SUPREME COURT OF NOVA SCOTIA

Citation: *R v. Doncaster*, 2014 NSSC 130

Date: 20140402
Docket: CR No. 422123
Registry: Truro

Between:

Her Majesty the Queen

v.

Ralph Ivan Doncaster

Judge:	The Honourable Justice Patrick J. Murray
Heard:	February 27, 2014, in Truro, Nova Scotia
Counsel:	Richard Deveau for the Crown Ralph Ivan Doncaster, self-represented

By the Court:

[1] Mr. Ralph Doncaster, the Applicant, has applied for a review of four (4) Provincial Court Orders, pursuant to section 520 of the *Criminal Code of Canada*. The Orders consist of three (3) Recognizances and one (1) Undertaking given to the Provincial Court for his release at various times in 2012, containing conditions for his release, pending trial on the matters in each of those orders.

[2] Mr. Doncaster claims the conditions imposed as part of his release by the various Honourable Provincial Court Judges, Judge T. Gabriel, Judge G. Lenehan and Judge R. MacKinnon, should be declared *void ab initio*, because the Court exceeded its jurisdiction and powers, by imposing conditions that were 1) overly broad, or "overbreath"; 2) irrelevant and had no relation or nexus to the offence; 3) unnecessary; and 4) otherwise unlawful.

[3] Mr. Doncaster filed an extensive brief, containing considerable caselaw. He cites leading cases in the area of bail such as **R v. Pearson,** [1992] 3 SCR 665, and **R v. Morales**, 1992 CanLII 53 (SCC). Mr. Doncaster argues that at the heart of bail, now called judicial interim release, is the presumption of innocence. He is correct to say that at the pre-trial stage of a proceeding this principle has obvious

application. He points out for example that the condition "to keep the peace and be of good behaviour", is not a condition which should be automatic or mandatory. It is within the discretion of the judge on the judicial interim release hearing, and as pointed out in **R v. K(S)**, 1998 CanLII 13344 (SK PC) it is a "discretionary condition" which the Crown must show cause for as a reasonable condition of bail. (Paragraph 27 of **K(S)**)

[4] Mr. Doncaster relies heavily on the case of **Keenan v. the Queen**, [1981] 57 CCC (2d) 267, a decision of the Quebec Court of Appeal by Mr. Justice Lamer, as he then was. I shall discuss **Keenan** throughout my decision.

[5] In **K(S)** the Court stated the exercise of arguing for conditions of release should be neither random nor routine. In K**(S),** the Court referred to **Keenan** and Justice Lamer's description of the role of the judge as one where the Court should differentiate between reasonable and unreasonable conditions. Further he stated it is a very different exercise than for example, deciding on release conditions as part of a probation order.

[6] In short, judicial interim release is quite different, given the presumption of innocence, than imposing conditions at the end of a proceeding or trial.

[7] The test is the relevance of a condition to the alleged circumstances of the offence. The test does not consider what might be helpful to the Defendant, but not clearly related to the offences charged.

[8] Mr. Doncaster in his brief submits numerous examples of conditions imposed upon him that are not related to the offence or are unreasonable or invalid for other reasons. One example cited by him was the restriction on using his computer and not able to communicate electronically to anyone within Nova Scotia. Mr. Doncaster submits conditions (c) and (e) of order 1413109 issued on March 1, 2012 by Judge Gabriel are outside of the scope authorized by section 515(4). As authority, he cites the case of **R v. Heywood**, [1994] 3 SCR 761 which discusses the effect of "overbreath", and whether the means are necessary "to achieve the stated objective".

[9] Another example cited is the condition on Mr. Doncaster not to come within 100 metres of Enfield School. Mr. Doncaster cites interference with his rights as a parent and inability to associate with his friends; conditions (c) and (e) of the Order # 1413109.

[10] Among others, Mr. Doncaster argues that Judge MacKinnon imposed the restrictive condition of a curfew, and that it has no relation to the charge as alleged, but is simply part of a pattern.

[11] In his brief, Mr. Doncaster submitted that *prima facie*, an accused should be released on bail, without conditions, citing once again Chief Justice Lamer in **R v. Pearson.**

[12] Without detailing all of the conditions objected to, the forgoing are examples of the conditions in the four (4) orders which Mr. Doncaster asked be reviewed by this Court under section 520.

[13] Mr. Doncaster in his submission summarized the orders to which this application applies. They are orders 1413109, 1427135, 1430915, and 1434874. Further, as stated in his brief as fact #9, undertaking #1413109 (and another undertaking 1410673) and the three recognizances 1427135, 1430915, and 1434874 were on July 9, 2012 vacated and Mr. Doncaster entered into an amalgamated recognizance with "reduced conditions", under a new order bearing number #1452083.

[14] It should be noted that Mr. Doncaster is not seeking a review of the latter Order (# 1452083) and the conditions therein. At the application hearing, I was

advised that all of the charges relating to the four orders which Mr. Doncaster seeks to review have been dealt with except one. That one was part of the previous order 1413109 and the trial had been concluded. Mr. Doncaster was due to be sentenced on the same day as the Review Application, immediately following the application at 1:30 p.m. on February 27, 2014.

[15] It is for this reason, the Crown argues that there are at present no orders in existence to review. The Crown submits that Mr. Doncaster's application is therefore moot. I shall deal with the mootness argument later in my decision.

[16] This, however, raises the question of whether this Court has jurisdiction to review the orders. The Applicant maintains I do have jurisdiction, but in the event I decide I do not, then he submits the remedy of *certiorari* is available to quash the conditions in these orders, as *void ab initio.*

[17] I turn now to deal with these 2 issues: (1) whether I have jurisdiction under section 520; and (2) whether certiorari lies to quash the orders.

Issue # 1 - Section 520 – Review of the Order (see appendix "A")

[18] This section of the *Criminal Code of Canada* allows an accused to apply for a review of an order made under sections 515(2), (5), (6), (7), (8) or (12) or an

order made or vacated under section 523(2)(b). The accused "may" make this application, at his option. It is not mandatory. The section does require however, that it be made "at any time before the trial of the charge".

[19] This is a key point, if not the key point on the question of jurisdiction. In his well-known text, **The Law of Bail in Canada**, Gary T. Trotter (as he then was), had this to say about the timing and commencement of the Review Hearing under sections 520 and 521 of the *Criminal Code*:

> Sections 520(1) and 521(1) of the *Criminal Code* may be invoked at any time before the trial of the charge…; and further he states, "once the trial has begun s. 523(2)(a) is the only means by which the bail issue can be revisited".

[20] In the present case, there are no trials yet to be commenced on the charges, which had been in the Orders for which Mr. Doncaster now seeks review. On its face then, the application is moot as the orders have now been vacated.

[21] There is the technicality that Mr. Doncaster, on one of the charges in the previous Undertaking (# 1413109) has not been sentenced. Setting aside that the Undertaking itself no longer exists, the trial itself had not only started, but was completed. This means that Mr. Doncaster's section 520 review application still does not meet the timing and commencement requirements of section 520. In

other words, just because Mr. Doncaster had not yet been sentenced does not mean the Court has jurisdiction under section 520.

[22] Mr. Doncaster has put forth a number of additional arguments to demonstrate why this Court does have jurisdiction and why it should assume jurisdiction, with respect to his section 520 Application.

[23] One of these he submits, stems from a decision of the Nova Scotia Court of Appeal in **R v. Doncaster**, 2013 NSCA 46, which involved the Applicant himself.

[24] The issue on that appeal was whether a section 520 review could commence within 30 days of a previous review. Section 520 (8) places a limit on further applications and require that they not be made, except with leave of a judge, prior to 30 days from the date of the decision of the judge who heard the previous application. The Court stated as follows at paragraphs 5 and 6 of the decision:

> 5. This Court's inability to entertain Mr. Doncaster's appeal as cast does not foreclose his rights. Section 520 of the Code permits a further review after the expiry of 30 days from the previous application:
>
> > 520(1) If a justice, or a judge of the Nunavut Court of Justice, makes an order under subsection 515(2), (5), (6), (7), (8), or (12) or makes or vacates any order under paragraph 523(2)(b), the accused may, at any time before the trial of the charge, apply to a judge for review of the order.
> >
> > (8) Where an application under this section or section 521 has been heard, a further or other application under this section or section

> 521 shall not be made with respect to that same accused, except with leave of a judge, prior to the expiration of thirty days from the date of the decision of the judge who heard the previous application.
>
> 6. Accordingly unless he applies for leave under s. 520(8), an applicant cannot file and a Prothonotary should not accept any document initiating an application for review until 30 days has expired from the time of the previous application. Mr. Doncaster did not wait 30 days in this case.

[25] Mr. Doncaster argues before me that although they dismissed his appeal, the Court still found he had a remedy. Therefore, he argues that section 520 should not be interpreted strictly, because if it is, the Court of Appeal would be wrong to say, there is always the additional remedy of another bail review.

[26] With due respect to Mr. Doncaster, I do not agree with his interpretation of the Court of Appeal decision. It said, in effect, he would have to wait the 30 days between review applications, except with leave of the Court. The reason the Court of Appeal said this was because of the wording in section 520(8). The wording of section 520(1), requires the Review Application to be made at any time prior to trial of the charge or charges.

[27] Under section 523(2)(a), the Court, Judge or Justice before whom the accused is tried, at any time may, on cause being shown, vacate any order previously made for the interim release or detention of the accused and make any other order for the detention or release of the accused until his trial is completed.

[28] Mr. Doncaster referred me to the decision in **R v. Mukpo**, 2012 NSSC 107, which is very much on point in terms of jurisdiction under section 520, but also section 523(2)(a). The issue before Justice P. Rozinski, was whether the Supreme Court had jurisdiction under section 520 or whether the application to vary should properly be heard in Provincial Court. Prior to filing the section 520 Review Application, Mr. Mukpo appeared in Provincial Court seeking to change the conditions of his recognizance.

[29] As noted in paragraph 2 of that decision, the Crown did not consent to the changes, and consequently the Provincial Court considered itself without jurisdiction, pursuant to section 523(2)(a) of the *Criminal Code*.

[30] In **Mukpo**, Justice Rozinski assumed jurisdiction under section 520, essentially because he concluded after reviewing the jurisprudence, that the Provincial Court did not. Justice Rozinski referred to the decision in **R v. Hill,** 2005 NSPC 50, and specifically to Judge Peter Ross's conclusion at paragraph 48.

[31] In that conclusion, the Honourable Judge Ross set out the instances where the Provincial Court does not require Crown consent before proceeding to hear an accused's application to change release conditions, previously imposed under section 515.

[32] Justice Rozinski analyzed the scope of the review available to an accused under section 520, describing it as broader and more exhaustive than that available under section 523 (see paragraphs of 29-36 of **Mukpo**).

[33] In terms of the relevance of the **Mukpo** decision to the Application for Review before me, like **Mukpo**, I heard Mr. Doncaster's evidence and arguments on the merits of the Application reserving my decision on jurisdiction, *certiorari*, and if applicable, the merits of his Review Application. Unlike here, the Crown in **Mukpo** was prepared to consent to the variation request as Mr. Mukpo was charged with assault, had no other outstanding matters, and no record. Mr. Mukpo was seeking to change his curfew condition for employment reasons. Justice Rozinski granted the variation.

[34] In terms of jurisdiction however, both the charge and the conditions were still outstanding and, in effect, when the variation request was made. In Mr. Doncaster's case, all trials had been concluded and the orders sought to be reviewed were vacated. I have concluded therefore that the decision in **Mukpo** is not helpful to Mr. Doncaster.

[35] Another decision which Mr. Doncaster relies upon is **Keenan v. The Queen**, to which I alluded earlier. Mr. Doncaster referred to **Keenan** in his brief,

and also in his oral submission (as **Keenan v. Stalker)**. As requested, I have reviewed carefully and considered this decision of the Quebec Court of Appeal, delivered by Mr. Justice Lamer.

[36] In **Keenan**, the issue was whether the Judge exceeded his jurisdiction, by ordering (as a condition of his release) that the accused undergo any appropriate medical treatment which a doctor might suggest. The Quebec Court of Appeal held that the condition was beyond the jurisdiction of the judge, since it constituted an unlawful delegation of judicial discretion to the physician. As noted in The Law of Bail in Canada (2nd Ed.), at page 273, the condition gave the physician the power to create offences by compelling the accused to submit to requirements, under threat of loss of liberty.

[37] The submissions put forth by the Applicant are intricate. **Keenan** was decided in 1979 when the applicable criminal codes provisions were different. For example, the review provisions then were sections 457.5 and 457.6. The Court's interpretation, but for general principles, was limited to the relief being sought.

[38] In **Keenan**, the Appellant signed an undertaking but attacked it a few days later, applying to the Superior Court for the issue of a writ of *certiorari*.

[39] The Court in **Keenan** specifically stated at page 275:

> It is not necessary to deal with the question whether the Judge "considered appropriate" the condition which he imposed since he did impose it. Also, since this is an application for *certiorari* and we are not exercising the review power provided in s. 457.5 or s. 457.6 of the *Criminal Code*, it is not fair for us to decide the question whether, having regard to the circumstances, the condition is reasonable in order, then should such be the case to make the order which we would consider justified in accordance with s. 457.5(7)(e). The only question on this aspect of the appeal with which we are seized is that of determining whether Parliament gave the Justice of the Peace, acting under s. 457 of the *Criminal Code*, the *power* to impose the condition even though the condition might be most reasonable.

[40] In my view, **Keenan** is more relevant to the second issue of whether *certiorari* should lie, before me. That said, the Court of Appeal in **Keenan** referred throughout to the review policies under the then section 457.5. The Court found that the review power before them was only relevant in terms of whether that section was an appeal in the sense which an appeal is used in the *Criminal Code* provision related to *certiorari*, then section 710, and now section 776.

[41] I referred the Applicant (and the Crown) to section 776 of the *Code*, during the review hearing.

[42] For the purposes of this review application, the condition in **Keenan** for which *certiorari* was sought was still in effect at the time the Appellant sought to have it quashed. The issue was whether the Court had jurisdiction to grant the condition, and whether section 710 applied so as to prevent the Court of Appeal from having jurisdiction to issue *certiorari.* The Court of Appeal concluded that

section 710 did not apply as a review (which could have been sought under section 457.5) is not an appeal. The Court of Appeal held that only in the clearest of terms could *certiorari*, the oldest remedy in the British legal system, be excluded. They found that wasn't the case on the facts before them. Similarly, they found that section 710(b) (now section 776(b)) easily applied to a trial but not necessarily to "an application for and a decision on bail", as the rules of interpretation do not allow an extension of that kind.

[43] Ultimately, the Court of Appeal in **Keenan** allowed the appeal, and proceeded to determine judgment on the merits by declaring null and void the condition in the undertaking. This was the approach the Superior Court appealed from should have followed. The Court of Appeal relied on the decision of the Supreme Court of Canada in **Saunders v. the Queen**, [1970] 2 CCC 57.

[44] The difference between the facts in **Keenan** and the case before me, is that, in **Keenan**, the condition challenged was still in effect at the time of the application. It was still available to be declared null and void. The words *"ab initio"* (from the start) were not used by the Appeal Court in **Keenan**.

[45] For these reasons, I have concluded that **Keenan** is not helpful to the Applicant's position, with respect to the exercise of the Court's jurisdiction under

section 520. I will return to **Keenan** under the second issue of whether *certiorari* lies.

[46] Before concluding on the first issue of jurisdiction, I must refer to several further arguments advanced by the Applicant.

[47] One rather ingenious argument is, that Mr. Doncaster could still be charged with breaching those conditions, even if the orders have been vacated. In his submissions, he referred to Constable Ponee's evidence during the hearing before Judge MacKinnon on May 16, 2012, that there were further charges pending at one point, which would still be laid. As there is the option to proceed indictably, he argues, there is no limitation period on these charges.

[48] Another argument made is that if an application for review was made, but not dealt with before the trial proceeded, an Applicant would be stuck in "no man's land". Mr. Doncaster submitted there would be this "weird situation", where it would be wrong to say the accused always had the remedy of a further bail review.

[49] There must be a remedy the Applicant argues. Otherwise, if an accused did not have time or was unable to make a new application he/she could be "stuck with" or even found guilty of breaching invalid or overly broad conditions.

[50] I have considered these arguments, but with respect, I have not been persuaded by them. Whether there is an available remedy will depend on whether the accused choses to avail him or herself of it. Timing can and is important, if relief under section 520 review is sought. Mr. Doncaster acknowledged in his submission that relief should be sought early and not at the last minute. He further acknowledged that the possibility of further charges stemming from Orders which have expired or been vacated is remote. To his credit, he acknowledged that the reality of his position is questionable.

[51] In my respectful view, even if new charges were brought forward based on conditions in the previous orders (a remote possibility); then new release conditions (or detention) would have to be imposed as part of the judicial interim release process. Mr. Doncaster could then make the submissions as to their reasonableness, connection to the offence, relevance, and/or scope or breadth. In short, he could then bring forth some or all of the same arguments, as applicable, he has now advanced with respect to these dated orders. Further, he would also have the section 520 review available to him prior to the trial on the charge or charges then proceeding. The charge (or charges) referred to in a section 520 would be fresh charges. The point being, he would have a remedy.

[52] For all of the above reasons, I would dismiss the application of Mr. Doncaster for a review under section 520. This Court does not have jurisdiction to revoke orders which are or have already been concluded. In addition, I would add the following as further reasons for my decision.

[53] Even if this Court did have, or could assume jurisdiction under section 520, the Court's powers to provide a remedy under that section (and in particular sections 520(7)(d) and (e) are limited to two (2) things: The *Criminal Code* says the Court shall either (1) dismiss the application under subsection (d); or (2) if the accused shows cause, allow the application, vacate the order previously made, and make any other order provided in section 515 which this Court considers as warranted under subsection (e).

[54] These powers pre-suppose or presume there is an order in existence to be vacated. On the facts before me, none of these orders or undertakings applied to be reviewed are in existence. For this reason, the Crown submits the section 520 application is moot. I concur.

[55] I will now turn to deal with the second issue, and Mr. Doncaster's second argument that *certiorari* is available to the Court, on this application and that being

the case, the Court should also grant *certiorari* to quash the 2012 orders, issued by the Provincial Courts on those four (4) occasions.

Issue #2 – Whether *certiorari* is available to provide a remedy to the Applicant?

[56] Section 776 states resort to *certiorari* is barred where (a) an appeal was taken or (b) where the defendant appeared and pleaded and the merits were tried, and an appeal might have been taken, but the Defendant did not appeal.

[57] In **Keenan**, the Court ruled that paragraph (a) obviously does not apply where the accused did not appeal in the sense of applying for a review and with respect to paragraph (b) it is clearly concerned with trial proceedings and it would not be proper to extend it to a bail decision hearing.

[58] Applying section 776(a) to the present case, Mr. Doncaster advised there was a previous review application before Justice Kevin Coady which resulted in the previous orders being consolidated into order # 1452083. Those previous orders with stricter conditions, (according to Mr. Doncaster) were eliminated and replaced with a new order, the conditions for which review is not sought.

[59] Arguably then, that review was an appeal for the purposes of section 776(a) as suggested in **Keenan**. However, even if it was not an appeal for section 776(a) purposes, the trials in all of those charges have taken place and therefore, it can be said the Defendant, Mr. Doncaster appeared, pleaded, the merits were heard (or otherwise dealt with) in accordance with section 776(b), and an appeal was not taken.

[60] It is unknown whether an appeal to the last trial referred to being the one for which the accused was to be sentenced on February 27, 2014, might be taken. However, even if it still could be appealed, the Applicant has not sought a review of that order, it being # 1452083.

[61] In addition, at a basic level, the remedy of *certiorari* would not lie, as there is nothing (no orders) remaining to be quashed.

[62] Finally, in **Keenan** the Court referred extensively to the 1970 Supreme Court of Canada decision in **Saunders v. The Queen** and in particular, remarks set forth in paragraphs 82-83 and 86 of the *Criminal Code of Canada*, where the Court recognized that in "exceptional cases", *certiorari* has been granted, in spite of the clear terms of section 682, which was the *Criminal Code* section applicable in that

case. The exceptional cases included those where there was: 1) an absence of jurisdiction, or 2) a denial of natural justice.

[63] No argument has been presented regarding a denial of natural justice except that the underlying condition in Order # 1452083 was included in one of the previous orders (# 1413109).

[64] In terms of jurisdiction the argument is that the lower Courts exceeded their jurisdiction, by imposing the conditions objected to; not that they did not have jurisdiction to impose conditions of release.

[65] Mr. Doncaster, a self-represented litigant has presented an able argument for *certiorari*. Having considered his submissions and evidence, the Court is constrained and has great difficulty accepting that the remedy sought by Mr. Doncaster is appropriate. In short, the remedy he seeks comes far too late in the process. All of those orders were dated in the months of March – May of 2012. He is currently not bound by these orders, nor are they, or their conditions currently in effect.

[66] The orders have been given "entry of formal judgment" which at that point, generally means that they are "final" and that a reviewing Court would cease to have power to reconsider them.

[67] While I do not make a formal finding (of *functis officio*), this Court is restrained or severely limited in its discretion, in these circumstances. I have decided and so order that it would not be a proper exercise of discretion to now overturn these orders. Much of what has been argued has been overtaken by events, and can be said to have been rendered "moot". From a practical point of view, these conditions no longer need to be considered by the Court.

[68] In relation to my finding of mootness, I would refer to the following statement from the Supreme Court of Canada in **Doucet-Boudreau** v. **Nova Scotia (Minister of Education)**, 2003 SCC 62 as authority (in paragraph 17):

> The doctrine of mootness reflects the principle that courts will only hear cases that will have the effect of resolving a live controversy which will or may actually affect the rights of the parties to the litigation except when the courts decide, in the exercise of their discretion, that it is nevertheless in the interest of justice that the appeal be heard (see **Borowski** v. **Canada (Attorney General)**, [1989] 1 S.C.R. 342, at p. 353.

[69] As earlier expressed, I am of the view that exercising my discretion to hear the review would not have the effect of resolving a live issue.

[70] The Court in **Doucet-Boudreau** referred to three (3) factors (in **Borowski**) which can lead a Court to nonetheless hear a case that is moot. These are: (1) the presence of adversarial context; (2) the concern for judicial economy; and (3) the

need for the Court to be sensitive as the adjudicative branch in the legislative or executive sphere (paragraphs 18 and 22).

[71] I have considered these factors as they may apply to the present case. The adversarial context is present, certainly from the Applicant's perspective; less so from the Crown's. With regard to the judicial economy the Applicant advanced this argument as a reason for the Court to hear the review at "one time", rather than on a "piecemeal" basis. I do not think it does anything for judicial economy to be hearing such matters, after the fact. I want to be clear, I am not minimizing or diminishing the importance of the liberty which Mr. Doncaster says was lost, as such rights are contained in our *Charter*.

[72] There is however, a proper time to adjudicate. I don't consider this application raises a unique question as to the jurisdiction of superior courts, if a timely application for review is made. The Applicant did take earlier steps to resolve some of the restrictive conditions with which he had difficulty. The same review was available under section 520 at other times prior to the trial in each of the charges in the four (4) orders.

[73] That said, I respect the arguments made by the Applicant and thank him for his thorough briefing to the Court.

[74] I am therefore dismissing the Application for review for two reasons: 1) this Court lacks jurisdiction under section 520 for the reasons given; and 2) the granting of *certiorari* in the present case would not be a proper exercise of the Court's discretion, failing which the remedy sought by the Applicant should be refused for the reasons that it has been rendered moot.

[75] All of which is respectfully submitted.

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Murray, J.

Appendix "A"

Review of order

520. (1) If a justice, or a judge of the Nunavut Court of Justice, makes an order under subsection 515(2), (5), (6), (7), (8) or (12) or makes or vacates any order under paragraph 523(2)(*b*), the accused may, at any time before the trial of the charge, apply to a judge for a review of the order.

Notice to prosecutor

(2) An application under this section shall not, unless the prosecutor otherwise consents, be heard by a judge unless the accused has given to the prosecutor at least two clear days notice in writing of the application.

Accused to be present

(3) If the judge so orders or the prosecutor or the accused or his counsel so requests, the accused shall be present at the hearing of an application under this section and, where the accused is in custody, the judge may order, in writing, the person having the custody of the accused to bring him before the court.

Adjournment of proceedings

(4) A judge may, before or at any time during the hearing of an application under this section, on application by the prosecutor or the accused, adjourn the proceedings, but if the accused is in custody no adjournment shall be for more than three clear days except with the consent of the accused.

Failure of accused to attend

(5) Where an accused, other than an accused who is in custody, has been ordered by a judge to be present at the hearing of an application under this section and does not attend the hearing, the judge may issue a warrant for the arrest of the accused.

Execution

(6) A warrant issued under subsection (5) may be executed anywhere in Canada.

Evidence and powers of judge on review

(7) On the hearing of an application under this section, the judge may consider

(*a*) the transcript, if any, of the proceedings heard by the justice and by any judge who previously reviewed the order made by the justice,

(*b*) the exhibits, if any, filed in the proceedings before the justice, and

(*c*) such additional evidence or exhibits as may be tendered by the accused or the prosecutor, and shall either

(*d*) dismiss the application, or

(*e*) if the accused shows cause, allow the application, vacate the order previously made by the justice and make any other order provided for in section 515 that he considers is warranted.

Limitation of further applications

(8) Where an application under this section or section 521 has been heard, a further or other application under this section or section 521 shall not be made with respect to that same accused, except with leave of a judge, prior to the expiration of thirty days from the date of the decision of the judge who heard the previous application.

Application of sections 517, 518 and 519

(9) The provisions of sections 517, 518 and 519 apply with such modifications as the circumstances require in respect of an application under this section.

R.S., 1985, c. C-46, s. 520; R.S., 1985, c. 27 (1st Supp.), s. 86; 1994, c. 44, s. 46; 1999, c. 3, s. 31.