NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Cromwell*, 2025 NSCA 37

Date: 20250527
Docket: CAC 536312
Registry: Halifax

Between:

His Majesty the King

Appellant

v.

Dante Cromwell

Respondent

Judges:	Farrar, Beaton and Gogan, JJ.A.
Appeal Heard:	May 13, 2025, in Halifax, Nova Scotia
Facts:	Following a 911 call reporting road rage and the pointing of a handgun, the Respondent was arrested and searched, leading to the discovery of a loaded handgun and cocaine. The Respondent faced multiple charges, including weapon-related offences and drug trafficking (paras 2-3).
Procedural History:	*R. v. Cromwell*, 2024 NSPC 53: The Provincial Court judge imposed a global stay of all charges against the Respondent due to a s. 8 *Charter* violation from an unreasonable strip search (para 4).
Parties' Submissions:	Appellant: The Crown argued that the stay of all charges was excessive and should have been limited to the drug charge, allowing the weapons and violence-related charges to proceed (para 5).

	Respondent: The Respondent contended that the global stay was necessary to address the police misconduct and the breach of his s. 8 *Charter* rights (para 6).
Legal Issues:	Did the trial judge err in imposing a global stay of all charges as a remedy for the s. 8 *Charter* violation? Was there a failure to consider alternative remedies to address the *Charter* breach? Did the trial judge properly balance the interests of justice in deciding to stay all charges?
Disposition:	The appeal was allowed, and the stay of proceedings on the gun and violence charges was vacated. The matter was remitted to the Provincial Court for a new trial on those charges (para 49).
Reasons:	Per Beaton J.A. (Farrar and Gogan JJ.A. concurring): The trial judge erred in law by not distinguishing between the charges related to the gun and violence offences and the drug charge when assessing the appropriate remedy for the s. 8 breach. The judge failed to consider alternative remedies short of a stay that could adequately address the police misconduct. Additionally, the judge did not properly balance the competing interests, including those of the alleged victim and the community, in the prosecution of gun and violence charges. The evidence related to the gun and violence charges was independent of the strip search, and the judge should have limited the stay to the drug charge only (paras 7-48).

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Held:	Appeal allowed, per reasons for judgment of Beaton, J.A.; Farrar and Gogan, JJ.A. concurring
Counsel:	Scott Millar, for the appellant Michael Lacy and Marcela Ahumada, for the respondent

Reasons for judgment:

[1] The appellant Crown seeks to reverse a judge's decision to impose a stay of criminal charges in response to a s. 8 *Charter* violation.

[2] On April 16, 2023, within minutes of a 911 call alleging road rage and the pointing of a handgun, the respondent Mr. Cromwell was arrested, handcuffed and checked for the presence of weapons. A search of his vehicle uncovered a loaded 9 mm handgun. Later that same evening he was subjected to an invasive strip search at police headquarters which revealed a quantity of cocaine.

[3] As a result of the 911 call and the ensuing events at the scene of Mr. Cromwell's arrest, he was charged with a number of serious offences, including using or threatening to use a weapon while assaulting the alleged victim, uttering a threat to cause bodily harm or death to the alleged victim, pointing a firearm at the alleged victim, possessing a handgun while under a prohibition order and possessing a prohibited or restricted handgun with readily accessible ammunition. The evidence seized during the strip search led to Mr. Cromwell later being charged with possession of cocaine for the purpose of trafficking.

[4] Following a blended *voir dire*/trial, Judge Alonzo Wright of the Provincial Court ("the judge") concluded the strip search had violated Mr. Cromwell's s. 8 *Charter* right against unreasonable search and seizure. In response to that breach, the judge deemed it necessary to impose a global stay of all charges Mr. Cromwell then faced (2024 NSPC 53).

[5] The Crown does not contest the judge's conclusion concerning the impropriety of the strip search and the breach of Mr. Cromwell's s. 8 *Charter* right. Rather, it says the judge's sweeping imposition of a stay of all charges was a remedy that went too far. The Crown's position is the judge erred in not limiting the stay to the drug charge alone, so the weapons and violence-related charges could proceed to trial on the merits.

[6] Mr. Cromwell maintains that in light of the judge's conclusion the strip search was unreasonable, no other remedy could appropriately redress the police conduct, given the judge's trenchant factual findings and the circumstances of the case.

[7] For the reasons that follow, I am persuaded the judge erred in law in his analysis, which led to the imposition of a remedy that exceeded a sufficient

response to the s. 8 *Charter* violation of Mr. Cromwell's right against unreasonable search and seizure.

[8] The strip search was prompted by contact between Mr. Cromwell and a police officer who was on scene on April 16. Upon arrest for the violence and weapons related offences Mr. Cromwell was placed in the back seat of a police vehicle. From the front seat of that vehicle the officer made the following observations as outlined in his evidence before the judge:

> … I maintained visible continuity of Mr. Cromwell while he spoke with his mother, and I noted he was positioning [h]is body very close to the window. He, he was making eye contact with me to try and see where my focus was, and I could also hear the rustling of plastic coming from the rear prisoner compartment where Mr. Cromwell was seated. These observations combined made me grow suspicious that Mr. Cromwell may be concealing something on his person. …

[9] The officer testified he had reported his suspicion to the Sergeant leading the investigation, advising that he "believed Mr. Cromwell needed further search, as I believed there was something concealed on his person that he was not willing to pass over to police".

[10] Once at the police station, a thorough pat-down search of Mr. Cromwell was conducted as captured on video. An egregious decision to conduct a strip search followed soon after. It resulted in police locating a number of plastic baggies, containing a total of 25.5 grams of cocaine, concealed on and in Mr. Cromwell's body.

[11] In total, there were four searches of Mr. Cromwell conducted that evening: two "cursory" weapon searches on scene following his arrest, a more thorough pat-down search at the police station, and finally the strip search which revealed the drugs.

[12] A strip search represents the pinnacle of personal physical intrusion by law enforcement, given its invasive nature and the concurrent absence of personal dignity. In *R. v. Golden*, 2001 SCC 83, the Supreme Court of Canada reminded trial judges that because the common law power of search incident to arrest includes the power to strip search, there must be limitations to ensure the appropriate balance between "the competing interests of valid law enforcement goals on the one hand, and individual privacy rights on the other" (para. 26).

[13] The Court recognized the more intrusive the search conducted, with implications for "personal dignity and privacy as well as additional medical concerns", the "higher degree of justification will be required before such a search can be carried out" (para. 87). It set out the benchmarks to justify conducting a strip search:

- it is carried out incident to a lawful arrest (para. 91, 92) and requires a compelling reason related to the circumstances (para. 96);
- the need to preserve evidence and prevent its disposal by the arrestee – the "reasonableness" of the search (para. 93);
- the mere possibility of concealed evidence or weapons does not suffice (para. 94);
- the strip search must be for evidence related to the grounds for the arrest or for weapons (para. 95); and
- reasonable and probable grounds to conclude the necessity of a strip search must be established (para. 98).

[14] In summary, strip searches will only be justified "where they are conducted as an incident to a lawful arrest for the purpose of discovering weapons in the detainee's possession or evidence related to the reason for the arrest" (*Golden* at para. 99).

[15] In Mr. Cromwell's case, the judge determined the strip search had been conducted contrary to the *Golden* principles, without police having had the requisite reasonable and probable grounds. The judge also found the strip search was not conducted in a reasonable manner and included "offensive and degrading conduct by the officers". The appellant's factum summarizes the judge's findings:

> 28. […] [T]he trial judge found that the officers failed to comply with *Golden* in a number of respects. Specifically:
>
> - Although the strip search was conducted as quickly as possible, it was unacceptable that the Respondent was completely naked.
> - The police failed to ensure that the minimum number of officers reasonably required was involved. He found that "four officers [were] present when Mr. Cromwell was stripped naked".

- The search was not carried out in a private area. The door was open and "anyone walking by would be able to see Mr. Cromwell's naked body".

- On the removal of the plastic bags from the Respondent's "butt cheeks," the trial judge found that the officers gave the respondent the option to remove them himself. However, when the Respondent refused, he [the judge] criticized the officers for removing them without the assistance of a trained medical professional.

- The officers did not keep a proper record of the reasons for and manner of the search. The trial judge criticized the state of the officers' notes, pointing out that the absence of notes can affect credibility and the public trust. The notes provided did not contain details "about what or how Mr. Cromwell's clothes were removed, or what ones were removed and in what order". Although there were notes explaining the reasons for the search, one of those notations was materially inaccurate. The trial judge was critical of Sgt. Astephen for having no notes regarding his approval. Documentation, he found, was "woefully lacking".

[16] Section 24(2) of the *Charter* provides for the exclusion of *Charter*-breaching evidence:

> 24. (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

Here, the judge imposed a remedy for the breach of Mr. Cromwell's s. 8 *Charter* right that was not simply the exclusion of evidence, but rather the imposition of a stay of all charges Mr. Cromwell faced.

[17] The imposition of a stay is recognized as an extreme remedy, one reserved for "the clearest of cases": *R. v. Babos*, 2014 SCC 16 at para. 31. *Babos* recognizes the two categories of cases which may attract such a remedy. The first is main category cases, where the truth-seeking function of the trial is frustrated by the breach 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 (para. 30). The second is residual category cases, where a stay of proceedings is

necessary due to the risk of undermining the integrity of the judicial process (para. 31).

[18] Referencing *R. v. Mullings*, 2019 ONSC 2408, the judge adverted to the three-part test in *Babos*. In his view, allowing Mr. Cromwell's case to go forward would mean "the prejudice to the integrity of the justice system will be manifested, perpetuated or aggravated". After noting once again certain aspects of the officers' conduct, the judge then concluded:

> [112] I am aware of the remedy under s.24(2) that is available - that the exclusion of the drugs as a result of the strip search is an option.
>
> [113] However, the offensive and degrading conduct by the officers that lead [sic] Mr. Cromwell here – that he has had to endure - warrants a stay of proceedings. Mr. Cromwell was subject to an unlawful search by four police officers. The search was not related to the reasons for his arrest and the case law dictates a strip search on mere suspicion is simply not sufficient to meet the high threshold that is required for a police officer to undertake such a search.
>
> [114] This behaviour respectfully cannot be condoned by this court. I say again, the law in respect of strip searches is not new or novel: *Golden* was issued in 2001. Our Supreme Court in Nova Scotia has emphasized this in *Cater*. The police should have been properly trained in conducting such a highly intrusive search. <u>The public and Mr. Cromwell are therefore better served by the imposition of a stay of proceedings. The continuation of this type of unlawful conduct by the police must be prevented.</u>
>
> [115] <u>There is no remedy, aside from a stay of the proceedings on all matters, that would be capable of adequately addressing the harm done to the justice system.</u>
>
> (Emphasis added)

[19] The judge did not specifically identify Mr. Cromwell's case as being in either the main or residual *Babos* categories, although it is clear the residual category was engaged. The judge's conclusions about the intolerable nature of the police conduct go to the state's conduct having undermined the integrity of the judicial process.

[20] In *R. v. Mitchell*, 2022 NSCA 77, this Court considered the *Babos* analytical framework, including the analysis called for in residual category cases:

[38] *Babos* provided, and the parties agree the judge utilized, the test to be applied to assess whether a stay is warranted:

> [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).

[39] That test is modified where, as here, the residual category is in play. *Babos* continues:

> [35] By contrast, when the residual category is invoked, the question is whether the state has engaged in conduct that is offensive to societal notions of fair play and decency and whether proceeding with a trial in the face of that conduct would be harmful to the integrity of the justice system. To put it in simpler terms, there are limits on the type of conduct society will tolerate in the prosecution of offences. At times, state conduct will be so troublesome that having a trial — even a fair one — will leave the impression that the justice system condones conduct that offends society's sense of fair play and decency. This harms the integrity of the justice system. In these kinds of cases, the first stage of the test is met.

[21] As was the issue in *Mitchell*, here the Crown objects to the judge's treatment of the third prong of the test, the balancing of interests. *Babos* explains the significance of the balancing exercise in residual category cases:

> [41] However, when the residual category is invoked, the balancing stage takes on added importance. Where prejudice to the integrity of the justice system is alleged, the court is asked to decide which of two options better protects the

> integrity of the system: staying the proceedings, or having a trial despite the impugned conduct. This inquiry necessarily demands balancing. The court must consider such things as the nature and seriousness of the impugned conduct, whether the conduct is isolated or reflects a systemic and ongoing problem, the circumstances of the accused, the charges he or she faces, and the interests of society in having the charges disposed of on the merits. Clearly, the more egregious the state conduct, the greater the need for the court to dissociate itself from it. When the conduct in question shocks the community's conscience and/or offends its sense of fair play and decency, it becomes less likely that society's interest in a full trial on the merits will prevail in the balancing process. But in residual category cases, balance must always be considered.
>
> (Emphasis added)

[22] With the background set out and these principles considered, I turn to the applicable standard of review. The Crown appeals pursuant to s. 676(1)(c) of the *Criminal Code*, which provides:

> **676 (1)** The Attorney General or counsel instructed by him for the purpose may appeal to the court of appeal
>
> . . .
>
> **(c)** against an order of a trial court that stays proceedings on an indictment or quashes an indictment …

[23] Deference is owed to the judge unless this Court is persuaded he misdirected himself in law, committed a reviewable error of fact or rendered a decision that is " 'so clearly wrong as to amount to an injustice' " (*R. v. Brunelle*, 2024 SCC 3 at para. 79 quoting *Babos* at para. 48). The task on appellate review does not permit a substitution of our discretion for that of the judge simply because we would have imposed a greater or lesser remedy (*R. v. Bellusci*, 2012 SCC 44 at para. 30).

[24] In its Notice of Appeal, the Crown asserts the judge committed errors of law and fact. In written argument, it expands on these two grounds, asserting the judge committed:

1. an error of law in misapprehending the evidence surrounding the valid safety purpose for the search;
2. an error of law in improperly applying the test for a stay of proceedings by failing to consider alternative remedies;
3. an error of law in not conducting a proper balancing of interests;
4. palpable and overriding errors of fact affecting the result; and

5. an error in rendering a decision that was clearly wrong and amounts to an injustice.

[25] For efficiency, I would re-frame the issues as:

1. did the judge commit any errors of law?

2. did the judge err in his fact finding?

3. did the judge render a clearly wrong decision?

[26] As noted earlier, a stay is the paramount remedy, one to be rarely imposed. *Babos* is clear: a stay is reserved for cases where "the affront to fair play and decency is disproportionate to the societal interest in the effective prosecution of criminal cases" (para. 44). More recently, in *Brunelle* the Supreme Court of Canada emphasised the significant implications of a stay remedy necessitate that three pre-conditions be met:

> [113] For these reasons, and as I noted above, this drastic remedy will be granted only where the situation meets the high threshold of being one of the "clearest of cases" (*O'Connor*, at para. 69). This requires the following three conditions to be met:
>
> (1) 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" (*Regan*, at para. 54; *Babos*, at para. 32);
>
> (2) there must be no alternative remedy capable of redressing the prejudice (*Regan*, at para. 54; *Babos*, at para. 32);
>
> (3) where there is still uncertainty over whether a stay of proceedings 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" (*Regan*, at para. 57; *Babos*, at para. 32).
>
> [114] These conditions are cumulative, and none of them is optional. […]
>
> (Emphasis added)

[27] In written argument, the Crown contends in this case the strip search was justified on the basis of public safety. Once Mr. Cromwell was at the police station it was clear he would be held in custody overnight and thus it was necessary to search him, to ensure the safety of those with whom he would come in contact. It is not difficult to dispense with this assertion. Because the Crown does not dispute the judge's conclusion the strip search violated Mr. Cromwell's s. 8 rights, whether there could be said to have existed any appropriate police motivation for having conducted the strip search is irrelevant.

[28] The Crown's chief quarrel rests with the judge's decision to stay all Mr. Cromwell's charges. It argues the gun and violence related evidence arose from events prior to the strip search, and were therefore separated "temporally and contextually" from the drug evidence.

[29] Mr. Cromwell maintains the connection between his arrest and the strip search is made out, as those events share a "temporal and contextual reality". He speculates that even if it could be said the judge erred in his analysis of the *Babos* factors, upon completion of a s. 24 analysis the judge would have been "driven" to the conclusion that all of the evidence, including the gun seized at arrest, would need to be excluded. He emphasizes the highly problematic circumstances under which the strip search was conducted, to underscore his argument the judge was justified in staying all charges to denounce it and to disassociate the court from what occurred.

[30] On the facts of this case, it is plain there were two discrete events that unfolded on April 16. The first, which led to the group of charges pertaining to violence and firearms, was the circumstances leading to the arrest of Mr. Cromwell. Events in that timeframe generated real evidence: the statement of the alleged victim and the seizure of a firearm and ammunition from Mr. Cromwell's vehicle. The Crown maintains none of that evidence was connected to or "tainted" by the later strip search. I agree, and the record supports that position. The judge noted "the police had a clear and strong case" at the point of Mr. Cromwell's arrest. Furthermore, as quoted earlier herein at para. 18, the judge included in his comments the observation the strip search "was not related to the reasons for his arrest".

[31] Mr. Cromwell urges the Court to demonstrate the deference that must be afforded to the judge's clear message that the actions of the police during the strip search ran contrary to the *Golden* principles. However, it is important to remember there is no dispute between the parties that the judge was justified in imposing a

stay of the drug charge to disassociate the court from the state's conduct of the strip search. It was the ultimate remedy, given the unjustified strip search in the context of the jeopardy Mr. Cromwell faced in relation to the drug charge.

[32] The circumstances that led to the gun and violence charges were separate and distinct from, and occurred prior to and regardless of the *Charter*-breaching conduct. *R. v. L.L.S.*, 2009 ABCA 172 provides a good illustration of this point. In that case, a young person was convicted of mischief, but the trial judge stayed a charge of assault of a peace officer that stemmed from the young person having been strip searched shortly after the damage was perpetrated. On appeal the Court upheld the trial judge's decision, noting "while the police should be held accountable for their conduct, it does not follow that the appellant should be unaccountable for hers" (para. 16).

[33] None of the evidence put before the judge in this case underpinned any temporal connection between the events leading to the discovery of the real evidence (a gun and ammunition), and the strip search which was executed approximately an hour later on the basis of a hunch or suspicion. On the facts as the judge found them, had the strip search never been conducted, all the evidence arising from the investigation of the original 911 complaint would have existed. The evidence leading to the guns and violence charges was independent of the later s. 8 breach. In my view, distinguishing between events prior to Mr. Cromwell's detention in the police car and what came after does not represent a "silo-ing" of the drug charges as Mr. Cromwell suggests. Instead, it reflects a proper orientation of the context in which events unfolded on the evening in question, which required restraint by the judge in imposing a remedy.

[34] The Crown also argues the judge erred in not considering whether any alternative remedy could have adequately addressed the prejudice suffered by Mr. Cromwell, before imposing the most extreme remedy of a stay of all charges. The Crown suggests there were lesser remedies available to adequately disassociate the court from the police conduct.

[35] The Crown aptly observes the judge ignored the opportunity to employ "a scalpel instead of an axe" (*R. v. O'Connor*, [1995] 4 S.C.R. 411 at para. 69) in staying all the charges Mr. Cromwell faced. The judge had a range of remedies open to him to denounce the police conduct, without sacrificing competing interests. I am not persuaded the solution the judge crafted properly took into account "the sometimes complementary and sometimes opposing concerns of

fairness to the individual, societal interests, and the integrity of the judicial system" (*O'Connor* at para. 69).

[36] Mr. Cromwell characterizes the judge's emphatic censure of the police action as a recognition of the need to disassociate the court from the troublesome police tactics. Certainly, the judge's strong language employed in his findings conveys a robust condemnation of the police action and the resultant affront to Mr. Cromwell. Respectfully, his tone does not ameliorate the absence of an analytical step in his reasons.

[37] The judge acknowledged that exclusion of the drug evidence pursuant to s. 24(1) of the *Charter* was "a remedy" available. He found the public and Mr. Cromwell were better served by the imposition of a stay, to prevent continuation of the police conduct, and concluded there was no other appropriate remedy. However, we do not know, and the judge's analysis does not speak to, whether he first considered or assessed, in the context of the case before him, the possibility of any lesser remedy, or a less drastic one, to address the harm done.

[38] Had the judge limited imposition of the stay to the drug charge only, he could still have crafted a solution that sufficiently balanced the disassociation of the court from the improper search, with the public and the alleged victim's congruent interests in addressing issues of gun violence. The judge himself alluded to the prevalence of gun violence in the community. Staying only the drug charges would have "fully address[ed] any prejudice occasioned to the justice system by the impugned conduct" (*Babos* at para. 57).

[39] In written argument, the Crown relies on *Brunelle* in asserting the judge exceeded the appropriate response:

> […] the trial judge failed to assess the significance of exclusion as a means of distancing the Court from the impugned conduct. In residual cases, the remedy should be directed towards the harm. Exclusion of the cocaine focusses the remedy on the harm that led to its discovery: the strip search. The global stay issued by the trial judge went beyond the harm and swept up lawful charges founded on evidence and conduct untainted by the search. Neither the public nor the victim were provided any explanation as to why the exclusion remedy "could not redress the prejudice to the integrity of the justice system". […]

[40] The *Brunelle* decision is on point with this case. There, the Court was satisfied the second pre-condition – "no alternative remedy capable of redressing the prejudice" – was not met:

> [116] Yet the Superior Court judge never mentioned this alternative to a stay of proceedings in his analysis at the stage of determining the appropriate remedy (Sup. Ct. reasons (2018), at paras. 178-222). He simply stated that [translation] "a stay of proceedings is the appropriate remedy in this case" (para. 217).
>
> [117] This may have been so, but it still had to be explained why a remedy short of a stay of proceedings could not redress the prejudice to the integrity of the justice system that the judge thought he had identified (see, e.g., *Brind'Amour*, at paras. 102-3).

[41] As in *Brunelle*, here the judge did not furnish any indication he had considered but rejected any other remedy, other than that he was "aware" of the evidence exclusion remedy pursuant to s. 24(2) of the *Charter*.

[42] The judge does not appear to have turned his mind to the range of possible responses available to denounce the police conduct, and whether any other remedy could suffice, or if not, why not. It is not possible to conclude from the judge's reasons that he considered but rejected any potential lesser remedy such as, for example, the exclusion of evidence or a reduction to any sentence. Whether any such remedy could have been appropriate is unknown as the judge did not engage the question.

[43] The judge was also required to weigh all the societal factors, as discussed in *R. v. Regan*, 2002 SCC 12:

> 123 […] the benefits of a stay must be considered in relation to the benefits of continuing the process. An egregious act of misconduct can overtake some passing public concern, but, in other circumstances, a compelling societal interest in proceeding can tip the scales against granting a stay. […]

[44] The judge's reasons demonstrate a focus on Mr. Cromwell to the exclusion of a rounded examination of all the factors in play, including society's interest in the prosecution of drug offences. The judge did not properly weigh the societal factors, nor meaningfully consider society's interest in the prosecution of offences of violence, particularly those involving allegations of gun violence. Rather, he over-emphasized the injury to Mr. Cromwell, although these reasons should not be read as minimizing either the ill-advised police decision to conduct the inappropriate search or the resultant affront to Mr. Cromwell. *Babos* cautions against a stay to provide "redress to an accused for a wrong that has been done to him" as the proper focus belongs on the need to "dissociate the justice system from the impugned state conduct going forward" (para. 39).

[45] The Crown also objects to the judge not having given any weight to the alleged victim's interests. It says that as a result, the proper functioning of the justice system is weakened. The judge does not appear to have turned his mind to the interests of the alleged victim in having the violence and weapons charges tried when he decided to also stay those charges. The Crown maintains this represents the absence of the critical balancing component of the *Babos* analytical framework. In the context that the interests of the alleged victim may be aligned with and a subset of societal interests, I agree with the Crown's assertion that not addressing whether the need for the stay outweighed all of the other interests in play meant the judge "removed a critical weight from the balance".

[46] The judge offered that he was "well aware of the prevalence of guns, and in particular, handguns, in our community, and the potential danger and harm resulting from their possession by unauthorized individuals", but seems to have ignored society's concurrent interest in having a complainant come forward in pursuit of the prosecution of the gun and violence charges. In concluding he was satisfied "the public and Mr. Cromwell are therefore better served by the imposition of a stay of proceedings", we do not know how the judge considered the interests of society and those of the alleged victim in having his complaint brought to trial.

[47] Given my determination regarding these errors by the judge, it is not necessary to address the Crown's second and third grounds (reviewable errors of fact or a clearly wrong decision).

[48] In conclusion, the judge erred in law in not drawing a temporal and contextual distinction between the charges related to the gun and violence offences and the drug charge when assessing the appropriate remedy for the s. 8 breach. He further erred in not considering whether there were other alternatives, short of a stay, that could properly denounce the state misconduct. Finally, the judge erred in not taking into consideration or conducting a proper balancing of the competing interests to be impacted by the imposition of a stay, in particular those of the alleged victim and the community that have an interest in the prosecution of gun and violence charges.

[49] I would allow the appeal, vacate the stay in relation to the gun and violence charges (19 counts) pertaining only to Mr. Cromwell as found in Information No. 852882 and remit the matter to the Provincial Court, for a new trial before a different judge.

Beaton, J.A.

Concurred in:

Farrar, J.A.

Gogan, J.A.