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Supreme Court considers the rights of trash

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What do you expect when you put your garbage in a receptacle on the curb? Most people expect a municipal worker will put it in a big truck and it will eventually be taken to a dump site and comingled with other garbage.

But think harder, do you think it might be picked up by the police and get sifted through for evidence to establish that you've broken the law?

Or suppose it is examined so your DNA can be scooped up for placement in a databank. Or it is examined so your fingerprints can be collected? I don't think you'd be very happy if anybody sifted through your garbage, let alone the police.

That's because garbage can contain evidence of sensitive and personal information and most people don't want the government poking around in their lives any more than they have to.

Our expectation of privacy may be low but we still have some expectation of privacy in our garbage.

But suppose the police have been trying to get evidence linking someone to a murder and they need one crucial piece of evidence but they can't get that evidence unless they sift through some low life's garbage. They find the evidence and a murder charge is laid but the charge is dismissed because the police didn't have a search warrant to search through the garbage.

Sounds far-fetched? Maybe, but last week the Supreme Court of Canada heard arguments in a case to decide just how private your garbage is.

The case under appeal comes from Alberta. It's not a murder case. It's a drug case. Police took garbage bags from an open garbage can in a receptacle at the back of Russell Stephen Patrick's property.

They did this several times because they had a reasonable suspicion Patrick was operating a drug lab in his home, but didn't have enough evidence for a search warrant. So they decided to go through Patrick's garbage to try to get that evidence.

The bags were green and opaque. So nothing was in "plain sight." The container was inches away from an alleyway. Police had to reach onto Patrick's property to get to the bags. On one occasion they even replaced a bag they took with another garbage bag just in case Patrick was checking the garbage.

From his garbage, police found evidence of an ecstasy pill lab and got a search warrant to allow a search of Patrick's house. The evidence obtained during that search was conclusive: Patrick was producing, possessing and trafficking in a controlled substance.

His only defence was to attack the search of his garbage and the implementation of the search of his house. The trial judge convicted Patrick and the Alberta Court of Appeal upheld the conviction in a 2-1 split decision.

Now it's up to the Supreme Court of Canada to sort out this mess. Odds are our top court will dismiss the appeal and rule the garbage search was legal -- and I don't have any problem with that.

On the specific facts of the Patrick case I'm satisfied the police acted properly and did have reason to suspect criminal activity and could justify the garbage search.

But I don't think the police should have the untrammelled right to conduct speculative fishing expeditions in anyone's garbage.

Yes, I know once you put out the garbage you've abandoned it and all sorts of people can root through it to take out bottles and cans. I know I have no control over it once the city workers pick it up and put it in their garbage trucks. I know once I've put something in the garbage I'm declaring I don't want it.

But that doesn't mean I'm consenting to have the "authorities" put together a dossier on me by examining my garbage.

But if the Supreme Court rules all garbage is available to the police even without any reasonable suspicion of criminal activity that won't bother me too much.

You see, by virtue of publicity given to this case, most intelligent people will be very careful concerning what they throw out and will shred any embarrassing pieces of paper.

It's only the dumb criminals who will be caught out by what they throw in the garbage.

And since most criminals are dumb, that's alright with me.