Unofficial English Translation of the Judgment of the Court

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| Fossen c. R. | | | | | 2022 QCCA 1518 |
| COURT OF APPEAL | | | | | |
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| CANADA | | | | | |
| PROVINCE OF QUEBEC | | | | | |
| REGISTRY | | OF QUÉBEC | | | |
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| No.: | 200-10-700002-210 | | | | |
| (160-36-000001-210) (160-01-000586-206) | | | | | |
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| DATE: | November 7, 2022 | | | | |
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| CORAM: | | | THE HONOURABLE | ROBERT M. MAINVILLE, J.A.  STEPHEN W. HAMILTON, J.A.  SOPHIE LAVALLÉE, J.A. | |
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| PHILIP FOSSEN | | | | | |
| APPELLANT – Impleaded party | | | | | |
| v. | | | | | |
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| HIS MAJESTY THE KING | | | | | |
| RESPONDENT – Applicant | | | | | |
| and | | | | | |
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| RICHARD P. DAOUST, in his capacity as judge | | | | | |
| IMPLEADED PARTY – Respondent | | | | | |
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| JUDGMENT | | | | | |
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1. This is an appeal pursuant to s. 784(1) of the *Criminal Code* from the judgment rendered on December 2, 2021 (corrected on December 3, 2021) by the Honourable Raymond W. Pronovost of the Superior Court, District of Alma, which granted the Crown’s *certiorari* application against a judgment rendered by the Court of Québec after a guilty plea to a charge of impaired driving.
2. For the reasons of Mainville J.A., Hamilton and Lavallée JJ.A. concurring, **THE COURT:**
3. **DISMISSES** the appeal.

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|  | | ROBERT M. MAINVILLE, J.A. |
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|  | | STEPHEN W. HAMILTON, J.A. |
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|  | | SOPHIE LAVALLÉE, J.A. |
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| Mtre Jean-Marc Fradette | | |
| Mtre Ariane Bergeron | | |
| FRADETTE & LE BEL, AVOCATS | | |
| For the appellant | | |
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| Mtre Sébastien Vallée | | |
| DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS | | |
| For the respondent | | |
|  | | |
| Date of hearing: | October 5, 2022 | |

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| REASONS OF MAINVILLE, J.A. |
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1. The appellant appeals pursuant to s. 784(1) *Cr. C*. from the judgment rendered on December 2, 2021 (corrected on December 3, 2021)[[1]](#footnote-1) by the Honourable Raymond W. Pronovost of the Superior Court, District of Alma, which granted the Crown’s *certiorari* application against a judgment rendered by the Court of Québec after a guilty plea to a charge of impaired driving.

**BACKGROUND**

1. On November 25, 2020, the appellant appeared before the Court of Québec on the following two charges prosecuted by way of summary conviction:

[translation]

1)   On or about July 18, 2020, in Alma, District of Alma, did operate a conveyance, namely a motor vehicle, while his ability to operate it was impaired by alcohol, thereby committing the offence punishable on summary conviction set out in ss. 320.14(1)(a) and 320.19(1) of the *Criminal Code*.

2)   On or about July 18, 2020, in Alma, district of Alma, did have a blood alcohol concentration equal to or exceeding 80 mg of alcohol in 100 mL of blood within two hours after ceasing to operate a conveyance, namely a motor vehicle, thereby committing the offence punishable on summary conviction set out in ss. 320.14(1)(a) and 320.19(1) of the *Criminal Code*.

1. On May 12, 2021, the appellant announced to Robert Daoust J.C.Q. that he intended to plead guilty to the first count of impaired driving. The Crown objected on the ground that the appellant was attempting to circumvent the imposition of a more severe penalty. The Crown instead proposed to the judge that the guilty plea be held in abeyance for the first count pending the trial on the second count.
2. The Court of Québec judge rejected the Crown’s submissions, accepted the guilty plea on the first count, convicted the appellant on that count, and condemned him to pay a $1,000 fine plus costs and the victim fine surcharge, confiscated his driver’s licence, and prohibited him from operating a motor vehicle on a public road for one year, subject to the provisions concerning breathalyzer devices if he qualified. The judge then set the trial date for the second count.
3. On June 9, 2021, the Crown filed an application for *certiorari* with the Superior Court to quash the decisions of the judge of the Court of Québec. The case was heard by Pronovost J.S.C. on November 19, 2021. He rendered judgment on December 2, 2021, and corrected it the next day.

**THE SUPERIOR COURT JUDGMENT**

1. Basing himself on *Loyer*,[[2]](#footnote-2) Pronovost J.S.C. found that the Court of Québec judge had erred. While the appellant argued that the principle of *Loyer* did not apply to the offences in question, Pronovost J.S.C. referred to a number of sources that stated the contrary. Pronovost J.S.C. therefore found as follows with regard to the substantive issue:[[3]](#footnote-3)

[translation]

[42] The case law and commentary establish that the respondent erred in passing sentence immediately on the first count. He should have held the guilty plea in abeyance and heard the evidence on the second count since the facts were the same.

[43] By acting in this way, the respondent prevented the applicant from obtaining a decision concerning guilt on the second count and a fit sentence. This is what was argued by counsel for the impleaded party; namely, that the judge who will hear the second count would have no choice but to order a stay of proceedings.

[44] In addition, the respondent committed another error, as he should have heard the evidence on the second count since the facts were the same.

1. That said, the appellant also maintained that the Superior Court could not consider the issue by way of *certiorari* but rather by way of an appeal. Pronovost J.S.C. dismissed this claim for the reasons that follow:[[4]](#footnote-4)

[translation]

[45] Regarding the procedural vehicle, counsel for the impleaded party argues that this is not an excess of jurisdiction and that the judge exercised his jurisdiction. The applicant should have proceeded by appeal.

[46] At the hearing, the undersigned noted that counsel for the applicant could easily have changed his proceeding to an appeal. Counsel for the impleaded party countered that the time limit had expired. An extension of the time limit could easily have been granted given the situation. Naturally, counsel for the impleaded party objected.

[47] Following the strategy used by counsel for the impleaded party and the respondent’s decision, the applicant finds himself at an impasse. This situation must be remedied. Counsel for the impleaded party stated that a final judgment had been rendered and that the only avenue was appeal.

[48] The procedural vehicle, as in the present circumstance, is more or less important.

[49] Furthermore, the Supreme Court, per Sopinka J., stated:

In my opinion, it would be extraordinary if the Court were powerless to remedy the injustice that is conceded as present in this case.  As a general principle, the rules of procedure should be the servant of substantive rights and not the master.

[50] Moreover, in *Jordan* and *Cody*, the Supreme Court recommends proceeding quickly and ensuring that the criminal proceedings are carried out in a manner consistent with an accused’s right to a trial within a reasonable time and acting accordingly.

[51] Whether this be by *certiorari* or by an appeal proceeding, the Court must set aside this decision. This is a significant error on the respondent’s part, and it is necessary to restore the parties to the state they were in before the respondent’s decision.

[Footnotes omitted]

**GROUNDS FOR APPEAL**

1. In his statement, the appellant sets out the following grounds for appeal:

[translation]

* Did the Superior Court judge err in law in applying the principles of *Loyer* to this case?
* Did the Superior Court judge err in characterizing the offence of driving while impaired (320.14(1)(a)) as a lesser offence than driving with a blood alcohol concentration exceeding the legal limit (320.14(1)(b))?
* Did the Superior Court judge err in stating that the prosecutor’s consent was required under s. 606(4) *Cr. C*.?
* Did the Superior Court judge err in purporting that the trial judge had been seized of the second count?
* Did the Superior Court judge err in law in stating that the procedural vehicle chosen by the respondent, namely *certiorari*, was unimportant?

1. Most of these grounds overlap. In reality, the appeal raises only the following two issues:
2. Did the Superior Court judge err in finding that the teachings of the Supreme Court in *Loyer* were applicable in the present case?
3. Did the Superior Court judge err in finding that *certiorari* was an appropriate vehicle for appealing from the judgment of the Court of Québec?

**ANALYSIS**

**Do the teachings of *Loyer* apply here?**

1. In 1974, the Supreme Court set out the rule against multiple convictions in *Kienapple.*[[5]](#footnote-5) This rule prohibits an individual from being convicted of two offences that, although theoretically different upon a reading of the charges, have decisive elements that overlap and in fact apply to essentially identical behaviours.[[6]](#footnote-6) When the rule applies, the court enters a conditional stay of proceedings on the less serious charge.[[7]](#footnote-7)
2. In *Prince*,[[8]](#footnote-8) Dickson C.J., for a unanimous Supreme Court of Canada, listed the criteria giving rise to the rule against multiple convictions. First of all, there must be a factual nexus between the offences, or in other words, they must arise from the same transaction.[[9]](#footnote-9) Most often, this first test is satisfied if the question: “Does the same act of the accused ground each of the charges?” can be answered in the affirmative.[[10]](#footnote-10) Secondly, there must be an adequate relationship or nexus between the offences.[[11]](#footnote-11) As this Court has stated, more concretely, the judge must determine: (1) if the first offence is a particular manifestation of the second; and (2) if the constituent elements of the first offence are also part of the second.[[12]](#footnote-12)
3. *Loyer* involved situations in which an accused wished to plead guilty to one of two offences subject to the application of *Kienapple* principle*.* In that case, the two accused were charged in two counts with (1) attempted armed robbery by use of a knife (which carried a penalty of up to 14 years’ imprisonment) and (2) possession of a weapon for the purpose of committing an offence (which carried a penalty of up to 5 years’ imprisonment). The accused pleaded not guilty to the first count, but guilty to the second.
4. The trial judge found that the Crown had established culpability on the first count punishable by a harsher sentence but concluded that the accused were entitled to an acquittal on this count given their guilty pleas to the second count and the *Kienapple* principle.
5. The Supreme Court of Canada overturned this Court’s judgment upholding the trial judgment, as it disagreed with this way of proceeding. In *Loyer*, the Supreme Court stated that an accused charged with two or more counts of different degrees of gravity cannot avoid a harsher sentence by pleading guilty to the less serious charge and then arguing the *Kienapple* rule. The Supreme Court, per Laskin C.J., set out the procedure to follow in similar circumstances:[[13]](#footnote-13)

The *Kienapple* doctrine cannot apply to bar a conviction of the more serious offence of which (as here) the accused would otherwise, on the evidence, be found guilty simply by offering a plea of guilty to the less serious offence and having the plea accepted. This case presents an opportunity to set out some guidelines on proper resort to the *Kienapple* principle where the facts justify its invocation by the Court.

Where a trial before a judge alone or before a judge and jury proceeds on two or more counts of offences of different degrees of gravity, and the same delict or matter underlies the offences in two of the counts, so as to invite application of the rule against multiple convictions, the trial judge should direct himself or direct the jury that if he or they find the accused guilty on the more serious charge, there should be an acquittal on the less serious one; but if he or they should acquit on the more serious charge, the question of culpability on the less serious charge should be pursued and a verdict rendered on the merits.

Again, if at the trial, there is a plea of guilty to the more serious charge, and a conviction is registered, an acquittal should be entered or directed on the less serious, alternative charge. However, if, as was the case here, the accused pleads guilty to the less serious charge, the plea should be held in abeyance pending the trial on the more serious offence. If there is a finding of guilty on that charge, and a conviction is entered accordingly, the plea already offered on the less serious charge should be struck out and an acquittal directed.[[14]](#footnote-14)

[Emphasis added]

1. The appellant is not challenging the *Kienapple* principleor the teachings of *Loyer.* Rather, he is maintaining that this principle and these teachings do not apply in his case.
2. First, he argues that the offence of impaired driving and the offence of driving with a blood alcohol concentration exceeding 80 mg in 100 mL of blood are separate offences and that one is not a lesser offence included in the other, thereby suggesting that *Loyer* cannot apply. Second, he adds that these two offences carry penalties of equal severity, which also excludes the application of *Loyer*.
3. The appellant is mistaken in both of the grounds he advances.
4. The case law has long established that the offences of impaired driving and driving with a blood alcohol level over the legal limit are separate offences but with a sufficient nexus to allow the *Kienapple* rule to apply and, *a fortiori*, the principles of *Loyer*.[[15]](#footnote-15)
5. Moreover, compelling proof of this can be found in the comments of Dickson C.J. in *Prince*:[[16]](#footnote-16)

[38] The third situation in which there is sufficient correspondence between elements to sustain the *Kienapple* principle is somewhat similar. It arises when Parliament in effect deems a particular element to be satisfied by proof of a different nature, not necessarily because logic compels that conclusion, but because of social policy or inherent difficulties of proof. The *Kienapple* case itself affords one example. There, as we have seen, the element of the victim's age served as a substitute for the element of non‑consent. A girl of less than fourteen years of age could not in Parliament's opinion meaningfully consent to sexual intercourse. Another example is provided by *Terlecki v. The Queen*, [1985] 2 S.C.R. 483. Although the case largely dealt with a procedural issue, the Court's decision was predicated on the applicability of *Kienapple* as between the offences of impaired driving contrary to s. 234 and "over 80" contrary to s. 236. Impairment is inherently difficult to prove, and Parliament has deemed a certain proportion of alcohol in one's blood to constitute an impairment of driving ability. The differences between the elements of these offences are explained by an attempt to facilitate the apprehension by the police or the conviction by the courts of persons who are guilty of essentially the same wrongful conduct: see Leonoff and Deutscher, *supra*, at p. 261. I believe that elements which serve only as an evidentiary proxy for another element cannot be regarded as distinct or additional elements for the purposes of the rule against multiple convictions.

[Emphasis added]

1. As for the argument based on the gravity of the penalties at issue, this determination must be made in accordance with the *Criminal Code*. Thus, even though the penalties set out in s. 320.19(1) *Cr. C*.are identical for the two types of offences, s. 320.19(3) *Cr. C.* provides a harsher minimum penalty for the offence of driving with a blood alcohol level over the legal limit when the blood alcohol concentration is equal to or exceeds 120 mg in 100 ml of blood, and even harsher when the concentration is equal to or exceeds 160 mg in 100 ml of blood. By providing harsher minimum penalties based on the intensity of the blood alcohol concentration, Parliament emphasizes the increased objective gravity of the offence.
2. There is also no reason to accept the appellant’s claim based on s. 320.22(*e*) *Cr. C.* This *Criminal Code* provision provides that, when determining the sentence for the offences under ss. 320.13 to 320.18 *Cr. C.* (including the offence of impaired driving and that of driving with a blood alcohol level over the legal limit), the court shall consider the offender’s blood alcohol level an aggravating circumstance when it is equal to or exceeds 120 mg of alcohol in 100 ml of blood. According to the appellant, the minimum penalties set out in s. 320.19(3) *Cr. C.* and the penalty applicable for an impaired driving offence are equivalent when the Crown can show that the blood alcohol concentration at the time of this offence exceeded 12 mg of alcohol in 100 ml of blood or, as applicable, 16 mg of alcohol in 100 ml of blood.
3. However, there are significant conceptual and legal differences between a minimum penalty and an aggravating circumstance used to determine a penalty. The minimum penalty binds the court, whereas an aggravating circumstance is one of the factors which the court takes into account as it exercises its discretion in imposing the applicable sentence. An aggravating circumstance is therefore not equivalent to a minimum penalty, on either the conceptual or the legal plane.
4. The principles of *Loyer* are therefore applicable in the present case.

**Is *certiorari* the appropriate remedy?**

1. *Certiorari* is an extraordinary common law remedy which allows the Superior Court to intervene when a lower court acts without or beyond its jurisdiction. There is a jurisdictional error in the classic sense when a court is seized of a matter without the right to hear it or, in a criminal context, when it fails to observe a mandatory provision of a statute or acts in breach of the principles of natural justice.[[17]](#footnote-17) Moreover, the *Criminal Code* refers to *certiorari* in Part XXVI dealing with extraordinary remedies.
2. In this case, the Court of Québec judge convicted the appellant on the first count, whereas he could not do so until a verdict had been rendered on the second count. This is a classic case of excess of jurisdiction. The remedy of *certiorari* was therefore available to the Crown.
3. However, like most of the extraordinary remedies at common law, this remedy is exercised at the discretion of the Superior Court, which may therefore refuse to be seized of a case by way of *certiorari* when another effective remedy, such as an appeal, is provided by law. Furthermore, this rule is partially codified and reinforced by s. 776 *Cr. C.*, which provides that the Superior Court must divest itself of *certiorari* in the scenarios described, namely where an appeal was actually taken or where the defendant could have appealed, thereby limiting the judicial discretion of the Superior Court in such cases. I will return to this.
4. Since the charges in this case were prosecuted by summary conviction, the circumstances in which an appeal is possible in such cases are codified in Part XXVII of the *Criminal Code*, more specifically in ss. 813 and 830(1) *Cr. C.*
5. The appeal under s. 813 *Cr. C.* does not apply here given that the appeal is available to the prosecution only from an order that stays proceedings on an information or dismisses an information, against sentence, or against a verdict of unfit to stand trial or not criminally responsible on account of mental disorder. The judgment of the Court of Québec in this case is not among these scenarios. Rather, in a case like the one before us, an appeal is permitted under s. 830(1) *Cr. C*.:

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| **830** **(1)** A party to proceedings to which this Part applies or the Attorney General may appeal against a conviction, judgment, verdict of acquittal or verdict of not criminally responsible on account of mental disorder or of unfit to stand trial or other final order or determination of a summary conviction court on the ground that | **830** **(1)** Une partie à des procédures que vise la présente partie ou le procureur général peut appeler d’une condamnation, d’un jugement ou verdict d’acquittement ou d’un verdict d’inaptitude à subir son procès ou de non-responsabilité criminelle pour cause de troubles mentaux ou d’une autre ordonnance ou décision définitive d’une cour des poursuites sommaires, pour l’un des motifs suivants : |
| **(a)** it is erroneous in point of law; | **a)** erreur de droit; |
| **(b)**it is in excess of jurisdiction; or | **b)**excès de compétence; |
| **(c)**it constitutes a refusal or failure to exercise jurisdiction. | **c)**refus ou défaut d’exercice de compétence |

1. The Superior Court judge himself acknowledged that an appeal is a procedural avenue open to the Crown in this case.[[18]](#footnote-18) It can be understood from his reasons that the Crown did not change its proceeding during the hearing to make it an appeal since the time limit had expired by then and the appellant objected to an extension of the time to appeal. The judge therefore concluded that the Crown was at an impasse[[19]](#footnote-19) but nonetheless decided to consider the application for *certiorari* even though the Crown could have undertaken an appeal.
2. With respect, I do not see how the Crown was [translation] “at an impasse”, as the Superior Court judge concluded. Contrary to what the prosecution maintains in its statement, the appeal from the Court of Québec judgment did not bear on an interlocutory judgment that could not give rise to an immediate appeal on his part. Acceptance of the guilty plea on the first count concerning impaired driving is a final and definitive judgment, at least with regard to that count, because, for the purposes of the *Criminal Code,* each count can be treated as a separate indictment.[[20]](#footnote-20) The Crown could therefore have appealed from this judgment on a point of law or jurisdiction pursuant to s. 830(1) *Cr. C.*
3. Be that as it may, at the hearing of the application for *certiorari* before the Superior Court, the 30-day time limit to institute such an appeal had expired. That did not prevent the Crown from requesting an extension of the time period to appeal, however, since s. 838 *Cr. C.* allows a Superior Court judge to grant such an extension “at any time”, subject, of course, to the criteria developed in the case law for this purpose.[[21]](#footnote-21) There was therefore certainly no impasse regarding an appeal by the Crown.
4. However, the case law recognizes that, although an appeal may be available, the Crown is not precluded from proceeding by *certiorari* where appropriate, given the specific wording of s. 776 *Cr. C*., which prohibits the defendant alone from proceeding by *certiorari* when an appeal might have been taken. Thus, in *Eross*, the Court of Appeal for British Columbia expressed itself as follows in this regard, per McFarlane J.A.:[[22]](#footnote-22)

Counsel for the Crown submitted that s. 682 [*now s. 776 Cr. C.*] does not destroy or affect the right which the Crown has had for many years to ask and obtain *certiorari* for the purpose of bringing the proceedings of inferior tribunals before superior Courts. He contended that this prerogative right of the Crown cannot be taken away unless the Crown be expressly mentioned or unless the language of the statute be such as to show a clear legislative intention to bind the Crown. He referred, *inter alia*, to *Re Martin and Garlow* (1910), 15 C.C.C. 446, 20 O.L.R. 295, and to *R. v. On Sing*, [1924] 2 W.W.R. 258.

The general principle is stated in 11 Hals, 3rd ed., p. 138, para. 259, as follows:

Effect upon Crown. Although certiorari is taken away by statute, the order may nevertheless be granted on the application of the Crown. Clauses by which certiorari is taken away do not affect the Crown, unless it is expressly mentioned, or unless there are words to show a clear intention that the Crown shall be included in the operation of those clauses. This rule extends, unless a contrary intention is manifested, to private persons prosecuting in the name of the Queen, though the Crown is not directly interested, and though the prosecutor may have become nominally the defendant.

This principle of interpretation applies to the statutory provision under consideration by virtue of the *Interpretation Act*, 1967-68 (Can.), s. 16 [*now s. 17*], which reads:

16. No enactment is binding on Her Majesty or affects Her Majesty on Her Majesty's rights or prerogatives in any manner, except only as therein mentioned or referred to.

The rights and prerogatives of the Crown are not mentioned or referred to in s. 682. Consideration of the section itself does not show a clear intention that the Crown should be included in its operation. On the contrary, para. (b) indicates an intention to deal with procedures available to defendants only. The application of s. 682 to motions by the Crown for *certiorari* was not dealt with in *Sanders v. The Queen* which was a case of a person found to be a criminal sexual psychopath who sought *habeas corpus* with *certiorari* in aid.

I am accordingly of the opinion that Code, s. 682 does not prevent the removal by *certiorari* of a conviction or order on the application of the Crown.

[36] This approach was affirmed by the Supreme Court of Alberta Appeal Division in *R. v. Conley*[[23]](#footnote-23) and taken up by the Superior Court of Québec in *R. c. Henry*,[[24]](#footnote-24) in which the Honourable Pierre Béliveau stated:[[25]](#footnote-25)

[translation]

[5] To the extent that, in criminal law, the right to appeal is statutory, this clearly raises the question of the admissibility of this appeal against the order rendered under s. 810. On the second day of the hearing, therefore, the appellant sought leave under s. 18 of the *Rules of Practice of the Superior Court, Criminal Division*, to extend the 30-day time limit to appeal for *certiorari*. Since the respondent did not object, the Court granted the application and allowed the appellant to verbally present an application for *certiorari*. In this regard, the undersigned states that the provisions of s. 776 *Cr. C.*, which prohibit such a remedy when an appeal may be taken, may not be set up against the Crown [*R. v. Conley* 47 C.C.C. (3d) 359 C.A.A.; *R. v. Eross* 1970 CanLII 1004 (BC CA), [1970] 5 C.C.C. 169 BC CA].

[Emphasis added]

1. That said, Superior Court judges must be sparing and restrained in the exercise of their discretion to accept to hear an application for *certiorari* if an appeal is available to the Crown.
2. In this case, Pronovost J.S.C. exercised his discretion by taking into consideration the significance of the error committed by the Court of Québec judge, the fact that there was a need for the criminal proceedings to move ahead quickly, and the fact that the procedural vehicle used was of little consequence in the case at bar since the judgment that the prosecution could have obtained through an appeal to the Superior Court would have been identical to the one obtained by way of *certiorari*.
3. Given the specific circumstances of this case, the appellant has not convinced me that there is any reason to interfere with the exercise of Pronovost J.S.C.’s discretion to hear the application for *certiorari* despite the availability of an appeal. I note that, if the Court allowed the appeal for this reason, the Crown could always avail itself of an application to extend the time limit to appeal, which would almost certainly be granted in the circumstances. The resulting appeal before the Superior Court would necessarily have to comply with the teachings of this Court in this judgment. It follows that the potential appeal by the Crown would necessarily be favourably received. In this context, given that *certiorari* was indeed available to the Crown, it is in the interests of justice not to intervene in the Superior Court judge’s exercise of discretion.

**CONCLUSION**

1. For these reasons, I suggest that the Court dismiss the appeal.

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| ROBERT M. MAINVILLE, J.A. |

1. *R. c. Daoust*, 2021 QCCS 5066 (the “Superior Court Judgment”). [↑](#footnote-ref-1)
2. *R. v. Loyer et al.*, [1978] 2 S.C.R. 631. [↑](#footnote-ref-2)
3. Superior Court Judgment at paras. 42–44. [↑](#footnote-ref-3)
4. *Ibid.* at paras. 45–51. [↑](#footnote-ref-4)
5. *Kienapple v. R.*, [1975] 1 S.C.R. 729. [↑](#footnote-ref-5)
6. Martin Vauclair & Tristan Desjardins, *Traité général de preuve et de procédures pénales*, 25th ed. (Montreal: Éditions Yvon Blais, 2021) at 1248 and at para. 34.76. [↑](#footnote-ref-6)
7. *R. v. J.F*., [2008] 3 S.C.R. 215 at para. 15. [↑](#footnote-ref-7)
8. *R. v. Prince*, [1986] 2 S.C.R. 480. [↑](#footnote-ref-8)
9. *Ibid.* at 491. [↑](#footnote-ref-9)
10. *Ibid.* at 492. [↑](#footnote-ref-10)
11. *Ibid.* at 493–495. [↑](#footnote-ref-11)
12. *Pronovost c. R*., 2018 QCCA 2212 at para. 26. [↑](#footnote-ref-12)
13. *R. v. Loyer et al.*, [1978] 2 S.C.R. 631 at 635. [↑](#footnote-ref-13)
14. Subsequent case law has specified that it is instead a conditional stay of proceedings that must be entered: *R. v. Provo*, [1989] 2 S.C.R. 3 at 16–18; *R. v. J.F*., [2008] 3 S.C.R. 215 at para. 15. [↑](#footnote-ref-14)
15. See *R. c. Boivin* (1976), 34 C.C.C. (2d) 203 (Que. C.A.); *R. v. Plank* (1987), 28 C.C.C. (3d) 386 (Ont. C.A.); *R. c. Morisette*, [2005] J.Q. No. 792 (CanLII) (Que. C.A.). [↑](#footnote-ref-15)
16. *R. v. Prince*, [1986] 2 S.C.R. 480 at para. 38. [↑](#footnote-ref-16)
17. *R. v. Awashish*, 2018 SCC 46, [2018] 3 S.C.R. 87 at paras. 11–12 and 20–23. [↑](#footnote-ref-17)
18. Superior Court Judgment at paras. 46–47. [↑](#footnote-ref-18)
19. *Ibid.* at para. 47. [↑](#footnote-ref-19)
20. Section 591(2) *Cr. C*.; *Beaulieu c. R*., 2014 QCCA 2311 at para. 2. [↑](#footnote-ref-20)
21. *R. c. Lamontagne* (1994), 95 C.C.C. (3d) 277 (Que. C.A.) and, by analogy, *R. v. Roberge*, [2005] 2 S.C.R. 469; *R. c*. *Lafortune*, 2018 QCCA 16 at paras. 17–18. [↑](#footnote-ref-21)
22. *R. v. Eross* (1970), 5 C.C.C. 169 at 171–172 (B.C. C.A.). [↑](#footnote-ref-22)
23. *R. v. Conley*, 1979 ALTASCAD 129 (CanLII), 47 C.C.C. (2d) 359 at paras. 22–23 [cited to CanLII]. [↑](#footnote-ref-23)
24. *R. c. Henry*, 1997 CanLII 9030 (QC CS). See also *R. c. Leblanc*, 2020 QCCS 4932atpara. 6: [translation] “Section 776 *Cr. C.* does not prevent the Crown from filing such an application [for *certiorari*]”; Roger E. Salhany, *Canadian Criminal Procedure*, 6th ed. (Aurora, ON: Canada Law Book, 1994) loose-leaf ed., section 10:9, at 10–23. [↑](#footnote-ref-24)
25. *R. c. Henry*, 1997 CanLII 9030 (QC CS), at para. 5 [cited to CanLII]. [↑](#footnote-ref-25)