

Alberta (Minister of Justice and Attorney General) (applicant) v. Daniel Lejam Petros and the
Chief of Police of the Calgary Police Services (respondents)
(1001 18297; 2011 ABQB 541)

Indexed As: Alberta (Minister of Justice and Attorney General) v. Petros et al.

Alberta Court of Queen's Bench
Judicial District of Calgary
Sullivan, J.
September 6, 2011.

Summary:

The Minister of Justice and Attorney General for Alberta applied to confiscate the respondent's motor vehicle which the Minister alleged was an instrument of crime (used in a dial-a-dope operation). The respondent had been arrested and charged with possession for the purpose of trafficking. The Minister advanced the application pursuant to the Victims Restitution and Compensation Payment Act of Alberta (2001). One of the novel issues raised was whether the Minister could rely on unlawfully obtained evidence.

The Alberta Court of Queen's Bench, on the strength of the admissible evidence, granted the order of forfeiture.

Civil Rights - Topic 1281

Security of the person - Unlawful arrest - General - [See first **Criminal Law - Topic 7062**].

Civil Rights - Topic 1506

Property - General principles - Charter - Application of - [See second, third and fourth **Criminal Law - Topic 7062**].

Civil Rights - Topic 1508

Property - General principles - Expectation of privacy - [See first **Criminal Law - Topic 7062**].

Civil Rights - Topic 8305

Canadian Charter of Rights and Freedoms - Application of - Persons protected - [See second, third and fourth **Criminal Law - Topic 7062**].

Civil Rights - Topic 8320.13

Canadian Charter of Rights and Freedoms - General - Application - Civil remedies for unlawful activity - [See second, third and fourth **Criminal Law - Topic 7062**].

Civil Rights - Topic 8368

Canadian Charter of Rights and Freedoms - Denial of rights - Remedies - Exclusion of evidence - [See first **Criminal Law - Topic 7062**].

Criminal Law - Topic 7062

Civil remedies for unlawful activity (Civil Remedies Act, Civil Forfeiture Act, etc.) - Remedies - Forfeiture - The Minister of Justice and Attorney General for Alberta applied to confiscate the respondent's motor vehicle which the Minister alleged was an "instrument of illegal activity" (running a dial-a-dope operation from the vehicle) and subject to forfeiture pursuant to s. 19.94(b) of the Victims Restitution and Compensation Payment Act (Alberta) (2001) - The Alberta Court of Queen's Bench granted the order of forfeiture - The police lacked reasonable and probable grounds to arrest the respondent and search him - Accordingly, the respondent's Charter rights under ss. 8 and 9 were violated - The s. 24(2) analysis militated against admitting any evidence unlawfully obtained - However, the respondent severed any privacy interest he might have had in five individually wrapped packages of cocaine when he abandoned those drugs in the back seat of the police vehicle - Consequently, his right to be secure against unreasonable search and seizure was not engaged when the police officer searched the back of the police vehicle - Evidence relating to the discovery of those drugs was admissible, as was evidence discovered during the subsequent strip search - There was sufficient evidence for the Minister to satisfy his onus to demonstrate, on a balance of probabilities, that the restrained vehicle was an instrument of crime - The respondent elected not to adduce any independent evidence in an attempt to satisfy his onus under s. 19.93(1)(b) - See paragraphs 3 to 5.

Criminal Law - Topic 7062

Civil remedies for unlawful activity (Civil Remedies Act, Civil Forfeiture Act, etc.) - Remedies - Forfeiture - The Minister of Justice and Attorney General for Alberta applied to confiscate the respondent's motor vehicle which the Minister alleged was an instrument of crime - The Minister advanced the application pursuant to the Victims Restitution and Compensation Payment Act (Alberta) (2001) - The issues included whether the Charter of Rights applied in the civil forfeiture proceeding - In determining the question, the Alberta Court of Queen's Bench noted that "the purpose of the Charter 'is to guarantee and to protect, within the limits of reason, the enjoyment of the rights and freedoms it enshrines. It is intended to constrain governmental action inconsistent with those rights and freedoms' ... [T]he Charter does not apply to strictly private litigation. However, this matter, while civil in nature, is not strictly private. The Alberta government, on behalf of the public, is advancing an action based on its own statute in order to confiscate the property of an individual" - In the end result, the court found that the circumstances attracted Charter scrutiny - See paragraphs 20, 37.

Criminal Law - Topic 7062

Civil remedies for unlawful activity (Civil Remedies Act, Civil Forfeiture Act, etc.) - Remedies - Forfeiture - The Alberta Court of Queen's Bench found that the Charter of Rights applied in this civil forfeiture proceeding under the Victims Restitution and Compensation Payment Act - As evinced by s. 32(1)(b) of the Constitution Act (1982), the Charter applied "to the legislature and government of each province in respect of all matters within the authority of the legislature of each province" - The Supreme Court of Canada had found civil forfeiture legislation that targeted the proceeds and instruments of crime was validly within the jurisdiction of provincial legislatures - In this case the impugned police conduct was an exercise of government authority delegated to peace

officers through the province's Police Act - "In my opinion, where the full force of the state operates against the interests of an individual, with the potential to impart significant legal consequences, it is a matter of fairness to afford a remedy to a person whose constitutionally protected rights have been infringed by government actors" - See paragraphs 21 to 23, and 37.

Criminal Law - Topic 7062

Civil remedies for unlawful activity (Civil Remedies Act, Civil Forfeiture Act, etc.) - Remedies - Forfeiture - The Minister of Justice and Attorney General for Alberta applied to confiscate the respondent's motor vehicle which the Minister alleged was an instrument of crime (Victims Restitution and Compensation Payment Act, s. 19.94(b)) - The issues included whether the Charter of Rights applied - The Minister relied on *D.P. v. Wagg* (2004) (Ont. C.A.) for the proposition that "the analysis of whether or not to exclude evidence for a Charter breach is entirely different in the civil context than in the criminal context" - The Alberta Court of Queen's Bench stated that "the Minister has taken the principle in *Wagg* too far. The suggestion that evidence may be treated differently in civil versus criminal proceedings does not necessarily imply that this will always be so. ... I am of the opinion that to bypass Charter scrutiny in circumstances where the Minister wants to rely on unlawfully obtained evidence to permanently deprive an individual of his or her real or personal property would have an adverse impact on public confidence in the administration of justice" - In the end result, the court found that "Charter protection and remedies pursuant to s. 24 apply in order to insulate the fairness of civil forfeiture proceedings under the Act" - See paragraphs 27 to 31, and 37.

Police - Topic 3063

Powers - Arrest and detention - Without warrant - Reasonable and probable grounds - [See first **Criminal Law - Topic 7062**].

Police - Topic 3185

Powers - Search - Following arrest or detention - [See first **Criminal Law - Topic 7062**].

Cases Noticed:

Southam Inc. v. Hunter et al., [1984] 2 S.C.R. 145; 55 N.R. 241; 55 A.R. 291, reld to. [para. 20].

Dolphin Delivery Ltd. v. Retail, Wholesale and Department Store Union, Local 580, Peterson and Alexander, [1986] 2 S.C.R. 573; 71 N.R. 83, reld to. [para. 20].

Ontario (Attorney General) v. Chatterjee, [2009] 1 S.C.R. 624; 387 N.R. 206; 249 O.A.C. 355, reld to. [para. 22].

D.P. v. Wagg (2004), 187 O.A.C. 26; 239 D.L.R.(4th) 501, consd. [para. 27].

Gonzalez v. Driver Control Board (Alta.) et al. (2003), 330 A.R. 262; 299 W.A.C. 262; 2003 ABCA 256, dist. [para. 32].

Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817; 243 N.R. 22, reld to. [para. 36].

McKinney v. University of Guelph et al., [1990] 3 S.C.R. 229; 118 N.R. 1; 45 O.A.C. 1, reld to. [para. 37].

R. v. Storrey, [1990] 1 S.C.R. 241; 105 N.R. 81; 37 O.A.C. 161, reld to. [para. 47].

R. v. Patrick (R.S.), [2009] 1 S.C.R. 579; 387 N.R. 44; 454 A.R. 1; 455 W.A.C. 1; 2009 SCC 17, refd to. [para. 50].
R. v. Tessling (W.) (2004), 326 N.R. 228; 192 O.A.C. 168; 2004 SCC 67, refd to. [para. 50].
R. v. Edwards (C.), [1996] 1 S.C.R. 128; 192 N.R. 81; 88 O.A.C. 321, refd to. [para. 50].
R. v. Grant (D.), [2009] 2 S.C.R. 353; 391 N.R. 1; 253 O.A.C. 124; 2009 SCC 32, appld. [para. 55].
R. v. Ramsum (T.A.) et al. (2003), 329 A.R. 370, 2003 ABQB 45, refd to. [para. 57].
R. v. Manley (M.) (2011), 275 O.A.C. 81; 2011 ONCA 128 (C.A.), refd to. [para. 57].
R. v. U.P.M. (2010), 399 N.R. 200; 346 Sask.R. 1; 477 W.A.C. 1; 2010 SCC 8, refd to. [para. 58].
R. v. Garofoli et al., [1990] 2 S.C.R. 1421; 116 N.R. 241; 43 O.A.C. 1; 36 Q.A.C. 161, refd to. [para. 62].
Quebec (Procureur général) v. Laroche et al., [2002] 3 S.C.R. 708; 295 N.R. 291, refd to. [para. 62].
R. v. Araujo (A.) et al., [2000] 2 S.C.R. 992; 262 N.R. 346; 143 B.C.A.C. 257; 235 W.A.C. 257, refd to. [para. 64].

Statutes Noticed:

Victims Restitution and Compensation Payment Act, S.A. 2001, c. V-3.5, sect. 19.93(1)(b), sect. 19.94(b) [para. 17].

Counsel:

C. Smith, for the applicant, the Minister of Justice and Attorney General;
K. B. Molle, for the respondent, David Lejam Petros.

This application was heard on June 8, 2011, before Sullivan, J., of the Alberta Court of Queen's Bench, who delivered the following judgment and reasons for judgment, dated at Calgary, Alberta, on September 6, 2011.

Application granted.

Editor: Joanne Oley