Unofficial English Translation of the Judgment of the Court

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| Reyes c. R. | | | | | 2022 QCCA 1689 |
| COURT OF APPEAL | | | | | |
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| CANADA | | | | | |
| PROVINCE OF QUEBEC | | | | | |
| REGISTRY OF | | MONTREAL | | | |
| No.: | 500-10-007465-204 | | | | |
| (540-01-095607-209) | | | | | |
|  | | | | | |
| DATE: | December 13, 2022 | | | | |
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| CORAM: | | | THE HONOURABLE | GUY GAGNON, J.A.  PATRICK HEALY, J.A.  FRÉDÉRIC BACHAND, J.A. | |
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| JOSÉ ALBERTO REYES | | | | | |
| APPELLANT – Accused | | | | | |
| v. | | | | | |
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| HIS MAJESTY THE KING | | | | | |
| RESPONDENT – Prosecutor | | | | | |
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| JUDGMENT | | | | | |
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1. The appellant seeks leave to appeal a judgment dealing with the sentence imposed by the Court of Quebec, Criminal and Penal Division, district of Laval (the Honourable Serge Cimon), rendered on November 27, 2020, following his plea of guilty on a count of uttering threats to cause death or bodily harm and a count of mischief of a value of $4,850, committed in a holding cell.
2. For the reasons of Healy and Gagnon JJ.A., Bachand J.A., concurring, **THE COURT:**
3. **ALLOWS** the appeal;
4. **QUASHES** the sentence imposed on November 27, 2020;
5. **IMPOSES** a three-month sentence on each count to be served concurrently with any other sentence in effect, as well as one year’s probation under the conditions set out in the joint submission;
6. **ORDERS** the appellant to present himself to the prison authorities no later than Tuesday, January 10, 2023, at noon.

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|  | | GUY GAGNON, J.A. |
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|  | | PATRICK HEALY, J.A. |
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|  | | FRÉDÉRIC BACHAND, J.A. |
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| Mtre Anna Ouahnich | | |
| ANNA OUAHNICH AVOCATE | | |
| For the appellant | | |
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| Mtre Simon Blais | | |
| DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS | | |
| For the respondent | | |
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| Date of hearing: | August 31, 2022 | |

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| REASONS OF HEALY J.A. |
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# Introduction

1. The appellant appeals from a sentencing judgment rendered by the Court of Québec, Criminal and Penal Division, District of Laval (the Honourable Serge Cimon), on November 27, 2020, following the appellant’s plea of guilty on one count of uttering threats to cause death or bodily harm[[1]](#footnote-1) and one count of mischief[[2]](#footnote-2) of a value of $4,850 committed in a holding cell.[[3]](#footnote-3)
2. At trial, the parties jointly proposed a three-month sentence to be served concurrently on both counts, along with one year’s probation, concurrent with all sentences already in effect for the global sentence of two years’ imprisonment handed down on the appellant in twenty separate files that he resolved before three judges in the districts of Laval and Montreal in the spring of 2020. The Court of Quebec rejected the joint submission and imposed a total sentence of six months’ imprisonment to be served concurrently and consecutively to any other sentence imposed, as well as one year’s unsupervised probation with the usual conditions.
3. The appellant invokes five grounds of appeal,[[4]](#footnote-4) which can essentially be summarized in a single question:

[translation]

Did the Court of Quebec err in principle in not applying the rules established by the Supreme Court in *Anthony-Cook*[[5]](#footnote-5) concerning the rejection of a joint submission?

1. To begin with, it must be stressed that the recital of the relevant facts and the statement of law by the Court of Quebec are without error in law but are reviewable in respect of the application of the principles in this case.

# Relevant facts

1. In his statement, the appellant presents a chronology of his appearances before the Court of Quebec in the spring of 2020 to resolve some twenty files:

[translation]

On April 14, 2020, in Montreal, the Honourable Patricia Compagnone J.C.Q. imposed a global sentence on the appellant of two years’ imprisonment in connection with events that had occurred in September 2015, November 2018, December 2018, and July and August 2019, thereby allowing the applicant to dispose of thirteen files.

On April 22, 2020, in Laval, the Honourable Maria Albanese J.C.Q. imposed a global sentence of fifteen (15) months’ imprisonment on the appellant to be served concurrently with any other sentence in connection with events that occurred on March 21 and 22, 2019, allowing the applicant to dispose of six more files.

On June 18, 2020, again in Montreal, the Honourable Silvie Kovacevich J.C.Q. imposed a sentence of two (2) months’ imprisonment on the appellant to be served concurrently with any other sentence in connection with an offence (breach of conditions) committed on June 7, 2019.

1. The events that gave rise to the two counts in this case occurred on November 29, 2019, in the cell block of the Laval courthouse, while the appellant was detained. The information for these two offences was authorized on May 20, 2020, and the appellant pleaded guilty to both counts on August 7, 2020.
2. Thus, the appellant was convicted of the two counts in this file and appeared for his other files at the Court of Quebec (districts of Laval and Montreal) during the same period.

# The *Anthony-Cook* decision

1. In *Anthony-Cook*, the Supreme Court firmly asserted that joint submissions are an integral and essential part of the sound administration of criminal justice and even that the administration of justice would collapse under its own weight without the general benefits provided by this form of resolving prosecutions. On this basis, the Court formulated the test that must be met for a judge to reject a joint submission. The judge must accept the proposed sentence unless it would undermine the public’s confidence in the administration of justice or is otherwise contrary to the public interest. The Court points out that even if the final decision falls within the judge’s discretion, the test requires that the judge accord the parties’ submission great deference. The test is therefore stringent and demanding. The rejection of a joint submission, as may happen in exceptional cases, must be explained by specific reasons why the proposed sentence is not in the public interest.[[6]](#footnote-6)

## The proper test

1. Moldaver J. of the Supreme Court, speaking for the Court, described the proper test as follows:

[32] Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. But, what does this threshold mean? Two decisions from the Newfoundland and Labrador Court of Appeal are helpful in this regard.

[33] In *Druken*, at para. 29, the court held that a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so “markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system”. And, as stated by the same court in *R. v. B.O.2*, 2010 NLCA 19, at para. 56 (CanLII), when assessing a joint submission, trial judges should “avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts”.

[34] In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold — and for good reason, as I shall explain.[[7]](#footnote-7)

1. Moldaver J. repeatedly emphasizes that this proper test is also “stringent”.
2. In *Nahanee*, the Supreme Court again emphasizes the stringency of the test:

[1] Where the Crown and the defence propose a specific agreed-upon sentence to a judge in exchange for an accused’s guilty plea, a stringent test, known as the “public interest” test, exists to protect that submission. The test, adopted by this Court in *R. v. Anthony-Cook*, 2016 SCC 43, [2016] 2 S.C.R. 204, instructs judges not to depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise contrary to the public interest. Sentencing judges must not reject a joint submission lightly. They should only do so where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system.

[2] The stringency of this test is designed to protect the unique benefits that flow from joint submissions. It provides the parties with a high degree of certainty that the sentence jointly proposed will be the sentence imposed, and it avoids the need for lengthy, costly, and contentious trials. As a rule, joint submission sentencing hearings are expeditious and straightforward. They save precious time, resources, and expenses which can be channeled into other court matters. In short, they enable the justice system to function efficiently and effectively.

…

[25]  *Anthony‑Cook* set out a stringent public interest test which must be met before sentencing judges can reject a joint submission following a guilty plea. At para. 34, the Court stated that:

Rejection [of a joint submission] denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.

[26] This test sets a very high bar by design. It is meant to encourage agreement between the parties, which saves court time at sentencing. The test also incentivizes guilty pleas, sparing victims and the justice system the need for costly, time-consuming trials (*Anthony-Cook*, at paras. 35 and 40). Accused persons benefit because they have a very high degree of certainty that the sentence jointly proposed will be the sentence they receive; and the Crown benefits because it is assured of a guilty plea on terms it is prepared to accept (paras. 36-39). Both parties also benefit by not having to prepare for a trial or a contested sentencing hearing.[[8]](#footnote-8)

And further on:

[41] … Although judicial discretion is limited by the public interest test in the context of a joint submission, this limitation is justified in order to protect the parties’ agreement on a specific sentence — the length of which is not unilaterally decided by the Crown. In contrast, if the public interest test applied to contested sentencings, the upper range would often be unilaterally decided by the Crown.

This is how the Court highlighted both the stringency of the public interest test and how strongly this principle protects the integrity of joint submissions.

## B. Exclusion of other tests

1. In *Anthony-Cook*, the Court considered three possibilities before determining the applicable test:

[27] The first of these is the “fitness” test. Under this test, trial judges should give joint submissions serious consideration, but may depart from them if, having regard to the circumstances of the case and the applicable sentencing principles, they conclude that the proposed sentence is not “fit”. Some provincial appellate courts use this test, most commonly in the western provinces (see, for example, *R. v. G.W.C.*, 2000 ABCA 333, 277 A.R. 20, at paras. 17-18; *R. v. Bezdan*, 2001 BCCA 215, 154 B.C.A.C. 122, at para. 15; *R. v. MacIvor*, 2003 NSCA 60, 215 N.S.R. (2d) 344, at para. 31). Crown counsel for the respondent urged us to adopt this test, arguing that it best reflects the trial judge’s duty to come to an independent decision regarding the appropriate sentence.

[28] The second test is also a “fitness” test, although of a different kind. It resembles the standard of review that appellate courts apply on sentencing appeals in circumstances where the sentence imposed by the trial judge is entitled to deference. Under this test, trial judges should not depart from a joint submission unless they conclude that the sentence proposed is “demonstrably unfit” (*R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at para. 11). This is clearly a more stringent test than the simple “fitness” test. However, the parties did not point us to any appellate decisions that have adopted it, and I am aware of none.

[29] The third test, commonly referred to as the “public interest” test, was developed in the *Report of the Attorney General’s Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions* (1993) (the “Martin Committee Report”).[2] Under this test, trial judges “should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest” (p. 327 (emphasis deleted)). This test has also been adopted by a number of provincial appellate courts (see, for example, *R. v. Dorsey* (1999), 123 O.A.C. 342, at para. 11; *R. v. Druken*, 2006 NLCA 67, 261 Nfld. & P.E.I.R. 271, at para. 29; *R. v. Nome*, 2002 BCCA 468, 172 B.C.A.C. 183, at paras. 13-14). The appellant supports this test, largely because it provides “a high threshold and is intended to foster confidence in an accused, who has given up his right to a trial, that the joint submission he obtained in return for a plea of guilty will be respected by the sentencing judge” (*R. v. Cerasuolo* (2001), 151 C.C.C. (3d) 445 (Ont. C.A.), at para. 8).

[30] And, finally, some courts, most notably in Quebec, treat the fitness and public interest tests as essentially the same, and use the language of the two tests interchangeably (though in Quebec “reasonableness” is used in place of “fitness”: see, for example, *R. v. Douglas* (2002), 162 C.C.C. (3d) 37 (C.A.), at para. 51; *R. v. Dion*, 2015 QCCA 1826, at para. 14 (CanLII); *R. v. Dumont*, 2013 QCCA 576, at para. 12 (CanLII); *R. v. Mailhot*, 2013 QCCA 870, at para. 7 (CanLII)). Perhaps the best example of this is found in *Douglas*, an oft referred to decision of the Quebec Court of Appeal in which Fish J.A. (as he then was) said:

In my view, a reasonable joint submission cannot be said to “bring the administration of justice into disrepute”. An unreasonable joint submission, on the other hand, is surely “contrary to the public interest”. Accordingly, though it is purposively framed in striking and evocative terms, I do not believe that the [public interest test] departs substantially from the test of reasonableness articulated by other courts, including our own. Their shared conceptual foundation is that the interests of justice are well served by the acceptance of a joint submission on sentence accompanied by a negotiated plea of guilty ― provided, of course, that the sentence jointly proposed falls within the acceptable range and the plea is warranted by the facts admitted. [Endnote omitted; para. 51.]

[31] Having considered the various options, I believe that the public interest test, as amplified in these reasons, is the proper test. It is more stringent than the other tests proposed and it best reflects the many benefits that joint submissions bring to the criminal justice system and the corresponding need for a high degree of certainty in them. Moreover, it is distinct from the “fitness” tests used by trial judges and appellate courts in conventional sentencing hearings and, in that sense, helps to keep trial judges focused on the unique considerations that apply when assessing the acceptability of a joint submission. To the extent *Douglas* holds otherwise, I am respectfully of the view that it is wrongly decided and should not be followed.

1. The Supreme Court therefore clearly adopts the third test. It emphasizes that this test is stringent and demanding to the point that it cannot be concealed or conflated with others the Court has set aside. It follows that not respecting this test is an error in principle.

## C. Why the public interest test

1. In the words of Moldaver J., the Court also explains why it adopted the public interest test and rejected the other two:

[46] As indicated, the position of the respondent is that while trial judges should give serious consideration to joint submissions, such submissions may be rejected on a simple “fitness” test. With respect, this test is not sufficiently stringent. Under it, trial judges must ask what a fit or appropriate sentence would be, instead of asking whether *the sentence proposed* would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. In short, the “fitness” test does not direct trial judges to approach joint submissions from a position of restraint. Rather, it sends a different, and in my view, a wrong signal: that they may interfere if they have a different view of what a “fit” sentence would be. If trial judges were free to interfere on this basis, the result would be to “effectively eliminate the use of plea bargaining as part of the criminal prosecution process” (*R. v. Oxford*, 2010 NLCA 45, 299 Nfld. & P.E.I.R. 327, at para. 55).

[47] While the “demonstrably unfit” test used by appellate courts is undoubtedly a higher threshold than the simple “fitness” test, in rare cases, this threshold may not be sufficiently robust for the joint submission context. I would not rule out the possibility that a sentence which would otherwise be considered demonstrably unfit absent a joint submission may nonetheless be acceptable in the context of one. For example, take the case of an accused involved in a very serious crime that the Crown may have difficulty proving because of deficiencies in its case. The accused agrees to plead guilty, and to assist the Crown in prosecuting his co-conspirators for this and other more serious offences. The Crown might reasonably conclude that it is in the public interest to agree, by way of a joint submission, to a very lenient sentence in order to obtain the accused’s guilty plea and his assistance. In short, a very lenient, even “demonstrably unfit” sentence may, in a particular case, serve the greater good.

[48] Further, both the fitness test and the appellate “demonstrably unfit” test suffer from a similar flaw: they are designed for different contexts. As such, there is an appreciable risk that the approaches which apply to conventional sentencing hearings or sentencing appeals will be conflated with the approach that must be adhered to on a joint submission. In conventional sentencing hearings, trial judges look at the circumstances of the offender and the offence, and the applicable sentencing principles. They are not asked to consider the critical systemic benefits that flow from joint submissions, namely, the ability of the justice system to function fairly and efficiently. Similarly, appellate courts are not bound to consider these systemic benefits on a conventional sentencing appeal. The public interest test avoids these pitfalls.

1. There is a reason for the intensity of the test. For joint submissions to work properly and be accepted as a central and vital element of everyday practice, the parties are entitled to expect, with a high degree of confidence if not certainty, that they will be ratified without any undue obstacles. To reinforce this expectation, the stringent test for rejection requires that judges approach joint submissions with a high degree of restraint, which translates into a duty of deference toward the parties submitting them. The Supreme Court notes that, on these issues, the parties’ confidence and the restraint on the judges’ part are complementary and reciprocal principles:

[41] But as I have said, for joint submissions to be possible, the parties must have a high degree of confidence that they will be accepted. Too much doubt and the parties may choose instead to accept the risks of a trial or a contested sentencing hearing. The accused in particular will be reluctant to forgo a trial with its attendant safeguards, including the crucial ability to test the strength of the Crown’s case, if joint submissions come to be seen as an insufficiently certain alternative.

[42]  Hence, the importance of trial judges exhibiting restraint, rejecting joint submissions only where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. A lower threshold than this would cast the efficacy of resolution agreements into too great a degree of uncertainty. The public interest test ensures that these resolution agreements are afforded a high degree of certainty.

1. I would like to say a word about the importance of judges’ restraint in the present context.
2. In sentencing, a consistent line of authority establishes that a court of appeal intervenes only where there is an error of principle or an incorrect (over- or under-) weighing of a relevant factor that has resulted in a demonstrably unfit sentence. This involves a duty of restraint and deference from one court to another. The stringent test for rejecting a joint submission on sentence involves this as well. The sentencing judge must show restraint and deference toward the parties who have made a joint submission, except if the submission would undermine the confidence of a knowledgeable public or would otherwise be contrary to the public interest, not because it seems demonstrably unfit to the judge, but for clearly identifiable reasons. In short, the rejection of a joint submission is an exception to the norm; not only is it unusual, it is somewhat rare.
3. Consequently, judges who do not follow these guidelines when rejecting a joint submission cannot expect the deference usually accorded them by an appellate court in sentencing matters, because a failure to adhere faithfully to the stringent *Anthony-Cook* test is in itself a reviewable error of principle.

# Case law of the Court

1. This brief outline of the stringent *Anthony-Cook* test is confirmed by the Court’s case law, but the following example is sufficient to demonstrate.
2. *Primeau* turned on the issue of the rejection of a joint submission. The argument on appeal was that the rejection was an error of principle that merited the Court’s intervention. Here, in a few paragraphs, is an illustration of the approach this Court has followed since *Anthony-Cook*:

[translation]

[23] Basing itself on the public interest test, the Supreme Court confirmed that other tests are to be rejected, such as the “fitness of sentence” test and the “demonstrably unfit” test. The fitness test should not be followed because “the result would be to “effectively eliminate the use of plea bargaining as part of the criminal prosecution process””. The Court also rejects the demonstrably unfit test because its threshold “may not be sufficiently robust for the joint submission context”.

[24] The public interest test is the proper one because it is “more stringent than the other tests proposed and it best reflects the many benefits that joint submissions bring to the criminal justice system and the corresponding need for a high degree of *certainty* in them”. Thus, the threshold is very high if a judge wishes to depart from a joint submission. Otherwise, doing so “would cast the efficacy of resolution agreements into too great a degree of uncertainty”.

[25] Having set out the proper test, the Court identified six elements that judges must take into consideration “when they are troubled by a joint submission on sentence”. The second is of particular importance in the circumstances of the present case:

[52] Second, trial judges should apply the public interest test when they are considering “jumping” or “undercutting” a joint submission (*DeSousa*, per Doherty J.A.). That is not to say that the analysis will be the same in either case. On the contrary, from the accused’s perspective, “undercutting” does not engage concerns about fair trial rights or undermine confidence in the certainty of plea negotiations. In addition, in assessing whether the severity of a joint submission would offend the public interest, trial judges should be mindful of the power imbalance that may exist between the Crown and defence, particularly where the accused is self-represented or in custody at the time of sentencing. These factors may temper the public interest in certainty and justify “undercutting” in limited circumstances. At the same time, where the trial judge is considering “undercutting”, he or she should bear in mind that the community’s confidence in the administration of justice may suffer if an accused enjoys the benefits of a joint submission without having to serve the agreed-upon sentence.

[References omitted]

[26] In this case, the other important element identified by the Supreme Court is that a trial judge who does not accept the joint submissions of the parties must “provide clear and cogent reasons for departing from the joint submission”. In all judgments rendered by the Court applying *Anthony-Cook*, the trial judges had “jumped” a joint submission, unlike in the present case. However, the Supreme Court clearly considered the case of “undercutting” a joint submission, as demonstrated by the above paragraph, even though undercutting the joint submission may lead to a different analysis. The test for departing from a joint submission remains the same.

[27] In *Séguin*and *Binet,* the Court of Appeal cautioned trial judges not to [translation] “use the public interest test simply to impose the sentence they consider appropriate”. To this end, these two cases cite passages from the Court of Appeal of Alberta which illustrate this interpretation of *Anthony-Cook*:

[translation]

[19] In a recent case, the Court of Appeal of Alberta draws a clear distinction between the principles that should guide a judge in accepting or rejecting a joint submission and those applicable to sentencing. It states the following:

[17] After a review of the case law, the sentencing judge summed up the test as follows:

[51] The principles to be drawn from these cases suggest that a joint submission will bring the administration of justice into disrepute or otherwise be contrary to the public interest when it does not adequately reflect the general principles of sentencing identified in the Criminal Code and where the benefits of accepting the joint submission do not outweigh these concerns. (Emphasis added)

This, however, is not the test for accepting a joint submission set in Anthony-Cook. It echoes the “fitness” or “demonstrable unfitness” tests that were specifically rejected in that case.

[18] While the sentence that might have resulted after trial is relevant, it is an unhelpful approach to start the analysis by reverse engineering the joint submission. In other words, it is inappropriate to first determine what sentence would have been imposed after a trial, and then compare it to the joint submission. This inevitably invites a conclusion that the joint submission would bring the administration of justice into disrepute merely or primarily because it departs from the conventional sentence. Rather, the analysis should start with the basis for the joint submission, including the important benefits to the administration of justice, to see if there is something apart from the length of the sentence that engages the broader public interest or the repute of the administration of justice*.*

[20] The Court agrees. The judge erred in principle in rejecting the joint submission from the parties. Under the guise of public interest, he instead imposed a sentence he found more appropriate in the circumstances.

[Emphasis in the original]

…

[28] We agree with the appellant that the circumstances of this case are similar to the circumstances in *Séguin* and *Binet*, and that the judge has, under the guise of the public interest test, imposed the sentence she considered the most appropriate in the circumstances. Essentially, with regard to the aggravating and mitigating factors, the judge departed from the proposed sentence because she considered that a custodial sentence was not appropriate in the circumstances.[[9]](#footnote-9)

[References omitted]

1. The Court found that the trial judge had departed from the joint submission not by applying the public interest test as required, but by substituting for the joint submission a sentence she considered fit according to general sentencing principles. The Court again describes this action as an error in principle, just as it did in *Séguin* and *Binet*.[[10]](#footnote-10)

# Application to this case

## A. The next steps

1. In this case, the parties suggested a sentence of three months to be served concurrently with any other sentence on both counts. The submission was basically motivated by the particular context of this case. On April 14, 2020, in Montreal, the appellant pleaded guilty to the offences committed between September 2015 and August 2019. These offences are unrelated and were committed over the course of several years. The appellant agreed to plead guilty in exchange for a global sentence of 24 months’ imprisonment for all the offences. At the time, however, the information for the charges in this case had not yet been sworn because of an administrative problem. It was finally sworn on May 20, 2020, after the comprehensive resolution of the other files. Nevertheless, counsel at trial were of the view that, had it been otherwise, the addition of these two offences would not have changed the joint submission and the sentence imposed would have been the same, because the acts were committed before the plea.
2. This reason, in addition to a consideration of detention conditions during the pandemic, the administrative penalty imposed, and the psychiatric reports on the appellant, led the parties to propose a concurrent sentence of three months’ imprisonment.
3. On August 7, 2020, the day of the guilty plea, the judge for his part had reservations about the proposal. He considered these offences unrelated to the ones covered by the global sentence of April 2020, which included offences of theft and breach of conditions, whereas the offences in question were mischief and uttering death threats. Accordingly, the principle is that sentences are consecutive and not concurrent. He added that the appellant’s numerous prior convictions for such matters was of concern and that the offences were even more serious because they were committed in a detention centre against actors in the justice system, while the appellant was on probation for similar acts. For these reasons, the judge considered the proposed sentence to be contrary to the public interest.
4. After the guilty plea, the judge told the parties that the joint submission was too lenient, especially because of the number and nature of the appellant’s prior convictions. Following the proper procedure indicated by the Supreme Court in *Anthony-Cook*, he continued the hearing on a later date to hear the parties’ submissions on a longer sentence consecutive to all the sentences already imposed.
5. Counsel for the appellant argued that the joint submission was negotiated by two experienced criminal law experts and that, moreover, the parties had agreed that, according to the totality principle, the global sentence would have remained the same if the two counts had been taken into consideration when resolving the other files. During these submissions, the respondent never departed from the joint submission. In short, the respondent maintained throughout that the joint submission was in the public interest.
6. As mentioned previously, the judge identified the principles applicable in this case so as to closely follow the Supreme Court’s teachings in *Anthony-Cook*. He acknowledged that the joint submission is an essential element in the sound administration of criminal and penal justice. He also followed the procedure recommended by the Court in a case where the judge considers rejecting the joint submission. Only the application of these concepts is at issue before this Court.

## B. Contradiction of the respondent

1. Before I comment on the judge’s reasons, it must be noted that the respondent claims before this Court that his position [translation] “does not repudiate the joint submission presented to the trial judge.” Rather, it holds that the judge [translation] “did not commit a reviewable error in rejecting the joint submission of the parties.” At the hearing, the respondent maintained this position. It is clear that these two statements are irreconcilable, unless we are to say that the respondent’s position at trial was without merit. They are irreconcilable because the respondent cannot maintain his position on appeal without stating that, if the judge was not wrong in rejecting the joint submission, this submission was by definition likely to undermine public confidence in the administration of justice and was contrary to the public interest. The respondent’s compromising position has already been the subject of comments by the Court in *Baptiste*:

[84] For the past 50 years, our Court has consistently held that the Crown may only repudiate its position on a sentence appeal in exceptional circumstances.

[85] This area of the law was handily summarized in *R. v. S.(H.)*:

[59] … While there is no rule or principle that precludes the Crown from repudiating its position taken at trial, jurisprudence has established that it may only be done in exceptional circumstances - where it can be shown that the public interest in the orderly administration of justice is outweighed by the gravity of the crime and the gross insufficiency of the sentence: See *R. v. P.J.B.* (1999), 1999 CanLII 18938 (NL CA), 141 C.C.C. (3d) 290 (Nfld. C. A.); *R. v. Marks* (1994), 1994 CanLII 9742 (NL CA), 91 C.C.C. (3d) 421 (Nfld. C.A.); *Attorney General of Canada v. Roy (*1972), 18 C.R.N.S. 89 (Que. Q.B.).

[60] The public’s interest in the orderly administration of justice requires a consideration of any potential unfairness to the offender resulting from the Crown’s change of position as to sentence on appeal.

[61] Appellate courts have refused to intervene in a sentence where the record demonstrated that the offender acted in reliance upon the Crown’s position below. Courts have been particularly reticent to give effect to increased Crown submissions on appeal where offenders have pleaded guilty after receiving sentencing assurances from the Crown, or where the parties have made a joint submission on sentence: See *R. v. Agozzino* (1969) 6 C.R.N.S. 147 (Ont. C.A.); *R. v. Wood*(1988), 1988 CanLII 7095 (ON CA), 43 C.C.C. (3d) 570, 29 O.A.C. 99 (Ont. C.A.); *R. v. Simoneau* (1978), 1978 CanLII 2650 (MB CA), 40 C.C.C. (2d) 307 (Man. C.A); *R. v. Dubien* (1982), 1982 CanLII 3901 (ON CA), 67 C.C.C. (2d) 341 (Ont. C.A.); *Attorney General of Canada v. Roy* (1972) 18 C.R.N.S. 89 (Que. Q.B.); *R. v. Edwards* (2001), 2001 CanLII 24105 (ON CA), 54 O.R. (3d) 737. In such cases, appellate courts have found that it would prejudice the offender to allow the Crown to repudiate its position on appeal. See also: *R. v. Fleury* (1971), 23 C.R.N.S. 164 (Que. C.A.); *R. v. Wood* (1975), 1975 ALTASCAD 33 (CanLII), 26 C.C.C. (2d) 100 (Alta. C.A.).

[86] It is crucial to remember that “[t]he Crown is not an ordinary litigant. As a minister of justice, the Crown’s undivided loyalty is to the proper administration of justice”. The Crown is expected to act accordingly.[[11]](#footnote-11)

[References omitted]

1. I am not suggesting that the prosecution is lawfully precluded on appeal from repudiating its position taken at trial. I find that it clearly appears to be making an about-face and, in a manner entirely consistent with *Anthony-Cook* and *Nahanee*, such a reversal of position on appeal can be justified only by the greater public interest.

## C. Reasons

1. The need to present reasons in support of the rejection of a joint submission is not an exercise in complacency or formality. In this context, it is a requirement through which the judge must make a focused demonstration of the specific reasons that go beyond mere disagreement with the fitness of the proposed sentence or a vague sense of foreboding about a negative feeling in an unknown and undefined public. After taking note of the judge’s reasons, this same public must be able to identify why “the proposed sentence would be … a breakdown in the proper functioning of the justice system.”[[12]](#footnote-12) As Moldaver J. noted in *Anthony-Cook*, “a very lenient, even “demonstrably unfit” sentence may, in a particular case, serve the greater good.”[[13]](#footnote-13) It follows that in a case in which a joint submission is rejected, the judge’s reasons must convincingly show not only why the parties’ submission is too lenient, but also why it cannot serve the greater good.
2. This case marks at least the fourth time that this same issue has been presented to the Court, and each time, the same answer has been given: the fitness of the sentence test cannot be used under the guise of the public interest.[[14]](#footnote-14)
3. In his reasons, the judge drew up a list of eleven reasons in support of his decision, only one of which might have had sufficient weight to justify rejecting the joint submission. This reason is that the proposed concurrent sentence of three months gives an informed and knowledgeable public the impression that no real or visible consequences result from the appellant’s culpability. The submission would therefore be contrary to the public interest and undermine public confidence in the administration of justice.
4. Here is the list:

[translation]

[82] **First**, this submission does not take into account the accused’s numerous prior convictions. Indeed, the accused has 330 previous offences, including 12 for uttering threats to cause death or to cause bodily harm. Indeed, on April 20, 2017, he received a 3-month term of imprisonment consecutive to any other sentence for an offence of uttering a threat to cause death. Furthermore, he has 3 previous offences for committing mischief.

[83] **Second,** on November 29, 2019, the accused was bound by a 2-year probation order imposed on July 10, 2018, in another case of mischief. Moreover, the Court notes that the accused has 203 prior convictions for breach of probation and 24 prior convictions for failure to comply with a recognizance. It must be noted that the accused’s behaviour directly calls into question the authority of the courts.

[84] **Third**, the offences were committed in a holding cell at a courthouse. In addition to being a gesture of defiance towards prison and justice system authorities, it is common ground that when an offender becomes disorganized in such an environment, it is likely to [translation] “complicate” the task of the correctional officers in charge of maintaining order and the safety of the individuals under their responsibility.

[85] **Fourth**, the accused caused over $4,800 in damages. The Court notes here that all citizens, through their income taxes, must pay for the damage caused by the mood swing of the accused, who wanted to have what the correctional officers were eating.

[86] **Fifth**, the offences of November 29, 2019, are unrelated to the offences for which the accused received a global sentence in April 2020 in Montreal and Laval. Indeed, according to the prior convictions and the pre-sentencing report, most of these sentences were for shoplifting, credit card fraud, and breach of probation. In addition, these offences dated back to September 2015, or took place during a continuous period from October 2018 to August 2019. In other words, the offences committed on November 29, 2019, are completely separate from those for which the accused received a comprehensive resolution. Clearly, they are not on the same time continuum or part of the same criminal venture. Furthermore, the Court finds that in this case, a consecutive sentence does not at all infringe on the totality principle.

[87] **Sixth**, the expert psychiatric report dated March 17, 2020, prepared for the Montreal files indicates that the accused does not appear to suffer from a known anxiety disorder. Psychiatrist Marion Pastor stated that the accused appears to present with antisocial personality disorder. However, the disorder appears to have stabilized in the past few years. The expert report also indicates that the accused displays resentment toward the justice system. In addition, the accused seems to acknowledge that he may need help to manage his anger and emotions.

[88] **Seventh**, in her pre-sentencing report, probation officer Lafontaine questions the accused’s transparency in relation to various spheres of life, including consumption and the use of violence. The probation officer also points out that the accused may have a tendency to manipulate the truth in order to present a positive image of himself and thereby avoid being negatively judged. She also adds that the accused displays a low tolerance for rejection and may react negatively to authority. She concludes by pointing out that, in her opinion, the accused must be held accountable for his actions so that he can continue to reflect on his lifestyle and delinquent values.

[89] **Eighth,** the accused’s guilty pleas are not worth much. Indeed, in this case:

• there is no particular issue concerning the accused’s identification;

* the witnesses to the event are correctional officers already working at the Laval courthouse, not civilian witnesses who might not be present at the trial;
* the trial is not long and complicated and does not require the resolution of complex legal issues or the management of a large body of evidence;

• there is no indication that the accused cooperated with law enforcement to resolve specific investigations or that the prosecution’s evidence was at risk in any way.

[90] In fact, the accused merely pleaded guilty in a case where the outcome appeared certain.

[91] **Ninth**, the document prepared by Patricia Chartrand dated June 24, 2019, has very little probative value and relevance. The evidence establishes that after this date, the accused continued to commit criminal offences, namely, on July 11, August 20, and November 20, 2019. In short, and with respect, there is not the slightest hint that the accused has begun to rehabilitate.

[92] **Tenth**, nothing suggests that the joint submission presented is the result of a lengthy and well-thought-out prior negotiation. In fact, the Court notes that on August 7, 2020, the prosecution did not have on hand the accused’s complete and up-to-date criminal record. This was not obtained until August 10, 2020, and it was sent to the Court by email on August 11, 2020.

[93] **Eleventh**, the accused chose not to be heard during the sentencing submissions. No specific evidence was presented concerning his personal characteristics and the risks the COVID-19 pandemic represented for him in the prison environment.

[References omitted]

1. The only reason for imposing a consecutive sentence would be that the events are not linked in any way to the other offences for which he received concurrent sentences in the files resolved in Montreal and Laval in the spring of 2020.
2. This observation overlooks the fact that the appellant received a disciplinary sanction of four days in solitary confinement following the events on November 29, 2019. It also minimizes the vast experience of counsel who presented the joint submission and negates the need to explain why he shows no deference for their assessment of the case. Nor does it mention the benefits that the parties surely considered before presenting the joint submission.
3. In addition, this finding is based on the fact that the offences in this case are unrelated to the multiple offences that the appellant had resolved earlier in Laval and Montreal, which were not interrelated. Therefore, the rejection of the joint submission in this case implies that the judge likely concluded that the global sentence imposed in the other files was contrary to the public interest. This aspect of the issue is not before the Court, of course, but it implies at the very least a marked, if not contradictory, difference between the approach shown in the resolution of the appellant’s other files and this particular case.
4. It is important to mention the two salient features of the judge’s conclusion. The first concerns the decision to double the quantum of the proposed sentence, increasing it from three to six months’ imprisonment. The second is to order that this six-month sentence be served consecutively to any other sentence in effect.
5. Despite the insistence in *Anthony-Cook* and *Nahanee* that clear and cogent reasons must be provided for making such a change, there is no explanation in the judge’s reasons justifying such an increase in the proposed sentence or any reason why this quantum must replace the one proposed in the joint submission for the sentence to respect the public interest. Moreover, the judge’s reasons do not indicate how the result ordered is to be allocated between the two counts before him.
6. Notwithstanding his comprehensive and solid articulation of the applicable principles according to *Anthony-Cook*, the only explanation that seems to justify the conclusion in this particular case is that [translation] “it’s worth more”. In short, although it is difficult to define what constitutes the opinion of an informed and knowledgeable public, the judge’s opinion is largely devoid of content, except to express a retributive purpose. However, that is not the purpose of the task when a judge receives a joint submission. As this Court has stated several times, the judge’s obligation is to identify and explain how the joint submission is contrary to the public interest. What the judge did in this case was to repeat the exercise of determining a fit sentence in the circumstances. As the Court has already said, this exercise cannot be done under the guise of public interest.
7. The eleven considerations listed are introduced by the judge in the following way:

[translation]

[81] The Court considers that a reasonable person, apprised of the circumstances of the case, would feel that this submission undermines the proper functioning of the justice system and would cause the person to lose confidence in the institution of the courts. It is worth recalling that the credibility of the penal and criminal justice system in the eyes of the public depends on the fitness of sentences imposed on offenders.

[References omitted]

1. Regarding the first sentence of this quotation, it is true that the point of comparison must be a “reasonable person, apprised of the circumstances of the case”. However, these minimum qualities are not enough. Such a person cannot only be reasonable and apprised of the circumstances of the case. This same fictitious and idealized person must also be familiar with the everyday practice in the courts of proceeding by way of joint submissions on sentencing and with the imperatives that govern this essential practice.
2. At the end of the second sentence of the excerpt cited above, the judge cites an excerpt from *Lacasse*,[[15]](#footnote-15) a case dealing with sentencing at trial and not the test for rejecting a joint submission. These two concepts cannot be superimposed without risk. Making a direct link between the fitness of the sentence and public confidence in the justice system in order to provide reasons for refusing to accept a joint submission is an indication of the error in principle that the Supreme Court referred to in *Anthony-Cook*. Moreover, the apparent link drawn by the judge does not allow an informed public to identify specifically how the joint submission might cause it to lose confidence in the administration of justice, and undermining the use of joint submissions runs a serious risk of paralyzing the criminal justice system.
3. It is hardly an approach marked by moderation, restraint and deference, as recommended in *Anthony-Cook*, or by respect for a high threshold for intervention. This result must be set aside for at least three reasons. First, it is opaque. Second, it does not meet the tests for rejection identified by the Supreme Court in *Anthony-Cook* and *Nahanee*. Instead, the judge applied the fitness test to the submission of the parties, which the test established by the Supreme Court and reinforced by the case law of this Court has expressly excluded from the analysis. Finally, the judge simply substituted his own opinion and discretion for that which was given to the parties, which once again runs contrary to the teachings of *Anthony-Cook* and subsequent case law.

# Conclusion

1. In closing, I emphasize that trial judges always have a duty to ensure that sentences are in the public interest, but the Supreme Court’s case law obliges all courts to respect joint submissions, except in clearly exceptional circumstances.
2. I would therefore allow the appeal, quash the sentence imposed on November 27, 2020, and impose a three-month sentence on each count to be served concurrently with any other sentence in effect, along with one year’s probation on the conditions contained in the joint submission.

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| PATRICK HEALY, J.A. |

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| REASONS OF GAGNON J.A. |
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1. Essentially, I concur with the reasons of my colleague Healy J.A. and with his conclusions.
2. The public interest test adopted in *Anthony-Cook*[[16]](#footnote-16) is particularly stringent and requires that trial judges not depart from joint submissions unless they find that the proposed sentence “would bring the administration of justice into disrepute or is otherwise contrary to the public interest”.[[17]](#footnote-17)
3. The sound application of this test aims to provide accused with reasonable certainty that the result of their dealings with the Crown will be accepted by the sentencing judge. This confidence is based, *inter alia*, on the assumption that joint submissions are the result of rigorous discussions conducted with due regard for the public interest by officers of the court.[[18]](#footnote-18)
4. The need for a high standard of intervention in joint submissions is also concerned with maintaining the justice system‘s efficiency.[[19]](#footnote-19) This process “saves court time at sentencing”, it spares “victims and the justice system the need for costly, time-consuming trials”, and “both parties also benefit by not having to prepare for a trial or a contested sentencing hearing.”[[20]](#footnote-20)
5. In *Nahanee,* the Supreme Court summarizes these benefits for the accused and the justice system in two words: certainty and efficiency.[[21]](#footnote-21)
6. I do not believe, however, that the case law of the Supreme Court or of our Court[[22]](#footnote-22) should be understood to mean that a judge’s task with regard to joint submissions is now limited to merely “rubber-stamping”. It is true that a judge’s discretionary power in this area is tenuous because it is one of the most limited standards of intervention that exists, but it should also be recalled that the judge is still ultimately the protector of the public interest. That is why the Supreme Court wrote in *Anthony-Cook*:

[3] But joint submissions on sentence are not sacrosanct. Trial judges may depart from them.[[23]](#footnote-23)

1. That said, the relevant factors when deciding whether intervention is required regarding a joint submission must be significant enough to cause a judge to firmly believe that the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. To decide such an issue, the judge must defer to the objective test of a reasonable and informed person who could only view “the proposed sentence … as a breakdown in the proper functioning of the justice system.”[[24]](#footnote-24)
2. An important point to bear in mind is that a reasonable person is sensitive to the concepts of “certainty and efficiency”[[25]](#footnote-25) underlying the application of the public order test for joint submissions.
3. In this case, the judge’s reasons undoubtedly demonstrate his in-depth knowledge of the applicable law. The thoroughness with which he sets it out in his judgment is also to be commended.
4. Nonetheless, and with great respect, I believe that he errs in principle in justifying his intervention by implicitly using the “demonstrably unfit” on for the joint submission. I further find that his analysis is based on two unreasonable misapplications of the test in *Anthony-Cook*, without which his decision would have been different.

* *The proper test*

1. Although the judge was wary of analyzing the joint submission of counsel in the basis of the test to determine a fit sentence,[[26]](#footnote-26) he seems to have fallen into this trap.
2. We will recall that the judge found that the parties’ joint submission meant that the appellant did not face any consequences for his actions on November 29, 2019. He reached this conclusion because of the submission by the parties of a concurrent sentence of three months. The judge discusses this issue as follows:

[translation]

[72] Similarly, subject to the totality principle, the general principle is that a sentence must be served consecutively when it involves offences that are not part of a single criminal adventure. In other words, sentences may be consecutive when they involve separate and distinct criminal transactions, or if there is an aggravating factor that justifies a consecutive sentence. Furthermore, an offender may be sentenced consecutively for offences committed on the same day if the offences involve separate legal interests.[[27]](#footnote-27)

[Footnotes omitted]

1. Later on, he adds:

[translation]

[80] In reality, this submission means that the accused faces no consequences for his actions in November 2019.[[28]](#footnote-28)

[Footnotes omitted]

1. The considerations referred to in the judge’s reasons for departing from the joint submission, which are reproduced in full by my colleague Healy J.A. in paragraph 39 of his reasons, show that he relied on the fitness test, under the guise of the public interest,[[29]](#footnote-29) stating, *inter alia*, [translation] “that the credibility of the penal and criminal justice system in the eyes of the public depends on the fitness of sentences imposed on offenders”.[[30]](#footnote-30)
2. This error manifests itself concretely when he intervenes to increase the term of sentence from three to six months. This increase reveals the true test applied to achieve the result.
3. Even if it had been specifically held that a three-month sentence was contrary to the public interest, it is not clear from the judge’s reasons why this sentence, even if served consecutively, would bring the administration of justice into disrepute to the point that it was necessary to double the length of the sentence.
4. I can see nothing determinative in the public interest between a sentence of six months’ imprisonment, as the one imposed by the judge, and the sentence of three months’ imprisonment, as recommended by the parties. Even it were accepted for a moment that the three months’ imprisonment was unfit, the term could not be changed once it became acceptable as part of a joint submission and analyzed from the perspective of the notions of certainty and efficiency inherent in the public interest test.[[31]](#footnote-31)
5. In short, the judge’s choice to double the length of time in detention recommended by the parties is clearly based on the application of a test to determine a fit sentence, not the public interest test set out in *Anthony-Cook.*[[32]](#footnote-32)
6. In addition, and as I am about to explain, the judge’s opinion regarding the need for a consecutive sentence to meet the expectations of a reasonable person is based on two misapplications of the test in *Anthony-Cook*.

* *Procedural background*

1. In my view, the judge should have paid very special attention to the procedural background of the appellant’s guilty plea.
2. The events giving rise to this plea occurred on November 29, 2019. Long after these events, the appellant resolved a large number of files before the Court of Québec. On April 14, 2020, Patricia Compagnone, J.C.Q. imposed a total sentence of two years’ imprisonment for a series of criminal offences committed between September 2015 and August 2019. On April 22, 2020, the appellant pleaded guilty again before Maria Albanese, J.C.Q. for offences committed on March 21 and 22, 2019, for which he was sentenced to 15 months’ imprisonment to be served concurrently with the sentences received eight days earlier, despite the fact that there was no legal or temporal nexus between the two sets of charges. Finally, on June 18, 2020, the appellant pleaded guilty to a breach of conditions before Kovacevich J.C.Q. on June 7, 2019, and was sentenced to two months’ imprisonment to be served concurrently with the other sentences already imposed.
3. Regarding the criminal acts of November 29, 2019, the Crown did not issue an information until May 20, 2020, due to administrative problems. The appellant pleaded guilty to these new charges on August 7, 2020. Had it not been for this administrative delay, the appellant could have pleaded guilty to the events of November 2019 before Compagnone, J.C.Q. or Albanese, J.C.Q.as early as April 2020.
4. Had this been the case, the appellant could have benefited from the principle of totality in sentencing regardless of the issue of the connectedness of the offences involved.[[33]](#footnote-33) Indeed, on April 22, 2020, Albanese J.C.Q. reached the same conclusion by imposing sentences on the appellant to be served concurrently with those already imposed by her colleague, Compagnone J.C.Q., on April 14, 2020.
5. The Crown argued before the judge that if the charges for which the appellant was appearing had been laid in a timely manner, he could have ruled on them as early as April 2020. The Crown added that a concurrent term of imprisonment would have been requested, as was done for the cases resolved before Albanese J.C.Q. The judge rejected this argument, however, as follows:

[translation]

[80] … Furthermore, the Court does not share the opinion of the parties to the effect that this case did not vary the global sentence received by the accused at the Montreal Courthouse.[[34]](#footnote-34)

[Emphasis added]

1. Contrary to what the judge wrote, this is not a matter of opinion, but a matter of bilateral commitment – you plead guilty, I agree to a joint submission on sentencing. Since the Crown argued at trial that the joint submission would have been presented in April 2020 in any event, had the appellant been able to appear at that time for the offences perpetrated in November 2019,[[35]](#footnote-35) I see no reason to doubt that this commitment would have been fulfilled if the joint submission of August 7, 2020, had been brought to the attention of the judges hearing the April 2020 cases.
2. In view of the foregoing, it would be fundamentally unfair to the appellant to be given a consecutive sentence solely because he was unable to plead guilty earlier, thereby being prevented from benefiting from the totality principle on account of systemic administrative delays. This fact was implicitly acknowledged by the Crown, which joined the appellant’s submissions at trial to argue that the events of November 2019 would necessarily have been included in a global resolution in April 2020.
3. The judge therefore erred in failing to attribute any weight to the common position defended by counsel for the parties. The rejection of their joint submission had the effect of neutralizing the high degree of certainty normally associated with joint submissions. This is a misapplication that is subject to review by the Court.

* *Disciplinary punishment*

1. Furthermore, the judge accorded no consideration to the disciplinary punishment imposed on the appellant by the correctional facility, which placed him in solitary confinement for three days following the events on November 29.
2. The experience of counsel involved in the case is not in question. It justified the assumption that they took the appellant’s period of confinement into account when they made the joint submission to the judge. In fact, the issue of the disciplinary punishement was raised by the appellant during his submissions at trial and was also addressed by the judge at that time.[[36]](#footnote-36)
3. From a strictly factual viewpoint, it was incorrect to conclude [translation] “that the accused faces no consequences for his actions in November 2019”.[[37]](#footnote-37) The disciplinary punishment could only have been a direct consequence of the appellant’s actions on November 29, 2019.
4. It is equally clear that this sanction must have been a significant factor duly considered by the parties when they made the joint submission to the judge. To ignore this factor is a reviewable error.

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1. Ultimately, I find that a reasonable person could not have concluded that the justice system had been brought into disrepute if the person had duly inquired about the joint submission made at trial. This conclusion is based in particular on the person’s presumed knowledge of the test for the admissibility of joint submissions, their interest in the crucial role of such agreements in the functioning of the justice system, and their concern, in the interests of a greater good, that a sentence be ratified by the court even though, at first glance, it appears unfit.
2. I also find that such a reasonable person, being familiar with the procedural background of the appellant’s guilty pleas on August 7, 2020, and the disciplinary consequences of his actions in November 2019, would have concluded that the joint submission was not prejudicial to the public interest.
3. That is why I agree with my colleague Healy, J.A. that the appeal should be decided as he proposes.

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| GUY GAGNON, J.A. |

1. *Criminal Code*, R.S.C. 1985, c. C-46, s. 264.1(1)(*a*). [↑](#footnote-ref-1)
2. *Criminal Code*, R.S.C. 1985, c. C-46, s. 430(1)(*a*). [↑](#footnote-ref-2)
3. *R. c. Reyes*, 2020 QCCQ 7784 [Judgment under appeal]. [↑](#footnote-ref-3)
4. [translation]

   A. Did the trial judge examine the joint submission of the parties in light of the correct test?

   B. Did the trial judge take all the essential aspects of the case into consideration?

   C. Did the trial judge’s decision have the effect of doubly punishing the appellant?

   D. Is the joint submission of the parties contrary to the public interest?

   E. Is the trial judge’s decision likely to bring the administration of justice into disrepute? [↑](#footnote-ref-4)
5. *R. v. Anthony-Cook*, 2016 SCC 43. [↑](#footnote-ref-5)
6. *R. v. Anthony-Cook*, 2016 SCC 43 at para. 60. [↑](#footnote-ref-6)
7. The particular significance of the second-to-last sentence of paragraph [34] is anchored in the word “unhinged”.

   [↑](#footnote-ref-7)
8. *R. v. Nahanee*, 2022 SCC 37. [↑](#footnote-ref-8)
9. *R. c. Primeau*, 2021 QCCA 1768. [↑](#footnote-ref-9)
10. *Séguin c. R.*, 2021 QCCA 195; *R. c. Binet*, 2019 QCCA 669. See also, for example, *Obodzinski c. R.*, 2021 QCCA 1395; *Baptiste* *c. R.*, 2021 QCCA 1064; *Gallien* *c.* *R.*, 2021 QCCA 1026; *Wheeler c.* *R.*, 2021 QCCA 1752; *Bellemare* *c.* *R.*, 2019 QCCA 1021; *LSJPA−1824*, 2018 QCCA 1450; *Flocari* *c.* *R.*, 2018 QCCA 554. [↑](#footnote-ref-10)
11. *Baptiste* *c.* *R.*, 2021 QCCA 1064. [↑](#footnote-ref-11)
12. *R. v. Anthony-Cook*, 2016 SCC 43 at para. 42. [↑](#footnote-ref-12)
13. *R. v. Anthony-Cook*, 2016 SCC 43 at para. 47. [↑](#footnote-ref-13)
14. *Séguin* *c.* *R.*, 2021 QCCA 195 at paras. 23–24; *R.* *c.* *Primeau*, 2021 QCCA 1768 at paras. 27–28;   
    *R.* *c.* *Binet*, 2019 QCCA 669 at para. 20. [↑](#footnote-ref-14)
15. *R.* *v.* *Lacasse*, 2015 SCC 64. [↑](#footnote-ref-15)
16. *R. v. Anthony-Cook*, 2016 SCC 43, [2016] 2 S.C.R. 204 [*Anthony-Cook*]. [↑](#footnote-ref-16)
17. *R. v. Nahanee*, 2022 SCC 37 at para. 1 [*Nahanee*]. [↑](#footnote-ref-17)
18. *Anthony-Cook*, *supra* note 16 at para. 44. [↑](#footnote-ref-18)
19. *Ibid.* at para. 40. [↑](#footnote-ref-19)
20. *Nahanee*, *supra* note 17 at para. 26. [↑](#footnote-ref-20)
21. *Ibid.* at para. 30. [↑](#footnote-ref-21)
22. *R.* c. *Primeau*, 2021 QCCA 1768; *Séguin c. R.*, 2021 QCCA 195; *R. c*. *Binet*, 2019 QCCA 669. [↑](#footnote-ref-22)
23. *Anthony-Cook*, *supra* note 16 at para. 3. [↑](#footnote-ref-23)
24. *Nahanee*, *supra* note 17 at para. 1. [↑](#footnote-ref-24)
25. *Ibid.* at para. 30. [↑](#footnote-ref-25)
26. Judgment under appeal at paras. 47–51. [↑](#footnote-ref-26)
27. *Ibid.* at para. 72. [↑](#footnote-ref-27)
28. *Ibid.* at para. 80. [↑](#footnote-ref-28)
29. *Séguin c. R.*, 2021 QCCA 195 at para. 24. [↑](#footnote-ref-29)
30. Judgment under appeal at para. 81. [↑](#footnote-ref-30)
31. *Anthony-Cook*, *supra* note 16 at para. 47; *Nahanee*, *supra* note 17 at para. 30. [↑](#footnote-ref-31)
32. *Anthony-Cook*, *supra* note 16 at para. 5. [↑](#footnote-ref-32)
33. See, on this subject: *Montour* *c. R.*, 2020 QCCA 1648 at paras. 72–73; *R.* *c.* *Dubé*, 2021 QCCA 1143 at paras. 36 and 52–53; *Vera Camacho* *c.* *R.*, 2021 QCCA 683, at paras. 25–26 and 31–32. [↑](#footnote-ref-33)
34. Judgment under appeal at para. 80. [↑](#footnote-ref-34)
35. *Ibid.* at paras. 12 and 80. [↑](#footnote-ref-35)
36. Hearing of November 12, 2020. [↑](#footnote-ref-36)
37. Judgment under appeal at para. 80. [↑](#footnote-ref-37)