

3.12 Deputy T.M. Pitman of H.M. Attorney General regarding the decision to arrest Senator Stuart Syvret and search his residence:

Would the Attorney General inform the Assembly whether he was aware in advance of the decision to arrest Senator Stuart Syvret and search his residents, and if he was not, would he inform the Assembly whether the decision to search the Senator's home without a search warrant was legal?

Mr. W.J. Bailhache Q.C., H.M. Attorney General:

Yes, I was aware in advance of the police decision to arrest Senator Syvret on suspicion of committing offences under the Data Protection Law and to search his residence.

3.12.1 Deputy T.M. Pitman:

Could I just have clarity on the second part, I did not understand if the Attorney General considered it legal and could he perhaps clarify for us why that would be?

The Attorney General:

I did not answer the second part because the question did not ask me to having answered yes to the first part. To the second part, yes, in my opinion the search of the residence without a warrant was lawful. Article 29 of the Police Procedures and Criminal Evidence Law clearly confers that authority. If the Senator wishes to challenge that the right place to do so is in a court of law.

3.12.2 Deputy G.P. Southern:

Could I ask the Attorney General why the regulations for a search warrant to be issued under the Data Protection Law were not followed in this particular case, if he would care to speculate as to the thinking of the police, and whether that should have taken priority?

The Attorney General:

I am certainly not going to speculate on what the decisions of the police might be. The police are entitled to exercise the powers which are conferred on them by the Police Procedures and Criminal Evidence Law and, in my view, that is quite clear.

The Deputy Bailiff:

Are you going to declare an interest, Senator Syvret, in this matter.

3.12.3 Senator S. Syvret:

Yes, Sir, I will declare certainly an indirect interest, yes. It is an example a few other Members in this Assembly could follow. If the Attorney General is asserting, as he did, that the use of Article 29 of P.P.C.E. (Police Procedures and Criminal Evidence) in this context was lawful, does he then accept by extension that similar grounds could be invoked to use Article 29 of P.P.C.E. to basically search any property by simply using the mechanism of arresting a person who steps out the door?

Senator S.C. Ferguson:

I must protest at this line of questioning is going on while there is a subject under investigation.

The Deputy Bailiff:

There are no court proceedings going and therefore it is not possible for the Chair to rule that it is *sub judice* at present. The wisdom of asking such questions is a matter for Members.

The Attorney General:

I perhaps should repeat that in my view if the Senator wishes to challenge the lawfulness of the police action the right place to do so is in a court of law, but in answer to his question he describes the use of a mechanism for achieving a search. The provisions of Article 29 which enable the police to search premises follow upon the arrest of a person. Under Article 3(1) of the Police Force Law where a police officer with reasonable cause suspects that any person has committed, is committing or is about to commit an offence the police officer may arrest that person. So this is not a mechanism. This is a case where the police believe, have reasonable cause for believing or suspecting, that a person has committed, is committing or is about to commit an offence. Where that predicate party is satisfied, the police have the powers to search premises consequent upon that arrest.

3.12.4 Senator S. Syvret:

Supplementary, if I may. The question was not really concerning the power of arrest. It was concerning the use of arrest under Article 29 as a device to then search a property without the police having to go through the standard protections and procedures of obtaining a search warrant.

The Attorney General:

Certainly I have nothing to say about the suggestion that the use of the arrest was a device. That is a matter which the Senator ought to raise in a court of law if that is what he feels inclined to do. It is a matter upon which the police will be heard with the evidence which they had to support their view at that time.

3.12.5 Deputy G.P. Southern:

Is it the Attorney General's opinion the powers outlined under section 29 of P.A.C.E. (Police and Criminal Evidence) take precedence over the conditions laid out in the Data Protection Law and indeed any other laws?

The Attorney General:

When the Deputy refers to P.A.C.E. I take it he means the Police Procedures and Criminal Evidence Law, and Article 29. The answer to that is, in my view, the powers which are conferred by the different pieces of legislation are cumulative and there is absolutely no reason why the police should not exercise the powers conferred by Article 29. I am not sure which particular regulations the Deputy is referring to in relation to the Data Protection legislation but if he is referring to schedule 9 then those provisions are available for the Data Protection Commissioner to take steps rather than the police. The police are still perfectly entitled to investigate offences under the Data Protection Law.