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INVASION OF PRIVACY BY CCTV CAMERAS

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INVASION OF PRIVACY BY CCTV CAMERAS

Introduction

We recently reported about an NCAT case in which a lot owner was ordered to remove CCTV cameras she unlawfully installed on the common property of a strata building in breach of the by-laws and strata laws.

But what happens when a next door neighbor whose property is not part of your strata scheme (and who is not bound by by-laws and strata laws) installs a CCTV camera that peers into your home?

What can you do about that?

Is there a right to privacy?

There is no general right to privacy recognised by the common law.ⁱ This means that, under the common law, a person is not able to accuse their neighbour of infringing their privacy or insist on their neighbour removing a CCTV camera to restore their privacy.

Is there a trespass?

The laws of trespass can be used to prevent a person entering, or in other ways trespassing on, the land of another person, including by trespassing into someone's apartment. But the installation of a CCTV camera on a neighbouring property is not a trespass.

Is there a nuisance?

The common law of nuisance does not prevent a person overlooking another's home or taking photographs of another person.ⁱⁱ This means that a person cannot argue that their neighbour is committing a legal nuisance by pointing a CCTV camera at their apartment.

Uncertainty in the law?

There have been some comments made in the High Court of Australia from time to time that a tort of privacy may exist in Australian common law or that there is no absolute and unrestricted right to spy on another person under the common law and that by doing so the spy is committing a nuisance.ⁱⁱⁱ

However, the better view is that there is currently no right to privacy under the common law and the law of nuisance does not prevent a person recording the activities of their neighbour.

Surveillance devices legislation

There is specific legislation which deals with surveillance devices such as CCTV cameras. This is the *Surveillance Devices Act 2007*.

Section 8 of that Act makes it an offence for a person to install or use an optical surveillance device such as a CCTV camera on premises, to record the carrying on of an activity, if the installation or use of the device involves entry onto premises without the consent of the owner or occupier of the premises.

In other words, section 8 of the Act makes it illegal for a person to install a CCTV camera on somebody else's property without the consent of that other person. However, there is nothing in the *Surveillance Devices Act 2007* which prevents a person installing a CCTV camera on a property which they own or with the consent of the owner of that property and recording activities on a neighbouring property.

Is it a crime?

The *Crimes (Domestic and Personal Violence) Act 2007* makes it an offence for a person to stalk another person with the intention of causing the other person to fear physical or mental harm (see section 13). Stalking includes watching (presumably by means of a CCTV camera) a person's place of residence.

However, it would be rare for a neighbour to install a CCTV camera with the intention of causing a person to fear physical or mental harm.

What about planning laws?

In some cases it might be possible that the installation of a CCTV camera requires some form of planning approval such as a development consent or complying development certificate. If so, it might be possible to have the camera removed by action taken through the local council, or even the Land and Environment Court, if the camera was installed without the required planning approval.

So what can be done?

The most sensible approach is to approach the neighbour who has installed the CCTV camera and ask him or her to remove it or reposition it. In many cases, common sense will prevail. If it does not, other, more creative steps would need to be taken, for example, planting trees and shrubs to screen the apartment from the view of the CCTV camera, or taking action against the neighbour if any planning laws have been contravened.

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About JS Mueller & Co Lawyers

JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of strata law and levy collection.

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ⁱ *Wainwright v Home Office* [2003] UKHL53

ⁱⁱ See *Bathurst City Council v Saban* (1985) 2 NSWLR 704

ⁱⁱⁱ *Australian Broadcasting Corp v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199;
Victoria Park Racing and Recreation Ground Co Ltd v Taylor (1937) 58 CLR 479.