



**Michael Pascu, LLB, ACCI**  
Fine & Deo,  
Barristers and Solicitors

# Warrantless Police Surveillance: Should such activity be permitted?

It is generally a good thing to assist the police when requested. However, if the police request to be permitted to carry out surveillance on the condominium corporation's common elements as part of a criminal investigation, without a warrant, can such surveillance activities be permitted? As will be discussed below, the answer is yes.

## **Duty to protect privacy**

It should not be news to anyone that condominium corporations have a duty to protect the privacy of its residents. This duty is imposed by common law as well as by federal legislation, specifically the *Personal Information Protection and Electronic Documents Act* ("PIPEDA"). PIPEDA essentially codifies the common law

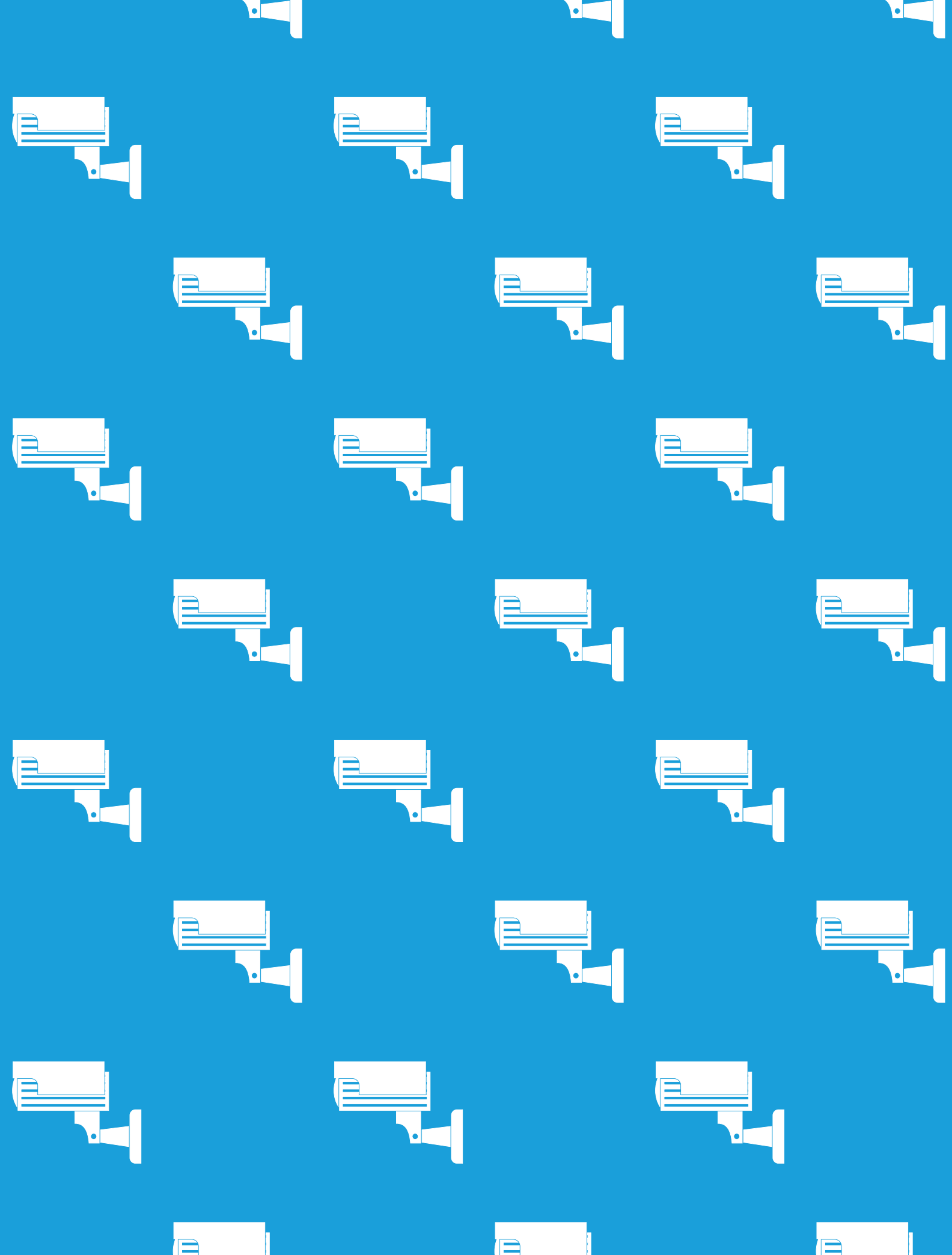
duty imposed on any organization to not disclose any private information that it collects on an individual without the consent of the affected individual or without being obligated to do so by law. However, this duty is not absolute and private information is permitted to be disclosed in certain circumstances, such as when the request for disclosure is made by the police with respect to the prosecution of a crime.

Since condominium corporations are permitted in certain circumstances to disclose to the police information about a resident, without the authorization of a warrant, does that mean that condominium corporations can also permit the police to conduct warrantless surveillance on the common elements, if

requested? Unfortunately, until recently the case law in this area did not provide a clear answer to this question, with some cases suggesting that warrantless surveillance activities on the common elements are okay, while other cases suggesting that such activities breached the privacy of the targeted resident.

## **The latest judicial view on warrantless searches of common elements**

Luckily for us, the court in the Ontario criminal case of *R v. Brewster* reviewed and clarified the law in this area. In this case, a number of warrantless police surveillance activities on the common elements of several condominium corporations were legally challenged for violating the Canadian Charter of Rights.





**RESIDENTIAL  
CONCIERGE**

## A *Luxury* LEVEL OF SECURITY & **CUSTOMER CARE**

Elite is one of the Top Concierge companies in the GTA, with over 14 years experience in the industry.

### CONTACT US

Book a meeting with Elite to discuss the security and concierge services that will fit your needs.

**T: 647.499.5727**

**E: INFO@ELITECONDOCONCIERGE.COM  
ELITECONDOCONCIERGE.COM**



## Elevate your career

### Prepare for your Registered Condominium Manager (RCM) designation with George Brown College

Gain a strong foundation in condo management with our Condominium Management Certificate – offered in partnership with the Association of Condominium Managers of Ontario (ACMO). Taught by industry professionals, courses explore the essentials of condominium law, financial management, administration, human resources and facilities management.



All courses are offered in the evenings at our St. James Campus, conveniently located in the heart of downtown Toronto. Completion of the following four certificate courses will allow you to write the Registered Condominium Manager (RCM) exam administered by ACMO:

- Condominium Law
- Condominium Administration and Human Relations
- Financial Planning for Condominium Managers
- Physical Building Management

**[coned.georgebrown.ca/condo](http://coned.georgebrown.ca/condo)**

For more information, contact us at 416-415-5000, ext. 2163, or [cebusiness@georgebrown.ca](mailto:cebusiness@georgebrown.ca).



School of  
**Continuing  
Education**

In order to determine whether there were breaches of the Charter, the court considered whether the targeted individuals had a reasonable expectation of privacy with respect to the common elements of their condominium corporation.

The court concluded that, in the cases that were reviewed, one of the main factors in determining whether the residents had a reasonable expectation of privacy with respect to the common elements of their condominium corporation was whether the residents had the power to regulate who accessed the common elements.

For example, the court reviewed one case in which a police officer conducted surveillance of a suspect who lived in a small, ten-unit building. In that particular case, the building had a security system that kept the building locked to non-residents, but the police officer entered the building by taking advantage of a malfunctioning door lock and then hid in the stairwell while conducting the surveillance. The building was so small and so poorly insulated that the police officer could overhear the conversations and activities taking place in the suspect's dwelling unit directly from the stairwell. The court in that particular case concluded that the targeted resident had a reasonable expectation of privacy with respect to the common areas.

The court, however, reviewed other cases wherein the condominium corporations in question had 150 to 200 dwelling units, and in those cases it was determined that there was either very low

or no reasonable expectation of privacy with respect to the common elements of those condominium corporations.

After analyzing the case law, the court drew two main conclusions, namely:

a. whether a resident has a reasonable expectation of privacy depends mostly on whether the resident has the power to regulate who has access to the common elements. In very small condominium corporations, where very few people are expected to be on the common elements (even if the resident does not strictly control who enters the common elements) there may be a reasonable expectation of privacy, but in larger condos, where at any given time there may be a number of residents, guests, condominium staff and tradespeople accessing the common elements without requiring the permission of the resident, there is low or no expectation of privacy on the common elements; and

b. even if the resident does not have control over who accesses the common elements, the resident's privacy expectations may still be breached if the surveillance is intrusive in nature. For example, if the surveillance activities involved observing things which were easily observable (such as which dwelling unit the resident lived in, or which parking space the resident parked his car in), or in other words, if the police collected information that was "exposed to the public", there was no reasonable expectation of privacy with respect to that type of information. However, there would be a reasonable expectation of privacy with

respect to information gathered by more intrusive types of surveillance, such as being in a hallway and looking into a unit through an open door, listening with the ear close to the unit door for noises or conversations inside the dwelling unit, looking through the peephole, or sniffing at the door threshold.

### Conclusion

Thanks to the Brewster case, it is quite clear that condominium corporations can permit the police to engage in warrantless surveillance of the common elements, in cases where the building has many dwelling units and the residents do not have control over who is on the common elements. However, in order to avoid or minimize the risk of being sued by a resident for breaching his or her privacy, the boards of condominium corporations should take reasonable steps to ensure that the surveillance activities are not intrusive. As well, in borderline cases where the building contains relatively few dwelling units, which makes it difficult to gauge whether the residents have a reasonable expectation of privacy with respect to the common elements, it would be recommended for the condominium corporation's board to either decline to allow the surveillance, or alternatively, seek legal advice before permitting the surveillance to take place. ■

**Michael Daniel Pascu, LLB, ACCI** practices law with Fine & Deo, Barristers and Solicitors.  
Finedeo.com



556 Edward Avenue, Unit 71  
Richmond Hill, ON L4C 9Y5  
P 905-737-0111 F 905-737-4046  
(Guelph Region) P 519-827-1757

- Reserve Fund Studies
- Performance Audits
- Condition Assessments
- Specifications & Tendering
- Forensic Engineering
- Roof Consulting
- Construction Review
- Contract Administration

**PRACTICAL APPROACHES ■ SENSIBLE RESULTS** [www.brownbeattie.com](http://www.brownbeattie.com)

