R. v. Ladouceur: The Constitutionality of Random Roving Vehicle Stops (1990)

On May 31, 1990, the Supreme Court of Canada decided whether police are constitutionally permitted to randomly stop drivers to check their licenses and insurance documents, inspect vehicles, and observe drivers for signs of intoxication.[1]

In Toronto one evening in 1982, two officers randomly stopped Mr. Ladouceur.[2]The police did not suspect that Ladouceur was acting unlawfully in any way. They based their authority for this stop on Ontario highway traffic legislation that grants them broad discretion to stop any vehicle.[3] After the police stopped his vehicle and requested Ladouceur's driver's license and his ownership and insurance documents, he admitted that his driver's licence was under suspension.[4] He was then charged with driving while his license was suspended.[5] In court, Ladouceur argued that randomly stopping his vehicle without suspicion of unlawful activity violated his *Charter* rights.[6]He based this claim upon three *Charter* sections:

- the section 7 right to not be deprived of liberty "except in accordance with the principles of fundamental justice,"
- the section 8 right "to be secure against unreasonable search and seizure," and
- the section 9 right "not to be arbitrarily detained."

Ladouceur argued that his rights had been violated and so the evidence obtained as a result of the random stop should not be admitted into court.[7] While the Supreme Court unanimously concluded that the evidence should be admitted, the nine judges divided sharply on whether Ladouceur's *Charter* rights had been violated. In a narrow 5-4 decision, a majority of the Court concluded that while his rights had been infringed, the infringement did not amount to a violation of the *Charter*. To come to this conclusion, the majority first considered whether his rights had been limited and then, after concluding that they had been limited, asked whether this limit was justifiable. In a previous decision, the Supreme Court had unanimously agreed that setting up check points and randomly stopping vehicles at these points did not violate the *Charter*.[8] In this case, however, the Court was asked to rule on whether it violated the *Charter* to allow for random *roving* stops – that is, stops that could occur anywhere, at any time, at the complete discretion of a single police officer.

Was There a Limitation on His Rights?

Justice Cory, writing for the majority, first considered section 9 of the *Charter* and determined that there had been an arbitrary detention. The reasoning here followed the

earlier decision about random stops at check points.[9] Justice Cory reiterated that the stop qualifies as a detention since the police officers assumed control over Ladouceur's movement by a demand.[10] As well, he stated that the random nature of the stop makes this detention arbitrary.[11] Justice Cory then considered the section 8 right to be secure from unreasonable search and seizure. He found no section 8 violation. He concluded that there was no "search" because there was no intrusion into Ladouceur's "reasonable expectation of privacy."[12]As well, there was no "seizure" since Ladouceur admitted to the police that he could not produce his licence.[13]Justice Cory did, however, point out that in other cases – for example, where the stop leads to seizure of drugs or stolen property – section 8 may be brought into play.[14] Having determined that Ladouceur's right to be free from arbitrary detention had been limited, Justice Cory decided it was unnecessary to consider whether or not his section 7 liberty rights had also been limited.[15]Instead, he moved on to consider whether the limit on the right was justifiable.

Is the Limit Justifiable?

Section 1 of the *Charter* provides that all *Charter* rights are subject "to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." An Ontario statute authorized police to stop vehicles at random, so Justice Cory quickly concluded that the limit is "prescribed by law."[16]Therefore, the real issue in the case was whether the limit was "demonstrably justified in a free and democratic society." To determine whether a limit on a *Charter* right is justified, the courts apply the "*Oakes Test*."[17] In order to satisfy this test, a limit must meet four requirements. First, it must have a pressing and substantial objective. Second, it must by rationally connected to that objective. Third, it must only minimally impair the *Charter*-protected right. And finally, there must be proportionality between the impact on the right and the legislative objective. If any one of these requirements is not met, there is an unjustifiable violation of the *Charter*.
Justice Cory concluded that all of the requirements were met. First he determined that ensuring that vehicles are in safe driving condition and that drivers are licenced, insured, and not intoxicated, is a pressing and substantial objective.[18] The conclusion was based on the large number of traffic accidents and the importance of mechanical fitness in preventing and minimizing the impact of accidents.[19]As well, he pointed to statistics linking uninsured, unlicenced, or intoxicated drivers to higher accident rates.[20] This evidence supported the conclusion that the objective was pressing and substantial. Next, Justice Cory concluded that authorizing police to stop vehicles randomly is rationally connected to these objectives.[21]He stated that stopping vehicles is the only way for police to check a driver's licence and insurance, the mechanical fitness of the vehicle, and whether the driver is impaired.[22]He also pointed out that if police were only able to stop drivers when they had reason to suspect unlawful activity, the factors leading to being caught would be more or less within the control of the driver. As a result, people may be less willing to drive unlawfully if they know they are subject to random stops.[23]As well, he pointed out that traffic check points are often well-known or visible in advance, so they are insufficient for dealing with unlawful drivers.[24] Justice Cory then considered whether the right is minimally impaired and concluded that it is.[25] Here he pointed out that other licenced activities, such as hunting and fishing, are also monitored through random checks.

There is no point in requiring licences for an activity if there is no way to ensure that people who engage in the activity actually have licences.[26] He also pointed out that the stops are usually brief and that drivers are only required to produce a few documents, so the inconvenience to the driver is minimal.[27] Finally, Justice Cory concluded that the limitation is proportional to the legislative objective.[28]He dismissed concerns about the potential for police to abuse this power as unfounded.[29] He based this conclusion on the fact that officers are only able to stop persons for reasons related to the driving of a vehicle, and that police are only justified in asking questions related to driving offences.[30]As well, Justice Cory pointed out that other democratic societies – such as the United Kingdom, New Zealand, and Australia – allowed police to perform similar random stops.[31] Having gone through this analysis, Justice Cory concluded that random vehicle stops are a justified infringement on the right to be free from arbitrary detention, and so the evidence obtained from the police stopping Mr. Ladouceur was admissible.[32]Four other judges agreed with Justice Cory's reasons, so a majority of the Supreme Court upheld random vehicle stops under the Ontario legislation.

The Dissent

Justice Sopinka, writing for the other four members of the Supreme Court, disagreed with the majority's reasoning.[33] Justice Sopinka agreed that random stops are arbitrary detentions that must be justified using the "OakesTest."[34]However, he concluded that such broad, unfettered discretion could not be justified.[35] He agreed that random stops at check points were permissible, but felt that allowing *roving* random stops would go too far:

> This case may be viewed as the last straw. If sanctioned, a police officer could stop any vehicle at any time, in any place, without having any reason to do so. For the motorist, this would mean a total negation of the freedom from arbitrary detention guaranteed by s. 9 of the *Charter*.[36]

Justice Sopinka found no evidence to suggest that roving random stops are necessary to address the problems identified by the majority. Nor was there was any evidence that they are effective in doing so. The available statistics did not show how successful random check points had been in reducing these problems, nor did they provide comparative data that would show whether there had been a reduction in unlawful driving since police had been authorized to randomly stop drivers.[37] He therefore felt that in terms of random vehicle stops, the "outer limits" of what could be justified had been reached when the Court allowed the use of check points.[38] As well, Justice Sopinka expressed concern about the potential for police to abuse this power. He emphasized that it allows vehicles to be stopped at the whim of a single police officer.[39] Unlike check points – where a police officer's behaviour may be kept in check by the presence of other officers – the type of stops considered in this case involved officers stopping drivers in unsupervised situations.[40] He observed that some officers may tend to stop younger drivers, or older cars, or may even employ racial profiling.[41]While the majority felt that this concern was unfounded because the police are limited to lawful uses of this discretion, Justice Sopinka pointed out that the courts and public will never know why an officer actually stopped a given driver. Officers will be able to justify the decision to stop a driver by saying that it was completely random – even if it was not.[42]*Charter* violations could therefore go undetected. For Justice Sopinka, this broad discretion and lack of transparency makes roving random

stops unreasonable. As a result, Justice Sopinka concluded that random roving traffic stops would violate the *Charter*, so the legislation must be interpreted in such a way that it only permits random stops and check points.[43]However, when the police stopped Mr. Ladouceur they believed that they were entitled to do so. For this reason, Justice Sopinka agreed with the majority that the evidence should be admitted in this case.[44] Adam Badari (May 26, 2010)

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[1] *R. v. Ladouceur*, [1990] 1 S.C.R. 1257. [2] *Ibid.* at 1269. [3] *Ibid.*, citing *Highway Traffic Act*, R.S.O. 1980, c. 198, s. 189*a*(1). [4] *Supra* note 1 at 1269. [5] *Ibid.* [6] *Ibid.* at 1270-71. [7] *Ibid.* [8] *R. v. Hufsky*, [1988] 1 S.C.R. 621. [9] *Supra* note 1 at 1276-77, citing *R. v. Hufsky*, [1988] 1 S.C.R. 621. [10] *Supra* note 1 at 1277. [11] *Ibid.* [12] *Ibid.* [13] *Ibid.* at 1278. [14] *Ibid.* at 1277. [15] *Ibid.* at 1278. [16] *Ibid.* [17] *Ibid.* [18] *Ibid.* at 1279. [19] *Ibid.* at 1279-80. [20] *Ibid.* at 1280-83. [21] *Ibid.* at 1283. [22] *Ibid.* at 1284. [23] *Ibid.* [24] *Ibid.* at 1285. [25] *Ibid.* at 1285-87. [26] *Ibid.* at 1286. [27] *Ibid.* [28] *Ibid.* at 1287. [29] *Ibid.* [30] *Ibid.* [31] *Ibid.* [32] *Ibid.* at 1288-89. [33] *Ibid.* at 1262. [34] *Ibid.* at 1263. [35] *Ibid.* at 1264 [36] *Ibid.* [37] *Ibid.* at 1265. [38] *Ibid.* at 1266. [39] *Ibid.* at 1267. [40] *Ibid.* at 1266-67. [41] *Ibid.* at 1267. [42] *Ibid .* [43] *Ibid.* at 1268. [44] *Ibid.*