

CANADA / JUDGMENT

R. v. Hayes

2025 BCSC 2331

COURT

Supreme Court of British Columbia

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2025 BCSC 2331 R. v. Hayes

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hayes,

2025 BCSC 2331

Date: 20251127

Docket: 100339

Registry: Kelowna

Rex

v.

Stephen Daniel Hayes

Before: The Honourable Justice Hardwick

Reasons for Judgment Re: Application for Judicial Interim Release

Counsel for the Crown:

J. O'Quinn

Counsel for the Accused:

D. Melville

Place and Date of Hearing:

Kelowna, B.C.

November 10, 2025

Place and Date of Oral Judgment:

Kelowna, B.C.

November 21, 2025

Place and Date of Judgment:

Kelowna, B.C.

November 27, 2025

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Introduction

- [1] These reasons for judgment follow my oral reasons for judgment delivered on October 23, 2025, addressing the Crown's application that Mr. Stephen Hayes' judicial interim release (otherwise commonly known as bail) be revoked following his conviction earlier that evening, by a jury, of two counts on a three-count indictment (the "Indictment"). Said oral reasons for judgment were subsequently transcribed and published: see R. v. Hayes, 2025 BCSC 2187 (the "Revocation Reasons").
- [2] By way of brief overview, the two offences which Mr. Hayes was convicted of on October 23, 2025, were:
- a) Count 1 - Breaking and entering a dwelling house at 3436 McTaggart Road in West Kelowna, BC, and committing an indictable offence therein, namely uttering or conveying a threat to [L.H.] to cause death or bodily harm to [L.H.], contrary to s. 348(1)(b) of the Criminal Code [Code]; and
 - b) Count 3 - Without lawful excuse using, carrying, handling, shipping, transporting or storing a firearm in a careless manner or without reasonable precautions for the safety of other persons, contrary to s. 86(1) of the Code.
- [3] Count 1 of the Indictment occurred on February 17, 2024, and Count 3 occurred between February 17, 2024 and February 19, 2024.

- [4] In the Revocation Reasons, I described Count 1 of the Indictment as involving "obvious intimate partner violence" but did not provide specific details to support that conclusion: see para. 5 of the Revocation Reasons.
- [5] I opted to do so for brevity in the circumstances wherein the issue needed to be adjudicated upon in a very timely manner and because my characterization of the circumstances of Count 1 did not, I find, come at any surprise to Mr. Hayes or his counsel given the evidence heard at trial. However, having had the opportunity to reserve somewhat in writing this decision to permit further review, research and analysis, I shall now do so for further context.

Factual Overview

- [6] Mr. Hayes and L.H. were married. L.H. has three children, none of whom are biologically related to Mr. Hayes. Mr. Hayes and L.H. separated in mid-December 2023 and Mr. Hayes left their joint rental property on McTaggart Road in West Kelowna (the "Home"). L.H. and her children continued to reside in the Home and the lease was shortly thereafter transferred into her sole name. The Home was a two-story single-family residence.
- [7] Notwithstanding the separation, Mr. Hayes continued to be in contact with L.H. and her children and was particularly connected with L.H.'s eldest son, whom I will refer to as "A.".
- [8] On Saturday, February 17, 2024, Mr. Hayes arranged to pick up A. from the Home with the intention of taking him to Big White Ski Resort ("Big White") for the weekend. Since separation, Mr. Hayes had been residing primarily at a strata property (otherwise referred to as a condo) owned by his mother at Big White.
- [9] L.H. agreed to Mr. Hayes picking A. up for this purpose and A. was on board with the plan. A., who testified at trial, indicated he had spent the morning organizing his gear to go with Mr. Hayes to Big White. A., while a child, was of high school age on the material date.
- [10] When Mr. Hayes arrived at the Home, he was in a very agitated state. He initiated a verbal altercation with L.H. outside of the Home relating to her post-separation conduct. As Mr. Hayes exercised his Charter right to not testify at trial, the only version of this argument the Court heard was from L.H. Despite this, I am satisfied, for reasons that will become clear, that L.H. was candid and truthful with the Court about what occurred at the Home on February 17, 2024.
- [11] Mr. Hayes was, according to L.H., upset that L.H. had been observed by a third party, while attending a hockey game with her children after the parties had separated, outside the hockey arena smoking a cigarette with a male individual who she referred to as an old friend.

- [12] During the verbal altercation, Mr. Hayes repeatedly referred to/called L.H. by multiple derogatory terms, augmented by profanities. It is not necessary to repeat those terms in these reasons as there can be no argument as to their commonly known meaning, particularly in the circumstances in which they were said by Mr. Hayes to L.H.
- [13] Mr. Hayes also, during the verbal altercation, described to L.H. how he had been excessively speeding from Big White to West Kelowna to pick up A.
- [14] L.H. decided, in that moment, that she felt Mr. Hayes' behaviour was unstable and that she no longer considered it safe for A. to spend the weekend at Big White with Mr. Hayes. Given L.H.'s legal status as the parent/guardian of A. and in the absence of any written agreement or court order permitting Mr. Hayes specified contact with A., L.H. was within her legal rights to do so.
- [15] Mr. Hayes made very clear he intended to leave with A. notwithstanding L.H.'s position, and A., in an effort to de-escalate the conflict, was also prepared to leave voluntarily with Mr. Hayes. Mr. Hayes and A. both were in Mr. Hayes' vehicle at that point and in a position to depart from the driveway of the Home.
- [16] As Mr. Hayes went to depart the Home with A. in the front passenger seat of his vehicle, L.H. admitted to the court that she said the words to Mr. Hayes - "you are a dead man".
- [17] Despite her utterance, L.H. took no positive action. L.H. instead went back inside the Home with her youngest son who had been present for a portion of the verbal altercation and locked the front door to the Home. Upon doing so, she told both her two younger children and a similar aged peer who happened to be at the Home, to go upstairs to their bedrooms and close the doors. Although she was not cross-examined on this point directly, the quite obvious inference to be drawn from L.H.'s evidence, I find, is that she almost immediately recognized her verbal reaction to Mr. Hayes' conduct might further inflame the conflict and she primarily sought to shield the younger children present from any exposure to that.
- [18] At or about the same time, Mr. Hayes made a conscious and deliberate decision to not leave the Home with A. Instead, Mr. Hayes stopped, re-parked the vehicle, exited the vehicle and approached the Home in a hurried pace. To paraphrase the language included within my charge to the jury, "the home security camera video evidence tendered at trial quite clearly shows Mr. Hayes entering the Home appearing to use his foot". Less ambiguously stated now given the jury's conviction on Count 1, the home security video quite clearly shows Mr. Hayes kicking in the front door of the Home in an aggressive manner.
- [19] Consistent with this, L.H. testified that there was significant damage caused by Mr. Hayes which necessitated the replacement of the door at considerable financial cost to her. The jury also heard A.'s evidence that he personally observed Mr. Hayes kick the front door of the Home off its hinges. Mr. Hayes did not, as mentioned above, elect to give evidence contradicting L.H. or A.'s version of events which is consistent with the home security video entered into evidence at the trial and which the jury had the opportunity to observe both

during the trial proper and again, at their request, during their deliberations.

- [20] Upon Mr. Hayes' obtaining access to the Home, L.H. testified that she came down the stairs of the residence and, by virtue of the layout of the Home, encountered Mr. Hayes at the stairway landing just a few steps up from the entrance to the Home. The layout of the Home being such, according to L.H., that the lower portion of the staircase was not visible to a person descending until such time as they reached the landing.
- [21] When L.H. encountered Mr. Hayes on the stairway landing of the Home, L.H. testified Mr. Hayes said to her, "you are a dead woman". The jury, I necessarily conclude, accepted L.H.'s evidence on this point in finding Mr. Hayes guilty of Count 1 beyond a reasonable doubt.
- [22] At or about the same time that Mr. Hayes forcibly entered the Home by kicking in the front door, the home security video shows A. leaving the passenger side of Mr. Hayes' vehicle in the driveway in a somewhat frantic manner and also entering the Home. The home security video only shows the driveway, front landing/porch area and the front door. There is no footage at all available once an individual obtains entry to the Home.
- [23] Beyond Mr. Hayes' statement to L.H. that "you are a dead woman", no other alleged conduct by Mr. Hayes whilst in the Home or during his brief interaction with L.H. was found by the jury to have been proven beyond a reasonable doubt and shall not be referred to, or quite obviously, considered in any manner, going forward as the Court addresses the consequences flowing from Mr. Hayes' conviction on Count 1.
- [24] Very importantly, I must articulate for the record that the facts upon which the jury convicted Mr. Hayes of in respect of Count 1 are, I conclude, that he broke and entered the Home by forcibly kicking in the front door and within a matter of seconds uttered the threat to L.H. as stated above.
- [25] Mr. Hayes then left the Home with A.
- [26] L.H. reported the altercation with Mr. Hayes to the RCMP immediately.
- [27] Mr. Hayes was subsequently arrested at the Big White condo in the very early morning hours of February 19, 2024.
- [28] After being transported by the arresting officer to the RCMP detachment for processing, Mr. Hayes made a brief comment to that officer which that officer conveyed to a colleague. The arresting officer understood the comment to be in reference to a firearm or firearms.
- [29] In a subsequent search of the Big White condo, conducted pursuant to a warrant, the RCMP located a handgun in the nightstand dresser drawer and a long gun situated under the bed in what L.H. and A. both testified was Mr. Hayes' bedroom at that property. Both were loaded with ammunition when located by the police. The fact that the two weapons seized were, in fact, firearms was confirmed by the expert certificates entered as exhibits.

[30] Finally, Mr. Hayes is the registered and licensed owner of two firearms in accordance with the governing legislation - one classified as a restricted weapon and one classified as a prohibited weapon. One of those firearms has a serial number that matches one of the firearms that was seized from the Big White condo. One of those firearms meets the general description of the other firearm that was seized from the Big White condo but does not have an identical serial number - one digit is different.

[31] These are the facts upon which Mr. Hayes was convicted of in respect of Count 3.

Caselaw

[32] In the Revocation Reasons, I discuss the decision of the Alberta Court of Appeal in *R. v. Aheer*, 2020 ABCA 232. It is not necessary to repeat my analysis here.

[33] I will, however, refer to the very recent decision of Justice Hewson in *R. v. F.C.M.*, 2025 BCSC 2242, starting at para. 7, wherein Justice Hewson discusses this same issue and also elects to follow *Aheer*:

[7] Liberty is a foundational value of Canadian law. In criminal cases, one of the ways this value is expressed and protected is s. 11(e) of the Canadian Charter of Rights and Freedoms. That section provides that "[a]ny person charged with an offence has the right . . . not to be denied reasonable bail without just cause".

[8] However, a person can not rely on the protection of Charter s. 11(e) after being found guilty of an offence. As Justice Arbour explained in *R. v. Farinacci*, [1993] O.J. No. 2627 (CA) at para. 9:

9. The right not to be denied reasonable bail without just cause is rooted in the presumption of innocence, which is substantially spent by the conviction. Indeed, the presumption of innocence is spent by the verdict, be it a conviction or an acquittal. A conviction does not create a presumption of guilt. It constitutes a legal, conclusive finding of guilt. Like an acquittal, it is enforceable unless and until reversed. After a conviction, there is no presumption left, one way or the other. There is an enforceable finding of guilt.

[9] The usual practice in British Columbia has generally been to allow people to remain on release orders following a finding of guilt. The fact that continued release has been the usual practice does not mean that it should be unexpected that the court could review release orders after a finding of guilt or could revoke them when appropriate. That practice may be evolving. The current version of the LSBC's Professional Legal Training Course "Practice Checklist for Judicial Interim Release" suggests that articulated students "[a]dvice the client that bail can be revoked by the court if there is a finding of guilt after trial (usually when the Crown applies for an order for same, but note that bail can also be revoked on the court's own motion)." (See: Law Society of British Columbia, Judicial Interim Release Procedure: Carswell's Form and Precedent Collection: Criminal Law Precedents, 2nd Ed. § 4:9, current to September 4, 2024.)

[10] There are two sources of authority for revoking a release order and remanding an offender into custody after a finding of guilt and before the imposition of sentence. They are sections 523(1)(b)(ii) and 523(2)(a) of the Criminal Code.

[11] Section 523(1)(b)(ii) provides as follows:

523 (1) If an accused, in respect of an offence with which they are charged, has not been taken into custody or has been released from custody under any provision of this Part, the appearance notice, summons, undertaking or release order 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, summons, undertaking or release order 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.

[12] Sections 523(1.1) and (1.2) deal with the process following the receipt of a new information or the preferment of a direct indictment, and are not relevant to the case before me.

[13] Section 523(2)(a) provides as follows:

523 (2) Despite subsections (1) to (1.2),

(a) the court, judge or justice before which or whom an accused is being tried, at any time,

(b) the justice, on completion of the preliminary inquiry in relation to an offence for which an accused is ordered to stand trial, other than an offence listed in section 469, or

(c) with the consent of the prosecutor and the accused or, where the accused or the prosecutor applies to vacate an order that would otherwise apply pursuant to subsection (1.1), without such consent, at any time

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

(ii) where the accused is charged with an offence listed in section 469, a judge of or a judge presiding in a superior court of criminal jurisdiction for the province, or

(iii) the court, judge or justice before which or whom an accused is to be tried,

may, on cause being shown, vacate any order previously made under this Part for the interim release or detention of the accused and make any other order provided for in this Part for the detention or release of the accused until his trial is completed that the court, judge or justice considers to be warranted.

- [14] Until recently, the law in Canada was unsettled as to which of these sections authorized the revocation of bail following a finding of guilt. One line of authority, including *R. v. Iyer*, 2016 ABQB 485, and *R. v. Green* (2006), 210 C.C.C. (3d) 543, held that s. 523(1)(b) recognized the possibility of post-guilt revocation of bail but did not confer power on the trial judge to do so; rather, that power arose only under s. 523(2)(a), and only upon cause being shown by the Crown.
- [15] The alternate line of authority, endorsed in cases including *R. v. B.T.Q.*, 2017 ABQB 715, held that s. 523(1)(b)(ii) itself provided jurisdiction to revoke or vary bail following a finding of guilt, without resort to s. 523(2). It had been interpreted in that way in cases including *British Columbia (Attorney General) v. British Columbia (Provincial Court Judge)*, (1999), B.C.J. No. 2406 (B.C.S.C.) at para. 17-20 as it would apply to Provincial Court judges. The Honourable Judge Doulis considered the issue in *R. v. P.M.M.*, 2019 BCPC 170, without needing to decide it, because the Crown in the case before her had made its application under s. 523 and 524(8) of the Code.
- [16] This uncertainty was addressed by the Alberta Court of Appeal in *R. v. Aheer*, 2020 ABCA 232, a decision that was very recently followed in this province in *R. v. Hayes*, 2025 BCSC 2187. In *Aheer*, the Alberta Court of Appeal held that s. 523(1)(b)(ii) and 523(2)(a), viewed in context, reflect the distinction between release before a finding of guilt and release after a finding of guilt. Section 523(2) governs revocation of bail before or during trial, prior to a finding of guilt, and the Crown must show cause. Once found guilty, however, an accused no longer benefits from the presumption of innocence. After a finding of guilt on evidence heard by the trial judge, s. 523(1)(b)(ii) grants the trial judge jurisdiction on his or her own motion to revoke bail, without a requirement that the Crown show cause. The two sections therefore address two distinct scenarios.
- [17] In the case at bar, I relied on s. 523(1)(b)(ii) after a finding that F.C.M. was guilty of the offences charged.

Mr. Hayes' Application

- [34] On November 7, 2025, Mr. Hayes filed an application for judicial interim release pending his sentencing.
- [35] Mr. Hayes' release plan is his same judicial interim release plan prior to trial - namely electronic monitoring and a strict curfew - augmented by a \$5,000 cash deposit. This represents a step up in what is referred to as the 'Antic ladder' - referring to the seminal Supreme Court of Canada in *R v. Antic*, 2017 SCC 27.

[36] As stated in the headnote of *Antic*:

While a bail hearing is an expedited procedure, the bail provisions are federal law and must be applied consistently and fairly in all provinces and territories. A central part of the Canadian law of bail consists of the ladder principle and the authorized forms of release, which are found in s. 515(1) to (3) of the Criminal Code . Save for exceptions, an unconditional release on an undertaking is the default position when granting release. Alternative forms of release are to be imposed in accordance with the ladder principle, which must be adhered to strictly: release is favoured at the earliest reasonable opportunity and on the least onerous grounds. If the Crown proposes an alternate form of release, it must show why this form is necessary for a more restrictive form of release to be imposed. Each rung of the ladder must be considered individually and must be rejected before moving to a more restrictive form of release. Where the parties disagree on the form of release, it is an error of law for a judge to order a more restrictive form without justifying the decision to reject the less onerous forms.

[37] In addition, the defence brings to my attention the fact that Mr. Hayes actually served some 53 days in pre-trial custody after his initial arrest on February 19, 2024, before he obtained judicial interim release. Further, given Mr. Hayes has been in post-trial custody since October 23, 2025, the defence says that he is approaching the possibility of a time-served situation or even a situation where he will have spent more time in custody than his ultimate sentence.

[38] In this regard, I consider the sentencing of Mr. Hayes to be a priority and so with the assistance of Supreme Court Scheduling and the cooperation of counsel, we have reserved the date of December 12, 2025, for this purpose.

Crown's Position

[39] The Crown opposes Mr. Hayes' application on two grounds: first, that I simply lack jurisdiction and, in the alternative, on a substantive basis.

Analysis

[40] As a starting point, I reject the Crown's argument that a judge does not have the jurisdiction to vary an order made under s. 523(1)(b)(ii) either upon their own discretion via a further s. 523(1)(b)(ii) order or upon cause being shown under s. 523(2). To suggest otherwise would go against well-accepted principles of statutory interpretation and against the Alberta Court of Appeal's analysis as set out in *Aheer*.

- [41] R. v. W.F., 2023 NSSC 281, is an example of a similar situation, albeit in reserve. The judge in W.F. initially heard an application to revoke bail under s. 523(1)(b)(ii) and decided to continue bail. Later, however, circumstances changed and the same judge revoked bail also under s. 523(1)(b)(ii). This decision also stands for the proposition that even though the provision in the Code says "without cause" there still must be some judicial reason to exercise discretion. Specifically at para. 16 Justice Bodurtha states:
- [16] In my view, even where the statutory provision is described as "without cause", the discretion would require some judicial reason to exercise it. The issue before me is whether the facts from my initial denial of the application to revoke W.F.'s bail have materially changed such that I should now exercise my discretion and revoke bail. In the current circumstances, the facts have materially changed and I shall revoke W.F.'s bail.
- [42] When Aheed and W.F. are read together, in my view, a framework emerges. Section 523(1)(b)(ii) allows judges to exercise discretion post-sentence to revoke bail. Section 523(2) allows judges to, upon cause shown by a party, modify an order made under any provision of this part of the Code.
- [43] My original order was made under s. 523(1)(b)(ii). Now, I find that the defence can apply under s. 523(2) for an order that I vacate my original order.
- [44] In reaching this conclusion, I find that the Crown's case authorities on appellate review are not applicable. The authorities concern the specific s. 680 appeal provision in the Code. It is true that s. 523(2) orders cannot be appealed but that is not what we are dealing with here. Section 523(1)(b)(ii) orders, I find, can be varied through the operation of s. 523(2) or through further s. 523(1)(b)(ii) orders (if the original order was to continue bail and the new order is to revoke bail).
- [45] In this regard, I rely upon the Alberta Court of Appeal's endorsement of this approach and there is also some authority from the Ontario Court of Appeal that suggests that the way I used s. 523(1)(b)(ii) was appropriate. I recognize there are some superior court decisions that suggest a different operation of s. 523 of the Code, but the approach taken in Aheer seems to be preferred.
- [46] Before moving on from the jurisdiction issues, however, I am going to specifically address three cases relied upon by the Crown in opposing Mr. Hayes' judicial interim release application since they are appellate authorities from this province that, if applicable, are binding on me.
- [47] The first is R. v. Purdy, 2005 BCCA 99 at para. 11. In my opinion, the Crown's reliance on this decision is mistaken. This decision expressly concerns s. 680 of the Code, a provision in the Code which relates to an appeal made to the Court of Appeal. It is also premised on the trite proposition that the Court of Appeal is a court of statutory jurisdiction: see para. 15.

- [48] Purdy, written by [then] Chief Justice Finch also impliedly states, at para. 11, that the defence is free to apply under s. 523(2) to vary an initial order that you made under 523(1)(b) (ii):
- [11] The effect of the legislation is that one may apply under s.680 for a direction to review a first order denying bail, but that if one applies unsuccessfully in the trial court under s.523 to vacate that first order, the Court of Appeal may not review the dismissal of the application to vacate. I make no comment on the legislative policy underlying the statutory scheme. However, the legislative intent is clear.
- [49] The second is *R. v. Bukmeir*, 1996 CanLII 2503. With all due respect, Crown's reliance on this case is also somewhat puzzling. It stands for the proposition that the Court of Appeal cannot hear an appeal of a decision made by a superior court justice under s. 523(2) of the Code. It also states that an order made under s. 523(2) is a final order.
- [50] The order that I made, however, was under s. 523(1)(b)(ii) of the Code. It appears to me that an application under s. 523(2) is precisely the mechanism the defence can and should use to apply to vary my initial order.
- [51] The final decision is *Patterson v. Canada (Minister of Justice)*, 2020 BCCA 13. This case is distinguishable as it concerns extradition, and the decision involves a consideration of the specific statutory provisions relevant to that issue. Further, the accused in *Patterson*, unlike Mr. Hayes, still enjoyed the presumption of innocence.
- [52] Having concluded that I do have jurisdiction, my analysis turns to whether Mr. Hayes' detention is still justified on tertiary grounds, particularly considering the length of the sentence in relation to the time spent in pre-trial and post-trial custody.
- [53] In this regard, I am guided by the Supreme Court of Canada's comments in *R. v. Oland*, 2017 SCC 17, wherein Justice Moldaver says at para. 35:
- [35] By contrast, once a conviction is entered, the presumption of innocence is displaced and s. 11(e) of the Charter no longer applies. This is reflected in the shift in onus which occurs when a person who has been convicted and sentenced applies for bail pending appeal. Unlike the pre-trial context, where by and large the onus rests on the Crown to establish that an accused should be detained in custody, for appeal purposes, Parliament has seen fit to reverse the onus onto the applicant in all cases.
- [54] I also find *R. v. Richardson*, 2024 BCPC 136, instructive. This Provincial Court decision concerns somewhat similar circumstances to the application at hand. Upon conviction, the trial judge revoked bail and then heard a s. 523(2) application for judicial interim release. The Crown in *Richardson* did not raise a jurisdictional issue, but did oppose the defence application on its merits.

- [55] Judge Silverman found that the release plan was quite similar to the previous bail conditions with some augmented terms such as Mr. Richardson residing with his mother and surrendering his passport. Judge Silverman did not, however, find these additional proposed conditions to be persuasive.
- [56] Judge Silverman also considered that Mr. Richardson's circumstances had changed in that he no longer enjoyed the presumption of innocence and ultimately dismissed the application.
- [57] I was also directed to *R. v. Yassin*, 2012 ONCJ 783, which is on point, but I prefer the analysis in *Richardson*.
- [58] I do certainly recognize that there are cases going the other way - namely where post-conviction judicial release is granted when the defence can satisfy the court that it is appropriate. Three such cases are:
- a) *R. v. Lanouette & Couchman* (unreported British Columbia Provincial Court case decided by Judge Bowry on January 29, 2019) - while relevant, it is quite factually specific. With respect to Mr. Couchman, an increase in his surety from \$400 to \$10,000, a condition that he reside with his mother, and the imposition of electronic monitoring was found sufficient to constitute a change in circumstances to the extent that judicial interim release pending sentence was granted. For Mr. Lanouette, the fact that he suffered very serious injury in prison was, alongside other bail conditions, also found to be a significant change in circumstances meriting a judicial interim release pending sentence;
 - b) *R. v. P.M.M.*, [2019] B.C.J. No 1441 - In *P.M.M.*, the offender missed court appearances and advanced "pseudo-legal arguments" in an attempt to frustrate the court process. The offender was initially denied bail. The offender later withdrew his pseudo-legal arguments and attended court, while demonstrating good behavior. Judge Doulis applied accordingly *Antic* and decided to grant bail to *P.M.M* pending sentencing; and
 - c) *R. v. A.H.*, 2024 ONSC 427 (CanLII) - this decision rather briefly addresses unsuccessful application by the Crown to revoke bail following convictions for what I think the public would consider to be objectively very serious offences - including the prospect of a dangerous offender/long term offender designation. Part of the Justice Casullo's reasoning indicated that the possibility of the convicted individual being in a time-served situation was a relevant factor to the analysis: see para. 23.
- [59] Having regard to all the circumstances and specifically considering the defence's submissions regarding their judicial interim release plan moving up the *Antic* ladder, which I accept, and their cited concerns about the combined amount of time that Mr. Hayes has been in pre-trial and now post-conviction custody, I still remain satisfied that Mr. Hayes should continue in custody until his sentencing scheduled for December 12, 2025. I am again doing so on tertiary grounds pursuant to s. 515(10)(c) of the Code.

- [60] Tertiary grounds exist where detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances including but not limited to those enumerated in ss. 515(10)(c)(i) through (iv) of the Code.
- [61] The fundamental question that arises from the tertiary ground is whether or not the public would lose confidence in the administration of justice if an individual (in this case not an accused person but a convicted person) is released on bail.
- [62] In reaching this conclusion, I rely strongly on the comments of the Honourable Chief Justice Wagner in *R. v. St. Cloud*, 2015 SCC 328, wherein he addressed the meaning of "public" at para. 74:

In *Hall*, this Court explained that the "public" in question consists of reasonable members of the community who are properly informed about "the philosophy of the legislative provisions, Charter values and the actual circumstances of the case": para. 41, quoting *R. v. Nguyen (Win - spell)* (1997), 119 C.C.C. (3d) 269 (B.C.C.A.), at para. 18.

- [63] Continuing in this regard at paras. 80 to 83 of *St. Cloud*, Chief Justice Wagner stated as follows:
- [80] In short, the person in question in s. 515(10)(c) Cr. C. is a thoughtful person, not one who is prone to emotional reactions, whose knowledge of the circumstances of a case is inaccurate or who disagrees with our society's fundamental values. But he or she is not a legal expert familiar with all the basic principles of the criminal justice system, the elements of criminal offences or the subtleties of criminal intent and of the defences that are available to accused persons.
- [81] It is of course not easy for judges to strike an appropriate balance between the unrealistic expectations they might have for the public on the one hand, and the need to refuse to yield to public reactions driven solely by emotion on the other. This exercise may be particularly difficult in this era characterized by the multiplication and diversification of information sources, access to 24-hour news reports and the advent of social media.
- [82] Canadians may in fact think they are very well informed, but that is unfortunately not always the case. Moreover, people can also make their reactions known much more quickly, more effectively and on a wider scale than in the past, in particular through the social media mentioned above, which are conducive to chain reactions. The courts must therefore be careful not to yield to purely emotional public reactions or reactions that may be based on inadequate knowledge of the real circumstances of a case.
- [83] However, the courts must also be sensitive to the perceptions of people who are reasonable and well informed. This enables the courts to act both as watchdogs against mob justice and as guardians of public confidence in our justice system. It would therefore be dangerous, inappropriate and wrong for judges to base their decisions on media reports that are in no way representative of a well-informed public. . . .

[64] Simply stated, and after deliberation, I am satisfied that the public, as defined and explained above, would lose confidence in the administration of justice if Mr. Hayes were granted judicial release pending his upcoming sentencing on December 12, 2025.

[65] December 12, 2025, shall be the next appearance in this matter.

"Hardwick J."

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