
Students' Right Against Search and Seizure

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Today's blog piece is an attempt to explain whether students are, to an extent, protected from search and seizure on school properties. This is a complicated issue that involves Charter arguments, specifically, s.8 of the Charter, which states "Everyone has the right to be secure against unreasonable search and seizure."

While students fit under the definition of "everyone" under s.8 of the Charter, whether a search is unreasonable depends on the grounds for the search, and whether the student would have a reasonable expectation of privacy over the searched items.

Locker Search

The most common form of searches at school is, perhaps, a locker search. School lockers are usually properties of school boards, and students may only use lockers with the school's permission. If, from the outset, a school had advised a student that his or her right to the locker is subject to locker searches, that student would have reduced expectation of privacy. In that case, if the school has reasonable grounds/suspicion to search a student's locker, the school might not be violating that student's Charter rights by conducting the search.

Body Search

The case of *R. v. M.R.M.*, [1998] 3 S.C.R. 393 sheds some light to this issue. In *M.R.M.*, a vice-principal conducted a body search on a student attending a school dance, and found a bag of marijuana in the student's socks. The vice-principal had, before the dance, received information from several students that *M.R.M.* was selling drugs on school property.

The Supreme Court of Canada held that *M.R.M.*'s Charter right was not violated, because the vice-principal had reasonable grounds to believe that the student was in breach of school regulations and that a search would reveal evidence of that breach. The search was conducted in a reasonable and sensitive manner.

Moreover, the Court in *M.R.M.* developed the following principled approach:

- (1) A warrant is not essential in order to conduct a search of a student by a school authority.
- (2) The school authority must have reasonable grounds to believe that there has been a breach of school regulations or discipline and that a search of a student would reveal evidence of that breach.
- (3) School authorities will be in the best position to assess information given to them and relate it to the situation existing in their school. Courts should recognize the preferred position of school authorities to determine if reasonable grounds existed for the search.
- (4) The following may constitute reasonable grounds in this context: information received from one student considered to be credible, information received from more than one student, a teacher's or principal's own observations, or any combination of these pieces of information which the relevant authority considers to be credible. The compelling nature of the information and the credibility of these or other

sources must be assessed by the school authority in the context of the circumstances existing at the particular school.

Sniffer Dogs

In *R. v. A.M.*, 2008 SCC 19, the police visited a school and used sniffer dogs to sniff out students' backpacks. The police found marijuana and magic mushrooms in a student's backpack.

The Supreme Court of Canada held that the dog sniff violated A.M.'s Charter rights, because the police had searched the backpacks without a warrant, and a student would have reasonable expectation of privacy when it comes to backpacks.

The issue of search and seizure on a school property often comes up when there are drugs and weapons involved. A student in that situation likely requires assistance of a criminal law lawyer.

While our office does not provide criminal law services, we would gladly assist a student facing suspension or expulsion as a result of a locker search, body search, or dog sniff. Once again, our legal services are free.