

The Top Five 2010

Each year at OJEN's Toronto Summer Law Institute, a judge from the Court of Appeal for Ontario identifies five cases that are of significance in the educational setting. This summary, based on these comments and observations, is appropriate for discussion and debate in the classroom setting.



R. v. Patrick, 2009 SCC 17

<http://scc.lexum.org/en/2009/2009scc17/2009scc17.html>

In this case, the Supreme Court of Canada (SCC) addressed whether a warrantless search of garbage cans located on a residential property constituted a violation of s. 8 of the Charter.

Date released: April 9, 2009

The Facts

Police suspected that Mr. Patrick was operating an ecstasy lab in his home, and on several occasions, seized bags of garbage that had been placed at the rear of his property left for city garbage pick up. The police did not have to set foot on Mr. Patrick's property to pick up the bags, but did have to reach through the airspace over his property line. The police used items in the bags, some of which were found to be contaminated with ecstasy, to acquire a search warrant of Mr. Patrick's property and to charge him.

Mr. Patrick claimed that the police violated his right under s. 8 of the *Canadian Charter of Rights and Freedoms* by searching his garbage.

Canadian Charter of Rights and Freedoms

8. Everyone has the right to be secure against unreasonable search and seizure.

The trial judge held that Mr. Patrick did not have a reasonable expectation of privacy for the items taken from his garbage, and that the seizure of the garbage bags, the search warrant and the search of Mr. Patrick's dwelling were therefore lawful. The trial judge admitted the evidence and convicted Mr. Patrick of unlawfully producing, possessing and trafficking in a controlled substance.

A majority of the Alberta Court of Appeal upheld the convictions.

The Decision

The SCC unanimously agreed that the police did not breach Mr. Patrick's *Charter* rights by removing his garbage and using it to obtain a search warrant. Therefore, the evidence found was admissible and the conviction upheld. Two judges wrote separate concurring reasons for the decision.

Justice Binnie (McLachlin C.J., LeBel, Fish, Charron and Rothstein JJ. concurring) wrote that the Court had to evaluate whether Mr. Patrick had a reasonable expectation of privacy in the contents

of his garbage. He found that Mr. Patrick had abandoned his privacy interest when he left his garbage bags out for collection at the edge of his property. It might have been different if he had simply placed them on his porch or by his house, but because the bags were left just inside his property line, they were unprotected and within easy reach of anyone walking by.

Justice Abella wrote a separate concurring judgment. She said that when Mr. Patrick left his garbage bags, he had only “abandoned” them for one specific purpose: to be picked up by the municipal waste disposal system. Mr. Patrick did not abandon any privacy interest in the personal information contained in his garbage bags. Waste left out for disposal does hold some expectation of privacy, even if it is a diminished one. Police should at least have reasonable suspicion that a criminal offence has been, or is likely to be, committed before conducting a search of garbage bags. In this case, the police did have reasonable suspicion that Mr. Patrick was operating an ecstasy lab, so the search was not in violation of Mr. Patrick’s s. 8 *Charter* right.

Discussion Issues

1. Do you think Mr. Patrick had a reasonable expectation of privacy that his garbage bags would not be searched by the police?
2. Did the location of the garbage bags matter? Would it have been different if the bags were placed on Mr. Patrick’s porch or inside an open garage?
3. Do you agree with Justice Binnie or Justice Abella’s reasoning? What privacy interest should garbage bags hold? In what way, if any, does the privacy interest change if the police suspect that a criminal offence has been committed?
4. If police may search garbage bags placed at the end of a property, what else might they be allowed to search?