

CANADA / JUDGMENT

R. v. Baxter

2026 ONCA 216

COURT

Court of Appeal for Ontario

DECIDED

24 March 2026

Source: norma.lexum.com · Research copy typeset by Esheria. Not court-issued or certified.

R. v. Baxter Collection Decisions of the Court of Appeal Date 2026-03-24 Neutral citation 2026 ONCA 216 Docket numbers COA-26-CR-0209, M56785 Judges Huscroft, Grant Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Baxter, 2026 ONCA 216[1] DATE: 20260324 DOCKET: M56785 (COA-26-CR-0209) Huscroft J.A. (Motion Judge) BETWEEN His Majesty the King Respondent (Respondent) and Barbara Baxter Applicant (Appellant) Lawrence Ben-Eliezer, for the applicant Katie Doherty, for the respondent Heard: March 19, 2026 REASONS FOR DECISION

- [1] This is an application for release pending appeal from conviction.
- [2] The applicant was found guilty following a jury trial and convicted of gross indecency and five counts of sexual assault. The offences occurred between 1982 and 1987, against five different students in grades 6-8. The applicant was the students' schoolteacher.
- [3] The application is dismissed for the reasons that follow. The applicant's onus
- [4] Under s. 679(3) of the Criminal Code, R.S.C. 1985, c. C-46, the applicant bears the burden of establishing the following three criteria on a balance of probabilities:
 - a) The appeal is not frivolous;
 - b) She will surrender into custody in accordance with the terms of the order; and
 - c) Her detention is not necessary in the public interest.
- [5] The Crown accepts that the applicant will surrender into custody. It contests the other two grounds. The applicant has not established that the appeal is not frivolous
- [6] I accept that the not frivolous criterion sets a low bar. It is, nevertheless, a requirement that must be met.
- [7] The applicant raises two grounds of appeal. First, the applicant argues that the jury's verdict was unreasonable. This argument relies on the evidence concerning only one of the offences of which the applicant was convicted: the sexual assault against M.B. M.B.'s identification of the house where the assault occurred was contradicted by evidence showing the applicant lived at a different house at the time. The applicant says that this

undermines M.B.'s evidence to the extent that no properly instructed jury could have found her guilty in regard to M.B.

- [8] The difficulty with this argument is that one piece of inconsistent evidence does not render a verdict unreasonable. The jury was entitled to accept some, all, or none of M.B.'s evidence. The applicant does not argue that the jury was not properly instructed concerning M.B.'s evidence. The applicant has not established that this ground of appeal is not frivolous.
- [9] Second, the applicant argues that in order to arrive at guilty verdicts on all counts, the jury must have ignored the trial judge's instructions to consider each count separately. However, the jury was specifically instructed to consider each charge separately and to return a separate verdict for each charge, "based only on the evidence and the legal principles that apply to it." Counsel stated specifically at the hearing on this application that he was not contesting the trial judge's instructions. Even if the guilty verdict on the M.B. count were unreasonable, it would not necessarily follow that the verdicts on all of the other counts were unreasonable or reached in defiance of the trial judge's instructions. The trial judge's instructions were clear and juries are presumed to follow a judge's instructions. The argument that the jury must have ignored the judge's instructions is simply conjecture.
- [10] The applicant has not established that the appeal is not frivolous. The applicant has not established that her detention is not necessary in the public interest
- [11] Even if that the applicant were found to have succeeded in establishing that the appeal is not frivolous, she has not established that her detention is not necessary in the public interest.
- [12] The public interest criterion set out in s. 679(3)(c) of the Criminal Code has two components: public safety and public confidence in the administration of justice: *R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250, at paras. 23-27. Under the public confidence component, the question is whether the public interest in reviewing the applicant's convictions outweighs the public interest in immediate enforcement of her sentence.
- [13] The applicant has been convicted of very serious offences – sexual offences against several children, all of whom were her students. These offences were committed decades ago and have gone unpunished. They involve a massive breach of trust. The seriousness of the offences is reflected in the 65-month penitentiary sentence the applicant received.
- [14] For the reasons provided above, the grounds of appeal are, if not frivolous, very weak, and the reviewability interest is low. I add to my consideration the fact that the M.B. count, which is the only count the applicant challenges with a particularized error, accounts for only four months of the applicant's 65-month sentence.
- [15] What distinguishes this case is the applicant's personal circumstances – her advanced age and poor health. These are relevant considerations in assessing the public interest in immediate enforceability, but the applicant has not established that they so reduce the weight of enforceability as to determine the outcome of the public interest analysis.

- [16] The applicant's age and health were mitigating factors taken into account by the sentencing judge in crafting the sentence that was imposed. Those circumstances do not preclude enforcement of the sentence pending appeal. Counsel for the applicant did not take the position that the applicant's needs cannot be met while she is incarcerated.
- [17] Considering the weakness of the proposed appeal, the seriousness of the offences and the length of the sentence imposed, as well as the applicant's age and health, the public interest in enforceability clearly outweighs the reviewability interest.

Disposition

- [18] The application is dismissed.
- [19] I note that Mr. Ben-Eliezer has only recently been retained for the appeal and relatively little has been done to this point. I am available to assist should the applicant wish to expedite the hearing of her appeal. Counsel can contact the court's Executive Legal Officer to arrange case management as required. "Grant Huscroft J.A."
- [1] This appeal is subject to a publication ban pursuant to s. 486.4 of the Criminal Code, R.S.C. 1985, c. C-46.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://norma.lexum.com/coa/coa/en/item/24042/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-baxter-2026>

Prepared on 25 October 2026 · Esheria