SCC File No.: 37869

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE SUPREME COURT OF BRITISH COLUMBIA)

BETWEEN:

COREY LEE JAMES MYERS

APPELLANT
(RESPONDENT)

AND:

HER MAJESTY THE QUEEN

RESPONDENT
(APPLICANT)

AND:

ATTORNEY GENERAL OF ONTARIO
CANADIAN CIVIL LIBERTIES ASSOCIATION

INTERVENERS

RESPONDENT'S FACTUM

(Pursuant to Rule 42 of *The Rules of the Supreme Court of Canada*)

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TABLE OF CONTENTS

PART I – OVERVIEW OF POSITION AND STATEMENT OF FACTS

A. Overview of Position

1. Almost one half century ago, in 1972, Parliament passed the *Bail Reform Act*. A "Review of Detention Where Trial Delayed" provision, located in what is now s. 525 of the *Criminal Code*, was part of that historic legislation.

2. Since 1972, the Canadian criminal justice system, and Canadian society itself, have undergone remarkable and profound changes. The proclamation of the *Canadian Charter of Rights and Freedoms*, the Crown's ever-increasing disclosure obligations since *R. v. Stinchcombe*,[1] numerous changes to the *Code* and to the common law of evidence, major technological advances – the videotape recorder, personal computers, mass use of the Internet, smartphones - an expansion in the amount of reported case law, the changing make up of Canadian society requiring an expanded reliance on court interpreters, have all dramatically increased the complexity and the duration of criminal proceedings at all phases. In short, the practice of criminal law, and of criminal cases, both leading up to trial, and during trial, are fundamentally different from half a century ago. Yet the time limits Parliament chose for a "Review of Detention Where Trial Delayed" procedure back in 1972 - 30 days for summary matters and 90 days for indictable matters - have remained engraved in s. 525 for the last near half century, completely unchanged.

3. The measure of what would be designated as an unreasonable delay in 1972 is markedly different than in 2018. The 30 day and 90 day limits chosen by Parliament for s. 525 back in 1972 are no longer realistic today.

4. The heading for s. 525 provides significant guidance as to Parliament's original intent: "Review of Detention Where Trial Delayed". It is apparent that Parliament was purposively connecting the process under s. 525 to a delay in the trial in what was designed to cover fairly exceptional circumstances. It was not merely a specific effluxion of time in custody that concerned the law makers, but rather that status in conjunction with a significantly lengthy delay in bringing the matter to trial - an "unreasonable delay" as outlined in s. 525(3).

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[1] [1991] 3 S.C.R. 326.

5. By the standard of what was a reasonable time to trial in 1972, subject to the accused being responsible for the unreasonable delay, it may well be that the elapse of the prescribed time limit *ipso facto* constituted a "delay" mandating reconsideration of the justification for detention in most circumstances. Nevertheless, when weighed in the appropriate context of contemporary criminal trials in the present day, one and three months are wholly unrealistic measures of delay in 2018.

6. In analyzing s. 525, many judges have engaged in a purposive interpretation by having regard to what Parliament intended the provision to accomplish: a review of detention where trial delayed. As a result, several courts have cogently determined that absent a delayed trial, on a realistic measure of the realities of the modern criminal justice system, there should be no reconsideration of bail. That is the correct interpretation of s. 525.

7. A superior court judge tasked with a s. 525 review must, as a first step, decide whether the trial of the detainee has been delayed. In the absence of any unreasonable delay, there should be no inquiry vis-à-vis detention. As part of the threshold consideration into delay, the Court should not focus on the impact of the detention on that basis for the denial of bail in the first instance. Such considerations are far better suited to reviews pursuant to s. 520 of the *Code*. In that regard, Riley, J.'s view of the nature of s. 525 reviews is not accepted. Rather, the approach exemplified by Bernard, J. in *R. v. Jerace*[2] is the framework that ought to apply to such hearings.

B. Statement of Facts

8. The respondent agrees with the appellant's statement of facts, subject to the following correction and the following additional facts.

9. With respect to para. 40 of the appellant's factum, Crown counsel was in fact available before March of 2018. The Crown was available for the trial dates offered in June of 2017 and in October of 2017.[3]

10. On the evening of January 4, 2016, the complainant was fired upon several times from a white car, which the complainant nevertheless continued to pursue while driving his own pick-up

[2] 2012 BCSC 2007.
[3] Oral Ruling on Severance Application, para. 11, Respondent's Record, p. 21.

truck, for approximately twenty minutes, at speeds reaching up to 160 kilometres per hour. Eventually the white car crashed. The appellant and his two co-accused were the occupants of the white car and were all arrested by police. Inside the white car the police found zap-straps, a large knife, a mask, a duffle bag with a stun gun inside it, screwdrivers, gloves, and other clothing.[4]

11. The complainant's truck had six bullet holes, and various bullet fragments from two different firearms were found inside his truck, but the fragments were damaged and could not be matched by forensic experts to a specific firearm. The appellant and his two co-accuseds all had gun shot residue on their hands. A 9 mm handgun was located very close to the point where one of the co-accused was arrested. When the appellant was arrested, he possessed a satchel containing six live .357 calibre rounds of ammunition. A .357 calibre handgun was found six days later nearby the crash site.[5]

12. At the time of his arrest, the appellant was already on bail for an outstanding break and enter charge in Vancouver, and he was the subject of a Canada-wide arrest warrant for numerous outstanding charges laid in Alberta. Those charges related to various alleged offences from 2015, and included failing to attend court in Alberta in April of 2015. The appellant was also on probation for the offence of possessing a firearm contrary to court order, and he was also the subject of three separate court-ordered prohibitions banning him from possessing firearms and ammunition.[6]

13. On April 25, 2016, a few months after his arrest and before his first trial date on this matter, the appellant was sentenced for his outstanding Vancouver break and enter charges. He received credit for his time in custody since his arrest on January 4, 2016, and a jail sentence of an additional 251 days was imposed.[7]

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[4] Appellant's Record, pp. 38-46; Oral Ruling on Severance Application, paras. 3-4 & 6, Respondent's Record, pp. 19-20.
[5] Appellant's Record, pp. 43-48; Oral Ruling on Severance Application, paras. 4-6, Respondent's Record, p. 20.
[6] Appellant's Record, pp. 51-54 & p. 61; Respondent's Record, pp. 29-41. The probation order was for two years following service of an 8-month jail sentence imposed on September 19, 2013; see p. 30 & p. 33 of the Respondent's Record.
[7] Appellant's Record, pp. 50-51; Respondent's Record, p. 30.

14. The appellant's March 2018 trial in superior court was scheduled for 20 days by judge alone. The Crown's case was circumstantial, and it anticipated having to rely on the complainant's police statement by seeking to have it admitted via the principled exception to the hearsay rule.[8]

PART II - RESPONDENT'S POSITION ON QUESTION IN ISSUE

15. The respondent's positon is that the correct approach to a bail review under s. 525 is the two-step approach where continued detention is not reviewed unless unreasonable delay has first been established.

PART III – ARGUMENT

Introduction – Two approaches to s. 525 – one-step and two-step

16. At issue in this appeal is the proper approach to a bail review under s. 525. The appellant advocates a one-step approach whereby an accused is entitled to the equivalent of a fresh bail application whereby the superior court judge may exercise a very wide discretion in determining whether the accused can be released.

17. The respondent supports a two-step approach to s. 525, which requires that a superior court judge first be satisfied that there has been unreasonable delay in the proceedings. Only when this first criterion of unreasonable delay is satisfied will the judge then go on to consider whether the continued detention of the accused is warranted under s. 525(4).

18. The respondent agrees with the appellant's position on the issue of mootness. Although the appellant is no longer in pre-trial custody due to the conclusion of the proceedings against him, the issue raised here, as to whether a one-step or two-step approach to s. 525 bail reviews is correct, remains controversial. Bail issues are typically evasive of appellate review, as this Court observed in *R. v. Oland*,[9] and accordingly, it would be helpful for this Court to decide which of the two approaches is correct.

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[8] Appellant's Record, p. 74; Oral Ruling on Severance Application, paras. 10, 12 & 22, Respondent's Record, pp. 21-22 & 24.

[9] 2017 SCC 17, [2017] 1 S.C.R. 250 at para. 17.

The two-step approach is correct

19. The two-step approach was first established in *R. v. Gill*[10] and *R. v. Kissoon*.[11] The leading case in B.C. favouring the two-step approach, *R. v. Jerace*, has since been followed in a number of cases within B.C., including, *R. v. Andreychuk*,[12] *R. v. Sutherland*,[13] *R. v. Whiteside*,[14] and *R. v. Elmi*.[15] More recently, in Newfoundland, the two-step approach has also been adopted in *R. v. Russell*,[16] and *R. v. Cheeseman*.[17]

20. Gary T. Trotter, presently a justice of the Ontario Court of Appeal and a leading author on the subject of bail, has opined that the two-step approach more closely aligns with the purpose of s. 525:

> The two-step approach is more consistent with the purposes of s. 525 of the Code, as well as with its relationship to the other bail review provisions. Section 525 does not establish custody time limits similar to British legislation. Instead, it provides time markers for a determination of whether the prosecution is moving at a satisfactory pace, with bail being an option if a direction would be unfeasible or inefficacious. Given that a detained person enjoys continued access to a. s. 520 bail review (subject to the 30-day limitation) and the other mechanisms for review in s. 523, it does not make sense that bail should be reconsidered in the absence of established unreasonable delay.[18]

21. As the respondent will explain below, Trotter's assessment is correct, and the two-step approach to s. 525 is more in keeping with the modern principle of statutory interpretation. While the one-step approach more closely aligns with a plain reading of s. 525, the proper modern approach to interpreting the section requires consideration of several other factors, including s. 525's heading – "Review of Detention Where Trial Delayed", Parliament's original intent and purpose of the section when it was enacted, having regard to the relevant context at the time, the problematic consequences of the one-step interpretation, as well as the specific role

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[10] [2005] O.J. 2648 (S.C.).
[11] [2006] O.J. 4800 (S.C.).
[12] 2013 BCSC 743.
[13] 2013 BCSC 1686.
[14] 2016 BCSC 131.
[15] 2016 BCSC 376.
[16] 2016 NLTD(G) 208.
[17] 2017 NLTD(G) 114.
[18] Trotter, Gary T., *The Law of Bail in Canada*, 3rd ed. Toronto: Carswell, 2010 (loose-leaf updated 2018, release 1) at 8-60.

played by s. 525 in the overall scheme governing judicial interim release under Part XVI of the *Code*.

The modern principle of statutory interpretation

22. The contextual plain meaning starting point, known as Driedger's modern principle, is summarized in *Sullivan on the Construction of Statutes:*

> In the first edition of the *Construction of Statutes*, published in 1974, Elmer Driedger described an approach to statutory interpretation which he called the modern principle:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> In the years following that first edition, the modern principle was frequently cited and relied on, and in 1998, in *Re Rizzo & Rizzo Shoes Ltd.*, it was declared to be the preferred approach of the Supreme Court of Canada. Speaking for the Court, Iacobucci J. wrote:
>
> > Although much has been written about the interpretation of legislation … Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. **He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone.**[19]

23. Sullivan outlines a useful framework to follow in the application of the fundamental modern principle:

> Under the modern principle, an interpreter who wants to determine whether a provision applies to particular facts must address the following questions:
>
> - what is the meaning of the legislative text?
> - what did the legislature intend? That is, when the text was enacted, what law did the legislature intend to adopt? What purposes did it hope to achieve? What specific intentions (if any) did it have regarding facts such as these?
> - what are the consequences of adopting a proposed interpretation? Are they consistent with the norms that the legislature is presumed to respect?.[20]

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[19] Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. Markham, Ont.: LexisNexis, 2014 at p. 7 [emphasis added].
[20] Sullivan at pp. 9-10.

The text of s. 525 is poorly drafted and is not the sole basis for interpretation

24. Section 525 is poorly drafted. This has been the subject of judicial comment as far back as 1978:

> The matter turns on the interpretation of s. 459 [now s. 525] of the Criminal Code which is contained in the new part XIV. It is a good example of complex and very hard to decipher legislation. It is a real labyrinth and the key or the clue to its understanding is not easy to find, if indeed one can find it at all. Various sections are intertwined by difficult-to-follow cross-references so that in order to read and understand one section, one must constantly refer back. One's trend of thought can thus easily stray in the process. Suffice it to say that it was meant to facilitate the obtaining of bail and the review of bail applications when originally refused, so that an accused, who is still under the presumption of innocence, should not be kept under detention for lengthy periods of time.[21]

25. The meaning of the text of s. 525 indicates an intent for there to be a superior court hearing dealing with a person's detention status. The timeframe for that person to appear before the Superior Court is outlined as 30 or 90 days, as the case may be, and on a plain reading, the superior court judge is to consider whether person's continued detention is warranted. But a plain reading of s. 525 – as advocated by the appellant – is "incompatible with the modern principle" of statutory interpretation, as context, purpose, Parliamentary intent, and consequences must always be considered.[22]

The section's heading reveals its purpose – a review of detention where a trial is delayed

26. Section 525 is entitled, "Review of Detention where Trial Delayed". This heading is a very important indicator of the purpose of the section. The use of headings as an important aid to statutory interpretation by this Court was been noted by Sullivan, who writes, "The view favoured in most recent judgments from the Supreme Court of Canada is that for purposes of interpretation headings should be considered part of the legislation and should be read and relied on like any other contextual feature.[23] Notably, in *R. v. Davis*, Lamer C.J. agreed that headings

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[21] *R. v. Dass* (1978), 39 C.C.C. (2d) 365 (Man. C.A.) at para. 2.
[22] Sullivan at pp. 20-21; *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27.
[23] Sullivan at p. 461.

"should be considered part of the legislation and should be read and relied on like any other contextual feature."[24]

27. The heading of s. 525 is a revealing lens through which to view the text that follows, as it brings the true purpose of the section into proper focus. The explicit reference to a "trial delayed" is a crucial component of the interpretation of the section. It unquestionably limits the application of the section to cases of delayed trials. The review of detention is made contingent by the term "where".

28. That the heading "Review of Detention Where Trial Delayed" encapsulates both Parliamentary intent and the purpose of s. 525, is confirmed by the Parliamentary record at the time – another important aid to statutory interpretation. In his evidence before the House of Commons Committee on Justice and Legal Affairs in 1971, John N. Turner, the Justice Minister in charge of promulgating the *Bail Reform Act*, drew the Committee members to the section and stated, "Proposed new Section 445K, review of detention where a trial has been delayed, that is to say **where there has been a delay in the trial, there is a right to have the decision of pretrial detention reviewed.**"[25]

29. The Minister's remark, however brief, is highly revealing as to the section's purpose. It further supports the view that the section was specifically designed to provide a remedy of review *which depended on a delay in the trial having first been established*. This Ministerial statement as to the section's true original purpose reinforces the basis for the current two-step approach to reviews under s. 525.

30. Further confirmation of the significance of both the heading and the need for delay as a basis for review can be found in the contemporary writings of a federal official who helped draft the *Bail Reform Act*. John A. Scollin, QC, a Director of the Criminal Law Section of the Department of Justice, testified alongside Turner at the House Committee hearings on the legislation in 1971.[26] The following year, shortly after its passage into law, Scollin authored a

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[24] [1993] 3 S.C.R. 759 at para. 53.
[25] *Evidence of the House of Commons Standing Committee on Justice and Legal Affairs*, 28th Parl., 3rd Sess., No. 8, February 23, 1971, at p. 13 [emphasis added].
[26] *Evidence of the House of Commons Standing Committee on Justice and Legal Affairs*, 28th Parl., 3rd Sess., No. 8, February 23, 1971 at p. 5, pp. 14-15 & pp. 24-25.

book in 1972 on the *Bail Reform Act*, just as it came into force.[27] In that book, Scollin adopted the very same heading, "Review of Detention Where Trial Delayed" at various points in his description of the section.[28] Notably, he also referred on several occasions to the section as providing for a "Delayed Trial" Hearing.[29]

31. Scollin's ready adoption of the section's heading, and in particular, his use of the term "Delayed Trial Hearing" for the review contemplated in the section, is telling. It again supports the proposition that a s. 525 review was intended to take place **when a trial had been delayed.** This indication of the original Parliamentary intent and purpose further supports the current two-step approach to s. 525. Simply put, it defies both the intent and purpose to engage in a full-fledged "Delayed Trial Hearing" and reconsideration of bail, without first inquiring and determining that an accused's trial has actually been delayed. Indeed, it would be far more helpful, and far more true to the purpose of the section, to think of s. 525 as providing for a "Delayed Trial bail review", rather than as a "90-day bail review".

The 1972 time limits in context

32. The significance of the original 90-day and 30-day time limits in 1972 as important markers of a truly "delayed trial" is far from obvious to contemporary justice system participants in 2018. Important context is provided here by considering the relevant part of the important study of Professor Martin Friedland's pioneering research study of bail in the Toronto courts.[30] Friedland's work is highly relevant here, as he was also involved in assisting Scollin and other federal justice department officials in drafting the *Bail Reform Act*.[31] In *R. v. Antic* this Court recognized the important role that *Detention before Trial* had in the formulation of many of the reforms to the bail system that were adopted in 1972.[32]

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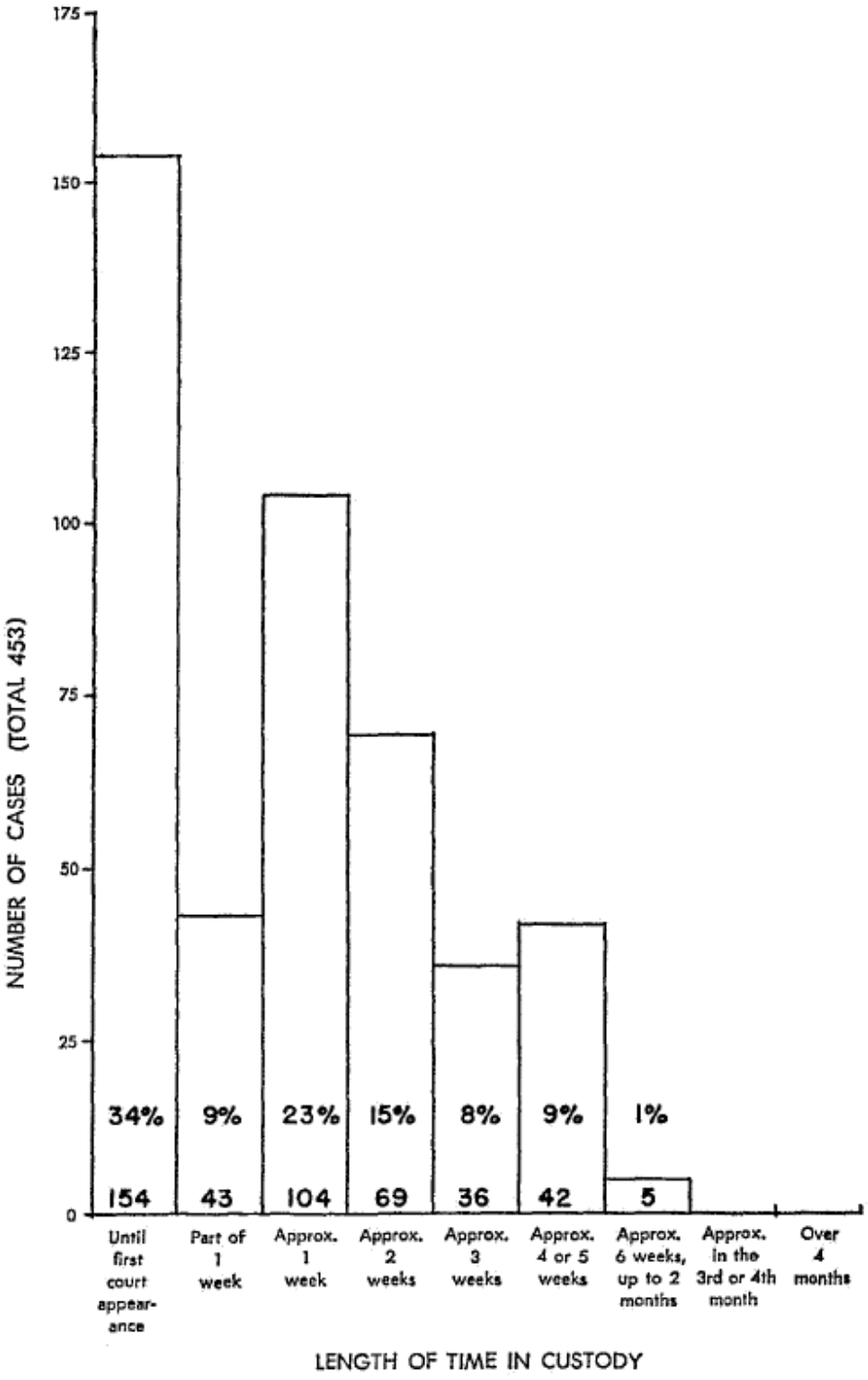
[27] John A. Scollin, QC, *The Bail Reform Act: An Analysis of the Amendments in the Criminal Code Related to Bail and Arrest*, Toronto: Carswell, 1972.
[28] Scollin at p. 11, p. 112 & p. 162.
[29] Scollin at p. 156 & p. 164.
[30] Martin L. Friedland, *Detention before Trial: A Study of Criminal Cases Tried in the Toronto Magistrates' Courts*. Toronto: University of Toronto Press, 1965.
[31] Martin L. Friedland, "The *Bail Reform Act* Revisited" (2012), 16 Can. Crim. L.R. 315 at 316.
[32] 2017 SCC 27, [2017] 1 S.C.R. 509 at paras. 25-28.

33. The Parliamentary record also amply supports the inference that the *Bail Reform Act* was heavily informed and influenced by Friedland's study. In both his speech at second reading of the *Bail Reform Act* to the House of Commons, and in his evidence to the House Committee, Turner referred approvingly of Friedland's study, describing it as "a very important book"[33] and "a very important book and very influential".[34] In addition, in both his speech to the Commons and his evidence before the Committee Turner also referred to statistics Friedland had gathered on other aspects of arrest and bail.[35]

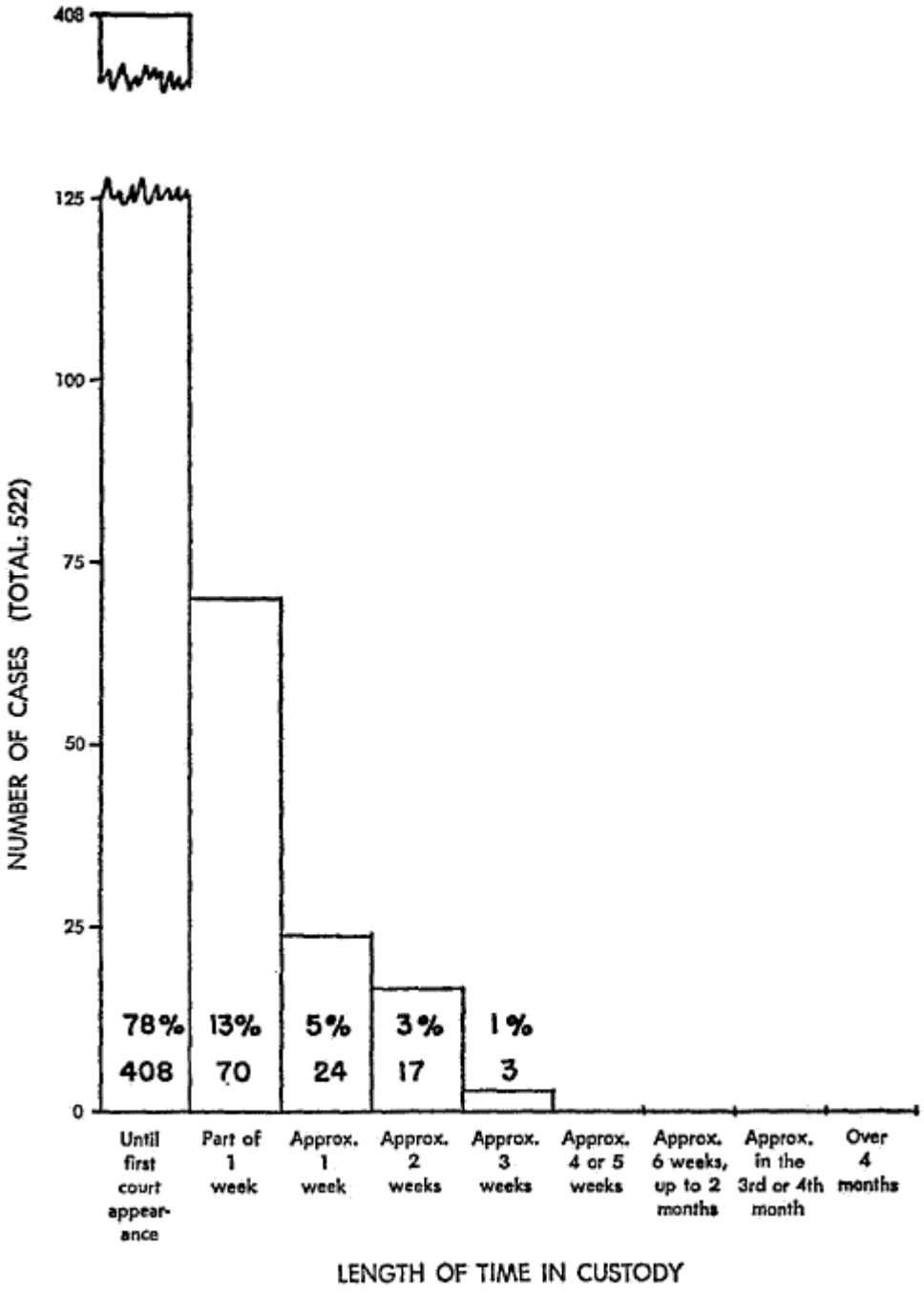
34. In his research study, Friedland carefully gathered precise statistical information on the progress of criminal cases and the time accused persons spent in custody prior to trial in the Toronto courts. For accused persons in custody facing indictable charges, **99 per cent had to wait in jail for up to approximately 4-5 weeks until trial,** and the remaining one per cent had to wait between approximately six weeks and two months, as illustrated by the chart for these cases reproduced below from Friedland's study[36] in Figure 1:

[33] House of Commons Debates, 28th Parliament, 3rd. Sess., Vol. III (February 5, 1971) at p. 3114.
[34] *Evidence of House of Commons Standing Committee on Justice and Legal Affairs*, 3rd Sess., 28th Parl., No. 8, February 23, 1971, p. 17.
[35] House of Commons Debates, 28th Parliament, 3rd. Sess., Vol. III (February 5, 1971) at p. 3115; *Evidence of House of Commons Standing Committee on Justice and Legal Affairs*, 3rd Sess., 28th Parl., No. 8, February 23, 1971, at pp. 28-29.
[36] *Detention before Trial*, p. 95.



35. For accused persons in custody facing summary charges, **99 per cent had to wait in jail for up to approximately two weeks until trial,** and the remaining one per cent of cases waited

approximately three weeks, as demonstrated in the chart reproduced below from Frieldand's study[37] in Figure 2:



[37] *Detention before Trial*, p. 94.

36. The statistics gathered by Friedland in his research put the 90-day and 30-day time limits adopted by Parliament in 1972 in their proper context. With respect to all cases in Friedland's study, none actually eclipsed either of the 1972 time limits. Moreover, 99 per cent of indictable cases came to trial within 5 weeks at most – *or just over a third* of the 90-day limit selected by Parliament. For summary matters, 99 per cent came to trial within two weeks – *or just under half* of the 30-day limit chosen in 1972. In both instances, the time limits chosen were considerably longer than nearly all cases studied by Friedland.

37. Given the significance of Friedland's study to the *Bail Reform Act*, it is a fair and reasonable inference that these statistics informed the choice of the time limits in 1972, and that they were meant to be triggered by what were then considered to be atypically long waits for trial. Friedland's study was obviously scholarly research of which the sponsoring Minister and Parliament had ample notice, and upon which there was some considerable reliance, given Friedland's role and Turner's comments to the Commons and the House Committee in 1971. The statistics from Friedland's work provide significant context as to the specific purpose of the provision and the specific mischief to be cured.[38] At a bare minimum, they provide valuable context, as they show that the 90-day and 30-day time frames represented unusually long time periods for in-custody cases to come to trial.

The 1972 time limits are no longer realistic

38. Over the 46 years that have passed since 1972, it has become increasingly clear over time that the 90 and 30 day time limits are completely unrealistic measures of a significant or unreasonable delay in a trial. Writing in his first edition on bail in 1992 – more than a quarter century ago - Trotter observed that "the time limitations which trigger a review under s. 525, 30 and 90 days, **may not** be as realistic a measure of undue delay as they were when the *Bail Reform Act* was first introduced."[39] Only seven years later, in 1999, Trotter wrote in his second edition that the 30 and 90 day time limits "**are not** as realistic a measure of undue delay as they

[38] Sullivan at pp. 658-659; see also *Neill v. Calgary Remand Centre* (1990), 60 C.C.C. (3d) 26 (Alta. C.A.).
[39] Trotter, Gary T., *The Law of Bail in Canada*, 1st ed. Toronto: Carswell, 1992 at p. 233 [emphasis added].

were when the *Bail Reform Act* was first introduced."[40] Currently, Trotter notes that these out-dated time limits make s. 525 particularly problematic, as "the 1972 time limits of 30 and 90 days are no longer realistic yardsticks for an automatic review hearing" and suggests that "Parliament might consider altering these thresholds to accord with the reality of modern prosecutions."[41] Recently, in *R. v. M.B.C.*, Blok J. noted that "the 30-day and 90-day time frames are woefully out of step with current time frames for criminal trials". [42]

39. These present-day assessments reflect the realities of numerous and profound changes in the criminal law, society, and technology in the near half century while the 30 and 90 day time limits have remained carved in stone since 1972. As a result, criminal proceedings are far more complex and lengthy than they were nearly half a century ago. In a speech given in 2007, Chief Justice McLachlin observed that the average length of serious criminal cases had increased remarkably – cases that used to be measured in days were now measured in months. This was partly due to pre-trial *Charter* motions, but also as a result of other significant changes to the law of evidence such as the principled exception to the hearsay rule, and evidence of previous discreditable conduct, among others.[43]

40. In 2012 the criminal sub-committee of the B.C Supreme Court issued a report listing a host of factors which had increased considerably the complexity and length of criminal proceedings. Among these were more complex forensic and expert evidence, routine video-taping of police interviews, enormous increases in the amount of information stored electronically which is required to be disclosed, mentally disordered offenders and the applicable *Code* provisions, and the increased need for interpreters doubling the length of proceedings.[44]

41. As this Court observed in *Jordan*, criminal proceedings have become particularly more complex since *R. v. Morin*[45]:

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[40] Trotter, Gary T., *The Law of Bail in Canada*, 2nd ed. Toronto: Carswell, 1999 at p. 333 [emphasis added].
[41] Trotter, 3rd ed., p. 8-66.
[42] 2018 BCSC 359 at para. 22.
[43] McLachlin, Beverley, "*The Challenges We Face*" (2007), 40 U.B.C. L. Rev. 819 at 823-24.
[44] Supreme Court of British Columbia, *Criminal Pre-Trial Conference Pilot Project Evaluation Report* (Vancouver, B.C.: Supreme Court of British Columbia, 2012) at p. 5.
[45] [1992] 1 S.C.R. 771.

> New offences, procedures, obligations on the Crown and police, and legal tests have emerged. Many of them put a premium on fairness, reasonableness, and a fact-specific analysis. They take time. They also take up judges, courtrooms, and other resources.[46]

42. Summary proceedings having also become more significant and now frequently involve much higher stakes than in 1972, and are now subject to jail sentences that are up to three times the traditional six month limitation for summary matters. Notably, many of the most commonly prosecuted offences in Provincial Court, such as uttering threats, assault with a weapon or assault causing bodily harm, breach of probation, sexual assault, and unlawful confinement, are all punishable by up to 18 months jail when prosecuted summarily: see ss. 264.1(2)(b), 267(a) & (b), 733.1(1)(b), 271(b), and 279(2)(b) of the *Code*. The maximum punishment for sexual assault under s. 271(1)(b) in a summary prosecution rises to two years less a day where the victim was under 16. It is important to remember here that sentences in summary prosecutions are not to be "scaled down" from the summary maximum set out by Parliament simply because the Crown proceeded summarily: *R. v. Solowan*.[47] Thus an 18-month jail term can be an entirely realistic prospect in such cases.

43. With respect to indictable matters in superior court, earlier this year, the Chief Justice of B.C. noted that several factors had made all forms of litigation "steadily more complex" and lengthy. Among the factors mentioned were the growth in legal complexity and case authorities generally, as well as a greater need for interpreters in many cases, and "electronic communications [which] have vastly expanded the number of documents typically put into evidence at trial."[48]

44. The two-step procedure properly takes into account that in any given case the 1972 time limits will easily be reached without there being any unreasonable delay in the trial when considered by the contemporary realities of modern criminal cases. Recognizing these realities does not mean condoning complacency for delay, of course. The two-step procedure places delay at the very forefront of consideration, where it belongs – if an in-custody case is taking an

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[46] 2016 SCC 27, [2016] 1 S.C.R. 631 at para. 42.
[47] 2008 SCC 62 at para. 15.
[48] Supreme Court of British Columbia, *Annual Report 2017* (Vancouver, B.C.: Supreme Court of British Columbia, 2018) at p. 2.

unreasonably long time to proceed, then a full reassessment of the accused's bail status is warranted.

45. It could be the case that 50 years ago, most detainees brought before the superior court pursuant to the section may well have merited a consideration of their detention status, though not invariably so. The barometer for what might have been considered unreasonable delay was markedly different from what it is today. In other words, in 1972 the 30 and 90 day time periods may have even been a proper basis for a presumptive determination of delay. However, the circumstances of the criminal justice system have changed dramatically in the approximate half-century since the *Bail Reform Act*. Consequently, there is a need for a more robust inquiry into the circumstances of each case to determine if those satisfy the original Parliamentary intent which was to capture a very small percentage of those cases where there was truly some significant and unusual delay. This is reflective of the original purpose of the section.

The role and purpose of s. 525 within the scheme of Part XVI of the Code

46. Deciphering the meaning of s. 525 cannot be accomplished by examining that section in isolation. Many of the appellant's arguments overstate the purpose of s. 525, confusing and conflating the overarching objectives of the *Bail Reform Act* as a whole with the particular purpose of the section itself. Rather, consideration must be had of all of Part XVI of the *Criminal Code*, and the specific role s. 525 was meant to fulfil. As Sullivan explains:

> It is presumed that the provisions of legislation are meant to work together, both logically and teleologically, as parts of a functioning whole. The parts are presumed to fit together logically to form a rational, internally consistent framework; and because the framework has a purpose, the parts are also presumed to work together dynamically, each contributing something toward accomplishing the intended goal. [49]

47. In considering the whole of Part XVI, particular attention must be paid to s. 520. It is helpful to juxtapose this section with that of s. 525. Section 520 does not provide for a *de novo* hearing, rather it is a review provision contingent on certain grounds being established by the applicant - when a bail decision is clearly inappropriate, the product of legal error, or should be changed due to new information.[50] Given the specific grounds for a s. 520 review, which can be

[49] Sullivan at 337.
[50] See *R. v. St. Cloud*, 2015 SCC 27

brought at any time following a bail decision, it would be irregular and incongruous for that focused review set out in s. 520 to exist briefly for the period of time set out in s. 525 before an open-ended review would then take place.

48. The countdown for eligibility for a review under s. 525 begins when the person is first brought into custody, not when the detention order is actually made pursuant to s. 515(10). Consequently, in some cases there would be little or even no effluxion of time needed for a detainee to out flank the onus on a s. 520 review and avail themselves of a hearing though s. 525. An interpretation of s. 525 which results in a new bail hearing after the elapse of 30 or 90 days from the time the person goes into custody would have the practical effect of rendering virtually meaningless the review provision under s. 520. This would be discordant interpretation of 525 in the context of all of Part XVI. Various courts have described such a state of affairs as "incongruous"[51], "an odd result"[52], "illogical"[53].

49. The appellant contends that s. 525's purpose is so broad as to provide for an accused, who has not yet had a bail hearing in the first instance in Provincial Court, to have that first bail hearing in Supreme Court.[54] The appellant's argument is refuted by the very nature of s. 525, which is a **review** provision, and **not** a mechanism for determining judicial interim release in the first instance. As Turner explained in his evidence before the House Committee in 1971, the section was designed to allow an accused "where there has been a delay in the trial…to have **the decision of pretrial detention reviewed.**"[55]

50. The appellant's submission also ignores the long-standing appellate court authorities which establish that a detention order is a prerequisite for a s. 525 review; those accused persons who have not sought release or are in custody on unperfected bail are ineligible.[56] Again, the appellant overlooks the overall scheme of the bail provisions and seeks to burden s. 525 with purposes which are well served by other sections within Part XVI of the *Code* – in the case of an

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[51] *R. v. Elmi*, 2016 BSCS 376 at para. 10.
[52] *R. v. Jerace*, 2012 BCSC 2007 at para. 15.
[53] *R. v. Whiteside*, 2016 BCSC 131 at para. 12.
[54] Appellant's Factum, paras. 85 & 86.
[55] *Evidence of House of Commons Standing Committee on Justice and Legal Affairs*, 3rd Sess., 28th Parl., No. 8, February 23, 1971, p. 13 [emphasis added].
[56] *R. v. Srebot* (1975), 28 C.C.C. (2d) 160 (B.C.C.A.) at para. 9; *R. v. Burgar*, 2003 BCCA 426 at para.15.

accused who has yet to have his first bail hearing, s. 515 affords him one in the usual venue of Provincial Court, rather than in Supreme Court. In the case of an accused who has not perfected bail, he or she would have recourse to a review of that original bail decision under s. 520.

Appellant's other arguments – implied exclusion and Charter values

51. The appellant also contends that the two-step approach does not align with Parliament's intention, given the absence of any reference by Parliament to a threshold test requiring unreasonable delay in s. 525. The appellant asserts that such a requirement "would not have been too difficult for Parliament to state."[57] But this argument overlooks the significance of s. 525's heading, which does suggest a basis for such a threshold, as already discussed. In addition and in the alternative, the appellant's argument here effectively relies on the "implied exclusion rule" of statutory interpretation – by Parliament's silence, it can be presumed that it did not wish such a threshold to be employed. However, as this Court held in *Green v. Law Society of Manitoba*, "[a]n argument based on implied exclusion is purely textual in nature and cannot be the sole basis for interpreting a statute."[58]

52. The appellant relies and refers to *Charter* principles in support of his position that the one-step approach better aligns with those values.[59] But as this Court explained in *Bell ExpressVu Limited Partnership v. Rex*, "*Charter* values" are only to be applied as an interpretive principle when a genuine ambiguity arises, and only after all other methods and means of interpreting a statute have failed to resolve the ambiguity. [60] As already explained, no such ambiguity arises here.

The negative consequences of the one-step approach should be avoided

53. The last of the three questions directed to be answered in the modern principle analysis relates to the consequences of the interpretation:

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[57] Appellant's Factum, para. 90.
[58] 2017 SCC 20, [2017] 1 S.C.R. 360 at para. 37; see also *R. v. Sciascia*, 2017 SCC 57, [2017] 2 S.C.R. 539 at para. 24.
[59] Appellant's Factum, paras. 91-93.
[60] 2002 SCC 42, [2002] 2 S.C.R. 559 at paras. 60-66.

> When a court is called on to interpret legislation, it is not engaged in an academic exercise. Interpretation involves the application of legislation to facts in a way that affects the well-being of individuals and communities for better or worse. Not surprisingly, the courts are interested in knowing what the consequences will be and judging whether they are acceptable. Consequences judged to be good are presumed to be intended and generally are regarded as part of the legislative purpose. Consequences judged to be contrary to accepted norms of justice or reasonableness are labelled absurd and are presumed to have been unintended. If adopting an interpretation would lead to absurdity, the courts may reject that interpretation in favour of a plausible alternative that avoids the absurdity.[61]

54. In this regard, the reality of the interpretation of the section vis-à-vis the operation of the justice system, and in the context of directives from this Court is an essential consideration. If the section were to be interpreted in the manner proposed by the appellant, there would be significant and substantial ramifications for the administration of justice in Canada.

55. Mandating a *de novo* adjudication of the s. 515(10) criteria in each and every case would be substantial drain on the Judiciary, the prosecution service, court services and defence counsel. Such resources are a precious commodity, particularly since the ruling in *Jordan*.

56. The circumstances that would be considered on review as proposed by the appellant would, in many cases, be identical to those considered in the lower court. Other than what may be in, in relative terms a short effluxion of time, nothing would change in terms of the circumstances put before the Court. This would necessarily result in a duplication of counsel's work, resources, judicial effort, and possibly result in inconsistent rulings on the same fact pattern.

57. A second broad, wide-ranging, fully discretionary assessment of detention under s. 525 would therefore be wasteful of scarce judicial resources. As this Court noted in *R. v. St. Cloud*, bail decisions, like sentencing decisions, typically involve the careful consideration of a host of factors by the judicial decision-maker, and therefore should attract deference on review, given the "delicate enterprise whose essence would be distorted if an open-ended review were to be conferred on the judge."[62]

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[61] Sullivan at p. 307.
[62] 2015 SCC 27, [2105] 2 S.C.R. 328 at para. 117.

58. This similarity between bail and sentencing is at its highest when, as is often the case, a bail hearing turns on whether the accused, if released, will pose a risk to the safety of the public under s. 515(10)(b) by reoffending while on bail. In both situations, the judge faces the very difficult challenge of assessing and predicting the future risk an offender, or an accused seeking release, would pose to the safety of the public. In *R. v. Proulx*[63] , this Court endorsed a useful (although non-exhaustive) list of factors set out by the Quebec Court of Appeal in *R. v. Maheu*[64] for assessing risk in the context of determining whether an offender would endanger the public if permitted to serve his or her sentence in the community:

> [TRANSLATION] . . . 1) the nature of the offence, 2) the relevant circumstances of the offence, which can put in issue prior and subsequent incidents, 3) the degree of participation of the accused, 4) the relationship of the accused with the victim, 5) the profile of the accused, that is, his [or her] occupation, lifestyle, criminal record, family situation, mental state, 6) his [or her] conduct following the commission of the offence, 7) the danger which the interim release of the accused represents for the community, notably that part of the community affected by the matter.[65]

59. Notably, this list of factors is *identical* to that which the Quebec Court of Appeal had previously proposed for assessing an accused's risk to public safety when considering bail under s. 515(10)(b) in *R. v. Rondeau*.[66] This non-exhaustive list of factors has also been adopted by the British Columbia Court of Appeal in *R. v. Wu*[67] for considering the risk to the public of an applicant for bail. Weighing all of these various factors – and others, such as past non-compliance with court orders, involves considerable judicial effort and deliberation. Such judicial efforts, and judicial time, should not be routinely and automatically swept aside only to be duplicated by superior court judges so shortly after an original bail decision has already been made to detain an accused.

60. That a bail judge's task, in balancing the competing interests of an accused and the public, is profoundly challenging, was a legal norm which was eloquently reflected in Turner's remarks when he addressed the House of Commons at second reading of the *Bail Reform Act*:

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[63] 2000 SCC 5, [2000] 1 S.C.R. 61.
[64] (1997), 116 C.C.C. (3d) 361 (Que. C.A.).
[65] *Proulx* at para. 70.
[66] (1996), 108 C.C.C. (3d) 474 (Que. C.A.).
[67] [1998] B.C.J. No. 2854 (C.A.).

> Certainly, in individual cases, the most difficult decision that a judge and jury as well as police and magistrates have to make, particularly at the arrest and bail stage is, the rights of the accused and the rights of society. **These judgments are human, and the balance between liberty on the one hand and the security of the state or the maintenance of public order on the other, requires the most difficult human judgment that men and women are called upon to make.** There is no need for me to underline to the House how difficult it is to make such a judgment, but I believe that we have to make it if we are to reconcile authority with freedom.[68]

61. Although bail hearings can be informal and heard very quickly after arrest, in many instances the opposite is the case – counsel is first retained, disclosure is sought and obtained, a release plan is formulated, and a lengthy bail hearing is then conducted. This often means that a bail decision is the product of careful consideration of lengthy and detailed submissions – as was the case here, where half a dozen exhibits were filed, submissions took a considerable period of time, a release plan was proposed, and judgment was reserved until the next day.[69]

62. The consequences of the interpretation of the section proposed by the appellant would have a profound systemic effect throughout Canada. It would consume large amounts of resources, and would render compliance with this Court's directive in *Jordan* significantly more difficult. An interpretation which permits a threshold consideration of the merits of the application in the context of whether there truly is any "trial delayed" is in accordance with this Court's directive in *Cody* encouraging threshold consideration by courts of applications with no real chance of success:

> In addition, trial judges should use their case management powers to minimize delay. For example, before permitting an application to proceed, **a trial judge should consider whether it has a reasonable prospect of success.** This may entail asking defence counsel to summarize the evidence it anticipates eliciting in the *voir dire* and, where that summary reveals no basis upon which the application could succeed, dismissing the application summarily.[70]

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[68] House of Commons Debates, 28th Parliament, 3rd. Sess., Vol. III (February 5, 1971) at p. 3116 [emphasis added].
[69] Appellant's Record, pp. 35-72; Respondent's Record, pp. 29-51.
[70] *R. v. Cody*, 2017 SCC 31at para. 38 [emphasis added].

Riley J.'s modification of the two-step approach

63. The respondent submits that the modification to the first step devised here by Riley J. should not be adopted. Riley J.'s decision changes the first step in the two-step approach, by holding that a full bail review under s. 525 is contingent upon the accused showing either 1) unreasonable delay on the part of the Crown; or 2) that the basis for the original detention order has been impacted by the passage of time.[71]

64. The respondent submits Riley J.'s modified first step adds unnecessary complexity to the first step. It also imports considerations better suited to a s. 520 review, such as the impact of the passage of time upon the original basis for detention, unnecessarily conflating s. 520 and s. 525. The respondent submits the preferred approach under s. 525 is that which was established in *Kissoon* and *Jerace* – the first step should be satisfied simply by a finding of unreasonable delay. The first step test in *Kissoon* and *Jerace* is simpler and more closely aligned with s. 525's main purpose of providing for a review where there has been an unreasonable delay in the trial.

Statistics of remand population and their significance

65. In support of his argument for automatic, full-fledged bail hearings under s. 525, the appellant points to "the backdrop of statistics which indicate a very high rate of pre-trial trial detention in Canada."[72] He points to various statistics gathered by Statistics Canada for the years 2012-2013 for the relative proportion of remand populations, as opposed to the number of persons serving sentences in provincial and territorial jails. These statistics, he argues, whereby the number of persons on remand often outnumber those serving provincial range sentences, require a broad and liberal approach to interpreting s. 525.

66. Such statistics must be approached with considerable caution, and a careful eye as to what, if anything, they actually demonstrate. As Trotter has observed, this ratio is "slightly distorted by virtue of the fact that these numbers do not include federal prisoners, who compromise part of the overall sentenced prison population."[73] Significantly, as Friedland has pointed out, the statistics gathered by Statistics Canada do not provide any breakdown of the

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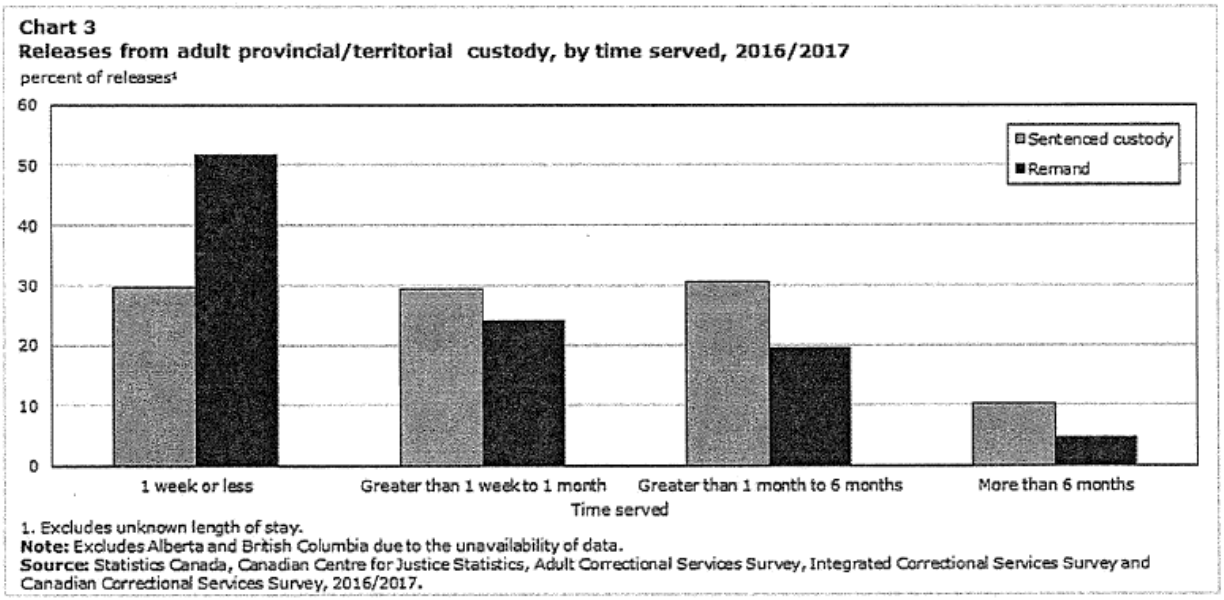
[71] Reasons for Judgment, paras. 20-27, Appellant's Record, pp. 23-27.
[72] Appellant's Factum, para. 53.
[73] Trotter, 3rd ed. at p. 1-44.

remand population into those persons who have pleaded or have been found guilty, and are awaiting sentencing. Rather, all prisoners are simply counted as part of the remand population until they are actually sentenced.[74] Thus the remand population statistics include an unknown number of persons who are **not** legally innocent.

67. Inasmuch as it may be of use to consider such statistics at all, the respondent submits that the more recent statistics gathered for 2016-2017 should be considered,[75] rather than figures from 2012-2013. Most relevant here is the statistical breakdown of the remand and sentenced populations by length of stay in jail. Notably, a very significant proportion of this swelling remand population actually experience very short stays in jail. As the most recent Juristat article reports, "in 2016/2017, just over half (52%) of adults released from remand were held for one week or less and around three-quarters (76%) were held for one month or less".[76] As the following chart reproduced below from Juristat as Figure 3[77] demonstrates, for lengthier custodial periods of time, the balance between remanded and sentenced prisoners is reversed with sentenced prisoners outnumbering remanded ones by a 2-to-1 ratio for time frames exceeding six months:



[74] "The *Bail Reform Act* Revisited" at 317 and footnote 11.
[75] "Adult and Youth Correctional Statistics in Canada, 2016/2017" (2018), 38:1 Juristat 1.
[76] "Adult and Youth Correctional Statistics in Canada, 2016/2017".
[77] "Adult and Youth Correctional Statistics in Canada, 2016/2017", see Table 3.

68. Thus the vast majority of the statistically surprising remand population are *not* languishing in custody on very lengthy remands, and therefore they would *not* benefit from any more liberal application of s. 525 as the appellant proposes.

Availability of programs for remand prisoners in British Columbia

69. On the issue of the broader context of pre-trial detention, one aspect of the appellant's pre-trial detention here is deserving of further comment. Notably, he was able to complete a number of post-secondary educational courses while incarcerated, specifically business management courses.[78] The respondent understands that programming – both occupational and rehabilitative – is frequently offered to and pursued by accused persons in remand centres throughout British Columbia.[79] There are several recent cases which show that remand prisoners have been able to take and complete numerous rehabilitative programs and courses in B.C.[80] The respondent further notes that in the recent *Russell* s. 525 case from Newfoundland, the accused was able to point to rehabilitative courses he had taken while in remand, in the course of submissions at his bail review.[81] These are developments which merit consideration in any discussion of the broader "backdrop" to pre-trial detention which may be relevant here.

Bill C-75 – a brief note regarding pending legislation

70. There is pending legislation before Parliament that would amend s. 525 if it becomes law. Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, received second reading in the House of Commons on May 24, 2018.[82] It is a very lengthy omnibus bill that would change many aspects of the criminal law, and has been referred to the House Standing Committee on Justice and Human Rights. However, this information is of no moment in interpreting s. 525 as it presently reads. As this Court stated in *United States of America v. Dynar*, subsequent legislative

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[78] Appellant's Record, pp. 59-60.

[79] British Columbia Ministry of Public Safety and Solicitor General, *A Profile of BC Corrections: Reduce Reoffending, Protect Communities, 2017* (Victoria, BC: British Columbia Ministry of Public Safety and Solicitor General, 2017) at pp. 27-31.

[80] See *R. v. E.R.E.P.*, 2016 BCPC 50 at para. 43; *R. v. Wilson*, 2016 BCSC 203 at para. 6; and *R. v. Brotherston*, 2017 BCPC 161 at para. 39.

[81] *Russell* at para. 39.

[82] *House of Commons Debates*, 42nd Parl., 1st Sess., No. 300 (May 24, 2018) at 19628-198631.

evolution "can cast no light on the intention of the enacting Parliament or Legislature".[83] At best, it may "reveal the interpretation that the present Parliament places upon the work of a predecessor", but "it is the judgment of the courts and not the lawmakers that matters."[84] This view is supported by s. 45(3) of the *Interpretation Act*, which states that, "[t]he repeal or amendment of an enactment in whole or in part shall not be deemed to be or to involve any declaration as to the previous state of the law."[85]

Disposition of this appeal

71. The matter is now moot. The respondent submits the appeal should be dismissed on the basis that the two-step approach is correct.

72. In response to the submissions provided by the appellant as to the proper disposition of this case should this Court hold that the one-step approach is correct, the following brief submissions are provided.

73. The appellant's continued detention was still warranted. Despite the unfortunate delays in the matter getting on for trial, the appellant remained a highly unsuitable candidate for bail on both the primary and secondary grounds. He had left Alberta for British Columbia in 2015 with outstanding charges of failing to attend court, among many others. At the time of the January 4, 2016 incident, the appellant was already on bail, he was also on probation, and he was also subject to a Canada-wide warrant for his arrest.

74. Although there were weaknesses in the Crown's case, the appellant was found in possession of six live .357 calibre cartridges, despite being subject to three different court-ordered prohibitions relating to firearms and ammunition. Although the complainant was no longer able to provide an account of the incident, it remained open to the Crown to seek the admission of his police statement through the principled exception to the hearsay rule. On balance, his continued detention was the appropriate disposition given the compelling concerns about his attending for trial and reoffending if released.

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[83] [1997] 2 S.C.R. 462 at para. 45.
[84] [1997] 2 S.C.R. 462 at para. 45.
[85] R.S.C. 1985, c. I-21.

PART IV – SUBMISSIONS CONCERNING COSTS

75. The respondent makes no submissions on costs.

PART V – ORDER SOUGHT

76. The respondent respectfully requests that the appeal be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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John R.W. Caldwell
Counsel for the Respondent

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Nicholas Reithmeier
Counsel for the Respondent

Vancouver, B.C.

August 31, 2018

PART VI: TABLE OF AUTHORITIES

AUTHORITIES	Para.(s)
Bell ExpressVu Limited Partnership v. Rex, 2002 SCC 42	52
Green v. Law Society of Manitoba, 2017 SCC 20, [2017] 1 S.C.R. 360	51
Neill v. Calgary Remand Centre (1990), 60 C.C.C. (3d) 26 (Alta. C.A.)	Footnote 38
Rizzo & Rizzo Shoes Ltd., [1998] 1 SCR 27	22
United States v. Dynar, [1997] 2 S.C.R. 462	70
R. v. Andreychuk, 2013 BCSC 1743	19
R. v. Antic, 2017 SCC 27	32
R. v. Brotherston, 2017 BCPC 161	Footnote 80
R. v. Burgar, 2003 BCCA 426	50
R. v. Cheeseman, 2017 NLTD(G) 114	19
R. v. Cody, 2017 SCC 31	62
R. v. Dass (1978), 39 C.C.C. (2d) 365 (Man. C.A.)	24
R. v. Davis, [1999] 3 SCR 759	26
R. v. E.R.E.P., 2016 BCPC 50	Footnote 80
R. v. Elmi, 2016 BCSC 376	19
R. v. Gill, [2005] O.J. No. 2648 (S.C.J.)	19
R. v. Jerace, 2012 BCSC 2007	7, 19, 64
R. v. Jordan, 2016 SCC 27	41, 55, 62
R. v. Kissoon, [2006] O.J. No. 4800 (S.C.J.)	19, 64
R. v. M.B.C., 2018 BCSC 359	38
R. v. Maheu (1997), 116 C.C.C. (3d) 361 (Que. C.A.)	58

LEGISLATION

Federal Interpretation Act, s. 45(3)	70

PART VII – STATUTORY PROVISIONS

Bill C-75, *An Act to amend the Criminal Code and the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, s. 237

237 (1) Subsection 525(1) of the Act is replaced by the following:	237 (1) **Le paragraphe 525(1) de la même loi est remplacé par ce qui suit :**
Time for application to judge	**Délai de présentation d'une demande à un juge**
525 (1) The person having the custody of an accused — who has been charged with an offence other than an offence listed in section 469, who is being detained in custody pending their trial for that offence and who is not required to be detained in custody in respect of any other matter — shall apply to a judge having jurisdiction in the place in which the accused is in custody to fix a date for a hearing to determine whether or not the accused should be released from custody, if the trial has not commenced within 90 days from	525 (1) La personne ayant la garde d'un prévenu qui a été inculpé d'une infraction autre qu'une infraction mentionnée à l'article 469, dont la détention sous garde n'est pas requise relativement à une autre affaire et qui est détenu sous garde en attendant son procès pour cette infraction doit, si le procès n'est pas commencé dans le délai ci-après, dès l'expiration de ce délai, demander à un juge ayant juridiction à l'endroit où le prévenu est sous garde de fixer une date pour une audition en vue de déterminer s'il devrait être mis en liberté ou non :
(a) the day on which the accused was taken before a justice under section 503; or	a) soit dans les quatre-vingt-dix jours à partir de la date où il a été conduit devant un juge de paix en vertu de l'article 503;
(b) in the case where an order that the accused be detained in custody has been made under section 521, paragraph 523.1(3)(b)(ii) or section 524, or a decision has been made with respect to a review under section 520, the later of the day on which the accused was taken into custody under that order and the day of the decision.	b) soit, lorsqu'une ordonnance enjoignant de le détenir sous garde a été rendue en vertu de l'article 521, du sous-alinéa 523.1(3)b)(ii) ou de l'article 524 ou qu'il a été statué sur la demande de révision visée à l'article 520, dans les quatre-vingt-dix jours à partir de la date de la mise sous garde ou, si elle est postérieure, la date de la décision.
The person shall make the application immediately after the expiry of those 90 days.	
Waiver of right to hearing	**Renonciation au droit à une audition**
(1.1) However, the person having the custody of the accused is not required to make the application if the accused has waived in writing their right to a hearing and the judge has received the waiver before the expiry of the 90-day period referred to in subsection (1).	(1.1) Toutefois, la personne ayant la garde du prévenu n'est pas tenue de présenter la demande si le prévenu a renoncé par écrit à son droit à une audition et si le juge a reçu la renonciation avant l'expiration des quatre-vingt- dix jours visés au paragraphe (1).

R.S., c. 27 (1st Supp.), s. 90(3); 1994, c. 44, s. 49

(2) **Subsections 525(3) to (9) of the Act are replaced by the following:**

Cancellation of hearing

(3) The judge may cancel the hearing if the judge receives the accused's waiver before the hearing.

Consideration of proceeding's progression

(4) On the hearing described in subsection (1), the judge shall consider whether the prosecutor or the accused has been responsible for any delay and, if the judge is concerned that the proceedings are progressing slowly and that an unreasonable delay may result, the judge may

(a) give directions for expediting the proceedings; or

(b) require a further hearing under this section within 90 days or any other period that the judge considers appropriate in the circumstances.

Release order

(5) If, following the hearing, the judge is not satisfied that the continued detention of the accused in custody is justified within the meaning of subsection 515(10), the judge shall make a release order referred to in section 515.

Provisions applicable to proceedings

(6) Sections 495.1, 512.3, 517 to 519 and 524 apply, with any modifications that the circumstances require, in respect of any proceedings under this section.

R.S., c. 27 (1st Supp.), s. 91

L.R., ch. 27 (1er suppl.), par. 90(3); 1994, ch. 44, art. 49

(2) **Les paragraphes 525(3) à (9) de la même loi sont remplacés par ce qui suit :**

Annulation de l'audition

(3) Le juge peut annuler l'audition s'il reçoit avant celleci la renonciation du prévenu.

Examen de la progression de l'affaire

(4) Lors de l'audition visée au paragraphe (1), le juge prend en considération le fait que le poursuivant ou le prévenu a été responsable ou non de tout délai et, s'il est préoccupé par la lenteur du déroulement de l'affaire et redoute que des délais déraisonnables pourraient en résulter, il peut, selon le cas :

a) donner des instructions pour hâter le déroulement de l'affaire;

b) exiger une nouvelle audition au titre du présent article dans un délai de quatre-vingt-dix jours ou dans tout autre délai qu'il estime indiqué dans les circonstances.

Ordonnance de mise en liberté

(5) Si, à la suite de l'audition, le juge n'est pas convaincu que la continuation de la détention du prévenu sous garde est justifiée aux termes du paragraphe 515(10), il rend l'ordonnance de mise en liberté visé à l'article 515.

Dispositions applicables aux procédures

(6) Les articles 495.1, 512.3, 517 à 519 et 524 s'appliquent, avec les adaptations nécessaires, relativement à toutes procédures engagées en vertu du présent article.

L.R., ch. 27 (1er suppl.), art. 91

***Criminal Code,* R.S.C. 1985, c. C-45**

Assaults

Uttering threats

264.1 (1) Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat

Voies de fait

Proférer des menaces

264.1 (1) Commet une infraction quiconque sciemment profère, transmet ou fait recevoir par une personne, de quelque façon, une

(a) to cause death or bodily harm to any person;
(b) to burn, destroy or damage real or personal property; or
(c) to kill, poison or injure an animal or bird that is the property of any person.
Punishment
(2) Every one who commits an offence under paragraph
(1)(a) is guilty of
(a) an indictable offence and liable to imprisonment for a term not exceeding five years; or
(b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

R.S., 1985, c. 27 (1st Supp.), s. 38; 1994, c. 44, s. 16.

menace :
a) de causer la mort ou des lésions corporelles à quelqu'un;
b) de brûler, détruire ou endommager des biens meubles ou immeubles;
c) de tuer, empoisonner ou blesser un animal ou un oiseau qui est la propriété de quelqu'un.
Peine
(2) Quiconque commet une infraction prévue à l'alinéa
(1)a) est coupable :
a) soit d'un acte criminel et passible d'un emprisonnement maximal de cinq ans;

b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois.
L.R. (1985), ch. 27 (1er suppl.), art. 38; 1994, ch. 44, art. 16.

Assault with a weapon or causing bodily harm

267 Every one who, in committing an assault,
(a) carries, uses or threatens to use a weapon or an imitation thereof, or
(b) causes bodily harm to the complainant,
is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

R.S., 1985, c. C-46, s. 267; 1994, c. 44, s. 17.

Agression armée ou infliction de lésions corporelles

267 Est coupable soit d'un acte criminel et passible d'un emprisonnement maximal de dix ans, soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois quiconque, en se livrant à des voies de fait, selon le cas :
a) porte, utilise ou menace d'utiliser une arme ou une imitation d'arme;
b) inflige des lésions corporelles au plaignant.

L.R. (1985), ch. C-46, art. 267; 1994, ch. 44, art. 17.

Sexual assault

271 Everyone who commits a sexual assault is guilty of
(a) an indictable offence and is liable to imprisonment for a term of not more than 10 years or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or

Agression sexuelle

271 Quiconque commet une agression sexuelle est coupable :
a) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans ou, si le plaignant est âgé de moins de seize ans, d'un emprisonnement maximal de quatorze ans, la peine minimale étant de un an;

(b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.

R.S., 1985, c. C-46, s. 271; R.S., 1985, c. 19 (3rd Supp.), s. 10; 1994, c. 44, s. 19; 2012, c. 1, s. 25; 2015, c. 23, s. 14.

Kidnapping, Trafficking in Persons, Hostage Taking and Abduction

Forcible confinement

279(2) Every one who, without lawful authority, confines, imprisons or forcibly seizes another person is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

R.S., 1985, c. C-46, s. 279; R.S., 1985, c. 27 (1st Supp.), s. 39; 1995, c. 39, s. 147; 1997, c. 18, s. 14; 2008, c. 6, s. 30; 2009, c. 22, s. 12; 2013, c. 32, s. 1.

Justification for detention in custody

515 (10) For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds:

(a) where the detention is necessary to ensure his or her attendance in court in order to be dealt with according to law;

(b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, or any person under the age of 18 years, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; and

b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois ou, si le plaignant est âgé de moins de seize ans, d'un emprisonnement maximal de deux ans moins un jour, la peine minimale étant de six mois.

L.R. (1985), ch. C-46, art. 271; L.R. (1985), ch. 19 (3e suppl.), art. 10; 1994, ch. 44, art. 19; 2012, ch. 1, art. 25; 2015, ch. 23, art. 14.

Enlèvement, traite des personnes, prise d'otage et rapt

Séquestration

279 (2) Quiconque, sans autorisation légitime, séquestre, emprisonne ou saisit de force une autre personne est coupable :

a) soit d'un acte criminel et passible d'un emprisonnement maximal de dix ans;

b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois.

L.R. (1985), ch. C-46, art. 279; L.R. (1985), ch. 27 (1er suppl.), art. 39; 1995, ch. 39, art. 147; 1997, ch. 18, art. 14; 2008, ch. 6, art. 30; 2009, ch. 22, art. 12; 2013, ch. 32, art. 1.

Motifs justifiant la détention

515 (10) Pour l'application du présent article, la detention d'un prévenu sous garde n'est justifiée que dans l'un des cas suivants :

a) sa détention est nécessaire pour assurer sa presence au tribunal afin qu'il soit traité selon la loi;

b) sa détention est nécessaire pour la protection ou la sécurité du public, notamment celle des victimes et des témoins de l'infraction ou celle des personnes âgées de moins de dix-huit ans, eu égard aux circonstances, y compris toute probabilité marquée que le prévenu, s'il est mis en liberté, commettra une infraction criminelle ou nuira à l'administration de la justice;

(c) if the detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including
(i) the apparent strength of the prosecution's case,
(ii) the gravity of the offence,
(iii) the circumstances surrounding the commission of the offence, including whether a firearm was used, and
(iv) the fact that the accused is liable, on conviction, for a potentially lengthy term of imprisonment or, in the case of an offence that involves, or whose subject-matter is, a firearm, a minimum punishment of imprisonment for a term of three years or more.

R.S., 1985, c. C-46, s. 515; R.S., 1985, c. 27 (1st Supp.), ss. 83, 186; 1991, c. 40, s. 31; 1993, c. 45, s. 8; 1994, c. 44, s. 44; 1995, c. 39, s. 153; 1996, c. 19, ss. 71, 93.3; 1997, c. 18, s. 59, c. 23, s. 16; 1999, c. 5, s. 21, c. 25, s. 8(Preamble); 2001, c. 32, s. 37, c. 41, ss. 19, 133; 2008, c. 6, s. 37; 2009, c. 22, s. 17, c. 29, s. 2; 2010, c. 20, s. 1; 2012, c. 1, s. 32; 2014, c. 17, s. 14; 2015, c. 13, s. 20.

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

c) sa détention est nécessaire pour ne pas miner la confiance du public envers l'administration de la justice, compte tenu de toutes les circonstances, notamment les suivantes :
(i) le fait que l'accusation paraît fondée,

(ii) la gravité de l'infraction,
(iii) les circonstances entourant sa perpétration, y compris l'usage d'une arme à feu,

(iv) le fait que le prévenu encourt, en cas de condamnation, une longue peine d'emprisonnement ou, s'agissant d'une infraction mettant en jeu une arme à feu, une peine minimale d'emprisonnement d'au moins trois ans.

L.R. (1985), ch. C-46, art. 515; L.R. (1985), ch. 27 (1er suppl.), art. 83 et 186; 1991, ch. 40, art. 31; 1993, ch. 45, art. 8; 1994, ch. 44, art. 44; 1995, ch. 39, art. 153; 1996, ch. 19, art. 71 et 93.3; 1997, ch. 18, art. 59, ch. 23, art. 16; 1999, ch. 5, art. 21, ch. 25, art. 8(preambule); 2001, ch. 32, art. 37, ch. 41, art. 19 et 133; 2008, ch. 6, art. 37; 2009, ch. 22, art. 17, ch. 29, art. 2; 2010, ch. 20, art. 1; 2012, ch. 1, art. 32; 2014, ch. 17, art. 14; 2015, ch. 13, art. 20.

Révision de l'ordonnance du juge
520 (1) Le prévenu peut, en tout temps avant son procès sur l'inculpation, demander à un juge de réviser l'ordonnance rendue par un juge de paix ou un juge de la Cour de justice du Nunavut conformément aux paragraphes 515(2), (5), (6), (7), (8) ou (12), ou rendue ou annulée en vertu de l'alinéa 523(2)b).
Avis au poursuivant
(2) Une demande en vertu du présent article ne peut, sauf si le poursuivant y consent, être entendue par un juge, à moins que le prévenu n'ait donné par écrit au poursuivant un préavis de la demande de deux jours francs au moins.
Le prévenu doit être présent
(3) Si le juge l'ordonne ou si le poursuivant, le prévenu ou son avocat le demande, le prévenu doit être présent à l'audition d'une demande en vertu du présent article et, lorsque le prévenu

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

est sous garde, le juge peut ordonner, par écrit, à la personne ayant la garde du prévenu, de l'amener devant le tribunal.

Ajournement des procédures

(4) Un juge peut, avant le début de l'audition d'une demande en vertu du présent article ou à tout moment au cours de cette audition, ajourner les procédures sur demande du poursuivant ou du prévenu, mais si le prévenu est sous garde, un tel ajournement ne peut jamais être de plus de trois jours francs sauf avec le consentement du prévenu.

Absence du prévenu à l'audition

(5) Lorsqu'un prévenu, autre qu'un prévenu qui est sous garde, a reçu d'un juge l'ordre d'être présent à l'audition d'une demande en vertu du présent article et n'est pas présent à l'audition, le juge peut décerner un mandate pour l'arrestation du prévenu.

Exécution

(6) Un mandat décerné en vertu du paragraphe (5) peut être exécuté n'importe où au Canada.

Preuve et pouvoirs du juge lors de l'examen

(7) Lors de l'audition d'une demande en vertu du present article, le juge peut examiner :

a) la transcription, s'il en est, des procédures entendues par le juge de paix et par un juge qui a déjà révisé l'ordonnance rendue par le juge de paix;

b) les pièces, s'il en est, déposées au cours des procedures devant le juge de paix;

c) les autres preuves ou pièces que le prévenu ou le poursuivant peuvent présenter, et il doit :

d) soit rejeter la demande;

e) soit, si le prévenu fait valoir des motifs justifiant de le faire, accueillir la demande, annuler l'ordonnance antérieurement rendue par le juge de paix et render toute autre ordonnance prévue à l'article 515, qu'il estime justifiée.

Limitation des demandes subséquentes

(8) Lorsqu'une demande en vertu du présent article ou de l'article 521 a été entendue, il ne peut être fait de nouvelle demande ou d'autre demande en vertu du present article ou de

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.

Order vacating previous order for release or detention
523 (2) Despite subsections (1) to (1.2),
(a) the court, judge or justice before which or whom an accused is being tried, at any time,

(b) the justice, on completion of the preliminary inquiry in relation to an offence for which an accused is ordered to stand trial, other than an offence listed in section 469, or
(c) with the consent of the prosecutor and the accused or, where the accused or the prosecutor applies to vacate an order that would otherwise apply pursuant to subsection (1.1), without such consent, at any time:

(i) where the accused is charged with an offence other than an offence listed in section 469, the justice by whom an order was made under this Part or any other justice,

(ii) where the accused is charged with an offence listed in section 469, a judge of or a judge presiding in a superior court of criminal jurisdiction for the province, or
(iii) the court, judge or justice before which or whom an accused is to be tried, may, on cause being shown, vacate any order previously made under this Part for the interim release or detention of the accused and make any other order provided for in this Part for the detention or release of the accused until his trial is

l'article 521 relativement au même prévenu, sauf avec l'autorisation d'un juge, avant l'expiration d'un délai de trente jours à partir de la date de la décision du juge qui a entendu la demande précédente.

Application des art. 517, 518 et 519
(9) Les articles 517, 518 et 519 s'appliquent, compte tenu des adaptations de circonstance, à l'égard d'une demande en vertu du présent article.

L.R. (1985), ch. C-46, art. 520; L.R. (1985), ch. 27 (1er suppl.), art. 86; 1994, ch. 44, art. 46; 1999, ch. 3, art. 31.

Ordonnance annulant une ordonnance de mise en liberté ou de detention
523 (2) Malgré les paragraphes (1) à (1.2) :
a) le tribunal, le juge ou le juge de paix devant qui un prévenu subit son procès, à tout moment;
b) le juge de paix, à la fin de l'enquête préliminaire sur toute infraction, non mentionnée à l'article 469, pour laquelle un prévenu est envoyé à son procès;
c) avec le consentement du poursuivant et du prévenu, ou sans ce consentement, lorsque le poursuivant ou le prévenu demande l'annulation d'une ordonnance qui autrement s'appliquerait à une nouvelle dénonciation aux termes du paragraphe (1.1), à tout moment :
(i) lorsque le prévenu est inculpé d'une infraction, autre qu'une infraction mentionnée à l'article 469, le juge de paix qui a rendu une ordonnance en vertu de la présente partie ou tout autre juge de paix,
(ii) lorsque le prévenu est inculpé d'une infraction mentionnée à l'article 469, tout juge d'une cour supérieure de juridiction criminelle de la province, ou tout juge présidant celle-ci,
(iii) le tribunal, le juge ou le juge de paix devant qui un prévenu doit subir son procès, peut, sur présentation de motifs justificatifs, annuler toute ordonnance de mise en liberté ou de detention provisoire du prévenu rendue antérieurement en vertu de la présente partie et rendre toute autre ordonnance prévue par la

completed that the court, judge or justice considers to be warranted.

R.S., 1985, c. C-46, s. 523; R.S., 1985, c. 27 (1st Supp.), s. 89; 2011, c. 16, s. 2.

Review of Detention where Trial Delayed

Time for application to judge

525 (1) Where an accused who has been charged with an offence other than an offence listed in section 469 and who is not required to be detained in custody in respect of any other matter is being detained in custody pending his trial for that offence and the trial has not commenced

(a) in the case of an indictable offence, within ninety days from

(i) the day on which the accused was taken before a justice under section 503, or

(ii) where an order that the accused be detained in custody has been made under section 521 or 524, or a decision has been made with respect to a review under section 520, the later of the day on which the accused was taken into custody under that order and the day of the decision, or

(b) in the case of an offence for which the accused is being prosecuted in proceedings by way of summary conviction, within thirty days from

(i) the day on which the accused was taken before a justice under subsection 503(1), or

(ii) where an order that the accused be detained in custody has been made under section 521 or 524, or a decision has been made with respect to a review under section 520, the later of the day on which the accused was taken into custody under that order and the day of the decision, the person having the custody of the accused shall, forthwith on the expiration of

présente partie que le tribunal, le juge ou le juge de paix estime justifiée, relativement à la mise en liberté ou à la détention du prévenu jusqu'à la fin de son procès.

L.R. (1985), ch. C-46, art. 523; L.R. (1985), ch. 27 (1er suppl.), art. 89; 2011, ch. 16, art. 2.

Examen de la détention quand le procès est retardé

Délai de présentation d'une demande à un juge

525 (1) Lorsqu'un prévenu qui a été inculpé d'une infraction autre qu'une infraction mentionnée à l'article 469 et dont la détention sous garde n'est pas requise relativement à une autre affaire est détenu sous garde en attendant son procès pour cette infraction et que le procès n'est pas commencé :

a) dans le cas d'un acte criminel, dans les quatrevingt-dix jours :

(i) à partir du jour où le prévenu a été conduit devant un juge de paix en vertu de l'article 503,

(ii) lorsqu'une ordonnance enjoignant de détenir le prévenu sous garde a été rendue en vertu des articles 521 ou 524 ou qu'il a été statué sur la demande de révision visée à l'article 520, à partir de la date de mise sous garde ou, si elle est postérieure, de celle de la décision;

b) dans le cas d'une infraction pour laquelle le prévenu est poursuivi par procédure sommaire, dans les trente jours :

(i) à partir du jour où le prévenu a été conduit devant un juge de paix en vertu du paragraphe 503(1),

(ii) lorsqu'une ordonnance enjoignant de détenir le prévenu sous garde a été rendue en vertu des articles 521 ou 524 ou qu'il a été statué sur la demande de révision visée à l'article 520, à partir de la date de mise sous garde ou, si elle est postérieure, de celle de la décision, la personne ayant la garde du prévenu doit, dès l'expiration de ces quatre-vingt-dix

those ninety or thirty days, as the case may be, apply to a judge having jurisdiction in the place in which the accused is in custody to fix a date for a hearing to determine whether or not the accused should be released from custody.

Notice of hearing

(2) On receiving an application under subsection (1), the judge shall

(a) fix a date for the hearing described in subsection

(1) to be held in the jurisdiction

(i) where the accused is in custody, or

(ii) where the trial is to take place; and

(b) direct that notice of the hearing be given to such persons, including the prosecutor and the accused, and in such manner as the judge may specify.

Matters to be considered on hearing

(3) On the hearing described in subsection (1), the judge may, in deciding whether or not the accused should be released from custody, take into consideration whether the prosecutor or the accused has been responsible for any unreasonable delay in the trial of the charge.

Order

(4) If, following the hearing described in subsection (1), the judge is not satisfied that the continued detention of the accused in custody is justified within the meaning of subsection 515(10), the judge shall order that the accused be released from custody pending the trial of the charge on his giving an undertaking or entering into a recognizance described in any of paragraphs 515(2)(a) to (e) with such conditions described in subsection 515(4) as the judge considers desirable.

Warrant of judge for arrest

(5) Where a judge having jurisdiction in the province where an order under subsection (4) for the release of an accused has been made is satisfied that there are reasonable grounds to believe that the accused

(a) has contravened or is about to contravene

jours ou trente jours, selon le cas, demander à un juge ayant juridiction à l'endroit où le prévenu est sous garde de fixer une date pour une audition aux fins de déterminer si le prévenu devrait être mis en liberté ou non.

Avis d'audition

(2) Sur réception d'une demande en vertu du paragraphe (1), le juge doit :

a) fixer une date pour l'audition visée au paragraphe

(1), qui aura lieu dans la juridiction, selon le cas :

(i) où le prévenu est gardé sous garde,

(ii) où le procès doit avoir lieu;

b) ordonner qu'avis de l'audition soit donné à tells personnes, y compris le poursuivant et le prévenu, et de telle manière que le juge peut préciser.

Questions à examiner lors de l'audition

(3) Lors de l'audition visée au paragraphe (1), le juge peut, pour décider si le prévenu devrait être mis en liberté ou non, prendre en considération le fait que le poursuivant ou le prévenu a été responsable ou non de tout délai anormal dans le procès sur l'inculpation.

Ordonnance

(4) Si, à la suite de l'audition visée au paragraphe (1), le juge n'est pas convaincu que la continuation de la detention du prévenu sous garde est justifiée au sens du paragraphe 515(10), il ordonne que le prévenu soit mis en liberté en attendant le procès sur l'inculpation pourvu qu'il remette une promesse ou contracte un engagement vises aux alinéas 515(2)a) à e) et assortis des conditions que prévoit le paragraphe 515(4) et que le juge estime souhaitables.

Mandat d'arrestation décerné par un juge

(5) Lorsqu'un juge ayant juridiction dans la province où a été rendue une ordonnance de mise en liberté d'un prévenu prévue par le paragraphe (4) est convaincu qu'il y a des motifs raisonnables de croire que le prévenu, selon le cas :

a) a violé ou est sur le point de violer la

the undertaking or recognizance on which he has been released, or
(b) has, after his release from custody on his undertaking or recognizance, committed an indictable offence, he may issue a warrant for the arrest of the accused.

Arrest without warrant by peace officer

(6) Notwithstanding anything in this Act, a peace officer who believes on reasonable grounds that an accused who has been released from custody under subsection (4)

(a) has contravened or is about to contravene the undertaking or recognizance on which he has been released, or
(b) has, after his release from custody on his undertaking or recognizance, committed an indictable offence, may arrest the accused without warrant and take him or cause him to be taken before a judge having jurisdiction in the province where the order for his release was made.

Hearing and order

(7) A judge before whom an accused is taken pursuant to a warrant issued under subsection (5) or pursuant to subsection (6) may, where the accused shows cause why his detention in custody is not justified within the meaning of subsection 515(10), order that the accused be released on his giving an undertaking or entering into a recognizance described in any of paragraphs 515(2)(a) to (e) with such conditions, described in subsection 515(4), as the judge considers desirable.

Provisions applicable to proceedings

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

Directions for expediting trial

(9) Where an accused is before a judge under any of the provisions of this section, the judge may give directions for expediting the trial of the accused.

R.S., 1985, c. C-46, s. 525; R.S., 1985, c. 27 (1st

promesse ou l'engagement en raison duquel ou de laquelle il a été mis en liberté;
b) a, après sa mise en liberté sur sa promesse ou son engagement, commis un acte criminel, il peut décerner un mandat pour l'arrestation du prévenu.

Arrestation sans mandat par un agent de la paix

(6) Nonobstant toute autre disposition de la présente loi, un agent de la paix qui a des motifs raisonnables de croire qu'un prévenu qui a été mis en liberté en vertu du paragraphe (4) :
a) soit a violé ou est sur le point de violer la promesse ou l'engagement en raison duquel ou de laquelle il a été mis en liberté;
b) soit, après sa mise en liberté sur sa promesse ou son engagement, a commis un acte criminel, peut arrêter le prévenu sans mandat et le conduire ou le faire conduire devant un juge ayant juridiction dans la province où a été rendue l'ordonnance de mise en liberté du prévenu.

Audition et ordonnance

(7) Un juge devant lequel un prévenu est conduit en application d'un mandat décerné en vertu du paragraphe (5) ou en application du paragraphe (6) peut, lorsque le prévenu fait valoir que sa détention sous garde n'est pas justifiée au sens du paragraphe 515(10), ordonner sa mise en liberté sur remise de la promesse ou de l'engagement visés à l'un des alinéas 515(2)a) à e) et assortis des conditions visées au paragraphe 515(4) qu'il estime souhaitables.

Dispositions applicables aux procédures

(8) Les articles 517, 518 et 519 s'appliquent, compte tenu des adaptations de circonstance, relativement à toutes procédures engagées en vertu du présent article.

Instructions visant à hâter le procès

(9) Lorsqu'un prévenu se trouve devant un juge en vertu d'une disposition du présent article, le juge peut donner des instructions pour hâter le déroulement du procès du prévenu.

L.R. (1985), ch. C-46, art. 525; L.R. (1985), ch. 27

Supp.), s. 90; 1994, c. 44, s. 49; 1997, c. 18, s. 61.

(1er suppl.), art. 90; 1994, ch. 44, art. 49; 1997, ch. 18, art. 61.

***Federal Interpretation Act*, RSC 1985, c I-21, s. 45**

45(3) Repeal does not declare previous law

(3) The repeal or amendment of an enactment in whole or in part shall not be deemed to be or to involve any declaration as to the previous state of the law.
R.S., c. I-23, s. 37.

Absence de déclaration sur l'état antérieur du droit
(3) L'abrogation ou la modification, en tout ou en partie, d'un texte ne constitue pas ni n'implique une déclaration sur l'état antérieur du droit.
S.R., ch. I-23, art. 37.