

SCC peels back curtain on police actions as trespassers

By AdvocateDaily.com Staff



The Supreme Court of Canada came down hard on the actions of police “as trespassers on private property” when it set aside a man’s drug and gun convictions, says Toronto criminal lawyer [Jacob Stilman](#).

A 3-2 majority of the nation’s top court recently [ruled](#) that the 20-year-old’s Charter rights were breached when he was arbitrarily detained by police who stepped into a backyard to question him without reasonable cause.

After fleeing the scene, the man was arrested when police caught up and found his bag contained a loaded handgun, cocaine and a large sum of cash.

“This decision really speaks to the actions of the police,” Stilman, a partner with the litigation and criminal law firm [Lo Greco Stilman LLP](#), tells AdvocateDaily.com. “They don’t really give the police any allowance for their behaviour, and it peels back the curtain so that their actions as trespassers on private property are not being condoned.”

According to the decision, the defendant was speaking with four men in the backyard of a house that police had been alerted to as a “problem address” by a security guard for a housing co-op, who said he had concerns about drug trafficking on the property.

After two officers stepped into the yard through a fence opening — without a warrant or consent — to question the men and request identification, a third stepped over the low barrier and demanded one of the men put his hands in front of him.

The defendant told one officer he had no identification on him and then ran away when asked what was in the bag he was carrying. He was caught nearby with the gun, money, and drugs.

At trial, a judge rejected the man’s claim that his Charter rights were violated because he was arbitrarily detained and unreasonably searched. The province’s appeal court upheld that finding, but the majority of the five-judge Supreme Court disagreed.

Characterizing the police as trespassers whose mode of entry “would be seen as coercive and intimidating by a reasonable person,” they concluded the interaction met the test for arbitrary detention, in violation of s. 9 of the Charter.

The majority added that it was unlikely the police would have behaved similarly in a more affluent and less racialized area.

“The reputation of a particular community or the frequency of police contact with its residents does not in any way license police to enter a private residence more readily or intrusively than they would in a community with higher fences or lower rates of crime,” they wrote. “Indeed, that a neighbourhood is policed more heavily imparts a *responsibility* on police officers to be vigilant in respecting the privacy, dignity, and equality of its residents who already feel the presence and scrutiny of the state more keenly than their more affluent counterparts in other areas of the city.”

In addition, Stilman says the decision is contrary to recent jurisprudence on s. 24 (2) of the Charter, which concerns the exclusion of evidence obtained via a breach of the defendant’s rights.

“More evidence is going in than staying out, and to keep out a piece of physical evidence like a gun often requires a demonstration of bad faith by the police,” he explains. “In this case, the court found the breach necessitated that the evidence be excluded and that is something defence lawyers can build on in similar cases.”