Supreme Court Rules on Application of the Charter Overseas

On June 7, 2007 the Supreme Court of Canada ruled that the Charter does not generally apply to the actions of police officers investigating Canadian citizens overseas.

The RCMP suspected Richard Hape, a Canadian businessman with an investment company located in Turks and Caicos, of money laundering contrary to s. 9 of the Controlled Drugs and Substances Act. The RCMP officers in charge of the investigation obtained permission from the Turks and Caicos Police Force (TCPF) to continue their investigation in the foreign country, on the condition that the RCMP would be working under the authority of the TCPF.

At issue was evidence collected from the office of the accused's company in Turks and Caicos; both the RCMP and the TCPF participated in the searches and seizures. The accused argued that the officials' actions violated s. 8 of the Charter, which protects against unreasonable search and seizure, and that the evidence should therefore be excluded under s. 24(2) of the Charter. "The sole issue [before the Court was] was whether s. 8 of the Charter applies to searches and seizures conducted by RCMP officers outside of Canada". [i]

The entire Court agreed that the evidence collected overseas was properly used to obtain a conviction against the accused and should not be excluded. However, the Court did not agree on the extent to which the Charter applied to RCMP officers acting overseas.

Justice LeBel, writing for the five judge majority, held that the Charter did not apply to the searches and seizures conducted under the laws of a foreign government; however, the majority judgement also stated that evidence obtained by Canadian state officials acting overseas would be excluded if its admission would render the trial process unfair.

Justice Bastarache, writing for himself and two others, found that although the Charter did apply to the searches and seizures, s. 8 was not violated. The three judges stated that, "the Charter is flexible enough to permit a reasonable margin of appreciation for different procedures" and held that the actions of the RCMP officers were reasonable given the context. [ii]

The remaining judge (Justice Binnie) said the Charter did not apply on the facts, but refused to consider the issue of whether or when the Charter will apply extra-territorially, stating that, "[t]he Court should decline to resolve such important questions before they are ripe for decision". [iii]

Sources

- R. v. Hape, 2007 SCC 26 (CanLII).

Further Readings

- Janice Tibbetts, "Charter protections end at Canadian border, top court rules" *CanWest News Service* (8 June 2007).
- Jennifer McPhee, "Charter's protections limited abroad" *The Law Times* (18 June 2007).
- Jim Brown, "High court ruling on RCMP actions abroad could have sweeping impact" *Macleans* (7 June 2007).

[i] R. v. Hape, 2007 SCC 26 (CanLII) at para. 24.
[ii] R. v. Hape, 2007 SCC 26 (CanLII) at para. 171.
[iii] R. v. Hape, 2007 SCC 26 (CanLII) at para. 189.