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Supreme Court Speaks on School Searches

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On April 25th the Supreme Court of Canada issued a much anticipated decision concerning a sniffer dog search of a high school that led to drug related charges against a student. A 6-3 majority of the Court held that the police violated the student's *Charter* right to be free from unreasonable search and seizure and held that the evidence of drug possession found by the police should be excluded from use at trial. The decision, called *R. v. A.M.*, is significant because it establishes a standard for *police* searches on school premises. It does not directly speak to a school board's own power to conduct searches of individual students or school premises.

THE *M.R.M.* CASE

Before discussing *A.M.*, we will review the Supreme Court of Canada's leading case on school board searches. In 1997, in a case called "*M.R.M.*," the Supreme Court recognized that teachers and principals must be able to react quickly to problems that arise in schools and, hence, should have greater search powers than those enjoyed by the police.

In *M.R.M.*, a junior high school vice-principal received information from several students that "M.R.M." was selling drugs on school property and also received specific information from one of the student informants that M.R.M. would be carrying drugs to a school dance. When M.R.M. arrived at the dance, the vice-principal called the RCMP, asked M.R.M. to come to his office and then searched him in the presence of the RCMP officer. M.R.M. turned out his pockets and pulled up his pant legs, and the vice-principal found a bag of marijuana hidden in M.R.M.'s sock. He was then arrested and charged with possession of a narcotic.

The trial judge excluded the evidence which had been found in the search because the vice-principal had violated M's right to be secure against "unreasonable search and seizure" as granted by section 8 of the *Canadian Charter of Rights and Freedoms*. This finding was ultimately overturned by the Supreme Court. In disposing of the case, the Supreme Court established the following rule (in our words) for "body searches" of students:

A school official who acts within the authority granted by the relevant education statute can search a student without a warrant when he or she has reasonable grounds to believe that a school rule has been or is being violated, and that evidence of the violation will be found in the location or on the person of the student searched.

The Court also said that courts should generally defer to the judgement of teachers and principals in determining whether there was enough evidence of wrongdoing to justify a search. It said that a body search could be justified by:

- 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 are considered to be credible.

THE *A.M.* CASE

The facts in *A.M.* are very different than those in *M.R.M*. In *A.M.*, a principal extended an open invitation to police to come onto school property and conduct sniffer dog searches. On the day in question, the police called the principal and received permission to enter the school. Students were told to remain in their classrooms while the police conducted the search. While

searching a gymnasium, a sniffer dog identified “A.M.’s” backpack. The police opened it and found narcotics and drug paraphernalia. A.M. was arrested and charged with possession for the purpose of trafficking.

At trial, the principal admitted that he did not have any reason to believe that drugs would be found in the gymnasium. He could only testify to a general suspicion that drugs would likely be found somewhere in the school.

Five of the nine judges in the *A.M.* decision held that police can perform sniffer dog searches of schools without a warrant based on a “reasonable suspicion” but that the police did not meet this standard in conducting the search that led them to A.M.’s backpack. A reasonable suspicion exists when some objective evidence has led the police to believe that a targeted person has possibly engaged in criminal activity or that a “group of people closely linked in proximity” has possibly engaged in criminal activity. The problem in *A.M.* was that there was only general speculation about the presence of drugs in the entire school.

Importantly, A.M. establishes a standard for searches of school premises conducted by the police. The majority made a point of affirming the general principle from *M.R.M.* – that in matters of school discipline, a broad measure of discretion and flexibility will be afforded to school authorities. The majority also held that this principle did not apply in *A.M.* because the search was conducted by the police on their own initiative.

CONCLUSION

A.M. was not resolved in a manner that significantly alters or speaks to the law regarding searches conducted by school boards themselves. When police search schools using sniffer dogs or conduct similar “premises” searches, it is now clear they must meet the reasonable suspicion standard. Searches conducted by school boards themselves continue to be subject to different rules. School boards should only conduct body searches of students in compliance with the rules established by the Supreme Court in *M.R.M*. Regarding other searches by school boards – locker searches, for example – school boards arguably have significantly greater latitude to conduct such searches than police.

School boards should appreciate, however, that the right to be free from unreasonable search and seizure that is guaranteed by section 8 is conditioned on the level of privacy expected by an individual. Therefore, in order to ensure their searches are lawful, school boards should establish and publish policies that clearly communicate the searches that principals may conduct and the conditions that principals will abide by in conducting searches. And while a school board’s power of search is broad, we suggest that any school policy that permits routine or generalized suspicion searches be approached with caution based on input from legal counsel.

For more information on the issue of school searches, information and privacy or safe schools please contact Dolores Barbini (416-864-7303, Toronto), or George Vuicic (613-549-6353, Ottawa).

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