

R. v. Patrick – Is Garbage Private?

Designed for CTS:
Legal Studies Landmark Decisions
(Module 3070)



Lesson Summary

Time required:

60 minutes (1 class period)

Materials/Resources Needed:

Printed copies of the case summary, handout of questions (included)

Lesson Format:

Case study, analysis and critical thinking questions, small group/class discussion.

For the Teacher

This activity will help students explore questions about what level of privacy Canadian citizens are entitled to and under what circumstances. This will be done through the examination of a landmark case – *R.v.Patrick*. Students will also consider the implications of this precedent in relation to other realms where privacy may not necessarily be a fair expectation. This case review and accompanying questions will take students about one class period (60 minutes) to complete.

The handout "Landmark Constitutional Decision: R.v.Patrick" will provide students with all necessary information about the case and assist them in answering the questions. Teachers may choose to handout copies of this case summary to students in advance so that it can be read for homework. Once all students have read the case summary handout and the basic details of the case have been reviewed as a class, students will be ready to complete the attached questions. This activity is designed to engage students in critical and open debate about privacy laws and issues within Canada. Therefore, it is suggested that students discuss and complete these questions in small groups, and then share their responses with the rest of the class.

Curricular Outcomes

In accordance with the Alberta CTS: Legal Studies Program of Studies (*Module 3070*), this activity should enable students to identify landmark decisions and analyze their subsequent effects on society, as well as:

- define the term precedent and explain how it operates in our legal system;
- identify and discuss examples of landmark decisions; and
- suggest future issues that may result in landmark cases.

A Brief Case Overview

As many of us do, Mr. Patrick had put his garbage out to be picked up. The police were suspicious of the activities Mr. Patrick was involved in within his home so they decided to retrieve his garbage, as that would give them information on his lifestyle. The police officer had to put his arm a few centimeters into the airspace over the property line to retrieve the bag of waste. The police found significant items in Mr. Patrick's garbage to indicate that a drug manufacturing operation was going on in Mr. Patrick's house. They used the information found in Mr. Patrick's garbage to obtain a search warrant for his house where they discovered an ecstasy lab. Mr. Patrick was arrested and charged with producing, possessing and trafficking in "a controlled substance." He argued that this was a breach of his section 8 *Charter* right, as the evidence gained from the garbage bags was obtained under unreasonable search and seizure and, as a result of s.24, it should therefore be excluded as evidence in the case against him.

Additional Resources

- “Trash Case Tests Privacy Rights” – a newspaper article about the case:
<http://www.thestar.com/news/canada/article/471609>
- “Trash Case Doesn’t Violate Privacy Rights” – another news article from CBC about the final verdict in the case:
<http://www.cbc.ca/canada/story/2009/04/09/supreme-court-garbage-privacy.html>
- *R.v.Delaa* – a 2009 case which used Patrick’s case as a precedent:
<http://www.albertacourts.ab.ca/jdb%5C2003-%5Cca%5Ccriminal%5C2009%5C2009abca0179.cor2.pdf>

For Students

Discussion Questions for *R.v. Patrick*

Read the handout "Landmark Constitutional Decision: *R.v.Patrick*" and use it to complete the following questions. These questions are complex and you may find that your ideas and opinions are different from those of your classmates, so compare responses and be open to other perspectives.

1. Define the term 'precedent' and explain how it operates in our legal system.

2. Why is 'abandonment' so important? If the main question is whether something is abandoned or not, why is location important?

3. Do you agree with the decision of the Supreme Court? Justify your response.

4. Section 8 of the *Charter of Rights and Freedoms* ensures that everyone has the right to be secure against unreasonable search and seizure. This means that everyone has the right to a “reasonable expectation of privacy”. What does this phrase mean in regards to the *Charter*?

5. If you should be able to have a reasonable expectation of privacy, where and where not should this occur? Complete the chart below with examples that fit the headings. Give at least 5 additional examples. Each column has been started.

Where reasonable expectation of privacy should occur	Where reasonable expectation of privacy should not occur
In your home.	At a football game when you are on the jumbo-tron.

6. If a *Charter* right has been violated, then Section 1 of the *Charter* is addressed. Section 1 guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be **demonstrably justified in a free and democratic society**. When a *Charter* case goes to court, the judge must decide between the rights of the individual and the needs of society. Complete the chart below with reasons of support for each side in the case of *R v Patrick*.

Rights of the individual	Needs of society
1.	1.
2.	2.
3.	3.

7. There have been cases where school lockers have been searched for drugs. Is this a breach of the *Charter*? Explain your opinion.

8. Why do you think this is a landmark case? What important precedent may it set for future cases?

9. The internet makes it easy to find and share information with the rest of the world – but what implications does this have when it comes to expectations of privacy? Do you believe that certain levels of privacy should be expected in regards to the internet? Consider social networking sites such as Facebook or Twitter.

Landmark Constitutional Decision: *R v. Patrick*

Privacy Rights, Warrantless Police Searches, and Abandonment of Information

Facts

In 2003, Russell Patrick was in his late twenties, a university graduate in physics and a former champion swimmer; he had represented Canada at the 1994 Commonwealth Games. He was also quite successful in the narcotics industry: he operated a profitable lab in his house where he made ecstasy. On December 23, 2003, police with a search warrant raided Patrick's house and arrested him for producing, possessing and trafficking in "a controlled substance" – an illegal drug.

The *Controlled Drugs and Substances Act* sets out criminal offences and penalties relating to illegal drugs. The penalties for production, possession and trafficking run to a maximum of ten years' imprisonment, depending partly on the kind of drug.

The Search and the Warrant

Prior to his arrest, the police had had suspicions about Patrick, as they had collected information about him in their ongoing drug investigations. They wanted to get more evidence about his activities so that they could convince a judge to give them a search warrant. With a warrant, they could enter his house (where they then expected to find the ecstasy lab).

To try to obtain enough evidence to get a search warrant, the police decided to search Patrick's household garbage.

In Patrick's neighbourhood, garbage is collected from the back lane. Patrick's house had a back fence at the edge of the laneway. There was an indentation in the fence with a stand for garbage cans. The way the fence was built, the stand was technically on the inside of the fence, so the garbage cans were on Patrick's property.

Six times in December 2003, the police went to the back lane in the early morning, reached into the arispace across the fence-line into Patrick's garbage cans, pulled out the garbage bags, and seized items that they found inside them, including receipts for the purchase of chemicals. Then they put the bags back in the cans. The police did *not* have a search warrant to look through the garbage. They thought they did not need one. It is a common police practice to search abandoned garbage for clues in criminal investigations.

Based on the information obtained from the garbage, on December 22 the lead police investigator swore an "Information to Obtain a Search Warrant" (I.T.O.), and a judge granted the search warrant. The I.T.O. outlined all the evidence the police had collected on Patrick, including details of the items they found in the garbage. Early the next morning, the police raided the house and made their arrest.

Search and Seizure in the *Charter of Rights and Freedoms*

Section 8

Section 8 of the *Canadian Charter of Rights and Freedoms* provides a guarantee against “unreasonable search and seizure.”

S. 8: “Everyone has the right to be secure against unreasonable search or seizure.”

Section 8 protects a person’s “reasonable” right to privacy. It requires the state – police in particular – to follow legal standards when they intrude on a person’s privacy. The result is that an accused person can argue that evidence presented to a court was collected in an “unreasonable” way.

Section 24

If the judge agrees that the search was unreasonable under section 8, then the judge can apply section 24 of the *Charter* to “exclude” the evidence.

S. 24: “Where ... 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.”

Excluded evidence cannot be used in a trial. In other words, the judge or jury may not consider the excluded evidence in coming to a conclusion about what happened, or who did what.

The Legal Issue: Privacy Rights and Excluding Evidence

After Patrick was charged with the three drug offences, all the parties created an Agreed Statement of Facts. This statement covered “the history of the investigation; the details of garbage searches and items seized; the details of items seized from the home as a result of the warrant; and the results of various drug analyses.” In other words, Patrick agreed that he would have no defence to the charges if all the evidence were admitted.

However, Patrick argued that, in accordance with section 24 of the *Charter*, the prosecutors should not be able to use the garbage evidence, as these searches had not been authorized by a search warrant. He also argued that the “tainted” evidence from the resulting home search should also be excluded as, without the garbage evidence, the police could not have obtained a warrant to search his house and they would not have found his lab.

Judicial History

Provincial Court of Alberta (2005)

Following the standard s.8 approach, the trial judge had to answer two questions.

- (1) Did the accused have a *subjective* expectation of privacy in the contents of the garbage bags?
- (2) If so, was that expectation of privacy *objectively* reasonable?

Patrick emphasized the *location* of the garbage. It had never left his property, so it was reasonable for him to expect that no one would reach over the property line to open the bags.

The prosecution insisted that the exact location of the garbage was not the point. The point was that Patrick had *abandoned* the material in the garbage bags. When he abandoned the garbage and left it to be taken to the dump, he gave up any reasonable expectation that the contents of the garbage bag would be private.

For the trial judge, a test based on location “could only lead to absurd situations and ‘mind boggling’ analyses.” He gave examples of unfenced properties, unmarked property lines, and a pile of garbage bags half-on and half-off the property. The judge said instead that when Patrick left the garbage for disposal, he abandoned any *objectively reasonable* expectation that the contents of the garbage bags would remain private.

Patrick’s argument had failed and he was sentenced the next year.

Court of Appeal of Alberta (2007)

Majority Decision

At the Court of Appeal, Patrick argued that the trial judge had paid too much attention to privacy as *information*, and not enough attention to privacy as *territory* – an idea that is connected to expectations from the law of trespass.

The majority – two out of the three judges – agreed with the trial decision: “reasonable persons would not expect that garbage is secure and private, and would conclude that garbage is not obviously private in nature.”

Dissent

The third judge disagreed. She noted an important legal distinction – a way to define reasonable expectations – in the location of the garbage bags. Garbage left for pick-up on the street – where it is on public property, but it is easy to tell who threw it out – is abandoned, so an expectation of privacy would be unreasonable. Garbage stored for pick-up at the edge of a well-marked yard is not abandoned in the same way: it is reasonable to expect it will be private until it is mixed and made anonymous in the garbage truck.

Supreme Court of Canada

The Supreme Court considered Patrick's appeal and issued a unanimous decision in 2009. Patrick lost again.

The Court took garbage seriously. It said "a garbage bag may more accurately be described as a bag of 'information' whose contents, viewed in their entirety, paint a fairly accurate and complete picture of the householder's activities and lifestyle." In general, said the Court, people have a "legitimate privacy interest" in garbage sealed and stored for disposal.

However, the Court considered abandonment the key question: "I do not think constitutional protection should turn on whether the bags were placed a few inches inside the property line or a few inches outside it. The point is that the garbage was at the property line, accessible to passers-by."

The Court is clear that the decisive point is putting the garbage where a lot of people have easy access to it – without, for example, having to open a gate or cross a lawn. Placement at the perimeter is the key point: "when the garbage is placed at the lot line for collection, I believe the householder has sufficiently abandoned his interest and control to eliminate any objectively reasonable privacy interest." The decision gives a few other examples of how people can abandon their reasonable expectation of privacy in the information in garbage, such as taking it to the dump, dropping it down a garbage chute, or dropping it in a dumpster.

Summary is based on information provided by the Centre for Constitutional Studies.
<http://www.law.ualberta.ca/centres/ccs/>