

How private is your garbage?

Suppose strangers went through your household garbage. What would it tell them about the habits of your family? Do you eat a lot of junk food? Does your mother colour her hair? Would they find information about your father's health or your parents' financial situation? Garbage can be very revealing. In the case of Russell Stephen Patrick, it led to his arrest.

Police suspected that Patrick, a former member of Canada's national swim team, was operating an ecstasy lab at his home in Calgary. On six separate occasions, police conducted a search of Patrick's garbage. The garbage bags were located inside garbage cans that were placed at the back of Patrick's property. The bags were readily accessible to the public. However the police did have to reach over the property line to retrieve the bags.

Inside four of the bags were items used in an ecstasy lab. These items, along with other information, were used to obtain a search warrant for Patrick's residence. There they found chemicals, thousands of pills, drug recipes, and scales.

In 2006 Patrick was convicted and sentenced to four years in prison. Patrick appealed to the Alberta Court of Appeal. Patrick lost the appeal, but the Alberta Court of Appeal Justices were divided on the issue. Patrick appealed to the Supreme Court of Canada.

YOUR GARBAGE SHOULD NOT BE PRIVATE

Justice Ritter of the Alberta Court of Appeal reasoned that although Patrick's garbage was technically on his property, he gave up any control over it when he put it out for collection. "Anyone living in a major metropolitan area knows that once garbage is left for pickup, it may be subject to disturbance by bottle collectors and others looking for discarded treasures, as well as birds, dogs and vermin," he said.

Federal prosecutors in their brief to the court argued that Patrick made the unwise choice of leaving clues in the trash about his criminal activities and any concern that his privacy rights were violated was a "hollow legalism."

They argued that the *Charter* right to be protected against unreasonable search and seizure cannot extend to the act of putting out one's garbage. Police and prosecu-

tors say going through garbage is an effective investigative technique and police have discovered everything from murder weapons to DNA. Garbage has, in fact, been abandoned and it is not reasonable to expect garbage to be private. In fact in some communities, police even pose as sanitation workers to confiscate the garbage of suspected felons.

The Crown argued that if the Supreme Court finds that the police's checking through garbage is unconstitutional it could mean that garbage discarded by people like Michael Briere, convicted of killing ten-year-old Holly Jones in 2003, would be protected by the *Constitution*. Briere had placed Jones' legs and feet in garbage bags and put them at the curb for pickup. They were never found.

off the mark

by Mark Parisi



Figure 4.15



Figure 4.16

YOUR GARBAGE SHOULD BE PRIVATE

The appeal court's decision was not unanimous. In a dissenting opinion, Justice Conrad said Patrick had a reasonable expectation that the garbage he put into bags and sealed would not be searched by police without a warrant. She claimed that the only people with an "implied" licence to take away the garbage were municipal garbage collectors.

Organizations interested in the outcome of a case (but not directly involved) may be permitted to make submissions for the court's consideration. In this case, the Canadian Civil Liberties Association, acting as an intervener or "friend of the court," argues that looking through someone's garbage can reveal intimate information about activities in the home and police should need a warrant. Without constraints, police would be free to build a database of our personal information, use waste collection to construct profiles of residents, and use the information in criminal investigations.

Since communities have bylaws preventing citizens from burying, burning, and recycling garbage themselves, people should have an expectation of privacy in their garbage cans. Quite simply, if police want to go through your garbage, they should get a warrant.

DOES LOCATION MATTER?

Russell Stephen Patrick's garbage was located at the back of his property and inside his property line. Would it have been different if his garbage had been taken to the curb for pickup?

What if his garbage cans had been inside his garage? Clearly, police would have needed a search warrant to enter the garage.

Is it a matter of location or whether you can reasonably expect your garbage to be private?

On the one hand, federal prosecutors argue that once you put the garbage in the can, it's "abandoned." On the other hand, you can't keep garbage forever and when it is discarded, you should have an expectation of privacy.

THE CASE TO DATE

The Supreme Court of Canada heard arguments in Patrick's case on October 10, 2008. At that time the Court reserved its decision.

Looking at the Issue

1. What does s. 8 of the *Charter* say regarding the right to privacy?
2. Assume the role of a Supreme Court Justice who must decide on this case. Write a judgment considering the positions of both sides, the *Charter*, and possible social and community concerns.
3. Visit our Web site to learn the Supreme Court's decision in Patrick's case.