*R v Paradis,* 2018 NWTSC 84 **S-1-CR-2018-000139**

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**CASSIUIS ZANE PARADIS**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Transcript of the Bail Review Decision delivered by The Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 5th day of December, 2018.

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ APPEARANCES:

Mr. M. Fane: Counsel for the Crown

Mr. B. Lotery: Counsel for the Accused

(Charges under s. 354(1), 91(2), 92, 92(2), 94(2) 88(2),

117.01(3) of the *Criminal Code* and s. 5(2) of the

*Controlled Drugs and Substances Act*)

1. THE COURT: Thank you.
2. The accused faces a number of charges
3. arising from events that occurred in
4. Fort Providence on October 20th, 2018. He had a
5. Show Cause Hearing before a Justice of the Peace
6. on October 28th, 2018, and was ordered detained
7. on the secondary and tertiary grounds.
8. He now applies for a review of that order.
9. He faces a total of 12 charges, which include
10. charges for possessing cocaine for the purpose of
11. trafficking; possessing property obtained by
12. crime, in this case, money; charges related to
13. being in possession of a prohibited firearm and
14. prohibited device. There is also a charge for
15. possession of a knife for a purpose dangerous to
16. public peace; possession of a firearm for a
17. purpose dangerous to public peace; and possession
18. of a firearm, ammunition, and prohibited device,
19. contrary to a firearms prohibition order.
20. At the bail review, the Crown relied on the
21. same allegations as those that were presented to
22. the Justice of the Peace on October 28th.
23. Essentially, all the charges stemmed from the
24. search, without a warrant, of a vehicle that was
25. intercepted near Fort Providence and was being
26. driven by the accused. Another person, a
27. 15-year-old youth, was also in the vehicle at the
28. time.
29. I will get back to the circumstances that
30. led to the interception of the vehicle in a
31. moment, but I want to set out first some of the
32. things that were seized as a result of the
33. search.
34. In the glove compartment, police found
35. baggies that contained cocaine, $579 in cash, and
36. a notepad, as well as two cell phones. In the
37. car, among other things, was a black suitcase.
38. In it, police found a knife, which has been
39. described as "a Rambo knife;" a pill prescription
40. bottle with the accused's name on it. Police
41. also found a firearm. A photograph of that
42. firearm has been filed at the review hearing. It
43. has the look of an assault rifle. It is equipped
44. with a laser sight, has no trigger lock, and was
45. loaded with a 40-round magazine full of
46. ammunition at the time it was seized.
47. In the trunk of the vehicle, police found a
48. safe. It contained cash and cocaine. There was
49. a large number of small, individually packaged
50. cocaine in a hand bag, as well as two larger
51. pieces of just over 28 grams. I heard that there
52. were two separate Ziploc bags and 93 small
53. packages of cocaine and a larger piece in one and
54. a similar number of small pieces and a larger
55. piece in another one. The small packages all
56. weighed between .19 and .27 grams. Crown alleges
57. that, in total, there was about 120 grams of
58. cocaine found alleged to have a street value of

5 about $40,000.

1. Money was found as well in the safe in the
2. Ziploc bag. There were two bundles, one
3. amounting to $3,000 and the other amounting $379.
4. In the allegations, there was also reference to
5. another bundle of money in the amount of $850
6. found in another bag that was in the safe.
7. Other items were found, which are alleged to
8. be consistent with the manner cocaine is packaged
9. for small quantity street sale. The notebook had
10. entries consistent with it being a score sheet.
11. The accused has a criminal record, which has
12. only one entry from January 19th, 2017, for
13. dealing with a firearm or restricted weapon
14. contrary to the regulations contrary to
15. Section 86(2) of the *Criminal Code*. For this
16. offence, he received a $3,000 fine.
17. Firearm prohibition orders are discretionary
18. on conviction for that particular offence. In
19. this case, such an order was made for a period of
20. 10 years, which is the maximum prohibition period
21. that can be imposed under that provision of the
22. *Code*.
    1. The accused has no known ties to the
    2. Northwest Territories. He is a resident of
    3. Alberta. The release plan that he has put
    4. forward is that he would live with his fiancée,
    5. who is also prepared to act as his surety. She
    6. proposes to deposit $10,000 in cash and to be
    7. bound by a recognizance without deposit for a
    8. further $10,000 to support his release. In her
    9. Affidavit, she deposes that she has known the
    10. accused for seven years and has been engaged to
    11. him for two years. She is employed and is a
    12. lifelong resident of Edmonton. She deposes that
    13. she is aware of the charges and of the type of
    14. sentence Mr. Paradis will face if convicted.
    15. The conditions that are being proposed and
    16. that the surety deposes she is prepared to
    17. enforce and monitor would include a curfew, a
    18. requirement for the accused to reside with her, a
    19. requirement that he report to a bail supervisor,
    20. and that he have no contact with the person he
    21. was with at the time of the arrest.
    22. Defence counsel has advised that release
    23. conditions of this type, in particular, the
    24. reporting condition and curfews are monitored in
    25. the city of Edmonton by police and by probation
    26. services; and so he argues that these proposed
    27. conditions would, in fact, be enforced and would
23. be meaningful.
24. The Crown has not sought to cross-examine
25. the proposed surety on her Affidavit. I infer
26. from that and I imagine that, if the Crown had
27. any reason to think that some of the things that
28. she deposes to are not true, such as her address,
29. her lack of criminal record, her employment
30. status, it would have sought to challenge her on
31. some of those assertions. There being nothing to
32. contradict those assertions, I have no basis to
33. doubt that the surety is who she says she is and
34. is prepared to do what she says she will do.
35. Counsel has added, at the hearing of the
36. bail review, that the money that she would put up
37. is from her own savings, money that she has put
38. aside for school, and that as such, she would
39. have a real incentive to carry out her
40. responsibilities as a surety diligently.
41. I want to speak briefly about the
42. jurisdiction of this Court to entertain this
43. review because the Supreme Court of Canada, in
44. *R. v. St-Cloud*, has made clear that the right to
45. bail review is not unlimited. But, in this case,
46. the Crown concedes that the door is open for this
47. Court to undertake its own analysis of the matter
48. because the Justice of the Peace committed some
49. errors in deciding this matter.
    1. Given that concession, I will not go into a
    2. lot of details on this issue. Suffice it to say
    3. that it seems clear, on the record, that the
    4. Justice of the Peace excluded completely
    5. consideration of the *Charter* breach that the
    6. accused claims took place in her analysis of the
    7. strength of the Crown's case.
    8. I agree that, although the bail hearing is
    9. not the time to go into a detailed analysis of
    10. the substantive merits of the case, defences that
    11. are put forward must be taken into account as
    12. part of the analysis of the strength of the
    13. Crown's case.
    14. A perhaps more difficult issue is how that
    15. factor plays in and what weight it should carry
    16. on the overall analysis, but it is clear that it
    17. should be considered; and so, therefore, I agree
    18. with Crown and Defence that indeed the door is
    19. open for review in this case.
    20. Any time pretrial bail is considered, the
    21. presumption of innocence and the right not to be
    22. denied reasonable bail are obviously an important
    23. part of the framework that governs the analysis.
    24. Our law, however, does recognize that, even
    25. in the face of those Constitutional rights, there
    26. are circumstances where pretrial detention is
    27. justified.
        1. The Crown, in this case, concedes that the
        2. primary ground is not engaged. The release plan
        3. contemplates a significant amount of money being
        4. put on the line by the accused's fiancée and
        5. tight conditions that counsel advise would in
        6. Edmonton actually be monitored and enforced.
        7. Given the Crown's position, I do not propose to
        8. discuss the primary ground any further.
        9. The Crown opposes release on the secondary
        10. and tertiary grounds. The secondary ground
        11. requires me to consider whether the accused's
        12. detention is necessary for the protection and
        13. safety of the public, having regard to all the
        14. circumstances including any substantial
        15. likelihood that the accused, if released, will
        16. commit a criminal offence or interfere with the
        17. administration of justice.
        18. Here, the issue is really the issue of
        19. substantial likelihood of commission of another
        20. offence. It appears most witnesses, on this
        21. case, will be police officers; so the issue of
        22. potential interference with the administration of
        23. justice does not appear to be a live one. The
        24. tertiary ground requires consideration of whether
        25. the accused's detention is necessary to maintain
        26. confidence in the administration of justice.
        27. As counsel have properly noted, the strength
            1. of the Crown's case is relevant to both of these
            2. grounds. It is specifically referred to in the
            3. description of the tertiary ground as a factor to
            4. be considered, but it is also relevant to public
            5. safety. If the Crown has a strong case on
            6. serious charges, the public safety concerns that
            7. arise as a result are bound to be greater than if
            8. the Crown has a marginal case, even on a serious
            9. matter. And, at the same time, the nature of the
            10. charge matters. A very strong Crown case on
            11. allegations that do not raise serious public
            12. safety concerns would not assist the Crown much
            13. in advancing the secondary ground for detention.
            14. The more pointed issue that arises in this
            15. case, with respect to the assessment of the
            16. strength of the Crown's case, is the assessment
            17. of the impact of the Defence that will be
            18. advanced, a *Charter* breach, to the analysis. As
            19. I have already noted, the Crown concedes that the
            20. Justice of the Peace erred in setting that factor
            21. completely aside in her consideration of the
            22. matter.
            23. Deciding what the impact of an alleged
            24. *Charter* breach has at a bail hearing stage is not
            25. simple. This is because, as everyone
            26. acknowledges, this is not the stage where it is
            27. appropriate to delve into all the details of that
50. type of issue and resolve it. Although the
51. Crown, in this case, fairly provided a detailed
52. outline of what preceded the search of the
53. vehicle, that cannot possibly be as complete a
54. record as what will be before the Trial Court,
55. nor should it be.
56. At the same time, the chances of success on
57. a *Charter* motion do have an impact on the
58. assessment of the strength of the Crown's case.
59. In this particular case, if the Defence fails on
60. its *Charter* motion, the Crown's case will be
61. extremely strong. If the Defence succeeds in
62. establishing a breach and in getting the evidence
63. excluded, the Crown will have no case at all.
64. The Crown has provided cases that address
65. aspects of this. Those cases show some of the
66. nuances that can come up in this area and are
67. very helpful, not so much because of similarities
68. in the facts, but because of the principles that
69. emerge from them.
70. I agree with the cautionary comments that
71. were made by the judge in *R. v. Dong*, [2008] O.J.
72. No. 464, quoted in the *R. v. Parsons,* 2009 ONCJ
73. 763, at paragraph 97. In *Dong*, the judge noted,
74. among other things, that a bail hearing is not a
75. trial. And consideration of the strength of the
76. Crown's case, in that context, cannot be
77. permitted to become a protracted test of the
78. Crown's allegation.
79. The judge also noted that the Court has to
80. be exceedingly cautious in attempting to evaluate
81. allegations that raise *Charter* issues; and, in
82. doing so, must not overlook that, as part of that
83. analysis, even if a breach is found to have taken
84. place, there also needs to be an analysis of
85. whether the evidence should be excluded.
86. Not all alleged *Charter* breaches are the
87. same. Where a search is under challenge and was
88. done on the basis of the judicial authorization,
89. like a search warrant, or as was the case in
90. *R. v. Stiopu*, 2017 NWTSC 7, an authorization to
91. intercept private communications, it may be very
92. difficult to gauge the chances of success of an
93. eventual challenge at the bail hearing stage.
94. Here, that is not the situation. It can at
95. least be determined, as the Crown has conceded,
96. that there is a live issue on the matter. That
97. being said, I still do not have all the evidence
98. that will be presented at trial.
99. Another nuance comes from the type of
100. evidence that the *Charter* application relates to.
101. If what is at issue is a statement obtained in
102. contravention of the right to counsel, for
103. example, the considerations on the Section 24(2)
104. analysis will play out differently than when the
105. evidence obtained is real evidence. The nature
106. of the breach, the conduct of the authorities,
107. the overall context will also be important for
108. the Section 24(2) analysis.
109. As I said, the Crown acknowledges that there
110. is a triable issue with respect to the
111. admissibility of the evidence seized in this
112. case. The investigation began on the basis of
113. tips received by one officer that were passed on
114. to another. That officer and his colleague, in
115. turn, made their own observations once they
116. spotted the vehicle in Fort Providence.
117. Eventually, they stopped that vehicle and made
118. other observations. This led to some verbal
119. exchanges between them and the accused and
120. culminated in the warrantless search of that
121. vehicle.
122. The *Charter* issues in this case may not be
123. quite as complex as they were in *R. v. Yoeun*,
124. 2011 ABQB 712, referred to by the Crown. But it
125. is not entirely straightforward either, given
126. what unfolded. And, as I noted already, there
127. will, even if a breach is established, have to be
128. a Section 24(2) analysis to determine whether
129. this evidence should be excluded.
130. So, as far as what is being put forward by
     1. the Defence, in terms of the strength of the
     2. Crown's case, this is not a case, in my view,
     3. where the triable issue is analogous to, for
     4. example, contested identification of the
     5. perpetrator or circumstantial evidence where it
     6. will be argued that there is another explanation
     7. for the evidence, aside from the accused's guilt,
     8. or a case where self-defence is being raised or a
     9. case involving an alibi.
     10. Here, on its face, the evidence that the
     11. Crown proposes to adduce raises very serious
     12. public safety concerns, and the only question is
     13. whether the Crown will succeed in having that
     14. considered as part of the trial.
     15. Acknowledging that the admissibility of the
     16. result of the search will be challenged at trial,
     17. I do not think this is a case where it can be
     18. said that this challenge will, more likely than
     19. not, result in the exclusion of the evidence.
     20. *Yoeun*, which I have already referred to,
     21. quotes another Alberta case, *R. v. Beyene*, 2007
     22. ABQB 474, where the judge, having concluded that
     23. the *Charter* challenge was very likely to succeed,
     24. said that an individual who is unlikely to be
     25. convicted at trial should not be kept in custody
     26. pending trial. I completely agree with that
     27. statement, but I do not think it can be said, at
131. this stage, that this accused is unlikely to be
132. convicted.
133. Going back to the grounds for detention,
134. dealing first with public safety, the allegations
135. raise significant concerns. The charges are very
136. serious. With respect to the drug charges and
137. the charges for possession of proceeds of crime,
138. the quantities of drugs seized, the manner in
139. which they were packaged, the money found in the
140. vehicle, the note book, all suggest that the
141. accused was engaged in commercial cocaine
142. trafficking in one of the smaller communities in
143. this jurisdiction. The jurisprudence of this
144. Court is replete with strong statements about the
145. very real harm that hard drugs have caused and
146. continue to cause in this jurisdiction. The
147. sentences imposed for this type of crime in this
148. jurisdiction reflect that show how seriously
149. these matters are taken.
150. The charges pertaining to the firearm are
151. also extremely serious. Firearm offences are
152. relatively common in the Northwest Territories,
153. but not this type of firearm. This is the kind
154. of weapon one would expect to see in a war zone,
155. not in Fort Providence. It was found with a
156. magazine that contained 40 rounds. I agree with
157. the Crown that this type of weapon with
158. ammunition can only have one use, and that is to
159. terrorize people.
160. The presence of the knife shown in the
161. photograph is also of concern. This is not a
162. Swiss Army knife. These people were not coming
163. back from a hunting trip. The juxtaposition of
164. these weapons and evidence of drug-trafficking
165. activities raise immense public safety concerns.
166. An added concern is the accused's criminal
167. record. It is not an extensive record, far from
168. it; but it is relatively recent, and it raises
169. issues about the effectiveness of the court order
170. to control the risk he presents because it raises
171. issues about his willingness and ability to
172. respect a court order.
173. With respect to the tertiary ground, the
174. issue is whether it is necessary to detain the
175. accused to maintain the public's confidence in
176. the administration of justice, having regard to
177. the circumstances as a whole and specific factors
178. that are mentioned in the provision. *St-Cloud*
179. clarified that the analysis should not assume
180. that this ground only applies in exceptional,
181. particularly heinous circumstances.
182. The factors that are outlined have been
183. referred to in submissions. The first is the
184. strength of the Crown's case. I have talked
185. about this a fair bit already. Acknowledging
186. there is a live issue on the *Charter* argument, I
187. do not see this as an obvious case either way on
188. the basis of what is before me now.
189. The second factor is the gravity of the
190. offence. It is noteworthy that this is listed as
191. a separate factor from the strength of the
192. Crown's case. So presumably, Parliament intended
193. the gravity of the offence to be a consideration
194. quite apart from the issue of how strong the
195. Crown's case is.
196. I have already talked about how seriously I
197. view these allegations. It was noted during
198. submission that there is no evidence of gang or
199. criminal organization activity here, and that is
200. a fair point.
201. On the other hand, whether someone is
202. driving around with a combat weapon in
203. conjunction with a small drug dealing enterprise
204. or in conjunction with a larger operation
205. involving a gang, the gravity of the conduct
206. remains high, and the public can be expected to
207. have grave concerns about it.
208. The third factor relates to the
209. circumstances of the offence, including whether a
210. firearm was used. Defence counsel has again
211. properly pointed out that the allegation is that
212. the accused was in possession of this firearm as
213. opposed to having used it in the commission of an
214. offence. If this particular firearm had been
215. used in the commission of a separate offence, the
216. charges may well be very different and the matter
217. would be even more serious. But, as I think must
218. be clear from what I have said so far, being in
219. possession of this type of firearm, especially
220. loaded with ammunition, is in and of itself
221. extremely serious.
222. The fourth factor is the sentence that the
223. accused is liable to if convicted. Here,
224. everyone acknowledges that, if convicted, the
225. accused will face a lengthy term of imprisonment.
226. I acknowledge that the release plan has some
227. strengths. If he complies with all the proposed
228. conditions, I accept that the accused would
229. likely not be a threat to public safety between
230. now and the time of his trial.
231. But, as with any release plan, its
232. effectiveness is dependent on his willingness to
233. comply with it. The plan has teeth in the sense
234. that his fiancée stands to lose a lot of money if
235. he breaches his conditions and it is shown she
236. did not carry out her duties as a surety as she
237. should have. But there remain questions.
238. According to her Affidavit, the surety has known
239. the accused for seven years, so she was in his
240. life when he committed the offence that appears
241. on his criminal record.
242. I agree with the Crown that the sentence
243. that was imposed for that offence, in particular,
244. the fact that the maximum firearms prohibition
245. period was imposed as part of that sentence, as
246. well as the fact that the fine is quite
247. substantial for someone who does not have any
248. previous record, suggests that this offence was
249. not at the most minor end of the scale for this
250. type of offence.
251. There is no evidence before me about where
252. the accused has lived over the past several
253. years; about whether he has been employed; what
254. type of work he has done; and what his plans are,
255. as far as work, if he is released. I note that
256. our Rules of Court provide that an accused who
257. applies for bail is required to file an Affidavit
258. that provides certain information. In this case,
259. there is no Affidavit from the accused.
260. The surety's Affidavit provides some of the
261. information, more specifically in relation to the
262. release plan, such as where he will live, some of
263. the conditions that are proposed; but there
264. remain some gaps. I am not mentioning this
265. because I feel it to be determinative, but it is
266. a factor to consider, particularly when the onus
267. is on the accused to show that he should be
268. released.
269. I conclude that, despite the strengths of
270. the release plan, there remain some concerns
271. under the secondary ground. Even if I am wrong
272. about that and the release plan is found to be
273. sufficiently robust to alleviate those concerns,
274. there remain concerns under the tertiary ground
275. as well.
276. Going back to *St-Cloud* and considering what
277. public the Supreme Court of Canada told us we
278. should be thinking about in analyzing that
279. ground, I am not satisfied that this fair,
280. thoughtful, and informed public, aware of basic
281. concepts, such as the presumption of innocence,
282. but also not a legal expert, would remain
283. confident in the administration of justice if a
284. person found in possession of this quantity of
285. cocaine and cash, score sheets, and weapons like
286. the ones that were seized here, especially while
287. under a court order not to be in possession of
288. any firearm, were released pending trial to be
289. effectively under the supervision of his fiancée.
290. I am not satisfied that this public would remain
291. confident in the administration of justice.
292. The proposed surety is obviously very
     1. supportive of the accused, and she is prepared to
     2. put a lot on the line for him. But, on the whole
     3. of the circumstances, as I have said, despite its
     4. strength, this plan does not satisfy me that the
     5. detention of the accused is not necessary to
     6. maintain public confidence in the administration
     7. of justice. For those reasons, the application
     8. is dismissed.
     9. Before we conclude today, I just want to add
     10. that the election on this matter is judge alone.
     11. Based on what I have heard, the investigation
     12. appears to have been brief, and it should not be
     13. very difficult to schedule this matter relatively
     14. quickly, unless there is something I am not aware
     15. of.
     16. I think the priority should be to ensure
     17. that the issues that need to be litigated on this
     18. matter can be litigated as quickly as possible.
     19. I can advise counsel that, as we speak, there are
     20. some weeks, not all, but some weeks in the first
     21. few months of 2019, where the Court may be able
     22. to accommodate this trial.
     23. Earlier this week, I suggested that counsel
     24. send in their availabilities for a pretrial
     25. conference as soon as possible. I am told that
     26. the Crown dates are in and our staff are simply
     27. waiting for the Defence's dates to schedule a
293. pretrial conference. But, even aside from that,
294. to speed up matters, if counsel are able to
295. discuss this matter between themselves, determine
296. which witnesses are needed and what the time
297. estimate is, in particular, for the voir dire
298. because it may be determinative of the result,
299. they can send that information in even before a
300. pretrial conference is held; and I would be
301. prepared to set aside time for this trial before
302. the pretrial conference is held.
303. That is not something that we normally do,
304. and it is not something I would ever consider
305. doing for a jury trial; but, to schedule a voir
306. dire on a case like this one, if this can
307. expedite the matter, I would certainly do it.
308. What I am getting at is that the Court is
309. prepared to do everything that it can to make
310. sure that this matter is dealt with as quickly as
311. it possibly can be.
312. So, unless there are any questions or
313. requirements for clarifications, we will close
314. court.
315. Anything from the Crown?
316. MR. FANE: Your Honour, I will follow up
317. with my friend in light of Your Honour's
318. comments.
319. THE COURT: All right.
     1. Anything from Defence.
     2. MR. LOTERY: No, Your Honour.
     3. THE COURT: All right. Thank you for your
     4. submissions. And, as I say, if you send me
     5. proposed availabilities for a voir dire and a
     6. time estimate, I will schedule it as early as we
     7. are able to do so. Close court.
     8. MR. LOTERY: Thank you, Your Honour.
     9. THE COURT CLERK: All rise. I declare the
     10. Supreme Court closed.

# 11 -----------------------------------------------------

12 **CERTIFICATE OF TRANSCRIPT**

13

1. I, the undersigned, hereby certify that the
2. foregoing transcribed pages are a complete and
3. accurate transcript of the digitally recorded
4. proceedings taken herein to the best of my skill and
5. ability.
6. Dated at the City of Edmonton, Province of
7. Alberta, this 3rd day of January, 2019.

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1. Certified Pursuant to Rule 723
2. of the Rules of Court

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1. Janet Belma, CSR(A), B.Ed.
2. Court Reporter