

CASE SCENARIO
SPRING 2007

Her Majesty the Queen
(APPLICANT)

v.

J.F.
(RESPONDENT)

Project Scenario

On the 1st of November, 2004, a search was conducted at Stonemount Secondary School, in the City of Yorktown by police officers. They were there at the invitation of the principal, who had issued a standing invitation to members of the police to enter into the school at any time they wished to search for drugs or illegal weapons. The principal stated that he had seen a disturbing increase in the use of drugs amongst some students and that he wished to head off any potential problems that could arise in the school as a result of this. This school principal permitted police officers access to the school to search for drugs. As a result of finding marijuana in a student's locker, the police laid charges.

The school and the local School Board have a zero tolerance policy on drugs and weapons of any sort. Students are aware of the policy, indeed, they are told this on the first day of classes and a circular is sent home to each student's parents or guardians in order to inform them of this policy. All are aware that to enforce the policy, the school authorities may resort to the use of police officers with drug detector dogs. As part of the principal's responsibilities under the Education Act, the principal is charged with maintaining a safe and orderly school. The zero tolerance policy and the means of enforcing it are steps taken to ensure the existence of a safe and orderly learning environment.

This matter raised a challenge in court on a *Charter* issue. The defence is challenging the admission of drugs that were found following a search conducted at Stonemount Secondary School, in the City of Yorktown. The defence claimed that the search was unreasonable and contrary to the Canadian *Charter of Rights and Freedoms*, Section 8. They submitted that the Court should not admit into evidence the drugs found in the locker of the young person before the Court, Jean Fumeé (who shall be referred to as J.F.). To do so, they argued, would condone illegal acts by the police and would be unfair. The student's lawyer has attempted to use the *Charter* to stop the prosecution from using the evidence found in the student's locker at the trial. The trial judge, however, applying four principles, held that the prosecutor could use the evidence.

Teams of students will argue the appeal of the trial judge's decision. The trial judge has declared four principles that led to the decision to admit the drugs into evidence at trial. One student from each team will address each of the four issues. The school that will act for the accused student (who in the appeal will be the Appellant) will argue that the judge was wrong and why. The responding school (which will represent the Crown/Respondent) will argue that the judge was right and give reasons why.

Citation: *R. v. J.F.* 2004 ONCJ 98

ONTARIO COURT OF JUSTICE

YOUTH JUSTICE COURT

IN THE MATTER OF the Youth Criminal Justice Act, S.C. 2002, c.1

HER MAJESTY THE QUEEN

v.

J.F.

REASONS FOR JUDGMENT

GIVEN BY THE HONOURABLE JUSTICE CURMUDGEON,

on the 9th day of June, 2005, at Yorktown, Ontario.

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OF THE YOUTH CRIMINAL JUSTICE ACT

4. The only restriction that has been placed on the searches at the school are that the police officers must check in at the main office before conducting a search. When this is done, students will be told to remain in their classes until the search has been carried out. Officers attended the school with their dog and asked for permission to search for drugs. As always, this was granted. The police conducted the search in a manner they determined to be appropriate.
5. The dog "Justice" stopped by a locker belonging to the young person and acted in a manner that indicated the possible presence of drugs in that locker or one next to it on either side. As a result, all three lockers were opened. The other two lockers did not contain any contraband. However, J.F.'s locker contained one ounce of marijuana.
6. Defence counsel submitted that this search was carried out based on nothing but a policy that was not connected in any reasonable way to the situation at the school. To force all students to be held in their classes while the police carried out random searches violated the very basic concepts of a democratic society. Indeed, the fact that three lockers were opened and two were found to contain no contraband shows how arbitrary this policy is, in the view of defence counsel. The Crown argues that the search was fair, considering that this was a school, students had to be protected, this was a pressing problem and in any event the evidence should be admitted.
7. In my view, teachers and principals must be able to act quickly to protect their students and to provide the orderly atmosphere required for learning. If a teacher were told that a student was carrying a dangerous weapon or sharing a dangerous prohibited drug, the parents of all the other students at school would expect the teacher to search that student. The role of teachers is such that they must have the power to search. Indeed, students should be aware that they must comply with school regulations and as a result, that they will be subject to reasonable searches. It follows that their expectation of privacy will be lessened while they attend school or a school function. This reduced expectation of privacy coupled with the need to protect students and provide a positive atmosphere for learning clearly indicate that a more lenient and flexible approach should be taken to searches in schools.
8. The Charter of Rights is not to be used as a shield to insulate students in a state funded institution from their own wrongdoing.
9. I would set out four principles which govern in a matter such as this:

Issue #1 - School Rules Override *Charter* Issues

10. The student was in a state funded institution and had certain responsibilities as a result of that. One of these was to obey the rules of the school. The student violated that responsibility and cannot claim the benefit of the *Charter* when the student's own wrongdoing led to a charge being laid. When a person violates a trust with a state

institution, they are not entitled to claim the protection of the *Charter* in order to defeat the ends of justice.

Issue #2 - Rights of Children Should be Protected Under *Charter*

11. Students should be protected as distinct from adults under the *Charter*. Students are children and there is a strong state duty to protect them and to provide an environment in which they can learn and flourish. The need for parental guidance is strong. In a school setting, this is replaced by the need for the guidance of teachers. The need to nourish and protect children means that those same children are not entitled to the same level of *Charter* protections that adults engaged in interactions with the state can claim. Put simply, children and adults are not equal in their entitlement to *Charter* protections.

Issue #3 - Existence of Evidence Overrides *Charter* Issues

12. Even if one could claim that the rights of J.F. were violated, the evidence should not be excluded from the trial. This is real evidence, that is, it exists despite any *Charter* violation. It was not created as a result of a *Charter* violation. The ounce of marijuana would still exist, with or without *Charter* rights being litigated. In the long term, it is more beneficial to have this type of evidence admitted at trials so cases can be judged on their merits, without the search for truth being deflected by constitutional motions to suppress evidence. I would therefore hold that this evidence is admissible.

Issue #4 - Existence of Drugs or Weapons Creates Exception Under *Charter*

13. The problem of drugs or weapons in a school is of such pressing importance that I would create a constitutional exception in a case such as this. Thus, where a search is conducted for drugs or weapons in a school, the possessor of such contraband cannot claim *Charter* protection. The *Charter* is not a shield to be used by wrongdoers.
14. I would therefore admit the evidence of finding the marijuana. I caution counsel that this only determines that the evidence is admissible and not that I have made any finding of guilt or innocence. That could only come at the end of a trial.
15. I thank both counsel for their submissions.

Curmudgeon, J.

Charter Issues

Section 8 of the Canadian *Charter of Rights and Freedoms* states:

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

A search means the seeking of something. A seizure is the actual taking of the property found. This section does not grant search or seizure powers, but only limits the right of the authorities to search or seize. In order to challenge a search, the person presenting the challenge must have an expectation of privacy in the place being searched. For example, a person will always have an expectation of privacy in their home. They may well have this expectation in other places as well. This is an issue to discuss with other firms.

A reasonable search must be authorized by law, the law which authorizes the search is reasonable and the search is carried out in a reasonable manner. Please note that this does not mean that there must be a written law authorizing each and every search. In some cases, the common law will permit a search.

Once a judge has determined that a search is reasonable, he or she will admit the item seized as a result of that search into evidence at trial. However, even if a judge decides a search was unreasonable, evidence may still be admitted. This will depend on a variety of factors, including what sort of evidence was taken (for example, if the evidence was not created as a result of the search, but would have existed whether there was a search or not, it is more likely that the evidence will be admitted at trial) and whether the police or authorities acted in good faith or arbitrarily. As well, every court must consider whether the admission into evidence of the item seized as a result of an unreasonable search could bring the administration of justice into disrepute. One has to look to the long term effects of admitting illegally seized evidence when considering this issue, not just the situation in one case which is being tried.