



Trash? Or treasure trove for police?

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Lawyers argue over whether the state has the right to go through individuals' garbage

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OTTAWA—They were talking trash yesterday at the Supreme Court of Canada, with judges picking through claims about the privacy of the country's garbage.

From orange peels and discarded envelopes to Band-Aids and cotton balls, what gets dragged to the curb can reveal vast details about a person's life.

The implications of allowing police unchecked freedom to comb through household refuse has civil libertarians worried.

"Permitting police to harvest the contents of our garbage, our household waste, is the functional equivalent of looking through the house," Jonathan Lisus, a lawyer representing the Canadian Civil Liberties Association, told a seven-judge panel yesterday.

"At the very minimum, it's the police looking in the window."

Or, as Justice Ian Binnie put it, the "house in a bag" scenario.

But lawyers for the federal government and three provinces, including Ontario, insist Canadians have no privacy claims over their garbage because it's "abandoned" once placed in its container.

"I mean, the whole concept of garbage – it's a euphemism for things discarded," argued Goran Tomljanovic, a lawyer for Alberta's attorney general.

"Hopefully, this is not a garbage submission I'm making," he said.

What brought lawyers from across Canada to the court's opulent surroundings was the case of Russell Stephen Patrick, a former member of Canada's national swim team, who was charged in 2003 with running an ecstasy lab out of his Calgary home.

Acting without a warrant, police reached across his property line, seizing garbage bags containing such things as drug recipes and gloves.

Patrick, who was convicted and sentenced to four years in prison in 2006, argues his Charter right to be free from unreasonable search and seizure was violated.

While an admittedly unsympathetic figure, his case has broader implications. It's expected to determine the extent to which police can search through garbage and whether Canadians have a constitutionally protected privacy interest in their trash.

Without constraints, police would be free to build a database of personal information on Canadians and collect garbage to build profiles of "bad neighbourhoods," the civil liberties association warns.

"This case is not about harvesting DNA in bad neighbourhoods or any sort of Orwellian nightmare," countered Ronald Reimer, representing the federal department of prosecutions. He called garbage

examination a "dreary, labour-intensive job" that police will undertake only in isolated cases, when "they're onto a suspect."

While most municipalities have bylaws restricting how residents can dispose of garbage, what they throw out is largely a matter of choice, Reimer argued yesterday.

But Justice Rosalie Abella challenged him on that theory.

"Leaving aside the question of bylaws, even if there were no bylaw in place, you can't keep garbage in your house forever," she said.

"It's got to go somewhere. Does that diminish an expectation of privacy or does it mean there's no more room to keep this in your home?"

"Sometimes people place things in the garbage precisely because they don't want anyone to see it," added Justice Morris Fish.

Jennifer Ruttan, Patrick's lawyer, spent considerable time trying to persuade the court that, as a starting point, they could find her client's "territorial" right to privacy was violated when police trespassed on his property.

But members of the panel suggested several times that the issue isn't so much where the garbage is located, but whether the occupant of a home can reasonably expect their trash is private.

That's a question with multiple considerations, including whether the items seized were in "plain view."

"What if a racoon knocked over the can?" asked Justice Louis LeBel. If the garbage spilled over the yard, would a resident's privacy interests be any different, he wondered.

"It would be the same as if my 10-year-old son left the door to the house open, as he often does," replied L'Heureux-Dubé.

Intruders may enter, but they're not free to loot.

The court reserved its decision.