



Case in Brief: ***R. v. Brunelle***

Judgment of January 26, 2024 | On appeal from the Court of Appeal of Quebec
Neutral citation: 2024 SCC 3

The Supreme Court confirms that a new trial must be held for 31 persons who were granted a stay of proceedings by the Superior Court of Quebec.

Following an investigation that began in 2014, a large-scale police operation was launched in 2016 in three regions in Quebec. Some 30 persons were arrested and charged with various indictable offences related to production of and trafficking in narcotics. At the time they were arrested, the accused persons were all informed of their constitutional right, guaranteed by section 10(b) of the *Canadian Charter of Rights and Freedoms*, to retain and instruct counsel without delay. Many of them indicated that they wanted to exercise their right as soon as they were informed of it, some did not ask to exercise their right until they were at the police station, and the others said that they did not wish to retain and instruct counsel or that they had already done so. In the end, out of those who indicated a desire to exercise this right immediately, only one was given an opportunity to do so while in the police vehicle.

The accused persons were divided into four different groups for separate trials. Those in the first group, who were to be tried first, filed a motion for a stay of proceedings on the basis that there had been multiple infringements of their constitutional rights during the police investigation and operation. In the context of a criminal case, a stay of proceedings is a remedy that may be granted to an accused person who establishes that the state's conduct undermines the integrity of the justice system, regardless of whether the person has suffered any personal prejudice or whether the fairness of the person's trial has been impaired. The accused persons in this case alleged that an accumulation of infringements of their constitutional rights, particularly their right to retain and instruct counsel without delay, amounted to an abuse of process for all of them, even though several of them were not the victims of any of these infringements. The accused persons in the other three groups filed motions similar to the one filed by the first group.

The trial judge entered a stay of proceedings for the accused persons in the first group. He found that the police practice of postponing the exercise by the accused persons of their right to counsel until they were taken to the police station infringed the right under section 10(b) of the *Charter* of everyone in the group. Relying on the cumulative effect of these infringements, which he considered to be the most serious ones, and other infringements that occurred during the police action, the judge found that there had been an abuse of process by the police. A stay of proceedings was also entered for the accused persons in the other three groups on the basis of these findings.

The Quebec Court of Appeal allowed the Crown's appeals and ordered that a new trial be held, including a new hearing on the motion for a stay of proceedings. In the Court of Appeal's view, some accused persons did not have standing to obtain a stay of proceedings, because a remedy can be granted only to persons whose own constitutional rights have been infringed. It was also of the opinion that the trial judge had erred in entering a stay of proceedings for all of the accused persons without first assessing whether the rights of each of them had been infringed. The accused persons appealed the decision to the Supreme Court of Canada.

The Supreme Court has dismissed the appeal.

The trial judge erred in entering a stay of proceedings for all of the accused persons.

Writing for the majority of the Court, Justice O'Bonsawin ruled that all of the accused persons had standing to apply for a remedy even though some of them were not the victims of any of the infringements constituting the alleged abusive conduct.

However, the trial judge had to determine whether each accused person's right under section 10(b) of the *Charter* had been infringed, and he did not do so. Finally, the trial judge erred in entering a stay of proceedings for all of the accused persons without first considering less drastic remedies that could have fully redressed the prejudice to the integrity of the justice system that he thought he had identified. For these reasons, Justice O'Bonsawin concluded that this error justified holding a new trial for the first group, as well as new hearings on the accused persons' motion for a stay of proceedings.

Breakdown of the decision: *Majority:* Justice [O'Bonsawin](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Martin](#), [Kasirer](#) and [Jamal](#) agreed) | *Concurring:* Justice [Rowe](#) stated that he agreed with Justice O'Bonsawin as to the result of the appeal but provided greater clarification on the methodology to be used when an accused person seeks a stay of proceedings on the basis of sections 8 to 14 of the *Charter*, in particular section 10(b), as well as on the basis of section 7 of the *Charter*.

More information: [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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