

R. v. Oake, 2017 NWTSC 41

S-1-CR-2017-000038

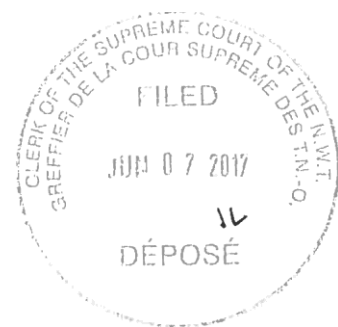
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

DARCY OAKE



Transcript of the Oral Decision on Bail delivered by The Honourable Justice L. A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 25th day of May, 2017.

APPEARANCES:

Mr. D. Praught: Counsel for the Crown

Mr. C. Davison: Counsel for the Accused

An Order of the Court has been made prohibiting publication, broadcast or transmission of information contained herein pursuant to s. 525 (8) and 517 of the *Criminal Code of Canada*

Publication Ban no longer in effect pursuant to the direction of the

Honourable Justice L.A. Charbonneau dated December 5, 2018.

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1 THE COURT: Would you like Mr. Oake seated
2 with you?

3 MR. DAVISON: Yes, please.

4 THE COURT: You can have a seat, sir.

5 MR. DAVISON: And, Your Honour, this is a
6 matter that's here for decision, but I do want to
7 mention, and I've mentioned this to Mr. Praught,
8 that Mr. Oake has brought with him this afternoon
9 some paperwork. He tells me he has been able to
10 start a treatment program while in North Slave
11 Correctional Centre. If he's granted release,
12 what he's just briefly told me about the program
13 is such he would be able to continue the program
14 outside of the facility pending his departure for
15 the treatment centre if that is arranged and
16 permitted under the terms of release. The flip
17 side is if he's not granted release, he will
18 still be able to carry on with the program inside
19 the correctional centre.

20 THE COURT: You've made the Crown aware of
21 just now.

22 MR. DAVISON: Yes. I've just learned of
23 this myself.

24 THE COURT: There's no need to be file --
25 the documents to be filed here. You're just
26 telling me so I'm aware?

27 MR. DAVISON: Yes. I haven't looked at the

1 documents myself. So I'm just telling you so
2 you're aware.

3 THE COURT: All right. Thank you. I am
4 ready to give my decision on this. I'm just
5 going to say at the outset and remind everyone
6 that there is a publication ban in effect that
7 relates to the evidence that was presented at
8 this hearing a few weeks ago. That ban applies
9 to the things I am about to say.

10 Mr. Oake faces a number of charges arising
11 out of events that are alleged to have happened
12 here in Yellowknife. He has one Information that
13 includes two breaches of recognizance said to
14 have happened on the 19th of November, 2016, and
15 he also faces charges on a five-count
16 Information. The charges on that Information
17 include importation of furanyl fentanyl between
18 October 30th and November 28th, 2016; trafficking
19 in fentanyl on the 23rd of November 2016;
20 possession of fentanyl for the purpose of
21 trafficking on November 25th, 2016; criminal
22 negligence causing bodily harm on the 23rd of
23 November 2016; and a breach of recognizance also
24 on the 25th of November, 2016.

25 I heard at the bail hearing that he is also
26 awaiting trial in Alberta on a charge of
27 possession of cocaine for the purposes of

1 trafficking in relation to events that date back
2 to October 2015.

3 Since his arrest on the charges most
4 recently laid against him in the Northwest
5 Territories, he has been on remand. His charges
6 came before this Court for review by operation of
7 Section 525 of the Criminal Code and he now
8 applies for release for the first time.

9 In support of his application, he has filed
10 an affidavit that sets out his release plan. The
11 Crown did not cross-examine him on that
12 affidavit. Mr. Oake's parents also both
13 testified at the hearing. They are both being
14 proposed as sureties.

15 The Crown opposes Mr. Oake's release on all
16 three grounds of detention that are set out at
17 Section 515 of the Criminal Code.

18 I will start by summarizing the allegations.
19 The Alberta charge, as I mentioned, stems from
20 allegations dating back to October 18th, 2015. I
21 was told that on that date a vehicle was
22 intercepted by police following a complaint.
23 There were three people in that vehicle: the
24 driver and two passengers. Mr. Oake was one of
25 the passengers.

26 After the vehicle was stopped, the police
27 officer noticed a strong odour of cannabis inside

1 the vehicle. The driver gave a false name when
2 he identified himself to the officer. The
3 vehicle was searched and cocaine was found in the
4 vehicle. I heard that just over 141 grams of
5 powder cocaine and 142 grams of crack cocaine
6 were seized from the vehicle.

7 According to the copy of the Indictment that
8 was filed at the bail hearing, Mr. Oake and the
9 driver of the vehicle are jointly charged with
10 two counts of possession of cocaine for the
11 purpose of trafficking.

12 I heard the case has passed the preliminary
13 hearing stage and is currently pending before the
14 Court of Queen's Bench in Alberta.

15 Mr. Oake was released on October 27th, 2015,
16 on a recognizance with a cash deposit of \$1500.
17 His father was the one who provided the funds for
18 that deposit and he is noted as the assignee on
19 the recognizance. But Mr. Oake's father was not
20 named as a surety. There were no sureties on
21 that recognizance.

22 The release conditions included, among other
23 things, that Mr. Oake was to reside at 166 Borden
24 Drive, in Yellowknife, (that is his father's
25 residence) and that he was to abide by a curfew
26 between 10 p.m. and 6 a.m. every day. He was
27 also required from refraining to possess,

1 consume, or purchase illegal drugs.

2 The Crown alleges that on November 19th,
3 2016, Mr. Oake was a passenger in a vehicle that
4 was intercepted in Yellowknife as a result of a
5 traffic violation. This occurred at 1:50 a.m.
6 The police officer who stopped the vehicle knew
7 that Mr. Oake was on a curfew and that is what
8 led to the two-count Information alleging
9 breaches. There is a breach of the curfew and a
10 breach of the condition that he keep the peace
11 and be of good behaviour. The two charges are
12 based on the same allegations.

13 Mr. Oake was released on a recognizance
14 before an officer in charge that same day, and
15 the only condition in that recognizance was the
16 requirement that he abide by a curfew between
17 10 p.m. and 6 a.m.

18 The next set of allegations are by far the
19 most serious. Between November 23rd and 25th,
20 2016, there were a number of fentanyl overdoses
21 in Yellowknife. I heard that the situation was
22 so serious that medical officials issued
23 advisories in the media that there was a
24 particularly potent and dangerous type of
25 fentanyl being sold on the streets of
26 Yellowknife.

27 Mr. Oake was one of the people who overdosed

1 on fentanyl. This happened on November 25th at
2 his father's residence at 166 Borden Drive. He
3 was, as a result of that overdose, in extreme
4 medical distress. Paramedics were called, and
5 police were also called to assist. He was
6 treated with the type of medication that is used
7 in these situations and was rushed to the
8 hospital.

9 The police officers that were at the scene
10 spoke with his parents. They learned that
11 Mr. Oake had used fentanyl on multiple occasions
12 at the residence. Police officers felt that they
13 needed to search the residence based on exigent
14 circumstances given the very dangerous nature of
15 the drug and the possibility there could still be
16 some in the residence. Mr. Oake's father
17 consented to the search of the residence.

18 As a result of the cursory search of the
19 residence and garage, police found in Mr. Oake's
20 bedroom a number of items, including a clear
21 baggie that had a white substance in it and a
22 digital scale. In the garage, they found a torn,
23 empty envelope which appeared to have been mailed
24 from Hong Kong. Police learned from Mr. Oake's
25 father that Mr. Oake sometime spent time in the
26 garage.

27 One of the officers who was involved in the

1 search began to experience worrisome symptoms
2 suggesting that he might be affected by the
3 substance that was being handled. That officer
4 required medical attention, but, as far as I
5 heard, was ultimately fine.

6 A search warrant was obtained for the
7 residence. During the execution of that warrant,
8 two more scales were found as well as another
9 empty envelope which appeared to have been mailed
10 from China. A laptop was also seized and it is
11 still being examined, so at this point it is not
12 known whether there is anything relevant to this
13 investigation that will be found in it. The
14 white substance in the baggies seized in
15 Mr. Oake's room was tested and it was found to be
16 furanyl fentanyl. Swabs taken from the inside of
17 both envelopes tested positive for the same
18 substance.

19 During the investigation, police interviewed
20 Courtney Janes, one of the persons who had
21 overdosed on fentanyl during those days in
22 November 2016. She advised that she went to 166
23 Borden Drive and saw Mr. Oake there. They went
24 inside the garage and there Mr. Oake made a line
25 of drugs for them. He gave her some as well and
26 some paper and told her to be careful on it as he
27 had overdosed on it the day before. Ms. Janes

1 advised that later that day she blacked out. It
2 is alleged that members of her family found her
3 in medical distress and called emergency
4 services. Ms. Janes also told police that she
5 was present when Mr. Oake ordered some fentanyl
6 from China.

7 During the investigation, Mr. Oake's parents
8 were also interviewed. They both confirmed they
9 knew their son was using drugs. His mother is a
10 nurse and had talked to him about getting into a
11 treatment program and he had agreed to go.

12 On November 28th, the police in Yellowknife
13 were advised by their colleagues in British
14 Columbia that as part of a seizure that occurred
15 at the Vancouver airport an envelope addressed to
16 Mr. Oake at 166 Borden Drive, mailed from China,
17 was found to contain 11.7 grams of furanyl
18 fentanyl.

19 The charges arising out of the November
20 events were sworn on November 30th and a warrant
21 for Mr. Oake's arrest was issued. He was still
22 in hospital at that point. The Crown alleges
23 that he was, at that point or shortly after, in
24 hospital voluntarily in the sense that there was
25 no medical requirement for him to remain there.

26 On December 2nd police made attempts to make
27 arrangements for him to turn himself in.

1 Surveillance was established at the hospital
2 because police were concerned that Mr. Oake might
3 decide to leave and not turn himself in.

4 The Crown alleges that Mr. Oake's mother was
5 seen arriving at the hospital in a vehicle and
6 that shortly after that Mr. Oake was seen walking
7 out of the hospital with a hood over his head.

8 The Crown further alleges that Mr. Oake went back
9 inside the hospital and his mother drove away. I
10 understand the Crown's allegation to be that this
11 happened because they saw police were there. But
12 the discussions continued and eventually Mr. Oake
13 did come out of the hospital and was arrested.

14 The Crown supplemented these allegation with
15 background information about the drug fentanyl.
16 These remain allegations at this stage, but the
17 nature of this drug and its dangerousness has
18 been the subject of comments by this Court over
19 the past few months and by other Courts across
20 the country as well, so at least some aspects of
21 this are not really in issue.

22 Fentanyl is a very potent drug that creates
23 physical dependency and it involves a high risk
24 of overdose. The Crown has provided statistical
25 information about the drastic increase, over the
26 past few years, in deaths resulting from fentanyl
27 overdoses. There have been two separate public

1 health advisories in the NWT in relation to this
2 drug, one in February and one in November. I do
3 not think anybody takes issue with the fact that
4 this is indeed a very dangerous drug.

5 Mr. Oake's election on the five-count
6 Information is trial by judge alone. At the time
7 of the bail hearing, no date had been scheduled
8 for the preliminary hearing into these matters,
9 and I know from reviewing the file that the
10 matter is actually to be spoken to in Territorial
11 Court tomorrow unless something has changed since
12 those endorsements were made on the Territorial
13 Court file.

14 Those are the allegations that provide
15 context for this application for release. The
16 other important piece of course is the release
17 plan being proposed.

18 It is clear on the evidence that Mr. Oake
19 was born in Yellowknife and raised here. He
20 spent virtually all his life here. His immediate
21 family is here (his parents and his brother) and
22 so are members of his extended family (an aunt,
23 an uncle, and cousin). He is 22 years old and he
24 does not have a criminal record.

25 In his affidavit, Mr. Oake acknowledges that
26 he is an addict and needs treatment. He has
27 attended Narcotics Anonymous meetings while on

1 remand. At the time of the bail hearing, he had
2 not been able to access the substance abuse
3 program offered at the jail because priority is
4 given to people serving sentences. At the time
5 he swore his affidavit, he was on the waiting
6 list, but I heard just after we opened court this
7 afternoon that he has now been able to begin a
8 treatment program within the jail and that is a
9 very positive thing.

10 Mr. Oake had taken steps to attend treatment
11 before his arrest. I heard that he had been
12 accepted into treatment at the Edgewood Facility
13 in British Columbia and he was scheduled to
14 attend in December 2016. His arrest prevented
15 that from happening. His plan, if released, is
16 to renew his application to attend this treatment
17 facility.

18 My understanding of the evidence and the
19 submissions made on the application is that
20 Mr. Oake is not able to reapply to Edgewood until
21 and unless he is actually released on bail. His
22 counsel advised that based on the information he
23 has been able to gather, the application process
24 to get into this treatment program requires the
25 applicant to be "available", which to them means
26 "not in custody" at the time the application is
27 submitted.

1 I am going to open a brief parenthesis here
2 just to draw to counsels' attention something
3 that I came across more by coincidence than
4 anything else, which does not change anything to
5 my decision in this matter but I thought I should
6 raise because it came to my attention.

7 In an entirely different context recently,
8 and Mr. Praught will be aware of this matter, as
9 part of an estreatment hearing and, as part, I
10 was provided background materials on another drug
11 case. Of course, at the stage of the estreatment
12 hearing, the only question was whether money
13 should be forfeited, but I was provided the
14 pre-sentence report that was prepared for that
15 sentence as well as the Reasons for Sentence of
16 the sentencing judge. And it may just be that
17 information was reported incorrectly or that I
18 misunderstood what I read, but it appeared that
19 in that case when the accused had been released
20 at some point during his case, he was released
21 directly into the treatment plan at Edgewood. In
22 other words, it sounded from what was referred to
23 in the pre-sentence report that when he was in
24 custody he was able to somehow apply while he was
25 still in custody. Just so counsel are aware, the
26 sentencing decision on that is reported at 2017
27 NWTTC 01, and this court's estreatment file is

1 2017-000009. I did not look at this very
2 closely, I just happened to notice it because I
3 had just heard this bail hearing.

4 I want to make it clear that I do not doubt
5 for a second that the information I was provided
6 at this hearing is the information that counsel
7 were given and was an accurate representation of
8 the situation as it was explained to counsel. I
9 raise it only because it may be that there is a
10 case where it does make a difference whether a
11 person may be released directly to this treatment
12 program. And, if not whoever is applying for
13 release at any given point, the Crown would have
14 an interest in knowing whether in fact it is
15 possible or not to submit an application while in
16 custody. But as I say, it makes no difference to
17 my decision on this matter. I just wanted to
18 raise it and now I close that parenthesis.

19 Turning back to this case, the information
20 and the evidence that I have is that there is
21 some uncertainty about when Mr. Oake might be
22 able to attend treatment if he is released. It
23 would depend on how quickly his application
24 process can be completed and, of course, when
25 space is available for him at the facility.

26 Also as part of the release plan, Mr. Oake
27 is prepared to consent to provide samples of his

1 blood and urine, to allow his hands to be swabbed
2 for the purposes of ensuring that he is
3 continuing to abstain from consuming illicit
4 drugs. He is prepared to subject himself to
5 random testing without there being a need for the
6 police officer requesting this to have any
7 grounds to believe that he has actually breached
8 his release terms, and he is prepared to waive
9 his right to confidentiality as to any medical
10 attention or intervention that he might receive
11 and to authorization any medical personnel who
12 deals with him to contact police and report
13 details of his condition should he require
14 intervention after have consumed illicit
15 substances. So I guess, in summary, he is
16 prepared to comply with any conditions the Court
17 may place on him and he has proposed to give up
18 several aspects of his rights to facilitate and
19 encourage the monitoring of these conditions. It
20 is proposed in the release plan that he would
21 live with his mother.

22 As I have said already, Mr. Oake's parents
23 are both prepared for act as sureties for him.
24 His father is prepared to cash in some of his
25 investments and deposit an amount of \$1,000. His
26 mother is proposing to pledge a surety in the
27 same amount but without a deposit. Both of them

1 testified that they are prepared to monitor their
2 son's compliance with conditions and to call the
3 police if there are any breaches. Neither of
4 them was a surety on the earlier recognizance.

5 Mr. Oake's mother was asked why she thought
6 it would be any different this time if her son
7 was released and why she believed this time he
8 would abstain from consuming drugs and take
9 treatment, considering that treatment had been
10 discussed and arranged in the past and evidently
11 he still continued to use. Her answer was "His
12 death." I take this to mean that she believes
13 that the near fatal consequences that he suffered
14 as a result of his last overdose is what will
15 make a difference to his resolve in tackling his
16 addiction issues.

17 With respect to what happened when the
18 police were trying to execute the arrest warrant
19 in early December, Mr. Oake's mother explained
20 that her intentions when she went to the hospital
21 that day were to facilitate her son's attendance
22 at the treatment program. She answered those
23 questions very directly and she did not try to
24 put any other spin on that. She said the
25 treatment was something that Mr. Oake's doctors
26 had approved and that, in effect, his arrest and
27 preventing him from attending treatment at that

1 point went against what she understood his
2 doctors wanted to see happen. Of course I do not
3 have any evidence from the doctors, but this is
4 what she said in her testimony. I think her
5 evidence makes it quite clear that her priority
6 at that time was to try to get her son into
7 treatment. She believed that is where he should
8 be and not in police custody.

9 She also testified that if her son is
10 released and is accepted at the treatment
11 facility, she intends on travelling there with
12 him and take him to the treatment centre herself.
13 She says she realizes it could take a long time
14 before these matters go to trial, and she
15 understands that by agreeing to be a surety and
16 monitoring her son's compliance with conditions,
17 she is making a major commitment. She maintained
18 that she is prepared to follow through with that
19 commitment.

20 Mr. Oake's father said he never saw evidence
21 of the drug-related activities in the garage at
22 his house on Borden Drive. He did acknowledge
23 that he saw evidence of drug use in his son's
24 room from time to time. He was asked why he did
25 not report this illegal activity to the police
26 and he said he did not think it was his
27 responsibility. He maintained that he does

1 understand that as a surety it would now very
2 much be his responsibility to call the police if
3 this were to happen again, or if he became aware
4 of any breaches of the release terms. He
5 testified that he is between jobs at the moment
6 and he would have some time and flexibility to
7 check in on his son and make sure he is complying
8 with the terms of his release. He acknowledged
9 it may be difficult for him to monitor compliance
10 with the curfew as Mr. Oake would not be living
11 with him, and he also added that there is no
12 landline at the residence, but he said he could
13 drive over and make some checks himself.

14 Again, Mr. Oake did not seem to me to be
15 trying to overstate anything. He answered the
16 questions he was asked in a very matter-of-fact
17 way and he did not try to justify or rationalize
18 his conduct or any of the things that he was
19 being cross-examined about during the hearing.

20 The Crown, as I have said at the outset,
21 opposes Mr. Oake's release on all three grounds,
22 emphasizing particularly the second and the
23 third.

24 On the primary ground, the Crown says that
25 the allegations involve very serious offences,
26 that significant sentences will be imposed if
27 Mr. Oake is found guilty, and that this gives

1 rise to a high risk that he may be tempted to
2 abscond. The Crown also notes that Mr. Oake,
3 knowing that there was a warrant for his arrest,
4 appears to have attempted to leave the hospital,
5 and his mother effectively confirmed that her
6 intention, as I have said already, was to try to
7 get him to treatment.

8 With respect to the second ground, which is
9 focused on public safety, the Crown notes that
10 the allegations reflect increasingly serious
11 behaviour and suggest that being on conditions,
12 even with a cash deposit, has not been a
13 sufficient incentive to ensure that further
14 offences would not be committed. The Crown also
15 noted that Mr. Oake's acknowledged addiction is a
16 powerful factor and creates a high risk of
17 reoffending. The Crown is concerned that the
18 proposed plan is not sufficient to control that
19 risk. Mr. Oake lived with one of his parents
20 when he is alleged to have committed the breaches
21 and the subsequent drug offences. There is no
22 guarantee that he will be accepted into treatment
23 and no certainty as to when he will go. The
24 Crown is not suggesting that Mr. Oake's parents
25 do not have the best of intentions, but argued
26 that especially given his involvement in
27 importing and trafficking a highly dangerous

1 substance, Mr. Oake poses a significant risk to
2 others.

3 On the tertiary ground, the Crown argues
4 that its case is strong and, if convicted,
5 Mr. Oake faces a significant penalty. The Crown
6 says that it is of particular concern that
7 Mr. Oake, having overdosed on the drug before,
8 knew how dangerous it was and still provided it
9 to another person. The Crown argues that
10 Mr. Oake's release in light of all of this would
11 cause the public to lose confidence in the
12 administration of justice.

13 Mr. Oake's counsel argues that the primary
14 ground is not really a concern given Mr. Oake's
15 ties to Yellowknife and his lack of criminal
16 record. On the secondary ground, the defence
17 notes that the allegations do not suggest that
18 Mr. Oake is involved in commercial trafficking
19 based on greed but, rather, that he is an addict
20 and that this is what is at the root of his
21 activities. Defence points out that the heart of
22 the release plan is to ensure that Mr. Oake
23 receives the treatment that he needs as soon as
24 possible and that once that happens and the issue
25 of his addiction is addressed, the concerns for
26 public safety would no longer exist.

27 Defence notes that because there were no

1 sureties before, Mr. Oake's parents were, in
2 fact, not under any obligation to report anything
3 to police in the past, but that they have both
4 now sworn that they understand their
5 responsibilities if they do become sureties and
6 have sworn that they will abide by them.

7 Defence notes that Mr. Oake is a young
8 person without a criminal record and argues that
9 his detention is not necessary to protect the
10 public.

11 On the tertiary ground, the defence
12 acknowledges that the Crown's case on the
13 importation charge is strong and that the likely
14 sentence for that offence, if Mr. Oake is
15 convicted, will be significant.

16 The defence points to the other factors set
17 out in the Criminal Code, however, including the
18 circumstance of the offence. Defence notes again
19 that the situation of an addict who is primarily
20 supporting his habit engages different
21 considerations than the situation of someone who
22 traffics in these dangerous substances purely for
23 commercial and mercantile purposes. There is no
24 allegation here or evidence suggesting
25 involvement with gangs, weapons, or violence.
26 Defence argues that Mr. Oake's involvement is at
27 the lower end of the scale and that his release

1 plan meets the concerns that may exist under the
2 tertiary ground.

3 I have given the evidence, the submissions,
4 and the case law that I was referred to a lot of
5 thought in what I consider to be a difficult
6 decision to make in this case.

7 On the primary ground, the question I must
8 ask myself is whether Mr. Oake's detention is
9 necessary to ensure that he will attend court.
10 To be sure, he faces a significant sentence if he
11 is convicted, and that is always something that
12 can raise concerns about the temptation a person
13 might have to try to flee to try to avoid facing
14 the consequences of a possible conviction.

15 At the same time, Mr. Oake is from
16 Yellowknife, his family is here. I think that
17 there are ways to craft release terms that will
18 minimize any flight risk that he might represent.
19 There can never be any guarantees in this regard.
20 Decisions on bail always require a risk
21 assessment, but, on the primary ground, I am
22 satisfied that it is possible to craft tight
23 conditions that would ensure Mr. Oake will come
24 to court as required and face trial when the time
25 comes.

26 The question I must ask myself on the
27 secondary ground is whether Mr. Oake's detention

1 is necessary for the protection of the public. I
2 must consider whether there is a substantial
3 likelihood that if released he will commit an
4 offence or interfere with the administration of
5 justice.

6 With respect to this ground for detention,
7 counsel have both referred to the Supreme Court
8 of Canada decision in R. v. Pearson, [1992] 3 SCR
9 665, and I want to say a few words about that
10 decision.

11 Pearson was the case where the
12 constitutional validity of the reverse onus bail
13 provisions for drug charges were challenged. In
14 explaining why these provisions were Charter
15 compliant, the Court made comments about the
16 unique characteristics of drug trafficking
17 offences, including how lucrative and organized a
18 business it is and how strong the incentive is to
19 continue trafficking even for someone awaiting
20 trial. The Crown emphasized those comments and
21 urged me to take them to heart and to recognize,
22 when considering whether Mr. Oake's detention is
23 necessary for the protection of the public, the
24 incentive he will have to continue trafficking in
25 this drug, because it is a very lucrative
26 business and also because of the fact that he is
27 an addict. Many addicts who traffic, traffic to

1 support their habits, and if Mr. Oake is not able
2 to address his addiction, the risk that he may
3 traffic again, if released, to resume supporting
4 his habit is high. I have taken this into
5 account, but, as noted by defence, there are
6 other aspects of the Pearson decision that must
7 also be considered.

8 One of the arguments that was made in
9 Pearson was that because of the very broad
10 definition of the concept of trafficking in the
11 Act, the effect of the reverse onus provisions on
12 bail was too far reaching. The Supreme Court of
13 Canada's answer to that argument was that for the
14 "small fry", or people who traffic essentially by
15 sharing drugs with their friends and supplying
16 their friends, it would be easier to rebut the
17 reverse onus and be granted release. That is
18 discussed as page 698 of the decision.

19 The Supreme Court recognized in this
20 context, as it should, that not all trafficking
21 offences are the same and not all drug
22 traffickers are in the same position vis-a-vis
23 the criminal organizations that effectively run
24 drug trafficking activities and profit from it.

25 The evidence adduced at this hearing is more
26 consistent with Mr. Oake being an addict who
27 trafficked primarily to support his habit as

1 opposed to being high up in an organized
2 hierarchy of fentanyl distribution in
3 Yellowknife. That is not to minimize the
4 seriousness of what he is alleged to have done.
5 But the allegations before me, taken at their
6 highest, do not suggest, not at this stage at
7 least, that he is a high level trafficker making
8 considerable profit. There no evidence that
9 score sheets were found, there is no evidence
10 that large sums of money were found on him or at
11 the house. His father was the one who put up
12 that cash deposit to secure his release on the
13 Alberta charges.

14 Of course there is always a concern where
15 there is evidence suggesting that an accused may
16 not be inclined to comply with release terms, and
17 there is that kind of evidence before me. The
18 case on the breach of curfew appears to be
19 strong, and, as the Crown noted, the next series
20 of substantive charges that also represented
21 breaches of the release terms arose just a few
22 days after Mr. Oake was arrested for the breach
23 of curfew. At the same time, I must recognize
24 the difference between the release plan that was
25 in place on the Alberta charges and the one that
26 is being proposed now. The Alberta recognizance
27 did not involve sureties. Mr. Oake was not being

1 supervised by anyone. The plan proposed now is
2 much stronger. There is always a question as to
3 whether a young adult's parents can actually have
4 any control over his behaviour. I have not lost
5 sight of the fact that Mr. Oake was living with
6 his father when the November events arose. And I
7 have not lost sight of the fact that one could
8 say that his mother was not as cooperative or
9 aligned with what the police were trying to do as
10 she could have been when they tried to execute
11 the arrest warrant. But, she has explained what
12 her point of view was and she has sworn before
13 this court that she understands what her
14 responsibilities as a surety would be. She has
15 sworn that she knows now that it would be her
16 obligation to report any breach of the release
17 terms immediately if that should happen.

18 Mr. Oake lived with his father at the time
19 of the November incidents. But, again, the
20 father had supplied the cash deposit for the
21 Alberta charges but he was not a surety. And he,
22 too, at this hearing, swore that he understands
23 the responsibilities that come with this. I have
24 no reason to doubt the sincerity of either of
25 these people and I did not understand the Crown
26 to actually be questioning their sincerity
27 either.

1 I am also mindful that Mr. Oake's parents
2 also have a powerful incentive, quite apart from
3 financial consequences to them should there be
4 breaches, to keep a close eye on their son. It
5 could be said that at this point for Mr. Oake to
6 address in a meaningful way his addiction could
7 very well be a question of life and death. And I
8 am confident that for a parent that is a powerful
9 incentive to do everything that they can to make
10 sure that he does comply with his release terms.

11 As I said already, bail always involves a
12 risk assessment. Can I be certain today that if
13 I release Mr. Oake he will not engage in illegal
14 activities again? Can I be 100 percent certain
15 of that? Absolutely not, but that is not what is
16 required for him to meet his onus. I am
17 satisfied that with two sureties, with strict
18 conditions, with some of the random monitoring
19 measures he is willing to subject himself to, and
20 with the plan of accessing treatment for his
21 addiction, the risk that his release presents
22 from the point of view of public safety can be
23 sufficiently mitigated to not make his detention
24 necessary.

25 That leaves the tertiary ground. The
26 question that I must ask myself on that ground is
27 whether Mr. Oake's detention is necessary to

1 maintain public confidence in the administration
2 of justice. That proves to be a challenging
3 ground, I think, in any case that involves
4 allegations of trafficking in this very dangerous
5 drug.

6 The Supreme Court of Canada in St-Cloud,
7 [2015] 2 SCR 328, has provided some welcome
8 guidance as to how the tertiary ground should be
9 approached. The Criminal Code itself says that
10 some factors must be considered. They include
11 the apparent strength of the Crown's case, the
12 gravity of the offence, the circumstances of the
13 offence, including whether firearms were used,
14 and the fact that the accused could face a
15 lengthy jail term if convicted. To this the
16 Supreme Court of Canada has added in St-Cloud, at
17 paragraph 71, that the circumstances of the
18 accused should be considered: age, whether there
19 is a criminal record, any physical or mental
20 condition that is relevant, whether the person is
21 part of a criminal organization.

22 On this ground, the defence has fairly
23 conceded that the Crown's case on the importation
24 case is strong and that these are serious
25 offences that would carry, in the event of
26 conviction, lengthy sentences.

27 The Alberta charge on its face is also

1 serious, but it is more difficult for me to
2 assess the strength of the Crown's case on that
3 charge based on what is before me. At the
4 hearing, the Crown noted that there has been a
5 committal to stand trial, but, in my respectful
6 view, that means very little given the very low
7 threshold under our law for committal after a
8 preliminary hearing. The allegations as I heard
9 them were in some respects quite vague. There
10 are no details, for example, as to where the
11 drugs were found in the vehicle. What I have is
12 an allegation that there was a vehicle, three
13 people in it, including Mr. Oake, and drugs found
14 somewhere it. So the outcome of the application
15 today and whether the onus and the tertiary
16 ground can be met turns much more on the nature
17 of the Yellowknife charges and their
18 circumstances.

19 The Crown has understandably emphasized the
20 very dangerous nature of the drug fentanyl. The
21 Crown also emphasized, also understandably, that
22 Mr. Oake was aware how dangerous it was because
23 he had overdosed on it already and still he chose
24 to provide it to someone else. And there appears
25 to be strong evidence that he is the one who was
26 bringing this drug into the community.

27 As I have said, the defence has acknowledged

1 all of this but points that the overall
2 circumstances do not suggest this was done for
3 greed but rather, was the desperate action of an
4 addict feeding his habit.

5 In St-Cloud, the Supreme Court clarified
6 which public must be considered when deciding
7 whether an accused's release, and sometimes
8 whether an accused's detention, would undermine
9 confidence in the administration of justice.

10 Some of the key things include that that public
11 is supposed to be someone who understands that
12 accused persons are presumed innocent until
13 proven guilty, have the right to reasonable bail,
14 and that the right to bail is constitutionally
15 protected for everyone in this country.

16 To be sure, there is considerable concern
17 around drug trafficking in general and with
18 respect to trafficking in fentanyl in particular.
19 That concern is growing exponentially as the
20 number of overdoses and death overdoses continue
21 to rise across this country. That concern is
22 well felt in this community as I have had
23 occasion to mention in a few decisions where I
24 sentenced people for trafficking in this drug.
25 But that concern, real as it is, cannot overtake
26 the entire analysis. If it did, no one charged
27 with fentanyl trafficking would ever be released

1 on bail, no matter what the circumstances and no
2 matter what release plan was presented. That is
3 not an acceptable outcome under our law. Under
4 our law, even people charged with very serious
5 offences, even murder, are entitled to reasonable
6 bail if their detention is not necessary for one
7 of the three grounds listed in the Criminal Code.
8 The detention has to be necessary, not just
9 helpful or convenient.

10 This Court is very concerned about the
11 public health risk associated with fentanyl and
12 its trafficking, but after considerable thought I
13 have concluded that the release plan that
14 Mr. Oake has presented meets the concerns under
15 the tertiary ground as well. I conclude that
16 given the nature of the terms that he is prepared
17 to agree to, given his parents' willingness to
18 act as sureties, given that they, too, know that
19 for him at this point getting treatment may be a
20 question of life and death, I have come to the
21 conclusion that Mr. Oake has met his onus on the
22 tertiary ground.

23 Mr. Oake, I hope you understand that you are
24 walking a very fine line for the next while. Do
25 not expect leniency if you are caught breaching
26 any of your release terms, at least not from me.
27 There will be cumbersome conditions, that you

1 have agreed to, that you outlined in your
2 affidavit. They could be in force for a long
3 time. But if you do not want to end up back in
4 custody, you have to follow them, as hard as it
5 may be. The main objective here is get you to
6 treatment and, once you return from treatment, to
7 have you remain sober.

8 The other case I was talking about, and you
9 know about it, I am sure, was one where the
10 person did go to treatment, came back and
11 overdosed again. So it is a long road and I know
12 you know that.

13 It is essentially going to be up to you, and
14 I hope that what happened in November has been
15 the last lesson you needed to actually do what
16 you need to do.

17 I will grant the application and release
18 Mr. Oake on a recognizance, and I followed for
19 the most part the conditions that were set out at
20 Exhibit "B" of Mr. Oake's affidavit. On the
21 recognizance there will be two surety. Mr. Dean
22 Oake will be the first surety and there will be a
23 requirement for \$1,000 cash deposit by him. Lori
24 Dashney will be the second surety. There will be
25 a \$1,000 amount pledged by her but without a cash
26 deposit. The other conditions are as follows,
27 and listen carefully to these, Mr. Oake: You are

1 to attend court as required. You are to reside
2 at 4919 - 44th Street in Yellowknife. You are to
3 comply with a curfew every day from 8 p.m. until
4 7 a.m. You are to come to the door of the
5 residence or answer the telephone if the police
6 or bail supervision authorities come to check on
7 your curfew compliance. You are not to possess
8 or consume any drugs except in accordance with a
9 medical prescription. In order to enforce that
10 term, I am going to include the three things that
11 are listed in the exhibit to your affidavit. I
12 will not read it all out here, Madam Clerk, but
13 you can refer to the exhibit.

14 COURT CLERK: Certainly, Your Honour.

15 THE COURT: Essentially, you are agreeing
16 that you are to provide samples of your blood or
17 urine, if needed, and you are waiving a lot of
18 your confidentiality rights with respect to
19 medical matters, and you are saying that you
20 understand that checks can be done at random.

21 I am going to require you to report - this
22 is cumbersome, but I feel it is important for all
23 the reasons I have been talking about - Mondays,
24 Wednesdays, Fridays, and Sundays in person. The
25 proposed conditions refer to "bail supervision
26 authorities". Often reporting conditions are
27 worded as "requirements to report to the RCMP".

1 Mr. Davison, has the situation changed or is
2 that intended to mean the RCMP? The reporting
3 conditions, it is worded "to bail supervision
4 authorities". I am more familiar with "report to
5 the RCMP", but we do not deal with that many bail
6 matters in this court.

7 MR. DAVISON: I had put it that way because
8 there is a bail supervisor -- effectively,
9 they're probation officers that do the bail
10 supervision duties as well. However, I'm going
11 to guess that there is a duty probation office
12 who's on call on weekends or holidays. But there
13 wouldn't be anybody in the office. So --

14 THE COURT: I think we will make the
15 reporting requirement to the RCMP.

16 MR. DAVISON: Thank you.

17 THE COURT: To the RCMP detachment because
18 we know that they are always there.

19 The next condition is that if you obtain
20 employment, you are to provide the full details
21 of that employment to the RCMP in Yellowknife and
22 to the bail supervision authorities, including
23 who your employer is, where you are working, and
24 what your schedule is going to be.

25 I did not ask this at the hearing,
26 Mr. Praught, but it was contemplated that there
27 be a no-contact order. Are there specific

1 individuals you would like listed?

2 MR. PRAUGHT: Yes, Your Honour.

3 Ms. Courtney Janes.

4 THE COURT: Yes.

5 MR. PRAUGHT: There are other witnesses,
6 potential witnesses, on the file we'd ask to
7 include as well. That would be Dwight Carpenter,
8 Samantha Janes, Barb Mezaros. Just if I may have
9 a moment?

10 THE COURT: Yes.

11 MR. DAVISON: If I can help out. I did see
12 a Lance Kristensen named in the file, and I think
13 he's also somebody that is associated with the
14 Section 145 charges. I would submit that's a
15 name that should be on the list, too, if my
16 friend wasn't going to propose --

17 MR. PRAUGHT: I thank my friend for that,
18 yes. And the Alberta recognizance will still be
19 in place.

20 THE COURT: Yes, and I know that file is
21 not before me. So maybe when we are done here, I
22 am just going to ask that you make sure the clerk
23 has the correct spelling of those names.

24 You recognize those names, Mr. Oake?

25 THE ACCUSED: Yeah.

26 THE COURT: All right. So you are to have
27 no contact with any of them, directly or

1 indirectly.

2 The next condition is that upon your release
3 you will take immediate steps to complete the
4 application process to be admitted to the
5 Edgewood treatment program.

6 The next condition -- here again, Madam
7 Clerk, I am using essentially what was paragraph
8 10 of the exhibit to Mr. Oake's affidavit.

9 THE COURT CLERK: Certainly, Your Honour.

10 THE COURT: It is a series of conditions
11 that will apply if you are accepted into the
12 treatment program. The idea there is that you
13 will have to make sure the RCMP and the bail
14 supervision authorities here know when you are
15 going and when you come back so that they know
16 where you are. Your lawyer prepared this, so I
17 think you are familiar with it, but the
18 conditions include: to provide your bail
19 supervisor with full details and provide your
20 written consent to allow the persons assisting
21 you in accessing the treatment program to provide
22 ongoing details about your program and your
23 progress; provide the Yellowknife RCMP with the
24 details of your travel itinerary to and from the
25 treatment program, including when you will be
26 travelling, the route, and your expected arrival.
27 You are to report in person to the local police

1 department or the closest RCMP detachment upon
2 your arrival at the treatment program in question
3 and provide them with a copy of your release
4 documents.

5 Once you return to Yellowknife, the
6 reporting conditions that I have already talked
7 about will resume. You are to travel as directly
8 as possible both to and from the treatment
9 program in the company of your surety, Lori
10 Dashney. This is not in what Mr. Davison had
11 listed, but I think it is crucial that someone be
12 with you. For the travel, I mean.

13 There is another paragraph that refers to
14 the requirement if you have to overnight on your
15 way to the treatment program: to advise the
16 Yellowknife RCMP of the details of where you are
17 staying and to continue to obey all the terms of
18 your release.

19 The last subparagraph confirms, and I want
20 this to be very clear to you, that all the other
21 conditions, including the monitoring conditions,
22 continue to apply whether you are in Yellowknife
23 or at the treatment program. The only conditions
24 that will not apply will be the residency
25 requirement, obviously, because you will not be
26 at home, and the reporting to the RCMP in
27 Yellowknife requirement because you cannot do

1 that if you are not here. But whoever the police
2 force is in the location you will be will be
3 authorized to monitor your compliance with the
4 other conditions exactly the same way as the
5 police here are.

6 The next condition -- you understand?

7 THE ACCUSED: Yeah.

8 THE COURT: The next condition is you will
9 remain in regular contact with your counsel and
10 you will keep yourself informed of all court
11 appearance dates scheduled for your case.

12 I forgot to ask this at the time of the
13 hearing, but do you have a passport?

14 THE ACCUSED: I think it's expired.

15 THE COURT: All right. Well, if -- I am
16 going to ask you to surrender your passport to
17 the RCMP even if it is expired.

18 THE ACCUSED: Okay.

19 THE COURT: I doubt these days you would
20 get very far with an expired passport --

21 THE ACCUSED: Yeah.

22 THE COURT: -- but surrender it.

23 I am also -- this is not going to come up
24 for some time, but I am going to include a
25 condition that you are to surrender yourself to
26 the custody of the North Slave Correctional
27 Centre, I think would be the logical place, no

1 later than 72 hours before the date scheduled for
2 the start of your trial. The proceedings in
3 Territorial Court are another matter. I am just
4 talking about trial here. When we get to the
5 point of the trial in this court (we do not know
6 when that will be but at some point you will
7 know), 72 hours before that, at the latest, you
8 have to surrender yourself in custody.

9 THE ACCUSED: Yeah.

10 THE COURT: Do you understand all that?

11 THE ACCUSED: Yeah.

12 THE COURT: Is there anything that I have
13 overlooked, Mr. Praught?

14 MR. PRAUGHT: Your Honour, I think a weapons
15 -- firearm condition is mandatory pursuant to
16 515(4.1) given that Mr. Oake is charged with a
17 Section 5 and Section 6 CDSA offence.

18 THE COURT: Do you agree, Mr. Davison?

19 MR. DAVISON: I think I do. If I can just
20 check?

21 THE COURT: Yes, yes.

22 MR. DAVISON: I hadn't thought about this,
23 but I think my friend is right.

24 Yes, I do agree.

25 THE COURT: So that mandatory condition.

26 And the reference, Madam Clerk, do you have it?

27 COURT CLERK: Section 515, Your Honour?

1 MR. PRAUGHT: Sub (4.1) sub (c).

2 THE COURT: (4.1)(c). Section 515 is a
3 long section. Anything else Mr. Praught that I
4 might have overlooked?

5 MR. PRAUGHT: No.

6 THE COURT: Anything not clear,
7 Mr. Davison?

8 MR. DAVISON: No. But if I might check one
9 point with his mother?

10 THE COURT: Yes.

11 MR. DAVISON: I was just checking about the
12 passport. Mr. Oake thinks it was at his
13 mother's. His mother thinks it may have been
14 disposed of given it was expired. I wonder if we
15 could simply say surrender it by 4:30 tomorrow
16 afternoon?

17 THE COURT: If it, if it --

18 MR. DAVISON: Or confirm that --

19 THE COURT: Or confirm that there isn't
20 one.

21 MR. DAVISON: Yes. That they can't find
22 one, yes.

23 THE COURT: All right. So one or the
24 other. Surrender or confirm that there isn't
25 one.

26 MR. DAVISON: And I am just thinking here.
27 Often that clause comes with an obligation or

1 prohibition against applying for any further
2 passport or further travel documents if that's of
3 concern to the Court.

4 THE COURT: Actually, now that you say
5 that, I will include a condition that aside from
6 the requirements of treatment, he is not to leave
7 the Northwest Territories. And also I think it
8 is a good idea as a subset of the passport
9 condition that he is not to apply for a passport.
10 That is clear enough, I think.

11 MR. DAVISON: Now, in terms of not leaving
12 the Northwest Territories, of course the
13 treatment program is in British Columbia. So --

14 THE COURT: Yes, I said except for the
15 purposes of attending treatment.

16 MR. DAVISON: Oh, I see. Okay. I'm sorry,
17 I didn't hear that.

18 THE COURT: Now, I think I made reference
19 specifically to Edgewood in some of these
20 conditions. That is the treatment program that
21 is being applied for, correct?

22 MR. DAVISON: It is. Now, I don't know if
23 -- for example, if they say they're full, I don't
24 know if the authorities here will have another
25 alternative to offer. But that is the program
26 that we had in mind and referred to in the
27 affidavit, that we've had in contemplation

1 throughout.

2 THE COURT: Well, I think that what I will
3 say is if that does not work out for some reason,
4 then presumably a written application for consent
5 amendment to include whatever other treatment
6 program could be submitted. I am deliberately
7 not leaving it very vague because if it was going
8 to be somewhere else, I would want the
9 arrangements to have been made, confirmed, and
10 that the Crown have an opportunity to make sure
11 that it is a known program. And I hesitate to
12 say legitimate, but there are all sorts of
13 programs that could justify leaving the
14 territories and that is not my intention.

15 MR. DAVISON: No, I understand that.

16 THE COURT: Now, the other thing,
17 logistically -- I don't know. There is an
18 appearance tomorrow in Territorial Court and on
19 the endorsement its says "removal order by
20 video". I do not know how long it will take to
21 perfect this recognizance. The clerk has some
22 work to do and I will have to review it and then
23 there is the issue of the money deposit. So
24 there is nothing I can do about the Territorial
25 Court appearance other than to say, Madam Clerk,
26 that the original Territorial Court file should
27 be returned to them as soon as possible because

1 they will need it tomorrow morning at 9:30.

2 COURT CLERK: Yes, Your Honour.

3 THE COURT: And for the rest, if
4 everything happens and you happen to be out of
5 custody by tomorrow morning by 9:30, then you
6 have to be next door.

7 THE ACCUSED: Okay.

8 THE COURT: I am not sure how long this
9 would take, but it is already 2:30 and it may be
10 some time.

11 MR. DAVISON: Understandable, yes.

12 THE COURT: Anything else?

13 MR. PRAUGHT: No, Your Honour.

14 THE COURT: Thank you, counsel.

15 MR. DAVISON: Thank you, Your Honour.

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20 Certified Pursuant to Rule 723
21 of the Rules of Court

21

22

23 Jane Romanowich, CSR(A)
24 Court Reporter

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