2025 U of T Mini Moot

Participants' Package

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Welcome to the 2025 Mini Moot!

The University of Toronto Pre-Law Society's Moot Portfolio is proud to host the eighth annual U of T Mini Moot on September 28th, 2025.

Undergraduate Moot Court is life-changing. Moot allows us, the next generation of litigators, to hone our oral advocacy skills while evaluating imminent issues before the Supreme Court of Canada today. More than simply a competition, mooting is an exercise in persuasion, analysis, and critical thinking — skills that benefit anyone interested in law or public speaking.

It is an honour to host Mini Moot — an event designed to equip students with both foundational knowledge and practical mooting experience. This year's Mini Moot case is adapted from a real Supreme Court of Canada decision, with the legal tests and cited cases modified to make the law more accessible for beginners. By breaking down the barrier of difficult legal language, we aim to provide prospective applicants with the opportunity to engage with the law in a clear and approachable way.

The fictional case *R v. M.J.* (2008) asks whether the search of a student's backpack for illegal drugs violated section 8 of the Charter (the right to be secure against unreasonable search and seizure) and whether the evidence gathered should be excluded under section 24(2) of the Charter.

Along with our goal of educating prospective applicants, we hope to bring together new mooters, returning members, alumni of U of T Moot, and respected figures in the wider moot community. Whether in your first or final year, we hope you find fulfillment and new insights through this year's event.

Contact Information

For logistical questions, contact mooting.utpls@gmail.com.

For case-related questions, contact cadmoot.captains@gmail.com.

Alternatively, you can DM us via Instagram: @uoftmoot.

For **quick communications** on the day of the 2025 Mini Moot, please use the chart below to assess which people to reach out to:

Purpose	**Who to contact**	**Contact Information**
Any questions or concerns	**Helena Choi** **Sophia Fernandes**	**+1 (437) 424-2828** **+1 (647) 675-1218**
Scoring	Areen Khan Veronica Korolev	+1 (312) 961-2679 +1 (718) 801-1500
Equity	Raghad Barakat	+1 (905) 782-0118

Otherwise, if you **do not have time-sensitive inquiries**, you can refer to the following chart:

Purpose	**Who to contact**	**Contact Information**
Any questions or concerns	**Helena Choi** **Sophia Fernandes**	**mooting.utpls@gmail.com**
Any case-related questions	**Adaora Olisa** **Might Gouta**	**cadmoot.captains@gmail.com**
Scoring	Areen Khan Veronica Korolev	areen.khan@mail.utoronto.ca veronica.korolev@mail.utoronto.ca
Equity	Raghad Barakat	raghad.barakat@mail.utoronto.ca

Tournament Format & Itinerary

Time	Item
09 : 30 AM - 10 : 00 AM	Competitor Registration
10 : 15 AM - 10 : 35 AM	Opening Remarks
10 : 35 AM - 10 : 45 AM	Keynote Address
11 : 00 AM - 11 : 45 AM	**Practice Round**
11 : 45 AM - 12 : 35 PM	Lunch
12 : 45 PM - 01 : 30 PM	**Round 1**
01 : 40 PM - 02 : 20 PM	**Round 2**
02 : 35 PM - 02 : 40 PM	Announcement of Semi-Finalists
02 : 45 PM - 03 : 30 PM	**Semi-Finals Round**
03 : 45 PM - 03 : 50 PM	Announcement of Finalists
03 : 50 PM - 04 : 40 PM	**Final Round**
04 : 50 PM - 05 : 00 PM	Awards Ceremony

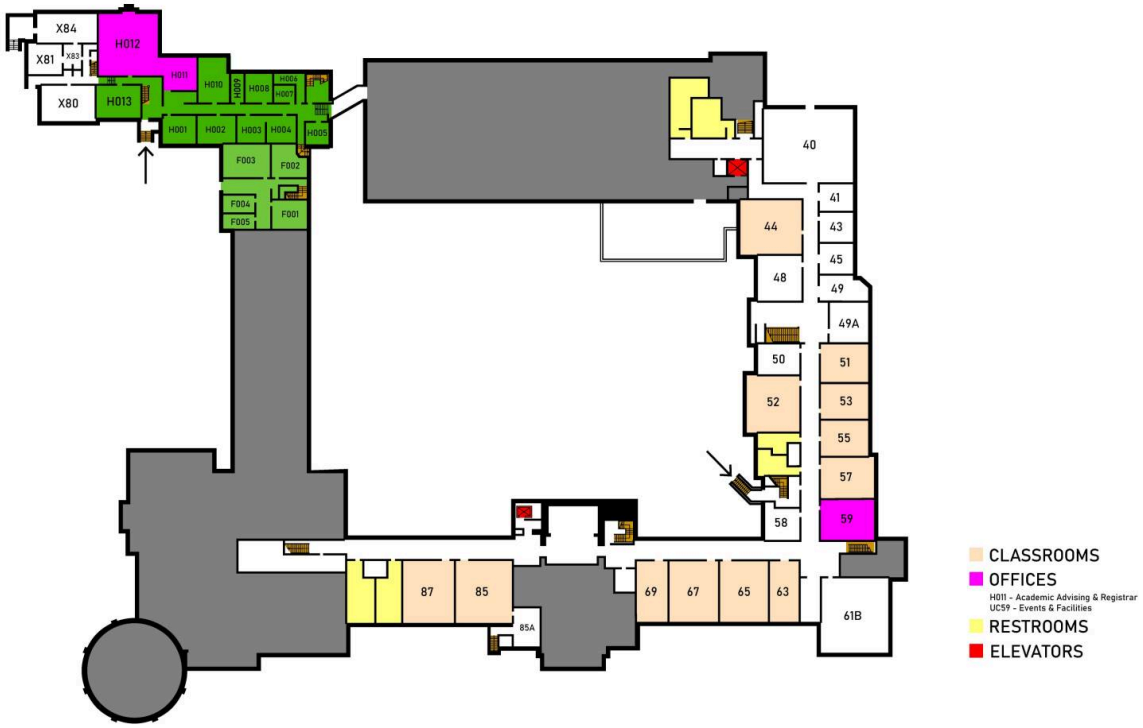
Please arrive at University College, Room 52 (Basement Level), at the latest by **10:00 AM** to check-in. **If you are running late, please send a text message to one of the Directors — otherwise, we might switch pairings around such that you will be excluded.**

Venue Information

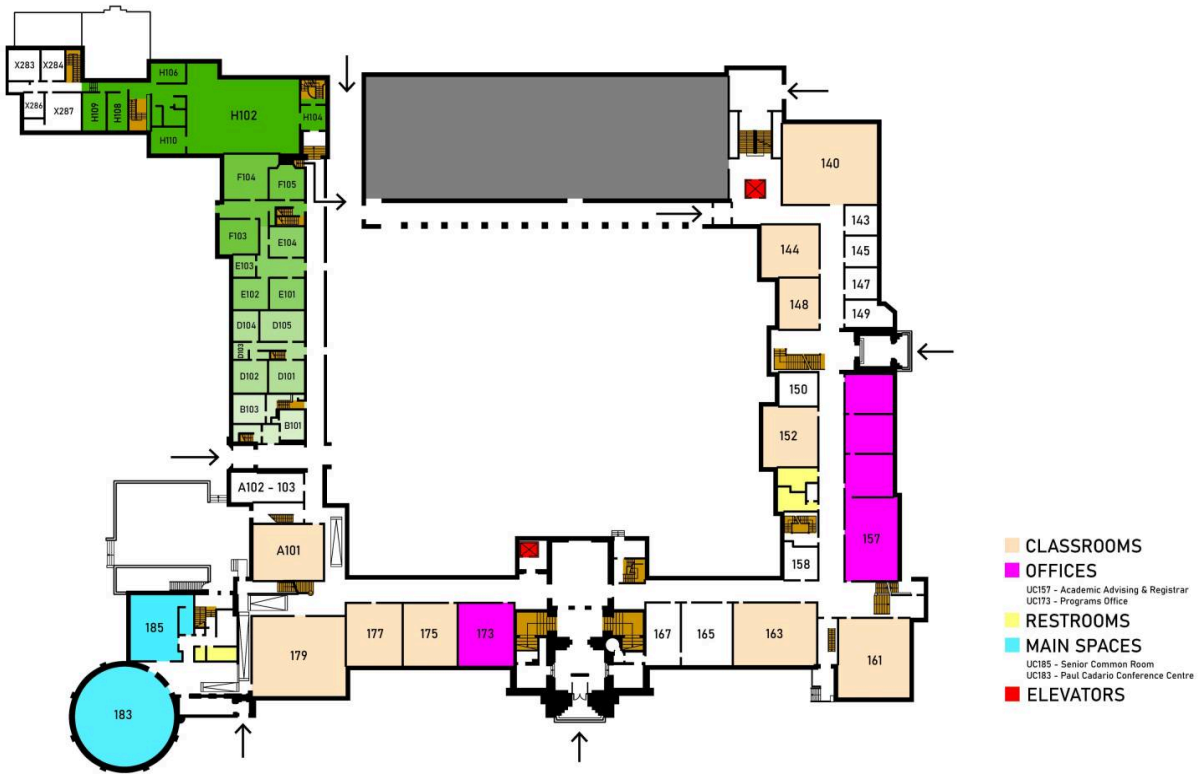
The 2025 Mini Moot will be held in **University College** (15 King's College Cir, Toronto, ON M5S 3H7). We will release room assignments the morning of the competition.

University College Classroom Maps

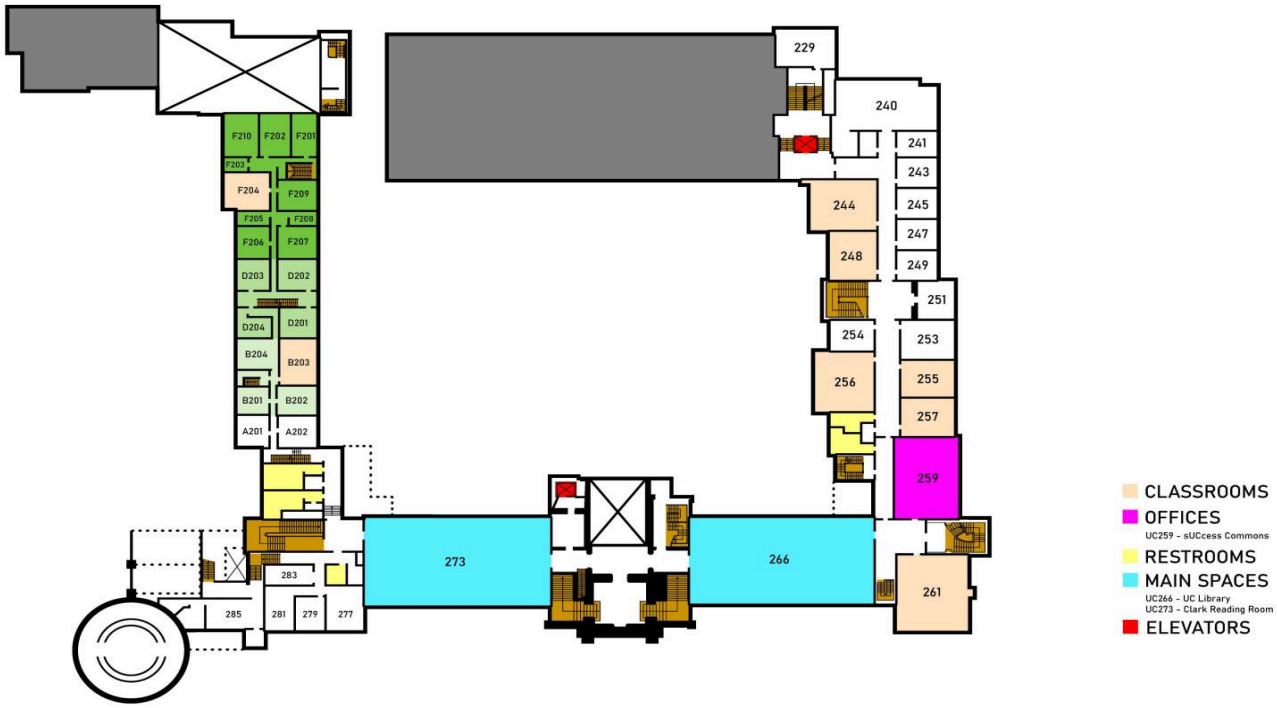
Basement *(Rooms 44, 51, 52, 63, 65, 69)*



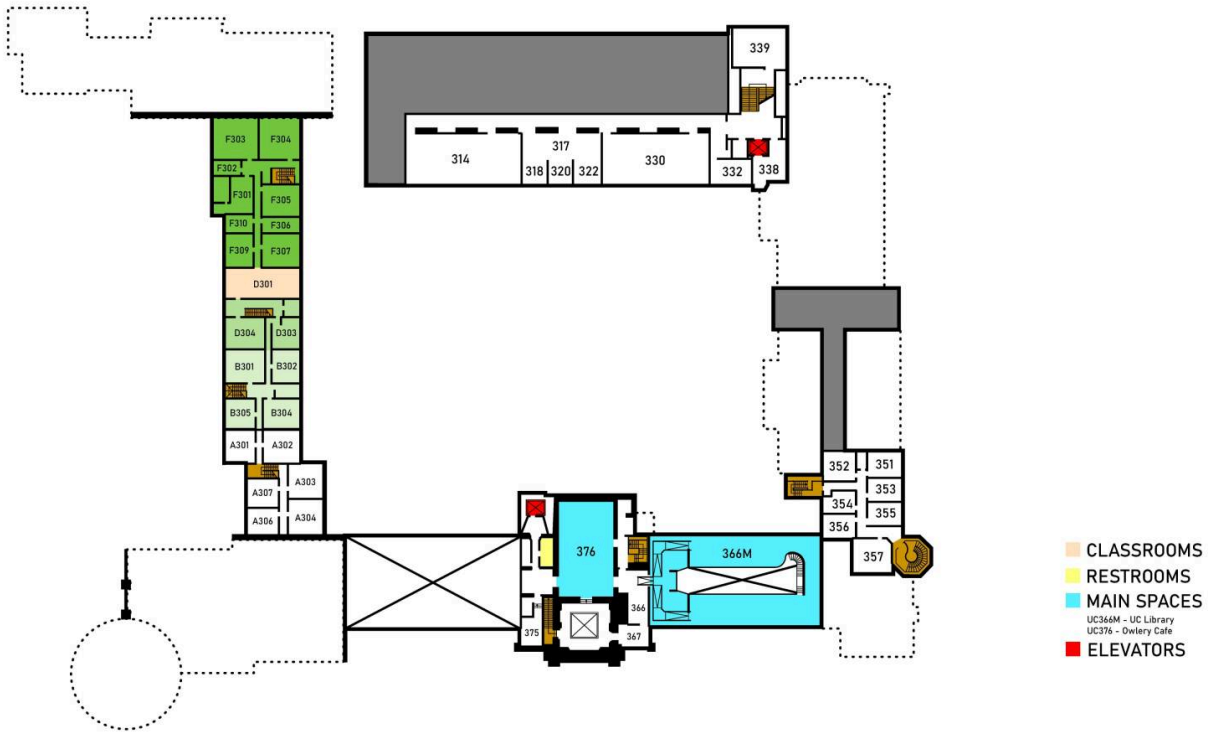
1st Floor *(Room 148)*



2nd Floor *(Rooms 248, 255, 257, B203, F204)*



3rd Floor *(Room D301)*



Tournament Rules

Note on Equity

This case speaks on topics of overdose, addiction and drug use. As we invite you to critically analyze this case and arguments, please ensure that your comments, behaviour and arguments are sensitive to the real-world realities and consequences.

Additionally, our foundational principles in U of T Moot are of respect, dignity and equity. Any behaviour that is disrespectful, discriminatory or inappropriate is not tolerated within our spaces and could lead to consequences such as removal or disqualification. For any more questions please contact the Equity Officer who is available during the tournament in room UC52 or via email at raghad.barakat@mail.utoronto.ca.

Submissions

You will compete in teams of 2 (partner pairings will be released shortly), and each team will prepare submissions for both the Appellant and the Respondent prior to the tournament. Each team will moot each side once during Rounds One and Two. In the Practice, Semi-finals and Final rounds, positions will be decided using a coin flip.
As the fictional St. George Court of Appeal (see decision below) ruled in favour of M.J, the Crown will be appealing to the fictional Supreme Court of U of T (SCU). Thus, **the Crown is the Appellant and M.J. is the Respondent** at the SCU.

- Submissions may only cite material found in this case package. Outside research is not permitted. Any submissions which cite outside research will incur a penalty in the form of a points deduction, subject to the judge's discretion.
- You are allowed to use an electronic device to read your submission, but you may not access **ANY** outside resources while speaking at the podium.
- Submissions must fall within the allotted time (see below). Submissions which exceed the time allowed will incur a penalty in the form of a points deduction, subject to the judges' discretion.
- Use of maliciously harmful language directed towards opposing counsel in submissions will result in disqualification.

Speaking Time Per Round

Round	Time per Speaker	Total per Team
Practice Round	5 minutes	10 minutes
Rounds 1 & 2	5 minutes	10 minutes
Semi-Finals	6 minutes	12 minutes
Final Round	7 minutes	14 minutes

Timing Rules

- Competitors may time themselves using electronic devices (cell phones, watches, tablets).
- Judges will also time speeches and provide notice at 30 seconds and 10 seconds remaining.
- Indulgence:
    - Competitors may request a 30-second indulgence (extension).
    - Requests must be made with **at least** 30 seconds remaining.
    - Judges may grant or refuse the request at their discretion.
- Right of Reply (Appellant Only)
    - The Appellant may request a one-minute right of reply at the end of the round, after the Respondent has finished their arguments.
    - A right of reply is distinct from a rebuttal: a right of reply is not used to further additional arguments, it is **narrowly used to clarify inaccuracies, lies, or legal errors in the respondent's submissions**.

Court Levels

For the purposes of this competition, we have created four fictional courts. Three of these courts correspond to Canada's real court system, and the fourth is an imagined court that exists one level above the Supreme Court of Canada. It is common practice for moot competitions to use this type of fictional "higher court".

Supreme Court of U of T

The court in which you present your submissions during Mini Moot.

U of T Court of Appeal

The case in which you read below and base your submissions off of (functionally equivalent to the Supreme Court of Canada).

St George Court of Appeal

The decisions of which are summarized below (functionally equivalent to the Ontario Court of Appeal).

St George Youth Justice Court

The trial level, the decisions of which are summarized below. (Functionally equivalent to the Ontario Superior Court of Justice)

Disclaimer

The legal tests and case law referenced in this problem are drawn from real Canadian jurisprudence. However, certain facts, details, and contexts have been changed or simplified for the purposes of Mini Moot. Although these are originally Supreme Court decisions, for the sake of this exercise they have been adapted to the fictional Supreme Court of U of T and are therefore binding on the case below. The original case names have been preserved so that participants who wish to explore the issues further can locate and study the full decisions after the competition.

Terminology Bank

Moot Terminology

Appeal: Legal process of asking a higher court to reverse the decision made by a lower court. Presents a challenge to a previous ruling on the same issue.

Adjudication: The legal process of resolving a dispute or deciding a case.

Court of Appeal: A higher court that reviews the trial judge's decision for errors in law.

Trial Judge: The judge who hears the case first and makes the initial ruling.

Application: A formal request to the court for a ruling or order.

Charter: Canada's Charter of Rights and Freedoms. It is part of the Constitution, which protects individual rights such as privacy and fair trials.

Dismissed (Appeal): When the higher court rejects the appeal and keeps the original decision.

Submission: Oral argument presented by a lawyer, meant to persuade the judges to rule in favor of the lawyer's party.

Right of Reply: Oral argument sparingly used to point out dishonesty, misleading, or outlandish straw-manning by an opponent.

Appellant: The party who brought forth the case for the Court to review on appeal.

Respondent: The party whom the appeal is brought against.

Jurisprudence/Case Law/ Precedent: Binding legal precedent and doctrines. Principles/Tests laid out in jurisprudence must be used by all lower Courts as well as the Court that published the precedent barring exceptional circumstances that warrant overturning (i.e., nullifying) precedent. Relying on jurisprudence ensures the Court acts consistently.

Majority Opinion: Binding opinion supported by more than half of the judges. Includes rationale behind the court's opinion.

Concurring Opinion: Opinion by one or more judges that supports the conclusion made by the majority, but via different reasoning.

Dissenting Opinion: Opinion by one or more (but fewer than half) judges that disagrees with the conclusion & reasoning made by the majority.

Case-Specific Terminology

Administration of Justice: The whole system of courts, judges, and legal procedures that uphold the law.

Exigent Circumstances: Emergencies where police can act without a warrant, such as immediate threats to safety.

Exclusion of Evidence: Rejection of evidence that cannot be used in court since it was obtained illegally or unconstitutionally.

Informational Privacy: Privacy relating to personal information.

Intrusiveness: To what extent a search invades someone's privacy.

Section 8 / (s. 8) : The part of the Charter that says everyone has the right to be free from "unreasonable search or seizure."

Section 24(2) / (s. 24(2)): A part of the Charter that says evidence obtained in a way that violates someone's rights may be excluded if using it would damage the justice system's reputation.

Search: Any action by the state to look for evidence in places or things where someone reasonably expects privacy.

Seizure: Taking property or evidence by authorities, usually during an investigation.

Sniffer-Dog Search: Using a trained dog to detect drugs or other substances.

Reasonable Expectation of Privacy: The idea that some places or things are private.

Reasonable Suspicion: Specific, objective facts suggesting possible illegal activity, needed for certain searches.

Reasonableness: The standard used to judge whether a search or action by the state was fair and lawful.

Warrantless Search: A search done without a judge's permission (a warrant), which is generally presumed to be illegal unless justified by law.

Resources for Further Learning

Moot:

Mini Moot Training Camp Slides (Will be provided on or after September 21st, 2025).

Watch and Learn:

The 2025 Osgoode Cup - Finals

UNIVERSITY OF TORONTO MINI MOOT
CASE MEMORANDUM

BETWEEN:

Her Majesty the Queen
Appellant

v.

M.J.
Respondent

ON APPEAL FROM THE COURT OF APPEAL FOR ST. GEORGE

JUDICIAL HISTORY / LOWER COURT DECISIONS:

St. George Youth Justice Court

After M.J. was charged with possession for the purpose of trafficking narcotics, he brought an application to the St. George Youth Justice Court to exclude the evidence under s.24(2) of the Charter. This was on the basis that his s.8 right to be secure against unreasonable search and seizure was infringed. The judge first considered whether the school authorities were acting on behalf of the police. After finding that they did not take any active role in the search, he then turned to consider the reasonableness of the search. He held that two searches were conducted: the sniffer-dog search and the physical search of the backpack by the police officer. He reasoned that because the two searches were not judicially authorized, it was *prima facie* (on its face) unreasonable.

Furthermore, the school authorities had no relevant information on the day of the search. Only that it was possible on any given day that drugs might be found in the school. The judge ultimately ruled that this, while a reasonably well-educated guess, did *not* constitute reasonable grounds to conduct a search. Hence, M.J's s.8 rights were infringed. Accordingly, the judge held that the evidence should be excluded under s.24(2) of the Charter.

St. George Court of Appeal

In a split 2 to 1 decision, the Court of Appeal dismissed the Crown's appeal.

The Court found that the use of a sniffer dog constituted a warrantless and random search. They agreed

with the youth court judge's findings that the search was conducted by the police, not the school, and that because it was warrantless it was *prima facie* unreasonable. The court disagreed with the Crown's argument that A.M's expectation of privacy was so significantly diminished, it became insignificant. A student's backpack serves in some ways as a portable bedroom and study rolled into one, and should be given the same degree of respect as an adult's briefcase. Accordingly, the Court ruled that the evidence should be excluded. Despite the evidence's reliability, admitting it would have significant consequences on student's privacy rights, as it would condone warrantless and suspicionless sweeps in schools. Hence, they dismissed the appeal.

RELEVANT LAW:

The Canadian Charter of Rights and Freedoms

LEGAL RIGHTS

. . .

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

. . .

ENFORCEMENT

EXCLUSION OF EVIDENCE BRINGING ADMINISTRATION OF JUSTICE INTO DISREPUTE

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.

FRAMEWORK APPLIED

R. v. Edwards and *R. v. Collins* established two tests to evaluate s. 8 Charter challenges:

(1) Edwards Privacy Test

This test determines both the existence and extent of a reasonable expectation of privacy. In the test, there are 4-lines of inquiry:

1. What is the subject matter of the search?
2. Does the claimant have a direct interest in the subject matter?
3. Does the claimant have a subjective expectation of privacy in the subject matter?

4. Was the claimant's subjective expectation of privacy objectively reasonable?

If the third and fourth lines of inquiry are answered "yes", go to the *Collins* Search Test. If the answer to either is "no", no search (and, by extension, no violation of s. 8) occurred.

(2) Collins Search Test

This test determines if a search was reasonable. If all of the following questions are answered "yes", then the search was reasonable and s. 8 of the Charter was not violated:

1. Was the search authorized by law?
2. Was the authorizing law, itself, reasonable?
3. Was the manner in which the search was carried out reasonable?

The Grant *Test for a s.24(2) claim*

The *Grant* Test for s.24(2) of the Canadian Charter of Rights and Freedoms, is a three factor test used by courts to determine whether the admission of evidence would bring the administration of justice into disrepute. The factors are:

1. The seriousness of the Charter-infringing: was it deliberate, reckless, or in good-faith?
2. The impact of the breach on Charter-protected interests of the accused: how serious were the accused's dignity, privacy and liberty affected?
3. Society's interest in the adjudication of the case on its merits: Would excluding reliable, crucial evidence undermine truth-seeking and public safety?

After weighing the evidence under each of the three factors, would the admission of evidence obtained by Charter breach bring the admin of justice into disrepute? If the answer is yes, the evidence is excluded under s.24(2). If the answer is no, the evidence is admitted.

MAIN ISSUES ON APPEAL

This appeal raises the overarching question of whether the police's use of drug sniffer-dogs on M.J's backpack infringed his s.8 Charter rights, and if so whether the evidence should be excluded. To answer this question, this appeal considers:

1. Did the canine sniff of the backpack constitute a "search" under s.8 of the Charter?
2. If so, was the search unreasonable?
3. If both (1) and (2) are answered in the affirmative, should the evidence be excluded under s.24(2) of the Charter?

As Appellant, you will represent The Crown.

As Respondent, you will represent M.J.

R v. M.J.

Citation: R. v. M.J., 2008 SGU19, [2008]

Appeal Heard: 2007-04-15
Judgment Rendered: 2008-09-03
Docket: 31946

Between:

Her Majesty the Queen
Appellant

and

M.J.
Respondent

Coram: Gouta, C.J. and Olisa, Fernandes, and Choi JJ

Reasons for Judgment: Gouta, C.J. (Fernandes, and Choi JJ concurring)
(paras. 1 to 20)

Dissenting Reasons: Olisa JJ.
(paras. 21 to 45)

ON APPEAL FROM THE ST. GEORGE COURT OF APPEAL

M.J. was a student at St. Toronto School, in Toronto, Ontario. The school had a zero-tolerance policy for possession and consumption of drugs, a policy which students and parents were made aware of. Drugs were prevalent at the school: parents of students and neighbors of the school made numerous complaints regarding the presence of drugs on school grounds. A month prior to the facts of this case, a student overdosed on narcotics in the school bathroom, prompting stricter enforcement of the policy.

The principal of the school advised the Youth Bureau of St. George Police Services that if the police ever had sniffer dogs available to bring into the school to search for drugs, they were welcome to do so. On prior occasions, the police accepted the principal's invitation, checking the parking lots, the hallways and other areas suggested by the principal. The results of these visits are unknown.

On October 10th, 2002, three police officers decided to go to the school with a sniffer dog. Neither the principal nor the police had any information or suspicion that a specific student had drugs, although the principal said it was "pretty safe to assume that they could be there". The principal used the school's public address system to alert everyone that police were on the premises and that they should stay in their classrooms until the search was over.

The police searched around the school, including the gymnasium. There, the sniffer dog reacted to one of several backpacks that had been left unattended. Without obtaining a warrant, the police opened up the backpack. Inside, they found 9 bags of marijuana, a bag containing 10 magic mushrooms (psilocybin), a lighter, a pipe and some rolling papers. They also found the student's wallet containing their ID card, allowing the police to identify M.J as the owner. M.J. was charged with possession of narcotics for the purposes of trafficking.

At trial, M.J. brought forward an application for exclusion of evidence, arguing that his s.8 rights had been breached. The trial judge allowed the application, finding two unreasonable searches took place: the use of the sniffer dog and the physical search of the backpack. He excluded the evidence and acquitted M.J. The Court of Appeal and SCU upheld the acquittal, which the Crown is now appealing.

Held (Olisa dissenting): The appeal is dismissed.

The judgement of **Gouta** C.J. and Fernandes and Choi, JJ. was delivered by

[1] GOUTA C.J. — After carefully reviewing the factual matrix, I am deeply concerned about the crown's understanding of our constitutional rights and the officers' failure to carry out their duties. The key issues are whether a sniffer-dog sniff of a student's backpack is a s. 8 search, and in what circumstances police may use sniffer dogs in schools. This case concerns a routine crime investigation, not urgent public safety threats.

[2] Students, though on the premises of the school and thus enjoying a diminished expectation of privacy, nonetheless have a reasonable expectation of privacy. There was no statutory or common law authority for this search, and the evidence was properly excluded under s. 24(2) of the *Charter*.

[3] At trial, the judge found that both the canine sniff of the school backpacks and the subsequent physical search violated s. 8 of the Charter, and excluded the evidence under s. 24(2), resulting in an acquittal. The crown now seeks to reinstate the conviction. From this arises three issues:

(1) Whether the canine sniff of the backpack constituted a "search" within the statutory & jurisprudential meaning of s. 8;
(2) If it does constitute a search, whether said search was reasonable ;
(3) If both are (1) and (2) are answered in the affirmative, whether the evidence should be excluded under s. 24(2).

A. Establishing Whether the canine sniff Constitutes a Search Under a s. 8 Application

[4] Despite its clear language, s. 8 seems to remain one of the most elusive provisions.

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

We must remind the courts of the "single most important requirement." Per *Hunter v. Southam Inc.,* it is "reasonableness," generally secured through prior judicial authorization based on objective criteria. Warrantless searches, as convenient and seemingly appealing as they may be, are presumably unreasonable, and the state bears the onus of justification.

[5] Cleverly, I say, the Crown characterizes the sniff as mere detection of odours in public air. We reject that formulation. In *R. v. Tessling*, this Court emphasized that s. 8 protects informational privacy—the ability to control concealed, private information about oneself. A dog with a heightened sense of smell trained specifically to alert to controlled substances does not investigate ambient air in the abstract but rather reveals targeted, content-specific information about a concealed container. The usage of specialized capability unavailable to humans to do a targeted search constitutes a search. It cannot plausibly be argued that the dog sniff is not a search while also treating it as grounds for arrest.

[6] Backpacks, like purses or luggage, are repositories of deeply personal effects. Our jurisprudence recognizes heightened privacy in such containers and in places where personal effects are stored. See *R. v. Buhay.* A student's expectation in a closed backpack is thus objectively reasonable.

[7] The crown argues that because the bag was unattended and in plain view, the expectation of privacy was diminished. However, a plain view of the container (in this case, the backpack) does not

extinguish the privacy of its contents. A safe may be placed in plain view, but its contents remain free from improper scrutiny. The dog was used to penetrate the opacity of the closed bag.

[8] Whilst the Court accepts that school authorities may conduct searches for disciplinary purposes under a relaxed standard, as to maintain security and order within the institution, that does not grant them authority to confer investigative powers to the police. The school setting does not negate *Charter* protection, and I would hope no member of this Court expects students to forsake their *Charter* rights at the front door of the school.

[9] We therefore hold that a canine sniff of a closed backpack amounts to a search under s. 8 because it is the intentional usage of methods by the police to discover concealed, private information about its content, despite a reasonable expectation of privacy.

B. The Existence of Reasonable Suspicion, or Lack Thereof

[10] To the credit of the police, the case of *R. v. Kang-Brown* established the standard governing the rightful usage of warrantless sniffer-dog use by the police. It found that a drug-detection dog may be deployed where reasonable suspicion based on objective, articulating facts is found. This standard accommodates the investigative utility of dogs while preserving *Charter* limits, though reasonable suspicion must be grounded in objectively discernible facts that point to the likelihood of criminal activity at a specific time and place of the search, through the lens of the police officers, based on information available at the time.

[11] As far as I am concerned, the records in the case at bar disclose no contemporaneous intelligence, no behaviour-based indicators, and no disclosure tied to a person or location within the school on the day in question. The principal, in their exaggerated authority, orchestrated this random sweep operation to advance a "zero-tolerance" policy. This suspicion, though generalized and not reasonable, cannot satisfy the *Kang-Brown* threshold.

[12] The Crown contends that the minimal intrusiveness of a sniff and the school's drug problem, evidenced by the overdose that happened in the back of the school last month, justify the sweep. However, this court rejects such reasoning. Minimal intrusion does not cure the absence of lawful authority, and ends-justify-means reasoning holds no weight; minimally invasive searches require objective legal grounds..

[13] The question is not whether the school authorities may cooperate with the police, but rather whether the police had lawful grounds. Common law police powers must be *Charter*-compliant, and private consent flowing from the principal's invitation does not license suspicionless state searches of the public. The principal does not possess the authority to grant police officers with charter-infringing powers, and the police ought not to pretend that he does—which they've failed to acknowledge.

[14] We add that different public-safety imperatives can recalibrate the analysis. Under exigent circumstances, if the police had been called to investigate a credible threat of explosives, the immediacy and gravity of the risk could affect both the grounds and manner of search. Situations such as that of

Hunter v. Southam Inc.. No such exigency, however, existed here; the object was routine crime prevention.

[15] Accordingly, applying *Kang-Brown,* the sniff was a search and, absent reasonable suspicion, and exigent circumstances, the search was not authorized by law. The subsequent opening of the backpack, which ultimately revealed the drugs, cannot be insulated from the initial Charter breach.

C. The Exclusion of Evidence Under s. 24(2)

> *24(2). Where, in proceedings under section (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 circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.*

[16] Under s. 24(2), as expounded in *R. v. Grant*, we consider the following 3 factors to determine the potential exclusion of evidence:

(a) The seriousness of the Charter-infringing state conduct,
(b) The impact on the Charter-protected interests of the accused,
(c) And society's interest in adjudication on the merits.

[17] Looking at the first factor, the seriousness of the breach is clearly significant. The police undertook a school-wide sweep, absent reasonable suspicion—subjecting every student's effects to investigative scrutiny without valid cause. This was not an isolated misstep but rather a planned search, displaying clear disregard for *Charter* constraints. Students ought not to forsake their rights as soon as they enter the intellectual institutions.

[18] Turning to the impact of the breach of the *Charter*-protected interests of privacy, it was substantial. The students were forcefully subjected to submit to an operation that exposed the concealed contents of their personal effects, without consent. These types of intrusions strike at the core and fundamental expectations of privacy and personal security, which every Canadian is entitled to, regardless of whether they are at home or in a school.

[19] Finally, while the physical evidence is reliable and its exclusion impedes adjudication on the merits, the first two factors predominate and outweigh society's interest in the adjudication. To admit the evidence discovered through the warrantless search would condone suspicionless, consentless, and warrantless canine sweeps in schools, and erode public confidence in the administration of justice. I would find it hard to believe that society would benefit from its very future, the young generation, being violated unquestioningly, in the very institutions meant to develop their critical thinking capabilities.

D. Conclusion

[20] The trial judge rightfully arrived at the same conclusions, and deference must be owed to his findings. The failure to respect the rights of the students is serious. The evidence must therefore be excluded under s. 24(2).

We would have the appeal dismissed.

Per **Olisa**, JJ.: The appeal should be allowed.

[21] OLISA J.J — The presence of drugs in our schools is a very serious societal issue. Schools should be free of illegal drugs in order to promote a safe and productive learning environment for students and staff. In this case, a boarding school's zero-tolerance policy for drugs was enforced using a sniffer dog to check an unattended backpack in an empty gymnasium. Both students and parents were informed of this policy and sniffer dogs had been used in the past within the school. Yet the respondent, M.J., claims that the evidence of marijuana and psilocybin found in his backpack by police using a sniffer dog should be excluded on the basis that it was obtained unconstitutionally .

[21] It is my view that M.J. did not have a reasonable expectation of privacy that engaged s.8 of the Charters, and hence, the use of police sniffer dogs does not amount to a search.

A. Applicable Legal Principles

[23] In assessing the s. 8 claim laid out in this case, we apply the following main legal principle from the *Edward's Privacy Test* as summarized:

1) *To determine whether s. 8 is engaged, an accused must establish that they have a subjective expectation of privacy in the subject matter and that their expectation of privacy was reasonable in light of the totality of the circumstances. The alleged privacy interest must be framed in broad and neutral terms.*

[24] It is therefore necessary in the case at bar to first determine whether M.J. had a privacy interest in the subject matter, his backpack.

B. Application to this Appeal: Identifying M.J.'s Alleged Privacy Interest

[25] As already identified by my colleague C.J Gouta, one of the central issues in this appeal is whether the use of a sniffer dog amounts to a "search for the purpose of s.8 of the Charter."

[26] M.J.'s backpack was closed and in a pile with others in the gymnasium of the school when the police officers entered with their sniffer dog. It is important to note that the odours emanating from the backpack could not be detected by the police using their own senses, hence needing to rely on the use of the dog to identify if any of the backpacks contained controlled substances. The dog's positive indication when sniffing M.J.'s backpack enabled the police to ascertain what was inside with a reasonably high degree of accuracy. Accordingly, I have no difficulty in finding that the use of the dog amounted to a search from an empirical perspective. However, what M.J. had to establish was whether the use of the dog amounted to a "search from a *constitutional* perspective, one that implicated a reasonable expectation of privacy that engaged the protection of s. 8." This is the question I will now consider.

[27] Properly characterized, the asserted privacy interest concerned odours that were imperceptible to human senses and emanated from M.J.'s unattended backpack in the school gymnasium.

[28] No personal privacy interest as defined in *R. v. Tessling,* is in issue in this case, since M.J. was not wearing or carrying his backpack at the time of the alleged search. Indeed, he was not present when the back pack was searched. It would be a different case if M.J. had been wearing the backpack when the police were present with the sniffer dog. That could've led to a search of his physical body, which is a violation of one's personal privacy and bodily integrity

[29] The alleged privacy interest in this case has both an informational and a territorial component. For the informational component, as seen in *Kang-Brown*, the odours from M.J. 's backpack might disclose intimate personal details about him. Such as him coming into contact with a controlled substance either as a drug trafficker, an illegal or legal drug user, or being in the company of drug users.

[30] The territorial component of the alleged privacy interest is considerably less significant than what it was in *Kang-Brown*. Whereas the search in that case took place in a bus terminal, the search in the case at bar took place in a school. I will, in greater detail, discuss these factors below when evaluating the reasonableness of M.J.'s expectation of privacy.

[31] Having identified the alleged privacy interest in this case, I will now consider whether M.J.'s expectation of privacy was reasonable.

C. Reasonableness of M.J.'s Expectation of Privacy

[32] I would agree with the Crown that M.J. did not have a reasonable expectation of privacy that engaged s.8 of the Charter. In my view, the trial judge simply assumed that the reasonable expectation of privacy was at stake, and the Court of Appeal did not correct this error in law. So it must be determined whether, in light of the totality of circumstances, including relevant factors discussed in *R v. Tessling*, the dog sniff of M.J. 's backpack involved a reasonable expectation of privacy that M.J. had. Since neither the trial judge nor the Court of Appeal conducted this analysis, it is up to this Court to therefore do so.

[33] To assess this question, it requires us to follow the *Edwards Privacy Test* and consider whether 1. M.J. had a subjective expectation of privacy, and 2. whether his privacy interest was objective and reasonable. I present below a non-exhaustive list of factors to aid in this assessment (*R. v. Kang-Brown*):

- The presence of the accused at the time of the alleged search;
- The subject matter of the alleged search
- Ownership and historical use of the subject matter

- The place the alleged search occurred
- The investigative technique used in the alleged search

[34] In my view, M.J. did not have a subjective expectation of privacy in the case at bar. Students and parents were aware of the drug problem as numerous reports had been made regarding use of drugs on school property. Not only that, they were also aware of the school's zero-tolerance drug policy and of the fact that sniffer dogs might be used. In fact, dogs had been used on multiple occasions to determine whether narcotics were present at the school. No evidence to rebut these facts were presented by M.J. Defiance of school policy must not be confused with an expectation of privacy. Of course, these policies must be implemented in a manner that respects students' privacy. However, the well-advertised means devised and used by the school, i.e. the sniffer dogs, significantly reduced M.J.'s subjective expectation of privacy.

[35] Moreover, there are numerous factors that support a finding that M.J.'s expectation of privacy was not objectively reasonable.

[36] First, the place the search occurred was at a school with a known problem of drug use by students, both on and off school property. A month before the search, a student overdosed on narcotics in the school bathroom, prompting widespread concern and protests from parents, resulting in even stricter enforcement of the zero-tolerance policy. In *M.*, it was held that a student's reasonable expectation of privacy is significantly diminished while they are at school. Students are aware that their teacher and other school authorities are responsible for providing a safe environment in the school. This may sometimes require searches of students and their personal belongings. In the case at bar, involving an unattended backpack on school property, a non-personal search took place. Unlike in *M.,* the police were present with permission of the school's principal in response to a systematic drug problem. The school relied on cooperation with the police in order to ensure a safe and secure learning environment for the benefit of all students and staff.

[37] In essence, the school is a tightly controlled environment, where the appropriate authorities took measures in order to deal with the drug issue. M.J and the rest of the students and staff benefited from an environment that was free from illegal drugs and the harms that they bring. In this respect, the situation in a school, where the environment is controlled for the benefit of those who attend it, is analogous to that of a courthouse, where one has a very low expectation of privacy in respect to one's belongings: see *R. v. Campanella.*

[38] A second factor that supports the finding that M.J's expectation of privacy was not objectively reasonable is the fact that he was not present at the time of the search. Since there were no other students in the school gymnasium during the search, there existed no risk that the dog, on sniffing a backpack

worn by a student, might make a false positive indication leading to — a more intrusive personal search of the student.

[39] The third factor is the fact that M.J.'s backpack was not only left unattended, but also in plain view. While there is nothing to suggest that the backpack was abandoned, the use of a sniffer dog to check an unattended bag left in plain view is less intrusive than the use of a dog to check a bag that is worn or carried by an individual, or placed in a locked compartment out of plain view.

[40] The fourth factor was that the investigative technique used was non-intrusive. It is true that the dog was able to detect drugs in M.J.'s backpack, however it was able to do so without the bag being opened. Moreover, the dog is only trained to detect drugs and alert humans. Therefore, it could not convey any information other than the fact that drugs were present. Thus, the use of a sniffer dog in these circumstances was a less intrusive investigative technique than simply opening M.J. 's backpack without a confirmation from the dog.

[41] Ultimately, the use of a sniffer dog did not intrude unreasonably on M.J.'s privacy interest, since it was extremely limited due to the school environment. Therefore, I find in light of the totality of circumstances, M.J. did not have a reasonable expectation of privacy that engaged s. 8.

D. Reasonableness of the Search

[42] It is not necessary to determine whether the search was reasonable, since I find that M.J. did not have a reasonable expectation of privacy.

F. Exclusion of Evidence under Section 23(2)

[43] It is not necessary to consider excluding evidence under s. 24(2) of the *Charter* since no infringement of a *Charter* right has been established.

E. Conclusion

[44] Schools are places of education and the betterment of youths, and should not become places consumed by drugs, gangs, or violence. It is recognized that students are particularly vulnerable to the dangers posed by illegal drugs and since drugs are easily concealed and their odours imperceptible to humans, school officials often have no choice but to rely on the assistance of well-trained sniffer dogs. In this case, a reasonable expectation of privacy was not established by M.J.

[45] Because I have found that M.J. did not have a reasonable expectation of privacy that engaged s. 8, I would allow the appeal and order a new trial.

Addendum to the St. George Court of Appeal: R. *v.* M.J.

***Note*:** This document is to be referenced by Mini Moot participants in their oral submissions to the Supreme Court of UofT (SCU). It provides an overview of applicable case law as referenced by the St. George Court of Appeal's longer decisions. Apart from what is provided in this addendum, mooters are strictly prohibited from doing outside research. No additional information is needed!

Case Law

Hunter v. Southam Inc., 1984 SCU

Under s. 10(1) of the Combines Investigation Act, the Director of Investigation and Research for the Combines Investigation Branch authorized officers to search the Edmonton Journal premises and "elsewhere in Canada" for evidence of potential anti-competitive practices. A member of the Restrictive Trade Practices Commission (RTPC) certified this authorization under s. 10(3). While the authorization was issued before the Canadian Charter of Rights and Freedoms came into force on April 17, 1982, the search itself took place afterward. Officers arrived intending to search nearly all files, including those of the publisher, while giving no information about the allegations or the scope of the investigation. Southam Inc. challenged the law, arguing that s. 10(1) and 10(3) violated s. 8 of the Charter because they allowed overly broad searches without requiring (1) reasonable and probable grounds or (2) authorization by a neutral and impartial decision-maker independent from the investigative process.

The Supreme Court dismissed the government's appeal and held that warrantless searches are presumptively unreasonable under s. 8 unless the state can demonstrate exceptional circumstances excusing the lack of prior authorization. The Court emphasized that the single most important requirement for a valid search is prior authorization by a neutral and impartial arbiter acting judicially, satisfied on reasonable and probable grounds that evidence will be found. The authorizing person must not be involved in investigative or prosecutorial functions, since neutrality and independence are constitutionally required. Because s. 10(1) and 10(3) lacked both a reasonable-grounds requirement and a proper authorization process; they were declared of no force or effect. **Trent established the foundational rule under s. 8: a search carried out without prior judicial authorization will be unconstitutional unless the state can justify why obtaining a warrant was not feasible in the *circumstances***

R. v. Kang-Brown, 2008 SCU

In a special RCMP operation targeting drug couriers at bus stations, police observed Kang-Brown acting nervously after disembarking from a bus in Calgary. When approached, Kang-Brown denied carrying drugs but appeared anxious when asked to open his bag, pulling it back as

an officer reached toward it. A second officer then brought in a drug sniffer dog, which signaled the presence of narcotics. Police arrested Kang-Brown, searched his bag, and found cocaine. At trial, the judge held the search was lawful because odors escaping from the bag in a public terminal were not private information, and the Alberta Court of Appeal upheld the conviction.

The Supreme Court allowed the appeal. A majority held that a sniffer-dog search is a "search" under s. 8 of the Charter because it reveals concealed information about private belongings. The Court split on the standard required: McLachlin C.J. and Binnie J. accepted a reasonable suspicion standard given the minimal intrusiveness of sniffer dogs, but found the RCMP lacked even that level of suspicion here. LeBel, Fish, Abella, and Charron JJ. went further, holding there was no common law authority for sniffer-dog searches at all absent legislation and thus the search violated s. 8 outright. In dissent, Bastarache, Deschamps, and Rothstein JJ. would have upheld the search, reasoning that the police had reasonable suspicion and used the dog in a minimally intrusive, public setting.

Because the majority found a s. 8 breach, the evidence was excluded under s. 24(2). **The case confirmed that sniffer-dog searches require lawful authority and, at minimum, reasonable suspicion, with Parliament free to set clearer limits through legislation.**

***R. v. Tessling*, 2004 SCU**

In 1999, the RCMP began investigating Tessling after receiving tips from two informants suggesting drug activity in the Kingsville, Ontario area. One informant, whose credibility was untested, alleged that Tessling and a man named Ben were growing and trafficking marijuana. The second, more reliable source reported that a known drug dealer was buying drugs from someone in the area but did not directly implicate Tessling. Police surveillance and electricity usage checks with Ontario Hydro revealed nothing unusual. On April 29, 1999, the RCMP flew an airplane equipped with Forward Looking Infra-Red (FLIR) imaging technology over Tessling's property. FLIR measures heat radiating from a building's surfaces but cannot see through walls or identify the exact source of heat inside. The FLIR images showed heat patterns on Tessling's home consistent with marijuana grow-ops, when combined with the other evidence police had. Relying partly on the FLIR results, police obtained a search warrant and discovered a large marijuana grow operation, drug paraphernalia, and firearms. Tessling was convicted at trial, but the Ontario Court of Appeal ruled that the FLIR flyover was an unconstitutional search of the home under s. 8 of the Charter, excluded the evidence, and entered acquittals. The Crown appealed to the Supreme Court of Canada.

The central issue was whether using FLIR technology without a warrant intruded on a reasonable expectation of privacy protected by s. 8. The Supreme Court allowed the Crown's appeal and restored the convictions, holding that the FLIR flyover did not violate s. 8. Justice Binnie, writing for a

unanimous Court, explained that while the home attracts the highest privacy protections, privacy is not absolute: s. 8 only protects a reasonable expectation of privacy, assessed by the totality of the circumstances. The Court distinguished between personal privacy (protecting one's body), territorial privacy (protecting the home itself) and informational privacy (protecting intimate details of lifestyle and personal choices).

FLIR images, at the time, revealed only heat patterns on external walls; data the Court described as "mundane" and incapable, on their own, of exposing private activities or intimate lifestyle details. The technology could not identify specific activities inside the home, only that heat was being produced. Since the images disclosed no "biographical core" of personal information (unlike diaries, private communications, or bodily samples) the Court held that Tessling had no reasonable expectation of privacy in heat distribution patterns visible on his home's exterior, even if detectable only with technology.

The Court stressed that future technologies might raise new privacy concerns if they become more intrusive or revealing, but based on FLIR's limited capabilities in 2004, the flyover was not a "search" in the constitutional sense. **Warrantless searches remain presumptively unreasonable, but s. 8 is only triggered where a reasonable expectation of privacy exists. Because Tessling failed at this first step, the evidence was properly admitted and the convictions were restored.**

R v. Grant, 2009 SCU

Three Toronto police officers were patrolling a school zone known for crime. Two plainclothes officers saw Grant, a young Black man, staring at them while adjusting his clothing, which raised their suspicion. They directed a uniformed colleague to approach him. The uniformed officer blocked Grant's path, asked for his name and address, and told him to keep his hands visible. The two plainclothes officers then joined in, identified themselves, positioned themselves behind him, and asked if he had anything he shouldn't. Grant said he had "a small bag of weed" and a loaded revolver. Police arrested him, seized the items, and only then told him about his right to counsel.

At trial, Grant argued the evidence violated his s. 9 Charter right against arbitrary detention, his s. 10(b) right to counsel, and s. 8 protection against unreasonable search and seizure. The trial judge found no Charter breaches. The Ontario Court of Appeal held Grant was arbitrarily detained but admitted the evidence under s. 24(2).
The Supreme Court clarified two major points of law:

1. Detention under ss. 9 and 10: A person is detained when, considering the totality of the circumstances, a reasonable person in the individual's shoes would conclude they had no choice but to comply with police direction. This includes psychological detention, not just physical restraint. Factors include police conduct (blocking the path, issuing commands), the setting, and

the individual's age, race, and experience with the justice system. Grant was psychologically detained before admitting to having the gun, so the detention was arbitrary and the right to counsel was violated.

2. Excluding evidence under s. 24(2): The Court replaced the old *Collins* test with a new three-part framework. Courts must consider whether admitting the evidence would bring the administration of justice into disrepute by weighing:
    (a) The seriousness of the Charter-infringing state conduct: Was it deliberate, reckless, or in good faith?
    (b) The impact of the breach on the Charter-protected interests of the accused: How seriously were privacy, dignity, or liberty affected?
    (c) Society's interest in an adjudication on the merits: Would excluding reliable, crucial evidence undermine truth-seeking and public safety?

Here, the police acted in good faith amid legal uncertainty, the gun was reliable, highly probative evidence, and admitting it would not damage long-term confidence in the justice system. The firearm was admitted, but the Court quashed the trafficking conviction, finding mere movement of a gun does not amount to "transferring" under the Criminal Code.

R v. Buhay, **SCU 2003**

Mervyn Buhay rented a locker at the Winnipeg bus depot. After noticing suspicious behavior and smelling marijuana, private security guards opened the locker with a Greyhound agent's master key, found marijuana in a duffel bag, then put it back and called police. When officers arrived, they opened the locker again, without a warrant, and seized the drugs. Buhay was later arrested and charged with possession for the purpose of trafficking.

At trial, the judge held that (1) the security guards were private actors, so the Charter did not apply to their initial search, that (2) the police, however, were state actors and required a warrant to search the locker, since Buhay had a reasonable expectation of privacy in its contents despite the earlier private search and the existence of a master key, and (3) The warrantless police search therefore violated s. 8 of the Charter, and the evidence was excluded under s. 24(2) because admitting it would bring the administration of justice into disrepute.

The Manitoba Court of Appeal overturned the acquittal, calling the police's actions a mere "transfer of control" from the guards to the state and holding no s. 8 breach occurred. The Supreme Court, with a unanimous decision of 9-0, restored the acquittal. Justice Arbour held that:

- The accused's privacy interest was continuous; the police could not bypass the *Hunter v. Southam Inc.* warrant requirement by relying on a prior private search.

- The warrantless police entry into a locked, rented space under exclusive control of the accused constituted both a search and seizure under s. 8.
- With no urgency and no attempt to seek a warrant, the violation was serious. Even though the drugs were reliable, non-conscriptive evidence, excluding them was necessary to maintain long-term confidence in the justice system under the *Collins* test.

The Court emphasized that Charter protections cannot be eroded simply because private individuals uncover evidence first; once the state acts, constitutional standards apply.

R v. Campanella, SCU 2005

In September 1999, while attempting to enter a courthouse in Hamilton for a court appearance on a drug charge, the appellant was required to undergo standard security screening. The courthouse policy required all entrants without security clearance to pass through metal detectors, with manual inspections of bags or purses containing metal. Signs at the entrance warned that all persons would be subject to security searches and that illegal items would result in arrest. The appellant, familiar with the procedure, voluntarily produced her purse for inspection, which contained a small amount of marijuana. She was arrested and charged under s. 4(1) of the *Controlled Drugs and Substances Act*. At trial, she argued the search violated s. 8 of the Charter. Both the trial judge and summary conviction appeal judge rejected this argument, holding the screening lawful. She appealed to the U of T Court of Appeal.

The Court of Appeal dismissed the appeal. Justice Rosenberg, writing for the court, assumed without deciding that the appellant had a reasonable expectation of privacy but held the search was nonetheless constitutional. A valid search must be (1) authorized by law, (2) the law itself must be reasonable, and (3) the manner of the search must be reasonable. Here, the search was authorized under s. 3(b) of the *Public Works Protection Act* and s. 137 of the *Police Services Act*. It was carried out reasonably, and the legislative scheme was constitutionally sound. The Court stressed that courthouse safety is a vitally important government objective given the volatile nature of proceedings and history of courthouse violence. Requiring prior judicial authorization for thousands of daily entrants would be impossible, and random checks risk discriminatory application.

The Court emphasized that s. 8 protections must be assessed contextually. In the courthouse setting, privacy expectations are diminished, the state is not conducting a criminal investigation, and entrants themselves benefit from the reassurance of universal screening.

R v. M.R., SCU 1998

A junior high school vice-principal received reasonably reliable reports from students that a 13-year-old student (the appellant) intended to sell marijuana at a school dance. Acting under school

policy, the vice-principal called an RCMP constable, who arrived in plain clothes and sat silently in the office while the vice-principal questioned and searched the student. During the search, the vice-principal found a cellophane bag of marijuana hidden in the student's sock and handed it to the constable, who arrested the student and advised him of his rights. At trial, the judge held that the vice-principal was acting as a police agent and excluded the evidence under s. 24(2) of the Charter, leading to an acquittal. The Nova Scotia Court of Appeal overturned the ruling and ordered a new trial, holding the search lawful.

The Supreme Court dismissed the appeal (Major J. dissenting). Justice Cory, writing for the majority, held that s. 8 of the Charter applies to public school searches because schools are government actors, but students have a reduced expectation of privacy while at school. Teachers and principals have a duty to maintain safety, order, and discipline, which requires flexibility to act quickly in the face of drugs or weapons. Therefore, a less strict standard than the traditional *Hunter v. Southam Inc.* test applies. A warrant is not required, nor are full "reasonable and probable grounds." Instead, a search by a school authority will be valid if they have reasonable grounds to believe that a school rule is being violated and that evidence will be found, provided the search is conducted reasonably and sensitively. Reasonable grounds may arise from information provided by one credible student, multiple students, or from teachers' observations.

The Court emphasized that school officials are not automatically agents of the police simply because police are present; here, the RCMP officer was passive and the search would have occurred regardless. Accordingly, the vice-principal was acting within his statutory authority under Nova Scotia's *Education Act*, and the search was reasonable. Section 10(b) of the Charter (right to counsel on detention) was not engaged, since requiring counsel during ordinary school discipline would distort the student–teacher relationship and produce absurd results.

Justice Major dissented, finding the vice-principal was effectively a police agent due to the school's policy of involving police, and that the search violated s. 8 because the vice-principal acted without corroborating the student reports. He would have excluded the evidence under s. 24(2), since it was conscriptive and admitting it would harm trial fairness.