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THE LAW OF BAIL IN CANADA

Trotter

Release No. 2, October 2024

This unique work provides comprehensive coverage of the *Criminal Code* bail provisions and the substantial body of case law interpreting those provisions with respect to police bail, bail hearings, bail review and forfeiture proceedings.

This release features substantial updates to Chapter 8, "Bail Reviews". Appendix A, "Criminal Code Provisions Relating to Bail", Appendix B, "Bail Act 1976 (U.K.)", and Appendix C, "Rules of Court Respecting Bail Pending Appeal", have been updated to bring the provisions up to date.

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Release Highlights

- **BAIL PENDING APPEAL IN SUMMARY CONVICTION PROCEEDINGS—Bail Pending Appeal—Generally**—Following the disposition of a summary conviction appeal, s. 839 of the *Criminal Code* provides for a further appeal, with leave, to the Court of Appeal on a question of law alone. By virtue of s. 839(2), the procedure set out in s. 679 for bail pending appeal is applicable. See, for example, *R. v. B.P.*, 2024 NLCA 14, in which Knickle J.A. considered an application for bail pending appeal in these circumstances. At para. 39, she observed that the fact of having a previous review by the Summary Conviction Appeal Court was a factor that favoured enforceability considerations. However, in the end, the applicant was released on bail.
JUST CAUSE FOR DETENTION—SECTION 515(10)(B)—THE SECONDARY GROUND—The Protection or Safety of the Public—Criminal Record of the Accused and Compliance with Court Orders—The accused who is on probation or subject to other types of orders may also encounter difficulties on the secondary ground. See *R. v. King*, 2023 NLSC 26, at para. 48, where McGrath J. said “where the accused is already subject to conditions at the time of committing the new offences, this is one of the strongest indicators in favour of detention on the secondary ground.” See also *R. v. Reid*, 2024 CarswellNfld 43, at para. 29 and *R. v. Hodder*, 2024 CarswellNfld 114, at paras. 13 and 17.
SURETIES—The Suitability of Sureties—The Criteria of Suitability—The factors involved in gauging the suitability of a surety are not closed. It will all depend on the circumstances. Judges place great trust in sureties to enforce release orders. Anything that enhances or detracts from a surety’s trustworthiness is relevant to this assessment. A challenging issue arises with the surety who protests the innocence of the accused person. In *R. v. Jaser*, 2020 ONCA 606, Doherty J.A. said, at para. 73: “I see no connection between Mr. Jaser Sr.’s belief in his son’s innocence and his ability to properly fulfil his allegations as a surety. Many individuals, prepared to assume the significant obligations of a surety, do so because they firmly believe the accused person is innocent.”