COURT OF QUEBEC

Criminal and Penal Division

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-01-256799-237
500-01-250496-236[1]
500-01-194502-198
500-01-185053-193

DATE: January 25th 2024

BEFORE THE HONOURABLE DENNIS GALIATSATOS, J.C.Q.

HIS MAJESTY THE KING
Prosecution
v.

Y.C.
(alias "N.C.")
(alias "N.M.")
Accused

DECISION ON INTERIM RELEASE
(s. 515(10) *C.C.*)

Note: Restriction on publication – By Court order made under section 486.4(1)(a)(i) of the *Criminal Code*, any information that

[1] This file is a duplicate of file 500-01-256799-237. It will eventually be stayed or withdrawn.

could identify the complainants shall not be published in any document or broadcast or transmitted in any way.

[1] The accused Y.C. has been in custody since his arrest in Montreal on December 11th 2023. He[2] stands charged in three unrelated Montreal-based files. Two of those involve offences allegedly committed in a domestic violence setting, albeit with different women. He is also wanted for an outstanding warrant in Ontario for violent crimes.

[2] Both the Montreal and Ottawa police departments actively sought to locate and arrest him. During various interactions with Ottawa police, the accused gave a false name and birthdate. A tracking device warrant was ultimately issued in Ontario, which allowed the police to locate the accused in New Brunswick in November of 2023. The tracking data then revealed that he returned to downtown Montreal in December. The Montreal police arranged for a surveillance operation during which he was apprehended. At the time of his arrest, he was in the presence of his mother and partner, both of which now offer to act as sureties.

[3] In file 500-01-256799-237, the accused is charged with two counts of sexual assault (s. 271(a) *C.C.*), two counts of criminal harassment (s. 264(1) *C.C.*) and one count of common assault (s. 266(a) *C.C.*) on M.C.B., his then-girlfriend and mother of his child. The events span from 2014 to 2022. The Crown has proceeded by indictment.

[4] In file 500-01-194502-198, he is charged with assault with a weapon (s. 267(a) *C.C.*) on N.B. in 2019, his then-girlfriend and mother of his other child. The charge was taken by summary conviction.

[5] In file 500-01-185053-193, he is charged with having failed to comply with a probation order (s. 733.1(1)(b) *C.C.*) that was imposed in Valleyfield in 2017 following a conviction for using counterfeit documents. He had an obligation to perform 150 hours of community service within 18 months. He completed zero of those hours. In fact, he

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[2] To dispel any confusion, the accused's name is Y.C. Defence counsel repeatedly referred to him as "Mr. Y.C." or "he, him", without being corrected. The accused's mother testified as a proposed surety and repeatedly referred to "her son" and "he". As the allegations demonstrate, he has fathered children with two women. In his own testimony, he repeatedly referred to himself as a loving "father" and he complained about parts of his youth, notably how he was expected to behave as "a man". He is currently detained in a men's remand centre. That being said, during the testimony of the second proposed surety, the witness repeatedly referred to the accused as "they" and noted that he is non-binary. Finally, during his testimony at the bail hearing, the accused referred to himself as non-binary and an active member of the queer community. Fundamentally, the accused's sexual orientation and gender have no bearing on any of the issues at bar. He is free to identify as he wishes. However, for clarity in these reasons, the Court will refer to him as "he". The Court declines to use plural pronouns to refer to any singular person.

changed his address and phone number without notifying his probation officer, who ultimately lost track of him.

[6] Finally, Y.C. is wanted in Ontario for an outstanding arrest warrant issued on August 2nd 2023.[3] In the judicial region of Ottawa, he is charged with assault with a weapon (s. 267(a) *C.C.*), two counts of forcible confinement (s. 279(2) *C.C.*), intimidation by violence (s. 423(1) *C.C.*), two counts of mischief (s. 430(1) *C.C.*), uttering death threats (s. 264.1 *C.C.*) and animal cruelty (s. 445.1(2) *C.C.*).

[7] The prosecution objects to his release, arguing that his detention is necessary for the safety of the public, as well as to ensure that he will attend court for his trial.

[8] Counsel for both parties submit that by operation of s. 515(6)(a)(i) *C.C.*, a reverse onus applies. That is, the accused bears the burden of establishing that his interim detention is *not* justified on any of the three criteria stipulated by Parliament, on the balance of probabilities. I agree that there is a reverse onus in the case at bar, although not for the reasons stated by counsel. Section 515(6)(a)(i) reverses the onus where the accused allegedly commits indictable offences while at large in respect of other indictable offences after being released on conditions. In the case at bar, at the time of the most recent allegations, Y.C. did indeed have two outstanding cases in Quebec. However, he had not been released in either of them. Thus, he was not under conditions. Instead, he failed to appear in one file at the arraignment stage and an active bench warrant was issued. In the other file, he evaded police from the outset, so an arrest warrant was the initial mode of compelling his appearance. In my view, section 515(6)(a)(i) does not operate to reverse the onus in such circumstances. Moreover, his pending cases involve summary offences, not indictable ones.

[9] Despite the foregoing, s. 515(6)(b.1) *C.C.* does apply. There is a reverse onus here due to the fact that the accused is charged with violent crimes on intimate partners, while having previously been convicted in 2010 of sexually assaulting another intimate partner. In any event, as will be seen below, the case at bar does not hinge on the allocation of the burden of proof. With respect, this is not a close call by any stretch.

[10] At the bail hearing before me, the defence produced two proposed sureties. They provided inconsistent, unreliable and sometimes contradictory testimony. They are not independent, as both have close vested interests in these proceedings. The Court concludes that they were not forthcoming. They bent the truth enough to make it look like a pretzel. For reasons expressed below, the Court affords them no trust whatsoever. For some time, while police officers in two provinces were searching for the accused, both sureties knew of the existence of the arrest warrants. At best, they enabled Y.C. in his refusal to surrender. At worst, they actively harboured a known fugitive, encouraging him to move across two provinces to avoid detection and arrest.

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[3] Exhibit EC-3.

[11] For reasons expressed below, this Court is ordering the accused's detention until the end of the proceedings.

THE FACTS

[12] The summary below is not meant to be exhaustive. Obviously, these are merely allegations at this juncture. Nothing has been formally proven in court.

[13] From the outset, I note that the summary refers to social media postings by "N.M." and various interactions between the police and N.M. At the bail hearing, the accused acknowledges using that alias.

1- The alleged offences, apprehension and arrest

a) File 500-01-256799-237[4]

i) The initial event in the summer of 2014

[14] In the summer of 2014, the complainant M.C.B. was 16 years old. She met the accused through Facebook, as both shared an interest in pet rats. She expressed that she wanted to adopt one of Y.C.'s rodents. Before he agreed to give her the rat, the accused wanted to see her house first.

[15] To that end, the accused attended her home while the girl was alone. They discussed for a while and the complainant took a shower. After her shower, they continued talking in her bedroom, where matters progressed quickly. The accused called her a tease and started to bite her. M.C.B. did not perceive that she had been flirtatious at all.

[16] Very quickly, the accused ended up on top of her with his pants down. She tried to push him away and she voiced her refusal. When she tried to escape, the accused pinned her down with all his weight. He was much larger and heavier than her. He removed her pants and placed his knees between her legs, preventing them from closing. Despite her pleas to stop, the accused responded "you wanted this; you made me do this". He penetrated her (without a condom) while biting her until he ejaculated.

[17] The intercourse was painful for the complainant, both during and after the act. She was in shock, disgusted by what had occurred. She did not even find the accused attractive. At his request, she agreed to walk him to the bus stop. The walk was painful because her genitals were irritated and inflamed. The pain and red marks lasted 48 hours.

[18] That night, the complainant wrote to the accused on Facebook, telling him that she was in pain and that she felt that she had been raped. Y.C. responded that he did not want her to make trouble for him and he blocked her.

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4 Police synopsis (exhibit EC-2).

[19] The complainant did not report the assault to the police. However, she told her father and her friend G.L. that night. Incidentally, G.L. has provided a statement to the police confirming that the complainant reported the sexual assault to him in 2014. She recounted that she told the accused "no", but he insisted and they had intercourse against her will, fearful that he would hurt her due to their size difference.

ii) The relationship from 2015 to 2018

[20] In 2015, while the complainant was still a minor, the accused contacted her through Facebook after hearing that she was in dire straits, sleeping on people's couches. He offered her money and ecstasy.

[21] The complainant accepted to go live with Y.C., his girlfriend and the latter's daughter. There, the three of them often took drugs, including ecstasy and Xanax. Y.C., who practised Wicca, gave the complainant ecstasy for its supposed therapeutic qualities. They often had sexual relations while on drugs.

[22] Eventually, the accused ended his relationship with his girlfriend and instead formed a couple with the complainant M.C.B. They both moved in with the accused's mother, proposed surety B.M. They continued consuming various drugs together.

[23] Throughout their cohabitation, there was daily physical and emotional violence, as well as financial control. The accused prevented the complainant from leaving the house. At times, he physically grabbed her and held her in place. If she ever left the house, the complainant had to be accompanied by the accused's mother or roommate E.C. Otherwise, she was expected to send the accused photos in order to continually document her whereabouts.

[24] The accused often punched the walls in the house and threw objects in the complainant's direction. When she pondered leaving him, he threatened that he would harm himself or suffer epilepsy seizures because of her. He also told her she would have no one to take care of her pets.

[25] They often changed addresses. Even though the complainant gave him her welfare cheques, the accused failed to pay their rent. She did not see any friends. She was expected to stay home and do housework.

[26] In December of 2015, the complainant became pregnant. The pregnancy was unplanned, although neither of them had used any contraception. The child was quickly removed by the Director of Youth Protection.[5]

[27] In 2016, the complainant was shown a screen shot from a message exchange indicating that "N.M." (*i.e.* the accused) had sent another woman a video of himself and

[5] Hereinafter "DYP".

M.C.B. naked, having sex. The complainant did not consent to the sharing. In fact, she was unaware that the accused had filmed her during sex in the first place.

[28] As of yet, the accused has not been charged with the unauthorized transfer of the intimate video (s. 162.1 *C.C.*).

[29] In 2018, the complainant left the accused and returned to live with her mother.

iii) The interactions from 2018 to 2022

[30] After the split, the accused continued to the send the complainant messages. M.C.B. was in therapy. She chose to ignore him and she blocked him from her social media. However, in late 2019, the complainant had difficulty obtaining photos of their daughter from the DYP. For that reason, she unblocked the accused's Facebook profile for the purpose of accessing photos of their child on his page.

[31] When the accused somehow noticed that she had accessed his page, he started writing to her again. During that period, both parties complained to their social worker that the other was harassing them. Among the messages from the accused, some indicated that he missed her while others were insulting and vulgar, calling her a whore and an egg donor and threatening that she would never see their child again.

[32] Ultimately, the complainant blocked him again. In September of 2021, she made it clear that she did not want him communicating with her anymore. However, every three months, the accused continued writing to her using alternate social media accounts.

iv) Notes in the disclosed portions of the DYP file

[33] As mentioned above, the child is currently in foster care, overseen by the DYP.

[34] In the DYP's file, there is a note by the complainant's gynaecologist who followed her during her pregnancy. According to the doctor, the accused and his mother B.M. (a proposed surety) had a practice of taking in innocent and vulnerable women whom they would control, manipulate and isolate. When the accused was present at the prenatal appointments, he displayed a dominating attitude, answering for the young complainant when the doctor asked her questions.

[35] The DYP file also documents that in August of 2016, a social worker went to their home where she met with the complainant, the accused and his mother. Again, the accused answered all the questions for the complainant and he suggested that she not talk unless he or his mother were present.

b) File 500-01-194502-198

[36] Complainant N.B. also had a young child with the accused.

[37] After their separation, their relationship grew tense since the accused did not want any other men to be in the presence of their son. N.B. had custody of the child, albeit monitored by the DYP. The accused had supervised visitation rights.

[38] On July 22nd 2019, the complainant asked the accused to pick up certain items for their son. He arrived on the scene, driven by his mother. At the building's front door, the accused called the complainant a fat cow and proceeded to throw a bag (containing the child's items) against the wall. Y.C. then picked up the bag and threw it again, this time in the direction of the complainant, hitting her on the side of her waist.

[39] The accused's mother was present during the alleged assault. She exited her vehicle and told the complainant: "I'm done. I'm telling your parents you have DYP". The accused and his mother left the scene.

[40] When the police arrived, the complainant told them that the accused had already been violent towards her on previous occasions. She expressed that she feared for her safety.

[41] The following day, July 23rd 2019, the police telephoned the accused for the purpose of scheduling an appointment for his arrest. On the phone, Y.C. stated that "he was not ready to be arrested". He added that he was working but would not disclose where. Instead, he told the officer that he would voluntarily report to Neighbourhood Police Station 8 on the following week, either on July 29th or 30th 2019.

[42] The dates came and went but the accused never surrendered himself to police, as he promised he would. When the police called him back, he hung up the phone. The officers attended his apartment but he was not there. His roommate informed the police that he had left five days prior after taking his dog and personal belongings. With the resident's consent, the police searched the apartment and the accused was in fact gone.

[43] The police then called the accused's mother, proposed surety B.M. She explained that she had not seen her son since July 20th (which was a lie, if she was in fact present during the July 22nd assault). Moreover, her son told her that he refused to go to the police station to be arrested. Instead, he was moving to Ontario.

c) <u>File 500-01-185053-193</u>

[44] In 2017, the accused was convicted of using counterfeit documents. His sentence included a 2-year probation order during which he was ordered to perform 150 hours of community service.

[45] Pursuant to s. 732.1 *C.C.*, he also had the compulsory obligation to inform the court or his probation officer of any change in address.

[46] He did neither. He changed address several times, essentially becoming unreachable to the police or to the correctional service. When his probation officer tried to call him, the phone number was no longer in service.

[47] As for his mandatory community service, he completed a total of **zero** hours.

[48] As for the procedural history of that charge, a summons was originally issued in February of 2019 to compel his appearance in court in April on a charge of breaching probation (s. 733.1 *C.C.*). However, the address he had provided to the court was no longer valid. Thus, with the assistance of the police department, private bailiffs had to attempt to track him down. Two different addresses proved to be invalid: at the first address, the property owner confirmed that he had moved; at the second reported address, the new tenant had no information about his whereabouts. Due to his absence in April, a new summons was issued for June. On June 19th 2019, an arrest warrant was issued.

d) The search for the accused

[49] In addition to the outstanding warrant from June 19th 2019 on the breaching probation charge, on September 19th 2019, another arrest warrant was issued in the domestic violence case regarding N.B.

[50] On July 4th 2023, an arrest warrant was issued in the sexual assault and domestic violence case regarding M.C.B.[6]

[51] In 2023, it came to the attention of the Montreal police that the Ottawa police was also seeking the accused on similar outstanding charges.

[52] On September 4th 2023, the Ottawa police service responded to a 9-1-1 call made regarding a “N.M.”, whom we now know to be the accused. When the police arrived on the scene, they spoke to the person in question, unaware that he was in fact Y.C., a wanted man. The accused provided a false name. The warrant was thus not executed for obvious reasons.

[53] In the days subsequent to that interaction, the police discovered through their databases that “N.M.” may be an alias used by Y.C. On September 6th 2023, an investigator documented that in recent weeks, there had been 4 other interactions between the accused and the Ottawa police regarding disturbance calls or ambulance requests. Each time, the accused identified himself as “N.M.” and he gave false birthdates.

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[6] Said arrest warrant was updated on November 21st 2023, when the Crown added an additional count of common assault.

[54] On September 15th 2023, Ottawa police tracked the name of a M.P.,[7] identified as a possible girlfriend of the accused's and linked to phone number (873) [XXX]-[XXXX]. When they called the number, they spoke to a man who agreed to "pass on the message to Mr. Y.C. that the police were looking for him".

[55] The police then attended a restaurant in downtown Ottawa where the management confirmed that the accused, Y.C., had been an employee. He had been fired one month prior. The manager also confirmed that (1) Y.C. used the nickname "N.", and (2) his primary phone number was (873) [XXX]-[XXXX].

[56] Unable to locate the accused, the Ottawa police obtained a tracking warrant for the cell phone in question. It was in active function in New Brunswick. As recently as October 12th 2023, it was detected in Moncton.

e) <u>The arrest in Montreal</u>

[57] On December 6th 2023, an Ottawa police sergeant informed the Montreal police investigator that the cell phone tracker suggested that Y.C. was in Montreal.

[58] On December 11th 2023, the police conducted surveillance outside the Lasalle home of the accused's mother, B.M. At 2:35 pm, a woman (later confirmed to be G.G.B., the second proposed surety) exited the house. Moments later, the accused and his mother exited the building.

[59] When the accused saw the police officers approaching, he quickly changed direction and tried to walk fast, even crossing directly in front of his mother's car. When the officers placed him under arrest for sexual assault, he began screaming and crying, complaining that he would be going to jail.

2- <u>The accused's criminal record</u>[8]

[60] In 2010, the accused was convicted of dangerous driving causing death and dangerous driving causing bodily harm, for which he was sentenced to 10 months in custody, followed by 5 months in community supervision.

[61] That same year, he was convicted of two counts of uttering death threats.

[62] Four months later, he was convicted of sexual assault and sentenced to 6 months in custody and one month of community supervision.

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7 The evidence later discloses that she was one of the accused's roommates.

8 Exhibit EC-1. The defence consented to the filing of the criminal record, which included convictions as a youth. Section 82(1)(c) *Y.C.J.A.* recognizes the importance of having the information in a youth record before the court determining bail.

[63] At the time of his youth charges, he amassed three convictions for failing to comply with release conditions (s. 139(1) *Y.C.J.A.*)

[64] In 2017, he was convicted of using counterfeit documents. He received a suspended sentence with a two-year probation order which included the obligation to perform 150 hours of community service in an 18-month delay.

[65] In addition to his formal convictions, on two occasions, in 2014 and in 2018, he was ordered to enter into a one-year recognizance to keep the peace pursuant to s. 810(3) *C.C.* This implies that each time, a judge was satisfied that due to the accused's behaviour, a complainant had reasonable grounds to fear that he would cause her personal injury or damage her property.

3- <u>The accused's personal circumstances</u>

[66] The accused is currently 32 years old. He is unemployed. He has held a few inconsistent jobs in the past, but always on a part-time basis since he receives provincial disability payments.

[67] He is the father of two children but has custody of neither. The DYP is involved in both children's lives.

[68] According to his testimony, he suffers from bipolar disorder, ADHD, depression and borderline personality disorder. In 2021, he was diagnosed with PTSD stemming from his fatal driving collision in 2008. He also claims to have been sexually molested as a child.

[69] He is asthmatic and epileptic.

[70] He denies using any drugs or alcohol. At most, he smokes cannabis and uses CBD oil, both of which are prescribed by a doctor for his many ailments.

4- <u>Testimony of the accused's mother as a proposed surety</u>

[71] The accused's mother B.M. is the first proposed surety. She works as a home caregiver for dementia patients in association with a local CLSC. She works 64 hours a week. In fact, because she "works all day", she has depended on her son's current girlfriend to find a treatment program for the accused.

[72] She does not currently live with the accused, although she acknowledges that between 2014 and 2022, they lived together 90% of the time at various addresses in Île-Perrôt, Vaudreuil and Beaconsfield. During that time, various girlfriends of his lived with them.

[73] She confirms that the accused often uses the name "N.M.".

[74] At the beginning of her testimony and several times thereafter, she repeats that she loves her son to death and that she would do anything for him. She even dramatically boasts that she would die for her son. She describes their relationship as excellent. They speak on the phone at least 10-15 times a day, in addition to countless text messages.

[75] She later repeats that as long as she lives, she will do whatever she can to help her son.[9] She will fight for his rights forever, even if it means draining her bank account to have him home with her.[10]

[76] She denies that her son has any drug or alcohol problem. To her knowledge, her son only smokes cannabis. She was unaware that the accused signed two peace bonds in 2014 and 2018. She was similarly unaware that he had convictions for failing to comply with release conditions.

[77] She describes the accused as a "good child" who was simply a victim of having taken people off the street to help them.[11]

[78] The surety knows both complainants personally. When asked about them, the witness is unable to mask her disdain. By her tone, gestures and sarcastic comments, she displays an obvious hostility towards the complainants. She resents them for "living off her" for so many years. She eventually "threw them out".

[79] When asked her opinion on M.C.B., the surety asks:

> Do you want my honest opinion or do you want me to lie to you?[12]

[80] After being reminded of her oath, she angrily answers that the complainant is an unfit mother who has never been present in her 7-year-old child's life. She does online pornography and all of a sudden, after a lifetime of neglect, she now purports to want to be a good mother, whereas the surety has been supporting the child since day one. For these reasons, the surety emotionally expresses that "I have no use for her".[13] She even criticizes her for "spreading her legs", "getting knocked up" and expecting the government to raise her child[14] (yet, she levels no similar criticism towards her son who impregnated her).

[81] When asked about complainant N.B., the surety similarly states that "she has no use for her" either.[15] In her view, the complainant only allows her child to call his grandmother when they need money.

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9 Courtlog of 2024-01-05 at 11:52.
10 Courtlog of 2024-01-05 at 12:05.
11 Courtlog of 2024-01-05 at 12:06.
12 Courtlog of 2024-01-05 at 11:48.
13 Courtlog of 2024-01-05 at 11:49.
14 *Ibid*.
15 Courtlog of 2024-01-05 at 11:50.

[82] She explains that the accused has supervised visitation rights with his daughter every other week, which are exercised by videocall. As for his son, the communication between the accused and the child are entirely left to the discretion of complainant N.B.

[83] The surety is currently in litigation against the complainants. In family court proceedings scheduled this month, the surety will be seeking custody of her granddaughter, who is currently placed in a foster home.

[84] When asked why her son does not have custody of the children, she answers: "because of the issues with M.C.B. and N.B.".[16]

[85] When asked if she can ensure that her son will respect release conditions, she expresses that she "would bet her life on it", adding that she "will go to jail if needed". She trusts her son and she is willing to deposit 5 000$ as a pledge, which is a huge sacrifice for her given her limited funds and heavy work schedule. This amount represents one month's pay.

[86] She also promises to report her son to the police if he ever breaches his conditions, although she admits that she is away from home most of the day due to her busy work schedule.

[87] She explains that she has acted as a surety for him in the past when he had his charges in Youth Court. She believes that he never breached his conditions then. The evidence shows that she is incorrect.

[88] She recognizes that her son can have a temper, but she quickly adds that everyone does, including herself, since "everyone has a breaking point in life".[17] Besides, when Y.C. is angry, he mostly takes it out on his mother. She insists that his anger is never directed towards anyone else. As an example, the surety explains that the accused gets angry with her when she refuses to give him money to eat out at restaurants or when she scolds him about getting a job. Recall that the accused is 32 years old.

[89] She adds that the accused has never assaulted her. If he ever did, "she would be the last person he ever put his hands on".

[90] According to the surety, for a long time the accused has been asking her to find him an anger management therapy program. However, waiting lists are long and they cannot afford to pay for it. At the bail hearing, when asked if her son needs any other type of treatment or psychological help, B.M. answers:

> If he's ordered to see a psychologist, **and you can find him one, and the government is going to pay for it, great!**

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16 Courtlog of 2024-01-05 at 12:12.
17 Courtlog of 2024-01-05 at 12:01.

> Because trust me. I have tried. I have tried. **And unless you're going to pay for it, there's none**.
>
> I just paid for therapy for him and G.G.B. I paid for the lawyer fees […] to fight for his daughter. **I can't afford to pay more, OK?**[18]
>
> [emphasis added]

[91] B.M. acknowledges that she knew the accused was in Ottawa. In fact, she continued to have constant communication with him.

[92] In her examination in chief, she makes a brief reference to the fact that she was on vacation shortly before her son's arrest. However, in cross-examination, we learn that B.M. was actually *with the accused* in New Brunswick in October, knowing full well about the outstanding warrants.

[93] In cross-examination, she acknowledges that she knew that Y.C. had outstanding arrest warrants in both Quebec and Ontario. She asserts that after her son returned to Montreal, she told him to eventually have the situation addressed. However, Y.C. and the surety both wanted to wait until after the holidays to do so.[19] B.M. expressly admits that she wanted to delay the process because she wanted him home with her.[20]

[94] Between 2019 and 2023, they often spoke about his warrants. She rationalizes the fact that he never surrendered to the police:

> Yes. We spoke over and over about going to the police. Yes.
>
> And **I understand Y.C.'s concept of it**. Why he didn't want to. And I **also** got to understand why **I didn't want to**.
>
> OK? Because, for one: **he doesn't trust the police**.
>
> **And I don't trust them either!**[21]
>
> [emphasis added]

[95] She had no intention of "dragging her son to the police station", since he was an adult.[22]

[96] She also expresses deep resentment towards the police officers who arrested the accused on December 11th 2023. Similar to the language used when referring to the complainants, the surety states that she "has no use for" the investigator.

[97] She is worried about her son's health in the detention centre. As a child, he took medication for epilepsy but it stopped being effective at age 15. From that moment on,

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18 Courtlog of 2024-01-05 at 12:02.
19 Courtlog of 2024-01-05 at 11:52.
20 Courtlog of 2024-01-05 at 11:53.
21 Courtlog of 2024-01-05 at 11:54.
22 Courtlog of 2024-01-05 at 12:04.

his doctor prescribed cannabis and THC oil, which has worked well to prevent seizures. However, Y.C. cannot access cannabis in jail. He takes no other medication.

[98] When asked if she had prior convictions in cross-examination, she angrily answered yes, but quickly added: "you know what? I'm in the process of a pardon".[23] When the Crown asked her what those convictions were, she interrupted the question and casually stated: "it's more or less fighting than crap".[24] When asked to explain what that meant, her answers were hesitant, noncommittal and unclear. Attempting to avoid the question, the coyly stated "getting into trouble, not knowing when to shut my mouth when I should shut my mouth". Whey asked when those convictions were entered, the surety answered – without hesitation – *more than 10 years ago*.[25] This would later prove to be false.

[99] These answers obviously did not pass muster with the Court. I thus directly asked her, pursuant to s. 515.1(1)(h) *C.C.*, what her prior convictions were and what sentences she received. Her answers remained inaccurate and unspecific. She first answered that "she did not receive any sentences… they were all just probation".[26] I then – again – asked her to state the offences for which she was convicted. She reluctantly answered "uh… they were all, uh… I don't know… uh… fighting and stuff like that".[27] When I asked if that meant convictions for assault, she said maybe. In piecemeal fashion, I asked her if she had any other offences. She answered "one theft under 5000$". Finally I asked her *how many* assault convictions she had. She answered six.

[100] Losing my patience for such a cat and mouse game, I adjourned the case until a formal criminal record could be printed. When we returned from the break, I was provided with her criminal record[28] revealing the following convictions:

Date	**Convictions**	**Sentence**
1987-12-04	-325: Forgery – making false documents (4 counts) -326(1)(a): Forgery – uttering false documents (3 counts)	-100$ fine and 1 year prob.
1989-03-22	-380(1)(b)(ii): Fraud -145(4)(b): Failure to appear	-suspended sentence. -100$ fine.

[23] Courtlog of 2024-01-05 at 12:03.
[24] *Ibid*.
[25] *Ibid*.
[26] Courtlog of 2024-01-05 at 12:09.
[27] *Ibid*.
[28] Exhibit EC-4.

1991-04-08	-380(1)(b)(ii): Fraud -145(4)(b): Failure to appear	-suspended sentence and restitution 339.60$. -50$ fine.
1992-01-13	-740(1): Breaching probation	-50$ fine.
1993-10-28	-264.1(1): Uttering threats	-suspended sentence (1 year prob.).
2005-09-06	-264.1(1): Uttering threats (2 counts)	-suspended sentence (2 year prob.).
2017-08-15	-380(1)(a): Fraud pertaining to a testamentary instrument – value over 5000$	-150$ fine and 2 year prob.
2018-08-07	-264(1): Criminal harassment -335: Taking a motor vehicle without consent -140(1)(a): Public mischief by falsely accusing someone of a crime and causing the police to enter a useless investigation, with intent to mislead	-suspended sentence (3 year prob.), with 120 hours of community service.

[101] When finally confronted with her formal criminal record, she still denies culpability regarding her 2017 conviction for fraud. She insists that she did not try to cash a false cheque. Instead, she "simply presented" the 15 000$ cheque at an Insta-Chèques establishment in order to "see if it was real".

[102] At the end of her testimony, in tears, she mentions that she is overwhelmed with work and with the proceedings. With a tone of desperation, she expresses:

> I need to be free, for a while, from everybody.[29]

5- <u>Testimony of the accused's partner[30] as a proposed surety</u>

[103] G.G.B. has been in a relationship with the accused for almost one year. She describes the relationship as "very kind and caring" and "mutually vulnerable".

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29 Courtlog of 2024-01-05 at 14:11.

30 The witness was sworn in and testified as "G.G.B.". During the accused's mother's testimony, she referred to this witness as a girl, as her son's girlfriend, as "her" and "she". Later, while the accused testified, he interchangeably used "her" or "him" when discussing G.G.B., even when pointing at her and speaking in her direction in the courtroom's gallery. The switching was constant and sometimes

[104] She is currently unemployed. She began studies in early childhood education, which she did not finish.[31] When asked if she has any other education, she answers no.[32] Before attending her year in college, she held retail jobs at Value Village and at a Griffon toy store. Before that, she was "working at the government, I believe".[33] As for her plans for the future, she is contemplating continuing studies in early childhood education or switching to elderly help.[34]

[105] The surety has no family in the Montreal area. Her parents live in Gatineau.

[106] The surety is concerned for the accused's mental health while incarcerated. She has arranged for them to attend couples' counselling, which will help them both in coping with the current charges and their general situation. She wants to support him if and when he gets out of jail, particularly in his slow transition back to work.

[107] She specifies that the counselling she arranged is through the Regain online application, where couples discuss with a therapist over the internet. They had one session in the week before her testimony, while the accused was incarcerated; he made a collect call to the surety and he could hear the counsellor from the audio on her laptop.

[108] The surety has never seen the accused consume any drugs other than cannabis.

[109] Their rent in Montreal costs 1625$ per month. However, neither of them is working and the accused has difficulty accessing his Ontario disability assistance payments. Thus, they are relying on financial support from their parents.

[110] She commits to call the police if the accused fails to respect his bail conditions.

[111] G.G.B. knew that the accused had outstanding arrest warrants.

[112] The accused told her directly. First, he informed her of the Quebec warrant. Although this concerned her somewhat, she steadfastly believed that he was innocent. She therefore chose to "stand by him" and did "whatever he needed".[35]

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difficult to follow. He sometimes called her "her", only to call her "him" a few sentences later, and vice versa. The accused then repeatedly called the surety "[male name]", but each time, would immediately correct himself, apologize and say "[female]" instead. The "mistake" (if it was in fact unintentional) was odd. If the surety has been his partner for over one year, the accused obviously knows how she wants to be called. Moreover, the "mistake" and correction were repeated constantly. Ultimately, the surety's sexual orientation and gender have no bearing on any of the issues at bar. She is free to identify as she wishes. The Court need not engage in any determination, nor will it grapple with grammar. Instead, for clarity in these reasons, the Court will refer to the surety as "she". This is based on her name at the time of her swearing in, which I can only hope was her real name in the first place, given the sanctity of the witness' oath. The Court declines to use plural pronouns to refer to any singular person.

31 Courtlog of 2024-01-05 at 14:18.

32 *Ibid*.

33 Courtlog of 2024-01-05 at 14:19.

34 Courtlog of 2024-01-05 at 14:20.

35 Courtlog of 2024-01-05 at 14:30.

[113] She even discussed the warrant with the accused's mother.

[114] The surety claims to have only found out about the Ontario warrant after the accused's arrest.

[115] She moved to New Brunswick with the accused. Their plan was to stay in New Brunswick. This was not a temporary trip.[36] The move was the accused's idea and it was related to the outstanding warrants and the fact that the police were searching for him.[37] Moreover, the accused's mother was part of the plan; she helped them move out there.[38]

[116] She was unable to find a job there. They ultimately decided to move to Montreal because they did not like living in New Brunswick.[39] Their return to Montreal was *not* for the purpose of surrendering to police or addressing his judicial predicament.

6- <u>The accused's testimony and plan of release</u>

[117] In his testimony, the accused promises to respect any condition the Court might deem fit. Namely, he agrees to be subjected to a curfew or even full house arrest. He also commits to follow any treatment or therapy that might be ordered by the Court.

[118] The accused denies having any drug problem. He was once addicted to crack-cocaine but he stopped all drugs in 2008 after being involved in the fatal car accident which caused the death of his friend.

[119] He denies having an anger problem. Although he previously did in the past, he now knows to detach himself and go for a walk when he becomes too emotional.

[120] Today, he uses cannabis and CBD to treat all his ailments. Unfortunately, he cannot access it in jail and the prison authorities have refused to prescribe him any new medication.

[121] He is a chef by trade. Even though he receives disability payments, he supplements that income by working extra hours as a cook. He was hoping to get a job at a restaurant in Dollard-des-Ormeaux in the new year, but his arrest prevented those plans from materializing.

[122] In the last few years, he occasionally worked at a restaurant in Ottawa. He also took temporary odd jobs in other provinces, usually for one month at a time. For example, during the pandemic in 2021, he moved to British Columbia where he worked at a golf course. He has friends and acquaintances in British Columbia.

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36 Courtlog of 2024-01-05 at 14:34.
37 Courtlog of 2024-01-05 at 14:36.
38 *Ibid*.
39 *Ibid*.

[123] His previous family doctor, psychiatrist and psychologist all retired a few years ago. Although he used to attend AA meetings, his sponsor also died a few years ago.

[124] He explains that since his incarceration, he has suffered two seizures. Luckily, the other inmates helped him.

[125] In his testimony, he insists that his children “are his life”. He is proud that he has set up tax-free savings accounts for both of his kids. Unfortunately, his son was alienated from him for many years. Nevertheless, while the child was in a foster home, the accused was building a relationship with him, speaking more frequently. Today, his only visitation rights depend on the willingness of the child’s mother.

[126] As for his daughter, he only participates in visits by video-link. At one time, B.M. was bringing the child to the accused in Ottawa for in-person visits, but the DYP’s social worker opined that the child was reacting negatively to the visits. The DYP therefore reduced the supervised visits to once a month by video-link and once every two weeks by phone call.

[127] The accused is encouraged by his first couples’ therapy session that took place one week before his bail hearing, even if it was over the phone, because he feels that this therapist understands where he’s coming from.

[128] He claims to have trauma from an experience where the police beat him and tazed him multiple times for no apparent reason. That is why he was afraid to turn himself in. He has a deadly fear of the police.

[129] He also claims to suffer trauma from the fact that in 2008-2009, following the car accident, people put posters everywhere calling him a murderer and they harassed him everywhere he went.

[130] On the issue of his outstanding warrants, he claims to have only known about the Quebec warrant. In fact, he claims that he only thought he had a warrant regarding his breach of probation regarding the incomplete community service.[40]

[131] He acknowledges having discussed the arrest warrant with both sureties.

[132] His plan was to turn himself in after the New Year. He first wanted to enjoy the holidays with his family.

[133] In fact, he denies that his move to New Brunswick had anything do to with his outstanding charges. Instead, he moved there because he had a job offer to work in an urban bistro. Unfortunately, those plans did not pan out, as the employer refused to pay him for his work.

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[40] Courtlog of 2024-01-05 at 14:56.

[134] Similarly, he denies that he gave a false identity to Ottawa police officers for the purpose of evading arrest. Instead, he considers “N.M.” to be “an alter ego” of his. Due to his borderline personality disorder, he formed the alternate identity of N.M.

[135] The accused insists that he will respect his conditions to the letter. He loves his mother dearly and he will not risk her losing her 5 000$ deposit.

[136] I note that in his testimony, the accused expressed that if his detention is ordered, he requests to be transferred to a psychiatric institution because he is in pressing need of mental help.

ANALYSIS

1- Basic principles applicable to interim release hearings

[137] As a matter of principle, there is a strong presumption in law that the accused should benefit from interim release subject to reasonable conditions while awaiting trial. First and foremost, it should be recalled that he is presumed innocent at this stage.

[138] Should he eventually be found guilty, a sentencing judge will have to apply an entirely different set of principles. The role of a sentencing judge is fundamentally different from the role of the justice at the show-cause hearing.

[139] The presumption of interim release is rooted in our Constitution, at s. 11(e) of the *Charter*, which provides that any person charged with an offence has the right *not* to be denied reasonable bail without just cause.

[140] This right was recently described by the Supreme Court as an essential element of an enlightened criminal justice system.[41] At the heart of a free and democratic society is the liberty of its subjects. Therefore, where the potential exists for the loss of freedom, we, as a society, must place the highest emphasis on ensuring that our justice system minimizes the chances of an unwarranted denial of liberty.[42]

[141] In addition to constitutional concerns, the presumption of release also flows from the statutory wording of ss. 515(1) and 515(10) of the *Criminal Code*, which provide that the detention of an accused in custody will be justified only in one of the three cases listed, that is:

> -515(10)(a) – first ground: detention is necessary to ensure the accused’s attendance in court;

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41 *R.* v. *Myers*, [2019] 2 S.C.R. 105 at paras. 1, 22, 25; *R.* v. *Antic*, [2017] 1 S.C.R. 509.

42 *R.* v. *Hall*, [2002] 3 S.C.R. 309 at para. 47, diss. in the result, but subsequently cited with approval in *Toronto Star* v. *Canada*, [2010] 1 S.C.R. 722 at para. 51.

> -515(10)(b) – second ground: detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice;
>
> -515(10)(c) – third ground: detention is necessary to maintain confidence in the administration of justice.

[142] Since the tertiary ground is not invoked by the Crown in the case at bar, the Court will not assess it.

[143] The Court notes that in the bail system, the conditions themselves should not be used to modify the accused's behaviour or to punish them.[43] Any talk of punishment has no place at this stage of the proceedings. The accused has not been convicted of anything.

[144] The overarching principle of restraint, which is now codified at s. 493.1 *C.C.*, must guide the Court in its analysis. Fundamentally, this restraint applies to all offences. In other words, there is no "category of offence" that is presumably excluded from provisional release. Even those charged with sex crimes are entitled to bail in principle.

[145] As stated above, in this case, pursuant to s. 515(6) of the *Criminal Code*, it is up to the defence to present grounds showing that Y.C.'s interim detention is not justified. He bears the burden on a balance of probabilities.

[146] Despite this reversal of the onus, in my view, the overarching principle of restraint still applies, as does the ladder principle that flows from it.[44] As recently highlighted by the Supreme Court in ***R.* v *Zora***, the principle of restraint applies not only to the ultimate issue of "custody *vs.* release", but it equally applies to the nature and number of release conditions that may be imposed.[45]

[147] In other words, subject to the rebuttable presumption of detention (due to the reversal of onus), the ladder principle must be strictly adhered to. Release is favoured at the earliest opportunity and on the least onerous grounds. If the accused succeeds in rebutting the presumption of detention, if another restrictive form of release is proposed, it must be specifically necessary. Each rung of the ladder must be considered individually and consecutively, and each must be rejected before moving to a more restrictive form of release.[46]

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43 *R.* v. *Zora*, [2020] 2 S.C.R. 3 at para. 85.

44 *R.* c. *Kadoura*, 2020 QCCQ 1455 at para. 57; *R.* v. *Mead*, 2016 ONCJ 308; *R.* v. *Smith*, 2003 ABQB 714; *R.* v. *Brown*, 2018 ONSC 2653; *R.* v. *Mohammed*, 2018 ONSC 7709; *R.* v. *Fuller*, 2019 BCPC 264; *R.* v. *B.H.*, 2017 ONCJ 540; *R.* v. *Alcantara*, 2007 ABQB 247.

45 *R.* v. *Zora*, *supra*, at para. 24.

46 *R.* v. *Antic*, *supra*.

[148] It is in light of these principles that the Court will analyze the evidence presented by the parties and the guarantees offered by the defence.

2- <u>The duties of a surety and their impact in mitigating primary and secondary concerns</u>

[149] When proposed sureties are offered to the Court, their adequacy will obviously be scrutinized. That being said, we must be careful not to put the cart before the horse. The whole point of requiring sureties is to mitigate a risk that the accused is deemed to present. Thus, if the evidence does not establish in the first place that the accused is a flight risk or presents a substantial risk of reoffending in a dangerous manner, then no sureties will be required at all.

[150] As such, should the Court conclude that there is *no* dangerousness and that the accused *will* attend his trial, the quality of the sureties (or lack thereof) will be a neutral factor. In other words, an otherwise "not dangerous" accused should not be penalized with respect to interim release because he presented unsuitable sureties. Reduced to its simplest form: good sureties can help an accused, but bad sureties cannot hurt him if they are unnecessary to begin with.[47]

[151] This approach is consistent with the Supreme Court's warnings in ***R.* v. *Antic***, in which it lamented the overuse of sureties in bail matters. As Wagner J. (as he then was) expressed: "a surety should not be imposed unless all the less onerous forms of release have been considered and rejected as inappropriate".[48]

[152] Where a surety is indeed needed, his or her purpose extends far beyond simply deposing a sum of money into the court file. The person is expected to supervise the accused and ensure that he remains faithful to his pledge to the Court to appear for trial.[49] Further, the surety must reassure the Court and vouch for the accused's undertaking to keep good conduct while awaiting trial.[50]

[153] The duty of the surety has been described as acting as a "civilian jailer", ensuring the good behaviour of the accused and promptly reporting him to the authorities if he does not comply with his conditions.[51]

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47 There may be some exceptions to the principle, for instance where in the course of testifying, the proposed surety reveals new information that casts the accused in an even worse light.

48 *R.* v. *Antic*, *supra*, at para. 67(g).

49 *R.* v. *Antic*, *supra*, at footnote 1.

50 *R.* c. *Williamson*, [2004] J.Q. no. 17465 (C.S.) at para. 71 – Gagnon J. (as he then was); *R.* c. *Cozak*, [2016] J.Q. no. 23889 (C.Q.), jud.rev. denied, 2017 QCCS 3144; *Gilliland Estate* v. *Canada (A.G.)*, 2007 BCSC 1008 at paras. 57-58; *R.* v. *Jacobson* (2005), 31 C.R. (6th) 106 (Ont.S.C.J.) at para. 18; *R.* c. *Therrien*, 2020 QCCQ 2228 at paras. 76-81.

51 *R.* v. *Brocklebank*, [2003] O.J. No. 1567 (Ont.S.C.J.); *R.* v. *Kevork*, [1984] O.J. no. 928 (Ont.S.C.J.); *R.* v. *Tymchyshyn* (2015), 314 Man.R. (2d) 1 (Man.Q.B.) at para. 34; *R.* v. *P.O.*, 2020 ABQB 355 at para. 53; *R.* v. *Piercey*, [2018] N.J. no. 126 (Nfld.Prov.Ct.) at para. 25.

[154] Obviously, the surety cannot do everything and the system must avoid asking too much of them. Nor is it their responsibility to replace the police in crime prevention. However, they must be in a position to have a sufficiently positive influence on the accused to incite and encourage him to respect his conditions.[52]

[155] The extent to which the surety is required to be responsible for the accused's behaviour will depend in part on the proposed terms of release.[53] Namely, where the plan of release mandates that the accused reside with the surety for a significant period (for instance, under house arrest or curfew) and that he comply with the surety's rules, household routine and discipline, the Court's expectations towards the surety will be greater. Stated otherwise, the more the plan of release gives importance to the surety's role, the more carefully the Court will need to scrutinize the surety's suitability.[54]

[156] In the case at bar, the accused offers various alternative plans: he proposes to continue living with his partner in their downtown apartment; he also proposes to live at his mother's house. In both cases, he is willing to be subjected to 24-hour house arrest.

[157] Both B.M. and G.G.B. contend that they will ensure strict supervision and keep the accused on the right track. The accused's mother hopes that her 5 000$ deposit will have a significant moral effect of "pull of bail". Yet, the accused has lived with his mother for the better part of the last 30 years. Despite her influence and supervision, he has amassed a plethora of serious convictions and outstanding charges. As for his current partner, he was living with her when the new Ontario charges were laid.

[158] Furthermore, both sureties were with the accused while he deliberately evaded arrest.

[159] Given Y.C.'s profile and history, the adequacy of the proposed sureties will certainly be scrutinized below.

[160] In addition to the foregoing, a proper surety should have a sincere and subjective belief that the accused will in fact abide by his conditions. In other words, if a surety is merely motivated by unconditional love and unshakeable loyalty towards the accused, that will not serve the Court well. Comments like "I'll do anything for the accused; I'll support him no matter what; I'll support him to the end" do nothing to appease safety or attendance concerns. After all, the surety owes loyalty to the Court, not to the accused.[55] Although understandable from an emotional perspective, naiveté or blind faith in the

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52 *R.* c. *Williamson*, *supra* at para. 71; *R.* c. *I.S.*, 2015 QCCA 770 at para. 8; *R.* c. *Boulanger*, 2014 QCCS 5943 at para. 71; *R.* c. *Laplante-Sanschagrin*, 2012 QCCS 4774 at paras. 35-37.

53 *R.* v. *Patko* (2005), 197 C.C.C. (3d) 192 (B.C.C.A.) at para. 22; *R.* v. *Smith*, 2013 ONSC 1341 at paras. 15-16.

54 *R.* c. *Rhazourri*, 2020 QCCQ 2923 at para. 56.

55 *R.* v. *Syed*, 2020 ONSC 2195 at para. 45.

accused is problematic and it will generally undermine the Court's confidence in a surety.[56]

[161] In its assessment, the Court will consider the following elements:

- The proposed surety's relationship with the accused;
- The proposed surety's relationship with the complainants and other witnesses, if any;
- Knowledge of the psychiatric history of the accused;
- Knowledge of the personal circumstances of the accused;
- Knowledge of the relationship between the accused and complainant (when applicable), or between the accused and the co-accused/accomplices;
- Knowledge of weapon access by the accused;
- Knowledge of the accused's criminal record;
- Knowledge of the accused's drug or alcohol use;
- Discussions with the accused regarding previous criminal acts;
- Discussions with the accused regarding the current alleged offences;
- Knowledge of the allegations;
- Does the person understand the responsibilities of a surety?
- Has the person ever acted as a surety in the past? If so, was it a successful experience?
- Has the person ever tried to exert control or influence on the accused in the past?
- Does the surety him/herself struggle with addiction or other personal problems that may act as a distraction?
- Does the surety have other responsibilities that may act as a distraction or that might prevent him from giving the accused his undivided attention?

[162] When assessing suitability, the Court will inevitably assess the surety's character. After all, the justice system places a great deal of trust in the surety to help achieve the objectives of the release provisions.[57] Alleged accomplices will normally be considered

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56 *R.* v. *Ryczak*, [2007] O.J. No. 3408 (Ont.S.C.J.) at paras. 157-161.

57 Hon. G. Trotter, *The Law of Bail in Canada*, 3rd ed., online ed., Thomson Reuters, Toronto at s. 7:10, p. 7-22.

inappropriate candidates.[58] Persons with a previous conviction for a serious offence will also generally be considered inadequate,[59] although the presence of a criminal record will not automatically disqualify them, especially if it is minor and dated. That being said, a record for offences related to the administration of justice will be more difficult to overcome.[60]

[163] Finally, misleading, deceitful or questionable testimony by the surety at the bail hearing will constitute a significant red flag in the analysis.[61]

3- <u>Application of the principles to the enumerated grounds: s. 515(10) *C.C.*</u>

[164] Many of the Court's observations below regarding the witnesses' credibility apply equally to the assessment on the primary and secondary grounds.

a) <u>The primary ground</u>

[165] Ensuring the attendance of the accused at trial is the primary purpose of any system of pre-trial release. The Court must evaluate the risk of an accused absconding rather than facing trial (and potential sanctions).[62] Incidentally, the test is not whether it would be possible to find an accused who has fled, but rather whether the accused's detention is necessary to ensure his or her presence before the court when required.[63]

[166] Law enforcement should not need to chase after an accused to ensure his presence for his legal proceedings; certainly not across three different provinces.

[167] In the assessment of this ground, the Court must consider the following:

> -The circumstances of the alleged offence(s);
>
> -Did the accused try to flee during arrest? What was the accused's reaction when apprehended?
>
> -Did the accused try to avoid being found and/or arrested?
>
> -Did the accused lie to the police or to the probation officer?
>
> -Connection to the community (place of residence, stability);
>
> -The accused's employment or occupation;

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58 *Ibid.* at p. 7-21, 7-23.
59 *Ibid*. at p. 7-21.
60 *Ibid*. at p. 7-23.
61 *R.* v. *H.K.*, 2020 ONSC 3275 at paras. 85-89; *R.* v. *Douse*, 2020 ONSC 2811 at para. 76; *R.* v. *Geesic*, 2014 ONSC 7438; *R.* v. *Alexander*, 2015 ONCJ 585.
62 *R.* v. *Pearson*, [1992] 3 S.C.R. 665.
63 *U.S.A.* c. *Taillon*, [2003] J.Q. No. 1590 (Que.C.A.).

> -The accused's marital or family status and her social circle. Do the accused's family and friends have a significant connection with the district of Montreal? Does the accused plan on staying in the district of Montreal?
>
> -The accused's character: does the accused have prior convictions for failure to attend court or does the accused show a general lack of respect for the orders rendered by the Court by failing to comply therewith?
>
> -The potential prison sentence in the event the accused is convicted. If it is long, would it therefore be in the accused's interest not to attend court?

[168] The history and evidence of this case paint a bleak picture: serial address changes, repeated phone number changes, extremely unstable work history, false names to multiple police officers, false birthdates to police officers, intentionally missed appointments with the police, misleading investigators, travelling across the country to evade capture, turning away and accelerating his pace when seeing uniformed officers, unstable parenting situation, …

[169] As the idiom goes, actions speak louder than words. In the case at bar, since 2019, Y.C.'s actions have bluntly shown that he has no regard for the justice system.

[170] Regarding the oldest file (and least serious, objectively speaking), the accused is charged with breaching the terms of a probation order. In and of itself, this is indicative of a lackadaisical approach to the justice system and to court-imposed conditions. Worse still, the accused performed **none** of the 150 hours of community service he was mandated to do. He made no efforts to contact his probation officer or to otherwise seek an extension, even though he was in close contact with his then-lawyer, who was even his Facebook friend.[64]

[171] More fundamentally, he failed to inform his probation officer of his address and phone number changes, rendering the Quebec Correctional Service essentially powerless in ensuring a follow-up with the offender. Instead, Y.C. left the province. His legal obligations were therefore out of sight, out of mind.

[172] As for his charge of assault with a weapon on N.B., on July 23rd 2019, the police spoke to him on the phone, expressly informing him that they wished to place him under arrest. To be clear: in doing so, the police afforded him a courtesy. Arranging an appointment for an arrest was far less invasive than being tracked down and arrested by uniformed police officers in front of friends, acquaintances and coworkers. Yet, Y.C. balked at the courtesy and took advantage of the officers' good will by lying to them.

[173] He first told them "he was not ready to be arrested", as if he was scheduling a dental cleaning or a manicure. He declined to tell them where he was working. Finally, he falsely promised that he would turn himself in at Station 8 on July 29th or 30th. When the

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64 Courtlog of 2024-01-05 at 15:10.

police called him back, he hung up the phone. In the meantime, we now know that he gathered his belongings, took his dog and fled the province. In doing so, he told his mother (a proposed surety) that he refused to turn himself in.

[174] He let four years pass without ever turning himself in. And now, he somehow expects the Court to trust him. But it gets worse.

[175] While in Ottawa, knowing full well that the arrest warrant was outstanding, he used a false name **and a false birthdate** during multiple interactions with the police. He was also charged with new substantive violent crimes in Ottawa.

[176] The Court concludes his use of a fake name was done in an intentional attempt to avoid detection for *both* Ontario and Quebec arrest warrants. I do not believe (as his mother suggests) that he simply liked the name "N.M.". If that were the case, there would be no need to change his birthdate. Nor do I believe that he used "N.M." as an alternate identity due to his borderline personality disorder. The accused is a 32-year-old, presumably intelligent man. He knew full well that he needed to use his real legal name when dealing with police officers.

[177] Finally, surety G.G.B. admitted under oath that the reason they left the province of Ontario was due to the outstanding arrest warrant. To aggravate matters, the accused's mother was aware of the plan and she helped them make the move.

[178] This is frankly unacceptable. The behaviour of the accused and his sureties is an affront to the justice system.

[179] Matters of credibility will be comprehensively addressed further below. At this stage, suffice to say that the Court does not believe Y.C.'s explanations regarding his knowledge of the warrants or his intentions while fleeing.

[180] First, he claims to have only known about one of the warrants: the Quebec one pertaining to the unfinished community service. The Court does not believe that the accused would move across two provinces in order to avoid detection for a mere charge of breaching probation due to incomplete community service. More fundamentally, he claims to have learned about the s. 733.1(1) *C.C.* warrant through complainant N.B. in 2021 or 2022. Alas, this makes no sense. How would N.B. even know that said warrant existed? It was a charge of breaching probation, quietly laid by the Crown without any fanfare. It was completely unrelated to the file pertaining to N.B. Moreover, the file was originally pursued by summons. Only after several unsuccessful attempts to serve the accused was it transformed into an arrest warrant. Thus, it is concretely impossible for N.B. to have known about *that* warrant.

[181] It follows that the accused's version does not hold water. Instead, it is obvious to the Court that he knew that the warrant was for the domestic violence charge. He knew the police were searching for him: they told him so on the phone. It prompted him to leave the province. Moreover, the Court concludes that he discussed *that* warrant with his

mother. After all, she knew about it. She spoke to the police while they sought her son. She told the police that her son would not surrender. She told the police that he had moved to Ontario. Finally, she acknowledges knowing about the warrants and speaking to her son 15 times a day, even when he was in Ottawa.

[182] I therefore conclude, beyond a shadow of a doubt, that the accused knew he was sought in Quebec for the charge of domestic violence. I also conclude, based on the evidence summarized before me, that the accused knew he was being sought in Ottawa for his Ontario warrant regarding the violent offence charges from August of 2023. In fact, when the Ottawa police called his phone number on September 15th 2023 and informed the male speaker that they were looking for Y.C., we can now infer that it was in fact the accused on the line. He escaped the province shortly thereafter.

[183] According to the accused, his supposed fear of the police following his unjustified beating in 2011 was the reason he did not surrender to be arrested. The Court does not believe that explanation. It is convenient, unrealistic and impossibly to verify. It is easy to claim extreme police brutality when the officers are not there to defend themselves. More on this topic below.

[184] Even if he did have a negative experience with the police in 2011, that was over 12 years ago. Moreover, he could simply have calmly walked into a police station, without incident. Alternatively, he could have called the police and scheduled and calm appointment to turn himself in. Moreover, as he recognizes in cross-examination, he had various interactions with the Ottawa police in 2023, many of which were prompted by *him* calling the police. Those interactions all went smoothly. They therefore demonstrate that he did not have some paralyzing fear of the police, as he contends.

[185] As Y.C. acknowledged during his testimony, following a recent assessment, he was not even approved for the provincial GPS ankle bracelet program.

[186] The evidence reveals that the accused treated his arrest warrants like nothing more than annoying afterthoughts. He chose to disregard them and to turn himself in “only when he was ready”, if that day ever came.

[187] His uncooperative and evasive conduct lasted until the very end. When he was finally tracked down in Montreal, when he saw uniformed police officers approaching to arrest him, he attempted to change course and quickly walk away.

[188] Given his flagrant and persistent track record of disregarding the justice system and wilfully fleeing prosecution, the Court readily concludes that it does not trust him to attend his trial as required. He has repeatedly shown a willingness to mislead State actors and change addresses. By his own admission, he has already travelled across Canada and he is able and willing to do it again on a moment’s notice. He knows friends as far as British Columbia who are ready to offer him lodging and employment.

[189] Finally, history has shown that his children's presence in Montreal is not an obstacle to him leaving the province. He is unemployed. Other than his mother, he has no persuasive ties to Montreal. Although he does have a lease, by his own admission, he is unable to pay it.

[190] The Court concludes that Y.C. presents a serious risk of absconding before trial.

b) <u>The secondary ground</u>

[191] On the secondary ground, the primary considerations for the Court are the protection and the safety of the public and any victim or witness.

[192] At s. 515(3)(b) *C.C.* as recently amended,[65] Parliament notes that bail judges must give particular consideration to the fact that an accused has been previously convicted of a criminal offence, particularly if said offence involved the use or threat of violence.

[193] While it is impossible to make exact predictions about recidivism and future dangerousness, exact predictability of future dangerousness is not constitutionally mandated, and even less required by s. 515(10) of the *Criminal Code*. Rather, establishing the probability of dangerousness is sufficient to deny bail to those likely to be dangerous.

[194] That being said, the accused will be detained only if there is a substantial likelihood that he will commit a criminal offence and only where this substantial likelihood endangers the safety of the public.[66] This threshold has been described as "significantly likely".[67] The mere possibility that the accused will reoffend is insufficient.[68] Clearly, there must be more than a slight or theoretical risk of danger to the public before release will be denied.[69] Furthermore, the risk must be directly related to public safety concerns. Thus, even if there is a substantial likelihood of the commission of "crimes" in the general sense, or a substantial likelihood that the accused will breach his bail terms, this will not be enough. Detention will be warranted *only* if the substantial risk of reoffending would compromise public safety.[70]

[195] From a logical standpoint, past misconduct of an accused is highly probative of likelihood of re-offence.

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65 *An Act to Amend the Criminal Code (Bail Reform)*, L.C. 2023, c. 30, s. 1(1). The bill received royal ascent on December 5th 2023 and it came in force on January 4th 2024. As *per* s. 3's transitional provision, its effect is retrospective and it applies to bail hearings already in progress.

66 *R.* v. *Morales*, [1992] 3 S.C.R. 711.

67 *R.* v. *Manasseri*, 2017 ONCA 226 at para. 87.

68 *R.* v. *Le* (2006), 240 C.C.C. (3d) 130 (Man.C.A.).

69 *R.* v. *Normore*, 2018 NLCA 27 at para. 28.

70 *R.* v. *Jaser*, 2020 ONCA 606 at para. 67.

[196] When applying s. 515(10)(b) *C.C.*, for assessing the dangerousness of an accused, in ***R.* c. *Rondeau***,[71] the Quebec Court of Appeal set out a non-exhaustive list of factors for the Court to consider:

> -The nature of the offence;
>
> -The relevant circumstances of the offence, including prior and subsequent events;
>
> -The likelihood of a conviction;
>
> -The degree of participation by the accused;
>
> -The relationship of the accused with the victim;
>
> -The accused's profile, *i.e.*, occupation, lifestyle, criminal record, family environment and mental state;
>
> -The accused's conduct following the commission of the alleged offence;
>
> -The danger that the accused's interim release represents for the community, notably that part of the community affected by the case.

[197] In addition to these factors, at s. 515(3)(a) *C.C.*, Parliament directs judges to consider that the alleged offences involve violence or threats against an intimate partner. Two of the three cases at bar meet that criterion.

[198] It is the combined effect of these factors that is determinative. No single factor is predominant and that an overall balancing of the circumstances must be conducted. It is a delicate balancing exercise.

i) <u>The nature of the offences</u>

[199] The objective seriousness of the charged offences is undoubtedly high. At the time of the events, s. 271(1) *C.C.* carried a maximum 10-year sentence.

[200] The remaining counts all refer to intimate partner violence, intimidation and harassment.

[201] As for the count of failing to comply with a probation order, it would be unwise to trivialize it as a "mere breach". At the time of his conviction in 2017, a court ordered him to perform 150 hours of community service, which is sometimes seen as an alternative to incarceration. The accused, rather than seize that opportunity, thumbed his nose at the justice system by ignoring the probation order altogether. In that sense, the breach was a serious one that demonstrated a total lack of insight and accountability on his part.

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[71] *R.* c. *Rondeau* (1996), 108 C.C.C. (3d) 474 (Que.C.A.).

ii) The circumstances of their commission

[202] The initial alleged sexual assault is particularly serious. The complainant was a minor. The accused fully penetrated her without her consent and without a condom despite her express objections. The offence occurred in the complainant's home, which should be a place of safety and comfort. Y.C.'s larger size and heavier build prevented the complainant from escaping when he pinned her down.

[203] As for the second set of alleged sexual assaults, criminal harassment and common assaults, they began when the complainant was still a minor and they were long-running. The accused took M.C.B. in when she was in a particularly vulnerable state. He gave her drugs, which often preceded their sexual encounters. If the complainant's account is true, once they began cohabiting, the accused and his mother closely monitored and controlled her movements and activities. She was isolated from her friends and she surrendered her welfare cheques to the accused.

[204] Even though the accused has not been charged with an offence under s. 162.1 *C.C.*, the evidence reveals that he filmed their sexual activity unbeknownst to the complainant and he shared photos or videos thereof to others without her consent. Such behaviour is extremely harmful to the integrity and reputation of the unwitting sexual partner. Once a photo or video is posted online, it is wishful thinking to hope that it can be removed. Similarly, once a photo or video is sent privately to a third party, it is practically impossible to predict what that third party will end up doing with it.

[205] What is particularly alarming to the Court is that a doctor and a DYP social worker, both undoubtedly independent and well-meaning witnesses, directly observed that Y.C. displayed a dominating attitude in their presence, answering all questions in the place of M.C.B. He even tried to prevent her from speaking to the authorities unless he or his mother were present.

[206] On the other hand, the Court considers that the allegations are all dated, particularly the most serious ones involving sexual assaults. In the normal course, this could mitigate safety concerns at the bail stage, provided the accused manages to demonstrate a recent history of good behaviour. Alas, that is not the case here. Instead, as recently as August of 2023, the accused was charged with new offences of a generally similarly nature in Ontario: assault with a weapon, multiple forcible confinements, uttering death threats, intimidation by threat of violence, mischief and animal cruelty.

iii) The relationship of the accused with the victim

[207] The current nature of the relationship with both complainants is unclear, based on the evidence before me. There appears to be litigation between the accused's family and M.C.B. regarding the custody of their daughter. Since this complainant recently filed her complaint with the police, we can infer that the relationship is acrimonious.

[208] As for the second complainant, the accused contends that N.B. already expressed that she did not want the charges to proceed. This remains to be confirmed by the authorities. At this juncture, the Court will certainly not rely on the statement of an untrustworthy absconding accused.

[209] What remains clear is that there is a palpable hostility between the accused's mother (a proposed surety) and both complainants.

[210] The DYP is still closely involved in the supervision of custody visits. One of the children is still in foster care.

iv) The accused's conduct following the commission of the alleged offences

[211] This factor has already been addressed above in the context of the primary ground. The same considerations apply here.

[212] In addition to the "flight risk" itself, the accused's behaviour more generally demonstrates that he does not respect the justice system. This invariably affects the Court's trust that he has the (1) ability or (2) willingness to respect any conditions that I might impose.

v) The accused's profile

[213] Y.C. has a number of serious prior convictions, including dangerous driving causing death and bodily harm, as well as sexual assault.

[214] Granted, most of his prior convictions are dated and the most serious ones involved crimes committed as a youth. That being said, the record's old age is counterbalanced by the very recent outstanding charges in Ontario which involve similar charges to those in the cases at bar. I also note the two 810 peace bonds entered by the accused as an adult. Although they are not convictions, they still demonstrate that various complainants had reasonable grounds to fear for their safety due to Y.C.'s conduct.

[215] I also consider his record of three convictions for failing to comply with bail conditions. Again, said convictions are very dated. However, based on the evidence before me and the admissions in his testimony, the accused has exhibited a consistent pattern of disregarding court-imposed conditions in recent years.

[216] As for the accused's profile, I do not believe his claim that he does not consume drugs. Complainant M.C.B. documented extensive drug use by the accused, which was independently corroborated by witness A.A.

[217] There is no stability in his life which could have served to reassure the Court in assessing his risk of reoffending.

[218] Y.C.'s assertion that "his children are his life" is a superficial one-liner. It also reveals a significant level of immaturity on his part. He does not have custody of either of his children, whose care and supervision are managed by the State. Recall that he left the province some time ago to resettle in Ontario. He also took various trips to British Columbia. Recently, he decided to move even further away from his children by relocating to New Brunswick. If the children were "his life", he would have made greater efforts to get his life in order.

[219] In his testimony, the accused goes to great lengths to depict himself as a victim of everyone and everything. He even describes himself as having "white knight syndrome" or a "hero complex", always striving to save everyone else, even to his own detriment. This description simply does not jibe with the reality exposed in his criminal record and in the evidence before me.

[220] I do not doubt that he has experienced hardships of his own during his upbringing. Although they may have been tragic, the Court's primary concern remains whether Y.C. constitutes a risk to the public and if so, whether that risk may be sufficiently moderated. Moreover, some claims about his past trauma appeared exaggerated, theatrical and unfounded. For instance, the Court does not believe that the police brutally beat him and repeatedly deployed their tasers on him for no apparent reason in 2011 during the Occupy Wall Street protests. In his testimony, he claimed that the police inexplicably attacked him as he was exiting his workplace near the protest. The claim is gratuitous and in line with his general distrust and dislike of the police, which is consistent with his behaviour and which is also expressly stated by his mother (the proposed surety).

[221] I also have serious doubts about the veracity of his claim that there were "posters everywhere in 2008 calling him a murderer" or that people followed him or harassed him everywhere he went. The claims are outlandish on their face.

[222] In his testimony before me, much like his mother denied her own criminal record, the accused attempted to downplay his previous convictions.

[223] Regarding his conviction for sexual assault (which is highly relevant here), the accused denied any culpability whatsoever. He asserted that it was "merely statutory rape", contending that the victim had in fact consented. He added that the victim had recanted her allegations, but the Crown insisted on charging him nonetheless. He minimized it further by stating that the victim, a minor, was 15 years old and he was 17 years old, which was the reason he was convicted.[72]

[224] The Court does not believe him. The conviction, which was never appealed, stands as dispositive. Moreover, in 2008-2009 when the offence was committed,[73] s.

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[72] Courtlog of 2024-01-05 at 15:23.

[73] Based on the accused's birthdate, since he claims he was 17 years old at the time.

150.1(2.1)(a)(i) of the *Criminal Code* provided that in cases of actual consent, a 17-year-old could not be convicted of sexually assaulting a 15-year-old.

[225] Incidentally, in her testimony, his mother steadfastly denied that her son had sexually assaulted anyone in the past. Regarding Y.C.'s conviction under s. 271 *C.C.*, the surety claims that the allegations were false, even going as far as advancing an alibi for her son: he could not have committed the offence, since he was with the surety at work.[74] To be clear, the Court does not believe the surety. She even contradicts her own son's version. This is merely an example of Ms. B.M. involving herself in her son's life in order to absolve him of any responsibility for his actions. This theme will be further addressed below.

[226] Regarding the accused's conviction for breaching probation, again, B.M. insists that it was *her* fault, *not* her son's. She contends that since she was unable to drive due to illness, her son was unable to complete <u>any</u> of his community service.[75] This is utterly unconvincing. First of all, it was Y.C.'s responsibility to comply with his probation order, not his mother's. He is a grown man. Second, it would have been eminently easy to contact his probation officer and seek an extension or discuss whatever difficulties he was experiencing regarding his community service.

[227] Recall that he completed <u>zero</u> hours. He did not even try.

vi) <u>The danger that the accused's interim release would represent for the particular community affected by the case</u>

[228] There is a multitude of different alleged victims here. Both complainants in Montreal were domestic partners of the accused. Although the identity of the complainant in Ontario was not disclosed to me, the Court can safely infer that it was not M.C.B. or N.B. That would imply that there is a third alleged victim.

[229] In that sense, the "particular community affected by the case" is not a finite category in the case at bar.

vii) <u>The likelihood of a conviction</u>

[230] The application of this criterion, by its nature, will often be awkward. The accused is presumed innocent at this juncture. The judge or justice is not a jury, nor does he act as a trier of fact. Indeed, great care must be taken to avoid usurping those functions. The trial has yet to take place. At the interim release hearing, the judge's role is rather limited in regard to the assessment of the strength of the Crown's case, or even potential defences. An interim release hearing is not a trial and should not become one. Rather, it is a proceeding that is intended to be expeditious.[76]

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74 Courtlog of 2024-01-05 at 11:58.
75 *Ibid*.
76 *R. c. Coates*, 2010 QCCA 919.

[231] Nevertheless, the caselaw mandates the exercise. The apparent strength of the evidence in the record must be analyzed by the Court for the secondary ground, as prescribed by ***R.* c. *Rondeau***.

[232] With these principles in mind, at this juncture, I simply observe that both domestic violence cases will depend on the testimonial evidence of the complainants as well as any defence at trial, if there is one. The verdicts will inevitably be fact-specific and they will rest on credibility and reliability assessments of the witnesses.

[233] Complainant M.C.B. is cooperating with the police. She has provided a videotaped statement.

[234] Her friend G.L. from 2014 also provided a statement to the police confirming that she reported the sexual assault to him on the night in question.

[235] E.C., a former roommate of the accused and the complainant, provided a statement to the police confirming that Y.C. controlled the complainant's activities.

[236] The DYP authorities having witnessed Y.C.'s domineering attitude might also provide relevant evidence showing the pattern of control exerted by the accused over the complainant.

[237] Finally, A.A., an old friend and part-time threesome partner of the accused and M.C.B., recently confirmed to police that the accused was giving ecstasy to the complainant to wean her off methamphetamines. She described the accused as having an explosive temper.

[238] The police synopsis indicates that the complainant has provided a USB key containing screen shots of text messages and various videos by the accused. At the hearing, the Crown did not file them as evidence. It appears that the admissibility of at least some of those messages will be challenged at trial. At this juncture, the defence suspects that they may be incomplete or even altered. Moreover, because the accused allegedly used aliases and alternate profiles, there may be a debate as to the identification of the sender. Those issues will be fully canvassed at trial. Notably, the complainant will be called to explain why she believes the sender was Y.C. The trial judge will be able to make appropriate findings based on the context and the evidence as a whole. Thus, the criminal harassment charges are difficult to assess at this point, even summarily, particularly because the messages were not shown to me. For instance, it is unclear if any of the messages were overtly threatening or if they were instead merely insulting, mean or annoying, the latter of which would not attract criminal liability.

[239] Overall, convictions are far from a foregone conclusion. This case will be no slam dunk for the Crown. The complainants are themselves troubled individuals with unstable lives, questionable characters and a history of drug use. Due to their ongoing child custody battles, each has a vested interest in this case going beyond the accused's jeopardy, which might be relevant to their credibility at trial. Nevertheless, to state the

obvious, they are entitled to the full protection of the law. Victims come in all shapes and sizes, from all backgrounds and walks of life.

[240] As for the charge of breaching probation, the evidence appears to be overwhelming against the accused. He completed none of the 150 prescribed hours. His stated defence (*i.e.* that he could not complete his hours because he was preoccupied by his mother's poor health) is not a valid one at law. I hasten to add that at no point did he reach out to his probation officer to seek a deadline extension.

viii) Conclusions regarding the secondary ground

[241] Conducting the final balancing of the ***Rondeau*** factors, the Court concludes that Y.C. constitutes a serious threat to the community's security. I do not believe his willingness to respect conditions nor do I trust his ability to do so.

[242] For all these reasons, the Court concludes that if released from custody, there is a substantial likelihood that the accused will commit crimes that would in turn place the public's safety at risk.

c) Do the plans of release appease the Court's security or flight risk concerns?

[243] A proper release plan may adequately manage the risk presented by the accused. That is where the implication of sureties comes into play.

[244] As described above, sureties must be both credible and dependable. In the case at bar, they are neither.

[245] It is disconcerting that between the testimony of the accused and the two proposed sureties at the bail hearing, they all contradicted each other of several topics, including:

- When Y.C. and G.G.B. left New Brunswick for Montreal;
- The reason they left New Brunswick;
- The reason the accused used the false name "N.M.";
- What the plan was in the first place when they moved to New Brunswick and the reasons for the move;
- The accused's mother's involvement in moving them to New Brunswick and her knowledge of the situation.

[246] When asked about her education, G.G.B. mentions only having completed one year of a college program in early childhood education. In fact, when asked if she had any other schooling, she answered no and then proceeded to list her previous jobs. It was

therefore surprising to later hear from the accused, in *his* testimony, that G.G.B. purportedly has a degree in psychology. Not only did the surety not mention this in her testimony, but it clearly contradicts her own answers.

i) The mother's suitability as a surety

[247] B.M. would be wholly inappropriate for a number of reasons.

[248] First, as canvassed in the caselaw above, a surety must be trustworthy in the eyes of the Court. The justice system places great trust in the surety's ability to act as a civilian jailer. Beyond the title alone and any cash deposit she might make, I must trust that she will adequately supervise the accused and report him in the event of a breach.

[249] Her testimony unquestionably establishes that she will not.

[250] It is no trivial matter that B.M. downplayed her convictions to the point that she sought to mislead the Court about her criminal record.[77] This was no mistake or faulty memory. The questions were repeatedly asked about her convictions and she had ample opportunity to answer truthfully. She minimized, she downplayed and she gave purposely vague answers to clear questions. Only when the Court intervened did she finally acknowledge the seriousness of the situation. Yet, even then, her answers were tempered and incomplete, as if she did not expect the Court to order the production of the official criminal record from the RCMP's database. But it did.

[251] The result revealed that she lied about the number of her convictions, their nature and their age. Her version went from having no prior convictions, to a few (but over 10 years old), to several and as recent as 2017 and 2018, which were followed by a lengthy 3-year probation order. That is certainly a lot to "forget about".

[252] Among her convictions, she has 10 involving crimes of dishonesty. This invariably affects her credibility. It is also telling that for her most recent fraud conviction, she still denies guilt by claiming that she "simply presented a 15 000$ cheque to the financial institution to *check* if it was real". This explanation, in and of itself, is nonsensical and unbelievable.

[253] She also has one breach of probation and two failures to appear, further shaking my trust in her ability to enforce someone else's conditions. She has multiple prior convictions for uttering death threats and criminal harassment, which incidentally, are the very same charges that Y.C. is now facing.

[254] Last but not least, she has a recent conviction for public mischief (s. 140 *C.C.*), pursuant to which she falsely accused someone of a crime with the intent to mislead the police into pursuing a groundless investigation. This conviction goes to the heart of the

[77] See: *R.* v. *Geesic*, 2014 ONSC 7438 at para. 27; *R.* v. *Alexander*, 2015 ONCJ 585 at para. 78.

administration of justice. She has shown that she is ready to thwart it. This is antithetical to the character that is expected of a surety.

[255] That conviction is also consistent with her testimony before me where, all while committing to be a surety, B.M. loudly declared that she does not trust the police. In the same vein, she added that she understands her son, who also shares a distrust of the police. This is far from the positive influence that a surety should exert.

[256] Instead, *based on the evidence of the defence*, she encouraged her son in his absconding and she condoned his casual snubbing of his charges.

[257] Indeed, if one is to believe the testimony of surety G.G.B. (*i.e.* that the mother helped them move from Ontario to New Brunswick in order to avoid the arrest warrants), B.M. is fortunate to not be investigated for obstruction of justice.

[258] Fundamentally, B.M. knew about the warrants and she deliberately kept her son home (or elsewhere). As such, when she declares before me that she will ensure the respect of her son's conditions, this is nothing more than meaningless lip service.

[259] On another note, as mentioned above, alleged accomplices will generally not be accepted as sureties. To be sure, B.M. is not charged with any offence. Nor does the Crown suggest that she acted as an accomplice to any crime. That being said, based on the evidence presented before me, B.M. is often closely embroiled in the litigious events.

[260] She is alleged to have been living with the accused and M.C.B. during much of the time covered by the harassment, assault and sexual assault charges. This is the period where it is alleged that the complainant was being monitored and controlled. Among other things, it is alleged that the complainant could not leave the house unless accompanied by B.M. It is alleged that the accused and complainant were taking drugs in B.M.'s house.

[261] The attending gynaecologist during the complainant's pregnancy noted that B.M. was involved in a practice of taking in vulnerable young women who would then be controlled, manipulated and isolated.

[262] B.M. was present during the altercation between the accused and complainant N.B. After the alleged assault, B.M. confronted the complainant on the scene.

[263] B.M. was in constant contact with her son despite knowing that the police was actively looking for him.

[264] B.M. was with her son when the takedown and arrest occurred in Montreal on December 11th 2023. He was seen exiting her house.

[265] When it comes to designating a surety, a certain detachment from the litigious events is needed to ensure objectivity and independence. Here, the proposed surety has direct and personal interest in the prosecutions not succeeding. Her name is mentioned

in all three outstanding cases. Her presence was widespread and she will likely be a material witness at each of the three trials.

[266] She openly displays hostility towards both complainants. She also expresses disdain for the police officers who arrested her son on December 11th 2023, threatening to file an ethics complaint against the investigator.

[267] Finally, her track record of support and supervision of her son has not yielded reassuring results. For instance, B.M. already acted as a surety in the past, during the accused's Youth Court charges, and he breached his conditions on several occasions. As such, her unsuccessful past performance is also an important factor in the overall assessment.[78] More generally, her son has lived with her for most of his life, including 90% of the period between 2014 and 2022. Sadly, her parental supervision and support did not prevent the accused from amassing extremely serious convictions as a youth, multiple peace bonds as an adult, a forgery conviction and these new pending charges.

[268] She acknowledges that she works 64 hours a week, which keeps her out of the house the entire day. As such, the Court finds that she would be unable to provide any supervision whatsoever. She would never be in the accused's presence. Thus, she could not exert any influence on him, nor be in a position to detect a breach in order to report it to the authorities.

[269] Her support for the accused is absolute, unshakeable and impervious to indicators of trouble, no matter how flagrant they may be. She candidly admits that she will support her son "no matter what". She says she is ready to drain her bank account to have him home with her. Her loyalty to him is unrelenting. Alas, when it conflicts with the interests of the justice system, B.M. has shown that she will prioritize the former over the latter. This is precisely why she did not want him to be arrested. She wanted to spend time with him. She refused to "drag her son to the police station", as she puts it. I simply cannot put faith in the surety's commitment to ensure supervision and report her son to the police in the event of a breach.

[270] The surety patronizes her son to such a point that it is counterproductive. He is now 32 years old, but she still refers to him as a "good child" in her testimony. He gets angry at her when she refuses to give him money to eat at a restaurant. It is high time the accused learns to self-motivate to get his legal affairs in order. By supporting him in his absconding and by making excuses for her son, the surety is enabling him rather than helping him.

[271] The Court is sensitive to the obvious fact that as a loving mother, it pains her to see the accused in this predicament. However, with great respect, B.M. herself appears to be living a period of significant turmoil in her life. She became very emotional and at times short with Crown counsel, even though the questioning was entirely appropriate.

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[78] *R.* v. *Kilbride*, 2022 ONSC 1074 at paras. 11-14.

She was tearful during parts of her testimony in which she described her own life and current challenges. In fact, she candidly acknowledged that she was overwhelmed by her work and by the current situation. In tears, she expressed that "she needed to be free from everyone for a while". Given her state, I cannot in good conscience entrust an accused in this surety's care.

ii) The partner's suitability as a surety

[272] G.G.B. was no more reassuring as a surety.

[273] She was aware of the outstanding arrest warrants and she willingly travelled across the country with the accused, supporting him in his plan to avoid arrest. When asked shy, she responds that "she believed him in his claims that is innocent".

[274] Fundamentally, she is entitled to believe him. Indeed, he may well in fact be innocent of all the charges. But that is besides the point. Court-issued arrest warrants are not optional. An accused must face justice and stand trial, all the while benefiting from the presumption of innocence. He cannot pick and choose if and when he will submit to prosecution.

[275] A surety that shares the same lackadaisical approach towards the justice system is patently unsuitable.

[276] When asked about her knowledge of the arrest warrants and the possibility of the accused merely surrendering into custody, G.G.B. claimed ignorance, stating that "uh… I didn't know… exactly how that worked".[79] The Court does not believe such an outlandish claim. The surety is 27 years old. She obviously knew what an arrest warrant entailed. In fact, she acknowledges that they left the province to *avoid* its execution.

[277] G.G.B. displayed significant immaturity for her age as well as a casual approach to the justice system that seriously undermines her adequacy as a surety. Her testimony was eerily vague. Almost all her answers were noncommittal and uncertain. Even for the most basic questions, she struggled to answer, hesitating tremendously and giving conflicting or unclear answers. For instance:

- When asked how long she has known the accused, she hesitated, stating "it's hard to remember".[80]

  Yet, she met him recently. This question did not refer to events having taken place many years ago.

- When asked how long she lived in Ottawa with the accused, after along pause and palpable hesitation, she was unable to answer. She first stated

[79] Courtlog of 2024-01-05 at 14:30.
[80] Courtlog of 2024-01-05 at 14:14.

that she lived with him for one year, but later mentioned that they lived in Ottawa for "not very long", approximately one or two months. Ultimately, she could not answer.[81]

Again, these are events relating back to recent months. The questions were easy and straightforward.

- When asked when she and the accused left New Brunswick and moved to Montreal, she is unable to answer clearly. She is not sure.[82]

  Yet, this was barely one month ago.

- She cannot remember when they signed their lease for the Montreal apartment.

  This was also barely one month ago.

- When asked about her education and work history, she is unable to give any of the relevant dates.

- When asked when her last paying job was, her answer is hesitant and unsure.[83]

- When asked when the accused told her about each of his outstanding warrants, she hesitated and her answers were unsure.

  Yet, these were all recent, memorable events and their importance was self-evident.

[278] At times during her testimony, she appeared to be absent-minded, extremely distracted or perhaps, and with great respect, in emotional or mental distress. Every sentence was laboured. In that sense, aside from any credibility and amenability concerns, the witness appeared to be emotionally fragile, if not compromised. Recall that she described herself and the accused as "mutually vulnerable". I agree with her description. This is obviously not a criticism to the surety. However, she is not in a position to act as a dependable, strong civilian supervisor for the accused.

CONCLUSION

[279] In the case at bar, the combination of all the relevant factors leads to the conclusion that Y.C. has failed to meet his burden of establishing that his detention is not necessary

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81 Courtlog of 2024-01-05 at 14:14-14:15.
82 Courtlog of 2024-01-05 at 14:15.
83 Courtlog of 2024-01-05 at 14:23.

and justified to ensure the protection of the public, as well as to ensure that he will attend court for his proceedings.

[280] He will therefore be ordered detained until the end of these proceedings.

FOR THESE REASONS, THE COURT:

ORDERS the accused's interim detention in all files.

PROHIBITS him from communicating – directly or through a third party – with M.C.B. and N.B., pursuant to s. 515(12) *C.C.*, except through an attorney as it relates to child custody litigation.

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D. Galiatsatos, J.C.Q.

M[e] Catherine Bernard
Counsel for the Crown

M[e] Audrey Amzallag
Counsel for the accused

Hearing dates: January 6th, 24th 2024[84]

[84] The delay between both hearing dates was unfortunately long, but in no way caused by the Court's availabilities. In fact, the Court proposed to continue the bail hearing on January 8th (the very next business day), or any other day of that week. Defence counsel's schedule was such that only January 24th was agreeable.