

CANADA / JUDGMENT

Bergeron et al. v. Deschamps et al.

[1978] 1 SCR 243

COURT

Supreme Court of Canada

DECIDED

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Bergeron et al. v. Deschamps et al. Collection Supreme Court Judgments Date 1977-03-08 Report

[1978] 1 SCR 243 Judges Laskin, Bora; Martland, Ronald; Judson, Wilfred; Ritchie, Roland Almon; Spence, Wishart Flett; Pigeon, Louis-Philippe; Dickson, Robert George Brian; Beetz, Jean; de Grandpré, Louis-Philippe On appeal from Quebec Subjects Criminal law Decision Content Supreme Court of Canada Bergeron et al. v. Deschamps et al., [1978] 1 S.C.R. 243 Date: 1977-03-08 Robert Bergeron et al. Appellants; and Aldéric Deschamps et al. Respondents; and The Clerk of the Peace and of the Crown, District of Montreal, and the Minister of Justice of Québec Mis en cause. 1977: February 8; 1977: March 8. Present: Laskin C.J. and Martland, Judson, Ritchie, Spence, Pigeon, Dickson, Beetz and de Grandpré JJ. ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC Criminal law—Illegal search—Certiorari—Order for return with the exception of documents required as evidence—Criminal Code, R.S.C. 1970, c. C-34, s. 443. Appellants applied for a writ of certiorari to quash a search warrant that did not comply with s. 443 Cr. C because it was too general. The warrant was quashed in the Superior Court and the correctness of that decision was not challenged. It was also admitted that the power to order the return of documents illegally seized inhered in the courts as incidental to their jurisdiction to quash a search warrant on certiorari. The appeal to this Court is based very specifically on the order made by the Superior Court judge and affirmed by the Court of Appeal, giving an opportunity to the Crown to indicate, within five days, documents required by it as evidence to be exempted from the order for return. Held: The appeal should be allowed. Appellants' objection to leaving it to the police to decide which documents should be retained as evidence when there is an order for return of documents illegally seized is sound. In the case at bar the Court is not called on, however, to pass on whether a judge who quashes a search warrant on certiorari and who must make an order for return may himself choose to exclude certain documents from his order for return on the grounds that they are required as evidence. *Black v. The Queen* (1973), 13 C.C.C. (2d) 446, distinguished; *Ghani v. Jones*, [1969] 3 All E.R. 1700, referred to. APPEAL from a judgment of the Court of Appeal of Quebec[1] affirming a judgment of the Superior Court, criminal side, recognizing the validity of an order for return of documents illegally seized with the exception of certain documents. Appeal allowed and return of all the documents directed.

Bruno Pateras, Q.C., for the appellants. Guy Lafrance and Serge Authier, for the respondents. The judgment of the Court was delivered by THE CHIEF JUSTICE—The issue in this appeal is a narrow one. Certiorari was brought to quash a search warrant for non-compliance with s. 443 of the Criminal Code. The warrant, issued by a justice of the peace, was directed to the seizure, at named premises, of various documents, described only by class (e.g. invoices, correspondence, books of account, cheques, handwritten notes and a list of names) and connected with the financial affairs of the Quebec Association for the Deaf. Although fraud was alleged, neither the perpetrator nor the victim nor the object of the fraud was identified. There was no indication whether the premises to be searched were those of the Association or of the perpetrator or of the victim of the alleged fraud which itself was left completely vague. Rothman J. quashed the search warrant, and the correctness of that decision was not challenged on appeal, nor is it challenged here. However, the search warrant had been executed, and certain documents claimed by the appellants were seized thereunder, before proceedings were taken to quash it. Although a question was raised as to the power of the Court to order the return of documents thus illegally seized, it was common ground in the Courts below that this power inhered in the Courts as incidental to their jurisdiction to quash a search warrant on certiorari. What has brought this case here is the order made by Rothman J. and affirmed by the Court of Appeal, giving an opportunity to the Crown to indicate, within five days, which of the documents were required by it as evidence and specifying them precisely. In making this order, the judge of first instance founded himself on the judgment of Berger J. of the British Columbia Supreme Court in *Black v. The Queen*[2]. Without passing on the correctness of that decision, it is clear that it can have no application here. The reason why the search warrant was quashed in the *Black* case was because the person signing it did not indicate beneath his signature that he was a justice of the peace or indicate in any other way that he was authorized to issue the warrant. None of the fatal frailties in the body of the search warrant in the present case were evident in the *Black* case. In the circumstances of that case, Berger J. gave a qualified order for the return of the articles illegally seized, permitting the Crown to file a letter stating, if that was the case, that they were required as evidence on a prosecution. In the present case, it cannot be said that there is any chargeable offence to which the seized documents could be relevant. On what basis, therefore, can the trial judge have left it to the police to determine which of the documents they wish to retain as evidence? It is true that in his prayer for relief and in his argument before this Court counsel for the appellants indicated that he had no objection to the trial judge himself exercising the power to order the return of the illegally seized documents to the extent that it not be established before him that they were required as evidence of a criminal offence. His objection was that Rothman J. had left it to the police to decide what should be retained. I think this objection is a sound one. In the present case, I need not pass on the question whether, in circumstances such as those present here, a judge may direct that notwithstanding a fatal defect of substance in a search warrant which has been executed, the documents seized should be retained subject to his order and that they may be turned over to the police as he may direct. The order in appeal

here is not of that kind. Ghani v. Jones^[3] is of no assistance to the Crown in this case. Apart from the fact that there is no general statutory authority in England as there is here to issue search warrants, and that, accordingly, common law rules determine in most cases whether documents seized by the police in the course of their investigation of a criminal offence may be retained as evidence, it is apparent from the reasons of Lord Denning that it is the Courts and not the police who determine whether adequate grounds exist for retaining seized documents. Those grounds as set out by Lord Denning are largely involved in the regularity and validity of a search warrant under s. 443. Since they have not been met in this case, as indeed they were not met in Ghani v. Jones, there is no reason to involve the Court in any sorting of the seized materials. I would, accordingly, allow the appeal, set aside the order in appeal and direct that all the documents seized under the illegal warrant and all extracts and copies be returned to the appellants. Appeal allowed. Solicitors for the appellants: Pateras, Macerola & Galileo, Montreal. Solicitor for the respondents: Guy Lafrance, Montreal. Solicitor for the mis en cause: Serge Authier, ' Montreal.

[1] [1976] C.A. 344.

[2] (1973), 13 C.C.C. (2d) 446.

[3] [1969] 3 All E.R. 1700.

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