

R. v. Keevik, 2009 NWTSC 67      S-1-CR-2009-000033

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

STANLEY KEEVIK

Transcript of the Ruling (re Bail Review under s. 525 C.C.)

delivered by The Honourable Justice L. Charbonneau, in

Yellowknife, in the Northwest Territories, on the 9th day

of July, 2009.

Publication ban prohibiting the publication and broadcast of any submissions, evidence or information conveyed during this hearing, pursuant to s. 276.3(1)

APPEARANCES:

Mr. J. MacFarlane:      Counsel on behalf of the Crown

Mr. H. Latimer:      Counsel on behalf of the Accused

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Charge under s. 272(1)(c) C.C.

1 THE COURT: This is a bail review that was  
2 held pursuant to section 525 of the Criminal  
3 Code. That provision exists to ensure that when  
4 a person is detained pending trial, that person's  
5 detention is the subject of periodical reviews by  
6 this court. It makes it the responsibility of  
7 the authorities who have custody of an accused  
8 person to cause the matter to be brought before  
9 the court for a hearing when the person has been  
10 in custody for a certain period of time, and this  
11 is how we end up having this hearing this week.

12 Mr. Keevik has filed an affidavit where he  
13 sets out the circumstances that led to his  
14 detention, some of his personal circumstances,  
15 and what he plans on doing if he is released. He  
16 has also caused to be filed a transcript of the  
17 preliminary hearing that was held on this matter  
18 on April 24th, a transcript of the bail hearing  
19 that was held on January 2nd, 2009, and a  
20 transcript of a preliminary hearing that was held  
21 in March on unrelated matters and resulted in his  
22 discharge. He has also filed a letter from Don  
23 Asher of a company called Adonis Planning, which  
24 is a construction company. That letter indicates  
25 that this company has some contracts in

26 Yellowknife and that they would be prepared to  
27 hire Mr. Keevik for some of the work if he were

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1

1 released. Mr. Asher also stated that if he  
2 became aware of Mr. Keevik breaching any release  
3 conditions that the court may order, he would not  
4 hesitate to report Mr. Keevik to the authorities.

5 It is important to make some reference to  
6 this matter's procedural history and, more  
7 specifically, the history of Mr. Keevik's bail  
8 status on this charge.

9 The charge is one of sexual assault causing  
10 bodily harm and it arises out of an incident that  
11 is alleged to have happened on September 27th,  
12 2008. The allegation is that the complainant had  
13 met with Mr. Keevik earlier in the day on  
14 September 27th with two other women at a  
15 laundromat in Yellowknife. They all went to a  
16 nearby pub for lunch and a few drinks, and later  
17 on Mr. Keevik went to a liquor store and  
18 purchased alcohol. Everyone returned to his  
19 camp, which I heard was located near the Explorer  
20 Hotel. The liquor was consumed. It is alleged  
21 that one of the women left, the other one passed  
22 out, leaving Mr. Keevik and the complainant the

23 only ones awake. She alleges that Mr. Keevik  
24 started making sexual advances to her and that he  
25 tried to unbutton her pants. She told him she  
26 did not want to do this and struggled with him,  
27 but he held her arms, hit her, and bit her breast

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2

1 while she continued struggling. She alleges that  
2 she was eventually able to get away and went back  
3 to the shelter where she had been staying and  
4 called the police. The police responded and took  
5 her to the hospital. It seems that she did not  
6 provide them a lot of details at this point but a  
7 few days later gave a more complete statement to  
8 them. It is alleged that as a result of what Mr.  
9 Keevik did, she suffered a significant cut or  
10 bite to one of her breasts and bruising to  
11 various parts of her body and a black eye.

12 In between September 27th, when the  
13 complaint was first made, and September 29th,  
14 when the more detailed statement was given, Mr.  
15 Keevik was located. This was on September 28th.  
16 He was given a promise to appear in court on  
17 November 25th on a charge of assault causing  
18 bodily harm. Presumably, with the information  
19 they had at that point, that was the charge that

20 the police expected to lay against Mr. Keevik.  
21 So Mr. Keevik was given this promise to appear  
22 and entered into an undertaking to an officer in  
23 charge with a condition that he have no contact  
24 with the complainant, but there were no other  
25 conditions binding him at that point.

26 Then an Information charging Mr. Keevik with  
27 sexual assault causing bodily harm was sworn

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3

1 October 22nd, 2008. His process remained the  
2 same even though he faced a charge that was more  
3 serious than what had originally been  
4 contemplated.

5 Mr. Keevik appeared in Territorial Court on  
6 November 25th as he was required to, and he  
7 appeared again on December 2nd. He elected to  
8 have his trial before a court composed of a judge  
9 and jury and requested a preliminary hearing.

10 That hearing was set to proceed on February 26th,  
11 2009.

12 Then in late December, Mr. Keevik was  
13 charged with two counts of sexual assault against  
14 another woman, apparently his common-law spouse.  
15 He was arrested and taken into custody. He had a

16 show cause hearing on those charges in Justice of  
17 the Peace Court on January 2nd, 2009, and was  
18 ordered detained for public safety reasons.

19 On February 23rd, Mr. Keevik appeared in  
20 Territorial Court again and at that point the  
21 preliminary hearing on this matter was  
22 rescheduled to proceed on March 24th, along with  
23 a preliminary hearing on the other matters. On  
24 March 24th the preliminary hearing on the other  
25 two matters proceeded. Mr. Keevik's spouse  
26 testified that she had lied about the allegation  
27 of sexual assault and Mr. Keevik was discharged

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4

1 on those matters. The preliminary hearing with  
2 respect to this charge did not proceed because  
3 the complainant did not attend court. The  
4 hearing was rescheduled to proceed on April 24th  
5 and on that date it did, and Mr. Keevik was  
6 ordered to stand trial on the charge. The  
7 Indictment was filed on April 30th and I am told  
8 the pre-trial conference is now scheduled to take  
9 place later this month on this matter.

10 That is the procedural background that takes  
11 us to this point.

12 On a review of detention pursuant to section

13 525 of the Code, the onus is on the accused to  
14 show cause why he should be released. The  
15 factors that must be considered include whether  
16 there has been an inordinate delay in the  
17 proceedings, the reasons that underlie the  
18 accused being detained, and whether there has  
19 been any significant change in circumstance since  
20 the decision was made. Those principles were set  
21 out in the case of R. v. Caza that was referred  
22 to by Crown counsel and in a number of subsequent  
23 cases.

24 In these types of hearings, as with any type  
25 of bail hearing, a fundamental principle is that  
26 a person who faces a criminal charge is presumed  
27 innocent and should only be denied bail for

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5

1 serious reasons. The Criminal Code sets out  
2 three grounds that can form the basis for  
3 detention. The first is that detention is  
4 necessary to ensure that the person will attend  
5 court; the second is that detention is necessary  
6 for public safety reasons; and the third is that  
7 detention is necessary to maintain the public's  
8 confidence in the administration of justice.

9           The Crown opposes Mr. Keevik's release on  
10       the second and third ground. Mr. Keevik, for his  
11       part, points to a significant change in  
12       circumstances since he was detained; namely, the  
13       fact that he was discharged on the two matters  
14       that prompted him being taken into custody in the  
15       first place. He is essentially asking the Court  
16       to give him a chance to prove that he can stay  
17       out of trouble, and his counsel says the main  
18       consideration underlying this is that he can  
19       prove he can abstain from consuming alcohol. His  
20       counsel argues that alcohol has been at the root  
21       of a lot of the situations where he has gotten  
22       himself into trouble.

23           So turning to the factors that must be  
24       considered, I first examine the question of  
25       delay. This is not a case where there has been  
26       any unusual or inordinate delay in the matter  
27       proceeding through the court system. The

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6

1       adjournment of the preliminary hearing resulting  
2       from the complainant's failure to attend court  
3       resulted in a delay of approximately one month,  
4       which I do not find is significant. Obviously  
5       any delay is of concern, particularly when a



6 person is in custody pending trial, but at this  
7 point it cannot be said that this is a case where  
8 there have been delays that are extraordinary, to  
9 borrow the words from the R. v. Caza case, and  
10 such that the delay in and of itself would form a  
11 basis for a decision to release.

12 I take into consideration the circumstances  
13 of how Mr. Keevik ended up in custody. It is  
14 noteworthy that he was placed on a relatively  
15 non-restrictive form of process on this charge.  
16 And as I have already said, he only ended up in  
17 custody as a result of being charged with the two  
18 other matters for which he has now been  
19 discharged. Obviously, this Court is not bound  
20 by the decision or the assessment that was made  
21 by those who decided to place Mr. Keevik on that  
22 form of process back in September, but Mr. Keevik  
23 points out that there is an inconsistency in  
24 position between the decision that was made back  
25 then to release him on an undertaking to an  
26 officer in charge and the position that is being  
27 taken now, which is that he should be detained

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7

1 until this matter is dealt with. In answer to

2 this, the Crown acknowledges the difference in  
3 position, points that it is not bound, strictly  
4 speaking, by the position taken by the police on  
5 this type of a matter. Crown also argues that in  
6 addition to the difference in circumstances -  
7 that Mr. Keevik has been discharged of the two  
8 other matters - there is another difference in  
9 circumstances, and that is that the present  
10 charge has now passed the threshold of the  
11 preliminary hearing and in that sense the case  
12 has been more tested than it can be at the show  
13 cause hearing stage.

14 The defence has made extensive submissions  
15 about potential frailties in the Crown's case.  
16 That is a factor that is most relevant in  
17 considering whether detention is necessary on the  
18 third ground. So even assuming that there are  
19 potential frailties in the Crown's case  
20 (something that I make no finding about at this  
21 point), this argument does not impact on the  
22 concerns that exist on the second ground, the  
23 public safety ground, and I will deal with that  
24 ground first because in my view it is the more  
25 problematic one from Mr. Keevik's perspective.

26 Mr. Keevik has an unenviable criminal  
27 record. There is one conviction relatively dated

1 for sexual assault which led to a relatively  
2 short sentence of five months. I say "relatively  
3 short" in comparison to sentences that are  
4 sometimes imposed for sexual assault charges that  
5 are at the more serious end of the scale of  
6 seriousness. But there are many more entries on  
7 the record. The last two entries from December  
8 of 2001 and December 2004 are for crimes of  
9 violence that both led to the imposition of  
10 penitentiary terms, two years and two-and-a-half  
11 years respectively. In 1998, another conviction  
12 for a common assault led to a sentence of two  
13 years less one day. And prior to that, other  
14 assault convictions led to sentences that were  
15 significant jail terms in the territorial range.  
16 Any time a person with this type of record faces  
17 a charge for a further crime of violence, one  
18 that involves the alleged infliction of injuries,  
19 significant public safety concerns arise. The  
20 issue then is whether the release plan presented  
21 by Mr. Keevik is sufficient to alleviate those  
22 concerns.

23 Mr. Keevik's release plan is summarized, if  
24 I can put it that way, at paragraph 18 of his  
25 affidavit. He says he will undertake to find  
26 suitable lodgings and employment, if released.

27 There is no indication of how he proposes to

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9

1 arrange for suitable lodgings. He has provided  
2 some evidence that a local construction company  
3 will have work for him if he is released, but  
4 there is not a lot of detail as to how long this  
5 work might last. Importantly, no one is being  
6 offered as a surety. No one is coming forward to  
7 vouch for Mr. Keevik's compliance with conditions  
8 that the Court might set. I have no doubt about  
9 the sincerity of the person who signed the letter  
10 that was filed in court today, that his employer  
11 would be prepared to report Mr. Keevik if they  
12 became aware that he was breaching conditions  
13 imposed by the Court. But that is not the same  
14 as having a surety - someone who undertakes to  
15 supervise a person's conduct while on release,  
16 not just when they are working but all the time.  
17 Chances are that Mr. Keevik does not get into  
18 trouble while he is at work. So in my view, the  
19 release plan is not a compelling one and leaves a  
20 lot of uncertainty.

21 The charge Mr. Keevik faces is a serious one  
22 even though no intercourse is alleged. The  
23 injuries alleged to have been inflicted by him

24 are not minor ones. He has a record that  
25 includes numerous convictions for crimes of  
26 violence and a few convictions for failure to  
27 comply with court orders. He has received

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10

1 significant jail terms for these crimes of  
2 violence and that record, combined with the  
3 seriousness of the current allegations, raise  
4 serious public safety concerns which, in my view,  
5 are not adequately addressed by the release plan  
6 that Mr. Keevik has put forward. So even taking  
7 into account that the matters that led to Mr.  
8 Keevik being in custody are no longer before the  
9 Court, considering everything on balance, I am  
10 not satisfied that Mr. Keevik has shown cause  
11 that he should be released. In my view, the  
12 decision not to seek Mr. Keevik's detention, or  
13 at least have him brought before a justice of the  
14 peace and seek a no drinking condition and  
15 possibly other conditions, back in September was  
16 ill-advised in light of his criminal record and  
17 his history of violence. It would be even more  
18 ill-advised for this Court to follow along the  
19 same path. Unfortunately, the prospect of being

20 in jail does not appear to have deterred Mr.  
21 Keevik in the past from getting into further  
22 trouble, so I am not convinced that the fact that  
23 he has been detained for the last six months,  
24 which is a short period time compared to some of  
25 the jail sentences he has received, is enough to  
26 allow the Court to count on him, that he will be  
27 deterred from getting himself into more trouble.

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11

1 Mr. Keevik's counsel has made a very strong  
2 plea for his release pending trial this  
3 afternoon. He has urged the Court to give Mr.  
4 Keevik a chance, and he has said everything that  
5 could possibly be said in Mr. Keevik's favour.  
6 But having considered the release plan and the  
7 other factors that I have already referred to, I  
8 am unable to conclude that Mr. Keevik has shown  
9 cause that he should be released, and this is  
10 having considered the concerns on the secondary  
11 ground, the grounds of public safety. Given the  
12 conclusion that I have reached on this ground, I  
13 am not going to comment on the considerations  
14 that come into play on the third ground, and I  
15 specifically make no comment about any of the  
16 matters touching upon potential frailties of the

17 Crown's case, evidence that might be brought  
18 forward at trial, the admissibility or  
19 non-admissibility or relevance of that evidence.  
20 All those issues in my view are better left for  
21 trial. If I did not have concerns under the  
22 secondary ground, then of course I would have to  
23 address those issues because the strength of the  
24 Crown's case is a relevant consideration under  
25 the third ground. But since I have reached the  
26 conclusion that allows disposing of this  
27 application in my examination of the second

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1 ground, I leave the other matters to be dealt  
2 with at trial.

3 The detention of Mr. Keevik is confirmed.  
4 There will be a new Form 8 warrant dated today's  
5 date showing that the review took place pursuant  
6 to section 525 on this date and that Mr. Keevik  
7 has failed to show cause why he should be  
8 released.

9 Counsel, as you know, the court has a little  
10 bit less flexibility in setting jury trials  
11 compared to setting judge alone trials because  
12 jury trials take more time and they involve more

13 logistics. But as I said during submissions, the  
14 court will do what it can to give priority to  
15 cases when a person is held in custody. So now  
16 that a pre-trial conference has been scheduled, I  
17 would strongly suggest that available dates for  
18 trial be sent to the court as soon as possible,  
19 because the next speaking to the list is in  
20 September and there is no reason to wait until  
21 then to think about setting a trial date on this.  
22 I am not aware of what is or is not possible as  
23 far as the court's schedule, but the sooner the  
24 court knows the availabilities for trial and a  
25 time estimate, the sooner the court can set aside  
26 time for this case to be heard on its merits. So  
27 I would also add that again in the spirit of

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1 trying to get this matter on for trial as soon as  
2 possible, counsel should have as much discussion  
3 as they are able to to have a meaningful and  
4 useful pre-trial conference so that whatever  
5 issues may come up are aired out and the court  
6 can go ahead and set this as soon as possible.

7 Thank you for your submissions, counsel. We  
8 can close court.

9 .....



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Certified to be a true and  
accurate transcript pursuant  
to Rule 7 23 and 7 24 of the  
Supreme Court Rules of Court.

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Annette Wright, RPR, CSR(A)  
Court Reporter

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