

**University of Toronto Faculty of Law
Problem – Grand Moot 2010**

1. The nation of Flavelle is a Parliamentary Democracy with a system of Government, Constitution, judicial system, statute law and common law history identical to that of Canada.
2. Flavelle is a member of the Club of Twenty (“C20”) which is an expansion of the Club of Eight (“C8”). The C20 is a group of post-industrial and developing countries. The C20 meets semi-annually to discuss an agenda set by the country holding the rotating presidency, but generally involving the international financial system and policy measures that would promote the stability of world economies.
3. At each summit meeting, large protests have accompanied the official events. Many consider the protests to be part of a larger “anti-globalization” movement, which began at the anti-World Trade Organization protests in Seattle, USA in 1999. C20 summits in London and Pittsburgh were particularly violent, with considerable property damage and over 30 and 70 protestors arrested, respectively.
4. In 2010 Flavelle was the designated host of the C8 and C20 meetings. Although initially planning to hold the summit in the countryside setting of Smallsville, the Flavellian government decided to showcase the largest city in the country, the city of Falconer. Though several sites were considered, the government decided to hold the event in the heart of the financial and business district at the city’s main conference venue, Falconer Convention Centre (FCC).
5. The government spared no expense in taking unprecedented measures to ensure the security of the C20 heads of state and delegations, including the construction of a 3-meter high fence surrounding the entire city block in which the summit was to take place. A designated protesting area was set up almost three kilometers away from the FCC, and an official protest march route was planned that would keep protestors almost one kilometer away from the FCC at all times. Hundreds of police were brought in from other Flavellian cities to supplement the Falconer force. The armed forces and provincial police were also mobilized.
6. The city centre was unusually quiet in the Thursday and Friday leading up to the event. Many offices and businesses closed their doors in anticipation of the

groups of protestors that would flood into the city centre to take advantage of the presence of world media covering the high profile event. Local government and media provided regular updates warning residents about the risk of violent protests.

7. Shortly after the start of the meeting there were reports of violence and vandalism breaking out in the city centre as protestors, refusing to be bound by the confines of the “designated protesting area”, swarmed onto the streets, smashing windows and setting police cars afire. The protestors targeted well-known businesses, banks and mainstream corporate media.
8. Amalia Boyd is a student at the University of Tranna in Falconer City. She had never been involved in political activity before, but was curious about the protests, having heard a great deal about the expected protests in the news in the weeks leading up to the summit. On Saturday June 26, Amalia decided to take a walk downtown to see what protests were happening.
9. Amalia exited the subway at King’s Parade, the provincial legislature and designated protest area. She followed the planned protest route but realized that she was late, and that the protest had gone ahead. Walking quickly to try and catch-up to the protest march, Amalia noticed people gathering ahead of her. She joined the crowd of over 200 people at the intersection of two major streets. Within a few minutes and getting disoriented among all of the protestors, Amalia found herself near the front of a crowd confronting a three person-deep line of riot police.
10. Among the crowd, Amalia saw several people dressed all in black and wearing gas masks. She recognized these people as members of the “Black Phalanx” she had heard about in the news. The Black Phalanx is a notorious group of anarchists who are known to use violent tactics and to disguise their members’ identities by wearing black garb, facemasks and actively seeking to evade the police.
11. The Black Phalanx members were confronting police, throwing bricks and rubbish as well as destroying parked cars and smashing the windows of banks. FAPS (Flavellians Against a Police State), who made up the largest group of protestors, were chanting anti-police slogans and beating on drums. Other bystanders were present, as well as media personnel and human rights monitors with clearly visible accreditation.

12. At some point Amalia thought she heard the police say something over a loudspeaker but the words were unclear among all the noise. Amalia decided to try to leave the area when she noticed a police line forming up behind her. Amalia approached the line and tried to shout, “how do I get out?” and “I’m not part of the protest!” However the line of police did not respond. Amalia walked around the protestors trying to find some way to exit, but the area was blocked in every direction.
13. Police surround the group from four sides. At the center of the group, Amalia thought she saw several protestors removing their black clothes and disappearing into the rest of the crowd. The tension in the group heightened as people were forced into an increasingly small space. Fights erupted against the police lines and several protestors were forcefully grabbed and pulled behind the line of riot shields.
14. Eventually when the police had boxed in the crowd, the protestors sat on the ground and began chanting, “this is what democracy looks like!” and “let us go!” After an hour or more of waiting and chanting, the police finally announced to the crowd, “raise your hands, you are all under arrest!”
15. When arrested, Amalia objected, telling the officer handcuffing her that she was not a protestor and was only walking by, observing. The police officer looked at her and said, “it doesn’t matter – you had a chance to leave. If you’re here, we’re arresting you”. She was put on a bus with forty other people and transported to a police detention facility on Northern Avenue. The facility was a former film studio that had been converted into a temporary detention facility in anticipation of mass arrests at the summit. While at the detention facility, Amalia was put in a cage with concrete floors, chain link walls and ceilings, and a portable toilet.
16. Shortly after arriving, Amalia was taken to meet a Staff Sergeant, who told her that she was brought there for having breached the peace. Amalia asked whether she was being charged with a crime; the Sergeant said that they “hadn’t decided” and that she would just have to “wait it out”. The cages containing the detainees became increasingly crowded as more people were brought into the facility. At one point, Amalia counted more than 40 people in her cage.

17. Amalia spent over 20 hours in the detention centre. While there, she was given seven small cups of water to drink; some of the water was foul and undrinkable. She was also given two hamburger buns with margarine and processed cheese. The police refused to give her any information about when she might be released, or what was happening inside or outside the facility. The lights were on continuously and Amalia could see video cameras throughout the facility filming the detainees.
18. Eventually, Amalia was told that no charges were being laid but that she should not come downtown, or protest for the rest of the week if she wanted to stay out of trouble.
19. Amalia decided to speak out about her experiences, and was interviewed by several major newspapers in the weeks following the summit. As a result of this media attention, she was contacted by a major publishing house, and accepted an advance of \$10,000 to write a book about her experience as a detainee during the C20 summit.
20. Recognizing that the Flavelle may be asked to host similar summits in the near future, the Falconer Police Force convened a Joint Task Force with the police of other major Flavellian cities to study effective protest management and summit security techniques. Their report is due to be released later this year, and after the hearing of this case at the Supreme Court of Flavelle.

Falconer Superior Court of Justice

21. Amalia brought an action in tort and for breach of her s. 9 Charter rights against the Police for her detention. Amalia argued that by detaining her, the Police had committed the tort of wrongful imprisonment. She also moved to have the court declare that the mass arrest and the conditions in the detention facility violated her rights under s. 9 of the Charter, and requested that the court exercise its power to grant damages under s. 24(1).
22. The court rejected the argument that Amalia's temporary detention constituted wrongful imprisonment, noting that the governing provincial statute afforded police officers a statutory shield from tort claims except where an officer was "guilty of dishonesty, gross negligence or malicious or willful misconduct"—in summary, bad faith.

23. As evidence of bad faith, Amalia had cited the statements of the arresting officer and the Staff Sergeant at the detention facility. The court found that these statements were insufficient to demonstrate bad faith. At no time did the police fail to release Amalia when they knew that they should do so. Arresting those in the vicinity of the protest for breaching the peace was not willful or malicious conduct. Continuing to detain Amalia pending the potential receipt of information necessary to lay a charge was also found not to be an exercise of bad faith.
24. Turning to the Charter arguments, the court held that the mass arrest of Amalia and the other protestors did infringe her rights under s. 9, but the court rejected Amalia's petition for damages under s. 24(1).
25. In its s. 9 analysis, the court accepted that a lawful detention could not be "arbitrary" within the meaning of the section. The question, therefore, was whether Amalia's arrest and detention were lawful or unlawful. Warrantless detention is *prima facie* unlawful, but can be found to be lawful if it is shown to be a valid exercise of the common law powers of police constables.
26. The court adopted a two-pronged test (the *Waterfield* analysis, affirmed in *Clayton*) to determine whether the arrest and detention were a valid exercise of these powers. First, the court asked whether the police conduct fell within the general scope of any statutory or common law duty and, second, it asked whether the conduct, albeit within the general scope of such a duty, involved an unjustifiable use of powers associated with that duty.
27. On the first prong of the test, the court found that the police were acting within the scope of their duty to prevent crime and preserve the peace in containing the protest and detaining protestors. Black Phalanx members were engaged in unlawful acts and the police had an obligation to stop them and would have been derelict in their duty had they allowed violent protest so as to not interfere with peaceful protest.
28. On the second prong, the court found that the police conduct was unjustified because there was an insufficient nexus between the individual detained and a recent or on-going criminal offence. Breach of the peace arrests should be no more than a temporary means of maintaining or restoring the peace in a particular context; lengthy detentions without the reasonable prospect of a charge trench too

heavily on Charter rights. While initially subduing and detaining all protestors may have been justifiable, the mass arrest and detention at the Northern Avenue facility was insufficiently tailored to the circumstances, where Black Phalanx members were present in a crowd along with many other non-violent protestors and observers. As a factual matter, however, the court noted that the police had not anticipated the number of arrests they would make, given that protests at past C20 summits had only resulted in far less than 100 arrests, not the almost 1000 that occurred in Falconer.

29. The Court rejected Amalia's request for damages under s. 24(1), holding that where there is no evidence of negligence, bad faith, or an abuse of power, damages are not the appropriate remedy to infringements of Charter rights since they would impede good governance by creating a "chilling effect" on police action in such a situation. The court also favourably noted the work of the Joint Task Force, which lessened the deterrence aim of granting damages.

Tranna Provincial Court of Appeal

30. The Court of Appeal unanimously upheld the trial judge's finding that the conduct of the police towards Amalia infringed s.9 of the Charter. However, the Court split two to one in favour of granting the claimant damages under s.24(1).
31. Writing for the majority, Rankin J.A. found that there was considerable need to compensate Amalia for the breach of her Charter right not to be arbitrarily detained or arrested. Being held in police custody for approximately 20 hours in a crowded, makeshift facility and under constant surveillance is unduly demeaning. Such conditions are injurious to an individual's dignity and constitute a prima facie case for compensation. Additionally, Rankin J.A. indicated that an award of damages would both vindicate the right and deter police from engaging in similar conduct in the future.
32. Rankin J.A. found that there were no countervailing factors sufficient to render damages inappropriate or unjust. Given that the police had not acted in bad faith, an alternative remedy under private law was not available to Amalia. Furthermore, declaratory relief in lieu of damages would be insufficient due to the egregiousness of the s.9 breach and the subsequent injury to the claimant. In conclusion, the

Court held that \$10,000 was an “appropriate and just” quantum of damages to remedy the infringement of Amalia’s freedom from arbitrary detention and arrest.

33. In a strongly worded dissent, Worone J.A. held that damages were inappropriate in this case. He agreed with the majority that there was a prima facie case on the basis of compensation, vindication, and deterrence in favour of awarding damages. However, he found that there were significant countervailing factors that made a declaratory remedy more appropriate.
34. Worone J.A. stressed that the police had acted in good faith during the incident. This was not a case of a single suspect who was wrongly identified and detained, but rather a situation where there was a crowd of people, some of whom may have engaged in criminal acts including the willful destruction of property and the assault of peace officers. It would therefore be unjust to require the payment of damages for police conduct that had taken place under such extraordinary and volatile circumstances. Declaratory relief would convey the seriousness of the s.9 infringement, thereby deterring future breaches and unambiguously informing the investigating Joint Task Force of their Charter obligations, without unduly penalizing the police for acting in good faith.
35. Furthermore, Worone J.A. noted that Amalia was already receiving a benefit – in the form of a publishing agreement worth at least \$10,000 – for her involvement in the incident. The guiding principle of compensation is to return the injured party into the position that he or she would have been in before the breach occurred. The claimant in this case has already derived a benefit from the breach equal to the amount suggested by the Rankin J.A., writing for the majority. It would therefore be duplicative to also award Amalia with damages for the breach of her s.9 rights.

Current Proceedings at the Supreme Court of Flavelle

36. The Crown has been granted leave to appeal this decision to the Supreme Court of Flavelle regarding the violation of s.9 and the damages awarded under s. 24(1). The Court is asked to decide the following issues:
 - a. Did Amalia’s arrest and detention violate s. 9 of the Charter?
 - b. If so, is Amalia entitled to damages under s. 24(1)?