

Man can seek compensation for rights violation

By MARINA STRAUSS

An Alberta judge has ruled that an accused man whose constitutional rights were violated when he was jailed for five days can seek state compensation.

Mr. Justice David McDonald of the Alberta Court of Queen's Bench ruled that Denis Germain can ask for money as a remedy for the violation under the Charter of Rights and Freedoms or can ask, if convicted of the charge against him, for a shorter sentence than would otherwise be imposed.

Mr. Germain was jailed for contempt after he appeared in provincial court without a lawyer. His explanation that he could not afford a lawyer and had been unable to obtain legal aid was rejected by Provincial Court Judge Lucien Maynard, a former attorney-general of Alberta.

Judge McDonald said the section of the Charter providing for infringement remedies "must be given a generous interpretation," although he added that, only in unusual and special cases, should proceedings against an accused be quashed.

Mr. Germain's case was not an example of one in which charges should be dismissed, because the assault charges against him are serious, the judge said.

Judge McDonald, best known nationally as the head of a royal commission that investigated wrongdoing by the RCMP, said:

"The conduct of the accused did not constitute a contempt of court. . . . The power of any court to find a person guilty of con-

tempt of court is one that must be used with great prudence. . . . What occurred in the present case was an abuse of the summary power of punishing for contempt."

In his recent ruling, Judge McDonald stopped short of awarding Mr. Germain damages for infringement of his rights. While he denied Mr. Germain's request that the assault charges still pending against him be quashed he invited Mr. Germain "to seek other relief," such as asking specifically for a monetary award.

David Midanik, an Edmonton lawyer now representing Mr. Germain, said in an interview he still is considering the options. A trial date for the four assault charges against Mr. Germain is to be set in September in St. Paul, about 120 miles northeast of Edmonton.

Fingerprinting child violates Charter: lawyer

A provision in the new Young Offenders Act allowing for fingerprinting and photographing of accused juveniles is unconstitutional and should be struck down, an Edmonton lawyer says.

David Midanik says that making his 13-year-old client present himself at a police station to be photographed and fingerprinted — possibly at the same time as hardened criminals — is an unwarranted invasion of his right to life, liberty and security of the person.

This, Mr. Midanik says in his notice to the Court of Queen's Bench of Alberta, violates the

Judge McDonald elaborated at some length on the availability of monetary compensation as a possible remedy to a Charter violation. He said the existence and scope of this remedy have not been explored in detail in any previous decision under the Charter.

"It was necessary to demonstrate that it forms part of the armory of remedies that may be just and appropriate when there has been an infringement of a right guaranteed by the Charter," Judge McDonald said.

He ruled that Judge Maynard did not make plain to the accused the nature of the contempt with which he was being charged.

"Here, the accused was deprived of his liberty by a procedure that was not in accordance with the principles of fundamental justice, which require that the specific nature of the com-

plaint against him be distinctly stated and that he be given an opportunity of answering it," Judge McDonald ruled.

Charter of Rights and Freedoms. The arguments are scheduled to be heard in court tomorrow and the fingerprinting is to take place on Tuesday.

The Young Offenders Act came into effect in April, replacing the Juvenile Delinquents Act which had no specific provision for fingerprinting and photographing youth.

Mr. Midanik says his client cannot be tried in adult court because the Young Offenders Act allows only those 14 and over to be transferred to the more severe adult criminal courts.

The act fails, however, to

make a distinction between a 13-year-old and youths who are older in forcing them all to be fingerprinted and photographed, which Mr. Midanik said can be a traumatic experience because of the associations these procedures carry with them.

He noted there are no separate places for youngsters to be fingerprinted and photographed in the police station, and adds that his client has had no previous dealings with law enforcement authorities.

The youngster is charged in connection with the theft of money and jewelry from a teach-

"Moreover, the remedy, to be just, must be otherwise consistent with other values enshrined in the Charter that are designed to protect an egalitarian pluralistic society that is free and democratic."

The charge against Mr. Germain relates to an assault on four people on July 18, 1983. Judge McDonald said he was told the most serious of the assaults cost one of the victims the sight of one eye.

After two months and a few Provincial Court appearances, Mr. Germain appeared before Judge Maynard on Sept. 12, 1983. Mr. Germain said he could not get a lawyer because he did not have money and had not qualified for legal aid. Judge Maynard cited him for contempt.

Mr. Germain, a carpenter, is married with two children.

er's purse, Mr. Midanik said. "Forcing a 13-year-old youth to attend for fingerprinting violates his right to be secure against unreasonable search and seizure."

The Supreme Court of Canada ruled earlier this year that police can use reasonable force to fingerprint juveniles charged with serious crimes and not be sued for assault.

The decision was, however, based on the Juvenile Delinquents Act, which had been repealed by the time the ruling was issued.