

The Charter in the Classroom: Students, Teachers and Rights

Topic: *The Canadian Charter of Rights and Freedoms* Section 8 and Section 24(2)

Case: R. v. A.M., [2008] 1 S.C.R. 569, 2008 SCC 19

Instructional Expectations and Opportunities have been selected by provinces and territories for secondary schools and may be found in **Resources** under **Curriculum Expectations**.

Environment

- Section 8 and Section 24 (2)(a) of *The Charter* visible to the class
- Search Location Cards (see Required Resources below) posted in the classroom

Required Resources:

- Section 8: *Everyone has the right to be secure against unreasonable search or seizure*
- Section 24 (2): *Where, in proceedings under subsection (1), 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.*
- Search Location Cards: (each location to be printed on a separate piece of paper/card stock) One set is required to conduct the game as a teacher-led activity. Multiple sets would be required to conduct the game in small groups. Adapted from OJEN Landmark Case: School Searches And Privacy: R. v. M. (M.R.)
<http://www.ojen.ca/sites/ojen.ca/files/sites/default/files/resources/MMR%20English.pdf>
 1. bedroom closet
 2. school locker
 3. rental locker at a train station
 4. airport
 5. concert hall/sports arena
 6. pockets
 7. your backpack/purse when you are wearing it
 8. your backpack/purse when you are not wearing it (i.e. left unattended)
 9. public washroom
 10. sidewalk
 11. prison cell
- Tape or magnets for posting Search Location Cards
- R. v. A.M. case summaries, found under the “Resources” section of the CC: STAR website [<http://www.thecharrules.ca>] The ruling of the Supreme Court is also found at under the Resources section.
- Case studies for ‘Reasonable Search’ activity found in Appendix A of this lesson plan.
- If time permits, allow students to review and explore the Introduction Section.

Content and Suggested Strategies

Overview/Agenda/Review:

1. Introduction: expectation of privacy exercise
2. Search Location Cards games
3. Review of R v. A.M. Case details
4. Discussion Questions

5. Consolidation: Case Studies - What constitutes a reasonable search? (Appendix A)
6. Extension Activity Option: With whom do you agree? What did the Supreme Court Justices say concerning R. v. A.M. (Appendix B)

Introduction:

[Adapted from OJEN Landmark Case: School Searches And Privacy: R. v. M. (M.R.)

<http://www.ojen.ca/sites/ojen.ca/files/sites/default/files/resources/MMR%20English.pdf>

Note: A digital version of the following game can be found under the “Explore” section of Concept 6 on The Charter in the Classroom: Students, Teachers, and Rights

[\[http://www.thecharterrules.ca\]](http://www.thecharterrules.ca)

- Introduce students to section 8 of the Canadian Charter of Rights and Freedoms: *Everyone has the right to be secure against unreasonable search or seizure.*
- Ask students what right(s) does section 8 of the Charter protect by prohibiting unreasonable searches/seizures? Students should arrive at the notion that s. 8 protects an individual’s right to privacy.
- Ask students with a show of hands if they agree that their right to privacy (or expectation of privacy) differs depending on where they are.
- Option A: **Teacher Led Activity** Place the 11 Search Location Cards on the board (see required resources above). Ask students to come to the board to arrange the cards in order from least to greatest in terms of their expectation of privacy in each location. Once all the items have been arranged, ask students to explain why they feel they should expect more privacy in certain locations than in others.
- Option B: **Small Group Work Activity** Provide each group (3-4 students) with a set of Search Location Cards. Ask each group to arrange the cards in order from least to greatest in terms of their expectation of privacy in each location. Ask a representative from each group to arrange their cards from least to greatest on the board. Discuss as a class the similarities or differences between arrangements of the cards. What is the rationale for their expectations of privacy in these various locations?

Content and Teaching Strategies/Activities:

- Case Review: Introduce the facts behind the case of R. v. A.M. by providing students with case summaries found under the “Resource” section of the CC: STAR website [\[http://www.thecharterrules.ca\]](http://www.thecharterrules.ca). Alternately, allow students to learn about the facts of the case by exploring the Concept 6 “Case Study Scenario” section of the CC: STAR website.

Discussion Questions:

1. What does the word “unreasonable” mean as referred to in section 8 of the Charter?
2. The Supreme Court makes a distinction between police and school officials in terms of the standards they must meet in order to justify a search under the Charter. The results of R. v. A.M. suggest that police must be held to a stricter standard than school officials in determining whether or not they have reasonable grounds to conduct a warrantless search. Consider leading the discussion by examining police powers compared to powers of school principals. Do students agree that the police should be held to a stricter standard than principals when conducting searches at school? Why or why not?
3. Section 24(2) of the Charter states that evidence “...obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter...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.” In this case, the Supreme Court found that the search was unreasonable because it violated the student’s rights, and therefore including the evidence would be unfair under s. 24(2). Do students agree or disagree that including the evidence in this case would have hurt the Court’s reputation for making fair and impartial judgments? Why or why not?

Consolidation:

- Provide students with the five case studies provided in Appendix A of this lesson plan. Students will work individually to determine whether each search described is reasonable or unreasonable, and provide justification for their decisions.

Extension Activity:

- An alternative activity is found in Appendix B of this plan. Students discuss the nuances in the decision statements provided by the Supreme Court justices.

Appendix A: Case Studies – Reasonable and Unreasonable Search

Read each scenario below and determine whether each search described is reasonable or unreasonable. In those instances where incriminating evidence is found, decide whether or not the evidence should be admitted or excluded at trial under s. 24(2) of the Charter. Consider the following questions in providing reasons for your decisions.

- Were there reasonable grounds for conducting the search in the first place?
 - Where is the search taking place?
 - Did the person subjected to the search have a reasonable expectation of privacy in that location?
 - Who is conducting the search?
 - How was the search conducted?
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- 1) An elderly woman leaves a restaurant and is followed by the owner who has accused her of stealing silverware. A nearby male police officer notices the dispute and frisks the elderly woman in search of the stolen goods. No silverware is found.
 - 2) A student tells his friends that an Arabic student whom he frequently bullies, is a terrorist and probably has guns in his backpack. This rumour eventually reaches the principal who then proceeds to search the student's backpack in the school cafeteria during lunch hour.
 - 3) A customs inspector randomly selects passengers waiting to board an airplane and asks them to remove their shoes and open their carry-on luggage for inspection prior to boarding.
 - 4) A reliable student informs the principal that she witnessed a bag of marijuana fall out of her classmate's locker. The principal discretely calls the suspected student to the office, explains the situation and searches her locker with the assistance of the vice principal. The student is then suspended from school.
 - 5) A police officer pulls over a driver for making an illegal left turn. While writing the ticket, the officer catches a scent of marijuana in the car. The officer proceeds to search the car's entire contents and finds a bag of marijuana in the glove compartment.

Appendix B: Extension Activity

With whom do you agree? What the Supreme Court Justices had to say in R. v. A.M.

There were differences of opinions in the case of R. v. A.M. This activity provides quotes for students to see that the decisions had nuances as complex as those reached by the judges.

Provide students with the following rationales from the Supreme Court justices in this landmark case. In small groups have students review and discuss the opinions of the Supreme Court. Ask students to record which opinions agree/disagree with and why. If they had been members of the Court, would their opinions have resulted in a change of the final decision? Where would students stand if they were members of the Supreme Court of Canada? With whom would they agree? Is it a simple s. 8 case for students?

The following quotes are taken directly the Judgments of the Supreme Court of Canada website: <http://scc.lexum.org/en/2008/2008scc19/2008scc19.pdf> R. v. A.M., [2008] 1 S.C.R. 569, 208 SCC 19.

1. *Per* McLachlin C.J. and Binnie, Deschamps and Rothstein JJ.: The police possess a common law power to search using drug sniffer dogs on the basis of a *Charter* compliant standard of reasonable suspicion.

Per Bastarache J.: The police possess a common law power to search using drug sniffer dogs on the basis of a *Charter* compliant standard of generalized suspicion.

Per LeBel, Fish, Abella and Charron JJ.: There was no authority at common law for the sniffer-dog search in this case.

2. *Per* McLachlin C.J. and Bastarache, Binnie, LeBel, Fish, Abella and Charron JJ.: The dog sniff of the backpack at the school amounted to a search within s. 8 of the *Charter*.

Per Deschamps and Rothstein JJ.: The dog sniff of the backpack at the school did not amount to a search within s. 8 of the *Charter*.

3. *Per* McLachlin C.J. and Bastarache, Binnie, LeBel, Fish, Abella and Charron JJ.: The sniffer-dog search of the backpack at the school violated s. 8 of the *Charter*.

Per Deschamps and Rothstein JJ.: There is no need to determine whether s. 8 of the *Charter* was violated because the dog sniff of the backpack at the school did not amount to a search.

4. *Per* McLachlin C.J. and Binnie, LeBel, Fish, Abella and Charron JJ.: In the circumstances of this case, the evidence should be excluded pursuant to s. 24(2) of the *Charter*.

Per Deschamps and Rothstein JJ.: There is no need to determine whether the evidence should be excluded pursuant to s. 24(2) of the *Charter* because the dog sniff of the backpack at the school did not amount to a search.

Per Bastarache J.: The trial judge erred in excluding the evidence pursuant to s. 24(2) of the *Charter*.

Per LeBel, Fish, Abella and Charron JJ.: Students are entitled to privacy in a school environment. Since there was no authority in the statutes or at common law for the sniffer-dog search in this case, the search violated s. 8 of the *Charter*. For the reasons stated in *R. v. Kang-Brown*, [2008] 1 S.C.R. 456, 2008 SCC 18, our Court should not attempt to craft a legal framework of general application for the use of sniffer dogs in schools. As a result, the evidence was properly excluded under para. 24(2) of the *Charter*. [1-2]

Per McLachlin C.J. and Binnie J.: The police possess common law authority to use sniffer dogs in appropriate circumstances. If the police in this case had been called to investigate the potential presence of guns or explosives at the school using dogs trained for that purpose, the public interest in dealing quickly and efficiently with such a threat to public safety would have been greater and more urgent than routine crime prevention. [7] [37]

The dog sniff amounts to a search within s. 8 of the *Charter*. The information provided when the dog is trained to alert to the presence of controlled drugs permits inferences about the precise contents of the source that are of interest to the police. The subject matter of the sniff is not public air space. It is the concealed contents of the backpack. As with briefcases, purses and suitcases, backpacks are the repository of much that is personal, particularly for people who lead itinerant lifestyles during the day as in the case of students and travellers. Teenagers may have little expectation of privacy from the searching eyes and fingers of their parents, but they expect the contents of their backpacks not to be open to the random and speculative scrutiny of the police. This expectation is a reasonable one that society should support. The guilty secret of the contents of the accused's backpack was specific and meaningful information, intended to be private, and concealed in an enclosed space in which the accused had a continuing expectation of privacy. By use of the dog, the police officer could "see" through the concealing fabric of the backpack. [8] [62-63] [66-67]

Although a warrantless sniffer-dog search is available where reasonable suspicion is demonstrated, the sniffer-dog search of the students' belongings in this case violated their *Charter* rights under s. 8. The dog-sniff search was unreasonably undertaken because there was no proper justification. The youth court judge found that the police lacked any grounds for reasonable suspicion and the Crown has shown no error in the youth court judge's finding of fact. [91]

While the sniffer-dog search may have been seen by the police as an efficient use of their resources, and by the principal of the school as an efficient way to advance a zero-tolerance policy, these objectives were achieved at the expense of the privacy interest (and constitutional rights) of every student in the school. The *Charter* weighs other values, including privacy, against an appetite for police efficiency. Because of their role in the lives of students, backpacks objectively command a measure of privacy, and since the accused did not testify, the question of whether he had a subjective expectation of privacy in his backpack must be inferred from the circumstances. [15] [62-63]

Per Deschamps and Rothstein JJ. (dissenting): In light of the totality of the circumstances, the accused did not have in this case a reasonable expectation of privacy that engaged s. 8 of the *Charter*, and a new trial should be ordered. [140] [149]

While the use of the dog amounted to a search from an empirical perspective, what the accused had to establish was whether that use amounted to a “search” from a constitutional perspective. The pivotal question in this appeal was thus whether the accused had a reasonable expectation of privacy in respect of odours imperceptible to humans that emanated from his unattended backpack in a school gymnasium. This requires consideration of whether the accused had a subjective expectation of privacy and whether his privacy interest was objectively reasonable. [119] [128]

The accused did not have a subjective expectation of privacy. Students and parents were made aware of the drug problem and the zero-tolerance drug policy and of the fact that sniffer dogs might be used. Dogs had in fact been used on prior occasions to determine whether narcotics were present at the school. While school policy must be implemented in a manner consistent with a legitimate expectation of privacy, the well-advertised means devised and used by the school reduced the accused’s subjective expectation of privacy very significantly. [129]

Per Bastarache J. (dissenting): The dog sniff constituted a search within the meaning of s. 8 of the *Charter*. The accused had a reasonable, but limited, expectation of privacy in his backpack when the dog sniff occurred, even though he was not carrying the backpack at the time. A high school student who, like his classmates, leaves his bag unattended continues to have a reasonable expectation of privacy in its contents. It is relevant from an objective perspective that the odour identified by the dog sniff was not accessible to humans and that its detection provided immediate information about the contents of the backpack. The accused’s reasonable expectation of privacy is, however, reduced by the fact that this dog sniff occurred at the school. Students are aware of the importance both society at large and school administrators place on the school environment, and have a diminished expectation of privacy as a result. [150] [157-159]