

CANADA / JUDGMENT

R. v. Rosbergen

2025 BCCA 466

COURT

British Columbia Court of Appeal

DECIDED

16 December 2025

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2025 BCCA 466 R. v. Rosbergen

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Rosbergen,

2025 BCCA 466

Date: 20251216

Docket: CA50614

Between:

Rex

Respondent

And

Adrianus Johannes Rosbergen

Appellant

Before:

The Honourable Madam Justice Fenlon

The Honourable Madam Justice Fisher

The Honourable Madam Justice Horsman

On an application to vary: An order of the Court of Appeal for British Columbia,
dated August 22, 2025 (R. v. Rosbergen, Vancouver Docket CA50614).

Oral Reasons for Judgment

Counsel for the Appellant:

P.S. McMurray

Counsel for the Respondent:

E. Purtzki

Place and Date of Hearing:

Vancouver, British Columbia

December 10, 2025

Place and Date of Judgment:

Vancouver, British Columbia

December 16, 2025

Summary:

This is a review of the decision of a chambers judge in this Court to grant an appellant interim release pending the hearing of his appeal. The appellant was convicted of second degree murder and sentenced to life imprisonment with no eligibility for parole for 12 years. The Crown obtained leave from the Chief Justice pursuant to s.680(1) of the Criminal Code to have a division of this Court review the release order.

Held: Application for review allowed. The chambers judge made two material errors in finding that the appellant's release would not undermine public confidence in the administration of justice. First, the judge failed to engage in a pointed assessment of the strength of the appeal. Second, the judge failed to consider the time the appellant would spend in custody pending the appeal in light of the overall length of the sentence imposed. Given the weak merits of the appeal, the seriousness of the offence, and the appellant's moral culpability, there is a strong public interest in this case in seeing the sentence imposed without delay. The release order is set aside and the appellant is returned to custody.

[1] FENLON J.A.: The issue before us is whether the decision of a single justice in chambers to release Adrianus Rosbergen pending his appeal should be varied. The question arises because the Crown obtained leave from the Chief Justice under s. 680 of the Criminal Code, R.S.C. 1985, c. C-46, to have the bail decision reviewed by a division of this Court.

Background

[2] In December 2024, a jury convicted Mr. Rosbergen of the second degree murder of Allen Skedden. The jury heard that Mr. Rosbergen and Mr. Skedden were in a court dispute over a tenancy claim. Mr. Rosbergen had been ordered to pay Mr. Skedden \$1,080 but failed to do so.

- [3] The jury heard that, the night before a court enforcement hearing scheduled for February 22, 2017, Mr. Rosbergen and his friend, Richard Anderson, went to Mr. Skedden's home in Delta. Mr. Anderson testified at trial for the Crown. He gave evidence that he and Mr. Rosbergen told Mr. Skedden they were going to take him to a bank to get the money he was owed. According to Mr. Anderson, Mr. Rosbergen then dropped him off before carrying on with Mr. Skedden. That was the last time Mr. Skedden was seen alive.
- [4] Mr. Anderson also testified that Mr. Rosbergen subsequently asked him to help clean a trailer box stored on Mr. Rosbergen's rental property. As Mr. Anderson cleaned out the trailer using a sponge, the water turned red. He asked Mr. Rosbergen what was going on and according to Mr. Anderson, Mr. Rosbergen told him, "Don't worry about it. He's gone." Later, Mr. Rosbergen told Mr. Anderson, "I tied him up with a rope and I threw him in the drink".
- [5] In addition to Mr. Anderson's evidence, there was a compelling body of circumstantial evidence linking Mr. Rosbergen to the murder. Mr. Skedden's blood was found inside Mr. Rosbergen's truck. Mr. Skedden's jacket with blood on it, his baseball cap with his DNA on it, and certain other items linked to him were located at Mr. Rosbergen's rental property near the trailer box. A piece of duct tape matching tape found near Mr. Skedden's body was also located at Mr. Rosbergen's property.
- [6] During sentencing, the trial judge found that Mr. Rosbergen had beaten Mr. Skedden until his bones were broken and then suffocated him before callously disposing of his body by the side of the river where it was predated upon by animals.
- [7] Mr. Rosbergen was 74 years old at the time of the offence and 82 when convicted. The trial judge found that the only mitigating factor was the absence of a prior criminal record. While accepting that Mr. Rosbergen was elderly and had some health issues, the judge did not find that his circumstances rose to the level of "excessive hardship": 2025 BCSC 833 at para. 22. The judge imposed a sentence of life imprisonment with no eligibility for parole for 12 years.
- [8] Mr. Rosbergen filed a notice of appeal from conviction and sentence in April 2025. In August, he applied for bail pending his appeal. He argued that the strength of his appeal, his age, his deteriorating health while in custody for the previous eight months, and the need to liquidate his real estate assets to fund the appeal all weighed in favour of his release.
- [9] The Crown opposed Mr. Rosbergen's release, taking the position that releasing him would undermine public confidence in the administration of justice.

The bail hearing

- [10] The bail judge began his analysis by recognizing that applications for release pending appeal on indictable matters are governed by s. 679 of the Criminal Code, which required Mr. Rosbergen to show:

- (a) that his appeal was not frivolous;
 - (b) that he would surrender himself into custody for the hearing of the appeal in accordance with the terms of his release order; and
 - (c) that his detention was not required in the public interest.
- [11] The judge also correctly noted that there is no presumptive entitlement to bail pending appeal from conviction on an indictable matter; nor is there a presumption of innocence once an accused is found guilty at trial. The burden was thus on Mr. Rosbergen to establish that the requirements for his release were met.
- [12] The Crown conceded at the bail hearing that Mr. Rosbergen met the requirements of s. 679(3)(a) and (b): the grounds of appeal were not frivolous, and Mr. Rosbergen was not a flight risk. Accordingly, the application for release turned on the public interest element of the test in s. 679(3)(c).
- [13] The bail judge was guided by the principles identified by the Supreme Court of Canada in *R. v. Oland*, 2017 SCC 17. In this regard, he said:
- [19] The Court in *Oland* confirmed that the public interest analysis under s. 679(3)(c) has two branches.
- [20] The first branch of the analysis is concerned with public safety. An applicant will not be granted bail pending appeal from conviction unless it is shown that release into the community will not pose a substantial risk to the safety of the community. Even where the applicant satisfies the court that this threshold has been met, residual public safety concerns that fall short of substantial risk may factor into the second branch of the analysis: *Oland* at para. 39, among others.
- [21] The second branch of the analysis is concerned with public confidence in the administration of justice. Although s. 679(3) does not contain a list of factors or considerations relevant to the assessment of public confidence, guidance can be taken from the four factors found in s. 515(10)(c), the public confidence branch of the test for release on bail pending trial. The four factors listed there are: the strength of the Crown's case, the gravity of the offence, the circumstances surrounding its commission, and the likely sentence: *Oland* at paras. 31-32.
- [14] On the first branch of the public interest element, the bail judge was satisfied that Mr. Rosbergen's release would not pose a substantial risk to the safety of the community. The success of Mr. Rosbergen's application turned on whether he could satisfy the judge that he met the second branch of the public interest analysis: that public confidence in the administration of justice would be maintained if Mr. Rosbergen were to be released.
- [15] The bail judge recognized that, in assessing this second branch of the public confidence element, he was required to address the tension between enforceability and reviewability interests. The enforceability interest reflects the need to respect the general rule that

judgments are to be immediately enforced. The reviewability interest reflects society's acknowledgement that our justice system is not infallible and that persons who challenge the legality of their conviction should be entitled to a meaningful review process--one which does not require them to serve all or a significant part of a custodial sentence only to find out on appeal that the conviction upon which the sentence was based was unlawful: Oland at para. 25, citing *R. v. Farinacci* (1993), 86 C.C.C. (3d) 32, 1993 CanLII 3385 (Ont. C.A.).

- [16] The bail judge grappled with the tension between these two principles. He noted it was "a close call given the gravity of the offence and Mr. Rosbergen's moral blameworthiness". However, he ultimately determined that public confidence would be maintained if Mr. Rosbergen was released. In so deciding, he considered that, "if bail is denied, Mr. Rosbergen could spend a considerable amount of time in jail pending the hearing of his appeal, in circumstances where he appears to have at least some arguable grounds on which to challenge the soundness of his conviction": at para. 35.

On review

- [17] Under s. 680(1) of the Criminal Code, this Court on review may vary the decision of a bail judge in accordance with the following principles: 1) absent palpable and overriding error, the Court must show deference to the judge's findings of fact; 2) the Court may intervene and substitute its decision for that of the judge where it is satisfied that the judge erred in law or in principle and that error was material to the judge's decision; and 3) in the absence of legal error, the Court may intervene and substitute its decision for that of the judge if it concludes that the decision was clearly unwarranted: Oland at para. 61.
- [18] The Crown contends the judge made two errors in principle, either or both of which were material to his decision to release Mr. Rosbergen. First, in assessing the merits of the appeal, the Crown says the judge failed to engage with the strength of the grounds of appeal relative to the significant enforceability interests in this case. Second, the Crown contends the bail judge erred in principle by failing to consider the length of Mr. Rosbergen's sentence relative to any anticipated delays in the hearing of the appeal. I will address each ground in turn.
1. Failure to engage with the strength of the appeal relative to the enforceability considerations
- [19] On the first alleged error, the Crown submits that the judge failed to engage in the "more pointed assessment of the strength of [the] appeal" mandated by Oland at para. 44--an assessment essential to weighing the reviewability interest against what the bail judge in this case described as "a strong public interest in seeing the sentence enforced without delay": at para. 32.
- [20] In addressing this ground of appeal, I begin, as the judge did, with the principles articulated in Oland at paras. 40-45. First, the strength of an appeal plays a central role in assessing the reviewability interest. Second, the bail judge is to conduct a more pointed assessment of the strength of the appeal, going beyond identifying whether the merits meet the "not frivolous"

standard identified in s. 679(3)(a). That criterion "operates as an initial hurdle that produces a categorical 'yes' or 'no' answer, allowing for the immediate rejection of a release order in the face of a baseless appeal". When conducting the more pointed assessment under s. 679(3)(c), the judge is to examine the grounds identified in the notice of appeal "with an eye to their general legal plausibility and their foundation in the record" and must "look to see if the grounds of appeal clearly surpass the minimal standard required to meet the 'not frivolous' criterion."

- [21] I agree with the Crown that the bail judge correctly stated the law. However, with great respect to the bail judge, I also agree with the Crown's submission that the judge erred in the application of the law. In my view, he fell into error when he approached the assessment of the merits of the appeal assuming that he should be circumspect in assessing the grounds of appeal. This approach is evident in the judge's reasons concerning the first ground of appeal. He said:
- [27] Because this matter will have to be considered by a division of the Court at the hearing of Mr. Rosbergen's appeal, I will be somewhat circumspect about the strength and potential legal effect of this ground of appeal.
- [22] That approach appears to have affected the merits assessment generally, resulting in findings on the merits of each ground that effectively equated to the "not frivolous" standard. For example, the first ground of appeal was found to be "at least arguable": at para. 27. The arguments relating to the jury charge were assessed as "legally viable": at para. 31. In disposing of the application, the judge described the appeal overall as raising "at least some arguable grounds": at para. 35. Thus, although the judge stated at para. 25 that "at least some" grounds of appeal clearly surpassed the "not frivolous" standard, his conclusions in respect of each ground of appeal did not clearly surpass that standard.
- [23] In summary, and with respect, it was an error in principle for the judge to be circumspect in his assessment of the merits of the grounds of appeal when addressing the reviewability interest. To the contrary, a more probing inquiry into the chances of success on appeal was required: Oland at para. 43. The fact that a division of this Court will eventually grapple with the same grounds at the hearing of the appeal is of no moment in the bail application. The judge is not deciding whether a ground of appeal will succeed. They are, rather, assessing the strength of the grounds on the limited record before them. There is no risk that a division will be in any manner constrained by a single justice's views in chambers. Accordingly, that consideration should have played no part in the bail judge's approach to the task before him.
- [24] In my view, this error is a material one because the merits analysis is the primary determinant of the weight to be given to the reviewability interest relative to the enforceability interest.
- [25] I turn now to the second ground of appeal.

2. Failure to consider the length of Mr. Rosbergen's sentence relative to any anticipated delays
- [26] The Crown contends that the judge considered only the time Mr. Rosbergen would spend in jail pending the appeal, without assessing that delay relative to the length of the sentence to be served. That comparison is relevant to assessing the reviewability interest because it is based on the risk that "all, or a significant portion, of a sentence will be served before the appeal can be heard and decided": Oland at para. 48.
- [27] This Court has held that the length of a person's sentence is a relevant factor for both granting and denying release. In *R. v. A.L.*, 2018 BCCA 456, the appellant's lengthy 14-year determinate sentence weighed against release: at paras. 65-66. Similarly, in *R. v. Poony*, 2017 BCCA 310, the appellant's 11-year sentence was a factor weighing against release: at paras. 44, 49.
- [28] In the present case, the judge found that Mr. Rosbergen should be released because a reasonably informed member of the public "would take into account that, if bail is denied, Mr. Rosbergen could spend a considerable amount of time in jail pending the hearing of his appeal": at para. 35. He also referred to the risk that if Mr. Rosbergen were not released on bail, he would spend "an appreciable amount of time in custody awaiting his hearing": at para. 33.
- [29] Criminal appeals are routinely heard in this Court within 12 months of the filing of an appeal. There was nothing to suggest that Mr. Rosbergen's appeal could not be heard within that timeframe. It was, in my respectful view, an error in principle for the judge to consider the time Mr. Rosbergen could spend in jail while waiting for the outcome of the appeal without placing that period within the context of the length of the sentence imposed--life with no eligibility for parole for 12 years. It is evident that this is not a case in which Mr. Rosbergen will have served a substantial portion of his sentence before the appeal is heard.
- [30] Counsel for Mr. Rosbergen contends that the judge must be taken to have found the appeal period to be significant relative to the length of the sentence based on Mr. Rosbergen's age: because he is 82 and in poor health, his life sentence may turn out to involve a relatively small number of years, making the time pending appeal a significant portion of the sentence.
- [31] I would not accede to this argument for two reasons. First, the judge did not adopt this reasoning. To the contrary, he said that it was hard to see how age fit into the reviewability/enforceability analysis: at para. 33. Second, the potential for Mr. Rosbergen's life sentence to encompass a shorter period of time because he began serving it at age 82 weighs equally in favour of enforceability. If Mr. Rosbergen turns out to have only a few more years ahead of him, there is a greater public interest in seeing that he begins to serve his sentence immediately rather than spending a significant portion of his remaining years out on bail.
- [32] Having concluded that the judge made two material errors in principle, it remains to be determined whether Mr. Rosbergen's release should be confirmed or set aside.

3. Should the release decision be varied?

[33] The Crown concedes that the grounds of appeal are not frivolous, that Mr. Rosbergen is not a flight risk and that he does not pose a risk to the public. Therefore, the focus of the inquiry continues to be the second branch of s. 679(3)(c). We must determine whether Mr. Rosbergen has met his burden of establishing on a balance of probabilities that his release would not cause a loss of public confidence in the administration of justice.

[34] In balancing the reviewability and enforceability factors, I bear in mind the Supreme Court of Canada's admonition in Oland that public confidence is to be measured through the eyes of a reasonable member of the public--someone who is thoughtful, dispassionate, informed of the circumstances of the case and respectful of society's fundamental values: at para. 47.

[35] Little need be said about the enforceability interest. I agree with the bail judge's conclusion that there is a strong public interest in seeing the sentence enforced without delay in this case given the seriousness of the offence, the degree of violence and callousness involved, and Mr. Rosbergen's heightened moral culpability.

[36] The main question before us is whether that strong enforceability interest is outweighed by the reviewability interest in this case, where the accused is otherwise a good candidate for release. The weight to be given to the reviewability interest depends on our assessment of the strength of the four grounds of appeal raised by Mr. Rosbergen, to which I now turn.

(a) The proposed grounds concerning Mr. Anderson's polygraph results

[37] First, Mr. Rosbergen contends that the trial judge erred in refusing to allow defence counsel to cross-examine Mr. Anderson on the results of a failed polygraph test. During cross-examination, Mr. Anderson volunteered that he had taken such a test and implied initially that he had passed. The exchange is set out here:

Q What ended up happening, sir, is that you were being accused on June the 22nd of lying, covering up your involvement in the disappearance of Mr. Skedden. You knew that. You knew that they --

A They wanted me to take a lie detector test, and I refused for the longest time. And finally I agreed to it. I said, Okay, fine. I'll take your --

Q And you failed it, too, didn't you, sir?

A No, I didn't.

Q Oh, really.

A Yeah, they said, "You're free to go. We won't bother you again, but we will require you to come to court and testify." I said, "Fine. I'll do whatever it takes."

Q Okay, well, just so we're clear, sir, you went in March of 2022, to see a Sergeant Buettner (phonetic) in Chilliwack, right?

A Yeah.

Q Yeah, that's where you had the polygraph.

A That's right.

Q And you failed it, right?

A No, I didn't. Undecisive or -- the word, or something to that effect they used. I didn't fail and I didn't pass. It was -- it was . . .

Q I'm just going to show you a copy [indiscernible]

At that point, the Crown objected to defence counsel placing the polygraph examiner's report before the witness. That objection was upheld.

[38] Mr. Rosbergen's counsel argues that he should have been permitted to put the report to the witness. He intended to have Mr. Anderson admit that, despite implying he had passed the polygraph test, he had in fact been found to be "deceptive"--an admission that would have both impeached his credibility and demonstrated that his recollection was not reliable. Mr. Rosbergen says that, given how important Mr. Anderson's testimony was to the Crown's case, the judge's decision to prevent this line of questioning prejudiced his defence.

[39] In my view, this is not a strong ground of appeal. It concerns a discretionary decision of the trial judge to restrict questions after determining that their prejudicial effect outweighed their probative value--a decision that will be reviewed on appeal on a deferential standard.

[40] Further, although Mr. Anderson initially implied that he had passed a polygraph test, he ultimately impeached his own credibility by acknowledging, "I didn't fail and I didn't pass". In addition, the jury was given a strong Vetrovec caution concerning Mr. Anderson's evidence.

[41] The judge was concerned that the line of questioning defence wanted to pursue called into question the meaning of the word "deceptive", saying:

THE COURT: All right, and what does in the context of that report, what does the word deceptive mean? Does it mean that it's not reliable, or does it mean that it's a lie? Cause if it's not -- if it's not -- if what it means in the context of that report is that it's not reliable, I don't think that's going to be a fair question for this witness, and I don't want that evidence in front of the jury.

Crown counsel also pointed out that polygraph tests are generally inadmissible, and in any event the report expressed the opinion of the polygraph examiner, which would not be admissible.

[42] Mr. Rosbergen also contends that the trial judge made an error because she did not direct the jury to disregard Mr. Anderson's evidence about passing a polygraph examination. However, during his testimony, Mr. Anderson acknowledged that the test was "undecisive" and that he neither passed nor failed. Further, defence counsel did not ask the judge to instruct the jury to disregard Mr. Anderson's evidence on this point, which suggests he did

not consider the evidence to be significant. Moreover, neither the Crown nor defence referred to this evidence in their closing arguments.

(b) The trial judge's instructions on the unlawful acts

[43] The second ground of appeal concerns the absence of instructions to the jury on the elements of assault, which was the underlying unlawful act in support of the allegation of murder.

[44] Mr. Rosbergen's position at trial was that Mr. Skedden started a fight in Mr. Rosbergen's truck and then left in a van, with some other events necessarily leading to his death and location on the river. Mr. Rosbergen says that because the judge did not tell the jury what elements make up an assault, and what evidence supported each element of assault, the jury did not have the necessary tools to assess whether the unlawful act of assault had been proved. Instead, the judge instructed the jury that "beating and binding" are assaults and unlawful acts under the Criminal Code, and told the jury to focus on whether the Crown had proved that Mr. Rosbergen beat and bound Mr. Skedden, failing which they could not convict.

[45] The judge was required to orient the jury to the unlawful conduct alleged by the Crown, and then, if that conduct constituted a Criminal Code offence, to instruct the jury as a matter of law that the conduct was an unlawful act. That is what the trial judge did here. She described the unlawful conduct at issue to ensure that the jury understood what Mr. Rosbergen was alleged to have done and whether that conduct significantly contributed to Mr. Skedden's death so as to constitute murder. In doing so, the trial judge distinguished for the jury the unlawful acts that caused the victim's death (the beating and binding alleged by the Crown) from the brief altercation between Mr. Skedden and Mr. Rosbergen in the van described in Mr. Rosbergen's statement (the defence's theory to explain the forensic evidence, which could not be the unlawful act alleged to constitute murder).

[46] In my view, the argument that the judge erred in her charge to the jury on this point is a weak one. It is difficult to see how describing the elements of assault would have assisted the jury or made it more difficult for the Crown to prove its case.

(c) The judge's instructions concerning hearsay statements

[47] Mr. Rosbergen submits that the judge erred in failing to instruct the jury on the hearsay statements of Nelson Westman and Mr. Anderson that the deceased stated he was being kidnapped. Mr. Westman testified that Mr. Rosbergen told him, "You are my witness, Nelson. These guys are going to kidnap me." Mr. Anderson also testified that when he and Mr. Rosbergen were driving with Mr. Skedden, Mr. Skedden got very upset, saying they were going to beat him up and kidnap him.

[48] Mr. Rosbergen submits that the judge should have instructed the jury that Mr. Skedden's statements were only available to show his state of mind, and not for their truth--i.e., that he was being kidnapped and would be beaten.

[49] Defence counsel did not object to the judge's charge on this point. The relevant portion of the charge reads:

Hearsay Evidence--Statement by Deceased Victim to Others Well Prior to Victim's Death

[128] You heard Mr. Westman testify that after Mr. Skedden got into Mr. Rosbergen's truck, he said "You are my witness, Nelson. These guys are going to kidnap me." You also heard Mr. Anderson testify that when they were driving with Mr. Skedden, Mr. Skedden started getting very upset, saying they were going to beat him up, and kidnap him.

[129] There are three limitations you must consider when using this evidence against Mr. Rosbergen.

[130] The first limitation arises from the fact that Mr. Skedden was not here to testify. Therefore, defence counsel had no opportunity to cross-examine him to test the truthfulness of the statements he allegedly made to Mr. Westman and to Mr. Anderson and Mr. Rosbergen. The truthfulness and reliability of that statement is directly in issue in this trial. Cross-examination provides a means for testing the reliability of evidence and also for bringing out additional facts favourable to Mr. Rosbergen.

[131] The second limitation is that you did not have any opportunity to observe the demeanour of Mr. Skedden.

[132] The third limitation is that Mr. Skedden was not under oath when he made the statements.

Caution

[133] Because of these limitations, the statements of Mr. Skedden as repeated by Mr. Westman and Mr. Anderson are not on the same footing as the statements of witnesses in this trial who appeared in court, gave evidence under oath, and were cross-examined. Therefore, you should examine carefully Mr. Skedden's statements to Mr. Westman and Mr. Anderson before giving it the weight you think it deserves.

Methodology

- [134] Consider the reliability of each of Mr. Westman and Mr. Anderson, including their ability to recall what Mr. Skedden said. Consider the circumstances in which the conversation occurred including the condition of Mr. Skedden and Mr. Westman and Mr. Anderson at the time they heard the statements. If you do not find the statements of what Mr. Skedden said to either Mr. Westman or Mr. Anderson was accurately reported, you must not make any use of it at all.
- [50] Despite the jury receiving the judge's general instruction that out-of-court statements were not admissible for their truth, the jury could have been left with the impression that they could use Mr. Skedden's statements to establish the truth of their contents. In my view, this ground of appeal clearly surpasses the "not frivolous" standard. However, this error must be considered in the context of the entire record. In my view, even if a division on appeal were to find the charge to be defective, given the weight of the evidence before the jury, it is unlikely that this error would be found to be material. I also note in this regard that the Crown did not rely on these statements in its closing submissions.
- (d) Instructions to the jury on causation
- [51] Mr. Rosbergen argues that the judge failed to properly instruct the jury on causation, telling them that they could find Mr. Rosbergen guilty of murder only if his conduct had significantly contributed to Mr. Skedden's death.
- [52] In my view, this is a weak ground of appeal. The judge further instructed the jury that a "person's conduct may contribute significantly to another person's death even though that conduct is not the sole or main cause of death". She also went on to tell the jury that if they were not satisfied that Mr. Rosbergen's unlawful acts "caused or significantly contributed to Mr. Skedden's death" they had to acquit. It was only if they were "satisfied beyond a reasonable doubt that Mr. Rosbergen's unlawful acts caused, or significantly contributed to, Mr. Skedden's death" that they were to proceed to consider mens rea.

Conclusion

- [53] Having assessed the merits of the grounds raised by Mr. Rosbergen, I conclude that the appeal is not a strong one. That assessment must be placed on the reviewability side of the scales, and weighed against the strong enforceability interest on the other side. In my view, the enforceability interest carries significantly greater weight, and must prevail in this case.
- [54] I would accordingly set aside the release order imposed on August 22, 2025, and order that Mr. Rosbergen be returned to custody to continue serving his sentence pending appeal. Given that the progress of the appeal to date has been delayed in part due to counsel's focus on this bail review, I would also direct that the appeal be expedited.
- [55] FISHER J.A.: I agree.

[56] HORSMAN J.A.: I agree.

[57] FENLON J.A.: The release order is set aside, and Mr. Rosbergen returned to custody.

"The Honourable Madam Justice Fenlon"

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