

MAY 2, 2019

Search Warrants: Misleading the Court Compromises the Integrity of the Process

Authors: [Léon H. Moubayed](#) and Sarah Gorguos

The Supreme Court of Canada (SCC) in *Agence du revenu du Québec v 9229-0188 Québec inc.* has dismissed an application for leave to appeal filed by Revenu Québec (RQ), acting as part of the Permanent Anti-Corruption Unit of Québec. In doing so, the SCC leaves intact the action brought by Davies on behalf of the respondents and upholds the decision of the Québec Court of Appeal (QCA), which itself upheld a first instance judgment that

- i. quashed two search warrants and a production order obtained and executed by RQ in August of 2016 (collectively referred to as the three warrants); and
- ii. ordered RQ to return the goods and items seized under these illegal warrants, of which RQ was not allowed to take cognizance in accordance with sealing orders obtained by the respondents.

The procedure for authorizing search warrants requires that the petitioning authority discloses “fully and frankly”, to the issuing judge, all the relevant facts in affidavit (known as an Information to Obtain, or ITO).

In the first instance, the Superior Court of Québec (SCQ) concluded that RQ omitted to disclose “facts of paramount importance” to the justice of the peace who heard and ruled on the authorization and issuance of the three warrants in question. Indeed, the evidence established that certain facts had been presented to the issuing judge in a misleading manner, thereby undermining the integrity of the process (QCA para. 13). The SCQ decided that such an “editorial choice” on the investigator’s part was “fatal” (SCQ para. 140; QCA, para. 3) and tainted the warrant authorization process with a “fundamental defect” (SCQ, para. 133; QCA para. 3, 19).

Given that RQ’s affidavit was so flawed, all the warrants that relied on it were also affected (QSC para. 133; QCA para. 3, 19). Thus, even if RQ’s misleading omission concerned facts related primarily to premises covered by one of the three warrants, they were all quashed *en bloc*, since they had all been issued on the basis of this same affidavit.

This case is important in several respects. First, it confirms the crucial role of the judge sitting in review of authorized search warrants to protect the integrity of the judicial authorization process and to preserve the fundamental rights of individuals and corporations, including the right to be secure against unreasonable search or seizure.

Moreover, it reiterates that police forces and other state authorities are held to the highest standards of diligence and transparency in the search warrant authorization process, and are required to disclose all relevant facts, favourable or not, to the issuing judge. Misleading the Court compromises the integrity of the process.

Key Contact: [Léon H. Moubayed](#)

This information and comments herein are for the general information of the reader and are not intended as advice or opinions to be relied upon in relation to any particular circumstances. For particular applications of the law to specific situations the reader should seek professional advice.