a key and a fob for Sgt. Chow. Once Sgt. Chow obtained the keys and the fob he retained them and used them to access Kwantlen whenever he was subsequently tasked to attend the location. He did not notify Mr. Lim that he would be attending on the subsequent attendances.
- [114] In the evening of April 18, 2018, Sgt. Chow returned to Kwantlen and used Mr. Lim's office to live monitor the CCTV cameras while the general warrant was executed. Sgt. Chow was able to access the computers without Mr. Lim's assistance as Mr. Lim had provided him with the password. He monitored the system for approximately four hours between 21:18 hrs and 01:30 hrs the next morning. None of the targets attended the building when the general warrant was executed.

April 23, 2018 attendance at Kwantlen

- [115] Sgt. Chow returned to Kwantlen on April 23, 2018, as he had been tasked by DC Apar to review the CCTV footage and fob records for that date to see if he could find Mr. Pikientio leaving the building carrying anything. It was his understanding that the investigators believed Mr. Pikientio was going to be making a trip to the Interior.
- [116] Sgt. Chow attended, reviewed the materials and observed Mr. Pereira and Mr. Pikientio taking the elevator to the 19th floor at 10:14 hrs. Sometime later he saw both men take the elevator from the 19th floor to the lobby. Mr. Pikientio was carrying a blue cooler-like bag.

April 24, 2018 attendance at Kwantlen

- [117] Sgt. Chow returned to Kwantlen on April 24, 2018, as he had been tasked by DC Hill to review the CCTV footage and fob records for that date to see if he could determine if either Mr. Pereira or Mr. Pikientio were in the suite. The investigation was endeavouring to locate Mr. Pereira for surveillance purposes.

- [118] Sgt. Chow attended, reviewed the materials and observed Mr. Pereira taking the elevator to the 19th floor at 15:53 hrs on that date. Sometime later he saw both men take the elevator from the 19th floor to the lobby. Mr. Pikientio was carrying a blue cooler-like bag. However, Sgt. Chow did not make a copy of the CCTV footage reviewed that day.

May 14, 2018 attendance at Kwantlen

- [119] Sgt. Chow returned to Kwantlen on May 14, 2018, as he had been tasked by investigators to review the CCTV footage and fob records for that date to see if he could see whether anything was taken to the suite between May 12 and May 14, 2018. The investigation had information that caused it to believe that Kyle Latimer had obtained a large amount of drugs. Sgt. Chow gained access to the building using the key for the rear door of the complex that Mr. Lim had provided and then let himself into Mr. Lim's office.
- [120] Sgt. Chow reviewed the CCTV footage and fob records for the one active fob for suite #1901 for the date range requested. He spent approximately three and a half hours reviewing CCTV footage and copied 22 clips during this visit. Sgt. Chow observed both Mr. Pereira and Mr. Pikientio take the elevator from the lobby to the 19th floor and back down to the lobby on all three days. He did not see the applicants attend Kwantlen on those days.

May 15, 2018 attendance at Kwantlen

- [121] Sgt. Chow returned to Kwantlen at 21:15 hrs on May 15, 2018. His role on this day was the same as his role on April 18, 2018 - to assist in the execution of a second general warrant at suite #1901 - 5068 Kwantlen St. Sgt. Chow reviewed the fob records and the CCTV footage and determined that the suite was not occupied. While live monitoring the CCTV cameras, Sgt. Chow did not see any of the targets attend Kwantlen while the general warrant was executed. He remained on site for approximately six hours.

May 22, 2018 conversations with Mr. Lim

- [122] On May 22, 2018, Sgt. Chow spoke with Mr. Lim on two different occasions. He learned that a female had attended the building seeking to gain access to suite #1901. Mr. Lim had to check with the owner of the suite. At no time did Sgt. Chow tell Mr. Lim not to grant her access. The only direction he provided to Mr. Lim was to make sure that the female was not made aware of the police involvement with the suite. Sgt. Chow asked Mr. Lim to provide him with a copy of the Form K. He conceded he did not ask anyone on the strata council to provide the information. Later that day, Sgt. Chow received a copy of the Form K for suite 1901. The listed tenant was Samantha Tso.

June 14 and 18, 2018 attendances at Kwantlen

- [123] Sgt. Chow returned to Kwantlen on June 14 and 18, 2018, and was tasked to review CCTV footage and fob records as investigators had information that caused them to believe Mr. Latimer and a cleaning crew attended the suite on June 12, 2018.
- [124] Sgt. Chow reviewed the fob records and saw activity for two different fobs associated to suite #1901. He recalled that one fob belonged to the owner, a Caucasian male. He checked the other fob that was unfamiliar to him and noted that it started to be used on May 24, 2018. Although outside the scope of his tasked time frame, Sgt. Chow explained it was relevant to his investigation to go back to when the new fob started to be used in order to determine who had control of it.
- [125] In reviewing the corresponding CCTV footage for the new fob associated to suite #1901 from May 24, 2018, Sgt. Chow observed Mr. Pikientio enter the lobby and take the elevator to the 19th floor and back down. Mr. Pikientio appeared to be moving and cleaning as the images observed depicted him carrying large garbage bags and suitcases. Sgt. Chow extracted eight clips of CCTV footage from May 24, 2018. Sgt. Chow saw no other targets on this date or on any of the days between May 24, 2018 and June 11, 2018.
- [126] In reviewing the fob records and related CCTV footage for suite #1901 from June 11, 2018, Sgt. Chow observed an Asian female take the elevator from the lobby to the 19th floor at 19:23 hrs and then take the elevator from the 19th floor to the lobby at 19:46 hrs. Sgt. Chow saw the same Asian female attend and travel up to the 19th floor at 20:22 hrs. on June 12, 2018, leaving 33 minutes later at 20:55 hrs.
- [127] The June 12, 2018, CCTV footage also depicted the applicants attend at the building, take the elevator to the 19th floor and then 10 minutes later take the elevator from the 19th floor to the lobby. This observation preceded the footage of the Asian female's attendance on the same date by about two hours.
- [128] The CCTV footage for June 17, 2018, showed Mr. Pikientio arriving at the complex with three unknown South Asians who were carrying mops and brooms. It appeared to Sgt. Chow that Mr. Pikientio was escorting a cleaning crew to the 19th floor.
- [129] Sgt. Chow completed his review of the CCTV footage and fob records on June 18, 2018. He explained in his evidence that for each of his attendances he employed the same procedure for reviewing and capturing the CCTV footage and fob records - he copied the relevant CCTV footage and saved it into a folder on the computer system at the building and took pictures of the fob records. All of the saved CCTV footage was then copied to a USB stick at the end of his attendances.
- [130] Sgt. Chow attended at Kwantlen one more time after June 18, 2018 to return the keys and master fob to Mr. Lim.

[131] In cross-examination, Sgt. Chow agreed that when a person descended from a floor in the building a fob was not required to get to the lobby. Much like Cst. Opoku's approach, Sgt. Chow reviewed CCTV footage between two known points of fob activity in relation to suite #1901 to locate the CCTV footage of the elevator descent. Sometimes, the fob records showed the fob being used to access the underground parking. When he closed the gap between the located CCTV footage of an ascent to the 19th floor and the fob record and CCTV footage for activity in the underground parkade, Sgt. Chow would see the various targets in the underground parkade and then worked back through the CCTV footage to find their descent from the 19th floor.

Conclusion on Kwantlen Materials

[132] Three different investigators with Project Territory were tasked to attend at Kwantlen a total of 11 times to view CCTV footage and fob records to determine the activities of the targets of the Project Territory investigation. The targets of interest were the two applicants as well as Jacob Pereira and Anduele Pikientio.

[133] Although initially tasked to look for certain specific time periods or events, the investigators quickly expanded their review of the CCTV footage and fob records to capture a large date range - March 13 through June 18, 2018 - and as such reviewed a voluminous amount of CCTV footage. The vast majority of the observed activity for the fob associated to suite #1901 related to attendances made by Mr. Pereira and Mr. Pikientio - at least 17 attendances were noted by the investigators upon review of the CCTV footage and corresponding fob records.

[134] The applicants were observed attending at Kwantlen together on three different occasions:

- i. March 13, 2018 together with a locksmith;
- ii. April 8, 2018 together with Mr. Pereira and Mr. Pikientio; and,
- iii. June 12, 2018.

The latter two attendances by the applicants were for less than 15 minutes.

[135] The applicants were not observed in any of the other Kwantlen CCTV footage reviewed by the three officers. The evidence does not support an inference that either of the applicants lived at Kwantlen. At best, they had access to the suite through the use of the same fob that Mr. Pereira and Mr. Pikientio were using and on one occasion were in the company of those two men. Similarly, the CCTV footage and fob records do not support an inference of any sort of tenancy or residency at suite #1901 by either Mr. Pereira or Mr. Pikientio.

- [136] It appears from Mr. Lim's evidence about dealing with the two men attending with the locksmith on March 13, 2018 that he was satisfied, based on information he received from the listed tenant, Samantha, that the two men were entitled to be there. The CCTV footage and fob records viewed by Cst. Opoku and Cst. Shum establish that the applicants were the two people accompanying the locksmith to suite #1901 on March 13, 2018.
- [137] The fact that the Project Territory investigators had information that there was a Shaw bill in Mr. Szucs name for suite #1901 does not, in my view, establish any tenancy given the lack of evidence as to the date or time frame for that bill. This conclusion is reinforced by the absence of any other evidence on the matter, apart from the three brief observed attendances of Mr. Szucs to the 19th floor over the course of a three-month period.
- [138] Cst. Opoku and Cst. Shum had limited involvement with the investigation and were merely carrying out the tasks they were assigned in respect of the investigation of Kwantlen. Although neither officer was able to say whether the location of Kwantlen was known to Project Territory prior to their March 14, 2018 attendance, on the totality of the evidence, it is not unreasonable to infer that Kwantlen first came to the attention of Project Territory on March 13, 2018 when members of the surveillance team followed the applicants in the red Mercedes to the Kwantlen location.
- [139] While I accept that the first attendance of the investigators at Kwantlen was to determine where the applicants went after entering the underground parkade on March 13, 2018, it is apparent from the fact of the 10 further attendances to the same location that Project Territory was after more. The investigators were gathering a body of evidence - lifestyle information - to establish who was attending the location, the frequency of their attendances, why they were attending it, what they were carrying in and out of the location, who was with them, what they were doing in relation to suite #1901 and any other information they felt was germane to the investigation that they could harvest from the materials reviewed, copied and seized.
- [140] In the Brighthouse Ruling, at para. 222, I commented as follows about the Project Territory investigators' approach to reviewing and copying fob records and CCTV footage:
- [222] The repeated police attendances at the Pacific Rim Estates with no further authorizations sought or obtained is emblematic of the general concern expressed earlier in these reasons that law enforcement agencies sometimes appear to treat the fob access records and the footage obtained from CCTV surveillance cameras in multi-unit residential buildings as "self-contained evidence preservation units" that they can access without the need to establish the minimal grounds for prior judicial authorization that a production order requires.
- [141] The same can be said for Kwantlen only, in my view, significantly amplified. Mr. Lim gave the officers unrestricted and unmonitored access to the systems where the CCTV footage was preserved and permitted the officers to copy what they wanted. He also gave them unrestricted access to the records related to the fob usage and provided a date range of

approximately an eight month time period, not the original day they were searching for. Further, he gave them free access to the building by providing a master fob. Project Territory investigators were given unrestricted and unsupervised access to databases that contained personal information of numerous owners, tenants and their guests.

- [142] There is no evidence that the strata council approved or authorized such wide ranging and free-standing access. Indeed, there is no evidence that the strata council was even aware of the unrestricted access to the premises and databases that Mr. Lim granted to the investigators. Finally, there is no evidence that this process satisfied even the minimum requirements of disclosure of personal information to law enforcement under PIPA. The officers did not provide even the minimum required by PIPA as they simply advised they were investigating suspicious activity. The process employed by the investigators in respect of Kwantlen certainly went well beyond the minimal disclosure guidance urged by the Privacy Guidelines.
- [143] Sgt. Chow's nine attendances at Kwantlen were largely for four purposes (i) to confirm surveillance observations of the targets, (ii) to determine if bags or items were being carried into the suite, (iii) to determine if the suite was unoccupied for the purpose of executing the general warrants, and (iv) to live monitor the CCTV cameras while the two general warrants were executed at suite #1901. His review encompassed a broad swath of materials for times between April 6 and June 18, 2018.
- [144] Overall, taken in their totality and viewed in context, the materials obtained by Sgt. Chow were sought to further the investigation and determine what was going on in respect of suite #1901 - 5068 Kwantlen, who was accessing it, what their activities included, and to confirm other investigative information. Although he copied at least 36 video clips, the totality of his evidence clearly establishes he watched hours of CCTV footage and likely viewed numerous third parties in the elevators of Kwantlen as he endeavoured to locate the attendances and movements of the targets that he gleaned from the fob records as cross-referenced to the CCTV footage for the elevator ascending to and descending from the 19th floor.
- [145] Sgt. Chow's access and observations illustrate how the building manager's office in Kwantlen was essentially turned into a surveillance observation post inside a residential building, seemingly without any direct knowledge of or specific authorization to do so by the strata council. His review of a wide range of CCTV footage between April 9 and June 18, 2018, confirms this point.
- [146] Mr. Lim, an employee of the property management company, simply obtained permission from his supervisor for Sgt. Chow to be in his office on the night of April 18, 2018 when the general warrant was to be executed. Significantly, Mr. Lim gave Sgt. Chow keys and a fob to access the building and security room but did not receive the keys back until after June 18, 2018. As Sgt. Chow had his own key and fob from April 18 onwards, he let himself in on a number of occasions - he did not notify Mr. Lim of his six further attendances at Kwantlen

after April 18, 2018.

- [147] In my view, the applicants were, at best, individuals granted unrestricted access to the suite by the listed tenant, Ms. Tso. While the applicants clearly were not tenants of Kwantlen, they nevertheless had access to suite #1901 through use of the fob associated to it as observed in the CCTV footage. In that respect they had a measure of control over the suite and at the very least were authorized visitors permitted to attend the suite by the listed tenant. The totality of the observations of the applicants, including the absence of lengthy or overnight stays and little in the way of personal effects in the suite, establishes that they were treating the suite as a form of storage locker and thus might even be described as "occupying but not residing in" the suite.

Attendances at West Georgia and Materials Obtained

- [148] The Residences on West Georgia consist of 488 units in two 36-story residential towers, a collection of townhouses and a heritage home within the area of W. Georgia, Alberni, Bute and Jervis Streets in Vancouver, B.C. The city addresses are 1200 and 1288 W. Georgia St. The two towers are referred to as the East Tower (1200 W. Georgia) and the West Tower (1288 W. Georgia). Approximately 40% of the units are rentals, some directly by the owners and some by property management companies like Vancouver Extended Stay. The rentals are supposed to be of no less than 30 days duration although shorter term rentals do occur.
- [149] Between June 27 and July 24, 2018, two investigators with Project Territory - Cst. Opoku and Cst. Shum - attended at West Georgia on seven different occasions to review and sometimes seize CCTV footage (or still photographs from the footage) and accompanying fob records for suite #501 - 1200 W. Georgia St.
- [150] Neither of the applicants owned the suite or was a listed tenant.

Melanie Blair - Head Concierge at West Georgia

- [151] Melanie Blair was the head concierge for the Residences on West Georgia at the time of the attendances by Project Territory investigators in June and July 2018.
- [152] Ms. Blair was an employee of a company that provided concierge services to various buildings in Vancouver. Her employer, Royal Concierge, contracted with AWM Alliance, a property management company, for the concierge services. AWM Alliance as the property management company contracted with the strata corporation of West Georgia. Ms. Blair was not an employee of the strata corporation or the property management company. She was not a member of the strata council for West Georgia and she was not an owner or tenant at West Georgia.
- [153] Ms. Blair did not report directly to the strata council; rather, she reported to the property management company and her employer. However, she frequently chatted with the president of the strata council, John Shalk. Early in her employment as the head concierge,

Mr. Shalk instructed Ms. Blair to cooperate with any police requests. Ms. Blair was not aware whether the strata corporation had a policy or bylaw on providing information and assistance to the police. She testified that when she cooperated with the police in this case, she did so on the basis of the general direction she had received from the strata council president. She did not seek specific authorization or direction from the strata council or AWM Alliance on whether to provide the officers access to the materials in this particular investigation as she believed the general instruction from Mr. Shalk to permit the police access to whatever they requested was all that was required.

- [154] Ms. Blair had numerous duties as the head concierge including taking care of the building, activating and deactivating fob and disc access devices, dealing with tenants and owners and related activities. Her work space is a desk in the lobby of 1288 West Georgia which has computers, cameras and fob access scanners.
- [155] In terms of report and direction chains, Ms. Blair explained she takes direction from the strata council, the building manager (an employee with AWM Alliance) and her employer, Royal Concierge.
- [156] Fob access is required to get into the lobby of the buildings and to take the elevator to the residential floors and back to the lobby. Although the fob should only permit access to a particular designated floor, Ms. Blair explained that when she started working at West Georgia in March 2018, she discovered that fobs were mis-programmed and given access to floors or suites that they should not have been able to access. Ms. Blair worked diligently to try and correct the problem. After a few months in the position she formed the opinion that there were non-residents accessing the building and claiming to be residents. Moreover, parking stalls and storage lockers were being rented to non-residents, something prohibited by the strata corporation.
- [157] A computer system maintains a record of the activity of all the fobs used in West Georgia by recording all transactions. The terminal is at the concierge desk in the lobby. Like Kwantlen, each fob has a unique identification number that appears in the activity records.
- [158] There are approximately 50 CCTV domed surveillance cameras of varying size visible throughout the common areas of the complex including the main entry doors, the elevators, the lobby, the parkade entry and the garbage room. There was no evidence as to whether there were warning signs posted throughout the building advising of CCTV surveillance.
- [159] The monitors for the CCTV surveillance cameras are located at the concierge desk in the lobby of West Georgia. There are three monitors each with 16 camera feeds for a total of 48 monitors for the buildings. The purpose of the CCTV surveillance system is for the security of the building. Ms. Blair explained that she both live monitored the CCTV cameras and also reviewed stored CCTV footage when complaints were received or to monitor activities such as the unauthorized disposal of items in the garbage room.

- [160] Ms. Blair testified that she recalled the police attending at West Georgia in June and July 2018. She recalled dealing with Cst. Opoku but could not recall Cst. Shum. Nor could she recall the circumstances of the first police attendance. Her clearest recollection was when the police attended to execute a search warrant on suite #501 - 1200 West Georgia and a suite on the 34th floor of 1288 West Georgia.
- [161] With respect to the first attendance by the police in relation to the matter before the court, Ms. Blair recalled the officer asking to do surveillance, asking questions about the locations of the cameras in the building and asking about fob usage reports. Ms. Blair testified that she helped the officer based on what the president of the strata council had told her in terms of cooperation with the police. Ms. Blair felt it was part of her job duty to assist the police. Further, she did not believe she was required to check with AWM Alliance or strata council because of what Mr. Shalk had advised her to do - to help the police in any way that they ask when they attend the complex.
- [162] The only time Ms. Blair recalled being shown anything in writing by the police was on July 19, 2018, when a search warrant was executed. She recalled the SWAT team arriving, a robot to disarm bombs and residents being directed to leave the building.
- [163] Prior to the execution of the search warrant on July 19, 2018, Ms. Blair was aware that the officer she had dealt with was interested in suite #501- 1200 W. Georgia. She recalled in general terms that she helped the officer with the CCTV system, ran reports on certain fobs for him and gave him keys to access the building. Ms. Blair showed the officer how to use the computer system. She could not recall if he made copies of the CCTV footage but said it was probable and that she would have permitted him to make the copies. She recalled that she may also have assisted the officer with printing the fob records. Ms. Blair was uncertain whether she knew who the tenant for suite #501 was at the time but stated she knew when she testified that the person was named "Monica".
- [164] Ms. Blair was unaware of whether West Georgia had a privacy policy. She knew there were bylaws for the strata corporation that were accessible to the residents through the AWM website. She knew of the SPA and PIPA but had not reviewed the latter since a course in 2015 or 2016. In June and July 2018 Ms. Blair was not familiar with the OIPC Privacy Guidelines.
- [165] Ms. Blair explained that when she started to work at West Georgia, she learned that the police already had some fobs in their possession. Specifically, in respect of this investigation, she provided a master fob when the police asked for it when they were on site. In so far as Cst. Opoku's attendances at West Georgia were concerned, Ms. Blair did not think he actually had a fob as she recalled buzzing him into the lobby.

- [166] Although Ms. Blair could not recall providing a list of owner information for the suites in the West Tower (1288 W. Georgia St.), when shown Ex. #5 she recognized it as a list of owner information that would have been obtained from the AWM Alliance website and agreed that she must have provided it to the officers.
- [167] Ms. Blair did not recall the specifics of her interactions with the police prior to the execution of the search warrant in this case. Once she gave the officers access to the CCTV database, she did not monitor what the police were watching or copying. Although she had concerns about the privacy interests of third parties not connected to the investigation, she did not do anything to ensure that their information was not also reviewed and copied. Ms. Blair explained that although early on in her employment at West Georgia she expressed reservations to her employer that privacy issues were not being properly handled, she was told "It doesn't matter. We want strata happy, do what strata wants." Ms. Blair said she raised this with the strata and they were clear that they wanted full cooperation with the police and that it did not matter what the police wanted.
- [168] Although Ms. Blair did not specifically recall a conversation with Cst. Opoku around July 17, 2018, she agreed that the officer called her, and asked her to run the fob records for suite #501 to determine if there had been recent activity at the suite. She agreed that she produced the records for the officer and that he picked them up later that same day.
- [169] When shown two documents in cross-examination, Ms. Blair acknowledged that she emailed Cst. Opoku on July 19, 2018 with two attachments to the email - a table that listed 11 suites as well as fob records for suite #501 from July 19, 2018. Ms. Blair also recognized Ex. #4, a fob activity report printed on July 17, 2018, that detailed use of a fob for suite #501 between the period of July 13 through 17, 2018. Although she did not recall printing the records, she agreed it was probable that she did and that she provided them to Cst. Opoku later that same day. She agreed that this was something that happened on several occasions - Cst. Opoku or another officer would contact her, request that she print fob activity records, she would prepare them and then have them available for when the officer dropped by to pick them up.
- [170] Ms. Blair agreed she emailed updated suite lists similar to Ex. #5 to Cst. Opoku a number of times. The last time she did so was on August 8, 2018 and she was advised by him that they no longer required additional information. She agreed that the ongoing information exchange with Cst. Opoku occurred between June and August 2018.
- [171] Ms. Blair recalled being asked by the police in this investigation to deactivate a fob. She consulted with the building manager. Similarly, she consulted with the building manager when giving the police access to the building.
- [172] In so far as the search warrant execution on July 19, 2018 was concerned, Ms. Blair gave Cst. Opoku access to the historical data on the fob records and the CCTV footage and also permitted him to live monitor the CCTV cameras for both 1200 and 1288 West Georgia.

- [173] During his live monitoring, Cst. Opoku saw two other individuals on the camera monitors for 1288 W. Georgia St. and asked Ms. Blair about them. She believed that Cst. Opoku's query about the individuals occurred within two to five minutes of the police breaching suite #501 - 1200 W. Georgia in the execution of the search warrant. By looking at the CCTV footage, Ms. Blair was able to determine which elevator the individuals were in and what floor they were attending by checking the fob records. The fob the individuals were using was associated to a different suite than the one the individuals attended. It was at this time that Ms. Blair provided Cst. Opoku with the owner information for all the suites on the 34th floor of 1288 W. Georgia as well as the fob records for the suites on that floor. To her knowledge, Cst. Opoku downloaded the CCTV footage of the attendance of the two individuals. He was permitted to download whatever he thought was appropriate.
- [174] Ms. Blair vaguely recalled Cst. Opoku telephoning her around July 23, 2018, advising he wanted to investigate the non-501 suites and asked her to print out the fob records for those suites all the way back to May 2018. She did so. Ms. Blair understood that Cst. Opoku would be coming to West Georgia in the early morning hours to obtain them.

Strata Bylaws for the Residences on West Georgia

- [175] The strata bylaws for the strata corporation of West Georgia were marked as part of Ex. #1 on this voir dire. The strata corporation bylaws, approved on May 23, 2017, applied to #501 - 1200 W. Georgia St. They are generic standard bylaws that cover a variety of issues in respect of strata living and business. The West Georgia strata corporation has no privacy policy and no privacy officer.
- [176] Two bylaws are germane to the issues raised on this voir dire - bylaws 3(1)(d) and 45. Bylaw 3 covers the use of strata property and bylaw 45 addresses security issues. The relevant extracts are as follows:

Bylaw 3: Use of Property

- (1) An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that
- (d) is illegal

Bylaw 45: Security

- (1) Security Measures NOTICE

The system operates 24 hours a day and the Strata Corporation collects data from the closed circuit television and video surveillance.

- (1) The Strata Corporation collects data with respect to the usage of each security fob programmed for use at Strata Plan LMS3094

- (2) The video files and/or security fob usage records will be used only for the purposes of law enforcement and/or for the enforcement of those Strata Corporation bylaws and rules, which relate to the safety and security of the building and its occupants. Also to prevent and recover damages for vandalism, misuse, theft and other improper and unauthorized or illegal activities relating to common area property or vehicles or other property of residents or Strata Corporation located in the parkades.
 - (3) The video files are stored for a period of up to 8 months from the date of the recording, which period may be extended for the files required for law enforcement and/or by-law enforcement purposes.
 - (4) The security fob usage records are stored for a period of up to 8 months from the date of the recording, which period may be extended for the files required for law enforcement and/or by-law enforcement purposes.
 - (5) The personal information of owners, tenants, or occupants will only be reviewed or disclosed as follows:
 - (a) Law enforcement in accordance with Bylaw 3 herein
 - (6) In installing and/or maintaining the systems described herein, the Strata Corporation makes no representations or guarantees that any of the systems will be fully operational at all times. The Strata Corporation is not responsible or liable to any owner, tenant, occupant or visitor in any capacity (including a failure to maintain, repair, replace, locate or monitor any of the systems, whether arising from negligence or otherwise) for personal security or personal property in any area monitored by any of the systems.
- [177] Curiously, the term "visitor" is included in Bylaw 3 and Bylaw 45(6) but is absent from Bylaw 45(5), the provision that authorizes disclosure of personal information.
- [178] Moreover, the apparent allowance for disclosure of personal information to law enforcement as contained in Bylaw 45(2) and (5) and Bylaw 3 is extremely vague. The provisions contain no guidelines or oversight on how the information is to be provided. To that end, then, the provisions of PIPA would govern on the disclosure of personal information.

Project Territory Investigators Attendances at West Georgia

Cst. Prince Opoku

- [179] Cst. Opoku attended at West Georgia on five occasions to determine where Mr. Szucs was going, the frequency and duration of his attendances, who he was associating with, if anyone, and whether he was carrying anything. The dates of his attendances were June 27, 28, July 3, 17, and 19, 2018. He made one more trip to West Georgia in relation to another person - identified as "Mega Man" - on July 23, 2018. His approach to obtaining fob records and corresponding CCTV footage was the same as his first attendance at Kwantlen.

- [180] Cst. Opoku acknowledged that during the March to July 2018 time frame, Project Territory was investigating several different locations and agreed that a number of officers were tasked with attending at these locations to obtain CCTV footage and fob records for different units that were suspected to be operating as "stash houses". Cst. Opoku agreed that part of the efficacy of reviewing and copying the CCTV footage was that it permitted investigators to review the materials, make observations and notice the patterns of the targets and thereby build a profile of what the target was doing at a given location.

June 27, 2018 attendance at West Georgia

- [181] At the team briefing on the morning of June 27, 2018, Cst. Opoku learned that Mr. Szucs had been followed by physical surveillance to the area of 1200 W. Georgia St. and that tracker data from a tracking device installed in a Honda Accord put the vehicle in that area. The tracker data did not provide a specific address and the physical surveillance observations failed to pinpoint an exact location. Cst. Opoku was tasked to find CCTV footage capturing the movements of the vehicle and where the driver went. He attended in the area and canvassed a building at 648 Jervis St. He spoke with the building manager and strata council president who allowed him to access the databases and review materials. Although given a specific time and date for this observation, Cst. Opoku spent about two hours reviewing materials at the Jervis St. location before determining that the vehicle had not gone to Jervis St.
- [182] Cst. Opoku then went to 1200 W. Georgia and met with Ms. Blair, identified himself as a police officer, produced his business card and advised her that he was investigating "suspicious activity" in the area. He advised Ms. Blair that he wanted to review CCTV footage and fob records to see if a certain vehicle had entered the underground parkade in a particular time frame; and, if the vehicle was located in the CCTV footage, he wanted to see who was associated to the vehicle, where it parked, what unit and parking stall number it was associated to and the fob number for any fob being used.
- [183] Ms. Blair agreed to assist Cst. Opoku and started to check the CCTV footage, eventually finding the vehicle Cst. Opoku was searching for. From there Ms. Blair was able, by cross-referencing the fob records with the CCTV footage, to locate the fob number that granted the vehicle's access to the parkade. With this information in hand, Ms. Blair followed the data trail and assisted in locating Mr. Szucs using a fob registered to suite #501-1200 W. Georgia St.
- [184] Cst. Opoku could not recall if he copied CCTV footage and fob records on his first attendance. He returned the next day to complete his task. However, during this first attendance, Ms. Blair showed him how to use the computer system, copy short clips of video that were of interest to him and then save them in a folder on the computer for copying to a USB stick. Although Ms. Blair was present for the remaining attendances outlined below, she did not monitor what Cst. Opoku was downloading.

- [185] Cst. Opoku agreed in cross-examination that he did not download all the CCTV footage that he reviewed during the course of his attendances at West Georgia. More significantly, he agreed that he made no notes of his attendance at West Georgia on June 27, 2018 and his examination of CCTV footage and fob records for suite #501 on that date. Nor did Cst. Opoku make any notes of his conversation with Ms. Blair on June 27, the request he made of her or the permission she granted. He agreed that nothing prevented him from making such notes and that the making of such notes was in fact important to assist in recalling what had happened.
- [186] In cross-examination Cst. Opoku could not explain why he seized 20 minutes of CCTV footage around the June 25, 2018 attendance at 20:26 hrs. or lengthy periods of CCTV footage of other individuals completely unrelated to the investigation. This held true for other extracts of CCTV footage played during the course of the voir dire, where brief appearances of Mr. Szucs in the elevator travelling up or down (approximately 16 to 20 seconds in duration) were included in lengthier clips of CCTV footage (approximately 15 to 20 minutes in duration) with other individuals he had copied. Cst. Opoku conceded that nobody told him he was copying too much CCTV footage.[15] He simply copied what he thought was appropriate in the circumstances.
- [187] In addition to reviewing CCTV footage and fob records on June 27, 2018, Cst. Opoku also obtained the owner information for suite #501 as well as information related to a second suite in the same tower, suite #504, as initially there was uncertainty as to which suite was of interest to the investigation.

June 28, 2018 attendance at West Georgia

- [188] On June 28, 2018, sometime around 15:00 hrs,[16] Cst. Opoku returned to West Georgia and asked Ms. Blair if he could continue his review of the CCTV footage and fob access records. Upon reviewing the fob access records for suite #501, Cst. Opoku learned there were three fobs for the suite but only one fob had consistent activity - fob #3594 - and its trail of activity took him back to May 19, 2018. With that information he started working back through the CCTV footage as far back as the video was retained and downloaded the CCTV footage at about 16:30 hrs.
- [189] Cst. Opoku agreed that his assigned task for June 28 was to check for an observation on June 26, 2018, at a specific time; however, once at West Georgia, he reviewed CCTV footage from June 28, 2018 all the way back to May 2018, as it was there and available for him to review. Once he conducted his review and just before he downloaded all the CCTV footage and fob access records reviewed, he checked with DC Hyde of the command triangle for Project Territory. Curiously, although he reviewed CCTV footage of Mr. Szucs attending at West Georgia prior to June 25, 2018, Cst. Opoku did not download that video and agreed there was no way to determine the accuracy of his assertions about seeing Mr. Szucs at West Georgia on dates where Cst. Opoku had not downloaded the CCTV footage he had reviewed.

[190] Based on a review of the fob records for fob #3594 Cst. Opoku learned that access to suite #501 was occurring for very short periods of time - less than an hour - more in the realm of three to five minutes.

[191] On his attendance at West Georgia on June 28, 2018, Cst. Opoku made the following observations about the Honda Accord and Mr. Szucs's movements as informed by his examination of the fob records and the related CCTV footage:

June 25, 2018 - two brief attendances

16:45 hrs. - a dark Honda Accord entered the parking garage of 1200 W. Georgia and parked in the trades parking area. Mr. Szucs used a fob (16:46 hrs.) and took the elevator to the fifth floor of the East Tower. He was not carrying any bags. Thirteen minutes later (16:59 hrs.) Mr. Szucs took the elevator from the fifth floor down to the parking garage. He was carrying a black and white bag and still wearing the same clothing.

20:26 hrs. - the dark Honda Accord again entered the parking garage of 1200 W. Georgia. Mr. Szucs used a fob, took the elevator to the fifth floor of the East Tower. He was carrying a black backpack. Six minutes later (20:32 hrs.) the Accord left the parking garage.

June 26, 2018 - one brief attendance

18:43 hrs. - the dark Honda Accord entered the parking garage of 1200 W. Georgia, Mr. Szucs used a fob and took the elevator to the fifth floor of the East Tower. Five minutes later (18:48 hrs.) Mr. Szucs took the elevator from the fifth floor back to the parking garage. He was carrying the same black backpack as before and was wearing the same clothing.

June 27, 2018 - four brief attendances

00:08 hrs. - the dark Honda Accord entered the parking garage of 1200 W. Georgia and parked in the trades parking area. Mr. Szucs used a fob and took the elevator to the fifth floor. He was carrying a grey backpack on his back, a red sports bag in his right hand and a black grocery bag. Four minutes later (00:12 hrs.) Mr. Szucs took the elevator from the fifth floor down to the parking garage. He was not carrying the three bags.

13:24 hrs. - Mr. Szucs entered the parkade in the Honda Accord, took the elevator to the fifth floor and then left the fifth floor about four minutes later.

16:56 hrs. - Mr. Szucs entered the parkade in the Honda Accord, took the elevator to the fifth floor and then left the fifth floor about four minutes later.

21:05 hrs. - Mr. Szucs entered the parkade in the Honda Accord, took the elevator to the fifth floor and then left the fifth floor about six minutes later.

[192] Through the four attendances on June 27, 2018, Mr. Szucs was wearing the same clothes as on his June 26, 2018 attendance, although, on one occasion he was wearing a hat.

July 3, 2018 attendance at West Georgia

[193] Cst. Opoku returned to West Georgia on July 3, 2018 to continue his investigation by reviewing more fob records and CCTV footage. The time frame that he reviewed was June 28 through July 3, 2018. As in his previous attendances, he was admitted to the front lobby and went to the concierge desk. He used the fob records to follow the use of the active fob for suite #501 - 1200 W. Georgia and then checked the CCTV footage for the locations and times the fob records showed the fob to have been used. Cst. Opoku made the following observations about the Honda Accord and the movements of Mr. Szucs:

June 28, 2018 - one brief attendance

13:32 hrs. - Mr. Szucs drove the Honda Accord into the parkade, took the elevator to the fifth floor and then left the fifth floor about 18 minutes later, wearing the same clothes.

June 29, 2018 - one brief attendance[17]

10:32 hrs. - Mr. Szucs drove the Honda Accord into the parkade, took the elevator to the fifth floor and then left the fifth floor about 14 minutes later.

June 30, 2018 - two brief attendances[18]

12:20 hrs. - Mr. Szucs drove the Honda Accord into the parkade, took the elevator to the fifth floor and then left the fifth floor about four minutes later.

17:25 hrs. - Mr. Szucs drove the Honda Accord into the parkade, took the elevator to the fifth floor and then left the fifth floor about five minutes later.

July 2, 2018 - one brief attendance

18:40 hrs. - Mr. Szucs drove the Honda Accord into the parkade, took the elevator to the fifth floor and then left the fifth floor about 15 minutes later.

[194] Significantly, Cst. Opoku was not in attendance at the team's morning briefing on July 3, 2018, and had not been tasked to go to West Georgia on that date. Moreover, he was unable to provide any detail about clothing or bags in his TAR for the June 29 and 30 observations as he did not copy the CCTV footage. When defence counsel suggested to Cst. Opoku that he simply inferred that Mr. Szucs was attending on these two dates because he only reviewed the fob records, the officer could not say whether that was correct or not. I am not prepared to infer that the officer did not see the CCTV footage. In my view, he simply did not to copy the CCTV footage and was unable to provide any detailed description of what Mr. Szucs had done during those intervals.

[195] Cst. Opoku was unable to attend West Georgia on July 13, 2018, as he was assigned to another task. He briefed Cst. Shum on what he had been doing there and how the computer system worked and so Cst. Shum attended West Georgia that day.

July 17, 2018 attendance at West Georgia

- [196] Cst. Opoku's next attendance at West Georgia was on July 17, 2018. He was tasked to conduct follow up to determine if there had been any fob activity for the one active fob for suite #501 between July 14 and 17, 2018. The purpose of this was to provide DC Nielsen, the affiant for the search warrant, with more recent activity at suite #501 beyond July 8, 2018. Cst. Opoku was to review the fob records and CCTV footage to determine this and if he saw activity to make copies of the fob records and obtain photographs from the CCTV footage.
- [197] Significantly, before even being assigned this task, Cst. Opoku contacted Ms. Blair and asked her to check the fob activity on suite #501. Cst. Opoku acknowledged that Ms. Blair was very helpful to the investigation. He conceded he undertook this inquiry before any task was assigned to him by DC Unheim. While the defence appears to imply something nefarious by this conduct or that it undermines the reliability of his evidence, I would not accede to this point. Rather, in my view it is an example of logical police work undertaken more quickly than the associated tasks could be assigned.
- [198] The only activity that Cst. Opoku found for the time frame of July 14 to 17, 2018 was one attendance on July 16, 2018. Consistent with all the other attendances, Cst. Opoku saw the Honda Accord enter the parkade and park in the trades parking area at 17:24 hrs. Mr. Szucs, who was carrying a bag, used the fob at the elevator at 17:25 hrs. and travelled to the fifth floor. He left the fifth floor via the elevator at 17:27 hrs. and drove out of the parkade in the Honda Accord at 17:30 hrs.[19] Although Cst. Opoku initially advised DC Nielsen that there had been three attendances at suite #501 on July 16, 2018, that information came from Ms. Blair and was not borne out by the CCTV footage Cst. Opoku reviewed.

July 19, 2018 attendance at West Georgia

- [199] Cst. Opoku's next attendance at West Georgia was on July 19, 2018 when a search warrant was to be executed on suite #501 - 1200 W. Georgia. His task that day was two-fold: he was to check the fob records for recent activity at suite #501 and then to live monitor the CCTV cameras while the search warrant was being executed. This latter task was undertaken for the purposes of officer safety. He attended West Georgia and Ms. Blair permitted him to access the computer systems at the concierge desk to conduct his review.
- [200] Based on his review of the fob records and the CCTV footage associated to suite #501, Cst. Opoku determined that the fob for suite #501 had been used on July 19, 2018 at 00:34 hrs. to access the fifth floor via the elevator and then to leave the fifth floor at 00:36 hrs. Based on that information, Cst. Opoku advised the command triangle there had been no other activity at the suite for that day. Notably, Cst. Opoku did not copy the CCTV footage on this occasion.

- [201] Cst. Opoku advised Ms. Blair that a search warrant was going to be executed on suite #501 that day during a particular time frame and requested permission to live monitor the CCTV cameras for the purposes of assisting in the execution of the search warrant. Ms. Blair had to obtain permission from another individual and once she did, she let Cst. Opoku monitor the CCTV cameras in real time.
- [202] The door to suite #501 was breached by ERT members of the VPD at 11:16 hrs. Cst. Opoku watched all the video cameras that permitted access to the building including all the parkade, elevators and key entrances to the building. He explained that the parkade had a common elevator area that allowed access to both towers of the West Georgia complex.
- [203] During the course of the execution of the search warrant, while Cst. Opoku was monitoring the CCTV cameras, he observed Justin Haevischer and Kyle Latimer using elevator #3 at 12:30 hrs. This elevator was for 1288 W. Georgia St. This concerned Cst. Opoku and so he alerted the command triangle to the attendance of Mr. Haevischer and Mr. Latimer. Cst. Opoku asked Ms. Blair to pull up the fob records to determine which fob these two individuals were using and where they were going. Cst. Opoku obtained a copy of the CCTV footage, the fob records as well as the owner information for the suite associated to the fob (suite #3401), the storage locker information, and the parking stall number. Ms. Blair also provided Cst. Opoku with two screen shots of owner information for six suites on the 34th floor of 1288 W. Georgia St.[20]
- [204] Cst. Opoku attended in suite #501 on July 19, 2018 and testified "there wasn't much stuff in there" but said he did not have a good recollection of that as he had not taken notes of what he observed.

July 24, 2018 attendance at West Georgia

- [205] Cst. Opoku attended at West Georgia one last time in the early morning hours of July 24, 2018. His task was to review fob records associated to a group of suites that Ms. Blair had brought to the team's attention and to follow up on an attendance on July 19, 2018 at 12:24 hrs., by a person who went by the name of Mega Man and to see if the CCTV footage depicted a particular large bag being carried in or out of the complex by Mr. Szucs. Cst. Opoku explained that Ms. Blair had emailed the list of fob records to him. Cst. Opoku spent approximately four hours reviewing numerous fob records back to May 2018 and some of the corresponding CCTV footage but was not able to locate Mega Man at suite #501 or any other of the associated suites that Ms. Blair had brought to their attention. Nor did he see the bag he had been directed to look for in the CCTV footage.

Cst. Marco Shum

- [206] On July 13, 2018, at the Project Territory morning briefing, Cst. Shum was tasked to conduct follow up at the West Georgia location. DC Unheim provided him with the one known active fob number for suite #501 - 1200 W. Georgia and directed him to review the fob records and CCTV footage for the period of July 3 through 12, 2018, to confirm activity of the targets of the investigation in relation to this suite.
- [207] With the fob number provided, the search for the targets was fairly easy. Once at the West Georgia location, Cst. Shum entered the fob number he had received from DC Unheim into the computer data base, obtained a fob activity record for that fob and then reviewed the CCTV footage for the related time frame.
- [208] Cst. Shum had no recollection of what he told the concierge about what he wanted to do - simply review or review and copy the material. Cst. Shum did not recall making any request or receiving any assistance in copying the CCTV footage he reviewed to a USB stick. Similarly, he could not recall the steps he took to save the fob records but knew that he had done so. Cst. Shum agreed he was left to obtain and take whatever he thought was appropriate in the circumstances. And, as he did in his Kwantlen attendance, he made no notes of who he spoke to, what he told them or what their response was to his request. Cst Shum again conceded that this was important information that he chose not to record in his notebook.
- [209] In his review, Cst. Shum observed three different days of activity between July 3 and 12, 2018. On all three occasions, he observed a black Honda Accord enter the parkade, Mr. Szucs use a fob and take the elevator to the fifth floor and then take the elevator back down to the parkade and leave in the Accord. On one day, he noticed that the vehicle plate had been changed. Cst. Shum reviewed the CCTV footage to determine whether Mr. Szucs was taking anything into or out of the suite, the length of time he was on the fifth floor, and what clothing he was wearing to assist in identifying him in the future. Based on his review of the CCTV footage, Cst. Shum recalled that Mr. Szucs was on the fifth floor of 1200 W. Georgia for about five minutes each time and never appeared to have changed his clothing.
- [210] The CCTV footage and still photographs from the video footage as well as the fob records that Cst. Shum copied were included in Ex. #2. Although Cst. Shum reviewed much more CCTV footage than he extracted, it is clear that he obtained fob records and CCTV footage for three separate attendances by Mr. Szucs at #501 - 1200 W. Georgia. Some of the photographs included in his TAR were obtained from CCTV footage he reviewed on site but did not copy. He simply extracted a still photograph of the image he wanted. Collectively, the materials establish the following:

July 6, 2018 - one brief attendance

21:52 hrs. - a dark Honda Accord entered the parking garage of 1200 W. Georgia. Mr. Szucs used the fob (21:53 hrs.) and took the elevator to the fifth floor of the East Tower. He did not have any bags with him. Three minutes later (21:56 hrs.) Mr. Szucs took the elevator from the fifth floor down to the parking garage. The Honda Accord exited the parking garage at 21:59 hrs.

July 7, 2018 - one brief attendance

19:42 hrs. - the dark Honda Accord entered the parking garage of 1200 W. Georgia. At 19:46 hrs. Mr. Szucs used the fob to take the elevator to the fifth floor of the East Tower. At 19:48 hrs. Mr. Szucs took the elevator from the fifth floor down to the parking garage and the Honda Accord left the parking garage about one minute later.[21]

July 8, 2018 - one brief attendance

15:41 hrs. - the dark Honda Accord entered the parking garage of 1200 W. Georgia. At 15:43 hrs. Mr. Szucs used the fob and took the elevator to the fifth floor of the East Tower. He was actively texting someone on his cellphone.[22] At 15:47 hrs. Mr. Szucs used the fob and took the elevator from the fifth floor down to the parking garage and the Honda Accord exited the parking garage at 15:49 hrs.

[21] These three attendances by Mr. Szucs at 1200 W. Georgia were all brief, lasting between seven and eight minutes in total. Cst. Shum agreed that for both the CCTV footage that he reviewed as well as that which he copied, there were a number of other third parties depicted in the images.

[212] Cst. Shum agreed that during the July 2018 period, Project Territory investigators were looking at a number of residential locations as sites of interest as potential "stash houses". He also agreed that the purpose of reviewing all the CCTV footage was to determine who was attending the locations, what they were doing as best as the investigators could decipher, who they were meeting with, who accompanied them, whether anything was taken into or out of the location, whether they were using cellphones and the like. Moreover, he used CCTV footage he had seen from other locations to confirm that it was Mr. Szucs on the CCTV footage for West Georgia and therefore was able to determine a pattern of behaviour across locations.

[213] Cst. Shum also agreed that his task on July 13, 2018, was more in the vein of general follow-up. It was not tied to a conversation overheard on the wire lines that required a targeted review for specific footage. He acknowledged that he had no production order or search warrant to obtain these materials and that he had not reviewed the bylaws of the strata corporation, checked if there was a privacy policy or spoken to on the strata council.

- [214] In so far as his TAR for this task was concerned, he agreed it contained detailed notes of what he saw on the CCTV footage, some excerpts of fob records and photographs from the CCTV footage. The purpose of obtaining these materials was to create a permanent record for other officers to review, determine what was going on and then use the materials in subsequent ITOs for a general warrant or a search warrant.

Conclusion on the West Georgia Materials

- [215] Two different police officers attended at West Georgia a total of seven times to view CCTV footage and fob records to determine the activities of targets of the Project Territory investigation. On the basis of Cst. Opoku's evidence, there was only one target associated to this location - the applicant, Csongor Szucs.
- [216] Although initially tasked to determine which underground parkade the Honda Accord with the tracking device had attended on June 25, 2018, once the location was discovered, Cst. Opoku reviewed whatever CCTV footage and fob records he could that were associated to suite #501 - 1200 W. Georgia St. between sometime in May 2018 through July 24, 2018. On his initial attendance, Cst. Opoku simply advised Ms. Blair that he was investigating suspicious activity in the area and looking for a particular car and whether it had gone into the underground parking lot at West Georgia.
- [217] Between June 25, 2018 and July 24, 2018, Mr. Szucs was observed to make about 16 brief attendances at the 1200 W. Georgia location. His mode of access was always the same - he drove a Honda Accord into the underground parkade, parked the vehicle and then used the active fob registered to suite #501 to use the elevator to travel to the 5th floor. The attendances were always brief, less than 20 minutes in length. Sometimes Mr. Szucs carried a bag up to the 5th floor, sometimes he carried a bag down from the 5th floor. Sometimes he attended on more than one occasion on the same day. He never changed his clothes between attending and leaving the 5th floor.
- [218] While the evidence does not support an inference that Mr. Szucs was a tenant or lived in suite #501, it clearly demonstrates he had unrestricted access to it through the use of the fob and a measure of control over it as he accessed the 5th floor with the fob at all hours of the day. The observations made by the officers in reviewing the CCTV footage support the inference that Mr. Szucs appeared to be using suite #501 in the vein of a storage locker. To this end he appears to occupy a grey zone vis-à-vis the strata corporation and the strata council - at the very least he was in possession of a valid fob and using it to access the suite, attending it on his own.
- [219] In so far as the July 19, 2018, attendance of Kyle Latimer at 1288 W. Georgia is concerned there is nothing in the evidence that establishes any connection to the location of the 34th floor. While Mr. Latimer did travel to the 34th floor that day, in the company of Mr. Haevischer, the evidence is silent as to who used the fob in the elevator on that single attendance. No other observations of Mr. Latimer at the West Georgia complex were

adduced in the evidence on this voir dire. I am unable to determine what his relationship, if any, is to 1288 W. Georgia St.

- [220] The bylaws for West Georgia are exceedingly vague as to when personal information in respect of owners, tenants, occupants and their guests can be disclosed for law enforcement purposes. In so far as conforming to even a minimum standard of protecting the personal information of owners, tenants, occupants and their guests attending at West Georgia is concerned it would be fair to say that the bylaws fail to conform to the minimum requirements of PIPA - that the disclosure is sought in respect of an investigation about an offence - and do not meet the best practices that the OPIC has identified in its comprehensive Privacy Guidelines.
- [221] In respect of the materials obtained from West Georgia, a significant body of information was reviewed and copied over an extended period of time. Cst. Opoku never made notes or recorded the details of the initial request he made for access to the databases and materials back on June 27, 2018 and made no notes of Ms. Blair's response. Nor did he determine whether Ms. Blair was actually authorized to release the personal information that she did provide. He certainly made no inquiries of the strata council as to whether he could review and copy the information.
- [222] While Ms. Blair believed she was authorized to release the information based on her general conversation with the strata council president a couple of months before Cst. Opoku's first request to access the databases, there is a flaw in this assumption. In my view, a general standing direction that concierges simply cooperate with all police requests for information is inconsistent with the implicit obligations placed on strata corporations and the strata councils pursuant to PIPA and the developing privacy jurisprudence that together seek to balance two competing principles - protecting personal information from indiscriminate disclosure and an organization's need to collect, use or disclose personal information for reasonable purposes.

The Governing Legal Principles

- [223] I addressed the governing legal principles in the Brighthouse Ruling. They apply equally here and I adopt them without the need to repeat them.

The Applicable Analytical Framework

- [224] As I noted in the Brighthouse Ruling, in my view, the Supreme Court of Canada jurisprudence in the cases of Tessling, Patrick, Spencer, Cole, Marakah and Jones all demonstrate a steadfast approach to the governing analytical framework applicable to this case.[23]
- [225] Although the Crown advances as its first position on these voir dires that the decision in Wilson BCCA is determinative of the matter, for the reasons outlined in the Brighthouse Ruling (paras. 130-141), I must respectfully disagree.

- [226] Furthermore, since the Brighthouse Ruling was released, Madam Justice Devlin has also addressed the issue in Kim #3. She agreed with the Brighthouse Ruling approach and also rejected the Crown's argument that Wilson BCCA was determinative of the issue.
- [227] Significantly, in R. v. Pipping, 2020 BCCA 104, Madam Justice Garson, writing for the Court, concluded that there can be a reasonable expectation of privacy in the common areas of multi-unit buildings. Notably absent from the analysis in Pipping is any reference to Wilson BCCA. As Devlin J. noted in Kim #3:
- [56] Most recently, in Pipping, the Court of Appeal found that Mr. Pipping had a reasonable expectation of privacy in the common area of a four-level, 96 unit building with key access to enter but open access once inside and no video surveillance. In conducting their analysis, the Court considered Edwards, Webster, White and Yu. The Court noted that the tenor of all these cases focused on the control of public access to the common areas of the building as "key to the assessment of a reasonable expectation of privacy" (at para. 30). There was no consideration of this in Wilson.
- [228] Accordingly, I will analyze the issues raised on these voir dres in accordance with the principles discussed in the Brighthouse Ruling.

Analysis

- [229] The issue before me on these two voir dres is whether the applicants have established on a balance of probabilities that they have a reasonable expectation of privacy in the CCTV footage that captured them in the common areas of the Kwantlen and West Georgia residential strata complexes, as well as in the accompanying fob records from those two locations. All of the items were obtained by investigators with Project Territory without prior judicial authorization.
- [230] Essentially, the investigators asked the building manager at Kwantlen and the head concierge at West Georgia for the materials and they were provided access to the databases to review and copy what they needed for their investigation. Indeed, on the evidence adduced on these two voir dres it would appear two of the officers - Sgt. Chow and Cst. Opoku - were granted unrestricted and unsupervised access to the computer systems where the CCTV footage for the two locations was stored.
- [231] No written request of what specifically was sought by the officers was provided to the individuals who permitted access and copying to the information. Moreover, the officers never approached the strata councils or even inquired as to whether Mr. Lim or Ms. Blair were authorized to provide the materials. As well, no record of the actual specifics of the authorizations sought and permissions granted were ever recorded, let alone retained.
- [232] Indeed, in respect of Sgt. Chow's attendances at Kwantlen, the evidence establishes that after his attendance on April 18, 2018, when Mr. Lim provided him with keys to the building, a fob granting him access to the office where the computers were kept, and the

password for the computers, Sgt. Chow attended Kwantlen on approximately six occasions to access the databases to review the CCTV footage and fob records in the absence of Mr. Lim. Thus, Project Territory through Sgt. Chow's attendances, continued to conduct its investigation and gather materials of interest without even alerting the building manager to the fact that an investigator was present accessing the computers and reviewing personal information.

- [233] It is the Crown's position that there is no reasonable expectation of privacy in any of the information the investigators obtained from these two locations and therefore no search or seizure that attracts s. 8 Charter scrutiny. Alternatively, the Crown contends that if the Court does find a reasonable expectation of privacy in the materials in issue, they were obtained with a valid consent.

Context Relevant to the Analytical Framework

- [234] In the Brighthouse Ruling I outlined contextual factors that were relevant to the analysis of whether the applicants had a reasonable expectation of privacy (paras. 152-161). I repeat them here, with some slight modifications, as I am of the view that they remain relevant to these applications as well.
- [235] While the information obtained by the police in this case may, at first blush, appear fairly innocuous, in my view it would be erroneous to proceed on that assumption. It is beyond dispute that we are going through a technological and digital revolution where changes in how we communicate, do business, live and play are exponential. Indeed, with the numerous advances in digital technology it would be fair to say that our society is rapidly evolving into a digital surveillance state where our movements, associations and activities are constantly watched, recorded and preserved through a proliferation of smart phones, CCTV surveillance cameras and the resort to the modern convenience of electronic key fobs both at work and in the residential context.
- [236] The information obtained in this case is a result of the larger societal shift to life in multi-unit buildings under the watchful eye of CCTV surveillance cameras that record all movements into, out of and within a complex. This same observation applies to work spaces and storage facilities. Additionally, many modern residential complexes require owners and tenants to use electronic key fobs to access most areas of such buildings. In the present case, for example, without a key fob, the applicants could not gain access to the building lobby, underground parkade and elevators of the residential complexes.
- [237] The fobs record the movements of the fob associated to an owner, tenant or occupant of the complex. The fob records contain data regarding the time, date and area accessed by a registered fob, and thus capture a significant amount of information about a fob user's movements. That information is even more powerful when cross-referenced with CCTV footage of the areas accessed. Collectively they provide a comprehensive record of lifestyle choices within the residential complex - who went where when, with whom, and what they

were carrying, wearing, and doing.

- [238] Moreover, much like video replay at sporting events, CCTV footage permits a viewer to play back, pause, study and interpret the images captured. In that regard, CCTV footage is completely different from the brief and fleeting observations made by eye-witnesses or surveillance officers. It is reviewable, permanent and far more informative. CCTV footage memorializes the interactions and movements of individuals, transforming the passing observations stored in human memory into a permanent visual record of a person's movements.
- [239] When the nature of these materials and the wealth of information that they are capable of providing are considered in this way, the content of the OIPC's Privacy Guidelines becomes more compelling. While the Privacy Guidelines are not statutory directions that carry the force of law, they do establish that significant concerns about privacy and disclosure of personal information exist in the context of residential living in strata properties. Collection of personal information through the use of CCTV footage and fob records should be carefully monitored, controlled and not randomly or easily disclosed. As the Privacy Guidelines note (at p. 19), video surveillance is inherently intrusive and strata owners, tenants and their guests have a right to be free from excessive and unwarranted intrusion in this area.
- [240] In my view, a corollary to the concerns enumerated in the Privacy Guidelines must be that strata owners, tenants and their guests have a right to be free from indiscriminate disclosure of their collected personal information to outside agencies in the absence of an articulable reason for such disclosure or some form of judicial oversight such as a production order. Concerns about privacy and the use of such information ought not to be contingent on whether a strata corporation has adopted a privacy policy or has implemented the recommendations of the OIPC. Even the bare minimum required by s. 18(1)(j) of PIPA provides some measure of protection. And so, failure to follow or implement the PIPA requirements is concerning in this context.
- [241] Law enforcement agencies are able to cross-reference CCTV footage and fob records with other information in the investigative file to advance their investigations. Such materials are, no doubt, of formidable assistance to law enforcement in fighting crime and protecting society. So, too, are general warrants, search warrants and wiretap authorizations. But those investigative techniques require prior judicial authorization before they can be employed to gather information. Similarly, law enforcement's access to cell phone records, computer IP addresses and activities, banking records and numerous other types of records - all of which can provide compelling circumstantial evidence in investigations and prosecutions - usually requires prior judicial authorization through a production order.
- [242] While CCTV cameras and key fobs enhance the security and safety of those living and working within a residential complex, they do not, in my view, extinguish the residual expectation of privacy - the right to be left alone by the state - such that the information

they record is there for the taking by state agents upon a simple request. Indeed, given the seeming mandatory nature of these devices in multi-unit residential settings, passive acquiescence or resignation by the occupants or their guests to the inevitable and ubiquitous private surveillance ought not to mean that they have entirely relinquished their expectation of privacy in the images and information contained therein, especially where the state is concerned.

- [243] The notion that common areas in multi-residential units are "privacy free zones" is inconsistent with the broad conceptions of the right to privacy. As the Ontario Court of Appeal noted in *R. v. White*, 2015 ONCA 508:
- [48] the fact that a relatively large number of people may have access to a building's common areas need not operate to eliminate a reasonable expectation of privacy. It is one thing to contemplate that neighbours and their guests, all of whom may be strangers to another resident, might be present in the common areas of a building, but another to say that a resident has no reasonable expectation of privacy as a result. An expectation of privacy may be attenuated in particular circumstances without being eliminated.
- [51] There is nothing "perverse" about providing a measure of privacy protection to the many Canadians who live in multi-unit dwellings. They, no less than those who live in detached homes, are entitled to the protection against unreasonable search and seizure the Charter provides. In any event, it is not an all or nothing choice. A balance must be struck between law enforcement objectives and privacy in modern urban life. Cases such as *Laurin and Thomsen* demonstrate that the police have considerable ability to investigate crime in multi-unit buildings. But they do not have *carte blanche*.
- [244] 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 multi-unit 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 and the other occupants, it does not mean that they have consented to or waived their residual privacy interest in their movements, images and information vis-à-vis the state. In an era when the trend in residential living is rapidly moving away from detached family homes and towards multi-unit residences, the legal concept of privacy must be flexible and adaptive in order to ensure that it is not being "videoed" out of existence.
- [245] As Devlin J. noted in *Kim #3*:
- [58] When considering whether an applicant has established a reasonable expectation of privacy, the totality of the circumstances test must be flexible because "individuals have different expectations of privacy in different contexts and with regard to different kinds of information and documents" (*Craig*, at para. 97). The assessment of an expectation of

privacy depends on a consideration of the totality of the circumstances. Privacy is a nuanced concept, and assessed in normative terms. An individual's expectation of privacy may be attenuated in particular circumstances without being eliminated (White at para. 48).

[246] With the governing legal principles and context firmly in mind I will now examine whether the applicants have established on a balance of probabilities that they have a reasonable expectation of privacy in the materials reviewed and seized in respect of their movements in the common areas of the multi-unit residential towers at Kwantlen and West Georgia.

[247] The existence of a reasonable expectation of privacy is determined by assessing the totality of the circumstances. The jurisprudence from the Supreme Court of Canada mandates that the factors relevant to this contextual analysis can be grouped into four lines of inquiry:

- i. The subject matter of the alleged search;
- ii. The applicant's interest in the subject matter;
- iii. Whether the applicant had a subjective expectation of privacy in the subject matter; and
- iv. Whether the subjective expectation of privacy was objectively reasonable.

[248] The exercise has been described as normative, rather than a purely factual analysis - that is, one in which the court must consider societal and social norms in making a value judgment about the state's ability to intrude on an individual's privacy: *R. v. Roudiani*, 2018 BCSC 1101 (para. 17) citing *R. v. Pelucco*, 2015 BCCA 370 at paras. 59 to 63.

What is the subject matter of the alleged searches?

[249] Kwantlen - The Crown acknowledges that the subject matter of the search in this case was in some respects similar to the Brighthouse Way search but contends it was not nearly as sweeping. In this case, argues the Crown, although the search captured activities and movements of the applicants, it did not extend to identities and associations of individuals as the targets were already known. In essence, the Crown asserts, the subject matter of the search simply provided a corroborative link between Mr. Latimer's physical location on March 13, 2018, as provided by physical surveillance and intercepted communications, and established which specific unit the applicants were attending.

[250] On the subject matter of the search, the Crown concludes with this point:

[27] By and large, the information sought by investigators in relation to 5068 Kwantlen related to who went to the 19th floor, when they went (including whether the timing corresponded to wiretap intercepts), how long they stayed, and what they carried in and out. This is a more circumscribed subject matter of the search than in the Brighthouse ruling.

[251] West Georgia - The Crown contends the subject matter of the search for this location was similar to that of Kwantlen.

- [252] The applicants argue the subject matter of the searches for both locations was much more than the video and still images from the common area of the elevators and the related fob records and was much wider than the corroboration of already known information. Indeed, in respect of the review of materials at West Georgia, the defence notes, there were no precipitating incidents which triggered the collection of information on July 13, 17 or 24, 2018. The attendances by Cst. Shum and Cst. Opoku on those dates were instances of general intelligence gathering where the police were casting a broad net to identify locations, associations, activities and movements and any other pertinent observations relevant to advancing the overall investigation. The same can be said in respect of Cst. Opoku's review of CCTV footage and fob records at Kwantlen on March 28, 2018, for the time frame between March 14, 2018 and March 28, 2018, when originally he was only tasked to determine whether Mr. Pereira had attended at the location on March 27, 2018.
- [253] With respect, I cannot agree with the Crown that the subject matter of the search for either location was more circumscribed than in the Brighthouse Ruling. While the identities of the targets and their associations were known to Project Territory, what these individuals were doing and how they were tied to the Kwantlen and West Georgia locations was largely a mystery - indeed the locations were unknown to the investigation until physical surveillance, together with intercepted conversations, tipped the investigation.
- [254] With that investigative information in hand, investigators were tasked with finding out where the targets had specifically gone, what they were doing, who was with them, what they were carrying in and out of the locations, the amount of time spent at the locations and anything else to further the investigation.
- [255] Using the CCTV footage and fob records, the investigators were able to corroborate other investigative information (public observations through physical surveillance and conversations overheard on wiretap intercepts) to place the applicants at a specific location and affiliated with a particular suite, the frequency of their attendances, the duration of their attendances, and what they were taking into and out of the locations. All this information furthered the investigation in ways that related to lifestyle information about the applicants - their movements and activities as tied to suspected stash houses in the context of a large drug investigation. Thus, the CCTV footage when cross-referenced to the fob records allowed the police to draw inferences as to what was occurring at the locations, all matters that could not be obtained through physical surveillance alone or even physical surveillance cross-referenced to wiretap intercepts: Brighthouse Ruling, paras. 168-177.
- [256] If Project Territory was only seeking to corroborate physical surveillance or intercepted communications, there would have been no need for the vast review and copying of materials that occurred in either instance. Indeed, while the officers were tasked to review specific time periods, such as the attendance at Kwantlen on March 13, 2018 (to see where the red Mercedes had gone) or on March 27, 2018 (to see if Mr. Pereira had attended), once in the office and freely reviewing the materials, the scope of the search expanded significantly, well beyond simply corroborating specific pieces of information from

surveillance or intercepts. The same can be said in respect of Sgt. Chow's numerous attendances at Kwantlen between April 10 and June 18, 2018.

- [257] Thus, it was not simply a specific activity, movement or attendance in a parkade or the elevators that the police were interested in obtaining. Rather, I find the subject matter of the search in respect of the Kwantlen materials to be much broader - seeking to gather information about the activities and movements of the applicants in relation to their travels via elevator to and from suite #1901.
- [258] I reach a similar conclusion in respect of the materials obtained from the West Georgia location in respect of suite #501 by Cst. Opoku and Cst. Shum. These materials were not restricted to attendances on one date (June 25, 2018) but expanded to cover various dates throughout the latter stages of the Project Territory investigation.
- [259] The same observation about the expanding of tasks at Kwantlen applies in respect of the attendances by Cst. Opoku at the West Georgia location on June 28, 2018. His task, initially, was to review CCTV footage and fob records in relation to an observation from June 25, 2018. However, once there, this expanded to him reviewing materials all the way back to May 2018 because it was there and available for him to review. Investigators returned to West Georgia on five more occasions to collect information and generally further the investigation for the entire time frame
- [260] The scope of these searches was even more sweeping, capturing the numerous attendances, activities and movements of Mr. Szucs at suite #501. The police were interested in obtaining information about Mr. Szucs's comings and goings from the West Georgia location - when was he attending, what was he carrying in or out of the location, whether anyone was with him, and how long the attendances were. It was not just the CCTV footage and the fob access records for one specific occasion that was of interest to the Project Territory investigation but rather the footage and records over time that produced a more comprehensive profile about Mr. Szucz's relationship to and dealings with suite #501 at West Georgia and how that fit with the ongoing investigation.
- [261] There is one exception, however, and that is Mr. Latimer's attendance on July 19, 2018 at 1288 W. Georgia St. In this case the subject matter is fairly circumscribed and consists of the image of Mr. Latimer and another travelling in an elevator to the 34th floor and the accompanying fob records for a suite on the 34th floor.

Did the applicants have a direct interest in the subject matter?

- [262] No argument was advanced on this factor by either side. Implicit in the absence of submissions on this point is the Crown's tacit acknowledgment that the applicants have a direct interest in their images captured by means of the CCTV footage and that when the fob records are cross-referenced to the suites of interest to the investigation and correlated with the CCTV footage, they provide not only corroborative information for the physical surveillance and specific wiretap intercepts but a range of information about the activities

of the applicants and their relationship with each suite.

[263] Accordingly, I am satisfied the applicants have a direct interest in the subject matter of all the information that Project Territory investigators seized from both the Kwantlen and West Georgia strata corporations.

Did the applicants have a subjective expectation of privacy in the subject matter?

[264] As outlined in *R. v. Kim*, 2019 BCSC 2150 at para. 39 (Kim #1), *R. v. Kim*, 2020 BCSC 1054 at paras. 47-49 (Kim #2) and the Brighthouse Ruling (paras. 182) the subjective expectation of privacy line of inquiry has never been a "high hurdle". A subjective expectation of privacy can be presumed or inferred from the circumstances in the absence of direct evidence from the accused.

[265] In the case at bar, there was no direct evidence from the accused. However, that is not fatal. Furthermore, like the second factor - whether the applicants had a direct interest in the subject matter - little to no argument was advanced on this factor. Implicit in the absence of submissions on this point is the Crown's tacit acknowledgment that the applicants have a subjective expectation of privacy in the information in their images and movements as captured in the materials seized at Kwantlen and 1200 W. Georgia St.

[266] There is no evidence of ownership or tenancy that ties the applicants to either of the two locations. But there is evidence that establishes that the applicants were able to regulate access to the suites - attending on their own or on one occasion with others in respect of Kwantlen; and, for suite #501 at West Georgia, Mr. Szucs clearly controlled access to the unit. He was the only individual observed repeatedly attending at the suite over a month-long period of time.

[267] While there is a very limited territorial privacy interest in the locations, the informational privacy interest engaged by the materials seized is more profound. In my view, the circumstances in respect of the materials from both locations - Kwantlen and 1200 West Georgia - are indistinguishable from the Brighthouse Ruling (paras. 182-192).

[268] In respect of the CCTV footage and fob access records for both Kwantlen and West Georgia, the absence of clear strata bylaws or a privacy policy governing the use of such information at the material time does not detract from the subjective expectation of privacy in the materials. The Privacy Guidelines make clear the obligations and expectations placed upon strata corporations and strata agents by PIPA when dealing with the personal information of owners, tenants and their guests, including CCTV footage and fob access records. The failure of the two strata corporations to have a privacy policy and / or comprehensive bylaws in place cannot negate the subjective expectation of privacy in the information and images provided to the police in the circumstances of this case. To find otherwise would render any subjective expectation of privacy illusory and meaningless in buildings that have failed to fulfill their statutory obligations to safeguard such information and to disclose the information only in accordance with authorized purposes.

- [269] And, as outlined earlier, on the state of the evidence in this case, I am unable to conclude that s. 18(1)(j) of PIPA was complied with as there is nothing to indicate that the requests made by the police here conformed to the requirements of that section of PIPA. The officers explained to the building manager or concierge that they were simply investigating suspicious activity and looking for a particular vehicle.
- [270] I find that the informational privacy interests of the applicants are engaged in all the materials obtained by Project Territory in respect of both Kwantlen and 1200 W. Georgia. St. While it is reasonable to infer the applicants may well have expected to be subjected to video surveillance in these places, it is also reasonable to infer that they would not have expected that their movements and activities, committed to a permanent record, would simply be handed over to law enforcement agencies in the absence of clearer compliance with the governing statutory directions (let alone the best practices recommended by the OIPC in the Privacy Guidelines).
- [271] I acknowledge that the CCTV footage in question captured movements in elevators and common areas like the elevators at Kwantlen and the underground parkade and elevators at West Georgia, to which many more people have access rather than the limited access to specific floors. Nevertheless, as I have discussed, the reality is that owners, tenants, and guests, including the applicants, have no choice but to submit to surveillance as they transit through these areas to access suites which they have a measure of access or control over. Similarly, they have no option but to use key fobs for access to the various areas of the buildings. The absence of choice in this regard does not militate in favour of finding that they have no subjective expectation of privacy in relation to state agencies.
- [272] I find that the applicants had a subjective expectation of privacy in the CCTV footage from the common areas and elevators for both Kwantlen and 1200 West Georgia as well as the fob access records for both those complexes. While the expectation of privacy may well be attenuated when compared to the level of privacy within a suite, it most certainly is not extinguished.
- [273] However, given the absence of any evidence as to Mr. Latimer's dealings or ties with the 1288 W. Georgia St. location on July 19, 2018, apart from his attending the location on that date in the company of another individual, I am unable to infer that he had a subjective expectation of privacy in respect of this location.

Was the subjective expectation of privacy objectively reasonable in the totality of the circumstances?

- [274] In my view, this is the factor where real issue is joined in this case. Indeed, the Crown's submissions, although not conceding the other factors, largely focused on the argument that any subjective expectation of privacy was not objectively reasonable in the totality of the circumstances.

- [275] As I held in the Brighthouse Ruling (para 194), this final line of inquiry mandates consideration of the following factors:
- a. The place where the alleged "search" occurred; in particular, did the police trespass on the applicant'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 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 details of the claimant's lifestyle, or information of a biographical nature.
- [276] Of course, as the assessment is contextual, some factors will have more significance than others, depending on the circumstances. Indeed, some factors may appear to either have no application at all depending on the materials in issue and where they are held or to be of such limited application that little weight is given to them: Brighthouse Ruling at para. 195.
- [277] In *R. v. Marakah*, 2017 SCC 59 the three factors that were of most significance in the Supreme Court's analysis were: (1) the place of the search (paras. 24-30); (2) the private nature of the subject matter (paras. 24, 31-37); and, (3) control of the subject matter (paras. 24, 38-45). Policy considerations were an additional factor, including the impact on law enforcement and whether finding a reasonable expectation of privacy in sent text messages would hamper the ability of law enforcement to investigate offences. Chief Justice McLachlin, writing for the majority, concluded that the fruits of the search cannot be used to justify an unreasonable privacy violation, noting that prior judicial authorization has been relied on to preserve privacy rights under s. 8 (at paras. 46-53).
- [278] As *Marakah* makes clear in respect of the place of the search, since s. 8 of the Charter protects people, not places, the question always comes back to what the individual, in all of the circumstances, should reasonably have expected (para. 30).
- [279] The Crown argues that when the totality of the circumstances is properly assessed and balanced in this case, the conclusion is that any subjective expectation of privacy was not objectively reasonable and that the investigators were not required to obtain prior judicial authorization to gather the materials from the strata corporations. Accordingly, they contend, s. 8 of the Charter is not engaged for either the Kwantlen or West Georgia materials.

- [280] Not surprisingly, the applicants assert that the weighing of the above factors militates in favour of a conclusion that they have established that their subjective expectation of privacy in respect of the materials obtained by the police was objectively reasonable and that the manner in which the materials were obtained breached their s. 8 Charter rights. The applicants contend that the circumstances in respect of both locations fall within the same parameters as the Brighthouse Ruling such that they have established that their subjective expectation of privacy is objectively reasonable.
- [281] The CCTV footage and the fob records engage a blend of both territorial and informational privacy interests. However, like the circumstances in Kim #1, the territorial privacy interest is not the primary consideration and certainly is not determinative of the privacy analysis (paras. 45-47).
- [282] In so far as the territorial privacy interests are concerned, there is no evidence linking either applicant as living in either of the two locations but the evidence does establish that they both had a measure of access and control over suite #1901 at Kwantlen and that Mr. Szucs had seemingly exclusive access and control in respect of suite #501 at 1200 W. Georgia.
- [283] In so far as Mr. Latimer and suite #3401 - 1288 West Georgia is concerned, there is an absence of evidence on his relationship, if any, with that location. He simply appeared on the CCTV cameras in an elevator on July 19, 2018 that travelled to the 34th floor of 1288 W. Georgia St. Nothing in the evidence establishes any measure of control or access in respect of this location and thus no territorial privacy interest in it.
- [284] I turn now to an assessment of the objective reasonableness of the subjective expectation of privacy with respect to the informational privacy interests engaged by these applications. Both applicants have informational privacy interests in respect of their images from the CCTV footage and the fob records when the data is cross-referenced. As noted earlier, the fob records on their own are meaningless. It is the cross-referencing of this data with the CCTV footage that gives the fob records meaning. Indeed, Bylaw 53(1)(e) of the Kwantlen bylaws characterizes such information as personal information.

Materials from Kwantlen

- [285] The Crown contends that the totality of the circumstances in respect of Kwantlen are distinguishable from the Brighthouse Ruling on three bases: (i) the place where the search occurred was not the residence of either applicant; (ii) Kwantlen's obligation of confidentiality over the disclosure of the information was not as controlled as the locations in the Brighthouse Ruling and (iii) the information in this case was disclosed in compliance with the applicable laws as well as the governing bylaws and policies of the strata corporation. When these distinguishing features are considered in the totality of the circumstances, contends the Crown, there can be no objectively reasonable expectation of privacy in the materials obtained from Kwantlen.

- [286] The applicants contend the circumstances in respect of Kwantlen are identical to those in the Brighthouse Ruling in that the applicants were invited or permitted guests at the location.
- [287] Although there are some distinguishing features from the circumstances in the Brighthouse Ruling, in my view they are not enough to overcome the objective reasonableness of the applicants' expectation of privacy in the materials from Kwantlen.
- [288] While the Kwantlen location was clearly not the residence of either of the applicants, they had permission to use the premises as evidenced by their attendances and access to the area with a fob. Although Mr. Lim initially believed they were not authorized to attend at suite #1901, once he spoke with the listed tenant, he was satisfied they had a right to be there - at the very least they were invited guests of the listed tenant. Although not their residence, and therefore not entitled to the level of privacy to which a home is entitled as outlined in *R. v. Patrick*, 2009 SCC 17 (paras. 19 and 78), that does not, in my view, preclude an objectively reasonable expectation of privacy. The fact that hotel rooms as well as storage lockers at bus stations and in storage facilities can still have a measure of privacy attached to them supports this conclusion.
- [289] The applicants appear to have been using the location as a private storage locker. While this use of the suite may attenuate the level of privacy it attracts as compared to a residential purpose, it does not eliminate it.
- [290] While Kwantlen's obligation of confidentiality over the disclosure of the information was not as controlled as in the Brighthouse Ruling, that does not inure to the benefit of the Crown in this case. Kwantlen did not have a privacy policy in place even though its own Bylaw 53 required as much. Its failure to do so cannot be used to deny an otherwise objectively reasonable expectation of privacy in one's own personal information vis-à-vis outside agencies such as law enforcement. The same is the case with respect to PIPA. As I outlined in the Brighthouse Ruling (paras. 107-117) PIPA did not neutralize the expectation of privacy in the materials provided to the police by a third-party record holder.
- [291] My reasons previously outlined in the Brighthouse Ruling, including at paras. 129, 135-141, 208-216, remain largely apposite to the circumstances in respect of the Kwantlen materials. Although Kwantlen was not a residence for the applicants it nevertheless was a location over which they had a measure of access and control and at the very least were authorized to attend by the listed tenant as they accessed the building with an issued fob. The informational content of the subject matter was not in public view - the movements recorded were in elevators and areas internal to the building. And, the personal information was held on a password protected computer system, a system that Mr. Lim permitted the officers to access unsupervised.

- [292] As for whether the evidence gathering technique was itself objectively unreasonable, in my view a reasonable person, properly informed of all the circumstances, including the importance of informational privacy and Charter values, would find the unrestricted and unmonitored access granted to the investigators in this case to be antithetical to the concept of informational privacy.
- [293] The informational content obtained from Kwantlen did expose details of the applicants' lifestyle - their activities and movements, including who they were with, how long they attended and whether they were carrying any items into or out of the 19th floor of Kwantlen.
- [294] Balancing the various factors leads me to conclude that in respect of the Kwantlen materials obtained by the Project Territory investigators between March and June 2018, the applicants' subjective expectation of privacy in their personal information was objectively reasonable in the circumstances.

Materials in respect of Suite #501 - 1200 West Georgia Street

- [295] The evidence of Cst. Opoku and the CCTV footage and fob records for suite #501 - 1200 W. Georgia St. establish that Mr. Szucs was the only person using the only active fob for this suite. Clearly, Mr. Szucs did not live in the suite. Mr. Latimer has no connection with this suite and so his privacy interests are not engaged for these materials.
- [296] The Crown contends that the totality of the circumstances in respect of West Georgia are distinguishable from those at issue in the Brighthouse Ruling on four bases: (i) the place where the search occurred was not the residence of Mr. Szucs; (ii) West Georgia's obligation of confidentiality over the disclosure of the information was not as controlled as in the Brighthouse Ruling; (iii) the information did not expose details of Mr. Szucs's lifestyle or aspects of core biographical information; and, (iv) the head concierge had been authorized by the strata council president to cooperate with any request made by the police. When these distinguishing features are considered in the totality of the circumstances, contends the Crown, there can be no objectively reasonable expectation of privacy in West Georgia.
- [297] Mr. Szucs contends that the circumstances in respect of West Georgia are identical to the circumstances from the Brighthouse Ruling in so far as being an invited or permitted guest or occupant at the location is concerned.
- [298] Although there are some distinguishing features with the circumstances from the Brighthouse Ruling, in my view they do not mandate a different outcome.
- [299] Like the circumstances outlined above for Kwantlen at paras. 290-291, the fact that Mr. Szucs did not live at the suite does not mean there is no expectation of privacy in the materials and therefore is not a factor that militates against the objective reasonableness of that expectation. He had possession of and regularly used the fob, albeit in a compressed period of time. Mr. Szucs was the only person observed to be accessing the property in the

time frame covered by Cst. Opoku's investigation of the location. On the evidence adduced, Mr. Szucs used the suite and regulated and controlled the access to the suite. That he did not live there does not extinguish his expectation of privacy in his personal information.

- [300] West Georgia's bylaws authorizing the disclosure of personal information to law enforcement are vague and contain no substantive direction or limits on when it is permissible to disclose personal information to the police. Nevertheless, that does not mean that an expectation of privacy in one's own personal information vis-à-vis outside agencies such as law enforcement is not reasonable.
- [301] The CCTV footage and fob records were made for the security of the building. To that end, an individual would expect to be documented for that specific internal purpose. Most individuals would not expect that their images and any recordings of their movements and activities would be freely shared with the police for general investigative purposes (here described generally as suspicious activity and searching for a vehicle), including unrestricted and unmonitored access to the building's CCTV footage and fob records databases on the building's computer system.
- [302] As the circumstances from Roudiani establish, providing one's personal information for the purposes of safety and security in respect of an attendance at a nightclub, does not mean that the individual has relinquished their residual privacy rights in the information or that the individual's reasonable expectation of privacy was extinguished when it comes to state actors conducting a criminal investigation separate and distinct from the original purpose for which the information has been provided.
- [303] To similar effect is the reasoning of Mr. Justice Williams in *R. v. Flintroy*, 2018 BCSC 1692 who concluded that provision of a photograph to a particular government department for the purposes of the issuance of a passport did not mean that the person had relinquished his expectation of privacy in his personal information such that the holder of the information could provide it to another branch of the state for any and all law enforcement purposes (paras. 32-38).
- [304] The Crown relies upon the strata council president's advice to Ms. Blair that she cooperate with any police request as establishing the requisite consent to provide this information to the police. The evidence of Ms. Blair establishes that the strata council president's instructions to her gave no consideration to the privacy interests of owners, tenants, occupants and visitors within the building, even in respect of the common areas. A blanket direction from the strata council president to simply provide the police with anything they requested is the antithesis of a reasoned or measured approach to protecting the privacy interests of the owners, tenants, occupants, or visitors.
- [305] As for the applicable laws, PIPA would be the only provision that authorizes the disclosure of the personal information to law enforcement in respect of West Georgia. However, as I outlined in the Brighthouse Ruling (paras. 107-117) PIPA does not neutralize the expectation of privacy in the materials provided to the police by a third-party record holder.

Significantly, the circumstances in respect of the West Georgia materials would not even satisfy the minimum disclosure requirements of PIPA as Ms. Blair operated on the assumption that the strata council president had authorized her to give the police anything they requested. PIPA, at the very least, requires the request for disclosure of personal information be tied to the investigation of an offence. Ms. Blair was unable to recall what she was told when Cst. Opoku first attended apart from his requesting to do surveillance and asking questions about the locations of the cameras in the building and about fob usage reports. On his request, she permitted him access to the databases and assisted him in locating what he was looking for. From there Cst. Opoku went on to search the database more generally because he had access to it.

- [306] Cst. Opoku's evidence on what he specifically advised Ms. Blair of his purpose was equally vague. He made no notes of his first attendance on June 27, 2018 and so was not in a position to say definitively what he advised Ms. Blair of his purpose in requesting access to the information, apart from investigating "suspicious activity" in the area and wanting to review CCTV footage and fob records to see if a certain vehicle had entered the underground parkade in a particular time frame. From there, if he was able to locate the vehicle in the CCTV footage, he wanted to see who was associated to the vehicle, where it parked, what unit and parking stall number it was associated to and the fob number for any fob being used. At best, this information was simply general investigative information and seemingly a request to locate a suspicious vehicle. Nothing in Cst. Opoku's evidence of what he believes he told Ms. Blair or Ms. Blair's evidence on what she recalled Cst. Opoku telling her supports an inference that he requested disclosure of this personal information because he was investigating whether an offence had taken place or any of the other parameters that s. 18(1)(j) of PIPA imposes on the authorization of disclosure of personal information to law enforcement.
- [307] My reasons in the Brighthouse Ruling, including at paras. 129, 135-141, 208-216, remain apposite to the circumstances in respect of the West Georgia materials. Although West Georgia was not a residence for Mr. Szucs it nevertheless was a location over which he had a measure of exclusive access and control as he repeatedly accessed the building with an issued fob. The informational content of the subject matter was not in public view - the movements recorded, save perhaps the area at the parkade gate, were in elevators and areas internal to the building. And, the personal information was held on a password protected computer system, a system that Ms. Blair permitted the officers to access unsupervised.
- [308] In so far as whether the evidence gathering technique was itself objectively unreasonable, in my view a reasonable person, properly informed of all the circumstances - including the importance of protecting informational privacy and Charter values - would find the unrestricted and unsupervised access granted to the investigators to review and access the databases as they saw fit in this case, without the explicit knowledge or authorization of the strata council, to be, at the very least, concerning. That same reasonable person would also

be troubled that a strata council president would issue a blanket direction to the concierge to give the police whatever they requested any time they requested it. Such a direction speaks to the failure of that individual to understand their obligations under PIPA in respect of protecting personal information from indiscriminate disclosure to an outside agency such as the police.

- [309] The informational content of the materials obtained from West Georgia did expose details of the lifestyle of Mr. Szucs - his activities and movements, including how long he attended the location, whether anyone was with him and whether he carried any items into or out of the 5th floor of West Georgia.
- [310] Balancing the various relevant factors leads me to conclude that in respect of the suite #501 - 1200 W. Georgia St. materials obtained by the Project Territory investigators between June 28, 2018 and July 24, 2018, Mr. Szucs's expectation of privacy in his personal information was objectively reasonable.

Materials in respect of suite #3401 - 1288 West Georgia

- [311] I have already found that Mr. Latimer has not established that he had a subjective expectation of privacy in respect of his connection to #3401 - 1288 W. Georgia St. As such it is not necessary to address the objective reasonableness of any such expectation. However, for the sake of completeness, I note that there is a complete absence of evidence in respect of Mr. Latimer's connection to #3401 - 1288 W. Georgia St. apart from one attendance in the elevator on July 19, 2018. The onus is on Mr. Latimer to establish a meaningful connection to the suite or the building. He has not done so. I conclude that if there was a subjective expectation of privacy in the materials seized in respect of 1288 W. Georgia St., Mr. Latimer has not discharged his onus of establishing that the expectation was objectively reasonable.

Has the Crown Established that the Materials Obtained without Prior Authorization were Obtained by a Valid Consent?

- [312] I have found that both applicants have established a reasonable expectation of privacy in the materials that contained their personal information seized from Kwantlen and that Mr. Szucs has established a reasonable expectation of privacy in respect of the materials seized from #501 - 1200 W. Georgia St.
- [313] As the materials were obtained in the absence of any form of prior judicial authorization, their seizure was prima facie unreasonable. It falls to the Crown to establish on a balance of probabilities that the seizures were nevertheless justified.

- [314] In the case of both locations, the Crown contends that the consent of the strata agent (Kwantlen) and the head concierge (West Georgia), both entities charged with creating and maintaining the records, was sufficient authority for the investigators to obtain the information and that therefore the seizures were justified. The Crown argues the individuals were both authorized to consent to the disclosure of the personal information to the police and did in fact validly consent to the provision of the information.
- [315] The applicants contend that the individuals who provided the materials to the investigators in this case did not have the authority to consent to the disclosure of this personal information. Alternatively, relying upon the principles from *R. v. Wills* (1992) 7 O.R. (3d) 337 (Ont. C.A.), the applicants contend that the Crown has failed to establish that any consent given by the building manager or the head concierge in respect of the two locations constituted an informed consent as the doctrine of consent requires in respect of justifying otherwise unreasonable searches.

Kwantlen

- [316] Mr. Lim was an employee of Rancho, the property management company that contracted with the strata corporation to act as its agent in respect of the day-to-day operations of Kwantlen. The strata corporation had a general bylaw in respect of privacy issues, Bylaw 53, outlining what constitutes personal information. The materials the investigators obtained from Kwantlen fit the definition of personal information contemplated by the bylaws. However, the bylaws are silent on who has the ability to authorize disclosure of this personal information to law enforcement or the process for obtaining authorization to disclose such information.
- [317] The agency agreement between Rancho and the strata corporation is equally vague and unresponsive to the circumstances. Clauses 3.23 and 18 of the agency agreement contain no specific authorization for the strata agent to disclose personal information to law enforcement. Moreover, the agency agreement only relates to disclosure of personal information of the owners, not tenants or guests.
- [318] In *Kim #4*, Devlin J. rejected the Crown's argument that the agency agreement in that case authorized the property manager at Brighthouse Way to release personal information to the police stating:
- [31] The Crown points to various clauses in the Agreement to illustrate that the provisions are essentially the same as those set out in the Act considered in *Yu*. Thus, the Crown submits if I adopt the interpretation from *Yu* I can conclude that the Agreement provides the same authority to regulate access, including access to the police. In my view, even if I apply the most generous and expansive reading to the Agreement, it would not advance the Crown's position. While I acknowledge the Agreement contained terms dealing with agent services and administration including "assisting the Strata Council in managing the affairs of the Strata Corporation" (term 3.1) and "assist in the administration of the common property and

common assets of the Strata Corporation under the direction of the Strata Council" (term 3.2) I am not prepared to infer those terms contemplated the Agent (who is represented by the strata manager) providing unbridled access to all areas of the secure building to the police. Throughout the Agreement, there are numerous examples of limitations placed on the authority of the strata manager.

- [32] For example, under the section Bylaws and Rules, term 3.28 deals with bylaw and rules enforcement. The clause reads "to assist with the enforcement of the Bylaws and Rules and, if so directed by the Strata Council, take appropriate action including legal action to enforce or stop any breach .". In Kim #3, I found that there was no evidence to establish that Mr. Poon had considered the requirements of section 40(4)(c) or 40(7)(a) of the strata bylaws dealing with permitting law enforcement to review video files or security fob usage records. I also found that there was no evidence that Mr. Poon had authority to make that decision. A plain reading of term 3.28 of the Agreement supports my earlier finding and demonstrates that Mr. Poon required direction from the Strata Council before taking action. In my view, it is only reasonable to infer from this example that, if Mr. Poon did not have authority to permit the police access to the video files and fob access records without the direction of the Strata council, he would not have authority to permit police carte blanche access to the secure areas of the building. As I said, on the evidence I do have, Mr. Poon acted individually in cooperating with the police. There is no evidence that he was acting on any instructions from the Strata council.
- [319] Kwantlen has an identical provision in its agency agreement (cl. 3.23) to cl. 3.28 that Devlin J. examined in Kim #4. I adopt this finding of Devlin J. in relation to the circumstances surrounding the disclosure of the Kwantlen materials. I would not interpret the agency agreement between Kwantlen's strata corporation and Rancho, the agent, as providing Mr. Lim, the building manager, with unrestricted authority to permit the police to have carte blanche access to the databases that contained the CCTV footage and fob records. The evidence does not establish that Mr. Lim was acting on the instructions of the strata council. On the totality of the evidence he acted individually in cooperating with the investigators and did not have the authority to disclose to the police the personal information of the applicants.
- [320] This leaves the provisions of PIPA as the only potential source for Mr. Lim's authority to disclose the applicants' personal information to the police. I have already dealt with this issue in the Brighthouse Ruling, at paras. 107-117. I incorporate and adopt that portion of the Brighthouse Ruling for the current applications. Nothing has been adduced or argued to persuade me to alter my analysis of PIPA and so my reasoning from the Brighthouse Ruling on this point continues to apply here.

- [321] Finally, none of the officers made any inquiries to determine Mr. Lim's employment relationship and whether he had the capacity to consent such that he was authorized to provide the materials to them. In the circumstances, I conclude that nothing in the bylaws, the agency agreement or PIPA authorized Mr. Lim to disclose the personal information of the applicants to the investigators of his own accord.
- [322] Given this finding, it is not strictly necessary to address whether Mr. Lim's disclosure satisfies the requirements of informed consent as established in Wills. For completeness, I will note the following points.
- [323] In Wills, Mr. Justice Doherty articulated the following approach where an otherwise unreasonable search exists and the Crown seeks to justify the search on the basis of the doctrine of consent:
- [69] In my opinion, the application of the waiver doctrine to situations where it is said that a person has consented to what would otherwise be an unauthorized search or seizure requires that the Crown establish on the balance of probabilities that:
- (i) there was a consent, express or implied;
 - (ii) the giver of the consent had the authority to give the consent in question;
 - (iii) the consent was voluntary in the sense that that word is used in Goldman, supra, and was not the product of police oppression, coercion or other external conduct which negated the freedom to choose whether or not to allow the police to pursue the course of conduct requested;
 - (iv) the giver of the consent was aware of the nature of the police conduct to which he or she was being asked to consent;
 - (v) the giver of the consent was aware of his or her right to refuse to permit the police to engage in the conduct requested; and,
 - (vi) the giver of the consent was aware of the potential consequences of giving the consent.
- [324] I have already found that Mr. Lim, an employee of the agent, did not have the authority to provide the consent for the carte blanche access to the databases and the disclosure of the personal information as he did in this case. While Cst. Shrum's evidence about telling Mr. Lim that they were investigating a fraud was troubling, I am unable to find that he in fact did tell Mr. Lim that. Indeed, it seemed to me that Mr. Lim did not have a full understanding of what he had been told by the investigators at the time of their first approach. Significantly though, Mr. Lim felt he had to provide the information to the police and that based on his own experiences there simply was no choice. Finally, there is no evidence that Mr. Lim was aware of the potential consequences of giving the consent to the police. Accordingly, the evidence fails to establish that Mr. Lim's "voluntary" disclosure of the materials to the investigators constituted an informed consent.

West Georgia

- [325] The Crown relies upon Ms. Blair's evidence about a conversation she had with the strata council president well before the attendance of Cst. Opoku on June 27, 2018, wherein she was told to cooperate with any request made by the police to establish the authority for the release of this information pursuant to the bylaws for West Georgia. I would not accede to this point for a number of reasons.
- [326] Ms. Blair was the head concierge, employed by a company that contracted with the property management company that was the agent of the strata corporation. The strata corporation's bylaws, as reviewed above, are anything but clear on who is authorized to disclose personal information for law enforcement purposes or the process for obtaining authorization to disclose such information.
- [327] While Ms. Blair believed she was authorized to release the information based on her general conversation with the strata council president, there is, as I noted earlier, a problem with this. In my view, a general standing direction that concierges simply cooperate with all law enforcement requests is inconsistent with the obligations of PIPA. Nothing in such a general direction, which was not tied to a specific investigation or a specific request for personal information, meets the minimal requirements of s. 18(1)(j) of PIPA.
- [328] The agency agreement between the strata corporation and the property management company is not in evidence, likely in part due to the fact that Ms. Blair was not an employee of the property management company. Rather, she was an employee of another company that contracted with the property management company to provide concierge services to the strata corporation. In such circumstances, Ms. Blair is one step further removed than Mr. Lim in respect of the agency relationship between the property management company and the strata corporation.
- [329] Finally, none of the officers made any inquiries to determine Ms. Blair's employment relationship and whether she had the capacity to consent such that she was authorized to provide the materials to them. In the circumstances, I conclude that nothing in the bylaws or PIPA authorized Ms. Blair to disclose the personal information of the applicants to the investigators in this case of her own accord. And, further, that the strata council president's open-ended direction to cooperate with any law enforcement request did not provide Ms. Blair with the authority to release the materials to the investigators in this case.
- [330] Given my finding that Ms. Blair was not authorized to disclose the materials to the investigators of her own accord, it is not strictly necessary to address whether Ms. Blair's disclosure satisfies the requirements of informed consent as established in Wills. For the same reasons provided in respect of the Kwantlen materials above, modified to the circumstances of West Georgia, the evidence fails to establish that Ms. Blair's "voluntary" disclosure of the materials to the investigators constituted an informed consent.

- [331] Similar to my observation in the Brighthouse Ruling (para. 211), albeit there in the assessment of the objective reasonableness branch of the analysis, if an individual's privacy in their own personal information is to be given any significance and protection, especially from state intrusion, it cannot be waived by a third party simply because the police ask to access a database that contains it and then make a copy of it once they find what they are looking for. Nor can a blanket and general direction from a supervisor of an employee of a strata agent or a strata council president that individuals (building managers or concierges) give the police what they request constitute a valid consent to the disclosure of personal information.
- [332] Finally, in the totality of circumstances I am unable to find that the requests for the disclosure of the materials from Kwantlen or 1200 W. Georgia conformed to the provisions of s. 18(1)(j) of PIPA. More importantly as I held in the Brighthouse Ruling (para. 117), the provisions of PIPA do not create a Charter-free zone in which the police can operate and conduct what amounts to a warrantless search to obtain personal information impressed with an expectation of privacy in so far as state actors are concerned: Roudiani.

CONCLUSION

- [333] Having considered the totality of the circumstances, I find the applicants have established on a balance of probabilities that they each had a reasonable expectation of privacy in the subject matter of the materials obtained by the Project Territory investigators from Kwantlen and 1200 W. Georgia St. They have standing to challenge the searches and seizures from these two locations.
- [334] In so far as 1288 W. Georgia St. is concerned, Mr. Latimer has not discharged his burden of establishing a reasonable expectation of privacy in respect of the materials obtained from this location on July 19, 2018.
- [335] As I have found a reasonable expectation of privacy in respect of most of the items in issue on these two applications, it follows that the manner in which those items were obtained by the police - without prior judicial authorization in the form of a production order - means that the items were obtained by means of a warrantless search and seizure.
- [336] I am not satisfied that the Crown has established that the seizures of the materials obtained from Kwantlen and 1200 W. Georgia St. without prior authorization were nevertheless justified on the basis that the building manager and the head concierge of the respective locations had the authority to consent and did in fact provide a valid consent to the seizure of the materials. The Crown has not established that the seizures from Kwantlen and 1200 W. Georgia St. were nevertheless justified in the circumstances such that they can withstand s. 8 Charter scrutiny.

- [337] Accordingly, I find that the CCTV footage and fob records from Kwantlen that contain personal information about the applicants as well as the CCTV footage and fob records from 1200 W. Georgia St. that contains personal information about Mr. Szucs were all obtained contrary to s. 8 of the Charter.
- [338] As for the materials obtained from 1288 W. Georgia St. on the occasion of Mr. Latimer's attendance there on July 19, 2018, Mr. Latimer has not discharged his onus of establishing on a balance of probabilities that he has a subjective expectation of privacy in the materials or that any subjective expectation of privacy was objectively reasonable in the circumstances. The materials obtained from 1288 W. Georgia St. were not obtained contrary to s. 8 of the Charter.

"Ker J."

- [1] Mr. Pikientio entered guilty pleas to counts #5 and #7 on Indictment VA 27798 on July 2, 2020, and was sentenced by Mr. Justice Ball on August 7, 2020. Mr. Pereira entered a guilty plea to count #5 on Indictment VA 27798 on July 27, 2020, and was sentenced by Associate Chief Justice Holmes on October 8, 2020.
- [2] The dates they were observed attending at Kwantlen (together or separately) included March 18, 20, 21, 24, 26, 27, April 6, 8 and an undisclosed number of times between April 9 and 16, 18, 23, 24, a number of times between May 12 and 14, May 24 and June 17, 2018.
- [3] The OIPC Privacy Guidelines, p. 3.
- [4] Cst. Opoku and Cst. Shum.
- [5] Sgt. Chow obtained permission and keys to attend the Kwantlen security office overnight on April 18, 2018. This was when Project Territory executed its first general warrant on suite #1901 - 5068 Kwantlen.
- [6] Ex. #2 is a draft Personal Information Protection Policy for the Seasons Strata Plan (Kwantlen). Interestingly, it appears to suggest that Mr. Lim would become the Privacy Officer. It was not drafted until sometime in 2019, well after the events covered by this voir dire.
- [7] Ex. #1, Tab 2.
- [8] Ex. #1, Tab 1.
- [9] The 2009 version of the Privacy Guidelines were before Judge Howard in Wilson BCPC.
- [10] Ex. #1, Tab 2.
- [11] Paragraph 158 of the written argument filed by Mr. Szucs provides a number of references in the agency agreement that limit the agents free standing powers by describing its ability to act to in certain situations to be done at the direction of the strata council. For example, clauses 3.2 (administration), 3.7 (taking legal action over non-payment of strata fees), 3.11

(payment of certain expenditures), 3.31 (obtaining property insurance), 3.32 (obtaining E & O insurance), 3.42 (legal proceedings dispute resolution), 3.46 (compliance with laws) all provide that the agent's ability to act in these spheres is at the direction or authorization of the strata council.

- [12] An identical term in the agency agreement for Brighthouse Way was considered by Madam Justice Devlin in *R. v. Kim*, 2020 BCSC 1075 (paras. 31-32) (Kim #4).
- [13] The reference in the evidence to "lines" was in respect of intercepted communications overheard on the wiretap authorization that went up when P.2018/05F was issued on February 14, 2018.
- [14] Presumably so he could alert the team executing the general warrant on suite #1901 if one of the targets appeared to be headed up to the suite.
- [15] For example, Cst. Opoku was interested in a four-minute window of time between 13:24 and 13:28 hrs. for CCTV footage from June 27, 2018 but copied an hour's worth of footage (12:50 to 13:50 hrs) with numerous other individuals unrelated to the investigation included in the materials copied and seized.
- [16] Cst. Opoku did not actually make a note of the time of his attendance at West Georgia but inferred the time frame by the fact that the fob records were printed out at 15:49 hrs.
- [17] Cst. Opoku did not copy the CCTV footage for this day's attendance by Mr. Szucs.
- [18] Cst. Opoku did not copy the CCTV footage for this day's attendance by Mr. Szucs.
- [19] Ex. #4 is the fob record of the activity that Cst. Opoku observed. The times on it are off by about two to three minutes as compared to the times Cst. Opoku provided from his TAR for his observations of the CCTV footage. The times for the fob records and on the CCTV footage were not perfectly synchronized.
- [20] Marked Ex. #5 on the voir dire.
- [21] Note: the time stamp on the photograph of the Accord exiting the parking garage is actually 19:48:24 hrs. Cst Shum testified that the fob access records and the CCTV footage were out of synch with each other by two or three minutes. He agreed that the entirety of Mr. Szucs attendance that day was around five minutes.
- [22] A still photograph from the CCTV footage was a zoomed in picture but Cst. Shum could not recall if that was from the CCTV system or something he did on his own.
- [23] *R. v. Tessling*, 2004 SCC 67; *R. v. Patrick*, 2009 SCC 17; *R. v. Cole*, 2012 SCC 53; *R. v. Spencer*, 2014 SCC 43; *R. v. Marakah*, 2017 SCC 59; and *R. v. Jones*, 2017 SCC 60.

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