

Her Majesty The Queen (respondent/respondent) v. Terrance Parker (applicant/appellant)
(C51187; 2011 ONCA 819)

Indexed As: R. v. Parker (T.)

Ontario Court of Appeal
Rosenberg, Sharpe and Juriansz, JJ.A.
December 22, 2011.

Summary:

The accused wished to access marijuana for medicinal purposes but did not have an authorization to possess marijuana issued under the Marihuana Medical Access Regulations. He was notified that a package of marihuana addressed to him had been seized by Canada Post and turned over to police. The accused applied for the return of the seized marijuana (Controlled Drugs and Substances Act, s. 24).

The Ontario Court of Justice, per Clements, J., dismissed the application. The accused appealed.

The Ontario Superior Court, per Tulloch, J., in a decision reported [2009] O.T.C. Uned. N34, dismissed the appeal. The accused appealed again.

The Ontario Court of Appeal dismissed the appeal. The accused failed to demonstrate that he was lawfully entitled to possess marijuana.

Narcotic Control - Topic 574

Offences - Possession - General - The accused, who wished to access marijuana for medicinal purposes, applied to have seized marijuana returned (Controlled Drugs and Substances Act (CDSA), s. 24) - The application was dismissed by Clements, J., a decision affirmed on appeal by Tulloch, J. - The accused appealed, arguing that the combined effect of R. v. Parker (ONCA 2000) and Hitzig v. Canada (ONCA 2003) was that all marijuana offences had been completely repealed - The Ontario Court of Appeal stated that that argument was based on a misreading of the law - Following Hitzig, the court had repeatedly confirmed that the marijuana offences in the CDSA remained in full force - Tulloch, J., was correct to find that Clements, J., made no error of law in that respect - See paragraphs 23 to 26.

Narcotic Control - Topic 574

Offences - Possession - General - The accused, who wished to access marijuana for medicinal purposes but did not have an authorization to possess marihuana (ATP) issued under the Marihuana Medical Access Regulations (MMAR), applied to have seized marijuana returned (Controlled Drugs and Substances Act (CDSA), s. 24) - The application was dismissed by Clements, J., a decision affirmed on appeal by Tulloch, J. - The accused appealed, arguing that: (1) the combined effect of R. v. Parker (ONCA 2000) and Hitzig v. Canada (ONCA 2003) was that all marijuana offences had been completely repealed; and (2) the decisions in Sfetkopoulos v. Canada (FC and FCA 2008) and R. v. Beren (BCSC

2009) invalidated the marijuana prohibitions retroactive to at least December 3, 2003, when the MMAR were enacted - The Ontario Court of Appeal rejected the accused's arguments and dismissed the appeal - See paragraphs 28 to 32.

Narcotic Control - Topic 700

Offences - Trafficking - General - [See both **Narcotic Control - Topic 574**].

Narcotic Control - Topic 831

Offences - Cultivation or production - General - [See both **Narcotic Control - Topic 574**].

Narcotic Control - Topic 2010

Search and seizure - General - Return of controlled substances (incl. appeals) - The accused applied for the return of seized marijuana (Controlled Drugs and Substances Act, s. 24) - The Ontario Court of Justice (Clements, J.) dismissed the application - The accused appealed - The Ontario Superior Court (Tulloch, J.), ruled that he had jurisdiction to hear the appeal under the summary conviction appeal provisions in s. 40 of the Courts of Justice Act (CJA), but dismissed the appeal - The accused appealed - The right of appeal issue was raised - The Ontario Court of Appeal determined that the accused did not have a right to appeal under s. 40 as provincial rights of appeal had no application - However, the accused had a right to review the decision of Clements, J., by way of certiorari - On the merits, the appeal was dismissed - See paragraphs 18 to 22.

Cases Noticed:

- R. v. Krieger (G.W.) (2000), 307 A.R. 349; 2000 ABQB 1012, *refd to.* [para. 2].
R. v. Parker (T.) (2000), 135 O.A.C. 1; 49 O.R.(3d) 481 (C.A.), *refd to.* [para. 2].
Sfetkopoulos et al. v. Canada (Attorney General) (2008), 323 F.T.R. 146; 2008 FC 33, *affd.* (2008), 382 N.R. 71; 2008 FCA 328 *refd to.* [para. 2].
R. v. Beren (M.D.) et al., [2009] B.C.T.C. Uned. 429; 2009 BCSC 429, *refd to.* [para. 2].
Hitzig et al. v. Canada (2003), 177 O.A.C. 321; 231 D.L.R.(4th) 104; 177 C.C.C.(3d) 449 (C.A.), *refd to.* [para. 10].
R. v. J.P. (2003), 177 O.A.C. 313; 67 O.R.(3d) 321 (C.A.), *refd to.* [para. 11].
R. v. Malmo-Levine (D.) et al., [2003] 3 S.C.R. 571; 314 N.R. 1; 191 B.C.A.C. 1; 314 W.A.C. 1; 2003 SCC 74, *refd to.* [para. 19].
Kourtessis et al. v. Minister of National Revenue et al., [1993] 2 S.C.R. 53; 153 N.R. 1; 27 B.C.A.C. 81; 45 W.A.C. 81, *refd to.* [para. 19].
R. v. Meltzer and Laison, [1989] 1 S.C.R. 1764; 96 N.R. 391, *refd to.* [para. 19].
Knox Contracting Ltd. and Knox v. Canada and Minister of National Revenue et al., [1990] 2 S.C.R. 338; 110 N.R. 171; 106 N.B.R.(2d) 408; 265 A.P.R. 408, *refd to.* [para. 19].
R. v. Lergie (1981), 63 C.C.C. (2d) 508 (Ont. C.A.), *refd to.* [para. 22].
Fleming v. R. - see *Gombosh Estate v. R.*
R. v. Gombosh Estate - see *Gombosh Estate v. R.*
Gombosh Estate v. R. (1982), 1 C.C.C. (3d) 323 (Ont. H.C.J.), *affd.* (1983), 3 C.C.C. (3d) 575, *revd.* [1986] 1 S.C.R. 415; 66 N.R. 133; 15 O.A.C. 159; 25 C.C.C.(3d) 297, *refd to.* [para. 22].
R. v. Turmel (J.C.) (2003), 177 O.A.C. 312; 231 D.L.R.(4th) 190 (C.A.), *refd to.* [para. 24].

R. v. Ethier (M.D.), [2011] O.A.C. Uned. 525; 2011 ONCA 588, reld to. [para. 25].
R. v. Mernagh (M.), 2011 ONSC 2121, reld to. [para. 34].

Statutes Noticed:

Controlled Drugs and Substances Act, S.C. 1996, c. 19, sect. 24 [para. 1].
Controlled Drugs and Substances Act Regulations (Can.), Marihuana Medical Access Regulations, SOR/2001-227, generally [para. 12].
Courts of Justice Act, R.S.O. 1990, c. C-43, sect. 40 [para. 19].
Marihuana Medical Access Regulations - see Controlled Drugs and Substances Act Regulations (Can.).

Counsel:

Terrance Parker, in person;
Jonathan Dawe, amicus curiae;
James Gorham, for the respondent.

This appeal was heard on November 7, 2011, before Rosenberg, Sharpe and Juriansz, J.J.A., of the Ontario Court of Appeal. The following decision was released by the court on December 22, 2011.

Appeal dismissed.

Editor: Elizabeth M.A. Turgeon