

Surveillance akin to intrusion

Tenants' rights infringed by cameras

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IN LAST week's article, reference was made to CCTV as one of the ways a landlord may interfere with the tenant right to undisturbed and peaceful use and enjoyment.

We are accustomed to CCTV cameras being used to monitor (potential) criminal activities. In business centres, for example, signage is posted, at least as a warning notice that people are under surveillance.

A person can therefore choose not to enter such a property, fearing misuse of the footage recorded or to avoid being recorded for anti-social behaviour or criminal activity.

What happens to a tenant who finds herself suddenly under camera surveillance in a residential block? Worse, what happens to the tenant's privacy and dignity if circulars are distributed to other tenants? What is the legal position in South Africa, given the Bill of Rights, common law and the law of delict?

In terms of the constitution, "everyone has the right to freedom and security of the person (s12 (1)): "Everyone has inherent dignity and the right to have their dignity respected and protected" (s10), and "Everyone has the right to privacy" (s14).

Privacy, dignity and freedom are interconnected to our humanity and regulates the way we express ourselves in whatever capacity and whichever situation. Privacy is protected out of respect for dignity (judge Ackermann¹). It is "the right to be left alone" that "encompasses the right of a person to live his or her life as he or she pleases" (judge Madala²).

According to Jonathan Burchell³ "We are fully human not only through engagement with other human beings, but also because others show respect for our private domain."

According to the **tenants of McIntosh House** in Durban, a few years ago, CCTV cameras were installed on every floor. Soon thereafter, circulars were sent to individual tenants and in some instances, to all tenants.

The tenants' initial shock turned to frustration with the publication and distribution of their alleged conduct and behaviour. They were upset at what they considered invasive, voyeuristic and unlawful conduct on the part of their supervisor who claimed to be acting on the instructions of the landlord.

A recent incident involving one of the tenants reminded them that they were still under the watchful eyes of 'Big Brother'.

A set of questions together with some of the circulars were sent to the landlord's attorney, Kelvin Walker of Thorpe and Hands, requiring a response:

1. Why were the CCTV cameras installed at McIntosh House?



McIntosh House, Dr Pixley Kaseme (Smith) Street, Durban

¹ *Bernstein and Others v Bester and Others NNO* 1996 (2) SA 751 (CC)

² *NM v Smith (Freedom of Expression Institute as Amicus Curiae)* 2007 (7) BCLR 751 (CC)

³ The Legal Protection of Privacy in South Africa: A Transplantable Hybrid, *Electronic Journal of Comparative Law*, vol. 13.1 (March 2009)

2. Do you condone the supervisor detailing tenants' alleged behaviours, conduct and movements, available for viewing as recorded by the CCTV cameras? Some of these letters were circulated to all the tenants and copied to you. For ease of reference, we enclose some of these letters to avoid any delay in you having sight of these.
3. Kindly confirm that the House Rules referred to in these letters/circulars, attached herewith:-
 - 3.1 Are required by law?
 - 3.2 Are legally binding on the tenants?
 - 3.3 Were issued as per the landlord's instructions?
4. Your written response by close of business Wednesday June 29, 2011 would be appreciated.

Walker sent two responses the same day. The first stated that the questions were 'forwarded to our client for its instructions'. The second confirmed that a meeting were to be convened by his clients on Thursday June 30 at 9 am and his client's response would be followed "by no later than Friday the 1st of July 2011".

The following day Walker said his client's directors could only meet on Friday, but required a response to three questions. They said it appeared that I (your columnist) now operated personally and wanted to know if I and the OCR charged for services rendered to tenants. The second question related to House Rules being objected to. The third question related to his client's concern that the article may not be objective because of my involvement with the tenants:

"Our client understands that your articles in the Daily News in the past have generally been even-handed, but questions how this can possibly be the case in this instance. We quote, for example the fact that you have enquired whether the writer personally condones the supervisor's alleged actions."

Walker had raised one legitimate and therefore relevant question.

My response, inter alia, was that I was writing the article as a columnist and regardless of my involvement in a given situation, I applied the test of an objective bystander, as a columnist and as an author.

This means that I even write about tenants I may be associated with in whatever capacity, but write objectively.

I write on issues that involve close associates and long standing comrades, but I have done so without compromising the ethics of journalism, and without fear or favour.

I was then asked to respond to the other questions, which I did, confirming that I never charged any fee, did not represent anyone in my private capacity and that the OCR welcomed donations, but did not charge for its services either.

He was then advised to direct his inquires to OCR's secretary general, Angel Paulsen, or to the legal team or acting legal team co-ordinators or to OCR's legal advisor.

There was no response from the directors or from Walker in spite of the numerous attempts. After at least two further reminders past the deadline, Mr. Walker finally responded to my personal email address indicating that his client would respond directly.

A response was subsequently sent by the supervisor, claiming to be acting in her personal capacity, but did not answer the questions posed.

Her letter was accompanied by what she called a transcript that contained offensive language by person or persons she alleged were represented by the OCR. However, the alleged 'perpetrator' was not named.

The tenants believe that this was another attempt to deflect from the fact that they were under psychological assault each time they walked into the building and entered their flats, and felt their reputation; their right to privacy and dignity under 'attack'.

It is time that our government regulated the use of CCTV. The furore at McIntosh House seems to be similar to the outcry by tenants of Torquay (where Agatha Christie lived) in England that Big Brother was watching, causing debates among residents and rights groups.

"In many ways CCTV is an even more intrusive form of search than an audio wiretap. CCTV can be grossly abused by recording intimate and private conduct and marking innocent people for tracking solely on the basis of racial, gender or other characteristics. No other technique can record in such graphic detail personal and private behaviour."⁴

⁴ April 8, 1999 Law Enforcement Should Support Privacy Laws for Public Video Surveillance, Address by ACLU Associate Director Barry Steinhardt to the International Association of Police Chiefs and the Security Industry Association