

ONTARIO COURT OF JUSTICE

B E T W E E N :

HIS MAJESTY THE KING

Respondent

— AND —

MARINELAND OF CANADA INC.

Appellant

Before Justice R.C.B. Watson
Appeal Decision on July 18, 2025

Danielle Mueleman and Jason Kirsh for the Ministry of the Attorney General –
Legal Services Branch – Ministry of the Solicitor General

Scott K. Fenton and Michelle Psutka for Marineland of Canada Inc.

WATSON J.:

Overview:

[1] This matter proceeded before me on March 19, 2025, in Welland, Ontario, pursuant to an appeal filed under s. 116 of the *Provincial Offences Act* by Marineland of Canada Inc. (the “Appellant”).

[2] The Appellant appeals a decision of Her Worship Justice of the Peace E. Walker dated March 7, 2024, regarding an application by the Appellant, then the applicant, on a motion for a stay of proceedings under s. 24(1) of the *Charter* for an abuse of process.

History of the Proceedings:

[3] The history of these proceedings is not in dispute. The history is contained in the Appellant's factum and the Respondent's factum and will not be exhaustively repeated in this decision. I find it was necessary for this appeal that the parties had to in essence re-argue the issues which were at play in the motion for the stay for a proper context to be given to their respective positions.

The March 7, 2024 Proceedings:

[4] On March 7, 2024, the Appellant was found guilty by Justice of the Peace E. Walker of three offences of failing to comply with an order issued on June 18, 2021 (the "Order") pursuant to s. 30(1) of the *Provincial Animal Welfare Services Act*, 2019, S.O. 2019, c.13, as amended (the "*PAWS Act*").

[5] Convictions were entered based on an agreed statement of facts (the "ASF") at trial. The ASF was the only evidence called at the trial.

[6] It was agreed upon by the Appellant that the ASF put forward sufficient evidence for Her Worship to make findings of guilt. Counsel for the Appellant stipulated and the parties agreed that although not a plea of guilt that Her Worship could reasonably conclude that the Appellant was guilty of the offences alleged.

[7] Prior to those proceedings the Appellant brought a stay application on the basis that the integrity of the judicial system would be undermined by the continuing prosecution. This would amount to an abuse of process warranting a stay of proceedings.

[8] The Respondent argues that Her Worship properly dismissed the abuse of process application and that the instant appeal should be dismissed.

Position of the Appellant:

[9] The Appellant submits that Her Worship properly stated the test for a residual category abuse of process as being whether the impugned conduct "risks undermining the integrity of the judicial process" because the conduct is "offensive to societal notions of fair play and decency." The Appellant agrees that Her Worship properly quoted from *R. v. Babos*, 2014 SCC 16.

[10] Moldaver J. writing for the Supreme Court of Canada stated commencing at para. 30:

A. Abuse of Process and Stays of Proceedings

[30] A stay of proceedings is the most drastic remedy a criminal court can order (*R. v. Regan*, 2002 SCC 12, [2002] 1 S.C.R. 297, at para. 53). It permanently halts the prosecution of an accused. In doing so, the truth-seeking function of the trial is frustrated and the public is deprived of the

opportunity to see justice done on the merits. In many cases, alleged victims of crime are deprived of their day in court.

[31] Nonetheless, this Court has recognized that there are rare occasions — the “clearest of cases” — when a stay of proceedings for an abuse of process will be warranted (*R. v. O’Connor*, [1995] 4 S.C.R. 411, at para. 68). These cases generally fall into two categories: (1) where state conduct compromises the fairness of an accused’s trial (the “main” category); and (2) where state conduct creates no threat to trial fairness but risks undermining the integrity of the judicial process (the “residual” category) (*O’Connor*, at para. 73). The impugned conduct in this case does not implicate the main category. Rather, it falls squarely within the latter category.

[32] The test used to determine whether a stay of proceedings is warranted is the same for both categories and consists of three requirements:

- (1) There must be prejudice to the accused’s right to a fair trial or the integrity of the justice system that “will be manifested, perpetuated or aggravated through the conduct of the trial, or by its outcome” (*Regan*, at para. 54);
- (2) There must be no alternative remedy capable of redressing the prejudice; and
- (3) Where there is still uncertainty over whether a stay is warranted after steps (1) and (2), the court is required to balance the interests in favour of granting a stay, such as denouncing misconduct and preserving the integrity of the justice system, against “the interest that society has in having a final decision on the merits” (*ibid.*, at para. 57).

[33] The test is the same for both categories because concerns regarding trial fairness and the integrity of the justice system are often linked and regularly arise in the same case. Having one test for both categories creates a coherent framework that avoids “schizophrenia” in the law (*O’Connor*, at para. 71). But while the framework is the same for both categories, the test may — and often will — play out differently depending on whether the “main” or “residual” category is invoked.

The Four Areas where the Appellant argues the Justice of the Peace Erred:

[11] At pages 7-10 of the Appellant’s factum the Appellant outlines the following areas where they argue the Justice of the Peace erred:

- B. Her Worship erred in finding that the prosecution was not an abuse of process.

- C. Her Worship incorrectly interpreted s. 30(5) of *PAWS*.
- D. Her Worship erroneously applied the test for imposing a stay of proceedings in determining whether an abuse of process was established.
- E. Her Worship mischaracterized the consequences of a stay of proceedings.

Discussion:

B. Her Worship erred in finding that the prosecution was not an abuse of process.

[12] The Appellant relies on the arguments presented in their original factum at paragraphs 25-39 dated December 29, 2023. Those arguments include [*inter alia*] that an abuse of process can flow simply from the very existence of a prosecution, the fact that the decision to prosecute was made in good faith is not fatal and consideration should be given to the precedent it would set to allow the prosecution. The Appellant cites *R. v. MacPhee*, 2014 NSPC 89 at paras. 36, 46-48, 71, 75-77 for this proposition.

[13] It is a relevant observation that this decision is a decision from the Provincial Court of Nova Scotia from 2014 and thus is not binding on this court. *MacPhee* was charged with manslaughter in 2014 for an offence which occurred in 2005.

[14] The court in para. 2 of *MacPhee* sums up the issue in that case the following way:

[2] A seven-year hiatus between the act and the consequence is itself enough to take this case into uncharted territory. Add to it the fact that in 2007 Mr. MacPhee was sentenced for aggravated assault for the very same deed, and one has a truly extraordinary situation.

[15] Moreover, at para. 71 of *MacPhee* the court stated the following:

[71] If this matter proceeds, it will set a precedent. It seems inevitable that pressure will mount in other such cases to seek redress yet again when the natural consequences of the original offences become manifest. One may well ask, if this prosecution is allowed to proceed, whether accused in such cases as *Kaotalok*, *Walkem*, *Nduwayo*, *Smith*, *M.G.J.*, *Nyoni*, etc. will be charged again with culpable homicide when their victims die.

[16] I find *MacPhee* is of no assistance to this court given the issues argued and the potential outcomes which could flow from that case.

[17] The Appellant further argued in their factum of December 29, 2023, and in the argument before me that the Ministry simply could have sent the Appellant a letter indicating that given the bears had been removed that compliance with the Order was no longer necessary. The legislation does not contemplate a letter being sent. They argue instead that the Ministry issued a formal Revocation saying that the Order had been complied with.

[18] I reject this argument. For this to be the case it would mean that the Revocation order would effectively nullify what were valid grounds to prosecute Marineland. I find this would result in an absurdity. The Ministry acted fairly and their course of action I find was not an abuse of process. I am mindful that I am not retrying the case and am sitting as an appellate court to determine the issue of whether the Justice of the Peace erred. In consideration of the Appellant's original arguments which they rely on and Her Worship's decision I find she did not err in not granting a stay of proceedings.

[19] The Appellant also argues that the doctrines of *estoppel* and *autrefois acquit* apply. They did not argue these doctrines were directly applicable in the instant case but rather they offered them in support of the notion that the prosecution itself offended notions of fair play and decency. I find that the notions of fair play and decency would be offended had the prosecution not proceeded.

[20] I find the Appellant's arguments on this appeal take an unduly narrow interpretive role of the wording and application of the legislation.

[21] I do not find the doctrines of *estoppel* and *autrefois acquit* of help in this case. I find assistance in this regard from the Supreme Court of Canada case cited by the Appellant of *R. v. Mahalingan*, 2008 SCC 63, at para. 39 wherein McLachlin C.J. stated:

[39] In my view, it is clear that fairness to the accused requires that an accused should not be called upon to answer allegations of law or fact already resolved in his or her favour by a judicial determination on the merits. This is the most compelling rationale for retaining issue estoppel in criminal law, as it goes to the core tenets of our criminal justice system. The state has the right to charge an accused and to prove the facts at a trial of the charge. If a judge or jury conclusively decides a fact in favour of the accused, including via a finding of a reasonable doubt on an issue, then the accused should not be required in a subsequent proceeding to answer the same allegation. To require, in effect, a second defence of the issue would be to violate the fundamental function of *res judicata*.

[22] In the instant case I find that these doctrines are not applicable as Marineland has not been called upon to answer allegations of fact or law already resolved in its favour by a judicial determination on the merits. The court held that to require a second defence of the issue would be to violate the fundamental function of *res judicata*. Marineland was not tried and acquitted on the merits nor was a decision decided by triers of fact.

[23] I find that in the instant case the notice of revocation was not akin to having factual issues determined one way or the other and is not an issue of "relitigation" as per *Mahalingan* at para. 46. The only decision on the merits in this case was the original proceeding where it was determined by way of a stated case.

C. Her Worship incorrectly interpreted s. 30(5) of PAWS.

[24] The Appellant argues that the proper approach to statutory interpretation is to read the words of the Act “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.” The Appellant cites *Wawanesa Mutual Insurance Company v. Axa Insurance (Canada)*, 2012 ONCA 592, at paras. 33-35 for this proposition.

[25] I find paras. 34 and 35 of *Wawanesa* of assistance:

[34] The purposive approach to statutory interpretation requires the court to take the following three steps: (1) it must examine the words of the provision in their ordinary and grammatical sense; (2) it must consider the entire context that the provision is located within (*Bell Expressview*, at para. 27); and (3) it must consider whether the proposed interpretation produces a just and reasonable result (*Bapoo v. Co-Operators General Insurance Co.* (1997), 36 O.R. (3d) 616, [1997] O.J. No. 5055 (C.A.), at para. 8).

[35] The factors comprising the "entire context" include the history of the provision at issue, its place in the overall scheme of the Act, the object of the Act itself, and the legislature's intent in enacting the Act as a whole and the particular provision at issue: Pierre-Andre Coté, *The Interpretation of Legislation in Canada*, 3rd ed. (Scarborough, Ont.: Carswell, 2000), at p. 387. A just and reasonable result promotes applications of the Act that advance its purpose and avoids applications that are foolish and pointless (Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham, Ont.: LexisNexis, 2008), at p. 299).

[26] Examining the words of the provision in their ordinary and grammatical sense, and upon consideration of the entire context of the provision and whether the proposed interpretation produces a just and reasonable result I find, the word “shall” in s. 30(5) of the *PAWS Act* is mandatory.

[27] However, I find this is not an end to the issue because considering the words of s. 30(5) in their grammatical and ordinary sense harmoniously “with the scheme of the Act, the object and intention of Parliament” the Justice of the Peace did not err.

[28] Her Worship considered these issues in her decision of March 7, 2024, averted her mind to and applied the correct test in the case before her and specifically referred to [*inter alia*] *Wawanesa*, *Babos*, *MacPhee* in coming to her conclusion to not stay the proceedings.

[29] I do not find she erred in focusing on the meaning of revoke. She considered it, in conjunction with a harmonious interpretation of the Act. She did not fall into err.

[30] I reject the Appellant’s argument in this regard.

D. Her Worship erroneously applied the test for imposing a stay of proceedings in determining whether an abuse of process was established.

[31] I find that Her Worship as the Respondent agreed did conflate the test at paragraph 35 and following of her decision. However, in conflating the criteria for determining whether there has been an abuse of process with the *Babos* requirements for determining whether a stay of proceedings was warranted I find she did not err.

[32] I do not find as the Appellant asserts at paragraph 30 of their factum and in oral argument that this conflation "...cut the appellant's argument for a stay off at the knees - had Her Worship assessed whether an abuse was established under the correct test, she may well have concluded that the prosecution was abusive *before* turning to whether a stay was appropriate." Based on a consideration of the record before me, the legislation, the written materials, the case law and oral argument I do not find that Her Worship erred in declining to issue a stay. I find in fact that she arrived at the correct result, perhaps not as cleanly and as concisely as she could have, but she arrived at the correct result.

E. Her Worship mischaracterized the consequences of a stay of proceedings.

[33] I disagree with the Appellant's argument that it is an abuse for the Ministry to issue a Revocation on the basis that the order had been complied with, and then prosecute the Appellant for the opposite. I find that the offences had crystallized and that the Appellant is placing undue emphasis and too narrow an interpretation on the issue of Revocation and not considering the overall context and intent of the legislation at issue. See *Ontario (Attorney General) v. Norwood Estate*, 2021 ONCA 493 generally and para. 66.

[34] When the Revocation notice was issued the bears were gone, there was no practical need to comply with the Order. The Revocation order was a permissible step for the Ministry to take. Could they have sent a letter to Marineland saying, "We have your bears so you don't need to take further steps to comply with the Order?" Yes, they could have, but issuing the Revocation order was a legislative step available to them, and they took it.

[35] Her Worship did not err by rejecting the Appellant's arguments. I reject the argument that the Revocation order effectively erased the offences themselves and disentitles the Ministry from prosecuting. I reject the Appellant's arguments and decline to quash the conviction and enter a stay.

Position of the Respondent:

[36] The Respondent submits that Her Worship at paragraph 35 of her decision of March 7, 2024, correctly sets out the criteria for determining if the residual category of abuse of process applies, but at paragraphs 35-39 and elsewhere in her decision conflates the criteria for determining whether there has been an abuse of process with the requirements set out in *Babos* for determining whether a stay of proceedings is warranted.

[37] The Respondent argues that at paragraph 37 of Her Worship's decision she sets out the three stay requirements in *Babos*, but then incorrectly characterizes these as the requirements for a determination of whether the residual category of abuse of process was made out. The

Respondent fairly points out that at paragraph 38 of Her Worship's decision the category for abuse of process is properly set out. However, the Respondent illustrates that at paragraph 39 of her decision Her Worship incorrectly sets out the positions of the parties on the test for a stay and conflates the analysis of whether an abuse of process is made out with a further assessment of whether a stay is warranted.

[38] The Respondent argues that Her Worship correctly found that the integrity of the judicial system was not undermined when she stated at paragraph 70 of her decision:

70 As the Crown submitted, granting a stay in this matter and not proceeding to trial where the facts of this case could be properly put forth would in itself bring the integrity of the judicial system into disrepute. Other statutes and regulations rely on compliance as an expectation and deadlines hold members of society accountable. Where there are not potential consequences for non-compliance, such orders become meaningless. Such a decision could have severe consequences to our statutory and regulatory regimes. Societal interests are best served and confidence in the administration of justice can only be maintained by hearing this case on its merits. I accept that the decision to prosecute Marineland had been undertaken in good faith, after appropriate deliberation, and with public interest factors in mind. The application for abuse of process is denied the s. 24(1) stay will not be granted. This matter will proceed to trial on its merits, with the defendant Marineland having entered a not guilty plea.

R. v. Marineland of Canada Inc., [2024] O.J. No. 3763, at para. 70

[39] I accept the Respondent's arguments as outlined in their factum and in oral argument before me. Particularly I have reviewed and considered the Respondent's position outlined in their factum at paragraphs 24-39 and I agree with them.

[40] The Respondent in their factum at paragraphs 40-68 outline their position as to why a stay was not warranted. This section of the factum is a generalized interpretation and argument on determining whether a stay was warranted. The Respondent articulates at paragraph 52 that Marineland asserts a technical statutory interpretation of s. 30(5) of *PAWS* which nullifies an Order. I agree with the Respondent's arguments and find that Her Worship did not err in not staying the proceedings. I agree as the Respondent argued that this is not an exceptional case or the rarest or clearest of cases warranting a stay.

[41] I have considered the Ontario Court of Appeal decision in *R. v. Boise Cascade Canada Ltd.*, 1995 CanLII 1579 (ON CA), wherein the Court cites the Supreme Court of Canada in stating:

Wilson J. affirmed this statement in *R. v. Keyowski*, [1988] 1 S.C.R. 657 at pp. 658-59, 40 C.C.C. (3d) 481 at p. 482:

A stay should be granted where "compelling an accused to stand trial would violate those fundamental principles of justice which underlie the

community's sense of fair play and decency", or where the proceedings are "oppressive or vexatious" [(1985), 21 C.C.C. (3d) 7 at p. 14, 20 D.L.R. (4th) 651 at p. 658] [1985] 2 S.C.R. at pp. 136-7). The Court in *Jewitt* also adopted "the caveat added by the Court in *Young* that this is a power which can be exercised only in the 'clearest of cases'" [(p. 14 C.C.C., p. 659 D.L.R.) p. 137.

[42] I find that to grant a stay in this case would "... would violate those fundamental principles of justice which underlie the community's sense of fair play and decency."

[43] The Ontario Court of Appeal in *Boise* went on to note:

More recently, writing for the majority in *R. v. Power*, [1994] 1 S.C.R. 601 at p. 616, 89 C.C.C. (3d) 1, she held that a finding of an abuse of process "requires overwhelming evidence that the proceedings under scrutiny are unfair to the point that they are contrary to the interest of justice".

[44] I also agree with the Respondent's position that the Appellant in this matter as was the case before Her Worship implicitly observed that the Appellant is turning the *PAWS* into a sword and not a shield:

I agree with Mr. Fenton's submission that the respondent's argument turns the principle in *MacMillan Bloedel* from a sword into a shield. The logic of the respondent's position dictates that once it can demonstrate construction of the crossing would cause a "teaspoon" of sediment to be deposited, the court should protect it from prosecution even if it dumped sediment in the water at will. This position flouts the abuse of process doctrine and the principles in *Wholesale Travel*.

[45] I find as the Ontario Court of Appeal found in *Boise*:

Counsel advised the court that Cabinet has not passed any regulations under this section. Mr. Cassidy submits that the Crown could have addressed the respondent's abuse of process argument by appropriate regulations. I agree that the Crown could have done so, but I do not agree that the absence of regulations enhances the respondent's position. The respondent must still show that prosecuting it for the sediment deposits caused by its inadequate construction would be unfair or oppressive. In my view it has not done so and the Summary Conviction Appeal Court judge erred in law in holding that it had. This prosecution does not offend the community's sense of fair play. Indeed I think that the community would be offended if the respondent were not prosecuted for its conduct.

The respondent's situation would be different if it had complied with the conditions of its permit. The respondent would still have deposited sediment in the water during construction. But the M.N.R.'s issuance of the permit, not the respondent's failure to meet environmental

requirements, would bring about this deposit. Then if the respondent were prosecuted it might have a due diligence defence or be entitled to a stay of proceedings for abuse of process. That situation, however, does not arise on the record before us. On this record prosecuting the respondent did not amount to an abuse of process.

[46] In the case before me the Crown could have sent a letter advising Marineland they no longer needed to comply because the bears were gone. They did not do so, but this does not nullify that Marineland was in breach of the order prior to the Notice of Revocation being issued. The Respondent argues and this court agrees that in paragraphs 56-60 and in oral argument that “Marineland was obligated to comply with the Act. The Act states a person must comply with the terms of an order until such time as it may be revoked and failure to comply with the order *until it is revoked* is an offence...” I find that Her Worship’s did not err in not entering a stay.

The Standard of Review in this Proceeding:

[47] The Respondent agrees that the Appellant at paragraph 22 of their factum set out the proper standard of review on this appeal when they stated:

22. Matters of statutory interpretation, and whether impugned conduct amounts to an abuse of process, are questions of law, reviewable on a correctness standard. Findings of fact that inform whether conduct amounts to an abuse are subject to deference unless the trier of fact made a palpable or overriding error. With respect to s. 24(1) *Charter* remedies including stays, appellate intervention is “warranted only where a trial judge misdirects him or herself in law, commits a reviewable error of fact, or renders a decision that is so clearly wrong as to amount to an injustice.

Duchesne v. St. Denis, 2012 ONCA 699 at para. 7

R. v. Derbyshire, 2016 NSCA 67 at paras. 72-75

Law Society of Saskatchewan v. Abrametz, 2022 SCC 29 at para. 30

Babos at para. 48

[48] *R. v. Babos*, *supra*, at para. 48:

[48] The standard of review for a remedy ordered under s. 24(1) of the *Charter* is well established. Appellate intervention is warranted only where a trial judge misdirects him or herself in law, commits a reviewable error of fact, or renders a decision that is “so clearly wrong as to amount to an injustice” (*Bellusci*, at para. 19; *Regan*, at para. 117; *Tobiass*, at para. 87; *R. v. Bjelland*, 2009 SCC 38, [2009] 2 S.C.R. 651, at paras. 15 and 51).

[49] The Supreme Court of Canada in *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, at para. 83 noted the following:

(2) Stay of Proceedings

[83] A stay of proceedings is the ultimate remedy for abuse of process. It is “ultimate” because it is “final”; the process will be permanently stayed: *Regan*, at para. 53. In disciplinary matters, that means that charges will not be dealt with, any complaint will go unheard and the public will not be protected. Given these consequences, a stay should be granted only in the “clearest of cases”, when the abuse falls at the high end of the spectrum of seriousness: *Blencoe*, at para. 120, citing *Power*, at p. 616.

[84] The decision whether to grant a stay involves a balancing of public interests. On one hand, the public has an interest in ensuring that a tribunal established for its protection follows fair procedures, untainted by an abuse of process. On the other hand, the public has an interest in the resolution of administrative cases on the merits. A balance must be struck between the public interest in a *fair administrative process untainted by abuse* and the competing public interest in having the *complaint decided on its merits*: *Blencoe*, at paras. 118-21 and 154; *Conway*, at p. 1667; *Robertson v. British Columbia (Commissioner, Teachers Act)*, 2014 BCCA 331, 64 B.C.L.R. (5th) 258, at paras. 78-80; *Diaz-Rodriguez*, at paras. 71-73; *Law Society of Upper Canada v. Abbott*, 2017 ONCA 525, 139 O.R. (3d) 290, at paras. 61-63 (leave to appeal refused, [2018] 1 S.C.R. v).

[85] When faced with a proceeding that has resulted in abuse, the court or tribunal must ask itself: would going ahead with the proceeding result in more harm to the public interest than if the proceedings were permanently halted? If the answer is *yes*, then a stay of proceeding should be ordered. Otherwise, the application for a stay should be dismissed. In conducting this inquiry, the court or tribunal may have regard to whether other available remedies for abuse of process, short of a stay, would adequately protect the public’s interest in the proper administration of justice.

Conclusion:

[50] In considering the reasons of the Justice of the Peace they do not show a misdirection. I find they rather show a proper application of the test was applied.

[51] However, if a conflation of the test does constitute a misdirection on the law I adopt the curative proviso in the *Provincial Offences Act*, R.S.O. 1990 c. P.33:

Orders on appeal against conviction, etc.

120 (1) On the hearing of an appeal against a conviction or against a finding as to the ability, because of mental disorder, to conduct a defence, the court by order,

(a) may allow the appeal where it is of the opinion that,

(i) the finding should be set aside on the ground that it is unreasonable or cannot be supported by the evidence,

(ii) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law, or

(iii) on any ground, there was a miscarriage of justice; or

(b) may dismiss the appeal where,

(i) the court is of the opinion that the appellant, although the appellant was not properly convicted on a count or part of an information, was properly convicted on another count or part of the information,

(ii) the appeal is not decided in favour of the appellant on any ground mentioned in clause (a), or

(iii) although the court is of the opinion that on any ground mentioned in subclause (a) (ii) the appeal might be decided in favour of the appellant, it is of the opinion that no substantial wrong or miscarriage of justice has occurred.

Idem

(2) Where the court allows an appeal under clause (1)(a), it shall,

(a) where the appeal is from a conviction,

(i) direct a finding of acquittal to be entered, or

(ii) order a new trial; or

(b) where the appeal is from a finding as to the ability, because of mental disorder, to conduct a defence, order a new trial, subject to section 44.

Idem

(3) Where the court dismisses an appeal under clause (1)(b), it may substitute the decision that in its opinion should have been made and affirm the sentence passed by the trial court or impose a sentence that is warranted in law. R.S.O. 1990, c. P.33, s. 120.

[52] In coming to this conclusion that the Justice of the Peace arrived at the correct decision I have also considered the following cases.

[53] *R. v Waisanen*, 2015 ONSC 5823 (CanLII), at paras. 26-28:

[26] From his reasons for judgment, it is apparent that the trial judge simply did not apply the correct legal standard in concluding that the just and appropriate remedy in all of the circumstances of this case was a permanent stay of proceedings.

[27] As I understand the governing authorities, there are two categories of cases where a stay of proceedings may be an appropriate remedy. The first or “main” category is where the state misconduct compromises the fairness of the accused’s trial. The second or “residual” category is unrelated to trial fairness, but comprises cases where failing to stay the proceedings risks undermining the integrity of the judicial process. The test used to determine whether a stay of proceedings was warranted is the same in both types of cases. In either type of case, before a stay of proceedings is justified, the court must be satisfied of the following three criteria. First, there must be prejudice to the accused’s right to a fair trial or to the integrity of the justice system that will be manifested, perpetuated or aggravated through the conduct of the trial, or by its outcome. In other words, the remedy is directed at prospective, ongoing prejudice, and is not to redress past prejudice. Second, there must be no other alternative remedy that is capable of redressing the prejudice. Third, where there remains uncertainty over whether a stay is warranted, the court must balance the interests in favour of staying of proceedings, such as denouncing misconduct and preserving the integrity of the justice system, against society’s interest in having the case tried and decided on its merits. This third criterion requires the court to examine the particulars of the case, the circumstances of the accused, the nature of the charges, the interest of any victim and the broader interest of the community in having the particular charges disposed of on the merits. See *R. v Babos*, at paras. 30-47; *R. v O’Connor*, [1995] 4 S.C.R. 411, at paras. 68, 73, 75, 82; *Canada (Minister of Citizenship and Immigration) v. Tobias*, at paras. 89-92; *R. v Regan*, at para. 54-57; *R. v Zarinchang*, 2010 ONCA 286, [2010] O.J. No. 1548, at paras. 57-61.

[54] *R. v. James*, 2023 ONSC 6935 (CanLII), at paras. 41-43:

Issue 2: Did the trial judge err in declining to grant a stay of proceedings?

[41] The Appellant challenges the trial judge’s decision to deny a stay of proceedings as a s. 24(1) remedy for the lost in-car camera video. The standard of review for this decision is a highly deferential one. Moldaver J. held in *R. v. Babos*, 2014 SCC 16 at para. 48 that “Appellate intervention is warranted only where a trial judge misdirects him or herself in law, commits a reviewable error of fact, or renders a decision that is ‘so clearly wrong as to amount to an injustice.’”

[42] The Appellant contends that the trial judge applied the wrong standard to this issue, pointing to her holding that there had not been “gross negligence” on the part of the Crown or police and noting that “unacceptable negligence” is the standard to be applied in determining whether the loss of evidence amounts to a *Charter* breach. I do not agree. The trial judge found a breach of the Appellant’s s. 7 right. This necessarily implies that she did find unacceptable negligence. On a fair reading of her reasons, she referred to “gross negligence” to situate the seriousness of this breach on the spectrum of unacceptably negligent conduct. I see no error.

[43] The trial judge granted a substantial remedy for the breach, finding breaches of s. 10(a) and 10(b) where the lost evidence would have assisted in resolving relevant factual issues, and excluding the breath samples. I cannot say that she was “clearly wrong” in finding that this remedy was sufficient and that this was not the clearest of cases for which a stay would be appropriate.

[55] In this case a stay was not warranted. The appeal is dismissed.

Released: July 18th, 2025

Signed: “Justice R.C.B. Watson”

Justice R.C.B. Watson