

## HANDOUT 1: Case Studies and *Charter* Rights

### Case 1: *R. v. M.R.M.*, [1998] S.C.J. No. 83

A student attending a school dance was searched by the vice-principal and was found to be hiding a bag of marijuana in his sock. The vice-principal had acted on information he received from “several students that the appellant was selling drugs on school property” and “had reason to believe this information because the students knew the appellant well and one of them had, on an earlier occasion, given the principal information which had proven to be correct”. The question for the court to consider was whether the search was “reasonable” in accordance with s. 8 of the *Charter*.

The judgment went in favour of the school and is explained by Justice Cory as follows:

- A warrant is not essential in order to conduct a search of a student by a school authority.
- The school authority must have reasonable grounds to believe that there has been a breach of school regulations or discipline and that a search of a student would reveal evidence of that breach.
- School authorities will be in the best position to assess information given to them and relate it to the situation existing in their school. Courts should recognize the preferred position of school authorities to determine if reasonable grounds existed for the search.
- The following may constitute reasonable grounds in this context: information received from one student considered to be credible, information received from more than one student, a teacher’s or principal’s own observations, or any combination of these pieces of information which the relevant authority considers to be credible. The compelling nature of the information and the credibility of these or other sources must be assessed by the school authority in the context of the circumstances existing at the particular school.

The ruling upheld the right of teachers and administrators to search bags, lockers and clothing if all the prescribed conditions are met. The ruling grounds itself in a legal concept ‘*in loco parentis*’ that in translation means ‘in the place of parents’. It is this concept that gives ground to many school rules, policies, consequences and violations of common rights. In essence it would be like stating that your parents have no legal right to search your room, cabinets or personal things for drugs or weapons. You might wish they did not but you do not have any legal right to refuse.

## **Case 2: *R. v. Z. (S.M.)*, [1998] 131 C.C.C. (3d) 136 (*Man. C.A.*)**

This case gives clarity to the issue of locker searches, as different from searching the personal effects or clothing of a student like in the case *R. v. M.R.M.* In that case the courts ruled that searches of the person, their clothing or bags is a violation of rights held under s. 8 but is reasonable for the safe operation of schools and protection of students. However, the judgment only related to searches conducted by school personnel, not the police.

It was explained in *R. v. M.R.M.* that via the concept of 'loco parentis' school lockers are the property of the school board and are used by students with the permission of the school and are not the private property of the students. Schools are advised to inform each student of the school's right to search lockers and should have policies in place so that the students have a reduced expectation of privacy, as they would in their own homes with respect to parent searches.

In this case the vice-principal of a junior high school conducted a locker search of a 15-yearold student's locker, after reports of drug use in the school. Classmates had reported that the student was present when drug use took place or was associated with other students thought to be involved in drugs.

On the morning of the search, the student was absent without permission and had returned to the school through an entrance that was not usually open during the day. These factors caused the vice-principal to suspect that he may have picked up drugs that day. The vice-principal searched the locker and found marijuana. The trial judge acquitted the accused, stating that the search infringed the s. 8 rights of the student. The decision was appealed but upheld by the Manitoba Court of Appeal.

## **Case 3: *R. v. A.M.*, [2008] S.C.J. No. 19**

In the most recent judgment from the Supreme Court of Canada the issue of drug sniffing dogs, locker searches and warrantless searches in high school was discussed. The case built upon earlier rulings with respect to searches at schools but differed significantly because of the involvement of police.

In *R. v. A.M.* the police had a long-standing invitation from the principal of a high school to bring sniffer dogs into the school to search for drugs. The police had no knowledge that there were drugs in the school and they would not have been able to obtain a warrant to search the school. During the police's visit to the school, the students were confined to their classrooms as a trained police dog sniffed their backpacks in an empty gymnasium. The dog led police to a backpack containing marijuana and magic mushrooms. A youth was subsequently charged with possession of marijuana for the purpose of trafficking. In 2004, the Ontario Court of Appeal upheld a trial judge's decision to exclude the drugs as evidence and acquit the youth. The Crown appealed to the Supreme Court of Canada (SCC).

In a 6-3 majority, the SCC held that the dog sniff amounted to a “search” within s. 8 of the *Charter* and that students in school have a reasonable expectation of privacy. The SCC held that the subject matter of the sniff was the concealed contents of the backpack and not the ‘air’ around the backpack. Teenagers may have little expectation of privacy from the searching eyes and fingers of their parents, but they expect the contents of their backpacks not to be subject to the random searches of the police. This expectation is a reasonable one that society should support.

The use of the sniffer dog allowed the policeman to “see” through the fabric of the backpack, thus invading the expectation of privacy assumed by the accused. The SCC also noted that a warrantless search using sniffer dogs would be justified in the case where the police held a reasonable suspicion; but in this case there was no proper justification for the search. The search was deemed unreasonable and the SCC upheld the earlier judgment of the Ontario Court of Appeal and dismissed the appeal.

The case adds another layer to the issue of searches in our high schools. The top court ruled that a warrantless and unreasonable search by drug-sniffing dogs is not constitutional.

However, drug-sniffing dogs could conduct searches, even warrantless searches if reasonable grounds were established prior to conducting the search. The Abbotsford School District conducted several warrantless searches in its high schools between 2005 and 2006 and has stated that it will consider searches for the 2009 school year notwithstanding the decision of the SCC. Further cases will be required to establish more precise guidelines for school administrators and students with respect to searches in our schools.

