

The Case of the School Search

R v. M. (M.R.) [1998]

Description of the Case

A high school vice principal was told by several students that a 13-year-old student was selling drugs on school property and would be bringing drugs to a dance. At the dance, the vice-principal asked the accused student and a friend to come to his office. While in the office he asked them if they had drugs with them and told them he was going to search them. Also in the office was an RCMP officer, who told the students who he was and watched the search.

The vice-principal found a bag hidden in the student's sock and gave it to the officer. The RCMP officer identified what was in the bag as marijuana. The officer arrested the student for possession of a narcotic (drug). The officer then told the student his rights, including the right to talk to a lawyer and the right to speak to a parent. The student tried to call his mother but could not reach her. He told the vice-principal and the officer that he did not want to call anyone else. The student then went to his locker with the RCMP officer. The officer searched it, but found nothing. The other student was also searched in the principal's office but nothing was found.

The Trial Decision

The student's lawyer argued that the search and seizure in the vice-principal's office was unreasonable for the following reasons:

- Since an RCMP officer watched the search, the vice-principal acted as an agent of the police (i.e. it was as if he was doing what the officer instructed).
- There was no warrant for the search or seizure. Normally, the authorities must get permission from a judge or justice of the peace in the form of a warrant before a search can be conducted. However, if an authority performs a search or seizure *without* a warrant, courts will call it unreasonable unless the Crown proves that:
 - a law authorized the search;
 - this law was reasonable;
 - the way the search was carried out was reasonable.
- At the time of the search, the vice-principal was not just trying to protect the school, but was involved in a criminal investigation, which heightened the student's rights.
- Having the RCMP officer in the office scared the student and intimidated him into agreeing to the search.
- The information about the drugs, which was given to the vice-principal before the search, was too unreliable to justify a search without further investigation.
- Since the bag of marijuana was found during a body search, and could have only been found that way, the student was forced to incriminate himself. If this evidence were allowed at trial, it would affect the fairness of the trial and lower the reputation of the court as a fair and impartial place.

The lawyer argued that the unreasonable search violated the student's right to privacy protected by s. 8 of the *Charter* and that it should be excluded under the test of s. 24(2) of the *Charter*. The judge agreed and excluded the evidence and dismissed the charge against the student.

Appeal to the Nova Scotia Court of Appeal

The Government appealed the decision and argued that the vice-principal was not an agent of the police and that the search was reasonable. Its main points were:

- School authorities must be able to deal with a situation that could disrupt the school environment or put the safety of the students at risk. These problems include the existence of drugs and dangerous weapons on school property.
- For this reason, school officials must be able to react quickly when they have reasonable grounds for thinking that a search will allow them to find evidence of a violation of school rules. The danger justifies the lack of a warrant.
- The way in which the search was carried out did not cross the line. The vice-principal and the student were both male and the search was not overly intrusive.
- Since there was no pre-planned strategy between the vice-principal and the RCMP officer, the vice-principal was acting on his own and was not an agent of the police.
- There is little or no reasonable expectation of privacy within the school setting because students know they are in an environment that has rules to make sure they are safe.

The majority agreed with the Crown and found that the search for the drugs was legal and that the student's rights were not violated. The Court of Appeal ordered a new trial with the evidence of the drugs included.

Appeal to the Supreme Court of Canada

The student appealed the decision to the Supreme Court of Canada (SCC), the highest court in this country. The majority of the SCC agreed with the decision of the Nova Scotia Court of Appeal. The majority looked at the needs of the school environment and how much they have changed over the years. The court came to the following conclusions:

- Drugs and weapons interfere with students' education and in order to keep a safe environment, teachers and other school officials must be able to act quickly to fight dangers within the school system.
- The vice-principal was not an agent of the police and that there was no evidence to show that the vice-principal would have acted differently had the RCMP officer not been there.
- Many high school students are bigger than their teachers or school authorities, so teachers and school authorities should not have to conduct searches without the presence of security or police.
- The student did have a reasonable expectation of privacy over his body and this right was not given up once the student entered the school.
- Because drugs and weapons have become a problem in schools, teachers and school authorities might not always have time to get a warrant to search, and for safety reasons may have to search without one.
- The search was reasonable because the vice-principal had reason to believe that the student was a drug dealer and because it took place in the privacy of the office and in a way that was not too invasive.

The Final Judgment

The case was sent back for a new trial because the Court found the evidence was gathered fairly and should be used at trial.

The Relevant Law

Canadian Charter of Rights and Freedoms

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

24. (2) 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.

The Issues

- Was it reasonable for the student to expect to have privacy over his body and locker while at school? What are reasonable expectations of privacy in a school?
- Should a vice-principal be allowed to search a student? Under what circumstances, if any, would this be acceptable?
- Was the school search a violation of the student's s. 8 *Charter* rights?

Questions:

Every year, you are given a school locker for your own use. Do you expect that whatever you put into your locker will remain private, to be accessed only by you? In one or two sentences, explain how you feel about privacy at school.

Taking a Closer Look

The Right to Privacy

The *Canadian Charter of Rights and Freedoms* protects Canadians against actions of the government that violate our fundamental freedoms. Since the school was a public school, the student argued in court that the school must respect the *Charter*. All police officers, including RCMP officers, must respect the *Charter* whenever they are on duty.

Section 8 protects the right to privacy. This means that police or other authorities cannot invade your personal space whenever they want. This protection includes your home, your body, your knapsack, or your private telephone conversations.

The right to privacy varies depending on where you are. When looking at cases that deal with section 8 of the *Charter*, the courts must ask if a person had a reasonable expectation of privacy. To do so, the court will ask some of these types of questions:

- Where did the search take place? Was it a public or private place?
- Was the accused present at the time of the search?
- Did the accused believe s/he had privacy at the time?
- Was the accused's expectation of privacy reasonable by community standards?

Another question the court must ask when measuring whether a search was reasonable is *who* was doing the searching. In this case, the courts had to consider why a vice-principal would search a student under certain circumstances and what kind of search would be reasonable within a school environment. The situation would be very different if the police came in uninvited and without a warrant to do a search.

1. Number the following locations in order of “reasonable expectation of privacy”, where “1” is where you have the greatest expectation of privacy and “10” is where you have the least. Why might you expect to have more privacy in one place than in another?

- _____ A sidewalk.
- _____ A public washroom.
- _____ Your bedroom.
- _____ An airport.
- _____ Your locker.
- _____ Your pockets.
- _____ Your friend’s house.
- _____ Your driveway.
- _____ Your car (when you are in it).
- _____ Your car (when you are away from it and it is parked in the street).

2. What is your expectation of privacy at home? Is your bedroom your own private space? Do you feel your parents should respect your privacy and not enter your room uninvited? Does it make a difference if you are buying groceries or paying some of the rent or the mortgage?
3. What level of privacy do you think you should have at school? Provide two examples to support your answer.
4. Review the scenarios below and answer the following questions. Keep in mind the questions the courts ask to determine expectation of privacy.
 1. Is there a reasonable expectation of privacy?
 2. Is the search reasonable?
 3. Should the evidence be excluded?

Scenario 1:

A vice-principal hears rumours that some students in a particular gym class are selling drugs, but he has not identified them. When the students are in gym class and have left their bags at the entrance of the gymnasium, he invites the police into the school with their sniffer dogs to sniff the bags and the row of lockers the class is using for that period. The dogs find drugs in one of the bags and in two of the lockers.

Scenario 2:

A man is arrested after a police helicopter passes randomly over his home with a special instrument that registers unusual amounts of heat coming from buildings. This information is presented to a Justice of the Peace, who gives the police a search warrant. A marijuana grow-op is located in the basement of the house. The instrument cannot measure the nature of the heat or the contents of the house.