SCC Court File No. 38213

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

B E T W E E N:

CHRISTIE CULOTTA

Appellant

– and –

HER MAJESTY THE QUEEN

Respondent

– and –

CRIMINAL LAWYERS' ASSOCIATION (ONTARIO)
and CANADIAN CIVIL LIBERTIES ASSOCIATION

Interveners

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PART I - STATEMENT OF FACTS

1. The Criminal Lawyers' Association (the "CLA") takes no position on disputed facts or on the outcome of this appeal.

A. OVERVIEW

2. The purpose of s. 24(2) of the *Charter* is to maintain the repute of the administration of justice.[1] Although not an exclusionary rule *per se*, the means through which s. 24(2) operates is by excluding evidence where its inclusion would otherwise bring the administration of justice into disrepute.

3. Applicants seeking the exclusion of evidence under s. 24(2) must surmount two evidentiary hurdles. First, they must establish that the impugned evidence was "obtained in a manner" that violated their *Charter* rights. To satisfy this requirement, there must be a *nexus* between the violation of the *Charter* right and the evidence that the applicant seeks to exclude.[2] Second, they must show that inclusion of the evidence would bring the administration of justice into disrepute, bearing in mind the three factors set out by this Court in *R. v. Grant*: the seriousness of the breach; the impact on the accused's *Charter* rights; and society's interest in adjudication of the trial on the merits.[3]

4. At issue in this appeal is first prong of s. 24(2). More specifically, this appeal requires the Court to consider the extent of the nexus required to satisfy the "obtained in a manner" requirement. Since its seminal decision in *R. v. Strachan*, this Court has consistently held that s. 24(2)'s "obtained in a manner" threshold requirement does *not* require proof of causation. In other words, the applicant need not show that the discovery of the impugned evidence resulted from the *Charter* breach. Instead, the nexus between the breach and the evidence can be temporal, or contextual, or causal, or a combination thereof.[4] Trial judges should consider the *entirety of the transaction* between the accused person and the police to determine if there exists a sufficient nexus between a *Charter* breach and the impugned evidence.

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[1] *R. v. Grant*, [2009] 2 S.C.R. 353 at para. 68.
[2] *R. v. Wittwer*, [2008] 2 S.C.R. 235 at para. 19.
[3] *Grant*, *supra* at para. 71 (S.C.C.).
[4] *Wittwer*, *supra* at para. 21 (S.C.C).

5. The Majority in the Court below, however, veered from this Court's jurisprudence and imposed a *de facto* causation requirement, which the Respondent has asked this Honourable Court to adopt. The CLA respectfully submits that this Court ought to reject the Respondent's submission and reaffirm its prior holdings that causation is not required to engage s. 24(2). Further, the CLA submits that this Court ought to make explicit what was logically implied but not expressly stated in its earlier jurisprudence: a *Charter* violation need not *precede* the discovery of the evidence in order to satisfy the "obtained in a manner" prong of s. 24(2). *Charter* violations that occur *after* the discovery of evidence may bring the administration of justice into disrepute just as much as *Charter* violations that occur *before* the discovery of evidence. [5]

PART II - ISSUES

6. The CLA intervenes on a single issue in this appeal, namely, the meaning of the "obtained in a manner" threshold requirement under s. 24(2) of the *Charter*.

PART III - LAW AND ARGUMENT

A. CAUSATION IS NOT REQUIRED FOR EVIDENCE TO BE "OBTAINED IN A MANNER"

i. Contrasting Approaches to "Obtained in a Manner" in the Court Below

7. Before even considering whether the admission of the evidence would bring the administration of justice into disrepute, s. 24(2) requires that the trial judge must first find that the impugned evidence was "obtained in a manner" that infringed *Charter* rights. [6] There must be a *connection* or *nexus* between the *Charter*-infringing conduct and the impugned evidence.[7]

8. In the decision below, a key difference between the Majority and the Dissent was the proper analytical approach to the "obtained in a manner" threshold.

9. There was no dispute in the court below that the police officer's conscription of hospital staff into taking two additional blood samples from the Appellant violated her rights under s. 8 of the *Charter*. The Majority and the Dissent, however, diverged on

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[5] See *R. v. Pino*, 2016 ONCA 389.
[6] *Charter*, s. 24(2); *Wittwer*, *supra* at para. 19 (S.C.C.).
[7] *Wittwer*, *supra* at para. 21 (S.C.C.).

whether that conduct tainted all of the blood sample evidence. In its s. 24(2) analysis, the Majority approached the admissibility of the two police-directed blood samples as an issue that was independent and distinct from the admissibility of the physician-ordered samples. It therefore did not exclude the evidence relating to the physician-ordered samples. The Majority acknowledged, on one hand, that the "taking of bodily samples in breach of their constitutional rights is a very serious violation of a person's bodily integrity."[8] The Majority nonetheless held that the police-directed samples, which the trial judge excluded, did not "undermine the admissibility and evidentiary value" of the other samples.[9] Implicit in that holding is that because the other samples likely would have been taken regardless of the police misconduct, they were not tainted by the *Charter* breach. The Majority thus infused a causal requirement into the "obtained in a manner" test of s. 24(2) where none should be required.

10. By contrast, Pardu J.A. treated all of the samples as part of the same transaction between the Appellant and the investigating officer during a relatively short period of time. Pardu J.A. found that there were contextual and temporal connections between the impugned evidence and the *Charter* breaches, and that these connections were sufficient to satisfy the "obtained in a manner" requirement. In the result, Pardu J.A. would have excluded the records relating to the physician-ordered samples despite the "absence of a direct causal connection" between the *Charter* breaches and that evidence.[10]

ii. This Court Has Held that Causation Is Not Required

11. The Majority's approach, which the Respondent asks this Court to endorse, is at odds with the weight of this Court's jurisprudence. Beginning thirty years ago with *Strachan*, this Court has taken a generous, broad and purposive approach to the "obtained in a manner requirement" requirement under s. 24(2).[11] In *Strachan*, this Court specifically rejected a causal requirement, holding that such a requirement was neither principled nor practical:

> In my view, reading the phrase "obtained in a manner" as imposing a causation requirement creates a host of difficulties. A strict causal nexus would place the courts in the position of having to speculate whether the evidence would have been

[8] *R. v. Culotta*, 2018 ONCA 665 at para. 65.
[9] *Ibid.* at para. 59.
[10] *Ibid*. at para. 71, per Pardu JA (dissenting).
[11] *R. v. Strachan*, [1988] 2 S.C.R. 980 at p. 1006.

> discovered had the *Charter* violation not occurred. Speculation on what might have happened is a highly artificial task. Isolating the events that caused the evidence to be discovered from those that did not is an exercise in sophistry. Events are complex and dynamic. It will never be possible to state with certainty what would have taken place had a Charter violation not occurred. Speculation of this sort is not, in my view, an appropriate inquiry for the courts.[12]

The Court further explained:

> In my view, all of the pitfalls of causation may be avoided by adopting an approach that focuses on the entire chain of events during which the *Charter* violation occurred and the evidence was obtained. Accordingly, the first inquiry under s. 24(2) would be to determine whether a *Charter* violation occurred in the course of obtaining the evidence. A temporal link between the infringement of the Charter and the discovery of the evidence figures prominently in this assessment, particularly where the *Charter* violation and the discovery of the evidence occur in the course of a single transaction. The presence of a temporal connection is not, however, determinative. Situations will arise where evidence, though obtained following the breach of a *Charter* right, will be too remote from the violation to be "obtained in a manner" that infringed the *Charter*. In my view, these situations should be dealt with on a case by case basis. There can be no hard and fast rule for determining when evidence obtained following the infringement of a *Charter* right becomes too remote.[13]

12. This Court later reaffirmed in *Wittwer* that the connection between the impugned evidence may be "temporal, contextual, causal or a combination of the three."[14] A strict causal connection between the *Charter* breach and the impugned evidence is unnecessary.[15] Even where there is no causal link, evidence "will be tainted if the breach and the discovery of the impugned evidence are part of the same transaction or course of conduct."[16] Provided there is *some* connection that is neither remote nor tenuous,[17] the applicant should pass through the "obtained in a manner" gateway.

B. THE *CHARTER* BREACH NEED NOT PRECEDE THE DISCOVERY OF THE EVIDENCE

13. Given that it is not necessary for the breach to have caused the discovery of the evidence, it follows logically that it is unnecessary for the breach to precede the discovery

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[12] *Strachan*, *supra* at para. 39 (S.C.C.).
[13] *Ibid.* at para. 46.
[14] *Wittwer*, *supra* at para. 21 (S.C.C.).
[15] *Ibid*.
[16] *R. v. Mack*, [2014] 3 S.C.R. 3; *R. v. Goldhart*, [1996] 2 S.C.R. 463 at para. 40; *R. v. Keror*, 2017 ABCA 273.
[17] *Goldhart*, *supra* at para. 40 (S.C.C.); *R. v. Plaha*, [2004] O.J. No. 3484 at para. 45 (Ont. C.A.).

of the evidence. Although this Court has not explicitly addressed this issue, the logic of *Strachan* and its progeny render such a conclusion inescapable.

14. Indeed, this was the Ontario Court of Appeal's holding in *R. v. Pino.* In that case, police found and seized a large amount of marijuana from the appellant's car. Subsequently, police committed serious violations of Ms. Pino's s. 10(b) rights. The trial judge agreed that the s. 10(b) violations were serious but held that he was powerless to exclude the impugned evidence "because the right to counsel breaches … occurred subsequent" to the discovery of the evidence.[18] The Court of Appeal allowed the appeal. In doing so, it held that decisions to exclude evidence should not turn on whether the breach occurred before or after the discovery of evidence because "[i]n either case, the administration of justice could be brought into disrepute if the court condoned serious *Charter* violations."[19] Relying on this Court's decisions in *Strachan* and *Wittwer*, the Court of Appeal reasoned that if causation is not essential for evidence to be obtained in a manner that infringes *Charter* rights, it logically follows that the breach does not need to precede the discovery of the evidence.[20]

15. Notwithstanding the Majority's holding in the court below, the Court of Appeal for Ontario has repeatedly reaffirmed and followed *Pino*.[21] Courts in other jurisdictions, though not bound by *Pino*, have cited it with approval and adopted similar reasoning in large part because *Pino* merely gives effect to this Court's jurisprudence.[22]

C. THE RESPONDENT'S ATTEMPTS TO UNDERMINE *PINO* ARE UNAVAILING

16. The Respondent argues that this Court ought to reject *Pino*. The Respondent's submissions, however, obscure the fact that *Pino* was not breaking new ground, but merely applying established principles.[23] Thus, in urging this Court to reject *Pino*, the Respondent

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[18] *Pino*, *supra* at para. 38 (Ont. C.A.).
[19] *Ibid.* at para. 77.
[20] *Ibid*. at paras. 50-78.
[21] See, e.g., *R. v. Rover*, 2018 ONCA 745 at para. 75 (finding temporal and contextual connection in absence of causal connection); *R. v. La*, 2018 ONCA 830 at para. 35 "while there was no causal connection between the discovery of the odour of marijuana and the water bill, and the s. 10(b) breach, there was a close temporal connection," which "is sufficient to engage s. 24(2)").
[22] See, e.g., *R. v. Kenowesequape*, 2018 ABQB 135 at para. 33; *R. v. Hamdan*, 2017 BCSC 867 at paras. 45-46; *R. v. Robertson*, 2017 BCSC 965 at paras. 19-21, 47; *R. v. Hussein*, 2016 ABQB 703 at paras. 107-109; and *Goulet c. R.*, 2016 QCCQ 15209 at para. 46.
[23] It is no doubt for that reason that the learned authors of *Charter Remedies in Criminal Cases* argue that "[i]t seems likely that the Supreme Court will accept the analysis in *Pino*." See Matthew Asma and Matthew Gourlay, *Charter*

implicitly asks this Court to roll back thirty years of its own jurisprudence. The CLA urges precisely the opposite: this Court ought to reaffirm *Strachan* and its progeny and explicitly endorse Justice Laskin's holding and reasoning in *Pino*. Even evidence discovered prior to a *Charter* breach can be irrevocably tainted by a subsequent breach.

17. The Respondent relies on this Court's 1985 decision in *R. v. Therens*, in which LeDain J, though dissenting, wrote in a passage that the majority implicitly endorsed, that, for the purposes of s. 24(2), the breach should have "preceded, or occurred in the course of, the obtaining of evidence."[24] That holding, however, was overtaken by *Strachan* three years later.

18. Although this Court's analysis in *Strachan* and its subsequent case law has focussed on the question of whether causation is required for evidence to be "obtained in a manner", this Court appears to have had little difficulty with the corollary that a *Charter* breach need not precede the discovery of evidence.

19. In *R. v. Mian*,[25] for example, after a lawful traffic stop, the police searched the accused's person and car, uncovering over $4,000 in cash and a large amount of cocaine. Despite the accused's arguments to the contrary, there were no s. 8 or s. 9 violations in detaining the accused and in conducting a warrantless search of the vehicle.[26] Subsequent to discovering the cash and cocaine, the police delayed informing the accused of the reasons for his arrest and further delayed advising him of his rights to counsel. The trial judge held that these delays amounted to a violation of s. 10(b) of the *Charter*. Although the discovery of the evidence preceded all of the *Charter* violations and the evidence was not causally linked to those violations, the breaches and the discovery of the evidence were part of the same transaction. Given the seriousness of the breach, the trial judge excluded the evidence. The Court of Appeal reversed, holding that the trial judge failed to give proper consideration to all of the evidence in the s. 24(2) analysis. This Court allowed the appeal and restored the trial judge's exclusion of the evidence and the acquittal.[27] Although

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Remedies in Criminal Cases (Toronto: Emond Publishing, 2019), at p. 32, Criminal Lawyers' Association Book of Authorities ("CLA BOA"), Tab 2.

[24] *R. v. Therens*, [1985] 1 S.C.R. 613 at p. 649.

[25] *R. v. Mian*, [2014] 2 S.C.R. 689.

[26] *Ibid* at para. 17.

[27] *Ibid*. at paras. 78-88.

Rothstein J., writing for a unanimous Court, did not expressly grapple with the "obtained in a manner" question, the impugned evidence in *Mian* clearly was discovered before *any* Charter violation took place. *Mian* is an implicit endorsement of the approach in *Pino*. If *Pino* is wrong, then *Mian* was wrong too.

D. A BROAD READING OF THE "OBTAINED IN A MANNER REQUIREMENT" IS CONSISTENT WITH S. 24(2)'S PLAIN LANGUAGE

20. Not only is the Respondent's position inconsistent with this Court's jurisprudence, but it is unsound in principle. Both the plain reading and a purposive interpretation of s. 24(2) require a generous approach, which encompasses *Charter* violations that occur after the discovery of evidence.

21. In both its English and French versions, it is clear that the framers of the *Charter* selected broad, generous language in s. 24(2), and rejected narrower language that might have supported a causation requirement:

(2) Where, in proceedings under subsection (1), a court concludes that evidence ***was obtained in a manner that infringed*** or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.	(2) Lorsque, dans une instance visée au paragraphe (1), le tribunal a conclu que ***des éléments de preuve ont été obtenus dans des conditions qui portent atteinte*** aux droits ou libertés garantis par la présente charte, ces éléments de preuve sont écartés s'il est établi, eu égard aux circonstances, que leur utilisation est susceptible de déconsidérer l'administration de la justice.

22. The framers could have used narrower language, but chose not to do so. They could have imposed temporal limits (i.e., "evidence obtained ***during*** or ***after*** a *Charter* breach"). They could equally have created a causal requirement (i.e., "***as a result of*** a *Charter* infringement"). Instead, the framers chose far more expansive language — in English, "*evidence…obtained in a manner that infringed Charter rights*." The French version — "***dans des conditions*** *qui portent atteinte aux droits*" — is arguably even broader.[28] This language does not suggest that the evidence must be discovered "*par conséquent*", or even that it was discovered "*d'une manière*" or "*d'une façon*". Instead, the framers chose the

[28] See *Strachan*, *supra* at p. 1001 (S.C.C.).

broadest possible language, requiring only that the evidence was obtained "*dans des conditions*" that infringed the rights of the accused.

23. It is established law that when there is a purported tension between the French and English versions of legislation, the harmonious, shared meaning ought to be preferred.[29] To read down "obtained in a manner" in the ways that the Respondent suggests is not supported by the broad, generous French version of the provision.

E. A BROAD READING OF THE "OBTAINED IN A MANNER REQUIREMENT" PROMOTES SECTION 24(2)'S PURPOSES

24. The generous approach also better promotes the purposes of s. 24(2) of the *Charter*. The purpose of the provision is to maintain the repute of the administration of justice.[30] Section 24(2) achieves this purpose by balancing society's "strong interest in the adjudication of the case," with its equally strong interest in "ensuring that the justice system remains above reproach in its treatment of those charged with these serious offences."[31] The Respondent's approach would disturb this carefully crafted balance.

25. A causal requirement makes logical sense where the primary purpose of the law is to undo or correct the harm that has been suffered by the victim, as is the case in tort law.[32] The primary purpose of s. 24(2), however, is not to *compensate* the rights holder, nor is it to *punish* law enforcement.[33] Rather, s. 24(2) is concerned first and foremost with "whether the overall repute of the justice system, viewed in the long term, will be adversely affected by admission of the evidence."[34] Insisting on causation in every case would do little to promote that purpose and would lead to situations where courts would fail to exclude evidence even where the long-term repute of the administration of justice would suffer.

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[29] See *R. v. Daoust*, [2004] 1 S.C.R. 217 at para. 28; See also Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th Ed. (Toronto: LexisNexis, 2014), §5.19 ("Because the versions of bilingual legislation must express the same law, they must receive the same interpretation; any discrepancy between the versions must be eliminated."), CLA BOA, Tab 3.
[30] *Grant*, *supra* at para. 68 (S.C.C.).
[31] *R. v. Spencer*, [2014] 2 S.C.R. 212 at para. 80.
[32] See, e.g., *Resurface Corp. v. Hanke*, [2007] 1 S.C.R. 333 at paras. 22-23 (discussing the "but for" test of negligence); *Whiten v. Pilot Insurance Co.*, [2002] 1 S.C.R. 595 at para. 146 (discussing the "corrective" function of tort law); *Vancouver (City) v. Ward*, [2010] 2 S.C.R. 28 at para. 51 (where this Court noted that the mechanisms of tort law are less useful when the purpose is to "vindicate" rights).
[33] *Grant*, *supra* at para. 70 (S.C.C.).
[34] *Ibid.* at para. 68 (S.C.C.), *R. v. Côté*, [2011] 3 S.C.R. 215 at para. 45.

26. Simply put, a causation requirement would render s. 24(2) under-inclusive with respect to unlawfully gathered evidence, the admission of which would bring the administration of justice into disrepute.

27. Likewise, a requirement that the breach precede the discovery of evidence would similarly render s. 24(2) under-inclusive. A *Charter* violation committed *after* the discovery of evidence can taint the administration of justice just as much as a violation committed *before* the violation. Given that s. 24(2) is not about compensating the accused or punishing the police, but rather, about preserving the integrity of the administration of justice, it should not matter whether the breach precedes or follows the discovery of the evidence.

28. As Professor Kent Roach noted in his treatise:[35]

> From a regulatory perspective, it should not matter whether the evidence was obtained before or after a serious *Charter* violation. In both cases, the administration of justice could be brought into disrepute if the courts appear to condone a serious *Charter* violation. If the court is concerned with responding to serious violations, there is no reason why evidence discovered before a violation should not be considered for exclusion.

29. In their treatise, Justice Paciocco and Professor Stuesser provide a helpful example of the difficulty with a rule that the *Charter* breach must precede the discovery of the evidence:

> Assume that the police discover marijuana during a lawful and reasonable pat-down search and then publicly and needlessly go on to strip search the suspect. Is a court to be deprived of the power to exclude the evidence because of the sequence of events? To insist on the breach preceding the discovery of evidence as an absolute precondition to exclusion means that *ex hypothesi* evidence can be admitted even where its admission would bring the administration of justice into disrepute, just because of the order in which things happened to occur.

30. Part of the purpose of s. 24(2) is to recognize the "intrinsic harm that is caused by a violation of a *Charter* right or freedom, apart from its bearing in the obtaining of the evidence."[36] That harm exists regardless of whether the *Charter* breach causes the

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[35] Kent Roach, *Constitutional Remedies in Canada*, looseleaf, 2nd ed. (Toronto: Canada Law Book, 2013), at para. 10.880, CLA BOA, Tab 1.

[36] *Strachan*, *supra* at p. 1001 (S.C.C.), citing *Therens*, *supra* at p. 649 per Le Dain J. (S.C.C.).

discovery of the evidence, and it exists regardless of whether the breach precedes or follows the discovery of evidence

F. THE PROPER FRAMEWORK FOR "OBTAINED IN A MANNER"

31. In *Pino*, the Ontario Court of Appeal held that trial judges ought to be guided by the following principles in determining whether the "obtained in a manner" threshold had been met. The CLA respectfully submits that this Court ought to endorse this framework:[37]

- the approach should be generous, consistent with the purpose of s. 24(2);
- the court should consider the entire "chain of events" between the accused and the police;
- the requirement may be met where the evidence and the *Charter* breach are part of the same transaction or course of conduct;
- the connection between the evidence and the breach may be causal, temporal or contextual, or any combination of these three connections;
- but the connection cannot be either too tenuous or too remote.

32. The foregoing approach best accords with s. 24(2)'s plain language and purposes. Section 24(2) requires a connection between the breach and the evidence that is neither tenuous nor remote. Stated in positive terms, the connection between the breach and the discovery of the evidence must be *proximate* — causal, temporal, contextual or a combination thereof. But requiring something more would skew s. 24(2)'s analysis and the careful balance that this Court sought to achieve in *Grant*.

PART IV - COSTS AND ORDER REQUESTED

33. The CLA does not seek costs and ask that none be awarded against it. The CLA does not seek any orders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of November, 2018.

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[37] *Pino*, *supra* at para. 72 (Ont. C.A.).

SCHEDULE "A"
AUTHORITIES TO BE CITED

	Para(s) in Factum
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SECONDARY SOURCES

SCHEDULE "B"
RELEVANT LEGISLATIVE PROVISIONS

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LEGAL RIGHTS

Search or seizure

8. Everyone has the right to be secure against unreasonable search and seizure.

Detention or imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Arrest or detention

10. Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed of that right; and

(c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

ENFORCEMENT

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Exclusion of evidence bringing administration of justice into disrepute

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

GARANTIES JURIDIQUES

Fouilles, perquisitions ou saisies

8. Chacun a droit à la protection contre les fouilles, les perquisitions ou les saisies abusives.

Détention ou emprisonnement

9. Chacun a droit à la protection contre la détention ou l'emprisonnement arbitraries.

Arrestation ou détention

10. Chacun a le droit, en cas d'arrestation ou de détention :

(a) d'être informé dans les plus brefs délais des motifs de son arrestation ou de sa détention;

(b) d'avoir recours sans délai à l'assistance d'un avocat et d'être informé de ce droit;

(c) de faire contrôler, par *habeas corpus*, la légalité de sa détention et d'obtenir, le cas échéant, sa libération.

RECOURS

Recours en cas d'atteinte aux droits et libertés

24. (1) Toute personne, victime de violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.

Irrecevabilité d'éléments de preuve qui risqueraient de déconsidérer l'administration de la justice

(2) Lorsque, dans une instance visée au paragraphe (1), le tribunal a conclu que des éléments de preuve ont été obtenus dans des conditions qui portent atteinte aux droits ou libertés garantis par la présente charte, ces éléments de preuve sont écartés s'il est établi, eu égard aux circonstances, que leur utilisation est susceptible de déconsidérer l'administration de la justice.