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| Procureur général du Québec c. Pryde | | | | | 2025 QCCA 736 |
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| English translation of the judgment of the Court | | | | |  |
| COURT OF APPEAL | | | | | |
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| CANADA | | | | | |
| PROVINCE OF QUEBEC | | | | | |
| MONTREAL | | SEAT | | | |
| No.: | 500-09-031063-241 | | | | |
| (500-01-230925-221) | | | | | |
|  | | | | | |
| DATE: | August 8, 2025 | | | | |
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| CORAM: | | | THE HONOURABLE | YVES-MARIE MORISSETTE, J.A.  PATRICK HEALY, J.A.  LORI RENÉE WEITZMAN, J.A. | |
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| ATTORNEY GENERAL OF QUEBEC | | | | | |
| APPELLANT – Impleaded Party | | | | | |
| v. | | | | | |
|  | | | | | |
| CHRISTINE PRYDE | | | | | |
| RESPONDENT – Accused | | | | | |
| and | | | | | |
| DENNIS GALIATSATOS, in his capacity as | | | | | |
| judge of the Court of Québec | | | | | |
| IMPLEADED PARTY | | | | | |
| and | | | | | |
| DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS | | | | | |
| IMPLEADED PARTY – Prosecutor | | | | | |
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| REASONS FOR THE JUDGMENT RENDERED  FROM THE BENCH ON MAY 27, 2025 | | | | | |
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1. The Attorney General of Quebec (the “AGQ”) appeals against a judgment rendered on May 17, 2024 by the Honourable Dennis Galiatsatos of the Court of Québec.[[1]](#footnote-2) The judgment was rendered within the scope of criminal proceedings on various charges brought against the respondent under ss. 320.13(3), 320.14(3) and 220(a) *Cr.C.* The respondent was tried on those charges before the Court of Quebec in file 500‑01‑230925‑221. The case arose out of a fatal collision between the vehicle driven by the respondent and a cyclist, the victim of the accident.
2. It should be noted from the outset that, at this stage, the appeal in file 500‑01‑230925‑221 pertains solely to the jurisdiction of the Court of Québec to proceed and rule as it did on the constitutionality of a provision of the *Charter of the French Language*[[2]](#footnote-3)(“*CFL*”).
3. On May 27, 2025, the date of the appeal hearing, the AGQ’s appeal was allowed from the bench as follows:

[translation]

**FOR REASONS TO BE FILED LATER, THE COURT:**

[1] **DECLARES** that the *de bene esse* application for leave to appeal is moot;

[2] **ALLOWS** the appeal;

[3] **REVERSES** the trial judgment;

[4] **DECLARES** that the trial judge did not have jurisdiction to render a judgment containing the conclusions in the judgment under appeal;

[5] **CONSIDERING** the previous conclusion, it is not necessary for the Court to rule on whether or not the expression “immediately and without delay” contained in section 10 of the *Charter of the French Language* is of no force or effect;

[6] **THE WHOLE** without costs.

The following are the reasons referred to in the foregoing conclusions.[[3]](#footnote-4)

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**I. CASE HISTORY**

1. While it may seem tedious to do so, setting out a detailed chronological account of the circumstances leading to the impugned judgment will allow for a proper understanding of the matter at issue in this appeal.

**A. Communications preceding the May 1, 2024 hearing**

1. On March 15, 2022, respondent Christine Pryde was charged with the offences listed above in paragraph [1]. The charges stemmed from an incident that occurred on May 18, 2021. On April 29, 2022, the respondent appeared in court, pleaded not guilty to the charges against her and asked to be tried in English.
2. On June 1, 2022, *An Act respecting French, the official and common language of Québec*[[4]](#footnote-5)(“*Bill 96*”) received royal assent. *Bill 96* amended s. 10 *CFL*, which amendment was to come into force on June 1, 2024. For ease of reference and a proper understanding of the matter at hand, it is useful to fully cite s. 10 in its amended form:

|  |  |
| --- | --- |
| **10.** A French version shall be attached immediately and without delay to any judgment rendered in writing in English by a court of justice where the judgment terminates a proceeding or is of public interest.  Any other judgement *(sic)* rendered in writing in English shall be translated into French at the request of any person; a judgment rendered in writing in French shall be translated into English at the request of a party.  The costs for a translation made under this section are borne by the government department or the body that makes it or bears the costs necessary for the exercise of the functions of the court that rendered the judgment. | **10.** Une version française doit être jointe immédiatement et sans délai à tout jugement rendu par écrit en anglais par un tribunal judiciaire lorsqu’il met fin à une instance ou présente un intérêt pour le public.  Tout autre jugement rendu par écrit en anglais est traduit en français à la demande de toute personne; celui rendu par écrit en français est traduit en anglais à la demande d’une partie.  Les frais de la traduction effectuée en application du présent article sont assumés par le ministère ou par l’organisme qui l’effectue ou qui assume les coûts nécessaires à l’exercice des fonctions du tribunal qui a rendu le jugement. |

1. On November 6, 2023, the impleaded party the Honourable Dennis Galiatsatos (the “Judge”) was entrusted with case management in the respondent’s criminal file.
2. Between November 2023 and January 2024 a *voir dire* was held regarding the admissibility of out-of-court statements made by the respondent. This proceeding led to a decision filed in English by the Judge on February 20, 2024.[[5]](#footnote-6) That same day, the Judge informed the parties that he had been assigned to preside over the trial.
3. As of mid-April 2024, the record shows a series of written communications between the Judge and the lawyers with a view to planning a case management conference to be held on May 1, 2024. It is useful to set out the text of this correspondence so as to provide a full picture of how things progressed. It is also important to bear in mind the dates, and even the times, when these communications took place.
4. On April 17, 2024, the Judge emailed counsel for the respondent (“Mtre Héroux”) and counsel for the impleaded party the Director of Criminal and Penal Prosecutions (“DCPP”). In the email, the Judge said he wanted to know their intentions regarding the issue of the interpretation of new s. 10 *CFL* and its constitutional validity in criminal matters*.* The subject of the message was described as follows: “issue of language – submissions re 10 C.F.L.”. It is worth noting that this provision was not yet in force. Nothing in the record indicates that anyone had mentioned it in any way prior to April 17, 2024.
5. The Judge stated that, when a judgment is written in English, one of the possible effects of the provision in question is that an accused such as the respondent, or any interested party, “would all have to wait several additional weeks or months (the latter being more likely than the former) to receive the final judgment, even though it will be ready long before that”.
6. As with this initial message, the subsequent communications described below were all by email.
7. Many of them date from April 19, 2024, which was a Friday. They were sent in the following order.
8. At 7:37 a.m., Mtre Héroux emailed the Judge, with a copy to the DCPP. Pursuant to the April 17 email, he wished to consult his client on a possible new direction for his mandate, and he therefore asked the Judge to provide clarifications regarding the basis of the observation reproduced in paragraph [11] above and drawn from that email.
9. At 8:36 a.m. on the same day, the Judge replied, “Your question is an excellent one.” He added:

Perhaps answering the question might require, in and of itself, the involvement of the Attorney General’s Office. In the interest of fairness, I assume this email (and the last) will also be disclosed to them at some point.

This was followed by various comments by the Judge, in which he explained his thinking with concrete but hypothetical examples of the delays that could accumulate due to a judge’s normal workload and the time required to translate a judgment. He concluded by stating that his approach was based on case law. We will return to this point later. He wrote:

To be sure, I realize that the Court has raised this concern on its own motion. I do this pursuant to the following authorities: *Re Therrien,* [2001] 2 S.C.R. 3 at para. 108; *Ville de Montréal c.* *Derradji,* 2021 QCCA 1434 at para. 6; *R. v. Fraillon* (1990), 62 C.C.C. (3d) 474 (Que.C.A.) at para. 7; *R. c.* *Boire* (1991), 66 C.C.C » (3d) 216 (Que.C.A.) at para. 23; *R. v. Arbour* (1990), 4 C.R.R. (2d) 369 (Ont.C.A.) at para. 11; *R. v. Richards* (2017), 349 C.C.C. (3d) 284 (Ont.C.A.) at para. 113; *R. v.* *Bialski* (2018), 364 C.C.C. (3d) 485 (Sask.C.A.) at paras. 66-73, leave to appeal denied, [2018] S.C.C.A. No. 442; *R. v.* *Wesaquate* (2022), 418 C.C.C. (3d) 225 (Sask.C.A.) at para. 90; *R. v.* *Travers* (2001), 44 C.R. (5th) 201 (N.S.C.A.) at para. 40.

1. At 1:46 p.m., the Judge wrote again to Mtre Héroux, as well as to the DCPP, to provide further details on the procedure he anticipated. He wished to hear from the DCPP as to how the new s. 10 *CFL* should be construed. He explained the reason for this request as follows:

As an independent body, I understand that the DPCP may not take position on the validity of the statute. However, in its capacity as an independent body, the DPCP may still present its interpretation of how the new statute is to apply. In the event that said interpretation is different from that espoused by the Attorney-Generals’ Offices (Que, Can or both), the Attorney-General will still need to be heard.

[Underlining in the original]

1. Ten minutes later, at 1:56 p.m., Mtre Archambault, a prosecutor with the DCPP, sent the Judge this reply:

Me Chabot [a colleague of Mtre Archambault] and I are deeply concerned by the question you raised pertaining to the new disposition (*sic*) of the C.F.L. For your information, we have submitted the question to our superiors, and we are awaiting their position on the subject. We will get back to you and Me Héroux as soon as possible. Be reassured that we will do anything in our power to have a firm position on the question latest (*sic*) May 1st.

1. At 2:29 p.m., the Judge replied to that email, with a copy to Mtre Héroux. He was concerned by the imminence of the trial and made no secret of it:

Due to the quickly approaching trial dates [the trial had been scheduled for June 3], in the interest of ensuring that the trial on the merits proceeds as scheduled, at least provisionally, I ask that you give notice to the Offices of the Attorney-General of Quebec and the Attorney-General of Canada of the issues mentioned in these emails and request their presence before me on May 1st 2024, 9:30 am in a room to be determined. At the very least, this provision and its impact will inevitably be discussed on that date.

Should a debate be required, I would like for it to be held on May 1st, or at the very least, schedule one with everyone’s schedules on hand.

1. The following Tuesday, April 23, 2024, at 10:10 a.m., Mtre Héroux informed the Judge that his client had not instructed him to challenge the constitutionality of s. 10 *CFL*. He explained as follows:

In response to your emails, it is the Defence position that the new section 10 applies to criminal law. The judgment will have to be rendered in writing in English, will terminate the proceedings on guilt, and most certainly is of public interest. The Court of Québec, Criminal and Penal Division is a Court of Justice.

I do not however, have the mandate to file a constitutional challenge in this file.

Filing such challenge would generate more delays than the delays resulting from the additional deliberation period. It would not be practical and would involve significant costs on the part of my Client.

More importantly, a constitutional challenge would take months to be completed. It would involve a hearing with expert witnesses, and potentially the participation of numerous interveners. It would unduly complexify the proceedings.

Even if the Defence was to prevail with a constitutional challenge, the delays we would gain by having section 10 declared inoperable would be cancelled out by the delays generated by the constitutional debate itself.

[Underlining in the original]

In that the same email, however, Mtre Héroux announced an intention to file a *Jordan* application on behalf of his client. Further on, he wrote:[[6]](#footnote-7)

We were not aware before your email dated April 14, 2024 of the significance and extent of the delays that would be generated by Bill 96.

These additional delays are an important change.

1. At 11:28 a.m., the Judge replied, copying the DCPP on his email. According to the email’s header, neither the Attorney General of Canada (“AGC”) nor the Attorney General of Quebec were yet among the message’s recipients.
2. The Judge took note of the respondent’s refusal to challenge the constitutionality of s. 10 *CFL*. Nonetheless, he required (he wrote “I request”) the presence of the two attorneys general at the case management hearing on May 1, 2024. While announcing the agenda for the case management conference and the preparations therefor, he explained the following:

As you mention, the s. 10 issue has an impact on other possible motions. I agree that it should be dealt with first.

To be clear, for the purpose of the *Notice of a constitutional question,* it should be made clear that Ms. Pryde is not raising the issue. The notice can be sent by the defence or by the DPCP, as long as it is clear that the question was raised by the judge. In any event, all these emails will eventually be filed in the record.

The Judge went on, indicating that for the benefit of the attorneys general, the issues to be debated should be as follows:

-Since criminal law is a federal jurisdiction, which includes criminal procedure, does s. 10 C.F.L. apply to criminal proceedings?

-If so, given the additional delay caused by the translation, does s. 10 C.F.L. interfere with the operation of the criminal law and/or the language rights provided by ss. 530-530.1 of the Criminal Code?

-If so, does the doctrine of federal paramountcy apply, rendering inoperable in criminal prosecutions the requirement that the translation be immediate and simultaneous?

1. On April 24, 2024, Mtre Héroux served the AGQ and the AGC with a pleading entitled “notice of a constitutional question (Ss. 76 and 77 of the *Code of Civil Procedure*, s. 52 of the *Constitution Act*, *1982*)”.This pleading sets out word for word the questions formulated by the Judge in his April 23 email.
2. Lastly, on April 29, 2024, at 4:25 p.m., through a lawyer representing him, the AGQ informed the Judge that he did not intend to address the questions set out in the notice dated April 24. The lawyer asked for 15 minutes at the May 1, 2024 hearing to argue that (i) the Court cannot raise a constitutional question on its own motion as it was claiming to do here, (ii) the AGQ does not have to defend the constitutionality of s. 10 *CFL* when the parties have abstained from raising this question or refuse to do so, (iii) the notice to the Attorney General did not comply with the conditions and strict time limit set out in art. 77 *C.C.P.*,and (iv) the Ministère de la Justice will implement the measures required for the application of s. 10 *CFL*.

**B. Hearing held on May 1, 2024**

1. The record contains the minutes and full transcript of the hearing. The transcript covers 84 pages in all. This shows that, on the substantive matter at issue here (the Judge’s right to raise the constitutionality question on his own motion), the hearing was fairly short,[[7]](#footnote-8) as judgment on this point was rendered on page 60, and the rest of the hearing dealt with pure case management and administration matters, without regard to the substantive issue. We will return to this point later. Yet, in addition to the Judge, four lawyers each spoke at this hearing to address the substantive issue. Without dwelling on the defence position that counsel for the accused had announced in his emails, the following is a brief overview of these exchanges.
2. In the Judge’s view, the first question to be decided was whether he could raise the constitutionality of s. 10 *CFL* on his own motion. The AGQ argued that it might be appropriate for a judge to raise a constitutional question on his own motion, but that in the case at bar, debating and deciding that issue should be excluded. According to the AGQ, the constitutional validity issue, as formulated in the notice dated April 24, 2024, was not stated sufficiently precisely, in particular because its author did not seek an explicit conclusion. The Judge was obviously not of the same opinion and made it clear by asking, “Unless I were to draw a picture for the Attorney-General of Quebec, how can I be more precise?” And, a few moments later, he added, “How is that difficult to understand?” The hearing continued in the same tone.
3. Counsel for the AGQ resumed her submissions and pointed out that, in identifying the issue, the Judge had done so in the absence of any actual facts: “[…] there needs to be a factual context to address a constitutional question”. Moreover, none of the parties in the file wished to debate the constitutionality of s. 10 *CFL*. Counsel for the AGQ pointed out that there were already proceedings underway elsewhere seeking a ruling on the constitutionality of various provisions of *Bill 96.* The Judge informed the lawyers that he was unaware of this.
4. Counsel for the AGC took the floor following counsel for the AGQ. She began by stating that, essentially,[[8]](#footnote-9) the AGC agreed with the AGQ’s point of view. It quickly became apparent that she and the Judge clearly disagreed on one aspect in particular, namely the effect that ss. 530 and 530.1 *Cr.C.* could have once *Bill 96* came into force. According to counsel for the AGC, the language requirements of *Bill 96* could allow these provisions of the *Criminal Code* to be applied as they already are, or could be, elsewhere in Canada, hence the importance of having a full factual context to answer the Judge’s questions. The Judge clearly disagreed. In his written judgment dated May 1, 2024, he rejected the AGC’s argument as follows:[[9]](#footnote-10)

[14] At the hearing, the Attorney-General of Canada joins its Quebec counterpart and argues that I cannot raise the issue *proprio motu*. Besides, counsel argues that there is lacking context, a lacking factual record and no real need to address anything. Implicitly in counsel’s arguments, the Attorney-General of Canada considers that this is simply a non-existent problem that the Court has imagined out of thin air. With great respect, these arguments stem from a severe lack of understanding of how criminal trials proceed and how a judge exercises his duties. These arguments may also result from not having read the seminal Supreme Court case of *R.* v. *Beaulac*.

This was followed by a number of comments on the constitutional validity of s. 10 *CFL* considered from the standpoint of ss. 133 and 91(27) of the *Constitution Act, 1867* (“*CA 1867*”).

1. The Judge then turned to counsel for the DCPP and said, “Do you think there’s anything you can contribute to the debate and if so, I’ll hear you,” to which she replied, “No, I have no comments.” Nevertheless, later in the hearing, the Judge again addressed counsel for the DCPP, asking her with some degree of insistence whether it is conceivable that, in the best of cases, a 40-page judgment in English could be rapidly translated into French. As she was unaware of what measures would be implemented by the time *Bill 96* came into force, she told him twice that she could not answer the question.
2. The hearing, which had started at 9:39 a.m., was then suspended. According to the minutes, this recess lasted from 10:47 a.m. to 11:43 a.m. When the hearing resumed, the Judge rendered his judgment (the following excerpt is a verbatim reproduction of the transcript):

For reasons that will be filed in the Court record, the Court concludes that it will hear a question on the constitutional validity of Section 10 of the Charter of French Language and the Court invites written submissions from the Attorney General of Quebec and the Attorney General of Canada to be filed no later than May 14th, 2024, and forwarded to all the parties and to the Court by email.

[translation] Madam Clerk, I’m giving you one original and one copy for the Court record, and I have eight copies, I hope there are enough, so you can distribute them to all the parties concerned. [original english] I will clearly need to review that for some holes and whatnot, but it gives an idea of where we’re heading on the procedural issue, so the debate. And both Attorneys General are free to express whatever argument or fact that they wish, according to the formalities set out in the judgment.

To that end, a hearing was scheduled for May 16, 2024. The following discussion took place between counsel for the AGC and the Judge:

[translation]

MTRE CAROLINE LAVERDIÈRE:

Thank you. And we understand that there will be no debate…

COURT:

There will be a full debate in writing, and I invite you to be as exhaustive as possible on both sides. Use as many pages and as much energy as you think will be useful. I’d like to receive an exhaustive statement of your respective positions.

This concluded the May 1, 2024 hearing.

**C. Judgment rendered on May 1, 2024**

1. A judgment was filed that same day.[[10]](#footnote-11) It is entitled “REASONS FOR THE COURT RAISING A CONSTITUTIONAL ISSUE ON ITS OWN INITIATIVE”. The judgment contains 17 pages and 46 footnotes. It is not entirely clear from the record whether this is the text which, according to the above-mentioned transcript, was given to the parties at the hearing. This is nevertheless what the respondent maintains in her brief, where she added the following comment: “The content of the Decision suggests that most of it had already been written before the Hearing of May 1st, 2024.”
2. Be that as it may, the judgment begins with an overview of the situation and a summary of the positions of the parties, the AGQ and the AGC. The Judge then mentions that the respondent does not object to him raising a constitutional question of his own motion, and he proceeds with an analysis of the issue discussed at the hearing that same day.
3. The Judge states that he that is well aware that the circumstances in which a judge can proceed as he is doing are exceptional. He then reviews the case law to which he had referred Mtre Héroux in his email of April 19, 2024.[[11]](#footnote-12) In his view, this case law supports his position. He therefore firmly rejects any claim that a judge in his situation faces “an absolute bar to judges raising constitutional questions *proprio motu*”.
4. He then sets out his reasons for questioning the validity of s. 10 *CFL*. After summarizing the emails exchanged between April 17 and 29, he focuses on what he believes to be the particular and unusual context of the case before him. In his opinion, the situation involves a *prima facie* violation of s. 91(27) of the *CA 1867*. It is a given that the trial, which is imminent, will be held in English. It is also certain that there will be a substantial written judgment at the end of what is likely to be a lengthy deliberation and, in accordance with ss. 530 and 530.1 *Cr.C.*, this judgment will have to be drafted in English. In this regard, however, s. 10 *CFL* will prevent the Judge from rendering his judgment as soon as it is ready, as he would ordinarily do. The Judge will be compelled to wait for a French translation, which will probably take some time, in all likelihood a lengthy period of time rather than a short one. This touches on something that “goes to one of the judge’s core functions”, even though the *Criminal Code* already prescribes, in a manner incompatible with the foregoing, the procedure to be followed in such a situation.
5. The Judge takes his analysis a step further, tying his concerns to those motivating the *Jordan* application filed by the respondent, who has approached the issue from a slightly different angle, but is attacking the same anomalies and deficiencies about which the Judge wishes to hear a debate on the validity of s. 10 *CFL*. Moreover, he notes that the ruling in *Jordan* imposes on him, as a judge, an obligation to see to it that the trial proceeds without delay.
6. At the end of this initial analysis, the Judge turns to the related notions of “ripeness” and absence of factual context invoked by the AGQ and the AGC. Their arguments on this subject find little favour in the eyes of the Judge, who remarks, “This was repeated like a slogan, even though it is patently incorrect.” Returning to the scenario he had put forward in an email, the Judge maintains that all the elements already exist for assessing how s. 10 *CFL* infringes the Constitution. He points out that during the hearing he asked the attorneys general for an answer regarding the anticipated impact of s. 10 *CFL* in a context where, hypothetically, 500 professional translators would be available as of June 1 to translate judgments.[[12]](#footnote-13) Both refused to engage in this exercise.
7. Further on, the Judge examines and rejects the somewhat underlying argument that, since s. 10 *CFL* is not in force, it is pointless to examine its constitutional validity at this stage. Given that the date on which the provision will come into force is known, certain and imminent, the Judge considers that everything is already in place to rule on the matter – he seems to be motivated by the idea, which is otherwise commendable, that an ounce of prevention is worth a pound of cure.
8. Finally, the Judge provides details on the appropriate timetable and procedure for the hearing scheduled on May 16, 2024. He invites the AGQ and the AGC to submit any documents they deem useful for debating the constitutional issue. In passing, he rejects any suggestion that the deadline imposed on the AGQ is too short and that the latter was taken by surprise. Among other reasons on this point, he makes the following observations:

[74] […] the amendment was enacted in 2022. As such, the provincial government has had almost two years to reflect on its eventual impact, operation and validity upon coming into force. It cannot seriously be contended that it was taken by surprise.

[…]

[87] Great care must be taken to prevent undue prejudice to the Attorney‑General. Luckily, by way of his reference to ***Paul* c. *D.P.C.P.***, he has expressed that the issue raised is patently unfounded and bound to fail. As mentioned above, since the issue is an easy one to address, the Attorney‑General of Quebec has implicitly recognized that he will be in a position to make submissions within a shorter time‑frame.

[88] Moreover, the issue is not obscure or difficult to research. There aren’t 400 leading cases dealing with ss. 530-530.1 *Cr.C.*; there are approximately 15 of them and they all stem from the Supreme Court of Canada, the Quebec Court of Appeal and the Ontario Court of Appeal.

[89] I have full confidence in the ability of both Attorney‑Generals’ Offices to provide fulsome, compelling and well‑reasoned arguments in writing, within the next 14 days. This would make its total notice 20 days, just shy of the statutory 30. In fact, it will have been advised 25 days prior, based on the correspondence by the DPCP.

[Boldface in the original]

1. In its judgment, the Court of Québec concludes this first part of the proceedings as follows:

**FOR THESE REASONS**, the Court:

**CONCLUDES** that it will decide the question of the constitutional validity of s. 10 *C.F.L*.

and

**INVITES** written submissions from the Attorney‑General of Quebec and the Attorney‑General of Canada, to be filed no later than May 14th 2024 and forwarded to all parties and to the Court by email.

The record reveals that the AGQ was granted until May 16 to file his submissions. The respondent, for her part, requested and obtained the same permission by email. The AGC did not file submissions.

**D. Judicial review**

1. On May 7, 2024, the AGQ filed an application in Superior Court for the judicial review of the May 1, 2024 judgment. He also sought a stay of execution of that judgment pending the outcome of the judicial review proceedings.
2. In a judgment rendered by the Superior Court on May 17, 2024,[[13]](#footnote-14) and subsequently corrected, Justice St-Pierre ruled on the application for a stay, dismissing it. He wrote the following, in particular:

[translation]

[6] The Attorney General of Quebec argues that the Court of Québec judge could not assume jurisdiction *proprio motu* over the question; moreover, he believes that, by doing so, combined with other factors, the judge is showing a bias that calls his impartiality into question.

[7] The Attorney General also posits that the factual context in which the judge of the Court of Québec situated the debate is incorrect in that the judge evaluated the additional time required by the translation based on his personal experience.

1. The dismissal, which was based on the absence of serious harm, relied primarily on the following points:

[translation]

[20] […] it’s not because the Court of Québec judge in this particular case rules on the matter that the state of the law will change.

[21] This implies that there is no real harm to the public interest as a result of the judge rendering a decision; let’s not forget that the AGQ will have a recourse in the event of a future judgment declaring the addition to s. 10 CFL unconstitutional, a recourse in which the AGQ will also be able to invoke the judge’s bias and the incorrect factual context.

1. This application for judicial review was not pursued any further.

**E. Hearing held on May 16, 2024**

1. One initial thing stands out here. This hearing, held on May 16, 2024, which was attended by Mtre Héroux and by counsel for the DCPP and those for the AGQ, but at which the AGC was absent, lasted less time than the hearing held on May 1, 2024. According to the minutes of the hearing, it began at 9:33 a.m. There was a recess at 10:28 a.m. to allow the Judge to deal with an issue in a matter unrelated to the respondent’s case. When the hearing resumed at 11:20 a.m., the Judge and the lawyers continued their discussion of certain case management aspects. The hearing ended at 11:43 a.m. During most of the hearing, it was truly a management conference and nothing more. It dealt mainly with issues unrelated to those raised by the appeal currently before the Court. For example, there was a lengthy discussion about the most appropriate time to hear the defence’s recently filed *Jordan* application. The potential impact of the constitutionality of s. 10 *CFL* on the *Jordan* application was also addressed.
2. The AGQ also informed the Judge about the application for judicial review pending before the Superior Court. The Judge and the lawyers made a number of comments on this subject, and the Judge stated that he would not render judgment on the constitutional issue until the Superior Court had ruled on the allegation of bias raised against him by the AGQ. As we have already seen, Justice St-Pierre’s judgment would be rendered the following day, May 17.
3. The AGQ also announced that “at the end of the day, today” he would be filing his written submissions, for which, as mentioned above, he had previously obtained an extension from the Judge from May 14 to May 16.
4. It is also apparent from one of the Judge’s remarks that, in his view, the question of the effect of s.10 *CFL* was nothing new. He noted:

[…] with great respect, the questions raised by section 10 of the Quebec language Charter have existed for the last two years.

And every judge of the Criminal Division of this Court has already thoroughly thought about these issues, unlike an 11(b) motion that was argued -- So, I mean, don’t be fooled -- and I say this to everyone in the room, including the Attorney General of Quebec -- the fact that I raised these concerns and that I’ve obviously put a great deal of thought into these issues, you know, it’s because these issues kind of didn’t come out of left field either.

1. The AGQ’s written submissions, which were filed after the hearing, are substantial. They were sent that very day, namely May 16, at 6:30 p.m. Those of the respondent were sent to the Judge on the same day, by email at 11:44 p.m.; on the issues considered here, she agreed with the AGQ’s position, albeit with a few nuances.[[14]](#footnote-15) The AGQ’s document consists of 27 pages and 111 paragraphs. It refers to abundant case law. In addition to an introduction on the approach required for a constitutional division of powers inquiry, the submissions are developed along three main lines:

[translation]

1. based on the pith and substance doctrine, s. 10 of the CFL is constitutionally valid
2. based on the interjurisdictional immunity doctrine, s. 10 of the CFL applies
3. based on the federal paramountcy doctrine, s. 10 of the CFL is constitutionally operative

Nothing in the record indicates that similarly extensive written submissions were made to counter those of the AGQ, that is, to support a declaration of unconstitutionality or inoperability. Consequently, one can wonder whether it is not actually an exaggeration to refer to a [translation] “full debate in writing”, as the Judge did at the May 1, 2024 hearing.[[15]](#footnote-16) Regardless, there is no doubt that, if an adversarial debate on the subject took place, it was utterly truncated. Aside from certain remarks by the Judge during the May 1 hearing, it can be said that the argument on the unconstitutionality or inoperability of s. 10 *CFL* was not argued orally in court, nor was it argued in writing between the parties.

**F. Judgment under appeal, dated May 17, 2024**

1. At 2:53 p.m. on May 17, the day after the hearing described above, the Judge filed a 33‑page judgment containing 177 paragraphs and 116 footnotes (some of them copious).[[16]](#footnote-17)
2. This judgment, rendered under the conditions previously described, is entitled “judgment on the applicability in criminal matters and the constitutional validity of s. 10 of the charter of the french language”. After meticulously setting out the respective positions of the respondent, the DCPP, the AGC and the AGQ, the Judge examined the issues on which he believed he had to rule.
3. He began with the meaning to be given to the words “immediately and without delay”, which appear in the first paragraph of s. 10 *CFL*, and noted firstly that the respondent, the DCPP and the AGQ agreed on this point. He shared their opinion: the meaning is clear, and the amendment made by *Bill 96* would have been unnecessary if a translation of a written judgment rendered in English did not have to be filed with it simultaneously. It therefore follows that, save situations in which a judge takes it upon himself to draft both versions simultaneously, there will necessarily be a delay between the moment when the judgment is completed in English and the moment when it can be filed with its French version.
4. The Judge then considered the evidence filed by the AGQ with his written submissions dated May 16, 2024. It consists primarily of two affidavits, one from a director at the Société québécoise d’information juridique and the other from the adviser to a deputy minister for the Minister of Justice. These affidavits set out the measures taken or to be taken to ensure that translations will be prepared with all due diligence. The Judge noted that the first affiant did not mention “how long it would take for one given judgment to be translated and returned to the trial judge”. As for the second affiant, she simply commented that [translation] “[…] save exceptional circumstances involving very long judgments, the translation capacity has been assessed in terms of days or weeks.”
5. Several paragraphs of the judgment deal with the apprehension of bias alleged by the AGQ against the Judge in the May 7, 2024 judicial review application. The Judge observed that, despite this, the AGQ had never asked him to recuse himself and that the respondent had taken the position that there was no apprehension of bias. The Judge cited case law to support this latter view.
6. The Judge then turned to the question at the centre of his analysis, that of the constitutionality of s. 10 *CFL*, indicating that it must be approached, not from the angle of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), but from that of the *CA 1867* and Parliament’s powers under s. 91(27) of the *CA 1867*. In his view, while the notwithstanding clause in s. 33 of the *Charter* may exempt the *CFL* from the application of certain provisions of the *Charter*, the same cannot be said for the provisions of the *CA 1867*. Referring, among other decisions, to *Jones v. Attorney General of New Brunswick*,[[17]](#footnote-18) *Reference re Genetic Non-Discrimination Act*,[[18]](#footnote-19) *R. v. Beaulac*[[19]](#footnote-20) and *R. v. Tayo Tomboupa*,[[20]](#footnote-21) the Judge outlined the framework that would allow him to rule on the central issue. He also discussed the doctrine of federal paramountcy and the impact it might have on concurrent jurisdiction over language or criminal law. Applying these concepts, the Judge concluded at paragraph [135] that s. 10 *CFL* is incompatible with ss. 530 and 530.1 *Cr.C.*
7. Lastly, the Judge addressed three related issues. In his view, rendering judgments orally from the bench, with “reasons to follow”, cannot resolve the inconsistency. The same can be said for the use of artificial intelligence to speed up translations – the incompatibility remains. And as to the objection that it would be premature to rule on the constitutionality of s. 10 *CFL* because it was not yet in force, the Judge dismissed it, referring to his analysis in the judgment dated May 1, 2024: according to him, everything was already in place for adjudicating the matter.
8. This led to the following conclusions:

**FOR THESE REASONS**, the Court:

**CONCLUDES** that the words “immediately and without delay” in s. 10 *C.F.L*. are incompatible with the operation of criminal procedure, which is a federal jurisdiction;

**CONCLUDES** that the words “immediately and without delay” in s. 10 *C.F.L.* are incompatible with the absolute language rights provided in Part XVII of the *Criminal Code*;

**CONCLUDES** that the doctrine of federal paramountcy is engaged, such that the immediacy and simultaneousness requirements for the French translation cannot apply to criminal proceedings;

and

**DECLARES INOPERABLE** in criminal proceedings the words “immediately and without delay”.

1. Although there is certainly some overlap between the reasons issued on May 1 and those made available to the parties in the judgment under appeal, that overlap is minimal. Thus, one cannot help but note, with astonishment, the speed with which things were done – in under 24 hours, if we take into account the time at which all the parties’ written submissions were placed in the record. In all fairness to the Judge, he clearly wanted to address the issue prior to the start of the trial, which was scheduled to begin on June 3, 2024. But was this necessary? Was it even appropriate to raise this issue in a manner that can only be described here as artificial? The issues addressed in this way, including first and foremost the argument regarding the unconstitutionality of s. 10 *CFL* due to a possible encroachment on s. 91 (27), are delicate. They call for nuanced solutions that are not self-evident. Is it advisable, in a case of this kind, to proceed at full speed, in a way that, by all appearances, seems to confuse haste with promptness? The question must be considered. It is all the more serious in that this central aspect of the dispute – the unconstitutionality of s. 10 *CFL* – was not argued by anyone, the AGC having withdrawn from the case after May 1, 2024. Thus, the only arguments in favour of this premise are those the Judge raised before and during the hearing, followed by the reasons on which he based his decision.
2. In the wake of this judgment, the AGQ filed a notice of appeal in due course, as well as a *de bene esse* application for leave to appeal, which was referred by a judge of the Court to the panel that would hear the appeal. The accused, Christine Pryde, was named as a respondent in these proceedings, while the Judge and the DCPP were named as impleaded parties.
3. It is worth noting that only three parties appeared before the Judge on May 16, and the DCPP’s participation was limited to very little. This being so, and given the position taken by these three parties, the way in which the case progressed to the Court of Appeal was bound to give rise to some concern. The Judge, it seems, shared those concerns. The cover page of his May 17 judgment contains the following paragraph:

**Note to the reviewing or appellate court**: due to the nature of these proceedings, evidently, it is anticipated that neither party will attempt to defend this decision on appeal or on review. Given the procedural history, the evolving positions and certain strategic choices made by the Quebec Attorney‑General, as well as the allegation of bias regarding this Court, I kindly ask that any appellate court insist on receiving a full record of the proceedings, including transcripts of all hearings and copies of all documents referred to herein. This is to ensure that the appellate court has the benefit of an accurate depiction of what occurred in the Provincial Court.

Providing a “full record” of oral arguments and debates that are already largely truncated, due to having been stripped of a significant part of what was at stake, is not likely to remedy such a deficiency. Regardless, the appeal record clearly shows, as evidenced in the preceding pages, that the procedure followed in the Court of Québec was, to say the least, highly unusual. This is equally the case of the note reproduced above.

**II. MERITS OF THE APPEAL**

1. The following are the reasons for the judgment handed down from the bench on May 27, 2025:[[21]](#footnote-22)
2. Could the Judge raise the issue of the constitutionality of s. 10 *CFL* on his own initiative?
3. Could the Judge rule as he did?
4. **Could the Judge raise the constitutionality issue on his own initiative?**
5. It bears reminding that the issue of concern to the Judge was first expressed in his email to Mtre Héroux on April 19, 2024 at 8:36 a.m.[[22]](#footnote-23) Here is what the email said:

[…] if the effect of the amendment is to systematically delay the rendering of all judgments for English-speaking accused (perhaps for very long periods), is there any concern about the C.F.L.’s impact on the operation of the criminal law, which is a federal jurisdiction?

This was followed by a list, already reproduced above,[[23]](#footnote-24) setting out the judgments that, according to the Judge, authorized him to unilaterally raise an issue for debate.

1. A careful reading of these judgments, however, shows that none of them deals with the alleged power of a provincial court judge to identify on his own initiative, and resolve, an issue concerning the validity of a statutory provision in light of the division of legislative powers set out in the *CA 1867*.
2. The issue leads to three sub-questions that concern the powers of a member of a provincial court in the same situation as the Judge. (i) Can he act on his own initiative to raise a question regarding a possible governmental violation of the *Charter*, which violation could lead to a remedy under s. 24 thereof? (ii) Can he act on his own initiative to raise a question regarding a possible violation of s. 52 of the *Constitution Act, 1982*,[[24]](#footnote-25) which violation could lead to a declaration that a law is invalid? (iii) Can he act on his own initiative to raise a question regarding the validity of a law in light of the division of legislative powers set out in the *CA 1867*? The last of these questions is precisely the one at issue in the present case.
3. What can be gleaned from the case law cited by the Judge?
4. We begin with the ruling in *Therrien*. The excerpt to which the judge referred states the following:[[25]](#footnote-26)

[108] The judicial function is absolutely unique. Our society assigns important powers and responsibilities to the members of its judiciary. Apart from the traditional role of an arbiter which settles disputes and adjudicates between the rights of the parties, judges are also responsible for preserving the balance of constitutional powers between the two levels of government in our federal state. Furthermore, following the enactment of the *Canadian Charter*, they have become one of the foremost defenders of individual freedoms and human rights and guardians of the values it embodies: *Beauregard*, *supra*, at p. 70, and *Reference re Remuneration of Judges of the Provincial Court*, *supra*, at para. 123. Accordingly, from the point of view of the individual who appears before them, judges are first and foremost the ones who state the law, grant the person rights or impose obligations on him or her.

This excerpt appears in a section of the reasons in which the place and role of judges in today’s society are discussed in generic terms. It describes the function of judges when a litigious issue is brought before them through the normal channels, that is, by a party. Nowhere is the jurisdiction of a judge – in the true sense of jurisdiction or *vires* – discussed, and nothing here extends, nor *a fortiori* creates, such jurisdiction. Nor does the excerpt in any way recognize the power or authority of a judge to assume jurisdiction on his own initiative, and rule unilaterally, over the constitutionality of a legislative provision with regard to the division of legislative powers set out in the *CA 1867*.

1. It is interesting to note that in *Youngpine*,[[26]](#footnote-27) a case in which the question at stake concerned a judge’s power to unilaterally take up an issue that the parties before him did not wish to debate,[[27]](#footnote-28) the Alberta Court of Appeal also put into context the same passage from *Therrien*.
2. In his reasons dated May 1, 2024, the Judge cited *Therrien*, writing, “judges are also responsible for preserving the balance of constitutional powers between the two levels of government in our federal state”.[[28]](#footnote-29) In so doing, he quoted descriptive rather than normative terms, citing them out of context, then transformed them by giving them a meaning attributive of jurisdiction. But a judge cannot decide a question concerning the constitutional validity of a legal provision unless that jurisdiction has been conferred on him, and he cannot assume such jurisdiction by insisting that a party give notice to the attorney general expecting that they consider the question. The generic terms of *Therrien* are not a theme from which one can fashion any given variation.
3. The Judge also referred to the ruling in *Fraillon*.[[29]](#footnote-30) In that case, the prosecution had appealed a judgment ordering a stay of proceedings. The Court, in a unanimous ruling, allowed the appeal, the appellant having conceded that an acquittal was appropriate in the circumstances. The relevance of this decision for our purposes lies in the following remarks, written by Vallerand, J.A.:

[translation]

First, the trial judge was wrong to rule as he did, without giving the parties the opportunity to argue the matter. As a general rule, a judge is free to point out to the parties that, within the scope of his duty to render justice, he is concerned by a point of fact or law that neither of them has raised. This is particularly so when dealing with a *Charter* right. That said, however, before ruling on the issue, the judge must inform the parties about it and give them ample opportunity to address it comprehensively. Here, however, the parties were astonished to learn, at the time the judgment was delivered, that it was based solely on an issue that the judge had only then raised and resolved on his own initiative. Such a procedure is unacceptable and would be sufficient in and of itself for the Court to allow the appeal.

Only one thing was at issue in *Fraillon*: when a judge considers questioning the legality of governmental action based on a provision of the *Charter*, he cannot do so without inviting the parties to be heard on the subject. In other words, the ruling concerns a judge’s power to introduce into the debate an issue that could lead to a remedy under s. 24 of that *Charter*. Nothing in the ruling pertains to the validity of legislation under the *Charter* or the *CA 1867*.

1. We turn now to *R. c. Boire*, also a Quebec Court of Appeal decision. Brossard, J.A. penned the Court’s reasons, which were unanimous on the matter at issue in the case at bar. He had the following to say with regard to the principle in question here:[[30]](#footnote-31)

[translation]

That said, given that the Canadian Charter of Rights, an integral part of the country’s constitution, is the most fundamental law with regard to the rights of individuals and, in particular, of an accused in criminal matters, I find it difficult to see how it can be argued that a court would not have the right, in certain circumstances, and obviously subject to certain conditions, to raise the provisions of this Charter on its own initiative when faced with a situation that it clearly feels constitutes a flagrant violation of this Charter.

In this case, which also dealt with possible violations of the *Charter* that were liable to warrant a remedy under s. 24, the Court confirmed the ruling of the Superior Court, which had granted two motions based on ss. 7, 11(b) and 11(d) and, for this reason, had ordered a stay of proceedings. Here, due to unusually long delays[[31]](#footnote-32) in the progress of the cases of the seven accused, it was the Court of Appeal which, at the outset of the hearing, raised the issue of the application of s. 11(b) with respect to the appeal process itself – while giving the parties time to file a supplementary brief on the matter. In its brief, the Crown argued that the Court could not raise this issue of its own motion, an argument that was later rejected by the Court, which relied, in particular, on the ruling in *Fraillon*.

1. It is particularly important to give the words the Court used to expresses itself the full attention they deserve: [translation] “in certain circumstances, and obviously subject to certain conditions” a court can raise an issue on its own initiative when faced with a situation that it clearly feels constitutes a flagrant infringement of *Charter* rights. In the context of the state of the law as it stood in 1991, there can be no doubt whatsoever that the situation here involved the possibility of a *flagrant* infringement of a right protected by the *Charter*, namely, the right to be tried within a reasonable time.
2. Nothing in *Arbour*,[[32]](#footnote-33) *Richards*,[[33]](#footnote-34) *Bialski*[[34]](#footnote-35)or *Travers*,[[35]](#footnote-36) cases to which the Judge referred in paragraphs [24] and [25] of his May 1, 2024 judgment, in any way dilutes the meaning and limited scope of Brossard, J.A.’s remarks in *Boire*. That case law and the case law reviewed in the preceding paragraphs conveys a clear message that is consistent in every respect with the message of Brossard, J.A. in *Boire*. At most, one can also glean a more permissive nuance from these cases than from the earlier ones or, in any event, a less restrictive nuance – namely, that in the presence of a self-represented accused, judges must be particularly vigilant about possible infringements of the defence’s fundamental rights.
3. Moreover, when the Judge notes, in paragraph [26] of those May 1, 2024 reasons, that “most of these cases dealt with judges raising constitutional issues pertaining to the *Charter*”, he is mistaken. It is not “most” of these judgments that share this characteristic, but all the judgments in question. None of them dealt with the validity of legislation – all of them addressed the legality (or, in other words, the constitutionality) of government action. It is conceivable, of course, that in giving effect to s. 52 of the *Constitution Act 1982*, a judge might conclude that a legislative provision applicable in a given case infringes the *Charter* and is therefore inoperative in that case. But we must distinguish such a situation from the one that the Judge’s comments and unilateral approach created here: he made a declaratory ruling on the constitutionality of a statute based on the division of powers stemming from ss. 91 and 92 of the *CA 1867*.
4. A question of this kind, especially when resolved by means of a “formal declaration” (a concept to which we will return), falls within the jurisdiction of the superior courts. There is no known precedent that departs from this proposition. The interpretation that the Judge seems to have adopted in his May 1, 2024 judgment contains an error to which we will return later and which consists in giving precedence to form over substance:[[36]](#footnote-37) if all “declarations” are accepted, whether or not they are “formal” ones, they are all equivalent. Yet, this is not the current state of the law: a “declaratory” judgment that appears to have all the attributes of a “formal” declaration falls within the jurisdiction of the superior courts.

**B. Could the Judge rule as he did?**

1. There are several reasons for concluding that, in the present case, the Judge could not raise the constitutional question on his own initiative, and that even if a party had raised it, he could not decide it as he did. The reasons set out so far would be enough on their own to allow the appeal,[[37]](#footnote-38) but as we will see, there is more.

**1. The limited jurisdiction of a Court of Québec judge**

1. The relevant starting point for a discussion of this issue is undoubtedly the legislation under which a judge of the Criminal and Penal Division of the Court of Québec is empowered to act. That statute is the *Courts of Justice Act*.[[38]](#footnote-39) One of its provisions provides the basis for this subject-matter jurisdiction:

|  |  |
| --- | --- |
| **82.** In criminal and penal matters, the Court has jurisdiction within the limits provided for by law in respect of proceedings brought under the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46), the Code of Penal Procedure (chapter C‑25.1) or any other Act.  Such jurisdiction shall be exercised, in particular, by the judges assigned to the Criminal and Penal Division. | **82.** En matière criminelle et pénale, la Cour a compétence, dans les limites prévues par la loi, à l’égard des poursuites prises en vertu du Code criminel (Lois révisées du Canada (1985), chapitre C-46), du Code de procédure pénale (chapitre C‑25.1) ou de toute autre loi.  Cette compétence est exercée notamment par les juges affectés à la chambre criminelle et pénale. |

1. To better define what must be deduced from this text and what place it holds within the framework of the relevant constitutional provisions, a few excerpts from the legal literature will be helpful.
2. Generally speaking and by way of introduction, one notes the following:[[39]](#footnote-40)

[translation]

The power to create courts of criminal jurisdiction, which the Constitution confers on the provinces, does not, however, allow them to determine the extent of the powers held by these courts in criminal matters. This prerogative belongs to the federal legislature by virtue of its jurisdiction over “criminal procedure”.

1. More specifically, and elsewhere in the same source, the observations set out below parallel the previous ones and provide several useful clarifications for our purposes:[[40]](#footnote-41)

[translation]

[…] the Supreme Court has significantly qualified its position in cases where the court called upon to rule on the constitutionality of a statute is not a superior court or a court vested with the power to review the constitutionality of legislation. It reiterated the principle that no one can be convicted of an offence under an invalid law, or be sentenced on the basis of such a law. It pointed out, however, that only a superior court has the inherent jurisdiction, as does a court vested with such jurisdiction by law, to issue a formal declaration of unconstitutionality under s. 52 of the Constitution Act, 1982 that has the effect of declaring a law inoperative with respect to everyone. In principle, a provincial court judge or an administrative tribunal has no such jurisdiction. Section 52, however, requires that a judge refuse to give effect to a law that the judge considers unconstitutional. A provincial court judge may avoid deciding the constitutional matter if his conclusion would have no impact on the decision to be rendered, as in the case of a statutory minimum sentence. Unlike a Superior Court judge who can, and must if convinced that legislation is constitutionally invalid, declare it unconstitutional with respect to everyone, a provincial court judge can dispense with the constitutional debate if the minimum sentence, or a longer sentence, is appropriate for the offender who raises the constitutional issue, since addressing it would, in his case, be a theoretical exercise. The judge may nevertheless choose to rule on the constitutional issue, but his conclusion will only be valid with respect to the case before him, subject to the precedent it creates for judges within his jurisdiction pursuant to the rule of stare decisis.

[Underlining added]

The foregoing excerpt sums up what follows from *R. v. Lloyd*,[[41]](#footnote-42) which must guide us towards a solution in the case at bar*.* In addition, *Denis c. R.*,[[42]](#footnote-43) a judgment that postdates the foregoing excerpt, provides useful clarifications on the subject, as will be discussed below.

1. It is instructive to begin with a brief review of the ruling in *Lloyd* so as to dispel any differences of opinion as to its true scope. Lloyd was found guilty by the British Columbia Provincial Court on three charges of possession of a prohibited drug for the purpose of trafficking. The applicable provision, s. 5(3)(a)(i) of the *Controlled Drugs and Substances Act*[[43]](#footnote-44) (“s. 5(3)”), provided, among other things, for a minimum one-year prison sentence for a person who had previously been convicted of the same offence. The accused challenged the constitutionality of the minimum sentence, relying on s. 12 of the *Charter*. After considering the relevant factors, the judge initially concluded that an appropriate sentence in this case would fall within a range of 12 to 18 months, and he imposed a sentence of 12 months’ imprisonment. This was therefore a situation in which a conclusion on the issue of constitutionality [translation] “would have no impact on the decision to be rendered”, to borrow from the doctrinal excerpt cited above. In light of the Ontario Court of Appeal’s ruling in *R. v. Nur*[[44]](#footnote-45) and the notion of the “potential inflationary effect of mandatory minimums” examined in that decision, the judge nevertheless decided to rule, and he concluded that the provision infringed s. 12 of the *Charter*.[[45]](#footnote-46)
2. The Court of Appeal allowed the Crown’s appeal,[[46]](#footnote-47) increased the sentence from 12 months to 18 months and agreed with the appellant, who had argued that, in the case before him, the trial judge did not have the authority to declare s. 5(3) “to be of no force and effect”.
3. The Supreme Court of Canada (the “Supreme Court”) allowed Lloyd’s appeal, restored the 12-month sentence and rejected the Crown’s argument regarding the trial judge’s authority to declare s. 5(3) inoperative. But to properly understand the scope of the latter point, one must carefully read the remarks of McLachlin, C.J., writing for the majority. The following is the relevant passage:

[15] The law on this matter is clear. Provincial court judges are not empowered to make formal declarations that a law is of no force or effect under s. 52(1) of the *Constitution Act, 1982*; only superior court judges of inherent jurisdiction and courts with statutory authority possess this power. However, provincial court judges do have the power to determine the constitutionality of a law where it is properly before them. As this Court stated in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at p. 316, “it has always been open to provincial courts to declare legislation invalid in criminal cases. No one may be convicted of an offence under an invalid statute.” See also *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)*, [1991] 2 S.C.R. 5, at pp. 14-17; *Douglas/ Kwantlen Faculty Assn. v. Douglas College*, [1990] 3 S.C.R. 570, at p. 592; *Re Shewchuk and Ricard* (1986), 28 D.L.R. (4th) 429 (B.C.C.A.), at pp. 439- 40; K. Roach, *Constitutional Remedies in Canada* (2nd ed. (loose-leaf)), at p. 6-25.

[16] Just as no one may be convicted of an offence under an invalid statute, so too may no one be sentenced under an invalid statute. Provincial court judges must have the power to determine the constitutional validity of mandatory minimum provisions when the issue arises in a case they are hearing. This power flows directly from their statutory power to decide the cases before them. The rule of law demands no less.

[17] In my view, the provincial court judge in this case did no more than this. Mr. Lloyd challenged the mandatory minimum that formed part of the sentencing regime that applied to him. As the Court of Appeal found, he was entitled to do so. The provincial court judge was entitled to consider the constitutionality of the mandatory minimum provision. He ultimately concluded that the mandatory minimum sentence was not grossly disproportionate as to Mr. Lloyd. The fact that he used the word “declare” does not convert his conclusion to a formal declaration that the law is of no force or effect under s. 52(1) of the *Constitution Act, 1982*.

1. Paragraph [15] from this passage corresponds closely to the doctrinal excerpt reproduced above in paragraph [77]. And paragraph [17] that follows merely specifies the consequences of the principles set out in the previous two paragraphs. The issue before the Provincial Court judge in *Lloyd* was intrinsically linked to the sentence that, in the event of a guilty verdict, should be imposed on the accused.
2. In a case such as *Lloyd*, the argument based on s. 12 of the *Charter* had the potential to transform the conduct and outcome of one part of the proceedings, in this case the sentencing phase. It is quite common, and indeed normal, for arguments of a constitutional nature to arise in criminal or penal proceedings and to redirect one of its components. Through provisions such as ss. 8 and 24 of the *Charter*, this control over the matter of legality extends to the pre-trial investigation that leads to the laying of charges. The Criminal and Penal Division of the Court of Québec hears issues of this kind on a daily basis, and it has been discharging this responsibility for decades.
3. On the other hand, in a case such as the instant appeal, we are far removed from what constitutes the criminal proceedings before the Court of Québec. It is difficult to see how the unconstitutionality of s. 10 *CFL* could have any impact whatsoever on the verdict or the sentence – and, as a matter of fact, it had no effect on the verdict.[[47]](#footnote-48) A delay in rendering judgment, caused by a rule in provincial legislation that is alleged to be discriminatory, or even incompatible with ss. 530 and 530.1 *Cr.C.*,could have had an impact on the procedural framework of the proceedings in the case at bar, but nothing of the sort had yet occurred. One may well ask whether it would have been advisable for the respondent to raise the issues set out in the April 19, 2024 email, at the time the Judge brought them to Mtre Héroux’s attention. In any event, both the respondent herself and her lawyer felt that it was not in her interest to debate the three-pronged constitutional issue identified by the Judge.
4. Moreover, it would be wrong to believe that the issue here is merely one of form. As we have seen, the judgment under appeal “declares inoperable in criminal proceedings the words ‘immediately and without delay’”. Is this a “formal declaration” within the meaning of paragraph [15] of *Lloyd*[[48]](#footnote-49) cited hereinabove or is it instead, within the meaning of paragraph [17] of that same judgment, a declaration other than a “formal declaration” – an “informal” declaration, for lack of a better term? Perhaps we would be better served by distinguishing between a “general declaration” and a “specific declaration”.
5. *Lloyd* confirms that provincial court judges can *declare* a legislative provision to be of no force or effect on constitutional grounds – “where [the matter] is properly before them”, McLachlin, C.J. specified. This is all well and good. But to use this proposition to draw the argument that *any such declaration* by a provincial court is permitted, regardless of the context, is to wrongly give precedence to form over substance and to disregard what was explained in the doctrinal excerpt cited earlier.[[49]](#footnote-50) The scope of a declaration couched in these terms can only be measured in context. Unlike the reasons in the trial judgment that the Supreme Court had to consider in *Lloyd*, the wording of those in the May 17, 2024 judgment leaves little doubt as to the potential (and perhaps intentional) scope of the conclusions based on those reasons. They may be viewed as an attempt to demonstrate “exhaustively” – *erga omnes, urbi et orbi* – why the words “immediately and without delay”, which are the most consequential words in s. 10 *CFL* following its amendment on June 22, 2021, are invalid and of no force or effect.
6. In this regard, the ruling in *Denis*,[[50]](#footnote-51) where the question arose as to whether a minimum sentence constituted “cruel and unusual punishment” under s. 12 of the *Charter*, provides a useful clarification. The decision, which was handed down one week after the May 17, 2024 judgment, confirms and clarifies the limits inherent in a Court of Québec judgment which declares, on constitutional grounds, that a rule of law stemming from legislation is inoperative in a particular case. The following is the relevant passage:

[translation]

[61] In other words, a Court of Québec judge can and even must refuse to impose a sentence on the accused whose trial he is presiding where that sentence is based on a provision contrary to the *Charter*. He cannot, however, declare it generally to be of no force or effect. In short, his ruling applies only to the parties, whereas the ruling of a superior court (or an appellate court) applies to the entire province, pursuant to the rules of *stare decisis*. Consequently, in all other cases, the other Court of Québec judges will have to reconsider the issue anew in order to determine whether the provision should be ruled inoperative with respect to the accused, unless the Superior Court (or the Court of Appeal or the Supreme Court) has, in the meantime, declared the provision unconstitutional.

This judgment, which postdates the judgment under appeal and the doctrinal excerpt reproduced above,[[51]](#footnote-52) thus shows that, although there is a rule of horizontal *stare decisis*,[[52]](#footnote-53) it does not apply in the case of “informal” or “specific” declarations of inoperability on constitutional grounds.

1. Perhaps the instant case is one in which there were grounds for a proper constitutional debate on the applicability of s. 10 *CFL* in criminal matters. The question is a legitimate one. But to initiate, conduct and resolve this debate, unilaterally and on an anticipatory basis, as the Judge attempted to do here, far exceeded the limits of his jurisdiction.

**2. Other shortcomings in the Judge’s approach**

1. In addition to the foregoing, there is another problematic aspect of the case in first instance. The procedure leading up to the May 17, 2024 judgment was flawed in several respects, and the three parties who appeared on appeal have raised this point from various angles.
2. Without elaborating on this aspect, the DCPP nonetheless argues that the procedure the Judge followed is seriously open to criticism. In the DCPP’s view, the Judge’s approach created an unfortunate situation that should be denounced for institutional reasons, so that it does not recur.[[53]](#footnote-54)
3. The criticisms of the appellant and the respondent are more focused. First, they address what they believe created a reasonable apprehension of bias on the Judge’s part. They then make a number of distinct complaints regarding the procedure followed between April 17 and May 2, 2024.
4. Two cases, *R. v. Mian*[[54]](#footnote-55) and *R. v. Youngpine*,[[55]](#footnote-56) are relied on with respect to the apprehension of bias.
5. The first of these judgments, in which the criticism was directed at the Alberta Court of Appeal, contains a general statement of principle. The Court of Appeal had reversed a judgment after hearing the parties’ answers to two questions the Court had sent them after the briefs had been filed and before the hearing was held. The Supreme Court, in a unanimous judgment written by Rothstein, J., allowed the appeal and restored the verdict of acquittal. While rejecting the argument that the Court of Appeal could under no circumstances have proceeded as it did, the Supreme Court specified the limited conditions under which it is appropriate for a court to raise a new issue at trial or on appeal. It concluded that, in the case before it, one of the two issues should not have been raised. On the allegation of bias, however, it added the following comments:

[60] The intervener the Attorney General of Alberta argues that, where a new issue is raised, the judge or panel that raised the new issue should recuse itself and the panel should be reconstituted as necessary. I cannot agree. Requiring recusal in all cases would be an onerous procedural requirement that would result in significant delay and would not be economical for the parties or the courts. Recusal is not necessary in every case and the need for a new judge or reconstituted panel should be determined on a case-by-case basis. Recusal should be rare and should be governed by the overriding consideration of whether the new issue or the way in which it was raised could lead to a reasonable apprehension of bias.

1. Thus, in circumstances quite different from those in the case at bar, the Supreme Court reiterated a requirement inherent in procedural law and, even beyond that, in the rules of natural justice. Was this requirement breached in the case at bar?
2. The appellant and the respondent also rely on *R. v. Youngpine*. The Judge, too, addressed this ruling in his May 1, 2024 reasons, but only from the standpoint of his power to raise a question on his own motion, and he saw no reason in that ruling that would require him to backtrack. His analysis led him to reject the possibility that he might be criticized for having introduced concepts into the debate that were irrelevant to the respondent’s defence; on the contrary, he was of the view that the defence itself had announced its intention to address the delays caused by s. 10 *CFL* in a *Jordan* application. This argument is not convincing, because a *Jordan* application and a declaration of inoperability lead to completely different results.
3. *Youngpine* clearly illustrates the connection between the notion of impartiality and a judge’s power to raise a question on his own initiative.
4. *Youngpine* involved a situation where, in the course of a criminal trial in the Alberta Provincial Court, the judge, on his own initiative, had raised an issue under s. 11(i) of the *Charter*. He ignored the parties’ refusal to debate the issue and, instead, insisted on appointing an *amicus curiae* to take on the responsibility of doing so. He subsequently issued a ruling in line with one of his own earlier decisions[[56]](#footnote-57) and refused to order that the accused be registered under the *Sex Offender Information Registration Act*.[[57]](#footnote-58) In his opinion, such registration constituted a “punishment” within the meaning of s. 11(i) that was liable to increase the severity of the punishment in force at the time the offence was committed. However, his earlier judgment on which he relied in *Youngpine* had been overturned by the Court of Appeal due to the absence of valid notice to the attorneys general.[[58]](#footnote-59) Moreover, this earlier judgment was incompatible with a more recent Court of Appeal ruling[[59]](#footnote-60) – the judge had thought he had the power to disregard that ruling because, in his view, it had been rendered *per incuriam* by the Court of Appeal.[[60]](#footnote-61) The latter considered that there was a reasonable apprehension of bias, particularly since the judge’s attitude was clearly prejudicial to the case put forth by the Crown, one of the parties appearing before him. The Court of Appeal stated the following:

[14] We have concluded that the sentencing judge’s actions in this case demonstrate a reasonable apprehension of bias. He had previously raised the same *SOIRA* constitutional issue on his own motion in ***Aberdeen,*** *supra*. His conclusion in that case that the retroactive application of the legislation breached s. 11(i) of the *Charter* had been reversed on appeal to this Court on the basis that no notice of a constitutional challenge had been provided to the Federal and Provincial Attorneys-General as required by the ***Judicature Act*,** R.S.A. 2000, c. J‑2, s. 24: ***R. v. Aberdeen***, 2006 ABCA 164, 384 A.R. 395. Here again, in this case, the sentencing judge raised this issue on his own motion and when defence counsel and his client made it clear that they did not want to pursue it, the sentencing judge insisted on appointing an *amicus curiae* and required that the Crown address the issue.

[Boldface in the original]

1. The analogy with *Youngpine* is imperfect, because the facts having given rise to a reasonable apprehension of bias there were more serious and surely more compromising for the judge than the circumstances of the matter at hand. Nonetheless, there are three particularly troubling elements, among others, in the case at bar. It is not uncommon for a judge to engage in a discussion with a lawyer and play the devil’s advocate so as to fully appreciate the scope of an argument. That said, one of the Judge’s comments, reproduced above in paragraph [46], which he made at the May 16 hearing, seems quite imprudent and perhaps indicative of something questionable. The Judge’s insistence on an accelerated timetable is also of concern. What all of this implies is corroborated elsewhere. When one considers the very short time that elapsed, on May 1 as well as on May 16, 2024, between the end of the hearing and the rendering or filing of highly detailed judgments, the party whose claims were dismissed certainly has serious cause for concern. What purpose does the right to be heard in the Court of Québec serve if the die has already been cast?
2. The foregoing observations should serve as a warning. Nonetheless, there is no need to go any further and comprehensively address the issue of a reasonable apprehension of bias, as the comments made under part **II.A** hereinabove, at paragraphs [60] and following, are sufficient to determine the outcome of the appeal.
3. The same can be said, in general terms, for the haste with which the proceedings progressed. The notice to the attorneys general was inadequate, both in its content and in the deadline set for their response. And it is not an acceptable reply to point out, as the Judge did, that “[a]s any first‑year law student quickly learns, the criminal law is notoriously known to be a federal head of jurisdiction” and “[…] at the very least, the Attorney‑General of Quebec must be assumed to have already given serious thought to this issue”. In a constitutional challenge, one thing stands out from the outset and above all others: compliance with the content and formalities of the notice prescribed by arts. 76 and 77 *C.C.P.* The liberties the respondent took with these rules, after having been forced to comply with the Judge’s requests, led to what can best be described as a major dislocation of the ensuing debate. Under these conditions, deciding a question such as the interaction between s. 10 *CFL* and ss. 530 and 530.1 *Cr.C.* becomes too risky – as is apparent from the way in which the case was conducted between April 17 and May 17, 2024. In the AGQ’s view, the problem lies elsewhere and is more a case of a blatant excess of jurisdiction, as clearly demonstrated in paragraphs [74] to [84] hereinabove.
4. Although the attorneys general share very similar views on the merits, they reacted in markedly different ways, one offering as full an argument as he could in a time frame too short for him to be satisfied with his argument, and the other simply withdrawing from the debate. No matter how one chooses to view the case, one can only conclude that the record had shortcomings likely to hinder the debate and prevent it from being resolved in a fully informed manner. Thus, to mention but one of many things, with regard to the interaction mentioned above at paragraph [99], it would have been useful to hear from the AGC about the practices accepted elsewhere in the country under ss. 530 and 530.1 *Cr.C.* The AGC’s lawyer alluded to this briefly in her oral argument on May 1, 2024, but the Judge did not seem to show any interest on this point, and the record as it stands tells us nothing else on the subject.

**III. CONCLUSION**

1. By proceeding as he did, the Judge usurped a prerogative that belongs to the parties, forced their hand and imposed on and against all of them an inappropriate framework for resolving issues – potentially serious ones – that he dictated and that, in order to be addressed properly, should have been dealt with quite differently.
2. The Court would likely have had to intervene even if an issue of constitutionality had been raised on the initiative of a party with an interest in doing so, in accordance with the appropriate procedure, and even if the Judge’s decision on such a constitutional issue had had the sole purpose, whether explicitly or implicitly, of ruling on the respondent’s fate in the proceedings. The procedure followed here left too much wanting. Relying on pure hypotheticals, and adjudicating within a flawed procedural framework, without the benefit of a well-documented context – this is not the way to decide an issue such as the one on which the Judge ruled. It follows that, on the merits, the entire matter will have to be relitigated properly, and elsewhere, if a party challenges the constitutionality of the words “immediately and without delay” in s. 10 *CFL*.
3. For these reasons, the Court allowed the appeal from the bench at the hearing on May 27, 2025.

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| Mtre Michel Déom | | |
| BERNARD, ROY (JUSTICE-QUÉBEC) | | |
| For the Attorney General of Quebec | | |
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| Mtre Jessy Bourassa Héroux | | |
| BATTISTA TURCOT ISRAEL | | |
| For Christine Pryde | | |
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| Mtre Nicolas Abran | | |
| DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS | | |
| For the Director of Criminal and Penal Prosecutions | | |
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| Date of hearing: | May 27, 2025 | |

1. *R. v. Pryde*, 2024 QCCQ 1794. [↑](#footnote-ref-2)
2. CQLR, c. C-11. [↑](#footnote-ref-3)
3. *Procureur général du Québec c. Pryde*, 2025 QCCA 736. [↑](#footnote-ref-4)
4. S.Q. 2022, c. 14. [↑](#footnote-ref-5)
5. *R. v. Pryde*, 2024 QCCQ 483. [↑](#footnote-ref-6)
6. Contrary to what is written below, the appeal record indicates April 17, 2024, rather than April 14, as the start of the communications that led Mtre Héroux to specify, on April 23, 2024, that he had not received instructions to challenge the constitutionality of s. 10 *CFL*. This, however, is of no consequence here. [↑](#footnote-ref-7)
7. The minutes of the hearing indicate that it began at 9:39 a.m., was suspended at 10:47 a.m., and resumed at 11:43 a.m. This will be addressed below. [↑](#footnote-ref-8)
8. Perhaps the AGC and the AGQ diverged on one point, as counsel for the AGC seemed to think. In the latter’s view, a constitutional question raised on a judge’s own initiative must give rise to an adversarial debate between the parties, failing which it must remain unanswered. On this specific point, counsel for the AGQ seems to have been less categorical, while nonetheless deploring the absence of any adversarial debate on the constitutional issue and reiterating that it was therefore not appropriate to rule on the matter. It is possible, however, that the AGQ’s position was in line with that of the AGC – at least that was the Judge’s perception: see paragraphs 28 to 30 of his May 1, 2024 reasons: *infra*, note 10. [↑](#footnote-ref-9)
9. The reference here to *R. v. Beaulac*, [1999] 1 S.C.R. 768, is somewhat surprising. *Beaulac* dealt with the manner for an accused to exercise his right to choose the official language in which his trial will be held. There is no mention of the language of judgments, and therefore no mention of s. 530.1(h) *Cr.C.*, which simply states that “any trial judgment [...] shall be made available by the court” in the accused’s official language. Nowhere does that provision refer to the requirement of an immediate or simultaneous translation. [↑](#footnote-ref-10)
10. 2024 QCCQ 1544. [↑](#footnote-ref-11)
11. See above, para. [15]. [↑](#footnote-ref-12)
12. The obvious factual shortcomings of the court record cannot be remedied with far‑fetched hypotheses like these. [↑](#footnote-ref-13)
13. *Procureur général du Québec c. Pryde*, 2024 QCCS 1825. [↑](#footnote-ref-14)
14. Based on the Judge’s comments in paragraphs 14 and 15 of his judgment rendered the next day, we know the gist of those submissions. Regarding the respondent’s position on s. 10 *CFL*, he wrote, “[…] she does contend that its application is unfair and highly problematic, but she instead raises those problems in support of an application to stay the proceedings under s. 11(b) of the *Charter*”. That said, in the respondent’s view, s. 10 was constitutionally valid: “In additional written submissions on the division of powers issue, the defence adds that in its view, s. 10 *C.F.L.* is constitutionally valid under the doctrine of federal paramountcy and it creates no conflict in operation or in purpose with the *Criminal Code*, since s. 530 *C.C.* does not provide for equal treatment between anglophones and francophones.” [↑](#footnote-ref-15)
15. See above, para. [29]. [↑](#footnote-ref-16)
16. *Supra*, note 1. [↑](#footnote-ref-17)
17. [1975] 2 S.C.R. 182. [↑](#footnote-ref-18)
18. 2020 SCC 17. [↑](#footnote-ref-19)
19. [1999] 1 S.C.R. 768. [↑](#footnote-ref-20)
20. 2024 SCC 16. [↑](#footnote-ref-21)
21. *Supra*, note 3. [↑](#footnote-ref-22)
22. See above, paras. [13] and following. [↑](#footnote-ref-23)
23. See above, para. [15]. [↑](#footnote-ref-24)
24. R.S.C. (1985), App. II, No. 44 Schedule B. [↑](#footnote-ref-25)
25. *Therrien (Re)*, 2001 SCC 35. The authorities mentioned in this excerpt are *Beauregard v. Canada*, [1986] 2 S.C.R. 56, and the *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3. [↑](#footnote-ref-26)
26. 2009 ABCA 89. This judgment will be discussed at greater length below. [↑](#footnote-ref-27)
27. Writing for the Court, Fraser, C.J.A. stated, *id.*, para. 12: “That said, there are limits as to how far a judge should go in raising, on his or her own motion, an issue potentially involving the defence of constitutional rights. Our system of law remains an adversarial one and where defence counsel advises that neither defence counsel nor the client wish to pursue a constitutional issue on which there is conflicting legal authority, it is not for a judge to impose on the offender his or her desire to address and determine that issue.” [↑](#footnote-ref-28)
28. *Supra*, note 10, para. 21. [↑](#footnote-ref-29)
29. J.E. 90-1686 (C.A.), (1990), 62 C.C.C. (3d) 474. [↑](#footnote-ref-30)
30. [1991] R.J.Q. 1258 (C.A.), p. 1263. [↑](#footnote-ref-31)
31. Starting with offences dating back to 1972 and charges laid in 1981, and due to appeals to the Supreme Court of Canada, more than nine years had elapsed between the filing of an appeal in the Court of Appeal and the hearing of that appeal. The Court wondered whether such a long delay before the appeal hearing could trigger the application of s. 11(b)*.* [↑](#footnote-ref-32)
32. (1990) 4 C.R.R. (2d) 369 (Ont.CA). [↑](#footnote-ref-33)
33. 2017 ONCA 424. [↑](#footnote-ref-34)
34. 2018 SKCA 71. [↑](#footnote-ref-35)
35. 2001 NSCA 71. [↑](#footnote-ref-36)
36. See below, para. [85]. [↑](#footnote-ref-37)
37. *Supra*, note 3. [↑](#footnote-ref-38)
38. CQLR, c. T-16. [↑](#footnote-ref-39)
39. Vauclair, Martin, Desjardins, Tristan and Lachance, Pauline, *Traité général de preuve et de procédure pénales*, 31st ed., Montreal, Éditions Yvon Blais, 2024, p. 87, § 5.56 (references omitted). [↑](#footnote-ref-40)
40. *Id*., p. 54, § 4.68 (references omitted). [↑](#footnote-ref-41)
41. 2016 SCC 13. [↑](#footnote-ref-42)
42. 2024 QCCA 647. Applications for leave to appeal to the Supreme Court of Canada dismissed with respect to Mario Denis and granted with respect to the Attorney General of Quebec, April 24, 2025, No. 41401. [↑](#footnote-ref-43)
43. S.C. 1996, c. 19. [↑](#footnote-ref-44)
44. 2013 ONCA 677. [↑](#footnote-ref-45)
45. *R. v. Lloyd*, 2014 BCPC 11. [↑](#footnote-ref-46)
46. *R. v. Lloyd*, 2014 BCCA 224. [↑](#footnote-ref-47)
47. See *R. v. Pryde*, 2024 QCCQ 5548. As of the date hereof, the sentence had not yet been handed down. [↑](#footnote-ref-48)
48. See above, para. [80]. [↑](#footnote-ref-49)
49. See above, para. [77]. [↑](#footnote-ref-50)
50. *Supra*, note 42. [↑](#footnote-ref-51)
51. See above, para. [77]. [↑](#footnote-ref-52)
52. There is indeed a rule of horizontal *stare decisis*; on this point, see: Vauclair, Desjardins and Lachance, *op. cit.*, *supra*, note 39, p. 17, § 3.8. This rule, however, cannot have an impact on constitutional issues such as those contemplated in the except reproduced in paragraph [92] below. It is in this sense that St-Pierre, J.S.C., in the judgment cited at para. [41] above, stated that the Judge’s ruling here would not change the state of the law. [↑](#footnote-ref-53)
53. The DCPP’s brief sets out the argument as follows: [translation] “In short, it would be contrary to the interests of justice to allow the situation that arose in first instance to recur, particularly in view of the considerable resources required to examine a constitutional question and the position in which the court places itself for the continuation of the criminal trial, which procedure should not be split up, save in truly exceptional cases.” [↑](#footnote-ref-54)
54. 2014 SCC 54. [↑](#footnote-ref-55)
55. 2009 ABCA 89. [↑](#footnote-ref-56)
56. *R. v. Aberdeen*, 2005 ABPC 203. [↑](#footnote-ref-57)
57. S.C. 2004, c. 10. [↑](#footnote-ref-58)
58. *R. v. Aberdeen*, 2006 ABCA 164. [↑](#footnote-ref-59)
59. *R. v. Owusu*, 2007 ABCA 95. [↑](#footnote-ref-60)
60. See *R. v. Youngpine*, *supra*, note 55, para. 8. [↑](#footnote-ref-61)