

SCC ruling notes problem people of colour have with police

By Paul Russell, AdvocateDaily.com Contributor



The Supreme Court of Canada's recent [decision](#) to set aside a man's gun- and drug-related convictions because he was arbitrarily detained and searched is another reminder to police about the need to respect people's rights, says Toronto criminal lawyer [Jacob Stilman](#).

"With this decision, the Supreme Court is upholding good fundamental Charter values and bolstering some Charter principles that seem to be getting watered down," says Stilman, partner with [Lo Greco Stilman LLP](#).

He cites a Canadian Press [story](#) about a 20-year-old Asian-Canadian man who was chatting with four young black men in a backyard of a community housing complex in Toronto one night when police officers showed up.

Two officers entered the yard without consent or a warrant and began asking questions and requesting identification, the story states, while a third officer stepped over a low fence and asked the 20-year-old man about the contents of a satchel he was carrying. The man fled but was apprehended a short distance away, with his satchel found to contain a loaded handgun, cocaine and a considerable amount of cash.

The trial judge ruled police legally detained the man, who unsuccessfully challenged the conviction in the Ontario Court of Appeal. He took the case to the Supreme Court, with the high court ruling the actions of police amounted to arbitrary detention and a violation of the man's rights.

"This is an important decision from the standpoint of emphasizing fundamental sections eight and nine rights of the Canadian Charter, which protect everyone from being illegally searched and arbitrarily detained," Stilman tells AdvocateDaily.com .

"I think what caught the public's attention with this case is that the court took significant notice of the problem people of colour face when they come into contact with the police, and it applied a very subjective interpretation, trying to understand the position of these individuals."

Stilman says this decision shows that the court understands people of colour have different experiences with the police than others.

The judgment states, "we have arrived at a place where the research now shows disproportionate policing of racialized and low-income communities ... another example of a common and shared experience of racialized young men: being frequently targeted, stopped, and subjected to pointed and familiar questions."

Stilman says the court understood that minorities in Toronto have "fraught relationship with the police, and that informs their actions."

Court documents state the police must "comply with the Charter in all neighbourhoods" and respect everyone's rights equally.

"The conduct of the police in a Rosedale backyard should be no different than their conduct in public housing backyards. They can't just unlawfully enter and start bugging people they don't like the looks of," says Stilman.

He says this verdict should remind police about their duties to uphold everyone's rights equally.

"The police officers knew they were trespassing and that they possessed absolutely no authority to do what they did, but they also knew they usually get away with it," Stilman says.

He says that front-line officers have to make difficult judgment calls as situations arise, and they may take certain liberties.

“Policing is dynamic. Sometimes their actions are going to fall on the correct side of the law, and they will be vindicated in court, and other times they are going to be called out on it,” Stilman says.

With the court throwing out the evidence about the loaded gun and drugs being found on the man, he says the judgment goes well beyond paying lip service to the idea of upholding Charter rights for all individuals.

“I think that the lessons contained in this verdict will probably come down through the police force, but it should have come down 20 years ago, so what does tell us?” Stilman asks.