

R. v. Patrick - Is There a Reasonable Expectation of Privacy in Garbage?

Every week, millions of Canadians place opaque plastic bags at the perimeter of their properties - in back alleys and on curbsides - with the expectation that municipal employees will pick them up and deliver them into oblivion. How can the contents of these bags be described? Clearly the householder has no further interest in possessing what he has treated as waste, but is it fair to say that garbage awaiting pick-up has been abandoned? Does the householder have no remaining property and privacy interests in the contents?

In [R. v. Patrick\[1\]](#) the Supreme Court of Canada addressed these questions. *Patrick* is a 2009 appeal of an Alberta case. It probes the limits of the right to be secure against unreasonable search or seizure, as guaranteed by section 8 of the [Canadian Charter of Rights and Freedoms](#).

Mr. Patrick worked from his home in Calgary manufacturing methylenedioxymethamphetamine, the illicit recreational drug commonly known as ecstasy. The detritus of his illegal operation - torn-up copies of chemical recipes, rubber gloves, chemical residue, and so forth - was discarded like any other household trash. Patrick put the plastic bags containing the incriminating evidence on a typical garbage stand, indented into the fence at the back of his yard. A garbage truck drove through the alleyway every week and collected the bags.

Motivated by suspicion, the police decided that an inspection of Patrick's garbage would probably produce enough evidence to justify a search warrant. Officers reached a few inches into the airspace over Patrick's property line and took his bags of garbage.[\[2\]](#) He argued that this was a breach of his section 8 *Charter* right and that any evidence gained from this unreasonable search and seizure ought to be excluded, in accordance with section 24(2) of the *Charter*.[\[3\]](#)

Justice Binnie, writing for a unanimous Supreme Court, recognized two privacy issues at stake in this case. First, what is the reasonable expectation of privacy within the perimeter of a residential property line? Secondly, what privacy interests does a person have in information that can be gleaned from garbage?[\[4\]](#)

Justice Binnie cited former Chief Justice Dickson (who was in turn citing established United States jurisprudence), stating that the constitutional protection from unreasonable search and seizure "protects people not

places.”[\[5\]](#) In other words, although there may be a physical intrusion into a place where privacy is typically expected, it does not necessarily follow that an individual’s privacy rights have been infringed.

Justice Binnie invoked other recent Supreme Court judgments to show how places that are usually associated with privacy do not automatically insure the privacy rights of anyone in that place. For example, a hotel room is a place where people have a normal expectation of privacy, but when it is used as an illegal gambling den, there is no longer a reasonable expectation of privacy.[\[6\]](#) Also, a private dwelling house does not extend privacy to those who do not live there.[\[7\]](#)

The Provincial Court of Alberta’s [trial decision](#) in *Patrick* said that “location is not the litmus test for determining the expectation of privacy.”[\[8\]](#) If a pile of goods happens to spill a few inches over a property line, the privacy interests in it should not be divided at the exact line. Such a precise delineation of where privacy interests begin and end is unreasonable. The Supreme Court agreed with this view, stating that “in assessing the reasonableness of a claimed privacy interest, the Court is to look at the totality of the circumstances.”[\[9\]](#)

The fact that the officer had to extend his arm a few inches into the airspace over Patrick’s property is not enough to establish an invasion of privacy. The physical intrusion by the police was relatively peripheral and the garbage was accessible to all, including “street people, bottle pickers, urban foragers, nosey neighbours, mischievous children, and dogs.”[\[10\]](#)

Satisfied that the case did not turn on a strict interpretation of territorial boundaries, the Supreme Court turned its attention to abandonment. Abandonment is fatal to a reasonable expectation of privacy.[\[11\]](#) If a person treats an item of property in a manner that would lead a reasonable person to conclude that he has given up his assertion of interest in it, then it is abandoned. However, the Court recognized that it could be a misleading oversimplification to characterize the subject matter of the search as merely “garbage” and thus abandoned. Bags of residential waste are “bags of information” that provide a window into the lifestyles inside the home.[\[12\]](#) Justice Abella, in her concurring reasons in *Patrick*, quotes the United States Supreme Court:

A single bag of trash testifies to the eating, reading, and recreational habits of the person who produced it. A search of trash, like a search of the bedroom, can relate intimate details about sexual practices, health and personal hygiene. Like rifling through desk drawers or intercepting phone calls, rummaging through thrash can divulge the target’s financial and professional status, political affiliations and inclinations, private thoughts, personal relationships, and romantic interests.[\[13\]](#)

The [Alberta Court of Appeal](#) considered whether the privacy interest in garbage continues until it becomes anonymous (when it mixes with other garbage at the landfill site). The appeal court recognized the potential absurdity of such a proposition, since some garbage never becomes anonymous (addressed envelopes, for example). Thus, in terms of privacy the landfill site would have to be regarded as an extension of the household.[\[14\]](#)

The Supreme Court decided that Patrick did, in fact, abandon his garbage. He did “everything that was required to commit his rubbish to the municipal collection system” and therefore he no longer had any reasonable privacy interests in it. Since there was no section 8 breach, the evidence obtained was ruled admissible.[\[15\]](#)

Jim Young (May 19, 2009)

Further Reading

Chris Younker, “[Unreasonable Search and Seizure](#)” *Centre for Constitutional Studies* (20 March 2009).

Martha Peden, “[Using Police Dogs to Search People](#)” *Centre for Constitutional Studies* (29 May 2007).

[\[1\]](#) 2009 SCC 17.

[\[2\]](#) *Ibid.* at para.3.

[\[3\]](#) *Ibid.* at para.4.

[\[4\]](#) *Ibid.* at para. 12.

[\[5\]](#) *Ibid.* at para. 14; *Hunter v. Southam Inc.* [1984] 2 S.C.R. 145 at 159; *Katz v. United States*, 389 U.S. 347 (1967).

[\[6\]](#) *Supra* note 1 at para. 16; *R v. Wong*, [1990] 3 S.C.R. 36.

[\[7\]](#) *Supra* note 1 at para. 17; *R. v. Edwards* [1996] 1 S.C.R. 128.

[\[8\]](#) *Supra* note 1 at para. 6; 2005 ABPC 242 at para 36.

[\[9\]](#) *Ibid.* at para. 26.

[\[10\]](#) *Ibid.* at para. 55.

[\[11\]](#) *Ibid.* at para. 22.

[\[12\]](#) *Ibid.* at para. 30.

[\[13\]](#) *Ibid.* at para. 76; [California v. Greenwood](#), 486 U.S. 35 (1988) at 50.

[\[14\]](#) *Supra* note 1 at para. 8; 2007 ABCA 308 at para 26.

[\[15\]](#) *Ibid.* at para. 55.