

Riccardo Bellusci (appellant) v. Her Majesty the Queen (respondent) and Attorney General of Ontario (intervener)  
(34054; 2012 SCC 44; 2012 CSC 44)

**Indexed As: R. v. Bellusci (R.)**

Supreme Court of Canada  
McLachlin, C.J.C., LeBel, Deschamps, Fish, Abella, Moldaver and Karakatsanis, JJ.  
August 3, 2012.

**Summary:**

A prisoner was found to have intimidated a justice system participant, but the trial judge stayed the intimidation charge because the prisoner's s. 7 Charter rights had been violated. The Crown appealed.

The Quebec Court of Appeal allowed the appeal, quashed the stay and remitted the matter for continuation of the trial. The prisoner appealed.

The Supreme Court of Canada allowed the appeal and restored the stay of proceedings entered by the trial judge.

**Civil Rights - Topic 8374**

Canadian Charter of Rights and Freedoms - Denial of rights - Remedies - Stay of proceedings - [See first **Civil Rights - Topic 8380.5**].

**Civil Rights - Topic 8380.5**

Canadian Charter of Rights and Freedoms - Denial of rights - Remedies - Appeals (incl. standard of review) - The accused was charged with intimidating a prison guard - The trial judge stayed the charge (Charter, s. 24(1)), because the prison guard had violated the accused's s. 7 Charter rights by assaulting him - The Quebec Court of Appeal quashed the stay - The prisoner appealed - The Supreme Court of Canada restored the stay of proceedings - The Court of Appeal should not have disturbed the stay where the judge had not misdirected himself in law, committed a reviewable error of fact or rendered a decision that was so clearly wrong as to amount to an injustice - The court reiterated that "appellate courts must take particular care not to substitute their own exercise of discretion for that of the trial judge merely because they would have granted a more generous or more limited remedy" - See paragraphs 12 to 32.

**Civil Rights - Topic 8380.5**

Canadian Charter of Rights and Freedoms - Denial of rights - Remedies - Appeals (incl. standard of review) - The Supreme Court of Canada stated that "It is well established that a trial judge's order under s. 24(1) of the Charter should be disturbed on appeal 'only if the trial judge misdirects himself or if his decision is so clearly wrong as to amount to an injustice' ... That this is the appropriate standard of review was unanimously reaffirmed by the Court, citing Regan, in R. v. Bjelland, 2009 SCC 38 ..." - See paragraphs 17 and 18.

### **Civil Rights - Topic 8599**

Canadian Charter of Rights and Freedoms - Practice - Appeals - Standard of review - [See second **Civil Rights - Topic 8380.5**].

### **Criminal Law - Topic 4975**

Appeals - Indictable offences - Powers of Court of Appeal - Appeal from an acquittal (incl. stay of proceedings) - [See **Criminal Law - Topic 4983**].

### **Criminal Law - Topic 4983**

Appeals - Indictable offences - Powers of Court of Appeal - Power to make any order that justice requires - At issue was whether, after setting aside a stay of proceedings entered by a trial judge, a Court of Appeal could order a continuation of the proceedings before the trial court or was it bound instead to order a new trial - The Supreme Court of Canada opined that the Court of Appeal could in appropriate circumstances remit the matter to the trial court for continuation of trial - That power came from s. 686(4) of the Criminal Code (powers of appellate court on Crown appeal from acquittal (which included a stay of proceedings)) and s. 686(8) (power of appellate court in exercising power under s. 686(4) to make any order "in addition" that justice required) - The court stated that "Continuation of the trial will not always be preferable or even possible. It is in any event an order that can properly be made only where the interests of justice require it, where there is no undue prejudice to the parties, and where no unfairness would result. Finally, I believe the trial court to which the matter is remitted should retain its discretion to instead order a new trial where resumption of the interrupted proceedings proves to be impractical or unfair" - See paragraphs 33 to 43.

### **Cases Noticed:**

- R. v. Regan (G.A.), [2002] 1 S.C.R. 297; 282 N.R. 1; 201 N.S.R.(2d) 63; 629 A.P.R. 63; 2002 SCC 12, reld to. [para. 17].
- Canada (Minister of Citizenship and Immigration) v. Tobiass et al., [1997] 3 S.C.R. 391; 218 N.R. 81, reld to. [para. 17].
- R. v. Bjelland (J.C.), [2009] 2 S.C.R. 651; 391 N.R. 202; 460 A.R. 230; 462 W.A.C. 230; 2009 SCC 38, reld to. [para. 18].
- R. v. Walcott (F.A.), [2008] O.T.C. Uned. 522; 57 C.R.(6th) 223 (Sup. Ct.), reld to. [para. 31].
- R. v. Maskell (A.W.) (2011), 512 A.R. 372; 2011 ABPC 176, reld to. [para. 31].
- R. v. Jackson (2011), 235 C.R.R.(2d) 289; 2011 ONCJ 228, reld to. [para. 31].
- R. v. Mohmedi (2009), 72 C.R.(6th) 345; 2009 ONCJ 533, reld to. [para. 31].
- R. v. J.W. (2006), 398 A.R. 374; 2006 ABPC 216, reld to. [para. 31].
- R. v. R.L.F. (2005), 373 A.R. 114; 2005 ABPC 28, reld to. [para. 31].
- R. v. Wiscombe and Tenenbein, 2003 BCPC 418, reld to. [para. 31].
- R. v. Murphy (2001), 29 M.V.R.(4th) 50 (Prov. Ct.), reld to. [para. 31].
- Spannier v. Canada, [1996] B.C.T.C. Uned. I11, reld to. [para. 31].
- R. v. Jewitt, [1985] 2 S.C.R. 128; 61 N.R. 159, reld to. [para. 34].
- R. v. Hinse (R.), [1995] 4 S.C.R. 597; 189 N.R. 321, reld to. [para. 37].
- R. v. Provo, [1989] 2 S.C.R. 3; 97 N.R. 209; 59 Man.R.(2d) 1, reld to. [para. 37].
- R. v. Yelle (J.) et al. (2006), 397 A.R. 287; 384 W.A.C. 287; 213 C.C.C.(3d) 20; 2006

ABCA 276, refd to. [para. 37].  
R. v. Smith (B.J.), [2004] 1 S.C.R. 385; 317 N.R. 168; 235 Nfld. & P.E.I.R. 236; 699 A.P.R. 236; 2004 SCC 14, refd to. [para. 38].  
R. v. Thomas (A.F.), [1998] 3 S.C.R. 535; 223 N.R. 266; 115 B.C.A.C. 161; 189 W.A.C. 161, refd to. [para. 40].

**Statutes Noticed:**

Canadian Charter of Rights and Freedoms, 1982, sect. 7 [para. 4]; sect. 24(1) [para. 6].  
Criminal Code, R.S.C. 1985, c. C-46, sect. 686(4), sect. 686(8) [para. 33].

**Counsel:**

Francis Pilotte and Henri-Pierre Labrie, for the appellant;  
Carole Lebeuf and Michel Pennou, for the respondent;  
Louis Belleau, as amicus curiae;  
James K. Stewart and Robert Gattrell, for the intervener.

**Solicitors of Record:**

Lord, Poissant & Associés, Brossard, Quebec, for the appellant;  
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Shadley Battista, Montreal, Quebec, appointed by the Court as amicus curiae;  
Attorney General of Ontario, Toronto, Ontario, for the intervener.

This appeal was heard on February 16, 2012, before McLachlin, C.J.C., LeBel, Deschamps, Fish, Abella, Moldaver and Karakatsanis, JJ., of the Supreme Court of Canada. The following decision was delivered for the court, in both official languages, by Fish, J., on August 3, 2012.

Appeal allowed.

Editor: Elizabeth M.A. Turgeon