

CANADA / JUDGMENT

R. v. Chow

2025 BCSC 1386

COURT

Supreme Court of British Columbia

DECIDED

30 May 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 1386 R. v. Chow

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Chow,

2025 BCSC 1386

Date: 20250530

Docket: 37950-2

Registry: Vancouver

Rex

v.

Chih Hwa Leo Chow

Restriction on Publication: A publication ban has been mandatorily imposed under s. 486.4(2) of the Criminal Code restricting the publication, broadcasting, or transmission in any way of evidence that could identify the complainant. This publication ban applies indefinitely unless otherwise ordered.

Before: The Honourable Justice Hoffman

Oral Reasons for Judgment

Counsel for the Crown (Respondent):

D. Meagher

Counsel for the Accused (Appellant):

T. Arbogast, K.C.

Place and Date of Trial/Hearing:

Vancouver, B.C.

May 27, 2025

Place and Date of Judgment:

Vancouver, B.C.

May 30, 2025

- [1] THE COURT: These are my oral reasons for judgment. If a copy of these reasons is ordered, they will be edited only to correct typographical and grammatical errors and to add full citations.
- [2] Mr. Chow is seeking his release pending the hearing of his appeal from his conviction for sexual assault under s. 679(3) of the Criminal Code, R.S.C. 1985, c. C-46. Mr. Chow seeks release pursuant to ss. 816 and 515 of the Criminal Code. The Crown opposes his release on the grounds that Mr. Chow's detention is necessary for the public interest.
- [3] On September 16, 2022, Mr. Chow sexually assaulted the 21-year-old complainant in the bar that he owned and operated. Mr. Chow was arrested the following day and was released on an undertaking to police with a condition that he not communicate with the complainant.
- [4] On October 31, 2022, a single count alleging sexual assault was sworn, and the Crown elected to proceed summarily.
- [5] Mr. Chow was convicted on December 23, 2024, following a trial in the Provincial Court. In advance of the sentencing hearing, Mr. Chow was released on a promise to appear with conditions. Mr. Chow was sentenced on May 16, 2025, to 12 months' imprisonment in addition to a period of probation. He is now in custody. The reasons for sentence were not yet available at the time of this hearing.
- [6] Mr. Chow has filed a notice of appeal against both his conviction and his sentence. Mr. Chow will be arguing that there was a miscarriage of justice because the trial judge improperly inserted himself into the trial process, taking on an inquisitorial role and, in so doing, abdicated his role as a neutral arbiter. I have before me transcripts of the trial in respect of both the complainant's and Mr. Chow's evidence.
- [7] The summary conviction appeal hearing in this Court has been scheduled for October 15, 2025.
- [8] In January 2024, while on release for the charges that led to the conviction that is the subject of his appeal and prior to his trial in that matter, it was alleged that Mr. Chow sexually assaulted a second complainant.

- [9] On August 15, 2024, Mr. Chow was charged with a further offence relating to sexual assault, forcible confinement, and administering a noxious substance. The complainant in that matter alleges that she was sexually assaulted in Mr. Chow's bar premises. The Crown is proceeding by way of indictment, although the trial has yet to be set.
- [10] For the second sexual assault charge, Mr. Chow was released on a recognizance with strict conditions, including that he was only permitted to attend the bar premises between the hours of 8:00 a.m. to 6:00 p.m., when no members of the public were present. Those conditions were later varied on an application to the court, although Mr. Chow is still not permitted to attend the bar in those hours, except for limited access.
- [11] Mr. Chow is currently in the process of selling his bar business and premises.
- [12] Before setting out the positions of Mr. Chow and the Crown on the application, I will now describe the legal framework applicable to this application.

Legal Framework

- [13] For bail pending summary conviction appeal, the relevant section of the Criminal Code is s. 816. This section does not contain any provision prescribing what factors an appellant is required to establish in order to be released pending an appeal. This is in contrast to s. 679 of the Criminal Code which deals with the application for release after conviction of an indictable offence pending appeal.
- [14] Section 679(3) of the Criminal Code sets out the following test for bail pending appeal from an indictable offence:
- (3) In the case of an appeal referred to in paragraph (1)(a) or (c), the judge of the court of appeal may order that the appellant be released pending the determination of his appeal if the appellant establishes that
 - (a) the appeal or application for leave to appeal is not frivolous;
 - (b) he will surrender himself into custody in accordance with the terms of the order; and
 - (c) his detention is not necessary in the public interest.
- [15] In *R. v. Gill*, 2010 BCSC 1987 at para. 19, Justice Gerow found that, in the absence of criteria prescribed by the Criminal Code, it is appropriate for the court to consider factors similar to those set out in s. 679(3) on a bail application pending a summary conviction appeal. She further held that an additional factor is whether the sentence will be served before the appeal can be heard on the merits.
- [16] A similar approach was taken by Justice Charbonneau in *Sorenson v. The HMTQ*, 2009 NWTSC 11, where he noted that specific factors flowing from the specific nature of summary convictions must also be considered:

- [9] For example, sentences for summary conviction offenses are generally shorter than those imposed for indictable offenses. I agree with the suggestion in Basha that particular attention should be given to the possibility of the appeal not being heard on its merits before the sentence is fully served if bail is not granted. In addition, summary conviction offenses are generally speaking less serious than indictable offenses. That is a factor to bear in mind in examining public interest considerations.
- [10] I conclude that a blend of factors must be considered: whether the appellant will surrender into custody, the strength of the appeal, the length of the sentence, the seriousness of the offence, public safety considerations, as well as other aspects of public interest, such as preserving the public's confidence in the administration of justice. Unlike what is the case with indictable matters, the approach should not, in my view, be one where the appellant is held to demonstrating that he or she meets a fixed set of criteria. Rather, the approach should be more flexible, with the various factors considered and balanced in deciding whether release is appropriate in a given case.
- [17] The Court of Appeal described the public interest consideration and the balancing exercise that must be undertaken by the court in *R. v. Dixon*, 2017 BCCA 192:
- [27] I turn to the public interest criterion under s. 679(3) of the Criminal Code, which is of course the principal issue on this application. The public interest component of the test for judicial interim release has two components: (1) public safety, and (2) public confidence in the administration of justice: *Oland*.
- [28] The public confidence component in s. 679(3)(c) of the Criminal Code involves a balancing of the principle of enforceability with the opposing principle of reviewability: *Oland* at paras. 31-51. Enforceability relates to the public interest in a person convicted of a serious offence being denied bail. The primary consideration in relation to enforceability is the seriousness of the offence: *Oland* at para. 49. Reviewability relates to the public interest in judgments being reviewed and errors corrected: *R. v. Mapara*, 2001 BCCA 508; *R. v. Farinacci* (1993), 1993 CanLII 3385 (ON CA), 109 D.L.R. (4th) 97 (O.N.C.A.), 86 C.C.C. (3d) 32. The strength of the grounds of appeal can be evaluated in this inquiry, although this is only required in serious offences (otherwise, there is no need to go beyond the "not frivolous" threshold in the first criterion): *R. v. Gingras*; *R. v. Porisky*, 2012 BCCA 467 at para. 47. The more serious the offence, the stronger the grounds required to shift the balance from enforceability to reviewability: *R. v. Gingras*; *R. v. Porisky*, at para. 31.
- [18] In this case, the Crown conceded that the appeal is not frivolous and that there is no basis in the record to argue that Mr. Chow will not surrender himself into custody. Accordingly, the submissions of both Mr. Chow and the Crown were focused on the public interest ground.

The Applicant's Position

- [19] Mr. Chow takes the position that he has a strong ground of appeal on the basis that the interventions of the trial judge in this matter resulted in a miscarriage of justice. Mr. Chow submits that consistent with the guidance from Dixon, the strength of the appeal is relevant to the balancing of enforceability and reviewability required to assess whether the continued detention of the accused is in the public interest. Mr. Chow submits that the interventions demonstrate substantial activism on the part of the trial judge and raise concerns that he did not receive a fair trial. According to Mr. Chow, the trial judge interrupted to ask substantive and lengthy questions on over 20 occasions when the complainant testified and over 50 separate occasions during Mr. Chow's testimony.
- [20] While several examples of these interventions were drawn to my attention in written submissions, counsel for Mr. Chow focused on two instances in his oral submissions. The first relates to questions that the trial judge asked the complainant during her direct examination. Mr. Chow submits that the trial judge went beyond asking neutral questions to qualify evidence or to make the complainant more comfortable in giving her evidence. The trial judge asked the complainant to tell her story and that she would be uninterrupted by counsel in doing so. During this portion of the evidence, the trial judge posed arguably leading questions about whether Mr. Chow had supplied the complainant with alcohol prior to the assault. Mr. Chow submits that these questions related to consent, a central issue at trial.
- [21] The second example took place at the conclusion of Mr. Chow's cross-examination by the Crown and re-examination by his counsel. Mr. Chow submits that the trial judge's lengthy questions which span three and a half pages of transcript was a probing cross-examination which crossed the line from neutral arbiter to advocate. It was submitted that several of these were tough and critical questions and the fact that they were coming from the judge raises fairness concerns.
- [22] In this regard, Mr. Chow relies on the recent decision of the Ontario Court of Appeal in *R. v. Walton*, 2025 ONCA 368, which deals with the question of when a trial judge goes too far in participating in the questioning of a witness. Walton sets out the applicable principles as follows:
- [22] The trial judge is duty-bound to exercise restraint and remain neutral to promote both the reality and the appearance of fairness. However, a trial judge is permitted to intervene where doing so is essential to ensure justice is done in both substance and appearance. A trial judge is entitled to and must "manage the trial and control the procedure to ensure that the trial is effective, efficient and fair to both sides", and to witnesses.
- [23] However, trial judges should, consistent with the principle of cautious restraint, confine themselves to their own responsibilities, leaving counsel and the jury to perform their respective functions.

- [24] In this light, I point out that examination-in-chief and cross-examination are and must remain the responsibility of counsel; a trial judge should not become an investigator. A trial judge must not cause a reasonable person to believe that he has "placed the authority of his office" on either side, particularly that of the prosecution, and must also be careful not to usurp the role of counsel because the overall impression created may be fatal to the appearance of trial fairness.
- [25] Although the trial judge may ask questions that should have been asked by counsel, the trial judge must not usurp counsel's role. The judge must not "leave his or her position of neutrality as a fact-finder and become the cross-examiner." When the trial judge does intervene in questioning a witness, "it is important that they use care and not create an impression through the questioning process of having adopted a position on the facts, issues or credibility."
- [26] As this court instructed in Chippewas, at para. 239, a trial judge should try to avoid interfering with the organization and flow of the evidence, because judicial intervention might impede counsel in following an organized line of inquiry. This is especially important during examination-in-chief. Obviously, the trial judge should never cross-examine a witness. Rather, when the trial judge believes that it is necessary to question a witness, the judge's questions should be asked after counsel has completed his examination, or at least after counsel has finished a particular line of questioning. An exception would be a fast clarification that does not become a digression.
- [23] Regarding public safety, Mr. Chow submits that he has not been found in breach of any of the release conditions placed upon him. Further, he has come to the realization that he is no longer able to operate his business and he is in the process of selling it.
- [24] With respect to the balancing required under s. 679(3), Mr. Chow submits that the concept of reviewability, which includes the significant public interest in ensuring that the trial and conviction was fair and proper, outweighs enforceability in the circumstances.
- [25] With respect to additional factors, Mr. Chow submits that consideration ought to be given to the length of his sentence in relation to when his appeal can be heard and reasons rendered. Given that the appeal is not to be heard until October 15 of this year, if not released, there is a reasonable prospect that Mr. Chow will be eligible for release on his sentence before his appeal can be heard and reasons released.
- [26] Finally, Mr. Chow relies on the decision of R. v. Fedoruk, 2024 MBKB 31, that the court may also consider the factors under s. 679(4) in a summary conviction appeal bail application, which includes whether the continued detention would cause undue hardship.
- [27] Mr. Chow provides evidence that he is the primary support for his 89-year-old mother, checking in on her daily, visiting her frequently, and delivering her groceries on a weekly basis. While his brother has stepped in to do this while he has been incarcerated, it is difficult for his brother to do so as he lives on Vancouver Island.

Crown's Position

- [28] The Crown submits that once all necessary factors are taken into consideration, including the nature of the charges before the court, the strength of the proposed appeal, and the public safety risk posed by Mr. Chow, the enforceability of the verdict outweighs the interests of reviewability in this case.
- [29] The Crown placed particular emphasis on the details of the summary conviction offence and the similarity of those circumstances to the second sexual assault alleged to have taken place while Mr. Chow was on a form of release for the offence which is now the subject of this appeal. The Crown says that this raises significant public safety concerns.
- [30] The Crown acknowledges that Mr. Chow has adhered to his release conditions. While it could be argued on this basis that he is not a public safety risk, such an argument is undercut by the alleged second sexual assault which occurred while Mr. Chow was bound by an undertaking.
- [31] The Crown relies on *R. v. Oland*, 2017 SCC 17, to submit that even if public safety is not, on its own, sufficient to justify the continued detention of Mr. Chow, it is a relevant factor to consider in balancing public confidence in the administration of justice.
- [32] Although the Crown proceeded summarily, the Crown submits that the circumstances of the offence which is the subject of the appeal are serious. Mr. Chow was convicted of sexually assaulting the 21-year-old daughter of his acquaintance in the bar which he owns and operates. The assault took place after he served the complainant and her mother alcohol, and during the assault, the complainant became ill to the point of vomiting twice.
- [33] The Crown says that the gravity of the offence in this case weighs against granting bail pending appeal. Mr. Chow was sentenced to a year in custody. The Crown submits that this is a significant sentence for a significant crime.
- [34] The Crown concedes that the appeal is not frivolous but takes the position that the appeal is not as strong as it may appear on first blush. The Crown submits that the interventions made by the trial judge largely fall into the category of attempts to clarify and focus the evidence, consistent with what was found to be appropriate in *R. v. Murray*, 2017 ONCA 393 and *Walton*.
- [35] With respect to the lengthy intervention during the complainant's examination in chief, the Crown submits that this was necessary and appropriate to ensure that the complainant felt comfortable in giving her evidence.
- [36] The Crown submits that in respect of the interventions that Mr. Chow's counsel characterizes as cross-examination, viewed objectively, they do not leave the impression that the judge had aligned himself with the Crown as was found in *Walton*.

- [37] The Crown also submits that in instances relied upon by Mr. Chow's counsel where the judge questioned the complainant or Mr. Chow at length, the judge offered counsel the opportunity for re-examination which goes a long way to curing any prejudice that may exist. Further, the Crown says counsel raised no objections during these interventions.
- [38] The Crown also relies on Walton for the proposition that the appellant bears a heavy onus to establish the judge unduly intervened in the trial which flows from the presumption of impartiality which judges are owed: Walton at para. 53.

Analysis

- [39] I now turn to my consideration of whether Mr. Chow should be released on bail pending determination of his appeal.
- [40] It is common ground that the appeal is not frivolous.
- [41] No arguments have been advanced that Mr. Chow will not surrender himself into custody in accordance with the terms of the order. Given Mr. Chow's compliance with his release conditions to date, I am satisfied that he will surrender himself as required.
- [42] The remainder of my analysis focuses on whether Mr. Chow has met the burden to establish that his detention is not necessary in the public interest. This requires me to address the components of public safety and public confidence in the administration of justice. The latter component requires me to balance society's interest in ensuring that trial judgments can be reviewed and errors corrected, with the risk that public confidence in the administration of justice will be undermined when those convicted of serious crimes are released on bail pending their appeals.
- [43] The Crown understandably raises public safety concerns arising from Mr. Chow's second sexual assault charge. However, I am mindful that Mr. Chow is entitled to the presumption of innocence in respect of this charge for which he has not yet been tried. Further, it is significant that he was once again placed on a release order following that charge. Mr. Chow's adherence to his release conditions to date satisfies me that any public safety risks are capable of being managed through release conditions. Finally, I take some comfort in the fact that Mr. Chow will no longer be operating the business where the first sexual assault and the second alleged sexual assault took place.
- [44] Nonetheless, public safety considerations are also relevant to the public's confidence in the administration of justice. As the Crown argued, a reasonable member of the public would have a hard time understanding why Mr. Chow, convicted of sexual assault that took place more than 30 months ago and sentenced to jail, should be released before he exhausts his right to an appeal.

- [45] Mr. Chow's 12-month sentence reflects the gravity of the offence. However, I am mindful that the Crown did not choose to proceed with an indictment, which is some indication that it does not fall in the category of the most serious offences. Nevertheless, given that sexual assault is a serious offence, together with the troubling nature of the circumstances in which this offence was committed, there is indeed a substantial public interest in holding Mr. Chow accountable by ensuring that he serves his time in custody.
- [46] I am mindful of the guidance from Oland that in evaluating the factors that inform public confidence, I am to do so through the lens of a reasonable member of the public who is thoughtful, dispassionate, informed of the circumstances of the case, and has respect for society's fundamental values.
- [47] On the reviewability side of the equation, the grounds of appeal squarely engage the fundamental rights of Mr. Chow, and indeed all accused persons, to the right to a fair trial. Applying the guidance in both Murray and Walton to the interventions made by the trial judge in this case, I am satisfied that the grounds of appeal in this case are strong.
- [48] If not released by the time his appeal is finally adjudicated, Mr. Chow will have served the majority of the sentence imposed. Should Mr. Chow's conviction be overturned because he was not accorded a fair trial, the confidence in the administration of justice held by a well-informed, reasonable member of the public would be shaken by requiring Mr. Chow to serve the bulk of his sentence before being fairly convicted.
- [49] Having considered all of these factors, I am of the view that concerns of reviewability outweigh those of enforceability and that Mr. Chow has met the burden to establish his continued detention is not necessary in the public interest.
- [50] I understand that Mr. Chow will continue to be subject to the release conditions relating to the second sexual assault charge, which included the surrender of his passport to police.
- [51] Before moving to conditions, I have a few matters on which I require the views of counsel.
- [52] First, unless counsel advise otherwise, I assume that Mr. Chow should be reporting to the same bail supervisor address as set out in his release conditions on the second charge. Is that the case?
- [53] CNSL T. ARBOGAST: Yes, that's my position.
- [54] THE COURT: Second, given that Mr. Chow is in the process of selling his bar and may seek other employment, including in the hospitality industry, I have some concerns that he should be prevented from either patronizing or working in bars generally. I raise this because of the circumstances of the offence and the alleged sexual assault, both involved the consumption of alcohol in a bar setting.
- [55] Accordingly, I seek counsel's submissions on whether the following would be an appropriate condition:

With the exception of the access permitted to 730 Main Street, you must not enter any bar, pub, lounge, nightclub, beer garden, or any other business from which minors are prohibited at any time by the terms of a liquor licence.

[COUNSEL SUBMISSIONS ON WORDING OF PROPOSED CONDITION]

[56] THE COURT: Mr. Chow, please stand. I order that you will be released on the following conditions:

You must report in person to the bail supervisor at 275 East Cordova Street, Vancouver, British Columbia, by 3:00 p.m. today, May 30, 2025, and after that you must report as directed by the bail supervisor.

Do you understand, Mr. Chow?

[57] THE ACCUSED: Yes, yes, ma'am.

[58] THE COURT: You must have no contact or communication, directly or indirectly, with [the complainant]. Do you understand, Mr. Chow?

[59] THE ACCUSED: Yes, ma'am.

[60] THE COURT: You are not to go to 730 Main Street, Vancouver, B.C., except during the hours of 8:00 a.m. to 6:00 p.m. when no members of the public are present, except for persons there on work-related business or in connection with the sale of the business or premises. Do you understand, Mr. Chow?

[61] THE ACCUSED: Yes, ma'am.

[62] THE COURT: With the exception of the access permitted to 730 Main Street, you must not enter any bar, pub, lounge, nightclub, beer garden, or any other business from which minors are prohibited at any time by the terms of a liquor licence. Do you understand?

[63] THE ACCUSED: Yes, ma'am.

[64] THE COURT: Your surrendered passports will remain with the Vancouver Police Department at 3585 Gravelly Street. Do you understand?

[65] THE ACCUSED: Yes, ma'am.

[66] THE COURT: You must reside at 2215 Bonnyville Avenue, Vancouver, B.C. Do you understand?

[67] THE ACCUSED: Yes, ma'am.

[68] THE COURT: And you must obey a curfew by being inside your residence at 2215 Bonnyvale Avenue, Vancouver, B.C., between the hours of 10:00 p.m. and 6:00 a.m. every day. Do you understand, Mr. Chow?

[69] THE ACCUSED: Yes, ma'am.

[70] THE COURT: Thank you. Anything further arising, counsel?

[COUNSEL SUBMISSIONS ON CONDITION FOR CURFEW CHECKS AND SURRENDER CONDITION]

[71] THE COURT: I am agreeable to including both of those conditions, namely a curfew checks condition and failing a decision on the appeal by January 31, 2026 that Mr. Chow should surrender himself.

[COUNSEL SUBMISSIONS TO CONFIRM WORDING OF THE TWO ADDITIONAL CONDITIONS]

[72] The two additional conditions are: 1) you must present yourself immediately at the door to your residence or answer the phone when any peace or bail supervisor attends or calls to check on you during the curfew hours; and 2) you shall surrender yourself into custody at the Sheriffs' Office, The Law Courts., 800 Smithe Street, Vancouver, British Columbia, by 9 a.m. on either the date for the release of judgment in the appeal against conviction or a date specified by the justice handling your conviction, or January 30, 2026 whichever happens first.

[73] THE COURT: Anything further?

[74] CNSL D. MEAGHER: Nothing further, thank you, Justice.

[75] THE COURT: Thank you, counsel. We are adjourned.

"Hoffman J."

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://www.bccourts.ca/jdb-txt/sc/25/13/2025BCSC1386.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-chow-2025>

Prepared on 29 October 2026 · Esheria