

# Duty to Warn Customers

# Liabilit



*A Saskatchewan court case helps define alarm companies' responsibilities and the importance of including limitation-of-liability clauses in monitoring contracts.*

BY ELLIOTT GOLDSTEIN

A recent Canadian court case raised the question of whether an alarm installer has a duty to warn its customers that their system can be circumvented, and what should that warning include.

In the 1997 Saskatchewan case of *Agopsowicz v. Honeywell Ltd.*<sup>1</sup>, the Court of Queen's Bench of Saskatchewan held that "Honeywell possessed a duty to warn the plaintiff (its customer) during the summer of 1995 that its digital-dialing monitoring system was being consistently rendered ineffective by burglars severing telephone lines." The court awarded the customer judgment in the amount of \$250 — the maximum payable under the limitation of liability clause in the Honeywell contract.

The facts of this case are very important. The customer operated an antique business from a commercial premises. Honeywell agreed to monitor the customer's existing burglar alarm system for a monthly fee of \$22.50.

The monitoring system was described to the court as a "digital-dialing monitoring system" that used a regular telephone line to transmit a signal to Honeywell's monitoring station. According to evidence presented in court, "if the telephone line was cut, not only would no signal be conveyed to the monitoring station when an unauthorized entry into the premises occurred, the monitoring station would not be aware that the telephone line had been cut by intruders."

**This case teaches the Canadian security industry that limitation of liability clauses are extremely important to include in monitoring contracts.**

However, Honeywell also had available "a leased-line monitoring system," which provides a higher degree of security than does the digital-dialing system. With the leased-line system, "signals were transmitted on a special copper leased line between the monitored premises and the monitoring station." However, the

leased-line system was more expensive than the other system.

The customer sued Honeywell not for breach of contract, but for breach of alleged duties owed by Honeywell to warn the customer that:

- 1) when the customer's telephone was cut by the burglar who stole his coins, no signal revealing the telephone line was severed was transmitted to Honeywell's monitoring station; and
- 2) Honeywell was aware there was a spate of burglaries — at least three per week — in Regina, Sask., during the period of April to September 1995. The burglaries occurred in premises monitored by digital-dialing monitoring systems, after telephone lines to the premises had been cut.

As to the first alleged duty to warn, the customer insisted it was reasonable for him to assume that Honeywell would be aware of the fact the telephone line had been severed. Honeywell was aware that its system did not reveal to its monitoring station when a customer's telephone line

had been severed. The customer argued that Honeywell owed a duty to inform him; he claimed he would have upgraded his system had he known that there was no monitoring — or warning to Honeywell — after the phone line was cut.

The court found Honeywell had not breached any duty it might have owed to the customer to warn him of the limitations of the digital-dialing monitoring system because the contract contained a caution to the effect: "Customer does not have line supervision. If the line is interrupted, Honeywell's protection services will not receive the signal." The court believed the testimony of Honeywell's branch manager, who stated it was a policy of Honeywell to communicate to employees and customers that interruption of the telephone line would result in no signal being received at Honeywell's monitoring station.

As for the second alleged duty to warn, Honeywell did possess such a duty and failed to warn its customers of the unusual number of break-ins following the cutting of monitored telephone lines.

The court found Honeywell did not warn the plaintiff or other customers. Had Honeywell warned its customers, it would have provided to its customers an opportunity to upgrade their services if they wished to do so.

Why didn't it warn them? The court heard evidence that "Honeywell saw no reason to do so because the circumventions had not reached 'panic' proportions; each customer had previously been informed that no signal would be received at Honeywell's monitoring station if the phone line was severed. In addition, Honeywell did not want 'trouble' to get out."

Fortunately, for Honeywell, the court upheld the limitation of liability clause in its monitoring contract with its customer. The court reasoned that "to permit recovery against Honeywell for the full amount of the plaintiff's loss would result in the alteration of a service contract that of an insurance contract." The limitation of liability clause was not unconscionable. Therefore, Honeywell's liability was not the \$55,623.75 stolen during the burglary. Instead, it was limited to \$250.

This case teaches the Canadian security industry that:

- limitation of liability clauses are extremely important to include in monitoring contracts. If reasonable, they will be upheld and given effect.
- alarm companies owe a duty to their customers to explain the limitations and frailties of the monitoring system and warn them of its limitations.
- Warnings and explanations should be written on the contract and brought to the customer's attention before the contract is signed.
- alarm companies, having given the aforementioned warnings, should provide their customers with an opportunity to upgrade their services if they wish to do so. For example, customers should be informed that (backup) systems transmit alarm signals as radio signals from the customer's premises to the central monitoring station using a radio phone. Simply put, if the phone line is 'interrupted,' the alarm system is still able to send the signal to the monitoring station.

Spending that little bit of extra time explaining things to the customer may avoid costly lawsuits in the future. And it may be prudent to mind the old adage: an informed customer is a good customer.

*Author's notes: 1 Agopsowicz v. Honeywell Ltd. - [1997] 7 W.W.R. 299, 36 C.C. L.T. (2d) 23 (Sask. Q.B.).*

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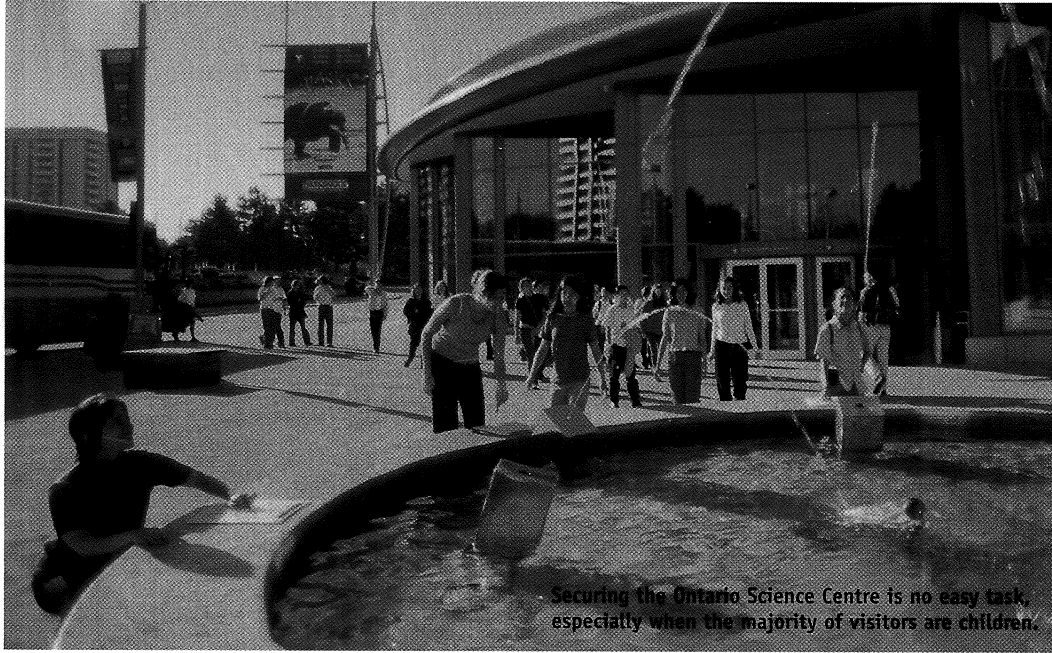
SECURITY PRODUCTS & TECHNOLOGY NEWS

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## Knowing What The Customer Wants

*The security directors of three Ontario landmarks share  
their views on what they look for when selecting an alarm company.*

# Trust



Securing the Ontario Science Centre is no easy task,  
especially when the majority of visitors are children.

BY PAUL GROSSINGER

Nobody in the alarm industry matters more than the customer.

Without them, manufacturers need not create, distributors need not stock product, dealers need not sell, and installers need not install.

So what do customers want? This is the \$64,000 question, and one for which no single answer exists.

In residential applications, end-users are more security-conscious than ever before. But in most circumstances, price remains the ultimate factor in choosing a system to protect their property and loved ones.

As for commercial and industrial environments, security is expanding beyond heavy-duty locks and windows bars to the point where CCTV and access control are

becoming just another business expense.

But when the issue of securing public sites, tourist attractions and provincial landmarks comes into play, security issues such as video surveillance, access control, crowd management, physical security, loss prevention and guard personnel all need to be thoroughly researched in

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### LA BELLE PROVENCE

*Quebec's security industry  
growing at an alarm*

Mergers, acquisition and unionization may be the latest industry trends in Quebec. Despite separation talks, security professionals are determined to be establishing standards across the entire country.

### PROTECTING YOUR BUSINESS

*Court decision may change  
the way Canadian alarm  
companies do business*

Before cashing that check for processing a customer's credit card, alarm companies' personnel might want to spend a little more time explaining to the client just how the security system works in order to avoid costly lawsuits.

### RIDING THE WAVE

*Establishing a Web presence  
help alarm companies  
attract new customers*

If you are not online, are you? The Internet is the place to be these days. Find out what the information superhighway can do to increase revenue and cut costs.