

CANADA / JUDGMENT

R. v. M.R.

2025 ONCA 789

COURT

Court of Appeal for Ontario

DECIDED

17 November 2025

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Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. M.R., 2025 ONCA 789

DATE: 20251117

DOCKET: M56263 (COA-25-CR-1083)

Thorburn J.A. (Motion Judge)

BETWEEN

His Majesty the King

Respondent/Responding Party

and

M.R.

Appellant/Applicant

Eric Granger, for the appellant/applicant

Emily Marrocco, for the respondent

Heard: November 14, 2025

REASONS FOR DECISION

- [1] The applicant was convicted of sexual assault, sexual interference, and invitation to sexual touching. The offences involved anal and vaginal sex from 2005-2009 when the complainant was a minor. He was sentenced to seven years for sexual interference, and seven years concurrent on the charge of invitation to sexual touching. The count of sexual assault was conditionally stayed.
- [2] The applicant seeks bail pending his appeal.

A. THE TEST TO BE MET The Factors to be Considered

- [3] Bail pending appeal is governed by s. 679(3) of the Criminal Code, R.S.C. 1985, c. C-46. To be granted bail pending appeal, the applicant must establish on a balance of probabilities that:
- (a) the appeal is not frivolous;
 - (b) he will surrender into custody in accordance with the terms of the release order; and
 - (c) his detention is not necessary in the public interest.
- [4] It is agreed that the first two factors have been met, that is, the appeal is not frivolous and the applicant will surrender into custody when required. However, the Crown claims the applicant has not satisfied the third factor, that his detention is not necessary in the public interest.
- [5] The balance of these reasons will therefore address the third public interest factor.

The Public Interest Factor

- [6] The meaning of “public interest” in the context of bail pending appeal applications was described in *R. v. Farinacci* (1993), 86 C.C.C. (3d) 32 (Ont. C.A.), at pp. 47-48 as follows:

The concerns reflecting public interest, as expressed in the case law, relate both to the protection and safety of the public and to the need to maintain a balance between the competing dictates of enforceability and reviewability. It is the need to maintain that balance which is expressed by reference to the public image of the criminal law, or the public confidence in the administration of justice.

- [7] The public interest criterion consists of two components: (i) public safety and (ii) public confidence in the administration of justice: Oland, at paras. 23 and 26.

The Public Safety Element of the Public Interest Factor

- [8] Detention is necessary to preserve public safety where the proposed release plan is insufficient to address any public safety concerns. In the judicial interim release, a court looks to past behaviour for assistance in assessing predictors of future behaviour in respect of public safety: Gary T. Trotter, *The Law of Bail in Canada*, 3rd ed. (Toronto: Carswell, 2024), at s. 10:10.
- [9] The applicant was on bail pending conviction for approximately four years without incident. He turned himself in for sentencing. He is 60 years old and has never served a custodial sentence. He has a surety and the proposed release plan is sufficient to address any public safety concerns.
- [10] For these reasons, it is agreed that on a balance of probabilities, the applicant has met his burden on the public safety component.

The Public Confidence Element of the Public Interest Factor

- [11] However, the Crown takes the position that the public confidence element of the public interest factor has not been met such that the applicant should remain in custody pending appeal. Public confidence includes both (i) enforceability, and (ii) reviewability considerations: Oland, at para. 25, citing Farinacci, at pp. 47-49.
- [12] Enforceability considerations include: the gravity of the offence, the circumstances surrounding the commission of the offence, and the potential for a lengthy term of imprisonment. The reasoning is that the more serious the crime, the greater the risk public confidence in the administration of justice will be undermined if the person convicted is released on bail pending appeal: Oland, at paras. 37-38; R. v. M.S., 2022 ONCA 348, at para. 14.
- [13] Reviewability involves an assessment of the strength of the appeal and extends beyond finding that the grounds of appeal are not frivolous, to a more comprehensive assessment of the general plausibility of the merits of the appeal, as meaningful review is essential to maintain public confidence in the administration of justice: Oland, at paras. 40-46.

- [14] When balancing enforceability and reviewability, public confidence is measured through the eyes of a reasonable member of the public who is “thoughtful, dispassionate, informed of the circumstances of the case and respectful of society’s fundamental values”: Oland, at para. 47, citing *R. v. St-Cloud*, 2015 SCC 27, [2015] 2 S.C.R. 328, at paras. 74-80.
- [15] The Supreme Court noted in Oland, at para. 28 that appellate judges continue to have difficulty resolving the tension between enforceability and reviewability in assessing the public interest factor “where they are faced with a serious crime on the one hand, and a strong candidate for bail pending appeal on the other.” Moldaver J. continued, saying, at para. 29, that “[r]arely does [the public confidence] component play a role, much less a central role, in the decision to grant or deny bail pending appeal.”
- [16] Parliament has not restricted the availability of bail pending appeal for persons convicted of serious crimes. As stated in Oland, at para. 66:
- [E]ven in the case of very serious offences, where there are no public safety or flight concerns and the grounds of appeal clearly surpass the “not frivolous” criterion, a court may well conclude that the reviewability interest overshadows the enforceability interest such that detention will not be necessary in the public interest.
- [17] The public safety and public confidence components are not “silos” and, where the public safety threshold has been met by an applicant, residual public safety concerns or the absence of public safety concerns should be considered in the public confidence analysis: Oland, at para. 27.
- B. THE ISSUE [18] The issue on this application is whether the applicant’s detention is necessary in the public interest.
- C. ANALYSIS [19] While on a balance of probabilities, the public safety concerns have been met, the enforceability factors are clearly grounds for concern. These offences are objectively serious and involve serious breaches of trust of a minor over a prolonged period, as reflected by the seven-year sentence. Therefore, all three enforceability factors weigh against the applicant’s bail pending appeal.
- [20] An assessment of the reviewability factors must therefore be conducted. As noted above, this involves a more comprehensive assessment of the merits of the appeal, keeping in mind that a meaningful review is essential to maintain public confidence in the administration of justice: Oland, at paras. 40-46.
- [21] Only two witnesses testified at trial: the complainant and the applicant. The trial judge acknowledged that the case “turns largely on the credibility of the witnesses and the reliability of their evidence.”

- [22] The applicant claims that the trial judge failed to address serious and material inconsistencies in the complainant's evidence between her police statement in 2021 and her testimony at trial. For example, in her 2021 police statement, the complainant said that after the assaults ended in 2009:
- (a) She blocked the applicant from all electronic and live communications, as he was a "monster";
 - (a) She had no contact with the applicant, save for once when she attended his house to confront him about what happened;
 - (b) When the police asked her whether the applicant had her telephone number she replied, "Oh, no no no, he's blocked on – I made sure he's blocked on everything he can be."
 - (c) When she was again asked by police, "Would he know your phone number or where you live or anything like that?", she replied, "I hope not".
- [23] In cross-examination at trial, after telephone records and other documents had been obtained, the complainant's evidence on these points was quite different. She acknowledged that:
- (a) She had substantial contact with the applicant through electronic communications to and from him, and in-person encounters with the applicant between 2017 and 2019. For example, she came to his home looking to do work for him, she came and did work for him, she went to have coffee with him at his home, and in 2017, she asked the applicant if she could stay with the applicant "for a while" and agreed that this was a serious request; and
 - (b) She knew the applicant had her telephone number because she texted him.
- [24] This was particularly problematic as only the complainant testified for the prosecution and there was no other evidence to support her testimony.
- [25] When asked about the discrepancy, the complainant explained that she called the police station to change her police statement but the police officer who had taken her statement had retired. She also said she spoke to a new officer but did not recall speaking to him about these changes to her statement.
- [26] No records were adduced to corroborate her statement that she had made attempts to contact the police to change her statement. and the complainant did not advise Crown counsel prior to trial that she wished to change her statement.
- [27] When she was asked by the applicant's counsel at trial whether she knew she had had contact with the applicant when she spoke to the police, she replied "possibly".
- [28] These were significant changes regarding the complainant's evidence as to her contact with the applicant and her relationship with him.

- [29] At trial, the applicant's counsel suggested that, contrary to the complainant's assertion that she viewed him as a "monster" and wanted nothing to do with him, she initiated communication and visits with the applicant many times thereafter. The applicant's counsel took the position that the only logical explanation was that the complainant lied to police to buttress her characterization of the applicant as a "monster" who had abused her and with whom she wished to have no contact, that she tailored her evidence to make her allegations seem more believable, and that the discovery of these untruths was devastating to her credibility.
- [30] The applicant's evidence was that the complainant continued to have contact with him. He suggested that the complainant came forward with these allegations after being offered money by his former wife and that the complainant was motivated to lie because she owed him thousands of dollars that she had not repaid.

Analysis of the Trial Judge's Reasons

- [31] Reasons for Judgment explain not just the result but how and why that result was reached. Credibility assessments are only accorded deference if the trial judge has "sufficiently explained how significant discrepancies that could undermine credibility and reliability, have been resolved": *R. v. D.H.*, 2016 ONCA 569, 338 C.C.C. (3d) 251, at para. 34; *R. v. J.B.*, 2023 ONCA 264, at para. 21.
- [32] However, the only reference to any of the above noted evidence by the trial judge is about the applicant having the complainant's telephone number as set out below:

Defence counsel states that the complainant acknowledges in the police statement having not been truthful with the police about [the applicant] having her phone number out of concerns to the fact that it might make her allegations less believable. In his view, this is a concrete example that she acknowledges of tailoring her statement to try and make her allegations more believable. I do not agree with counsel on this point.

[The complainant] testified that she wanted to add to her statement after it was made to the police in 2021. She would have contacted the police detective in Long Sault detachment on more than one occasion to add to her statement. She would have left a voicemail to the officer. Unfortunately, there was never a follow-up by the police on this because a detective was no longer working on her case or working for the – the police. She explains that at the time of the interview she did not remember this information as she had blocked it off in her mind. When she spoke to someone at the police detachment, she was told that she would get a return call to add to her statement as the detective working on her case was no longer part of her case because he had left as stated previously.

[The complainant] also testified that when asked by the detective during her interview in 2021 whether or not [the applicant] had her phone number, she said she had blocked him. She confirms having blocked him at the time of the interview in 2021, but that from 2017 to 2019, he was not blocked.

[33] The failure to otherwise address the complainant's statement to the police, and the changes to her evidence regarding her contact and relationship with the applicant, may be a failure to address, analyze and give effect to a material issue.

[34] Where there are material inconsistencies that go to the heart of the issue as to whether the complainant was telling the truth, it is incumbent upon a trial judge to articulate, in succinct terms, how these difficulties were resolved. *R. v. Dinardo*, 2008 SCC 24, [2008] 1 S.C.R. 788, at paras. 24-35 (emphasis added).

[35] The applicant submits that the failure to consider these material discrepancies suggests that no deference is owed to those findings under *R. v. W.(D)*, [1994] 3 S.C.R. 521.

[36] The Crown fairly acknowledged in oral submissions that these grounds of appeal are arguable and that the evidence that was neither referred to at all or analyzed, is material to the complainant's credibility.

[37] For these reasons, as there are no public safety or flight concerns and the grounds of appeal clearly surpass the "not frivolous" criterion, the reviewability interest overshadows the enforceability interest such that detention is not necessary in the public interest.

D. CONCLUSION [38] For the above reasons, and notwithstanding the able submissions of the Crown, the application for bail pending appeal is allowed on the terms set out in the draft order.

"Thorburn J.A"

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