

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. Morelli, 2010 SCC 8

<http://scc.lexum.org/en/2010/2010scc8/2010scc8.html>

In this case, the Supreme Court of Canada (SCC) dealt with what it means to “possess” pornography under the Criminal Code of Canada (CCC).

Date Released: March 19, 2010

The Facts

On September 5, 2002, a computer technician arrived unannounced at Mr. Morelli's house to install a high-speed internet connection he had previously ordered. The accused lived with his wife and two children, aged 3 and 7, but was alone that day with his younger daughter. When the technician opened up Mr. Morelli's web browser, he found several links to both adult and child pornography on Mr. Morelli's "favourites" list. The technician also noticed that Mr. Morelli had home videos and a webcam connected to a videotape recorder that was pointed at the toys and child. When the technician returned the next day to complete the installation, everything suspicious had been "cleaned up"; the child's toys had been placed in a box, the videotapes could no longer be seen, the webcam was pointed at the computer user's chair and the computer hard drive had been "formatted".

In November, concerned for the child's safety, the technician reported what he had seen to a social worker, who contacted the RCMP. Upon receiving this information, the police used it to obtain a search warrant to search Mr. Morelli's computer. Pornographic pictures involving children were found on the computer and the accused was charged with possession of child pornography contrary to s. 163.1(4) of the CCC.

Criminal Code of Canada

163.1 (4) Every person who possesses any child pornography is guilty of
(a) an indictable offence and liable to imprisonment for a term not exceeding five years; or
(b) an offence punishable on summary conviction.

At trial, Morelli unsuccessfully argued that the search warrant was not valid under s. 8 of the *Canadian Charter of Rights and Freedoms*.

Canadian Charter of Rights and Freedoms

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

The trial judge convicted Mr. Morelli. On appeal, the majority of the Court of Appeal for Saskatchewan upheld the conviction.

The Decision

In a split 4-3 decision, the SCC quashed Mr. Morelli's conviction and entered his acquittal, holding that the unreasonable search and seizure violated his s. 8 rights and that admitting the illegally obtained evidence would damage the credibility of the justice system.

In deciding this case, the SCC tried to determine what it means to "possess" pornography. The issue of possession was of particular importance because s. 163.1(2) to (4.1) of the CCC establishes four distinct offences related to child pornography: (1) the making of child pornography; (2) the distribution of child pornography; (3) the possession of child pornography; and (4) the accessing of child pornography.

In this case, for the police to obtain a search warrant, a justice of the peace had to have reasonable and probable grounds to believe the offence of possession had been committed. To have "possession" of something under the CCC, it is important that the person accused had knowledge of the possession in question and control of the object possessed. However, this is complicated in the case of Internet use because computers routinely store on the hard drive temporary copies of images accessed online by a user. This is known as "caching." The caching function varies and can be modified by the user, but sometimes this happens automatically and without the user's knowledge and cached files are generally automatically discarded after a certain number of days.

Justice Fish, writing for the majority, focused on possession as arising out of control of the underlying data file in some way. The majority decision stated that "merely viewing in a Web browser an image stored in a remote location on the Internet does not establish the level of control necessary to find possession." Creating an "icon or "favourite" on one's computer also does not constitute possession. In order to commit the offence of possession, a person must knowingly acquire the underlying data files and store them in a place under his or her control. This is because the underlying file is the stable object, capable of being possessed. Accordingly, automatic caching of a file on a computer's hard drive will not constitute possession unless it is shown that the file was knowingly stored and retained through the cache.

In their decision, the majority also discussed the presence of the webcam, which was used as part of the grounds in obtaining a search warrant. The majority stated that the webcam had a weak connection to the crime alleged, adding that it was speculative to conclude that the accused was the "type" to hoard illegal images on the basis of the fact that he had a webcam. The majority also stated that the fact that Mr. Morelli cleaned up after the technician's first visit does not support a conclusion that he was seeking out and storing child pornography. In essence, the Court held that although Mr. Morelli's conduct was suspicious, as a matter of law, mere suspicion is no substitute for reasonable grounds. Accordingly, the majority indicated that the evidence obtained as a result of the illegal search should be excluded under s. 24(2) of the *Charter*, because admitting the illegally obtained evidence in this case would damage the reputation of the justice system. The majority held that the required degree of control was not present and Mr. Morelli was found not to have "possession" of the images under the CCC.

Canadian Charter of Rights and Freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this *Charter*, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this *Charter*, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

The Dissent

Writing for the dissent, Justice Deschamps also analyzed the issue of possession. Her dissent focused on control over the material sufficient for a person's use or benefit. She stated: "Control [is] the defining feature of possession, not the possibility of finding data files on a hard drive."

Possession exists if the accused willingly took or maintained control of the object with full knowledge of its character for his or her benefit or for the benefit of someone else. She also found that there were reasonable grounds to believe that Mr. Morelli was in the habit of reproducing and saving images of child pornography and that the search warrant was therefore validly issued.

Justice Deschamps concluded that, in the internet age, the definition of control needs to evolve and become more flexible in order to adapt to our changing world. As such, she concluded that the necessary amount of control was present in this case to establish possession.

Discussion Issues

1. Do you agree with the majority that the presence of the webcam, when taken in connection with the images the technician found on the computer, only establish a weak connection between Mr. Morelli and the possession of child pornography? Do you feel that the evidence did support a finding that he was in possession of child pornography?
2. The majority held that the evidence obtained from the illegal search should be excluded under the *Charter* because admitting evidence that was obtained illegally would bring the administration of justice into disrepute. Do you agree? How do you balance the reputability of the administration of justice with the risk posed by excluding evidence that could lead to a conviction?
3. What do you think it means to "possess" images that you access on your computer? Do you think it is enough to simply view the pages? What about marking something as a "favourite" or a home page? Is physically saving the images too high of a threshold? Is it not high enough?
4. Whose idea of "possession" do you agree with more, that of the majority (articulated by Justice Fish) or that of the dissent (articulated by Justice Deschamps)?

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. National Post*, 2010 SCC 16**

<http://scc.lexum.org/en/2010/2010scc16/2010scc16.html>

In this case, the Supreme Court of Canada (SCC) dealt with the issue of confidential sources in a news exposé and examined whether reporters should have to reveal anonymous sources.

Date Released: May 7, 2010

The Facts

A reporter from the *National Post* was investigating former Prime Minister Jean Chrétien following the sale of a golf course and a hotel by Mr. Chrétien in 1993. Soon after he sold the properties, Mr. Chrétien was elected Prime Minister and the man he sold the properties to applied for a loan from the Business Development Bank of Canada (BDC) in the hopes of expanding the property. Although the buyer's loan was rejected at first, it was later approved, leading reporters to investigate the circumstances surrounding the loan to see if Mr. Chrétien's involvement in it was improper.

In examining Mr. Chrétien's role in approving the loan, the *National Post* reporter received documents in the mail from a secret source containing evidence of possibly corrupt behaviour. The information was only disclosed in return for a full promise of confidentiality. The documents claimed that one of Mr. Chrétien's holding companies was owed a debt by the purchaser. If the documents were genuine, they could show that Mr. Chrétien had a conflict of interest in relation to the loan.

The *National Post* reporter proceeded to forward the documentation to the Prime Minister's Office, the Prime Minister's legal counsel and the BDC, in an attempt to assess their authenticity. All three claimed that the documentation was forged and the BDC complained to the RCMP. The RCMP then got a warrant for the documents implicating Mr. Chrétien, as well as an order compelling the reporter to assist the police in investigating these documents. The warrant and the order gave the *National Post* one month before the RCMP could search their premises. The RCMP claimed that there were reasonable grounds to believe that the documents used by the *National Post* were forged and would therefore be evidence of a crime.

The *National Post* did not want to give up its confidential source and tried to quash the warrant and the assistance order, arguing that the warrant and the order infringed ss. 2(b) and 8 of the *Canadian Charter of Rights and Freedoms*. The *National Post* also argued that the source should be protected by the common law of privilege.

Canadian Charter of Rights and Freedoms

2. Everyone has the following fundamental freedoms:

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

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

The reviewing judge held that there was enough information to conclude the document was a forgery, but that there was only a remote possibility that disclosing the documents would move forward a criminal investigation. The trial judge set aside the search warrant and the assistance order. The Court of Appeal for Ontario reversed the trial level decision and reinstated the search warrant and the assistance order. The *National Post* appealed.

The Decision

The SCC dismissed the appeal brought forward by the *National Post* in an 8-1 decision, requiring the editor-in-chief and reporter to comply with the properly issued search warrant and assistance order, even if the result is to disclose the source's identity. This decision required them to hand over the documents to the police.

In its decision, the SCC had to decide whether a confidentiality privilege for journalists' sources existed under s. 2(b) of the *Charter* and whether such a privilege existed under the common law. If a confidentiality privilege for sources was found to exist, the Court would also have to decide how that privilege would be applied.

Constitutional Protection of Journalists' Sources Under s. 2(b) of the Charter

The majority acknowledged that freedom of expression does protect writers and speakers. They also noted that the public has an interest in being informed about matters of public importance that may only come to light through the cooperation of sources who will only speak if they can remain anonymous; however, the public also has an interest in effective law enforcement.

The majority found that the *National Post* made a convincing case that if they could not offer source anonymity, important stories would be left untold. This could affect the accountability of public institutions in Canada. Nevertheless, the Court noted that the police were unable to confirm the document's authenticity and had reasonable grounds to believe it was a forgery. Moreover, the Court observed that the documents the police were seeking in the *National Post's* offices were not merely evidence of the crime; if they were indeed forged, they represented the crime itself.

With respect to the *Charter* arguments made by the *Post*, the Court stated that although freedom to publish news necessarily involves the freedom to gather news, the many techniques of news gathering (including reliance on secret sources) are not constitutionally protected. The *Charter* does not provide for a confidentiality privilege for journalists' sources, because the journalistic profession is so diverse that it would be hard to determine whose actions are worthy of constitutional protection and whose are not.

Common Law Journalist-Source Confidentiality Privilege

Although the Court held that a confidentiality privilege for journalists' sources does not generally exist in the common law, a journalist's claim for protection of secret sources is to be assessed on a case-by-case basis. That is to say, it is up to the Court to decide on the facts of each case whether the journalistic sources in question should be protected.

In deciding whether the source's confidentiality should be protected in this particular case, the majority applied a set of criteria created by John Henry Wigmore, an American lawyer and expert in the law of evidence. The Court decided on the "Wigmore criteria" because of its flexibility and workability. According to the Wigmore test, a journalistic source should be protected when:

1. The communication originates in a confidence that the identity of the informant will not be disclosed;
2. The confidence is essential to the relationship in which the communication arises;
3. The relationship is one which should be fostered in the public good; and
4. The public interest served by protecting the identity of the informant from disclosure outweighs the public interest in getting at the truth.

In this case, the *National Post* ultimately "lost" even though the Court acknowledged the importance of anonymous sourcing in journalism. The majority held that while the first three Wigmore criteria were met, the *National Post* failed to establish the fourth criteria. Accordingly, this case establishes that the validity of journalistic source confidentiality is in the hands of the judges deciding the case, and that a promise of confidentiality may lose out to broader social considerations, such as a police inquiry into a serious crime.

Discussion Issues

1. Do you think the Court made the right decision here? Was it more important to determine whether the allegations against Mr. Chrétien were true or entrench confidentiality for journalists' sources in Canada?
2. This case established that confidentiality of journalistic sources is not constitutionally protected in Canada. What effect do you think this has, if any, on journalists' ability to report on news stories of public interest?
3. Do you think the result in this case would have been different if the allegations were against a private citizen and not the Prime Minister?
4. What do you think of having judges decide on a case-by-case basis whether a source will remain protected? Do you think this will lead to appropriate judgments or a lack of certainty in the law?

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. J.Z.S., 2010 SCC 1

<http://scc.lexum.org/en/2010/2010scc1/2010scc1.html>

In this case, the Supreme Court of Canada (SCC) upheld the provisions in place to facilitate a child's testimony during a trial, while still protecting the rights of the accused.

Date Released: January 19, 2010

The Facts

In 2006, J.Z.S. was accused of sexually assaulting his two children. At trial, the Crown applied to have J.Z.S.'s children, aged 8 and 11, testify from behind a screen and with a support person, as provided for under s. 486.2 of the *Criminal Code of Canada* (CCC) and under s. 16.1 of the *Canada Evidence Act*. Where the prosecutor applies for such testimonial aids, the judge is required to order it unless it would "interfere with the proper administration of justice."

Criminal Code of Canada

486.2 (1) ...in any proceedings against an accused, the judge or justice shall, on application of the prosecutor, of a witness who is under the age of eighteen years or of a witness who is able to communicate evidence but may have difficulty doing so by reason of a mental or physical disability, order that the witness testify outside the court room or behind a screen or other device that would allow the witness not to see the accused, unless the judge or justice is of the opinion that the order would interfere with the proper administration of justice.

Canada Evidence Act

16.1(1) A person under fourteen years of age is presumed to have the capacity to testify.

The defence argued that the provisions under those two acts violated J.Z.S.'s right to a fair hearing under ss. 7 and 11 of the *Canadian Charter of Rights and Freedoms*. In particular, he argued that he has a right to face his accused, and that not requiring the prosecutor to provide case-specific evidence of a need for testimonial aids prevents a fair trial. The effect of the provisions is that he is unable to confront his accused unless he shows that it would interfere with the administration of justice. In addition, J.Z.S. argued that it is unsafe for a court to automatically receive the evidence of a child witness unless he or she demonstrates an understanding of the moral obligation to tell the truth.

Canadian Charter of Rights and Freedoms

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

11. Any person charged with an offence has the right

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal

The trial judge rejected this claim, convicted J.Z.S. and sentenced him to 24 months in jail. J.Z.S.'s appeal to the British Columbia Court of Appeal was dismissed.

The Decision

In a one-sentence judgment, the SCC unanimously stated: "We are all of the view that this appeal must be dismissed for the reasons given by the British Columbia Court of Appeal."

The Court of Appeal considered whether s. 486.2 of the CCC or s. 16.1 of the *Canada Evidence Act* violated J.Z.S.' rights under ss. 7 or 11(d) of the *Charter*. In looking at these provisions, the Court emphasized that they are meant to facilitate children's testimony while still protecting the rights of the accused. However, the Court still needed to weigh this consideration against an accused's right to a fair trial and right to make full answer and defence.

In analyzing this issue, the Court stressed that an accused's rights under the *Charter* must be weighed against broader social interests. As such, the Court found that an accused does not have an absolute right to have an unobstructed view of the witness testifying against him or her. Justice Smith wrote: "Under our criminal justice system, an accused has no constitutional right to a face-to-face 'confrontation' with the complainant." Rather, that accused's rights are balanced against the need to protect and encourage children who are testifying in court. Additionally, the Court found that admitting child testimony was not unconstitutional, since a child's moral understanding and cognitive abilities (credibility and reliability) may be challenged by defence counsel in the same way that adult testimony often is.

Ultimately, the Court of Appeal found that neither the CCC nor the *Canada Evidence Act* provisions in question violated the *Charter* rights of the accused. In hearing this appeal and then firmly agreeing with the Court of Appeal's findings, the SCC affirmed the validity of children's testimony in Canada.

Discussion Issues

1. Do you think that children testifying in court deserve accommodations different from those that adult witnesses receive? Do you think that adult victims could also benefit from being able to testify behind a screen? If yes, in what cases?
2. What do you think of the accused's arguments that his ss. 7 and 11(d) *Charter* right were violated by these provisions? Do you agree or disagree?
3. Do you agree that it is important for an accused to face someone who is testifying against him or her? Why or why not? How does this relate to trial fairness?

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.



Canada (Prime Minister) v. Khadr, 2010 SCC 3

<http://scc.lexum.org/en/2010/2010scc3/2010scc3.html>

In this case, the Supreme Court of Canada (SCC) ruled that Omar Khadr's s. 7 Charter rights had been violated by Canadian intelligence officials who interrogated him while he was subjected to a sleep deprivation technique. However, the SCC deferred to the federal government to determine the appropriate remedy for the Charter breach.

Date released: January 29, 2010

The Facts

Omar Khadr is the 15 year old Canadian citizen who the American armed forces took prisoner on July 27, 2002 in Afghanistan, as part of military action taken against the Taliban and Al Qaeda after the September 11, 2001 attacks. He was brought to Guantanamo Bay Prison Camp.

In 2003 and 2004, Canadian intelligence agents from the Canadian Security Intelligence Service (CSIS) and the Department of Foreign Affairs and International Trade (DFAIT) interviewed Mr. Khadr at Guantanamo Bay for intelligence and law enforcement purposes. On at least one of those occasions they were aware that Mr. Khadr had been subjected to the "frequent flyer program," a sleep deprivation technique used to make inmates less resistant to interrogation.

In *Canada (Justice) v. Khadr, 2008 SCC 28* (see OJEN's Top Five 2008), the SCC ruled that the interrogation processes used at Guantanamo Bay constituted a clear violation of Canada's international human rights obligations. Under s. 7 of the *Canadian Charter of Rights and Freedoms*, the SCC ordered that the Canadian government produce all documents and materials that may be relevant to Mr. Khadr's case to a designated Federal Court judge. That judge would in turn review the materials to ensure that the disclosure of any materials would not, among other things, compromise national security.

Canadian Charter of Rights and Freedoms

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Subsequent to this decision, Mr. Khadr requested several times that he be repatriated to Canada. Upon refusal of the Canadian government, Mr. Khadr applied to the Federal Court. The Federal Court ordered the Canadian government to request Mr. Khadr's repatriation. The majority of the

Federal Court of Appeal upheld the order, holding that Mr. Khadr's rights under s. 7 of the *Charter* had been breached during his 2004 interrogation by Canadian agents, when he was interrogated after being subjected to the "frequent flyer" program. The government further appealed the decision to the SCC.

The Decision

In a unanimous decision, the SCC ruled that Mr. Khadr's s. 7 *Charter* rights were breached during his interrogation by Canadian officials at Guantanamo Bay. However, the SCC removed the original order of the Federal Court to repatriate Mr. Khadr, leaving the appropriate course of action to be decided by the federal government.

The SCC held that the *Charter* applied in this case because there was a sufficient connection between the federal government's participation in an illegal interrogation process and the deprivation of Mr. Khadr's liberty and security. This case is based upon the same underlying series of events considered in the Court's 2008 decision of *Canada (Justice) v. Khadr*; Canada actively participated in a process contrary to its human rights obligations. Mr. Khadr, who was a youth at the time, had been detained and interrogated without a lawyer by Canadian officials who knew that he had been sleep deprived. The SCC held that Mr. Khadr's repatriation to Canada would be a reasonable remedy for breach of his *Charter* rights, particularly given that his *Charter* rights continued to be breached while he remained at Guantanamo Bay.

However, the Court recognized that the power to make decisions on foreign relations is a privilege granted to the federal government. The Court recognized that this does not mean that government decisions are free from constitutional scrutiny by courts, since courts have jurisdiction to determine whether a power asserted by the Crown exists and if its exercise infringes the *Charter*. However, the SCC held that, in this case, the appropriate remedy was best left to the federal government to decide in light of current information in its possession, its responsibility over foreign affairs and the Court's declaration that Mr. Khadr's *Charter* rights have been violated. The executive government is better placed to make a decision within the range of constitutional options.

Update

On February 3, 2010, the federal government announced that it would not request Omar Khadr's repatriation to Canada.

Discussion Issues

1. Do you think Mr. Khadr's rights to liberty and security were violated during his interrogation by Canadian officials under the "frequent flyer program?" Do you think the fact that he was charged with war crimes should have altered this right?
2. Do you think the SCC made the right decision to have the federal government determine the best course of action, even though it found that Mr. Khadr's *Charter* rights had been infringed?
3. The Court ruled that this was a decision best made by the federal government because it was within the scope of foreign affairs and it was better placed to make the decision. To what extent do you believe that courts should intervene with executive decisions?
4. What implications could the SCC's decision have for public confidence in the judicial system?

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.

<i>Canadian Charter of Rights and Freedoms</i>

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?