SCC File No.: 37869

IN THE SUPREME COURT OF CANADA
(On Appeal from the Supreme Court of British Columbia)

BETWEEN:

COREY LEE JAMES MYERS

APPLICANT
(RESPONDENT)

AND:

HER MAJESTY THE QUEEN

RESPONDENT
(APPLICANT)

RESPONSE TO APPLICATION FOR LEAVE TO APPEAL

(Pursuant to Rule 27 of *The Rules of the Supreme Court of Canada*)

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PART I – OVERVIEW AND STATEMENT OF FACTS

Overview

1. On October 5, 2017, Mr. Justice Riley of the British Columbia Supreme Court dismissed the review pursuant to s. 525 of the *Criminal Code* of the applicant's detention in custody pending his trial. As the *Code* provides no route to a provincial court of appeal in respect of a s. 525 bail review decision, the applicant resorts to s. 40(1) of the *Supreme Court Act*. The proposed appeal would be the first time this Court has addressed the issue in question.

2. This Court has recently twice taken up this opportunity in respect of matters pertaining to pre-trial bail. The first in ***R. v. St-Cloud***, 2015 SCC 27, [2015] 2 S.C.R. 328, in respect of the scope of bail reviews pursuant to ss. 520 and 521; the second in ***R. v. Antic***, 2017 SCC 27, [2017] 1 S.C.R. 509, in respect of the ladder approach to judicial interim release generally and the application of s. 515(2)(e) specifically.

3. The applicant contends that, if leave is granted, the proposed appeal "presents this Court with an opportunity to provide much needed clarification concerning the test to be applied on a bail review" conducted pursuant to s. 525 of the *Criminal Code*. (Applicant's leave materials ("ALM"), Tab C, p. 1, para. 1). However, whether leave to appeal should be granted in this particular case ought to be informed not only by the importance of the issue in question and the need for appellate guidance in the face of competing or conflicting lines of authority in the B.C. Supreme Court in particular. It ought to also be informed by additional considerations set out immediately below.

4. There is a question about what the applicant specifically is seeking leave to appeal – the October 5, 2017 decision to confirm the detention order or Riley J's earlier decision dated September 27, 2017 (ALM, Tab 1) addressing the conflicting authorities with respect to the analytical approach to s. 525 bail reviews, the specific issue in respect of which the applicant says this Court's guidance is needed. If the latter, the present application for leave to appeal arguably was filed out of time. The applicant has not applied for the requisite extension of time application.

5. Further, the respondent has appended to this memorandum of argument material which irrefutably establishes that this leave application (and proposed appeal) will be rendered moot soon after the date on which this response is filed, and most certainly well before this leave application is likely to be resolved. The resultant absence of a "live controversy" between the parties militates against the granting of leave.

6. Finally, on the merits of the application for leave to appeal itself, the applicant's assertion about the need to clarify the conflicting interpretations of s. 525 must take into account the impact of, and be informed by, this Court's decision in ***St-Cloud***. The *de novo* show cause hearing inherent to the one-step approach the applicant favours is fundamentally at odds with the more circumscribed nature of bail reviews as discussed in ***St-Cloud***.

Statement of Facts and the Course of the Proceedings

7. The applicant faces serious charges arising on January 4, 2016. On that date, he was an occupant of a vehicle from which shots were fired at a pursuing civilian witness during a protracted high speed car chase which only ended when the car containing the applicant lost control and crashed. Also in the car were the applicant's two co-accused, one of whom was the car's registered owner and driver. The Crown's theory is that the non-driving co-accused and the applicant both possessed and fired handguns at their pursuer. Some shots struck the exterior of the witness's truck. At least one penetrated its passenger compartment. Both handguns were recovered: one in the possession of the co-accused at the scene of their arrest; the other, believed to be associated with the applicant due to his possession of ammunition suitable for it, was later found at the roadside at a location consistent with it having been discarded during the chase.

8. The charges the applicant faces are in pairs, one per handgun. They are two counts of intentionally discharging a restricted or prohibited firearm (s. 244.2(1)(a)); two counts of discharging a restricted or prohibited firearm with intent to wound, etc. (s. 244(1)); two counts of being an occupant of a motor vehicle knowing there was a firearm in the vehicle (s. 94(1)); two counts of assault with a weapon (s. 267(a)); and

two counts of unlawful possession of a firearm (s. 92(1)). The applicant faced a further pair of charges on separate informations alleging that he possessed a restricted or prohibited weapon while bound by a court order prohibiting him from doing so (s. 117.01(1).

9. Despite being arrested on January 4, 2016, the applicant did not seek a show cause hearing until November 9, 2016. This initial bail hearing took place in Provincial Court before Sudeyko PCJ. Pursuant to s. 515(6)(vii) and (viii), the applicant faced a reverse onus situation. (Respondent's leave material ("RLM"), pp. 29-66 – transcript of show cause hearing) The judge gave his decision the following day, November 10, 2016. He found that the charges were "very serious with very aggravated circumstances" and the Crown's case was "relatively strong" (RLM, p. 75). He ordered that the applicant be detained pending his trial on the secondary ground, s. 515(10)(b). His Honour held that the applicant's detention was necessary for the protection or safety of the public "having regard to all the circumstances including any substantial likelihood that the [applicant] will, if released from custody, commit a criminal offence."

10. Reliance upon the secondary ground is not surprising given the applicant's criminal history. Judge Sudeyko set forth this history in his reasons dated November 10, 2016 (RLM, pp. 75-76). Past criminal convictions of particular note include a prior assault causing bodily harm conviction in 2009 and a 2013 conviction for unlawful possession of a firearm. This conviction resulted in him being prohibited from possessing firearms for ten years.

11. As a result of inconsistent elections as to the mode of trial, pursuant to the combined operation of ss. 567 and 565(1)(b) of the *Code*, the applicant and his co-accused were deemed to have elected to be tried by a judge and jury in B.C. Supreme Court. A preliminary hearing was held before Sudeyko PCJ in November 2016. At its conclusion on November 24th, counsel for the applicant sought to have the applicant's bail status reviewed pursuant to s. 523(2). Judge Sudeyko declined to alter the detention order. (RLM, p. 82)

12. The applicant has appended an affidavit of counsel's articled student, Mr. Williams as well as a chronology of relevant occurrences in respect of the course of proceedings in this matter at ALM, Tab D3 and Tab D4 respectively. The respondent notes the following:

a. With respect to the chronology, it would appear the applicant has never proceeded with a s. 520 review of his detention order;

b. Specifically, following his unsuccessful application for severance on February 16, 2017, the applicant never sought to review his bail status until the subject s. 525 review which commenced five months later on July 21, 2017;

c. Inconsistent with paragraph 10(l) of Mr. Williams' affidavit, the chronology's notation for the February 2017 severance application[1] makes no reference to a s. 520 bail review also being set for hearing on the same date. It is counsel's understanding that, although listed for hearing together with the severance application, the bail review was simply struck off the list;

d. The applicant's trial is set for March of 2018. If it were to proceed and conclude as scheduled, the total period of time separating the swearing of the first information soon after the applicant's arrest and the conclusion of the trial will be less than 27 months.

PART II – RESPONDENT'S POSITION ON QUESTION IN ISSUE

13. The October 5, 2017 decision of Riley J to confirm the applicant's pre-trial detention in isolation does not give rise to an issue of law of national or public importance and leave to appeal that decision ought not to be granted. Neither should leave to appeal be granted in respect of the broader issue arising from the September 27, 2017 decision of Riley J in the particular circumstances of this case.

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[1] The affidavit states the bail review was heard and dismissed on Feb. 3/17 whereas the chronology states this occurred on Feb. 16/17.

PART III – ARGUMENT

A Does the Applicant Require an Extension of Time?

14. The notice of application for leave to appeal (ALM, Tab A) states that the judgment of Riley J which is the subject of this leave application is the October 5, 2017 decision dismissing the s. 525 bail review and confirming the applicant's pre-trial detention. Yet, on reading the leave material, it is apparent that the applicant seeks leave to appeal the earlier decision of Riley J rendered on September 27, 2017 setting out the analytical approach to s. 525 reviews. It is in respect of this issue that he seeks this Court's guidance. It is this decision, and not the October 5, 2017 decision, that is included in the applicant's materials.

15. More than 60 days following the September 27th judgment elapsed before the applicant filed his leave application. The applicant has not filed an application for an extension of time.

B Applicable Principles of Statutory Interpretation

16. The applicant contends that a plain meaning of s. 525 supports the one step approach. The respondent takes the applicant to mean that the provision is not ambiguous in and of itself. Yet, the applicant also purports to rely on *Charter* values in support of the one step approach. This approach, as a matter of statutory interpretation, is inconsistent with this Court's decision in ***Bell Express Vu***, 2002 SCC 42, [2002] 2 S.C.R. 559. Resort to Charter values as an interpretive aid is only had when the provision in question is itself ambiguous. It is insufficient to rely upon differences in judicial interpretations of a provision to establish the requisite ambiguity. The applicant's reliance upon the *Charter* as an interpretive aid in respect of s. 525 must be read with this limitation in mind.

C The "Unsettled" State of the Law

17. The respondent acknowledges that superior courts, particularly the B. C.

Supreme Court, have approached s. 525 bail reviews in two different ways.[2] The first is the "one step" approach[3], favoured by the applicant. Pursuant to this approach, the detained accused is granted a bail hearing *de novo* at which the criteria set forth in s. 515(10) of the *Code* is considered afresh. Pursuant to s. 525(3), the judge conducting the hearing may "take into consideration whether the prosecutor or the accused has been responsible for any unreasonable delay in the trial of the charge".

18. Pursuant to the "two-step" approach[4], a threshold requirement is the existence of an unreasonable delay before trial which cannot be ameliorated by judicial directions for expediting the trial made pursuant to s. 525(9). Only if this threshold is surpassed does the detention review take place. Unlike the "one-step" approach, this review is not open-ended but is a circumscribed inquiry. The detained accused must show that the justice who made the detention order under review either erred in law or in principle or made a decision that is manifestly wrong or that the has been a material and relevant change in circumstances.

19. In ***St-Cloud***, this Court held that bail reviews conducted pursuant to ss. 520 and 521 do not provide for a *de novo* hearing (at paras. 91-95, 118-119). The power of a judge to review a bail decision "is not open ended" and the exercise of this power

> is only appropriate in three situations: (1) where there is admissible new evidence; (2) where the impugned decision contains an error of law; or (3) where the decision is clearly inappropriate. In the last of these situations, a reviewing judge cannot simply substitute his or her own assessment of the evidence for that of the justice who rendered the impugned decision. It is only if the justice gave excessive weight to one relevant factor or insufficient weight to another that the reviewing judge can intervene. (para. 6)

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[2] For the purposes of this response, the respondent proposes to confine its consideration of the divergent approaches to BC cases.

[3] Most often cited case representative of this approach is *R. v. Sarkozi*, 2010 BCSC 1410 *per* Gaul J.

[4] Most often cited case representative of this approach is *R. v. Jerace*, 2012 BCSC 2007 *per* Bernard J.

20. Somewhat inconsistently, given his stated preference for the "widest discretion possible" (ALM, Tab C, para. 89) the applicant contends that Parliament intended to give judges conducting a s. 525 review, the applicant acknowledges that "accused persons are still required to demonstrate reasons for their release, and those reasons will likely have to be different than at the original bail hearing in order for the review hearing to be decided differently". (ALM, Tab C, at para. 91) His leave materials contain no indication of what those "different reasons" might be.

21. Manifestly, the nature of the review contemplated by the two-step approach is consistent with ***St-Cloud***. While Wagner J (as he then was) did not specifically consider s. 525 bail reviews, his description of the circumscribed inquiry is consonant with that conducted under the "two-step" approach. It is of note that of the 15 cases adopting the "one-step" approach listed in the applicant's Appendix A, only two were rendered in 2015: ***R. v. Haleta***, 2015 BCSC 850 and ***R. v. Goudreau***, 2015 BCSC 1227. The dates of those decisions are May 19, 2015 and June 25, 2015 respectively. Neither decision considers the effect of ***St-Cloud*** decided on May 15, 2015.

22. A decision that squarely addressed the conflicting approaches and the effect of ***St-Cloud*** is ***R. v. Whiteside***, 2016 BCSC 131.[5] Gropper J opted to follow the "two-step" approach. She was guided in this determination by ***St-Cloud***:

> [9] In my view, the disparate approaches of this court are now settled by the ***St-Cloud*** decision that emphasizes that a review under s. 520 or 521 is not open-ended and is appropriate only when there is admissible new evidence, where the impugned decision contains an error of law, or where the decision is clearly inappropriate, referring to para. 6.

After quoting paras. 120 and 121 from ***St-Cloud***, Gropper J continues:

> [12] While I acknowledge that ***St-Cloud*** does not address s. 525 specifically, if ss. 520 and 521 require the accused to meet certain preconditions, how is it that a 90-day review of detention where the trial is delayed mandates a hearing *de novo*? That, in my view, is illogical.

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[5] R. v. Kevin Junior Whiteside, SCC no. 37152: "Motion to Continue and to Appoint *Amicus Curiae*" dismissed *per* Coté J, September 26, 2016.

> [13] For this reason, I am convinced that the ***Jerace*** approach is the appropriate approach. It is the length of the delay to bring the accused to trial that may overtake previous judicial findings that support the necessity for the accused's detention.

23. This analysis is apposite notwithstanding that ss. 520 and 521 are bail review provisions and s. 525 is a detention review provision. That ***St-Cloud*** informs the nature or scope of the review as determined by Gropper J is also the view of Riley J in the instant case. (ALM, Tab B1, paras. 17 -19, 22, 23(b))

24. In ***R. v. Elmi***, 2016 BCSC 376, Cullen ACJ found in respect of the divergent approaches that "[t]he quantitative weight of authority in this court favours the two-step approach". (para. 5) In addition, the more recent decisions of the BCSC similarly favour the two step approach.[6]

25. The more recent prevalence of the two-step approach is further indicated by two decisions of Weatherill J. In the earlier decision, ***R. v. Quinn***, 2014 BCSC 2529 (December 2014), he adopted the one-step approach. Subsequently, in ***R. v. Wheeler***, 2015 BCSC 848 (April 2015), he found "that the preferred interpretation of s. 525 requires a two-step process with the threshold step being whether there has been an unreasonable delay". (para. 1) It would thus appear that the law is becoming less unsettled in B.C.

26. The respondent acknowledges, however, that Cullen ACJ in ***Elmi*** went on to state that once the threshold of unreasonable delay that cannot be ameliorated by directions from the court to expedite the trial is surpassed, the hearing of the s. 525 review that ensues is a *de novo* hearing under s. 515(10). This judgment post-dates ***Whiteside*** by slightly less than three weeks.

27. One possible view of Riley J's September 27th decision is that it creates a third approach thus further unsettling the law. Another, possibly more reasonable view, is that the decision does not create a third approach at all. As previously stated, Riley J

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[6] For example, see *R. v. Hinnegan*, 2017 BCSC 1489 *per* Pearlman J (August 22/17), and *R. v. Adams*, 2017 BCSC 2418 *per* Dley J (December 19/17).

clearly adopts the two-step approach with its threshold and the circumscribed inquiry on the merits. The respondent agrees with the applicant (ALM, Tab C, para. 8) that the modification his judgment affects is to the threshold by requiring the applicant to show, as an alternative to unreasonable delay, "that detention beyond the prescribed time has had a material impact on the initial decision to detain". (ALM, Tab B1, para. 23(c))

28. It is noteworthy that on October 5, 2017, counsel for the applicant declined to make any submissions on the merits. (RLM, pp. 86-89) An inference can therefore be drawn that counsel felt he could discharge neither of the disjunctive components comprising the modified threshold. The applicant's criminal record and the seriousness of the charges he faces will undoubtedly result in him being sentenced to a lengthy period of incarceration should he be convicted. Neither is it surprising that the applicant could not point to there being an unreasonable delay however unreasonable delay is to be assessed in this context, whether by reference to the ***Jordan*** presumptive threshold or to a consideration whether the continued detention of the applicant to would result in his having "served" more time in pre-trial custody than he would likely be sentenced to should he be found guilty at trial.[7]

29. A review of other steps taken, or not taken, throughout the course of the proceedings reveals the absence of a s. 520 review following:

(i) the initial decision to detain:

(ii) the preliminary inquiry justice's decision not to alter the detention order at the hearing's conclusion in November 2016;

(iii) the dismissal of the applicant's severance application in February of 2017 despite the indication of a bail review being listed for hearing; and

(iv) the October 5/17 dismissal of the s. 525 review, notwithstanding Cullen ACJ's remarks in ***Elmi*** (at para. 13) that the availability of a s. 520 review, even repeated s. 520 reviews, following an unsuccessful s. 525 review is a safeguard against prejudice to a detained accused.

[7] See the discussion of this specific point in *Hinnegan*, at paras. 38 – 42.

30. Of course, it is always possible that counsel did not pursue a s. 520 review at any point below because his assessment was that the applicant would simply not be successful. It is therefore curious that, at ALM, Tab C, para. 51, he asserts he made no submissions on October 5th because "the applicant took the position that he had great prospects of success proceeding under another review provision".[8]

31. No step taken or, more accurately, proposed to be taken, resonates more importantly in terms of the proper disposition of the subject leave application than the one to which the respondent now turns.

D The Proposed Appeal Will Be Moot

32. The respondent has included in its response a notice of re-election[9] pursuant to s.. 536.2. (RLM, p. 94) This document is signed by counsel for the applicant. It is also signed by Crown counsel with conduct of the matter below with whom counsel for the respondent has been consulting. It is an inescapable inference, confirmed by Crown counsel below, that the applicant intends to dispose of these charges by way of guilty plea(s) and sentencing in Provincial Court. The applicant's next scheduled appearance in Provincial Court is January 29, 2018.

33. Taking these steps at this time will render this application for leave to appeal moot. The applicant has not asked this Court to expedite its resolution of his leave application. This Court will not be in a position to resolve this leave application before the applicant begins serving his sentence. In other words, upon the entry of his plea(s) and the imposition of sentence, there will be no "live controversy" affecting the rights of the parties to this prosecution.

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[8] The applicant has not indicated what his submissions would have been pursuant to the one-step approach or at a s. 520 bail review.

[9] Counsel completing the notice inadvertently but erroneously noted that the applicant was re-electing from a previous election for a judge alone trial in B.C. Supreme Court. As noted in para. 11 herein, the applicant was deemed to have elected trial before a Supreme Court judge and jury.

34. Writing for this Court in ***Borowski v. A.G. (Canada)***, [1989] 1 S.C.R. 342, at p. 353, Sopinka J stated:

> The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. . . . I consider that a case is moot if it fails to meet the "live controversy" test. A court may nonetheless elect to address a moot issue if the circumstances warrant.

35. The applicant bears the burden of persuading this Court to exercise its discretion to hear the matter because it is in the interests of justice to do so: ***Jane Doe v. Canada (Attorney General)*** (2005), 75 O.R. (3d) 725 (Ont. C.A.), para. 26.

36. Discharge of this burden takes into account, but is not determined solely by reference to, whether or not the issue advanced raises an issue of public or national importance. "The mere presence of an issue of national importance in an appeal which is otherwise moot is insufficient", *per* Sopinka J in ***Borowski***, at p. 362.

37. Neither is the likelihood of the issue recurring in future cases determinative of how this Court will exercise its discretion to hear a moot appeal:

> The mere fact, however, that a case raising the same point is likely to recur even frequently should not by itself be a reason for hearing an appeal which is moot. It is preferable to wait and determine the point in a genuine adversarial context unless the circumstances suggest that the dispute will always have disappeared before it is ultimately resolved. (p. 361)

38. In sum, as of the date of the filing of this response, this case is on the cusp of becoming moot. It will unequivocally become so when proceedings in the Provincial Court conclude, potentially as early as January 29, 2018 and, in any event, well before this appeal, should leave be granted, can be heard and decided. The applicant's rights as a party will not be affected by this Court's decision. The applicant is effectively asking this Court to grant a free-standing reference with respect to proper interpretation of s. 525. This Court has the discretion to decline to do so. The arguable importance of

the issue notwithstanding, it is preferable for this Court to await a case where there remains a live controversy between the parties.

39. The respondent acknowledges that in ***R. v. Oland***, 2017 SCC 17, [2017] 1 S.C.R. 250, this Court chose to hear an appeal concerning the *Code* provisions governing bail pending appeal notwithstanding that it was moot. Seven days before the appeal was to be heard in this Court, the New Brunswick Court of Appeal allowed the appellant's appeal from conviction. The following day, that court granted the appellant bail pending the new trial it had ordered. As Moldaver J explained:

> [17] At the commencement of the hearing, the Court raised the issue of mootness and we were urged by the parties and the interveners to hear the appeal on its merits. Mr. Oland and the respondent Crown submitted that this Court's decision was potentially of significance to them, as Mr. Oland might find himself in the same situation following his re-trial. In addition, all concerned submitted that guidance was needed from this Court to resolve inconsistent approaches to bail taken by appellate courts across the country. And as bail pending appeal was, by its temporary nature, evasive of appellate review, this was an appropriate case to resolve the conflicting jurisprudence: (reference to ***Borowski*** omitted).
>
> [18] In view of the unanimous position taken by the parties and the interveners, and considering that the appeal meets the criteria established in ***Borowski***, the Court determined that it would proceed to hear the appeal on its merits.

Clearly, the unique circumstances that resulted in this Court exercising its discretion to hear Mr. Oland's moot appeal are not present in the instant case.

40. It is of note that in ***Whiteside***, the respondent raised the same mootness objection in response to the then applicant's interlocutory application (the "motion to continue") which effectively sought a ruling that the leave application should be considered notwithstanding that fact that the accused had disposed of the charges before counsel filed his leave application. The decision of Coté J was to deny the motion to continue effectively bringing the leave application to an end. That this present applicant has not yet disposed of the charges but intends to so soon after the filing of the response may well militate in favour of this Court taking the same view as that taken by Coté J.

PART IV – SUBMISSIONS ON COSTS

41. The respondent makes no submissions with respect to costs.

PART V – ORDER SOUGHT

42. That the application for leave to appeal be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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John M. Gordon, Q.C.
Counsel for the respondent

January 22, 2018
Vancouver, B.C.

PART VI – TABLE OF AUTHORITIES

CASES	PARAGRAPH
Borowski v. A.G. (Canada), [1989] 1 S.C.R. 342	34, 36, 39
Jane Doe v. Canada (Attorney General) (2005), 75 O.R. (3d) 725 (Ont. C.A.)	35
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PART VII – STATUTORY PROVISIONS

***Criminal Code*, R.S.C., 1985, c. C-46 / *Code criminel*, L.R.C., 1985, ch. C-46**

s. 515 (10)

Justification for detention in custody

(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

(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.

Motifs justifiant la détention

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

a) sa détention est nécessaire pour assurer sa présence 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) 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.

s. 520

Review of order

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

Notice to prosecutor

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

Accused to be present

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

Adjournment of proceedings

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

Failure of accused to attend

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

Execution

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

Evidence and powers of judge on review

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

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

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

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

and shall either

(d) dismiss the application, or

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

Limitation of further applications

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

Application of sections 517, 518 and 519

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

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

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 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 mandat 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 présent 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 procédures 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 rendre 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 présent article ou de 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.

s. 523

Period for which appearance notice, etc., continues in force

523 (1) Where an accused, in respect of an offence with which he is charged, has not been taken into custody or has been released from custody under or by virtue of any provision of this Part, the appearance notice, promise to appear, summons, undertaking or recognizance issued to, given or entered into by the accused continues in force, subject to its terms, and applies in respect of any new information charging the same

offence or an included offence that was received after the appearance notice, promise to appear, summons, undertaking or recognizance was issued, given or entered into,

(a) where the accused was released from custody pursuant to an order of a judge made under subsection 522(3), until his trial is completed; or

(b) in any other case,

(i) until his trial is completed, and

(ii) where the accused is, at his trial, determined to be guilty of the offence, until a sentence within the meaning of section 673 is imposed on the accused unless, at the time the accused is determined to be guilty, the court, judge or justice orders that the accused be taken into custody pending such sentence.

Where new information charging same offence

(1.1) Where an accused, in respect of an offence with which he is charged, has not been taken into custody or is being detained or has been released from custody under or by virtue of any provision of this Part and after the order for interim release or detention has been made, or the appearance notice, promise to appear, summons, undertaking or recognizance has been issued, given or entered into, a new information, charging the same offence or an included offence, is received, section 507 or 508, as the case may be, does not apply in respect of the new information and the order for interim release or detention of the accused and the appearance notice, promise to appear, summons, undertaking or recognizance, if any, applies in respect of the new information.

When direct indictment is preferred charging same offence

(1.2) When an accused, in respect of an offence with which the accused is charged, has not been taken into custody or is being detained or has been released from custody under or by virtue of any provision of this Part and after the order for interim release or detention has been made, or the appearance notice, promise to appear, summons, undertaking or recognizance has been issued, given or entered into, and an indictment is preferred under section 577 charging the same offence or an included offence, the order for interim release or detention of the accused and the appearance notice, promise to appear, summons, undertaking or recognizance, if any, applies in respect of the indictment.

Order vacating previous order for release or detention

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

Provisions applicable to proceedings under subsection (2)

(3) The provisions of sections 517, 518 and 519 apply, with such modifications as the circumstances require, in respect of any proceedings under subsection (2), except that subsection 518(2) does not apply in respect of an accused who is charged with an offence listed in section 469.

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

523 (1) Lorsqu'un prévenu, à l'égard d'une infraction dont il est inculpé, n'a pas été mis sous garde ou a été mis en liberté aux termes ou en vertu d'une disposition de la présente partie, la sommation ou la citation à comparaître qui lui a été délivrée, la promesse de comparaître ou la promesse qu'il a remise, ou l'engagement qu'il a contracté, demeure en vigueur selon ses termes et s'applique à l'égard d'une nouvelle dénonciation lui imputant la même infraction ou une infraction incluse qui a été reçue après que la sommation ou citation à comparaître lui a été délivrée, la promesse de comparaître ou la promesse a été remise, ou l'engagement a été contracté :

a) lorsque le prévenu a été mis en liberté en application d'une ordonnance d'un juge rendue en vertu du paragraphe 522(3), tant que son procès n'a pas pris fin;

b) dans tout autre cas, tant que :

(i) son procès n'a pas pris fin,

(ii) lorsque le prévenu est déclaré coupable à son procès, sa peine au sens de l'article 673 n'a pas été prononcée, à moins que, au moment où sa culpabilité est déterminée, le tribunal, le juge ou le juge de paix n'ordonne que le prévenu soit mis sous garde en attendant le prononcé de la peine.

Lorsqu'une nouvelle dénonciation impute la même infraction

(1.1) Lorsque, à l'égard d'une infraction dont il est inculpé, un prévenu n'a pas été mis sous garde ou est détenu ou a été mis en liberté aux termes ou en vertu d'une autre disposition de la présente partie et qu'une nouvelle dénonciation, imputant la même infraction ou une infraction incluse est reçue contre lui après qu'une ordonnance de mise en liberté ou de détention provisoire a été rendue ou après que la sommation ou la citation à comparaître lui a été délivrée ou après que la promesse de comparaître ou la promesse lui a été remise ou que l'engagement a été contracté, l'article 507 ou 508 ne

s’applique pas à l’égard de la nouvelle dénonciation et l’ordonnance de mise en liberté ou de détention provisoire du prévenu, ainsi que la sommation ou la citation à comparaître, la promesse de comparaître, la promesse ou l’engagement, s’il en est, s’appliquent à la nouvelle dénonciation.

Acte d’accusation imputant la même infraction

(1.2) Lorsque, à l’égard d’une infraction dont il est inculpé, un prévenu n’a pas été mis sous garde ou est détenu ou a été mis en liberté aux termes ou en vertu d’une autre disposition de la présente partie et qu’un acte d’accusation, lui imputant la même infraction ou une infraction incluse est présenté en vertu de l’article 577 après qu’une ordonnance de mise en liberté ou de détention provisoire a été rendue ou après que la sommation ou la citation à comparaître lui a été délivrée ou encore après qu’il a remis une promesse de comparaître ou une promesse ou contracté un engagement, l’ordonnance de mise en liberté ou de détention provisoire du prévenu, ainsi que la sommation ou la citation à comparaître, la promesse de comparaître, la promesse ou l’engagement, s’il en est, s’appliquent à l’acte d’accusation.

Ordonnance annulant une ordonnance de mise en liberté ou de détention

(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 détention provisoire du prévenu rendue antérieurement en vertu de la présente partie et rendre toute autre ordonnance prévue par la 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.

Dispositions applicables aux procédures prévues au paragraphe (2)

(3) Les dispositions des articles 517, 518 et 519 s’appliquent, compte tenu des adaptations de circonstance, à l’égard de toute procédure que prévoit le paragraphe (2),

sauf que le paragraphe 518(2) ne s'applique pas à l'égard d'un prévenu qui est inculpé d'une infraction mentionnée à l'article 469.

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

s. 525

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

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 quatre-vingt-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 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 telles 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 détention 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 visés 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 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.

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

s. 536.2

Elections and re-elections in writing

536.2 An election or a re-election by an accused in respect of a mode of trial may be made by submission of a document in writing without the personal appearance of the accused.

2002, c. 13, s. 27.

Choix ou nouveau choix

536.2 Le choix ou le nouveau choix fait par le prévenu quant au mode de procès peut être effectué par écrit sans que celui-ci ait à comparaître.

2002, ch. 13, art. 27.

s. 561(1)(a)

Right to re-elect

561 (1) An accused who elects or is deemed to have elected a mode of trial other than trial by a provincial court judge may re-elect

> **(a)** at any time before or after the completion of the preliminary inquiry, with the written consent of the prosecutor, to be tried by a provincial court judge;

Droit à un nouveau choix

561 (1) Un prévenu qui a choisi ou qui est réputé avoir choisi d'être jugé autrement que par un juge de la cour provinciale peut choisir :

> **a)** à tout moment avant ou après la fin de son enquête préliminaire avec le consentement écrit du poursuivant, d'être jugé par un juge de la cour provinciale;

s.565(1)(b)

Election deemed to have been made

565 (1) Subject to subsection (1.1), if an accused is ordered to stand trial for an offence that, under this Part, may be tried by a judge without a jury, the accused shall, for the purposes of the provisions of this Part relating to election and re-election, be deemed to have elected to be tried by a court composed of a judge and jury if

> **(b)** the justice, provincial court judge or judge, as the case may be, declined pursuant to section 567 to record the election or re-election of the accused; or

Présomption de choix

565 (1) Sous réserve du paragraphe (1.1), s'il est renvoyé pour subir son procès à l'égard d'une infraction qui, en vertu de la présente partie, peut être jugée par un juge sans jury, le prévenu est, pour l'application des dispositions de celle-ci relatives au choix et au nouveau choix, réputé avoir choisi d'être jugé par un tribunal composé d'un juge et d'un jury dans l'un ou l'autre des cas suivants :

> **b)** le juge de paix, le juge de la cour provinciale ou le juge, selon le cas, a, conformément à l'article 567, refusé d'enregistrer le choix ou le nouveau choix;

s. 567

Mode of trial when two or more accused

567 Despite any other provision of this Part, if two or more persons are jointly charged in an information, unless all of them elect or re-elect or are deemed to have elected the same mode of trial, the justice, provincial court judge or judge may decline to record any election, re-election or deemed election for trial by a provincial court judge or a judge without a jury.

R.S., 1985, c. C-46, s. 567; R.S., 1985, c. 27 (1st Supp.), s. 111; 2002, c. 13, s. 43.

Mode of trial if two or more accused — Nunavut

567.1 (1) Despite any other provision of this Part, if two or more persons are jointly charged in an information, unless all of them elect or re-elect or are deemed to have elected the same mode of trial, the justice of the peace or judge may decline to record any election, re-election or deemed election for trial by a judge without a jury.

Application to Nunavut

(2) This section, and not section 567, applies in respect of criminal proceedings in Nunavut.

1999, c. 3, s. 48; 2002, c. 13, s. 43.

Mode de procès lorsqu'il y a deux ou plusieurs prévenus

567 Nonobstant toute autre disposition de la présente partie, lorsque deux ou plusieurs personnes font l'objet d'inculpations énoncées dans une dénonciation, si toutes ne choisissent pas en premier lieu ou comme second choix ou ne sont pas réputées avoir choisi, selon le cas, le même mode de procès, le juge de paix ou le juge de la cour provinciale ou le juge peut refuser d'enregistrer le choix, le nouveau choix ou le choix présumé pour être jugé par un juge de la cour provinciale ou par un juge sans jury.

L.R. (1985), ch. C-46, art. 567; L.R. (1985), ch. 27 (1er suppl.), art. 111;

2002, ch. 13, art. 43.

Pluralité de prévenus : Nunavut

567.1 (1) Malgré les autres dispositions de la présente partie, lorsque plusieurs personnes font l'objet d'inculpations énoncées dans une dénonciation et que toutes n'ont pas retenu, à titre de choix premier, nouveau ou réputé, le même mode de procès, le juge de paix ou le juge peut refuser d'enregistrer le choix d'être jugé par un juge sans jury.

Application : Nunavut

(2) Le présent article s'applique, contrairement à l'article 567, aux procédures criminelles au Nunavut.

1999, ch. 3, art. 48; 2002, ch. 13, art. 43.