

The Top Five 2007

Each year Justice Stephen Goudge of the Ontario Court of Appeal identifies five cases that are of significance in the educational setting. This summary, based on his comments and observations, is appropriate for discussion and debate in the classroom setting.



R. v. Clayton, 2007 SCC 32

<http://scc.lexum.org/en/2007/2007scc32/2007scc32.html>

A police detention and search of two men at the site of a roadblock in response to a 911 call about handguns was found not to infringe s. 8 and s. 9 of the Charter.

Early one morning, a 911 call was received from a man who reported that he'd seen four men with handguns standing near four cars in the parking lot of a strip club. The four men were described as being among a group of ten "black guys" in the parking area. In response to the call, officers arrived immediately at the scene and set up "roadblocks" at both of the club's two exits. A car that did not match any of the descriptions provided by the 911 caller drove towards the exit. After stopping the car, the officers observed that the two occupants were black males. One officer approached the driver, informed him about the gun complaint, and asked him to step out of the car. The driver protested before getting out of the car, and the officer became concerned for his safety. The passenger was also asked to step out of the car and he unsuccessfully attempted to flee. One officer noticed that the passenger was wearing gloves even though it was not "glove weather". Once the two officers regained control of the scene, they searched the driver and passenger and found they were each carrying loaded, prohibited handguns.

At the trial level, the judge found that the initial roadblock and stop of the accused's car was lawful, but that the detention of both men and subsequent search for handguns violated their ss. 8 and 9 rights under the *Canadian Charter of Rights and Freedoms*. Section 9 is the right to be free from arbitrary detention or imprisonment. Section 8 is the right to be secure against unreasonable search and seizure. When a judge finds that evidence has been obtained in violation of a *Charter* right such as ss. 8 or 9, the judge can exclude the evidence based on section 24(2) of the *Charter*. Under s. 24(2), evidence that was obtained in a manner that denied or violated a *Charter* right will be excluded if admitting the evidence would bring the administration of justice into disrepute. In other words, if admitting of the evidence would affect the fairness of the trial, the evidence will generally be excluded.

In this case, the trial judge admitted the guns into evidence under s. 24(2) of the *Charter* and both men were convicted. However, at the Ontario Court of Appeal the evidence of the handguns was excluded and the two men were acquitted on all charges.

Issues before the Supreme Court of Canada included whether the officers legitimately exercised their common law powers when detaining and searching the two men and whether

the common law power violated the *Charter* and, if so, whether it would have been saved under s.1 of the *Charter*.

Police are granted certain duties and powers that exist independently of statute and are therefore called “common law” duties and powers. Police duties, at common law, include the preservation of the peace, the prevention of crime, and the protection of life and property. Police powers are used to carry out these duties where necessary. These powers are not without limits. A balance must be struck between the competing interests of the police duty and the liberty interests of individuals. More specifically, the police’s interference with liberty must be necessary given the risk and must not interfere with the liberty interest more than is necessary to address the risk.

In this case when considering the police exercise of common law power, a majority of the Supreme Court of Canada disagreed with both the Court of Appeal’s and trial judge’s decisions. It found that the officers had lawfully exercised their common law powers when they detained and searched the accused and found no violation of ss. 8 or 9 of the *Charter*. In determining whether the police officers had properly exercised their powers in relation to a detention, the Court considered the nature of the situation including the seriousness of the offence, the information known to the police about the suspect or the crime, and whether detention was reasonably tailored to the risk in the circumstances. Searches which are incident to an investigative detention can be justified if the officer believes, on reasonable grounds, that her safety, or that of others, is at risk.

The majority of the Supreme Court of Canada concluded that, in this case, the initial roadblock detention was reasonably necessary to respond to the seriousness of the threat to safety and was responsive to the circumstances known to the police. If the police only had the authority to stop vehicles which matched the description given by the 911 caller, this would impose an unrealistic burden on police, inconsistent with their duty to respond in a timely manner to the threat to safety. The continued detention of the two men by their car was also found to be justified. It was reasonable for the police officers to believe that the accused were implicated in the offence under investigation. Both accused came from the scene of the reported crime, had left the scene within minutes of the call, and matched the 911 caller’s description. Finally, the officers’ safety concerns justified the searches of both men.

Justice Binnie wrote a minority opinion in which he agreed with the majority’s end result but disagreed with their reasoning and analysis. The minority found that the police’s strategy to stop all cars without any criteria for selecting the drivers to be stopped was a valid exercise of their common law powers but was contrary to s.9 of the *Charter*. Justice Binnie then considered whether a detention by a roadblock in response to a 911 call was a reasonable limit on rights under s. 1 of the *Charter*.

Section 1 of the *Charter* provides that rights are not absolute and can be constrained by reasonable and justifiable limits as long as those limits are prescribed by law. In *R. v Oakes* the

Supreme Court formulated a test to determine whether an infringement is justified under s.1 of the *Charter*. This test requires that the objective behind the state action be sufficiently important to warrant overriding a *Charter* right. The means used by the state must be reasonable and demonstrably justified in the circumstances.

Justice Binnie applied the *R. v. Oakes* analysis and found that the police's actions were a reasonable limit on rights under s. 1. First, protection of society from illegal handguns in public places is clearly a pressing and substantial public purpose. The roadblock was a rational response to the 911 call and minimally impaired the accuseds' rights to be free from arbitrary detention. The police should not be required to rely on an unknown 911 caller's ability to recognize vehicles. It also would not have been practical for police to assume that the people reported by the 911 caller would necessarily leave in the vehicles described by the caller. Finally, the beneficial effects of the roadblock exceeded its negative effects.

Justice Binnie also found that the searches did not violate s. 8 of the *Charter*. By the time the passenger was asked to step out of the car, the police had sufficient individualized suspicion to detain and search him. Although the driver was perhaps less suspicious, it would have been unrealistic to treat them as unconnected.

Discussion Issues:

- Why shouldn't police be allowed to stop and search *anyone* that could possibly be guilty of some wrongdoing?
- Should police be allowed to ask questions and detain someone even if they don't have reasonable and probable grounds to arrest or charge that person? What potential issues arise if police were not able to detain individuals for investigative purposes or ask questions?
- How do we balance an individual's rights under the *Charter* in a way that allows the police to do their job and guess right under pressure? What guidelines should exist for police?
- Would or should the result have been different if this had happened at the Air Canada Centre?
- Would or should the result have been different if the 911 caller had been very specific and had identified only one car?
- Would or should the result have been different if the caller had seen marijuana instead of guns?
- Would or should the result have been different if the caller did not give the 911 operator any specific details about the men or their vehicles?
- Justice Binnie stated that Parliament should consider and enact measures setting out the particular circumstances in which investigative detention should be permitted. Do you agree? If so, what do you think would be appropriate? (see paragraph 75 of the case for similar legislation enacted in other countries)
- Why is evidence that is obtained in violation of s. 8 or s. 9 rights sometimes excluded? Should this happen?