**SNIFFER DOGS, SCHOOL SEARCHES, AND THE CHARTER: R. v. A.M.**

**R. v. A.M. [2008] 1 S.C.R. 569, 2008 SCC19**

**FACTS**

In 2002, A.M. was a student at St. Patrick’s High School in Sarnia, Ontario. The school had a zero-tolerance policy towards drugs that was well known by students, faculty, and parents.

The principal of St. Patrick’s, Mr. Bristo, had offered a standing invitation to the local police to search the school whenever they had the resources to do so. On November 7, 2002, the local police arrived at the school and requested permission to bring in their sniffer dog, Chief, to search the premises. The police had no specific reason to suspect that drugs were at the school that day and would not have been able to obtain a warrant to search the premises. Sniffer dogs are trained to alert to the presence of odours associated with drugs (i.e. the smell of marijuana). Mr. Bristo agreed, and the police proceeded to bring the dog through the school. During the search, students were told to remain in their classrooms while Chief inspected students’ lockers. After completing a sweep of the halls, the officer asked the principal if there were any other locations to search. The principal took the officer to the gymnasium, where a number of backpacks were lined up against the walls.

In the gymnasium, Chief indicated the presence of drugs in one of the bags, the one which belonged to A.M. The police opened the backpack where they found ten bags of marijuana, a bag containing approximately ten “magic mushrooms”, a bag containing a pipe, a lighter, rolling papers and a roach clip. The police also found A.M.’s wallet and identified A.M. as the owner of the backpack. A.M. was arrested and charged with possession of drugs with the intent of trafficking. At trial at the Ontario Court of Justice, A.M. argued that his constitutional rights had been infringed by the police search, and therefore the evidence gathered by the police during the search should be inadmissible under section 24(2) of the Charter. Section 24(2) allows a court to exclude evidence that is gathered by breaching someone’s rights.

The Youth Court judge found that there were two searches conducted on November 7, 2002. The first search was conducted by the sniffer dog, which alerted police to the presence of drugs. The second search was the physical searching of A.M.’s backpack by the police officer. The judge found that both of these searches were ‘unreasonable’, and therefore unconstitutional and excluded the evidence. The Crown appealed this ruling to the Court of Appeal for Ontario. The Court of Appeal agreed with the earlier ruling that the searches were ‘unreasonable’. The Crown appealed the decision to the Supreme Court of Canada.

**ISSUES**

The Crown’s Charge: Controlled Drug and Substances Act: s.4 subsection 2a) possession with intent to traffic

A.M.’s defence: *The Charter of Rights and Freedoms,* Sections 8 and 24

8. Everyone has the right to be secure against unreasonable search or seizure.

24(2). Where…a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

The Supreme Court was asked to consider the following questions:

1. Did the police possess the legal power to use drug sniffer dogs? If so, are there limitations to this power?

2. Did the use of the drug-sniffing dog in these circumstances amount to a “search” under section 8 of the Charter?

3. If it was considered a “search”, was there a violation of A.M.’s section 8 right?

4. If there was a section 8 violation, should the evidence be excluded in the criminal case against A.M.?

**DECISION**

The nine judges of the Supreme Court of Canada considered whether sniffer dog searches are constitutional, and then looked at how they should be used in the school environment.

1.A majority of judges decided that the police did have the legal authority to use drug-sniffing dogs in order to investigate crimes but that this investigatory power must be used in a way that is consistent with the Charter. Therefore, to comply with Charter protection, the Court agreed that police could only use drug-sniffing dogs (without a warrant), when there was a “reasonable suspicion” that drugs would be found.

2. The Majority found that the drug dog search was a search under section 8 of the Charter but paid particular attention to the fact that the search took place at a school. The Court acknowledged that staff members of a school are responsible for maintaining order in the school, while police are responsible for criminal investigations. The Court compared the backpacks of students with the briefcases and purses of adults. The Majority stated that business people would consider it absurd to have the contents of these cases and bags searched at random by the police. Therefore, students could expect similar protection from arbitrary police searches. The personal contents of backpacks, particularly for young students who spend much of their time at school and are effectively living out of their book bags, are private. Therefore the drug dog search is a “search” within the meaning of section 8 of the Charter.

3. Having established that a search did take place at the school, the Court considered whether the search was based on a ‘reasonable suspicion’. Neither the school authorities nor police had any specific information that drugs were on the school grounds on November 7, 2002. The officers’ “reasonably well-educated guess” that there would be drugs somewhere on school property on any given day was not sufficient. Thus, the search was unreasonable and a violation of A.M.’s rights.

4. Section 24(2) of the Charter allows for the admission of evidence, despite a Charter violation, unless the inclusion of the evidence would “bring the administration of justice into disrepute”.

The Court considered two major competing values: the Charter rights of students, and expediency of police investigations. Expediency refers to the ability of police to use their resources as efficiently as possible. The Court agreed with the findings of the lower courts that the evidence should not be admitted. By excluding the evidence in A.M.’s case the Court was encouraging police forces to respect the Charter rights of students.

**Questions**

1. Do you agree with the Court’s decision to not allow this evidence? Explain your opinion.
2. How much power should police have to search students within the school setting? Explain your answer.
3. What is the legal significance of this case? Does it set a precedent?