

Police Search Rights on Condominium Common Elements – An American Case

We [previously blogged](#) about an Ontario case where a man accused of drug trafficking was acquitted, as the police had on three occasions entered the common elements of the condominium in which the accused resided and owned a unit, without permission and without a search warrant. The trial court determined that the unauthorized police visits constituted trespassing and an infringement on the privacy rights of the accused. The acquittal was upheld by the Ontario Court of Appeal, which concluded that *“those who live in multi-unit dwellings are no less entitled to protection of their privacy than those who live in single-family homes.”*

The right to privacy in the common elements of a condominium and the right of the police to enter the common elements was recently considered in a criminal case by the State of Minnesota Court of Appeals. In the [Minnesota case](#) the police had obtained information from an informant that the accused was trafficking in drugs. The police, with a drug-sniffing dog, then attended at the condominium building in which the accused resided. After sniffing in the hallway outside the accused’s unit the dog indicated that illegal drugs were in the unit. The police then obtained a warrant to search the unit. The police found large quantities of marijuana and other controlled drugs, as well as weapons and the accused was convicted of various drug-and-weapons-related offences.

The condominium unit was located on the third floor of a four-storey building. The entrance door to the building was kept locked, but there was no concierge or guard at the front door. Visitors would gain entry to the building by using an internal phone to call the resident who would remotely unlock the entrance door.

However, the police had access to a building key that was stored in a “lockbox” in the building foyer. The property management company of the building had given the police access to the key and the building for *“whenever police officers deemed it necessary or appropriate for law-enforcement purposes.”*

The accused appealed the convictions on the basis that the police warrantless entry and the dog sniff were both unlawful, and therefore the subsequent warrant was not valid and the evidence obtained in the search of the unit was not admissible. However, the accused in the Minnesota case did not get the favourable result rendered in the Ontario case, as the convictions were upheld by the Appeals Court.

The Appeals Court determined that the accused *“did not have a legitimate or reasonable expectation of privacy in the common areas of the secured, multi-unit condominium building”* and that the police warrantless entry into the common areas was justified by the consent of the condominium property management. The Appeals Court also rejected the accused’s argument that the dog sniff was unlawful on the basis that area outside the door of the unit was akin to the front porch of a house and was an extension of the accused’s home. This argument failed for several reasons: there was no enclosure of the area outside the unit’s door; the accused shared that area with other residents and visitors; and the accused was limited in his ability to use that area as he had to abide by the condominium rules regarding usage of the common element hallway.

One major distinguishing factor between the Minnesota case and the Ontario case was the fact that in the Minnesota case the police had the consent of property management to enter the condominium building, while in the Ontario case, the police had surreptitiously snuck into the building. The result in the Ontario case may have been different if the police had obtained consent to enter the condominium.