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# MEMO

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**To:** You (counsel for the Respondent Crown)

**From:** Senior Crown Attorney

**Date:** September 18, 2018

**Re:** *R v Le*

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We act for the Crown in this criminal appeal to the Supreme Moot Court of Dalhousie. I need you to write the factum and argue the appeal for me.

The appellant's factum is due on Friday October 26, 2018 at 9:00 a.m. I recommend that you complete a draft of your factum before you receive the appellant's factum – you can always revise your draft to address any additional points the appellant raises that you didn't anticipate.

Our factum is due on Friday, November 2, 2018 by 9:00 a.m. and must be filed electronically via Brightspace. We must also provide a copy to opposing counsel.

The appeal will be heard during the week of February 4-7, 2019. I am scheduled to be out of town for a preliminary inquiry that week. You will need to check the Court's docket to determine the exact date and time of the appeal. Should the appeal be delayed by inclement weather, it will likely be rescheduled for the same time the following week. Please keep this time available if possible.

I've summarized some of the relevant facts of the case and set out the grounds of appeal to which we have to respond. Feel free to use any other facts mentioned in the lower courts' decisions, if you think they might be useful.

Good luck!

## Facts

On the evening of May 25, 2012, Tom Le (age 20) was hanging out with four friends in a friend's backyard in downtown Toronto. Around 10:40 p.m., three police officers arrived. They had been directed to the townhouse by security guards, who advised that a man

police were searching for had been hanging out in the backyard of the townhouse. The guards told police the townhouse was a “problem address” and there were concerns about drug trafficking there. The townhouse is located in a Housing Co-operative that has been plagued by a very high level of violent crime, most of which is associated with gangs, guns, and drugs. The officers were aware of this history.

The officers proceeded to the townhouse via a footpath. When they arrived at the townhouse, the officers observed five young men in the back yard. The men were just talking. Two of the officers walked through an opening in the waist-high fence and began to question the young men. They did not ask permission to enter. None of the men objected to their presence. The third officer joined them a short time later. Their purpose was to determine if any of the young men were the man they were seeking and to investigate whether the young men were entitled to be in the back yard, or were trespassing. They began questioning the men and asking them for identification, including Mr. Le.

They noticed that Mr. Le appeared to be blading his body (turning so as to keep a satchel he had slung across his shoulder away from the officers), which police are trained to associate with possession of a firearm. When an officer asked what he had in the bag, Mr. Le bolted from the yard. Less than a minute had elapsed since the officers arrived. Two officers gave chase and tackled Mr. Le to the ground on a nearby street. They discovered a loaded gun in his satchel. He was also carrying two cell phones, a large amount of cash, and a quantity of cocaine.

Mr. Le was charged with 10 offences. At his trial, he argued that police violated his rights under ss 8 and 9 of the *Charter* by entering the backyard without permission and questioning Mr. Le and the others.

The parties agree that if the evidence is admissible, it establishes Mr. Le’s guilt beyond a reasonable doubt with respect to the gun and drug offences.

Mr. Le was convicted at trial after the trial judge found that there were no *Charter* breaches, and even if there had been, he would have admitted the evidence. Mr. Le’s appeal to the Ontario Court of Appeal was dismissed, with Lauwers J.A. dissenting. We have appealed to the Supreme Moot Court of Dalhousie on the following grounds:

**First Issue:**

1. Did Mr. Le have a reasonable expectation of privacy in his friend’s backyard, such that police entry into the backyard violated his s 8 *Charter* rights?

**Second Issue:**

2 (a) Did police arbitrarily detain Mr. Le in violation of his s 9 *Charter* rights?

(b) If there was a breach of Mr. Le’s *Charter* rights under s 8 and/or 9, should the evidence be excluded pursuant to s 24(2) of the *Charter*?

## Sources

You will want to start by reading the lower courts' reasons. You will find the Ontario Court of Appeal's reasons at 2018 ONCA 56. The ONCA appended the trial judge's reasons as a Schedule A to their reasons, but you can also find the trial judge's reasons at 2014 ONSC 2033.

The Supreme Moot Court of Dalhousie prefers that counsel cite only the most relevant cases and authorities. You may cite up to seven cases on each issue, any relevant legislation you feel should be brought to the Court's attention, and up to two secondary sources. You may cite *R v Edwards*, [1996] 1 SCR 128 and *R v Grant* 2009 SCC 32 without these cases counting toward your seven case limit.

Counsel arguing issue #1 should be aware that the Supreme Court of Canada has reserved decision on another reasonable expectation of privacy case, *R v Jarvis* (case #37833). It was argued in April 2018, so the decision may come down before our appeal is heard. If the decision does come down before we argue this appeal, Prof. Chewter will let you know whether you will be permitted to refer to the SCC's reasons in *R v Jarvis* in argument.