

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

- v -

**JASON JOHNNY LAROCQUE**

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Transcript of the Decision on s. 525 Bail Review delivered by The Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 9th day of June, 2017.

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**APPEARANCES:**

Mr. J. Potter: Counsel for the Crown  
Mr. C. Davison: Counsel for the Accused

(Charges under s. 253(1)(a), 253(1)(b), 259(4), and  
264.1(1)(a) of the *Criminal Code*)

*A.C.E. Reporting Services Inc.*

1 THE COURT: Mr. Larocque faces charges of  
2 impaired driving, driving with a concentration of  
3 alcohol in his blood in excess of the legal  
4 limit, driving while prohibited, and uttering  
5 threats to Special Constable Steven Beck. These  
6 charges arise from events that are alleged to  
7 have occurred on November 28th, 2015.

8 The allegations are that on that date, at  
9 about 5 p.m., Special Constable Beck and another  
10 officer were on patrol in Hay River, and they saw  
11 the snowmobile at a four-way stop near a  
12 high-rise building in that community. The  
13 snowmobile did not have lights on.

14 Special Constable Beck recognized the driver  
15 as being Mr. Larocque. He was slouched over the  
16 steering column of the machine. As a result of  
17 their observations, the officers initiated a  
18 traffic stop. The emergency lights were turned  
19 on the police vehicle, and it is alleged that at  
20 that point, Mr. Larocque revved the snow machine  
21 in what the officers believed was an attempt to  
22 drive past the police vehicle. Special Constable  
23 Beck jumped out to block his way, and the other  
24 officer opened the door of the vehicle to assist  
25 in preventing Mr. Larocque from getting away.

26 The officers observed that Mr. Larocque had  
27 a strong smell of alcohol on his breath, that he



1 had poor balance when he got off the snowmobile,  
2 and that his speech was slurred. A breathalyzer  
3 demand was made based on those observations. In  
4 response, Mr. Larocque swore at the officer. It  
5 is alleged that he made various utterances  
6 including the fact that he was just working on  
7 the machine, that he was not driving it.

8 He made a comment to Special Constable Beck  
9 to the effect of asking him to just let him go;  
10 and as he was being taken back to the detachment,  
11 as the vehicle was pulling into the bay, it is  
12 alleged that Mr. Larocque uttered threats to  
13 Special Constable Beck saying, among other  
14 things, "I'll give you a good fucking licking."  
15 The breathalyzer testing was done, and the  
16 readings were 220 and 240.

17 At this stage, of course, these are  
18 allegations only. The trial of this matter has  
19 now been scheduled to proceed on November 1st and  
20 2nd, 2017.

21 Mr. Larocque initially was released on these  
22 charges, but in 2016 various other charges were  
23 laid against him, and he was ordered detained  
24 following a show cause hearing that was held in  
25 December 2016. He now applies for a review of  
26 his detention based on a change in circumstances.  
27 That change is that at the time of the first show



1           cause hearing, he was facing a much larger number  
2           of charges. Today the Indictment that is set for  
3           trial in November is all that remains pending  
4           against him.

5           The Crown does not dispute that this is a  
6           change in circumstances, but it points out that  
7           it cuts both ways, because some of the charges  
8           that were pending at the time of the show cause  
9           hearing have now resulted in convictions. More  
10          specifically, a charge of driving while  
11          disqualified that arose before the allegations  
12          here and which was recently concluded in a  
13          sentencing hearing last month. There have also  
14          been convictions on two breach charges for which  
15          Mr. Larocque, as I understand, was sentenced to a  
16          jail term that was considered served through his  
17          period of remand. Most of the remand time he has  
18          accumulated until now has been taken into account  
19          in other sentencings.

20          The fact remains, though, that ten of the  
21          charges that he faced at the original show cause  
22          hearing have been stayed or withdrawn by the  
23          Crown. These included several other alleged  
24          breaches and an assault, among other things. I  
25          am satisfied on that basis that there has been a  
26          change in circumstance that does open the door to  
27          bail being reviewed at this stage. The point





1 made by the Crown about the initial convictions  
2 is well taken, but to me, it is relevant to the  
3 ultimate decision. It does not change the fact  
4 that there has been a change in circumstances.

5 It is, of course, of concern that  
6 Mr. Larocque now has one more driving while  
7 disqualified conviction, given the nature of the  
8 allegations he faces in this case. And it is  
9 also a concern that all three of his new  
10 convictions -- by "new" I mean the convictions  
11 that have arisen since the show cause hearing --  
12 are all for failures to comply with orders of the  
13 Court.

14 Mr. Larocque's release plan is to go spend  
15 the better part of the summer at a lodge that is  
16 operated by his aunt, Kim Beck. A letter from  
17 Ms. Beck has been filed at the bail review  
18 hearing, and it confirms that he could be  
19 employed there as a fishing guide pretty much all  
20 summer. The plan, as I understand it, is that he  
21 would travel there as soon as possible after his  
22 release, and he would work there for the summer  
23 until the lodge closes down. He does not have to  
24 operate motor boats as part of his work as a  
25 fishing guide, there is no alcohol at the lodge,  
26 and I was told it closes down usually sometime in  
27 September.



1           Mr. Larocque's father, James Larocque, is  
2 being offered as a surety, and he is prepared to  
3 supervise Mr. Larocque while he is in the  
4 community of Fort Resolution. James Larocque  
5 testified at the hearing. He said he was willing  
6 to pledge an amount of \$500 without deposit to  
7 support the release of Mr. Larocque.

8           James Larocque was a surety on one of  
9 Mr. Larocque's earlier recognizances, including  
10 one that he was bound by when he failed to appear  
11 before the court in the fall of 2016.

12           I understand from what I heard at the  
13 hearing that Mr. Larocque had decided to go out  
14 on the land a few weeks before his scheduled  
15 court date and got stuck where he was due to bad  
16 weather, which, of course, is not uncommon at  
17 that time of year. James Larocque, as I  
18 understand, went to court on the day that  
19 Mr. Larocque was supposed to be there to report  
20 that Mr. Larocque was weather bound and could not  
21 be there.

22           James Larocque candidly acknowledged that  
23 after that, he did not take any further steps to  
24 see that Mr. Larocque turned himself in after he  
25 did return to the community. James Larocque  
26 explained that he thought that after the warrant  
27 issued, his duties as a surety were concluded.



1 He has also said that he understands more now  
2 than he did last fall what his responsibilities  
3 as a surety would be. He has a full time job,  
4 but he is prepared to check on Mr. Larocque  
5 regularly while he is in the community. He does  
6 not allow alcohol in his home, and he has said  
7 that he will report any breaches of the  
8 conditions to police.

9 Mr. Larocque, the accused, has indicated  
10 through his counsel that he would be prepared to  
11 post up to \$1,000 in cash bail to support his  
12 release application.

13 Part of the submissions I heard earlier this  
14 week were on the issue of who bears the onus on  
15 this application. My attention was drawn to  
16 paragraph 50 of the very recent decision of the  
17 Supreme Court of Canada in *R v Antic*, 2017 SCC  
18 27. Some of the comments at paragraph 50 of that  
19 decision seem difficult to reconcile with the  
20 wording of Paragraph 520(7)(e) of the *Criminal*  
21 *Code*.

22 Section 520 deals with bail reviews  
23 initiated by the accused. The paragraph I have  
24 referred to states that on the hearing of such an  
25 application, if the accused shows cause, the  
26 Court may allow the application.

27 Section 521 deals with review applications



1 brought by the Crown. Paragraph 521(8) of that  
2 provision says that the Court can either dismiss  
3 such an application or, if the prosecutor shows  
4 cause, allow the application.

5 A plain reading of these provisions suggests  
6 that the onus to show cause on a bail review is  
7 on the party that brings the application. And  
8 looking at the French version, it is as  
9 unambiguous as the English version seems to be.

10 In *Antic* at paragraph 50, the Supreme Court  
11 said: (As read)

12 With these interpretative principles  
13 in mind, I will now turn to the bail  
14 review decision at issue in this  
15 appeal. Mr. Antic's show cause  
16 hearing and bail reviews were  
17 contested. Mr. Antic bore the onus  
18 of establishing why the detention  
19 order should be vacated. However,  
20 once Mr. Antic had satisfied the bail  
21 review judge that new circumstance  
22 justified his vacating the order, the  
23 ladder principle ought to have guided  
24 the judge in fashioning a release  
25 order. Although Mr. Antic had been  
26 charged with drug trafficking, which  
27 had reversed the onus at the initial  
bail hearing, he had pleaded guilty  
to these charges by the time of his  
second bail review hearing. He was  
therefore not in a reverse onus  
position at that time.

23 I have to admit that at first blush I find  
24 it difficult to reconcile the last few sentences  
25 of this paragraph with the seemingly clear  
26 language of Sections 520 and 521 that I have just  
27 referred to. If Defense's interpretation is





1 correct, the onus on a bail review would only be  
2 on the accused if the charges that the accused  
3 faces at the time of the review triggers a  
4 reverse onus on bail in the first instance. And  
5 as I said, I find that a little bit difficult to  
6 reconcile with the language of the bail review  
7 provisions.

8 There may be an alternative interpretation  
9 of what the Supreme Court was getting at in that  
10 comment at paragraph 50. The Court was talking  
11 about change in circumstances, and perhaps what  
12 the Court meant was that one of the changes in  
13 circumstances was that the accused would no  
14 longer be in a reverse onus situation if he was  
15 applying for bail for the first time at that  
16 point because the drug charges, which had  
17 triggered the reverse onus were no longer  
18 pending.

19 Another example could be, if an accused is  
20 ordered detained at a show cause hearing because  
21 he is alleged to have breached his process, which  
22 creates a reverse onus situation, and those  
23 breach charges are later withdrawn, and the  
24 accused then applies for a bail review. It would  
25 be fair enough, I would think, to say on review,  
26 "I was in a reverse onus situation at my original  
27 bail hearing, but now I'm back to not facing



1 those charges that reversed the onus, and this is  
2 one thing that should be considered on my review  
3 application."

4 I acknowledge that if that is what the  
5 Supreme Court meant, it could have been expressed  
6 more clearly. But at the same time, it is  
7 important to put the comments of the Court in  
8 *Antic* in context. That case was a constitutional  
9 challenge about one of the bail provisions. The  
10 Supreme Court of Canada took this opportunity to  
11 talk about how the various release options set  
12 out in the *Criminal Code* should be approached and  
13 on the importance of respecting the "ladder  
14 principle" that underlines the bail scheme in  
15 Canada. The case was not focused on onus, it was  
16 about the importance of respecting the ladder  
17 principle in bail matters and the proper  
18 interpretation of the provisions that set out the  
19 various release schemes available under the law.

20 I have made all of these comments on this  
21 issue because the matter was raised at the  
22 hearing, but I must say that I do not find the  
23 disposition of this application rises or falls on  
24 who has the onus. The bottom line is that the  
25 accused's criminal record raises significant  
26 concerns, and the issue is whether his release  
27 plan is strong enough to address those concerns.



1 That is often the case in bail matters, but it  
2 certainly is in this one. I would reach the same  
3 conclusion on this matter irrespective on whether  
4 I approached it as one where the accused has the  
5 onus or if I approached it as one where the Crown  
6 has the onus.

7 The Crown is opposed to Mr. Larocque's  
8 release, raising the primary and secondary  
9 grounds, but with more emphasis, I think it is  
10 fair to say, on the secondary ground. The  
11 central concern here is whether the Court can  
12 have confidence that Mr. Larocque would respect  
13 conditions that the Court might impose on him.  
14 He has a very bad track record of non-compliance  
15 with court orders. His record includes a  
16 staggering number of convictions for breaches of  
17 all sorts of court orders, undertakings,  
18 probations orders, driving prohibitions. Put  
19 simply, the question is why should I believe him  
20 now when he says he will obey release conditions  
21 that I might impose on him.

22 As far as the primary ground is concerned,  
23 the issue is whether he will come to court in  
24 November to have his trial. I am satisfied that  
25 with tight enough conditions, and a condition  
26 that he turn himself into custody well ahead of  
27 his trial date, I can be satisfied that he will



1 attend court and be tried on the merits of this  
2 matter. The record for his breaches to comply  
3 with court orders is a concern on the primary  
4 ground, but Mr. Larocque is from Fort Resolution.  
5 He has family there. He is from the Northwest  
6 Territories, and I really do not think he  
7 represents a flight risk in the classic sense of  
8 the term.

9 The secondary ground has to do with public  
10 safety. Mr. Larocque has a terrible record of  
11 drinking and driving and for driving when he is  
12 not allowed to drive. Drinking and driving  
13 represents a significant risk of serious harm  
14 being caused to others, and for that reason the  
15 criminal record raises significant concerns,  
16 which I think is plain to see.

17 Mr. Larocque's track record suggests that he  
18 cannot be trusted, if he drinks, not to drive,  
19 even when he is prohibited from driving by virtue  
20 of a specific order. At the same time, the  
21 release plan that he has presented would have him  
22 spend the majority of the months between now and  
23 his trial in a place where there is no alcohol,  
24 where he can work, where he can make money to  
25 satisfy his child support obligations, and  
26 basically lead a healthy lifestyle for a period  
27 of time. Inevitably, he will be in Fort





1 Resolution once the lodge closes, and he will be  
2 subject to the temptations that might exist in  
3 that community to consume alcohol.

4 But hopefully if he has spent the better  
5 part of the summer working at his aunt's lodge,  
6 that will have given him a foundation to build  
7 from and continue to abstain from consuming  
8 alcohol and complying with his conditions. From  
9 his affidavit, I know that he will want to be  
10 back in the community or wherever the graduation  
11 of his son will take place. That is an  
12 understandable wish, and I can see why he would  
13 not want to miss that event. Of course, the  
14 longer he is away from the lodge, the more risks  
15 there will be. So I have given this some thought  
16 in that context as well.

17 On its face the Crown's case, on at least  
18 some of these charges, appears quite strong. And  
19 as I said, there are public safety concerns  
20 associated with the danger Mr. Larocque presents  
21 and the risk he will choose to drink and choose  
22 to drive. His father has said he can keep the  
23 keys of his vehicle away from him, but  
24 realistically in a small community, that does not  
25 mean that Mr. Larocque will not be able to get  
26 his hands on a vehicle if he really wants to. So  
27 there is clearly a risk. But balanced against



1           these concerns, I must also remember the  
2           fundamental principles that must be honoured any  
3           time bail is discussed. Mr. Larocque is presumed  
4           innocent, and he has the right, a  
5           constitutionally protected right, to reasonable  
6           bail. Pretrial detention should be the exception  
7           and not the rule. And the plan here involves  
8           removing him for a big part of time between now  
9           and the trial from an environment where alcohol  
10          is available.

11                 Because of the plan -- and I have to say  
12           this is probably the only plan that would have  
13           convinced me under the circumstances -- I am not  
14           satisfied that it is necessary for Mr. Larocque  
15           to remain detained, and so I will release him.  
16           But given the significant concerns that I have  
17           about public safety arising from his criminal  
18           record, including his most recent convictions,  
19           the terms of release are going to be very, very  
20           strict. Mr. Larocque, you will find those terms  
21           cumbersome, and the police may find them a little  
22           bit cumbersome, too, but I think there really  
23           needs to be strict monitoring of Mr. Larocque,  
24           particularly when he is not at the lodge.

25                 I have decided that there should be a  
26           requirement for cash bail. I am acutely aware of  
27           what the Supreme Court said in *Antic* about cash



1 bail being the last resort, but I think the  
2 criminal record here makes this case a case where  
3 it is, in fact, necessary to resort to all the  
4 tools that the law gives me in order to make this  
5 recognizance as strong and give it as much  
6 "teeth" as possible.

7 I have also decided that Mr. Larocque should  
8 turn himself into the custody of the Hay River  
9 RCMP detachment a longer time ahead of the trial  
10 date than might otherwise be the case, for a few  
11 reasons. One, there is one recent conviction for  
12 failure to appear, and combined with all the  
13 other breaches of court orders, that does give me  
14 concern.

15 Two, knowing that Mr. Larocque will  
16 hopefully spend a lot of time at the lodge, and  
17 although the lodge's season should be finished  
18 well ahead of the trial date, the fact is that he  
19 may have the opportunity to work there after it  
20 closes down. There could be repairs to do.  
21 There could be all sorts of things that need to  
22 be done there. And even aside from that, he may  
23 well want to go out on the land quite apart from  
24 his work at the lodge. I think that would be,  
25 actually, a very positive thing for him to do,  
26 far more than just staying in town where, as I  
27 said, temptation will be closer.



1           But the flip side of that is because of the  
2 fall weather especially, that the authorities  
3 could need more time to find him should he choose  
4 not to return. So in the interest of making sure  
5 that this trial does proceed as scheduled, I am  
6 going to require him to turn himself into custody  
7 on a date sufficiently in advance of the trial  
8 date to ensure that the authorities have a little  
9 bit more lead time to try and find him if he does  
10 not turn up when he is supposed to.

11           I am going to grant the application and  
12 release Mr. Larocque on a recognizance with James  
13 Larocque acting as a surety, and with a \$500  
14 non-deposit pledge by James Larocque. I am going  
15 to require a cash deposit of \$750. It is not  
16 quite the 1,000 that you offered. I do not want  
17 to go overboard, but I do think it is necessary  
18 that there is an additional incentive for you to  
19 follow your conditions this time.

20           Now, listen carefully to the conditions.  
21 Most of them were the ones in your affidavit, but  
22 there are a few small differences, and you will  
23 see that the idea is that when you are in Fort  
24 Resolution, there will be very, very, close  
25 monitoring of what you are doing. The first  
26 condition will be that you attend court as  
27 required. The second is that when you are in





1 Fort Resolution, you reside at the home of  
2 James Larocque, Lot SA173. The third is that  
3 when you are in Fort Resolution, you abide by a  
4 curfew and be inside the residence of  
5 James Larocque between 9 p.m. and 7 a.m.

6 The fourth is that when you are in Fort  
7 Resolution, you come to the door of the residence  
8 or answer the telephone when the police or a bail  
9 supervisor comes over or calls to check on your  
10 curfew compliance. You will have to answer the  
11 door to show you are there. The fifth is that  
12 while you are in Fort Resolution, you will report  
13 in person to the RCMP detachment every Monday,  
14 Wednesday, Friday, Saturday, and Sunday between  
15 noon and 5 p.m. That is, quite simply and  
16 honestly, to make sure you are not drinking.

17 THE ACCUSED: Okay.

18 THE COURT: Six, you are not to possess or  
19 consume alcohol, and you are not to attend any  
20 premises where alcohol is sold. Seven, as soon  
21 as possible after your release, you will make  
22 arrangements to go to Aurora Nights Lodge to  
23 work, and once those arrangements are made, you  
24 will advise the RCMP or your bail supervisor in  
25 Fort Resolution of the date you are departing. I  
26 want them to know when you are gone, and I want  
27 them to know if you come back.



1                   Which takes me to Condition Number 8.     Here  
2                   I am thinking of your son's graduation and any  
3                   other occasion why you might want to or need to  
4                   return to Fort Resolution.   Condition 8 will be  
5                   if you return to Fort Resolution from Aurora  
6                   Nights Lodge, you will report to the RCMP or the  
7                   bail supervisor in Fort Resolution within two  
8                   hours of having returned and advise of the date  
9                   that you expect to leave again.   Condition  
10                  Number 5, the reporting condition, will start  
11                  applying again until you leave to go back to the  
12                  lodge.

13       THE ACCUSED:                    Okay.

14       THE COURT:                     And, finally, I am going to  
15                  direct that you turn yourself into the custody of  
16                  the RCMP in Hay River no later than October 18 at  
17                  5 p.m.   That is a little bit past the middle of  
18                  October.   The lodge should be closed by then, and  
19                  it is a couple of weeks before trial.   It is  
20                  better than being in custody between now and the  
21                  trial.

22       THE ACCUSED:                    When's the trial date again?

23       THE COURT:                     November 1st and 2nd.

24       THE ACCUSED:                    Okay.

25       THE COURT:                     So that way, if you are not  
26                  there, they will have a little bit of time.

27       THE ACCUSED:                    Okay.



1 THE COURT: Or if there is a problem with  
2 the weather, it gives a better buffer. It is  
3 really important that your trial proceeds on its  
4 merits as it is scheduled, because this is  
5 already getting a little bit dated.

6 THE ACCUSED: Okay.

7 THE COURT: I do not want this trial to  
8 fall apart for any reason, whether it is the  
9 weather that surprises or you any other reason.  
10 You understand all of these conditions?

11 THE ACCUSED: Yeah, I do. I'll just -- I'll  
12 just get -- I don't know. Like, I'll get them in  
13 writing or something?

14 THE COURT: Yes. The clerk is going to  
15 put all of this in writing, and you will have a  
16 copy with you, and you will have it accessible  
17 to --

18 THE ACCUSED: I was wondering about that --  
19 that money. Like, do you send it -- where do you  
20 send it?

21 THE COURT: Mr. Davison will be able to  
22 explain all that.

23 THE ACCUSED: Okay.

24 THE COURT: All right. Have I overlooked  
25 anything, Mr. Potter?

26 MR. POTTER: No, Your Honour. I just ask  
27 that there be a Form 8 until the recognizance and



1 the pledge of money is met. So --

2 THE COURT: Well, there is already a  
3 Form 8 in place, and until all this is met --

4 MR. POTTER: Very well.

5 THE COURT: -- the recognizance does not  
6 kick in. So hopefully all this can be worked out  
7 fairly quickly. And I think you are better off  
8 at the lodge fishing and helping other people  
9 then sitting in jail or doing other things that  
10 do not lead to anything good.

11 -----

12 **CERTIFICATE OF TRANSCRIPT**

13 I, the undersigned, hereby certify that the  
14 foregoing pages are a complete and accurate  
15 transcript of the proceedings taken down by me in  
16 shorthand and transcribed from my shorthand notes  
17 to the best of my skill and ability.

18 Dated at the City of Edmonton, Province of  
19 Alberta, this 4th day of July, 2017.

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Kaylene Davidsen, CSR(A)

Court Reporter

