

R. v. L.L.S.: Unreasonable Strip-Searches and the Charter

In [R. v. L.L.S.](#) the Alberta Court of Appeal considered the remedies available when [Charter](#) rights have been infringed.[\[1\]](#)

The facts of the case arose when police were called to the Crisis Unit at the Northeast Community Health Centre in Edmonton. The infant daughter of a seventeen year old woman was seized by the Crisis Unit because the mother was deemed too intoxicated to care for her child.[\[2\]](#) Police were called to the scene, where they witnessed the woman exhibiting “strange behavior” such as attempting to urinate on the floor.[\[3\]](#) The subsequent events resulted in the mother being charged with two counts of criminal mischief and one count of assaulting a police officer.

The first charge of mischief arose when the appellant deliberately set off the sprinkler system in the hospital, resulting in the emergency ward being closed for two weeks.[\[4\]](#)

The second charge of mischief arose when, after being placed in a police car, the appellant kicked out the windshield.[\[5\]](#)

After the two incidents of alleged criminal mischief the appellant was detained at the police station where she was to be strip-searched.[\[6\]](#) When asked to remove her clothes, the appellant proceeded to throw her clothes at the attending officer before inserting her bracelet into her rectal cavity.[\[7\]](#) When the officer attempted to stop her, the seventeen-year-old punched her in the face, resulting in the third charge.[\[8\]](#)

The trial judge found the defendant guilty on both counts of criminal mischief.[\[9\]](#) However, the court ruled that the strip-search was not justified and that it was a violation of *Charter* section 8 (unreasonable search and seizure).[\[10\]](#)

The Supreme Court of Canada ruled in [R. v. Golden](#) that strip-searches cannot be conducted as a matter of routine.[\[11\]](#) Furthermore, because of their “inherently humiliating and degrading nature,” they must be founded upon “reasonable and probable grounds.”[\[12\]](#) No evidence or argument had been placed before the trial judge in *L.L.S.* to support such an invasive procedure.

[Section 24\(1\)](#) grants a trial judge discretion in providing a remedy where a defendant’s *Charter* rights have been violated.[\[13\]](#) Based upon what the trial judge termed “a very strong temporal connection” between the unjustified strip search and the assault, the court opted to provide the “extraordinary” measure of staying the assault charge.[\[14\]](#)

On appeal, the young woman's lawyer argued that the two counts of mischief should also be set aside. However, under the standard of review to which appeal judges must adhere, a trial judge's discretionary selection of a *Charter* remedy should not be interfered with unless there is an error of law.^[15] After reviewing the facts of the case, it was clear to the Court of Appeal that there was no link between the strip-search and the mischief charges, so it would be inappropriate to provide a stay of all charges. The appeal was therefore dismissed.^[16]

^[1] 2009 ABCA 172.

^[2] *Ibid.* at para. 2.

^[3] *Ibid.* at para. 3.

^[4] *Ibid.* at paras. 3, 4, 7.

^[5] *Ibid.* at para. 5.

^[6] *Ibid.* at para. 6.

^[7] *Ibid.*

^[8] *Ibid.*

^[9] *Ibid.* at para. 8.

^[10] *Ibid.* at para. 9.

^[11] 2001 SCC 83. at para 90.

^[12] *Ibid.*

^[13] *Supra* note 1 at paras. 11-12.

^[14] *Ibid.* at paras. 10, 16.

^[15] *Ibid.* at para. 11.

^[16] *Ibid.* at para. 18.