HOME Line Records Support Court of Appeals' Ruling That Minn. Stat. § 504B.211 Penalizes Both Severe and Minor Entries Made Without Notice

HOME Line

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Summary

The Tenant's Right to Privacy statute, Minn. Stat. § 504B.211, requires residential landlords to give prior notice before entering their tenant's apartment in non-emergency situations. Under subdivision 6 of the statute, when a landlord "substantially violates" this requirement the landlord is subject to several penalties.

In *Ta v. Ryan Rentals LLC*, Minn. Ct. App. File No. A-21-0264 (Sept. 13, 2021) (nonprecedential) the Court of Appeals held that "substantially violates" means "violates essentially" as opposed to "violates in a substantial manner", i.e. that "substantially violates" includes both minor and severe incursions without notice.

The *Ta* court's analysis is linguistic ("plain-language" analysis) and rather brief. We compiled a detailed legislative history of the statute here and then reviewed it for evidence directly supporting or contradicting the *Ta* court's construction. There is neither. However, committee testimony included presentations by HOME Line staff reviewing calls to the HOME Line hotline from tenants concerned about invasions of privacy. Those calls provide a measure of the mischief to be remedied by the law.

77% of the calls regarded minor incursions and about 1/3 of those (27% of all calls) involved landlords who entered without notice only once. We conclude that the mischief to be remedied by Minn. Stat. § 504B.211 included both severe and minor incursions, supporting the *Ta* court's construction of "substantially violates".

We also examined more recent calls to the hotline to measure whether the law has altered landlord behavior. Adjusted for population, the frequency of recent privacy-related calls to the hotline is about 22% lower than the frequency before Minn. Stat. § 504B.211 was enacted. This indicates that at least some of those landlords who are generally law abiding have ceased making non-emergency entries without notice.

Introduction

Minnesota residential landlords do not have free reign to enter their tenants' apartments. Except in an emergency, Minn. Stat. § 504B.211 requires them to warn the tenants when they will be entering and to have a valid reason for entering. Specifically, subdivision 2 of the statute reads:

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> Subd. 2. **Entry by landlord**. Except as provided in subdivision 4 [emergency situations], a landlord may enter the premises rented by a residential tenant only for a reasonable business purpose and after making a good faith effort to give the residential tenant reasonable notice under the circumstances of the intent to enter. A residential tenant may not waive and the landlord may not require the residential tenant to waive the residential tenant's right to prior notice of entry under this section as a condition of entering into or maintaining the lease. [emphasis added]

The penalty for disobeying subdivision 2 is set out in subdivision 6 of the statute, which reads:

> Subd. 6. **Penalty**. If a landlord substantially violates subdivision 2, the residential tenant is entitled to a penalty which may include a rent reduction up to full rescission of the lease, recovery of any damage deposit less any amount retained under section 504B.178 and up to a $100 civil penalty for each violation. If a landlord violates subdivision 5, the residential tenant is entitled to up to a $100 civil penalty for each violation. A residential tenant shall follow the procedures in sections 504B.381, 504B.385, and 504B.395 to 504B.471, and to enforce the provisions of this section. [emphasis added]

The statute does not define "substantially violates". BLACK'S LAW DICTIONARY 1428-1429 (6th Ed. 1990)[2] defined "substantially" as follows:

> **Substantially** [means] Essentially; without material qualification; in the main; in substance; materially; in a substantial manner. About, actually, competently, and essentially.

That is, "substantially" could mean "essentially … in the main" or alternatively "in a substantial manner", i.e. significantly or severely. The legislature has used the word "substantially" in both ways. *Compare* Minn. Stat. § 630.18 ("the indictment shall be dismissed … when the indictment does not substantially conform to the requirements of sections 628.10 to 628.13"); Minn. Stat. § 634.20 ("Evidence of domestic conduct … is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice").

Which of these two versions of "substantially" is the one intended by the legislature in the phrase "substantially violates"? That was one of two issues decided in *Ta v. Ryan Rentals LLC*, Minn. Ct. App. File No. A-21-0264 (Sept. 13, 2021) (nonprecedential).[3] Judge Ross' opinion explains

[2] As discussed below, Minn. Stat. § 504B.211 (2020) was originally enacted as Minn. Stat. § 504.183 (1995 Supplement) by the 1995 legislature. It was recodified in 1999 as Minn. Stat. § 504B.211 but that did not change its meaning. *Occhino v. Grover*, 640 N.W.2d 357,362 (Minn. App. 2002). Therefore the version of BLACK'S current in 1995, the 6th edition, is the correct dictionary to consult.

[3] The other issue was whether the trial court had abused its discretion when it found that Ryan's entry into Ms. Ta's apartment was egregious. The Court of Appeals affirmed the trial's finding. Therefore, the Court of Appeals held that "even if the statute required a substantial violation

that "substantially" can mean either "largely, essentially, generally, to a similar extent, or basically" [4] or it can mean "significant, grievous, weighty, or severe" [5]. He then holds that the legislature meant the word to have the former meeting, with the following being his reasoning:

> Nothing in section 504B.211 suggests that by using the phrase "substantially violates [the entry prohibition]" the legislature meant to authorize the district court to penalize only those apartment entries that are somehow more intrusive or shocking than others. To the contrary, the context informs us that the legislature predicted that some intrusions might be merely technical, minor violations but would nevertheless subject the landlord to being penalized within the district court's discretion. [6]

Other than the linguistic (plain-language) analysis of the type just quoted, are there other ways to determine what the legislature meant by "substantially violates"?

An obvious possibility is the legislative history of the statute. The "substantially violates" language in section 504B.211 was included in the original law, 1995 Minn. Laws c. 226 art. 4 s. 21, codified first at Minn. Stat. § 504.183 (1995 Supplement). One of the authors (Birnberg) compiled a legislative history of this session law here.

Unfortunately, the legislative history sheds little light on the issue. The identical original bills, 1995 HF72 and 1995 SF98, had a different structure than the final law. Their penalty clause said that an unnoticed entry "shall constitute trespass, as defined in section 609.605." Delete-all amendments in the Senate Judiciary committee and the House Housing committee substituted bills that had the structure of the final law.[7] At this stage, the first clause of the penalty clause read, "If a landlord violates subdivision 2, the residential tenant is entitled to a penalty [emphasis added]."[8] The House Judiciary committee made several amendments, one of which was adding the word "substantially", when it adopted amendment H72A23.[9] The result was that the first clause of the penalty clause then read, "If a landlord substantially violates subdivision 2, the

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rather than merely conduct that violates [subdivision 2 in some minor way] … Ryan Rentals would not prevail on appeal." *Ta*, slip op. at 8.

[4] *Ta*, slip op. at 5.

[5] *Ta*, slip op. at 6.

[6] *Ta*, slip op. at 7-8.

[7] 1995 Journal of the Senate 766 (3/20/95); 1995 Journal of the House 112 (2/2/95).

[8] 1995 Journal of the House 112 (2/2/95).

[9] 1995 Journal of the House 323 (2/23/95); first page of the minutes of the House Judiciary Committee 2/22/95 (marked "-16-" at the top, reflecting fifteen pages from minutes of prior meetings).

residential tenant is entitled to a penalty [emphasis added]." [10] The bills went through other amendments, incorporation into omnibus bills, and finally into a conference report on SF1653/HF1700 that was passed by both chambers, signed by the governor, and enrolled into law.

When amendment H72A23 was presented in the House Judiciary committee on 2/22/95, the presenting representative described[11] the changes, including the addition of the word "substantially", as the result of a "compromise".[12] At subsequent stages, the amended bill was also described as a "compromise".[13] The nature of the compromise was never stated. In summary, there were no statements by legislators, oral or written, about the meaning of "substantially."

Therefore, other canons of statutory construction come into play. One of these is the commonsense one, Minn. Stat. § 645.16, clauses (1), (3) and (4) ("the occasion and necessity for the law … the mischief to be remedied, [and] the object to be attained"). In plain English, what problems did the bill's proponents want to fix? Were they concerned with what Judge Ross called

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[10] 1995 Journal of the House 323 (2/23/95).

[11] Recordings of committee hearings and floor debates are available via https://www.house.leg.state.mn.us/audio/default.asp or perhaps more directly at https://www.lrl.mn.gov/media/ (webpage for recordings made between 1991 and 2003). The next two footnotes and associated text are based on listening to these recordings.

[12] The discussion of HF72 starts at timestamp 1:15:34 on the 2/22/95 House Judiciary recording.

[13] Recordings are available as follows:

> Discussion of HF 1700 is on Tape 2 of the House floor 5/2/95 recording. It starts very near the start of the recording with a vote at timestamp 2:22:36. The discussion of the Kari-Koskinen-Act and the Tenants-Right-to-Privacy language and the Tuma-et-al amendment to the Tenants-Right-to-Privacy language is between timestamp 12:08 and timestamp 14:38.
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> Discussion of the Kari-Koskinen-Act and the Tenants-Right-to-Privacy language in the conference committee for HF1700/SF1653 was on 5/10/95 and is on audio file 3 of 5 starting at timestamp 1:13:08 through the end of the file and on audio file 4 of 5 between the beginning and timestamp 7:54 (when the language passes by a voice vote).
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> Discussion of the conference report on HF 1700 (SF 1653) on the House floor on 5/19/95 and is on Tape 2 of the recording for the House for that day. It starts at about timestamp 40:50 and the vote starts at about timestamp 53:20. The discussion of the Kari-Koskinen-Act and the Tenants-Right-to-Privacy language, lasted only 19 seconds between timestamp 45:19 and timestamp 45:38, saying the Senate accepted the House language on caretaker screening.

"minor violations" [14] or did they only care about those that Ross called "somehow more intrusive or shocking than others" [15] -- "egregious" conduct that reflected "a heightened level of severity, intrusion, or impact" [16]?

The proponents' testimony included examples of both concerns. [17] While those testifiers only testified about one or two entries into their own apartments, there was another kind of testimony about a large number of concerning wrongful entries. Legal Aid attorney Doug Clark not only testified about his own apartment but also testified that one of the issues his office most commonly heard about from clients was wrongful entries. He did not specify whether those were minor or egregious. However, two employees of HOME Line, Sherry Coates and Beth Kodluboy, testified about calls coming into HOME Line's tenant hotline, which had started its operations in January 1992. Every call to the hotline is logged into HOME Line's database as a separate file. The staff member handling the call enters a variety of information about each call, including the caller's name and address, a subject – e.g. "Eviction", "Privacy/Intrusion", "Security Deposit" – and a summary of the tenant's concern and facts presented plus a summary of the recommended action. Ms. Coates presented a list of the several hundred "privacy" calls with the "Notes" of those calls (summary of tenant's concern and facts) to the House Housing committee; Ms. Kodluboy did the same in the Senate Jobs, Energy and Community Development committee. Both testified that these illustrated the nature of the problem and that it was pervasive.

Therefore, the HOME Line database provides an excellent measure of the "mischief to be remedied" by the law. Were those callers, and thus the bill's proponents, concerned only about egregious violations or were a good number of the callers concerned about minor violations? To answer that question, we have reviewed every entry coded as "Privacy/Intrusion" in HOME Line's database from the beginning of the hotline through May 26, 1995, the day the law was signed by the Governor. The results are reported below.

We were also interested in whether the law has changed the rental industry. One would hope that the law has caused residential landlords to change their behavior -- to enter tenants' units only

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[14] *Ta*, slip op. at 8.

[15] *Ta*, slip op. at 7.

[16] *Ta*, slip op. at 5.

[17] For example, Doug Clark testified about a maintenance man twice entering their bathroom unannounced and confronting Doug's wife taking a shower (starting at time stamp 40:18 on the digital recording of the 1/23/95 House Committee on Housing). Representative Linda Wejcman testified about a caretaker briefly entering her apartment to drop off literature, perhaps even when no one was at home (starting her presentation at timestamp 48:15 on the digital recording of the 1/30/95 House Committee on Housing and her story about her caretaker at timestamp 48:45).

for a reasonable business purpose and after making a good faith effort to give the tenant reasonable notice under the circumstances. Therefore, we also reviewed the database files for a comparable recent period. Those results are also reported below.

Methods

Two sets of data were analyzed. The first set of data were all the files in HOME Line's database coded "Privacy/Intrusion" from January 1, 1992 through May 26, 1995. The former date was the day the hotline began its operation. The latter date is the day 1995 Minn. Laws c. 226 was signed by the Governor.

The second set of data were all the files in HOME Line's database coded "Privacy/Intrusion" and coded as coming from a resident of any of the cities in Hennepin County except Minneapolis and coded as being made between August 6, 2016 and December 31, 2019. The reason for limiting the location was that prior to 1999 HOME Line was a division of Community Action for Suburban Hennepin and only handled calls from the suburbs of Hennepin County. Subsequently, HOME Line split off from Community Action for Suburban Hennepin and began handling calls from anywhere in Minnesota. The reasons for picking the August 6, 2016 to December 31, 2019 period were [a] this was the same number of days as represented by the first set; [b] starting in January 2020 fears of COVID-19 led many tenants to have a new concern -- catching COVID-19 from people entering their homes – skewing the nature of calls received by the hotline.

The first set of data consisted only of notes from phone calls. More recently, HOME Line has allowed tenants to either call and get advice over the phone or email questions and get advice by email (with an occasional follow up by phone). Thus the second set of "call" data is a mixture of actual calls and of emails. There is no reason to believe this skewed the data.

One of us (Birnberg) read the Notes and Recommended Action for each call. Many of the calls were about privacy but not about unnoticed entries and were scored as "NA" (Not Applicable). Examples are calls about landlords gossiping, landlords releasing information to third parties, calls that really were about other subjects and were double coded by the staff member such as "Repairs" and "Privacy/Intrusion" but were really just about repairs, calls where the landlord had done nothing wrong but the caller wanted to know the law, and a very few calls where it seemed highly likely that the caller was living with a mental illness and was imagining wrongful entries.

The calls not scored "NA" were then scored for four things:

> [1] Were there multiple unlawful entries or just one? Unless there was information to the contrary,when the notes used the word "entering" this was scored as multiple entries; unless there was information to the contrary, when the notes used the word "entered" this was scored as a single entry. Often other things in the notes confirmed this score. "Unlawful" was used in the sense of unlawful once Minn. Stat. § 504B.183 (1995 Supplement) was enacted.

[2] Were any of the entries egregious? This included entries where the tenant was disturbed while asleep, while unclothed, or in another embarrassing situation; entries that involved other wrongful acts such as moving possessions, stealing, harassing the tenant, or making unwelcome sexual advances; and entries with no valid business purpose.

[3] Was there reasonable notice? “Notice” that was a blanket notice of a long period of time, such as, “Maintenance will come next Tuesday” was scored as no notice; this was an infrequent situation and had little effect on the results.

[4] Was the entry for a reasonable business purpose? For many of these, the file was scored as “unknown” since the file wasn’t informative enough to even make an educated guess. Many others indicated a valid purpose, such as making repairs (e.g. “the maintenance man came in unannounced”) or showing the unit (e.g. “realtors come unannounced”) and were scored Yes. Some clearly were for no good reason and were scored No. For a few, an educated guess could be made and were scored “Probably Yes” or “Probably No.”

If the entry or entries were preceded by reasonable notice and once inside the landlord or its agents engaged in a reasonable business purpose, the file was scored as NA. There was only one instance where the landlord gave proper notice but ended up engaging in behavior that had no reasonable business purpose. That file was scored as a single, egregious entry and included in the no-notice files.

The other author (Spaid) then reviewed a random selection of 50 calls from each dataset. In almost all cases he completely agreed with Birnberg’s scoring. In a very few, he thought it was a close call (a “gray area”) and left the score alone.

In order to maintain client confidentiality, we are not providing copies of the raw data (the individual files from our database).

To determine if two percentages were statistically different, a difference-of-p's analysis, as described in Frederick Mosteller et al., PROBABILITY WITH STATISTICAL APPLICATIONS § 9-5 (Addison-Wesley Publishing Co. 1970), was performed.[18] The analysis assumed that the calls to the hotline represented a random sample of suburban Hennepin tenants with privacy concerns during the period in question.

Results

Judge Ross contrasted a minor violation with an egregious violation. In its appellate brief, Ryan Rentals made this same distinction but it also made another one. It suggested that “substantially violates” could include not just egregiously violating subdivision 2 but multiple non-egregious

[18] Also see the websites here and here for a description of the analytic method.

violations.[19] Therefore, as indicated in the Methods section, the database files were scored for both non-egregious versus egregious entry but also whether the landlord had violated subdivision 2 more than once.

There were quite a number of entries without notice that also involved activity without a reasonable business purpose. In the tables below, these files are included in the single-but-egregious group if there was only one entry or in the multiple-and-egregious group if there were multiple entries.

The first set of data, for 1/1/92 to 5/26/95, included 314 calls. Of these, 124 were scored "NA". That left 190 calls where the landlord had entered the tenant's home without prior notice.

The second set of data, for 8/6/16 to 12/31/19, included 405 calls. Of these, 227 were scored "NA". That left 178 calls where the landlord had entered the tenant's home without prior notice.

Table 1 shows the breakdown of the 190 calls in the first dataset (calls received prior to the enactment of the law on 5/26/95) by number of calls. Table 2 shows the same results but by percentage of the total number of calls (percentage of 190).

Table 3 shows the breakdown of the 178 calls in the second dataset ("Recent Set" calls, those received 8/6/16 to 12/31/19) by number of calls. Table 4 shows the same results but by percentage of the total number of calls (percentage of 178).

Table 1 – Pre-law Calls by Raw Numbers

	Multiple Unlawful[20] Entries	Only One Unlawful[20] Entry	Row Total
At least one egregious entry	33	11	44
No egregious entries	94	52	146
Total	127	63	190

[19] Brief for Ryan Rentals, *Ta v. Ryan Rentals LLC*, Minn. Ct. App. File No. A-21-0264 (Sept. 13, 2021) at 1 ("The basis for the district court's finding of substantiality consisted of a single entry"); *id*. at 2 ("based upon one single entry"); *id*. at 3 ("This single entry does not rise to the level of "substantiality"); *id*. at 15 ("Appellant entered a vacant unit on a single occasion"); *id*. at 17 ("near-maximum penalty … for Appellant's single entry"); *id*. at 2 ("Only egregious landlord conduct involving constitutional infringements or repeated and grievous invasions have risen to the level of 'substantial violations' under Minnesota law").

[20] "Unlawful" in the sense that it would have been unlawful once Minn. Stat. § 504B.183 (1995 Supplement) was enacted.

Table 2 – Pre-law Calls by Percentages

	Multiple Unlawful[20] Entries	Only One Unlawful[20] Entry	Row Total
At least one egregious entry	17%	6%*	23%††
No egregious entries	49%†	27%	77%†††
Total	67%	33%	100%

Table 3 – Recent Set, Calls by Raw Numbers

	Multiple Unlawful Entries	Only One Unlawful Entry	Row Total
At least one egregious entry	26	28	54
No egregious entries	73	51	124
Total	99	79	178

Table 4 – Recent Set, Calls by Raw Percentages

	Multiple Unlawful Entries	Only One Unlawful Entry	Row Total
At least one egregious entry	15%	16%*	30%††
No egregious entries	41%†	29%	70%†††
Total	56%	44%	100%

The pair of percentages marked with an asterisk (*) are different with a confidence level over 99%. The pair marked with a single dagger (†) are different only at a 90% level, the pair with a double dagger (††) only at an 89% level, and the pair with a triple dagger (†††) only at an 89% level.

Discussion and Conclusions

Pre-law dataset

As shown in Table 2, the results from the pre-law dataset show a large fraction of the Privacy/Incursion calls involved non-egregious (minor) incursions. Over three-quarters (77%) of the calls fell into this category. Even if one accepts Ryan Rentals' concession that a landlord who enters wrongfully more than once has crossed the line, over one-quarter (27%) of the calls fell into the minor category. Either way, it is clear that the "mischief to be remedied" by the law included not only egregious or repeated entries but also single, non-egregious entries conducted without notice.

This is not a surprising result. Most landlord entries are for a legitimate purpose and the landlord does not intend to upset the tenant. However, motive aside, sometimes the landlord who enters without advanced warning will run into the tenant in a compromising position (e.g. exiting the shower) or see something potentially compromising or embarrassing (e.g. banking information or medication). And, 100% of the time the landlord will be disturbing the tenant's own home ("a man's home is his castle"). It makes sense for the tenant to want a warning prior to every non-emergency entry because otherwise there is a good chance something worse will happen. The landlord cannot undo seeing the tenant naked, seeing the tenant's embarrassing items, or disturbing the tenant's peace.

Comparison of the two datasets

Overall number of calls

It is very difficult, perhaps impossible, to compare the differences between the two datasets and draw meaningful results. While the privacy law itself has remained virtually unchanged, many other laws have not, and many cities have begun to require rental licenses and landlord training. Other factors as well, such as the type of rental housing or the rise of large management companies and outside investors, could all affect this issue.

However, if it has worked well, the 1995 law, Minn. Stat. § 504.183 (1995 Supplement), should have reduced the number of tenants complaining about wrongful landlord entries. The existence of the law and its penalties should have made landlords modify their behavior.

The data confirm this expectation but the change in the number of Privacy/Intrusion calls to the HOME Line hotline was not dramatic. The pre-law, 1,243-day period (1/1/92 to 5/26/95) produced 190 Privacy/Intrusion calls. The recent 1,243-day period (8/6/2016 to 12/31/2019) produced 178 calls, an 6.3% decrease. This 6.3% figure does not account for population increase. Taking into account the fact that the suburban Hennepin population increased by about 20% from 1995 to 2019[21], the adjusted decrease was about 21.9%[22], still not dramatic but noteworthy.[23]

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[21] Census figures for 1990, 2000, and 2019 show the population of the Hennepin-County suburbs increased by 10.5% from 1990 to 2000 and by 25.6% from 1990 to 2019. Assuming the 1995 figure fell about halfway between the 1990 and 2000 figures, the change from 1995 to 2019 was about 20%.

[22] Calculated as follows: 190/100 = 1.900; 178/120 = 1.4833; 1.4833/1.900 = 0.7807; 1 – 0.7807 = 0.219 or 21.9%.

[23] One could use the number of Privacy/Intrusion calls as a fraction of all calls to the hotline to measure the effect of population increase. However, that measure conflates two effects – population increase plus the behavior of landlords on many issues other than privacy/intrusion. From 1995 to 2019 several pro-tenant housing statutes were enacted governing landlords on issues besides incursions, there were other changes in housing law, and in some Hennepin

Type of calls

To our slight surprise, the complaints from tenants in recent years largely mirror those from the pre-law times. We had expected that the statute would have less effect on landlords with little regard for the law but induce law-respecting landlords to now provide notice. This would lead to a bigger fraction of the calls being from tenants with landlords who didn't care about the law.

The only big difference in the type of Privacy/Intrusion calls to the hotline is that the fraction of reports of landlords who made a single but egregious entry almost tripled, from 6% to 16%. See the figures in Tables 2 and 4 marked with asterisks. The overall fraction of egregious entries reported also increased from 23% to 30%, but this change was just short of being statistically significant.[24] These two changes, especially the first one, are consistent with our expectations.

Overall conclusions

[1] The HOME Line data shows that the mischief to be remedied by the Tenant's Right to Privacy law, Minn. Stat. § 504.183 (1995 Supplement), encompassed all surprise entries by landlords, not just egregious or multiple entries.

[2] The statute probably has had some effect on landlord behavior but not as dramatic an effect as the proponents probably hoped for. This suggests modifications to the law -- amendments to Minn. Stat. § 504B.211 -- merit consideration.

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suburbs government regulation by housing inspectors increased due to creation of a rental-inspection office or by invigoration of an existing office.

Nevertheless, we report in this footnote that total suburban Hennepin calls to the hotline during the pre-law period of 1,243 days was 8,479 and during the recent period of 1,243 days (8/6/2016 to 12/31/2019) was 8,643, an increase of 2%. Using this figure, the adjusted decrease in calls was 8.2%.

This 8.2% figure was calculated as follows: 190/100 = 1.90; 178/102 = 1.745; 1.745/1.9 = 0.918; 1 – 0.918 = 0.082 or 8.2%.

[24]See the last paragraph in the Results section. The 89% confidence level that this pair of percentages are different falls short of the usually accepted 95% cutoff.