

## COURT OF KING'S BENCH OF MANITOBA

### B E T W E E N:

HIS MAJESTY THE KING,

- and -

ROBERT SAURETTE,

appellant.

)  
) Deann Sahulka  
) for the Crown  
)  
)  
) on his own behalf  
)  
)  
)  
) Judgment Delivered:  
) May 20, 2025

### **BOCK J.**

[1] On July 10, 2024, Mr. Saurette initiated a private prosecution under ***The Provincial Offences Act***, C.C.S.M. c. P160 (the "***Act***"). He filed four informations in Provincial Court alleging misconduct against an insurance adjuster, an insurance adjusting firm and two insurers.

[2] On September 19, 2024 those matters came before a judge of the Provincial Court. Mr. Saurette was present. The Crown informed the presiding judge that he was directing a stay of proceedings on all four matters because they did not meet the Crown's charging

standard. Mr. Saurette then made a brief submission in opposition to the stay before the judge interrupted him, saying (Transcript, p. T4):

I'm going to interrupt you there because I agree with him [i.e., the Crown] on that, and he has entered a stay of proceedings which takes any jurisdiction away from me at this time. You can seek whatever other remedy may be available to you, but I'm not going to hear you further at this time, sir. Thank you.

A stay of proceedings is endorsed as requested by the Crown.

[3] On October 15, 2024 Mr. Saurette filed a notice of appeal to set aside the stays of proceedings entered in Provincial Court and for an order that the prosecutions proceed on terms more particularly described in the notice of appeal.

[4] For the reasons that follow, Mr. Saurette's appeal is dismissed.

[5] To begin, there is no question that the Crown in this instance had the legal authority to enter the stays. Under s. 22 of the **Act** the laying of an information commences a private prosecution. The Crown's authority to intervene in the prosecution and stay the proceedings is found in s. 57, which states:

**Attorney General may intervene**

**57(1)** The Attorney General may intervene in a prosecution commenced by an information laid by someone other than the Attorney General or his or her agent.

**Powers on an intervention**

**57(2)** On an intervention, the Attorney General or agent may do any of the following:

- (a) withdraw the charge against the defendant;
- (b) stay the proceedings;
- (c) take over conduct of the prosecution of the offence.

**Intervention du procureur général**

**57(1)** Le procureur général peut intervenir dans des procédures intentées par une dénonciation faite par une autre personne que lui-même ou son mandataire.

**Pouvoirs du procureur général**

**57(2)** Lorsqu'il intervient dans des procédures, le procureur général peut :

- a) retirer une accusation contre un défendeur;
- b) ordonner l'arrêt des procédures;
- c) se charger de la poursuite de l'infraction.

[6] Thus, the Crown had explicit authority under s. 57(2) of the **Act** to stay the prosecutions which had been commenced by Mr. Saurette's informations. Furthermore, the Crown's authority to exercise its discretion to stay proceedings in a private prosecution at any time after the information is sworn has been acknowledged and upheld by the Manitoba Court of Appeal in **R. v. Klippenstein**, 2019 MBCA 13 ("**Klippenstein**") (para. 7).

[7] In **Krieger v. The Law Society of Alberta**, 2002 SCC 65 ("**Krieger**") the Supreme Court of Canada confirmed that the exercise of prosecutorial discretion is subject to deference. This does not place the Crown's decision to stay proceedings beyond the scope of judicial review, of course. However, the Crown's decision to stay is only reviewable in circumstances of "flagrant impropriety or in actions of 'malicious prosecution'" (**Krieger**, para. 49). In this case, there is no evidence of either impropriety or malice. Absent such evidence, there is nothing to justify a further review of the Crown's decision to enter a stay of proceedings in this case.

[8] As I will go on to explain, none of the arguments raised by Mr. Saurette persuades me that the Crown's decision to stay proceedings merits judicial review and intervention.

[9] First, Mr. Saurette argues that the Crown's stay of these proceedings was in violation of a mandatory court process set out in s. 24(2) of the **Act**. In short, he argues the Crown has no authority to enter a stay before a justice has first reviewed the information and heard and considered the allegations of the person who laid the information and the evidence of any witnesses.

[10] In my view, Mr. Saurette has misinterpreted s. 24(2). On a plain reading, it only requires the justice to review the information. It also gives the justice the discretion, “when he or she considers it desirable to do so”, to hear and consider allegations and evidence. However, there is no requirement that the justice do so. Furthermore, Mr. Saurette’s interpretation of s. 24(2) ignores the broad authority conferred on the Attorney General to stay a prosecution under s. 57.

[11] Second, Mr. Saurette argues the stay was ineffective because the Crown mistakenly informed him that it was relying on the authority to stay a prosecution under s. 579 of the **Criminal Code**, R.S.C., 1985, c. C-46 (the “**Code**”). The Crown acknowledges that was a mistake. Section 579 of the **Code** only applies to federal, not provincial, legislation. But I agree with the Crown’s submission that it is a mistake without consequence, because the Crown has the same authority to stay a private prosecution under s. 57 of the **Act** that it has under s. 579 of the **Code**.

[12] Third, there is no merit to Mr. Saurette’s argument that the Crown failed to adhere to the Policy Directive issued by the Manitoba Department of Justice in respect of private prosecutions, a copy of which was contained in the Crown’s brief at Tab 11. The Policy Directive contains this “Policy Statement”:

All private prosecutions are subject to the scrutiny of the Attorney General. In assessing whether a private prosecution should proceed, Crown Attorneys should be guided by the same charging standard that applies to criminal charges initiated by the police. That is:

1. Is there a reasonable likelihood of conviction, and
2. Is it in the public interest to proceed with the prosecution?

[13] The Policy cautions the Crown Attorneys “not to be overzealous in intervening to stay proceedings in private prosecution matters.” It also identifies a stay of proceedings as the appropriate option “where the circumstances of the case do not meet the charging standard.” There is no evidence of the Crown being overzealous or failing to consider the circumstances of Mr. Saurette’s case. To the contrary, the Crown informed the docket court judge that he had reviewed these matters, concluded that they did not meet the charging standard and had advised Mr. Saurette accordingly.

[14] Finally, there is likewise no merit to the suggestion that the Crown acted unethically in violation of Chapter 5 of The Law Society of Manitoba’s Code of Conduct.

[15] In summary, it is Mr. Saurette who carries the burden of satisfying me that an inquiry into the Court’s exercise of its discretion to stay proceedings is warranted (*Klippenstein*, para. 8). He has failed to meet that burden. Mr. Saurette’s appeal is therefore dismissed.

**DATE: May 20, 2025**

\_\_\_\_\_ J.