SUPREME COURT OF YUKON

Citation: *R v James*,
2025 YKSC 45

Date: 20250619
S.C. Nos. 24-00185
24-00185A
24-00185B
Registry: Whitehorse

BETWEEN:

HIS MAJESTY THE KING

AND

KASHIES CHARLES ANDREW JAMES

Publication, broadcast or transmission of any information that could identify the complainant or a witness is prohibited pursuant to s. 486.4 of the *Criminal Code*.

Publication of evidence, information, representations or reasons given at the show cause hearing is prohibited by court order pursuant to s. 517 of the *Criminal Code*.

Before Chief Justice S.M. Duncan

Counsel for the Crown	William McDiarmid
Counsel for the Defence	Kimberly Eldred and Kevin Drolet

This decision was delivered in the form of Oral Reasons on June 19, 2025. The Reasons have since been edited for publication without changing the substance.

REASONS FOR DECISION

[1] DUNCAN C.J. (Oral): Kashies James applies under s. 520 of the *Criminal Code*, RSC 1985, c C-46 (the "*Code*"), for a review of the decision of the bail judge on May 12, 2025, to detain him in jail pending his trial scheduled for September 8-9, 2025.

[2] Mr. James was charged with sexual assault and sexual interference of a 14-year-old girl, allegedly unknown to him, between 12 p.m. and 2 p.m. on June 25, 2023, in downtown Whitehorse. He was arrested on March 19, 2024, after DNA evidence revealed his connection to the alleged offences. He was released from custody for those offences on two previous occasions (September 5, 2024, and February 7, 2025) and shortly after both releases (November 4, 2024, and February 22, 2025) he was re-arrested for a breach of a release condition and charged under s. 145.

[3] On May 12, 2025, the bail judge denied bail after a joint recommendation from defence and Crown for Mr. James' release to Connective. She denied bail on secondary and tertiary grounds. Because of the s. 145 charges, the accused was in a reverse onus situation, meaning that he had to establish on a balance of probabilities that his detention was not justified under the criteria in s. 515(10) of the *Criminal Code*.

[4] The accused raises the following grounds of review:

- The bail judge erred in law by failing to consider and apply s. 493.2 and s. 515(13.1) of the *Criminal Code*. These are provisions requiring the Court's determination of whether an accused is Aboriginal; and if so, the consideration of their circumstances in making their decision.

- The bail judge erred in law by failing to consider the joint recommendation for a release plan of the defence and Crown.
- The bail judge erred in law by failing to consider on the tertiary ground the delay created by the Crown's failure to provide timely notice of the *Mills* documents (*R v Mills*, [1999] 3 S.C.R. 668) in their possession relating to the credibility of the complainant.
- The bail judge erred in law in finding the release plan did not mitigate her concerns under the secondary grounds.

[5] The Crown opposes the application. While it maintains its original position taken at the bail hearing that the proposed release plan satisfies the accused's onus to show that detention is not justified, it states that the bail judge did not err in law and that this Court's intervention is not warranted.

[6] In the following, I will review the facts of this case, the bail judge's decision, the scope of bail review under s. 520, very generally the legal principles of bail, the analysis of the alleged errors of law, and my conclusion.

Facts

[7] The accused is alleged to have approached the complainant while she was walking down a trail by the Yukon River between noon and 2 p.m. on June 25, 2023. She says she did not know him. He allegedly dragged her under a dock near the train station. She says she told him she was 14 years old. He allegedly sexually assaulted the complainant, penetrating her vagina with his penis.

[8] When he was finished, the complainant left, waved someone down to request help, and was driven to the hospital. She was examined by a doctor and completed a sexual assault examination kit.

[9] Her clothing was seized and swabs from her body, including vaginal swabs, were provided to the police. Human semen on the crotch of her shorts was noted by the RCMP forensics lab analyst. Through the National DNA Data Bank, the DNA from the semen on the complainant's shorts and from her vaginal swabs was found to match the DNA on record of the accused.

[10] Mr. James was arrested on March 19, 2024, and further DNA obtained from him by police by warrant confirmed the match with the DNA from the complainant's clothing and swabs.

[11] The accused had a contested bail hearing on August 23, 2024. He was released on September 5, 2024, due to him being in custody on another matter, on a number of conditions, including:

- $2,500 promise to pay;
- reside as directed at a location close to Carcross;
- report to Carcross RCMP daily;
- report to a bail supervisor once a week;
- abide by a curfew between 10 p.m. and 6 a.m.;
- no contact with the complainant;
- no attendance within 100 metres of her residence, work, school, or place of worship;

- not attend Whitehorse unless in line-of-sight supervision of persons approved in advance by the bail supervisor; and
- “no go” to various areas where persons under age 16 could reasonably be likely to be present, as well as some treatment conditions.

[12] On November 2, 2024, the accused attended the RCMP detachment for his check-in and was warned about his curfew, as the police had knowledge he had not been at his residence the night before through a request to them from him for a ride home. Later that day, an RCMP officer recognized the accused at another residence at 8:30 p.m. where drinking was occurring but not by him. The accused saw the officer look at her watch and he said, “It’s not 10 p.m. yet”. At 10:27 p.m. that evening, the RCMP attended at the area where he was supposed to be living and noted that he was not there. The next morning, they attended at this same place of residence, found him inside, and arrested him for breaching his curfew.

[13] On November 5, 2024, at a contested bail hearing, he proposed a surety but was denied bail on secondary and tertiary grounds. His trial was initially set for March 10-11, 2025, but was adjourned to May 7, 2025, at the request of the Crown and on consent, because March 10 was the complainant’s 16th birthday. Given the trial delay, the Crown agreed that bail could be reopened.

[14] Another bail hearing was held on January 31, 2025, before the same bail judge who presided on May 9, 2025. Mr. James was released on January 31, 2025, on similarly strict conditions as the previous August, including:

- a $2,500 promise to pay;
- no contact with the complainant and “no go” in relation to the complainant;

- reside as directed — in this case with a named person in Mayo, who was a relative;
- abide by a curfew of being inside the residence or on the property at all times except with prior written permission of the bail supervisor or in the direct line of sight of the person he was to reside with or another approved responsible adult;
- report;
- participate in programming;
- not attend Whitehorse unless in the line of sight of the same person or an approved person; and
- “no go” to various areas where persons under age 16 could reasonably be likely to be present.

[15] On February 7, 2025, Mr. James travelled to Mayo, as contemplated by the release conditions. On February 11, 2025, RCMP officers checked the Mayo residence where he was to be living and were advised by the person with whom he was to live that between February 7th and 11th, he had left for the store and did not return. When she contacted him, the accused told her that he had a family emergency in Carcross. She had not heard from him since.

[16] On February 21, 2025, the police attended a different residence in Mayo in response to a call about a disturbance that involved Mr. James. They arrested him there and he has been in custody since that date.

[17] Defence counsel advised at the May 9th hearing that Mr. James has accepted responsibility for the breach of his condition of release to Mayo. On the day he left

Mayo, he went to Carcross because he had learned that his father had been found dead under the bridge in Carcross as a result of his substance use addiction.

[18] Counsel proposed the following plan at the May 9th hearing:

- $1,000 promise to pay;
- reside at Connective and abide by its rules;
- be inside the residence, and only leave for the purposes of attending assessment, treatment, counselling, or legal appointments, or otherwise unless in the company of a responsible approved adult;
- report;
- abstain from alcohol and non-prescription drugs;
- “no go” bars;
- no possession of weapons;
- attend for programming;
- remain within the Yukon Territory; and
- no contact with the complainant and “no go” in relation to the complainant.

Bail Judge’s Decision

[19] The bail judge dismissed the application despite the joint recommendation for release because the accused did not satisfy his onus on a balance of probabilities that his detention was not justified on the secondary and tertiary grounds.

[20] On the secondary grounds, the bail judge noted that her role was to consider the safety and protection of the public. She had concerns for the protection of the public on the basis of his risk of reoffending, noting, in part, the numerous breaches of court orders on his criminal record, as well as the alleged breaches of the terms of two prior

release orders on his current substantive charges. She also considered the seriousness of those substantive charges, the particular vulnerability of a 14-year-old complainant, and the allegation that a violent sexual assault occurred in broad daylight in downtown Whitehorse. She noted four prior convictions for assault, an assault causing bodily harm, and a 2023 conviction for sexual assault. She noted that his criminal record contained 26 entries from 2009 to 2023. Nine of those convictions were for failure to comply with court orders. Other convictions were for property crimes, a driving offence, and a resist arrest. Stating that the criminal record is a relevant consideration as to whether there is a substantial likelihood that he will reoffend, the bail judge concluded a criminal record that is significant, lengthy, serious, and relatively uninterrupted like this one, weighs heavily in favour of detention. She assessed the Crown's case on the substantive charge before the Court as strong, based on the DNA evidence. She stated that a record of breaches of prior court orders demonstrates a likelihood the accused will not comply with future orders. She concluded that, given Mr. James' history of non-compliance, she was not satisfied that there were "conditions that can be imposed that would protect the public and prevent reoffending" (para. 42).

[21] On the tertiary ground, the bail judge first described the legal approach, referencing *R v Manasseri*, 2017 ONCA 226, where the Court of Appeal stated:

> [93] … detention can only be justified on the tertiary ground if the judge, having considered the listed factors and related circumstances, is satisfied that a reasonable member of the community would be satisfied that denial of release is necessary to maintain confidence in the administration of justice. [citations omitted]

[22] She described “public” and “reasonable member of the public”. She analysed the four factors set out in s. 515(10)(c) and found that they all militated in favour of detention:

(1) the Crown’s case was strong due to the DNA evidence and the complainant’s statement that she told him her age, even considering the defences of his lack of knowledge of her age, and his denial of the assault;

(2) the offences were grave, with maximum penalties of 14 years for each;

(3) the circumstances surrounding the commission of the offences were serious, especially given the vulnerable young complainant and the alleged violent assault in broad daylight downtown; and

(4) there was a prospect of a lengthy imprisonment.

[23] All four of these factors she found weighed against release because of the risk that public confidence in the administration of justice would be undermined.

[24] The bail judge found that the release plan was not sufficient to meet the concerns expressed on the secondary and tertiary grounds because, while Connective is a structured environment, it is a place from which Mr. James can walk away and he had been arrested recently for allegations of failure to comply with strict conditions of release.

Issues

[25] To summarize the issues, the two primary issues are:

- whether the bail judge erred in law in failing to address s. 493.2 and s. 515(13.1) of the *Criminal Code*; and
- whether she erred in law in not accepting the joint recommendation.

I find that the late disclosure of the *Mills* documents is subsumed in the joint recommendation issue, and I will address it there.

[26] The final issue is whether the bail judge failed to address the sufficiency of the plan in relation to the concerns expressed; and if so, if this was an error of law.

Scope of s. 520 Bail Review

[27] *R v St-Cloud*, 2015 SCC 27, clarified the previously inconsistent approaches to the nature and scope of a review under s. 520. The reviewing court does not have open-ended discretion to vary an initial bail judge's decision and substitute its own assessment in the absence of any error in the original decision. As noted by the Supreme Court of Canada at para. 117 in *St-Cloud*:

> … a decision with respect to release made on the basis of s. 515(10)(c) *Cr. C.* calls for the consideration of several factors that may be difficult to balance. This is a delicate exercise whose essence would be distorted if an open-ended discretion to review the initial release decision were to be conferred on the judge.

[28] In other words, it is not a presumptive *de novo* proceeding. Instead, the reviewing judge must first determine whether it is appropriate to exercise their power of review on one of the following three bases only:

(a) where there is admissible new evidence that shows a material and relevant change in circumstances in the case;

(b) where the decision contains an error of law; or

(c) where the decision is clearly inappropriate.

[29] This last basis means that the bail judge must be found to have given excessive or insufficient weight to one or more relevant factors. Interference with the initial

decision is not justified where the reviewing judge would have weighed the relevant factors differently.

[30] The Supreme Court of Canada in *St-Cloud* also noted Parliament's intention to restrict further the scope of review, with its wording in s. 520(7), that is, on the hearing of an application under this section, after considering the evidence, the judge shall either "(d) dismiss the application, or (e) if the accused shows cause, allow the application, vacate the order previously made by the justice and make any other order provided for in section 515 that he considers is warranted." [emphasis in original]. The requirement in s. 520(7)(e) of the accused to show cause before the judge allows the application is a further restriction on the reviewing judge's ability to vary the order.

[31] This approach is described as a hybrid remedy, meaning it has aspects of a *de novo* proceeding because it provides greater scope to vary the original order than a remedy on an appeal, but it contains more restrictions than a true *de novo* proceeding would have (such as a review under s. 525).

[32] In this case, the applicant's basis for a s. 520 review is the errors of law in the bail judge's decision. There was discussion during the review hearing of whether interference by the reviewing court on this basis is appropriate only if the court finds that errors of law could have resulted in the release of the accused. This description was set out at para. 52 in the decision of *R v AI*, 2023 NUCJ 16. However, in para. 105 of *St-Cloud*, while the court refers to the appellant's argument there that the reviewing judge should interfere only where there was an error in principle that affects the result, the court's conclusion in *St-Cloud* at para. 121 is, "[i]t will be appropriate to intervene if the [judge] has erred in law." And at para. 139, the court says "[i]n conclusion, a reviewing

judge can intervene where relevant new evidence is tendered, where an error of law has been made or, finally, where the decision was clearly inappropriate." The basis of the error of law is not qualified, and these same bases with the same wording were confirmed and repeated by the Supreme Court of Canada in *R v Zora* decision, 2020 SCC 14 at para. 64.

[33] Other decisions provided to me during this hearing, subsequent to *St-Cloud*, where courts intervened on s. 520 applications are: *Raheem-Cummings v R*, 2020 SKQB 342; *R v EB*, 2020 ONSC 4383, *R v Papequash*, 2021 ONSC 727, and *R v Vickers*, 2021 ONSC 3896 — and this was for failure to consider s. 493.2 or a failure to consider *Gladue* principles. These decisions were not entirely helpful because in all of those cases the courts found not only an error of law but also a material change in circumstances based on new information provided, and that is a basis that does not exist here. Although in none of the cases did the Court engage in an explicit inquiry into and conclusion on whether this error of law could have resulted in the release of the accused, all the courts found that they were authorized to conduct a *de novo* review of the applicant's continued detention and a determination of whether it remained justified, regardless of the error of law, based on the new circumstances.

[34] *R v AI* is the only decision with which I have been provided that qualifies a reviewing court's ability to intervene on an error of law in this way, and the clarity of that analysis was not provided because the Nunavut Court found no error of law in that case.

[35] As a result, I accept the unqualified statements by the Supreme Court of Canada in *St-Cloud* and *Zora* that once an error of law is found, a reviewing court may intervene and vary the order, being mindful of the statutory constraints that apply in every case.

Legal Principles of Bail

[36] Decisions about bail must be made in the context of and consistent with two related rights guaranteed by the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982 (the "*Charter*"): the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal (s. 11(d)); and the right not to be denied reasonable bail without just cause (s. 11(e)).

[37] Section 11(e) protects both the right not to be denied bail without "just cause" and the right to bail on reasonable terms and conditions (*R v Pearson*, [1992] 3 SCR 665 at 689; *R v Morales*, [1992] 3 SCR 711 at 735; and *R v Antic*, 2017 SCC 27 at para. 67). The presumption of innocence, a foundational principle at the heart of our criminal law, is only satisfied in the bail process when the requirements of s. 11(e) are met (*R v Morales* at 748). Section 11(e):

> [1] … entrenches the effect of the presumption of innocence at the pre-trial stage of the criminal trial process and safeguards the liberty of accused persons. … (*Antic*)

and

> [20] … The *Charter* therefore protects accused persons from unreasonable terms and conditions of bail. (*Zora*)

[38] There have been a number of decisions from the Supreme Court of Canada since 2017 that have confirmed the approach to bail that release following arrest is the norm and detention is the exception, occurring in a limited set of circumstances, to

ensure the proper functioning of the bail system (*Pearson* at para. 58; and *Antic* at para. 40). Those circumstances are listed in s. 515(10), commonly referred to as the primary ground (detention is necessary to ensure the accused attends court), the secondary ground (detention is necessary for the protection and safety of the public because there is a substantial likelihood the accused will commit further offences while on bail), and the tertiary ground (detention is necessary in order to maintain public confidence in the administration of justice). The “ladder principle” applicable to bail, described in *Antic*, is grounded in restraint and requires the form of release imposed on an accused be no more onerous than necessary (*Antic* at para. 44), and this is codified in s. 515(1)-(3).

Analysis

Errors of Law

i) Failure to accept joint recommendation

[39] I will address this first: whether the bail judge declining to accept the joint recommendation or consent release, in the context of a reverse onus situation, was an error of law.

[40] Defence counsel, while acknowledging that the Supreme Court of Canada in *Antic* stated that the bail judge has discretion to reject a consent release plan, says in this case, the Court appeared to give the plan no weight. The defence argument rests largely but not completely on the delay factor: that is, the late disclosure of the *Mills* documents by the Crown necessitated an adjournment of the trial date from May to September in order to hear and decide the s. 278 application, and that this Crown delay prompted the negotiation of the consent release plan.

[41] Otherwise, defence says it would have initiated a *Bjelland* application (*R v Bjelland*, 209 SCC 38) for a stay of the proceedings or an exclusion of the proposed evidence of the Crown on the basis of prejudice to the accused's ability to make full answer and defence by the late disclosure. In exchange for not doing this and agreeing to the adjournment, defence says the proposed consent release plan was agreed to. The defence says this was a benefit to the Crown, as they did not have the risk of defending an application for a stay or to exclude the proposed *Mills* evidence, and the bail judge should have exercised deference and factored it in to her analysis on the tertiary grounds. To not have done so was an error of law, justifying court intervention.

[42] Defence further argued that, in effect, the May 9th bail hearing was treated as a contested bail hearing, which was unfair because they had prepared to present a joint recommendation.

[43] The Crown in response noted that this is not an *Anthony-Cook* situation (*R v Anthony-Cook*, 2016 SCC 43), where the Supreme Court of Canada set out the limited circumstances in which a judge may not accept joint submissions on sentencing. There are good reasons for the different judicial treatment of joint recommendations in the bail context from the treatment of joint submissions in the sentencing context. There are more significant systemic benefits to joint submissions on sentence and the statutory scheme is less prescriptive on sentencing than for bail. Systemic benefits of a joint submission on sentence include avoidance of a trial, thus saving court and other resources, obtaining an earlier resolution, preventing complainants from being cross-examined, and securing the cooperation of witnesses in other investigations. The

systemic benefits of joint bail recommendations are relatively insignificant, although there could be some saving of court time and resources.

[44] With respect to the statutory scheme for bail, ss. 515(1)-(2) of the *Code* provide that a justice shall release an accused unless the Crown shows cause why detention is justified. So, if the Crown chooses not to show cause, the bail judge has no discretion to detain the accused. Further, under s. 515(6), the reverse onus provision, a bail judge is required to detain an accused unless the accused shows cause why their detention is not justified. So even where the Crown and the accused have agreed on a release plan, the accused may only be released if they have shown cause. The bail judge must be satisfied that the plan addressed the concerns on one or more of the three grounds adequately and the accused has shown cause that detention is not required. These statutory parameters on the exercise of the judge's discretion in the bail context are more prescriptive than those in the sentencing context, which helps to explain the greater ability and in some cases the responsibility of the bail judge to reject joint recommendations in the bail context.

[45] Here, the bail judge's refusal to accept the joint recommendation was not an error in law. The law supports the exercise of discretion by the judge, where the accused must show cause, even where counsel have agreed. The Supreme Court of Canada in *Antic* stated at para. 68:

> Of course, it often happens that the Crown and the accused negotiate a plan of release and present it on consent. Consent release is an efficient method of achieving the release of an accused, and the principles and guidelines outlined above do not apply strictly to consent release plans. Although a justice or a judge should not routinely second-guess joint proposals by counsel, he or she does have the discretion to reject one. Joint proposals must be

> premised on the statutory criteria for detention and the legal framework for release.

[46] The court in *R v Singh*, 2018 ONSC 5336, described the court's role in these situations even more bluntly at paras. 25-26:

> [25] Exercise of the judicial function of deciding the issue of bail requires an independent and impartial judicial determination. The show cause judge is not a rubber stamp. Put differently, consent or agreement of the detainee's counsel and the prosecution does not constitute a judicial adjudication. The court maintains a residual discretion to discharge the important obligation of balancing liberty and public safety considerations: *Regina v. Hilderman*, 2005 ABCA 249, at para. 17.
>
> [26] Undoubtedly in an era of active case management by courts, and sensitivity to contribution to the collaborative effort of all system participants to reduce delay, agreements between the parties that an arrestee is releasable furthers these objectives. That said, narration of a cryptic summary of the relevant criminal allegation, the tendering of a bald statement of consent, and dictation of conditions of release by counsel to the court for sign-off, without more, does not generally found a judicially-considered determination of bail. Indeed, this approach risks abdication of judicial responsibility.

[47] And finally, at para. 31 of the *Singh* case:

> … A joint submission in a bail hearing is an important consideration for the exercise of judicial discretion but rejection of the submission can occur on a principled and reasonable application of the law to the facts without the court asking itself whether the joint submission is unhinged or whether it would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the bail system.

[48] Counsel have a better chance of success in ensuring acceptance of the joint submission, or the joint recommendation, if they provide the court with sufficient information to show the statutory criteria have been met. Counsel should not assume

that the court will act as a rubber stamp on the presentation of minimal information that does not demonstrate that all of the circumstances have been considered.

[49] The defence argument that the judge should have deferred to the joint recommendation because it was agreed to in part in order to address the delay caused by the Crown's late disclosure and to avoid a defence application for a stay or exclusion of evidence, while it may have a systemic benefit, is not sufficient in this case to override the judge's statutory obligations. The bail judge must be guided by s. 515 considerations and the circumstances of the accused, balancing liberty and public safety.

[50] The best practice in this type of circumstance entails the provision of notice by the bail judge at a show cause hearing of their inclination to reject a consent release so that counsel can decide what further information, explanation, evidence, or submissions might meet the expressed concerns of the court. In some cases, an adjournment before decision may be appropriate.

[51] Here, the bail judge indicated early in the proceeding that she was not bound by the consent release. She said:

> … It's a reverse onus, so your consent is not really the issue, but the Accused bears the burden of persuading the Court that there are no concerns on the primary, secondary, or tertiary grounds.
>
> In this case, perhaps some attention should be given to the tertiary grounds, so I'd like to hear from the Crown, but I'd also like some comments. I recognize it is a strict release plan. There's very serious allegations before the Court and he's been released twice and has been unsuccessful already, so I need to hear a little bit more. I need to have the background of the case put before the Court —
>
> MR. McDIARMID: Yes.
>
> THE COURT: — and then we can go from there.

> I'd like to hear from the Crown why they would be satisfied —
> MR. McDIARMID: Yes.
> THE COURT: — given the prior releases.

[52] The bail judge clearly indicated that she wanted to be satisfied that the accused had shown cause as to why his detention was not justified and she specifically asked the Crown for details of why they were satisfied by the release.

[53] The Crown's reply acknowledged the bail judge's discretion in these circumstances. He said:

> MR. McDIARMID: And Your Honour, just to confirm, and this is what the Crown's position on the issue would be — I think I understood Your Honour correctly that it's the Court's position on the law as well is that although the Crown's consent in a situation like this may assist the Court in arriving at a determination, Your Honour has the residual discretion in a reverse onus to deny bail if, in Your Honour's assessment, the grounds —
> THE COURT: If I'm not satisfied that the plan …
> MR. McDIARMID: Right.
> THE COURT: meets the grounds, all three grounds, so —
> MR. McDIARMID: Right.
> THE COURT: Yeah.
> MR. McDIARMID: And that — that, I think, is important that that position is established at the outset. …

[54] Then the Crown proceeded to provide significant details of the substantive offence, the breaches, the facts (that I have set out above) during the hearing.

[55] This exchange does show the common understanding that the Court was considering rejecting the consent release, or at the very least did not consider she was bound by it and had specifically requested submissions as to why she should accept that detention of the accused in this reverse onus situation was not justified.

[56] In conclusion, there was no error of law here.

ii) Failure to give attention to the applicant's circumstances as required by ss. 493.2 and 515(13.1)

[57] This is the applicant's main argument.

Purpose of s. 493.2

[58] Section 493.2 provides that in making a decision under this Part …

— that is, a decision on bail —

> … a peace officer, justice or judge shall give particular attention to the circumstances of
>
> (a) Aboriginal accused; and
>
> (b) accused who belong to a vulnerable population that is overrepresented in the criminal justice system and that is disadvantaged in obtaining release under this Part.

[59] Section 493.1 was enacted at the same time, in 2019, and it codifies the principles set out in *Antic*, particularly the "ladder principle", that the least onerous conditions must be imposed on an accused at a bail hearing unless it can be justified why more onerous conditions are necessary. Section 493.1 provides:

> In making a decision under this Part, a peace officer, justice or judge shall give primary consideration to the release of the accused at the earliest reasonable opportunity and on the least onerous conditions that are appropriate in the circumstances, including conditions that are reasonably practicable for the accused to comply with, while taking into account the grounds referred to in subsection 498(1.1) or 515(10), as the case may be.

[60] These enactments are presumed to be remedial because of s. 12 of the *Interpretation Act*, RSC 1985, c I-21, and that is referenced in *R v EB* at para. 22, *R v Gladue*, [1999] 1 SCR 688, and *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42. Their objective is to remedy the problem of overuse of pre-trial custody

and the overrepresentation of certain populations in the criminal justice system in general and the remand population in particular.

Application of s. 493.2

[61] As noted by the court in *R v EB* and other cases, how s. 493.2 is to be implemented to achieve its purpose is not clear, especially given the principles of restraint and laddering, which are applicable to all accused. The mandatory aspect of the section means the judge must:

> [16] … be aware of and sensitive to the reality of Aboriginal people and must take it into account in a concrete way with a view to reducing their imprisonment.
>
> [17] Otherwise, s. 493.2 … would only be wishful thinking with no practical implication for the circumstances of Aboriginal offenders. … [*R v Tullaugak*, 2021 QCCQ 13164]

[62] The court in *R v McGinn*, 2023 ABPC 56 at para. 19, said:

> … a meaningful response to the over incarceration of Aboriginal persons and members of other vulnerable populations … [means] [m]ore must be done to find ways to release these [people] at the earliest opportunity and with the least onerous conditions possible (while not … compromising public safety or the repute of the administration of justice). …

[63] The court reviewed the Parliamentary Secretary's comment in the House of Commons during the debates, which occurred November 8, 2018, on these amendments:

> … the proportion of indigenous adults admitted into a provincial or territorial correctional institution is roughly seven times higher than the rest of the Canadian population ... [and] [f]or indigenous women in federal correctional institutions, the proportion is eight times higher than for non-indigenous women …
>
> … [and] indigenous people and vulnerable persons tend to be disproportionately impacted by onerous and unnecessary

> bail conditions, more likely to be charged with breaching minor conditions, and more likely to be caught in the revolving door of the criminal justice system. …

[64] The court in *McGinn* then noted that s. 493.2 was more than a simple codification of the "*Gladue* factors" but is Parliament's emphatic demand that bail decisions are to be made through a new lens: one which is aware of and pays respect to the over-incarceration of Aboriginal persons and other vulnerable populations, particularly in the context of pre-trial detentions.

[65] Practically, the approach described by courts considering this question has its roots in the application of *Gladue* principles, which direct sentencing judges to consider first:

> … the unique systemic and background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and (2) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection. … [*R v Ipeelee*, 2012 SCC 13 at para. 72]

[66] Modification for the bail context is necessary for two reasons:

(1) the absence of information in the bail context compared with what is available in the sentencing context; and

(2) the fact that the accused seeking bail is not an offender, but is entitled to the presumption of innocence, at least on the charges that bring them before the court, and thus there is no proven offence for which inquiries about systemic or background factors can be made.

[67] However, the application of systemic or background factors may be relevant in several areas that are considered in bail decisions:

- First, the allegations against the accused are a significant part of the determination of whether the public is at risk, and a failure to consider systemic and background factors of the accused may affect that risk determination (*EB* at para. 36); and
- Second, a bail decision regularly includes a review and risk analysis of past convictions, and s. 493.2 (or *Gladue*) mandates a consideration of the extent to which they may be attributable to systemic or background factors, including over-zealous policing (*EB* at paras. 37-38).

[68] Particular examples are administration of justice breaches — that is, failures to comply with court orders — and as stated in *EB* at para. 46:

> Breaches of court orders are not all created equal. They can consist of being out of one's home a few minutes after a curfew, missing an appointment with a probation officer, or possessing drugs when prohibited … [and] [a]t the other end of the spectrum, a breach can result from the commission of a serious criminal offence. [citations omitted]

[69] Judicial notice can be taken of the effect of the imposition of bail conditions that may be unnecessary, unreasonable, unduly restrictive, or too numerous, which may set up the accused to fail (*Zora* at para 26). These can lead to a vicious cycle where more onerous conditions are imposed that are harder to comply with, leading to more breach charges, more restrictive conditions, and eventually pre-trial detention. A contextual consideration of an accused's criminal record is necessary.

[70] The second *Gladue* direction in the sentencing context is the consideration of the type of sentencing procedures or sanctions appropriate to an Indigenous offender. Modified for the bail context, the court can consider the types of supervision or measures to be included in a bail plan for an Indigenous offender, such as an

alternative to a surety because a dysfunctional upbringing due to systemic factors makes it difficult or impossible to find a reliable surety.

[71] But what happens, as was in part the case here, where little to no information about the accused's circumstances as an Indigenous person is provided to the bail judge?

[72] First, courts have held that judges may take judicial notice of the broad systemic and background factors affecting Aboriginal people generally (*R v Ipeelee* at paras. 59-60). This could include the intergenerational impact and harm of residential schools, family displacement, addiction, poverty, low education levels, inadequate housing, and impacts of racism. How these factors may have affected the accused's criminal record or failure to comply with conditions — that is, why the accused has an extensive criminal record, including their inability to comply with release conditions — may assist in evaluating whether realistic release conditions could be developed to address the concerns in s. 515(10).

[73] The court in *R v Chocolate*, 2015 NWTSC 28, and following *R v Magill*, 2013 YKTC 8, considered the application of *Gladue* principles in the bail context — this was before s. 493.2 — and wrote:

> [49] … There simply must be more than a superficial review of an accused's past criminal conduct and/or the circumstances leading to the current charge.

[74] This was repeated by the court in *R v Coleman*, 2023 PESC 11, in the context of a s. 525 bail review hearing in which s. 493.2 was found to be an important and necessary consideration.

[75] While the provision of case-specific information to the court is the responsibility of counsel, recognizing its limits at a bail hearing, the absence of such information from

counsel does not relieve the court of its statutory obligation, and there may be occasions where a short delay may be required in order to obtain such information.

[76] It is also essential to review the relationship of s. 493.2 with the provisions in s. 515(10). Courts have consistently held that s. 493.2 does not supersede the requirements in s. 515(10) — and, in particular, for a court to ensure it is satisfied, for example, in a reverse onus situation, that detention is not required because there is no substantial likelihood that an accused will commit an offence or interfere with the administration of justice.

[77] Section 493.2 requires that particular attention be given to the applicant's Aboriginal status when the bail judge is considering the three factors in s. 515(10). For example, if reoffending may result from systemic conditions such as alcohol addiction, then release under certain conditions, such as attending treatment, may follow from the provision of particular attention to the applicant's circumstances as an Aboriginal accused person (*R v Rain*, 2023 ABCA 95).

[78] However, if the bail judge concludes that detention is necessary, which is a high standard, with little discretion, because there is a substantial likelihood — that is, the probability of a certain conduct or it is significantly likely that the accused will commit further offences if released, thus compromising public safety — the fact that systemic or background factors contributed to that substantial likelihood does not change that result.

[79] It is accepted by many courts that the considerations under s. 493.2 may have more relevance to the tertiary ground — that is, the maintenance of public confidence in the administration of justice. A reasonable and informed member of the public may understand and accept that the over-representation of Indigenous people in jail justifies

a different approach to the factors in s. 515(10) and may also have an impact on the appropriate release conditions (*Rain* at para. 21).

Purpose of s. 515(13.1)

[80] An additional statutory amendment related to s. 493.2 came into force in January 2024. Section 515(13.1) provides:

> A justice who makes an order under this section shall include in the record of proceedings a statement that sets out both how they determined whether the accused is an accused referred to in section 493.2 and their determination. [Where] the justice determines that the accused is an accused referred to in section 493.2, they shall also include a statement indicating how they considered their particular circumstances, as required under that section.

[81] The purpose of s. 515(13.1) was discussed at the Senate Committee on Legal and Constitutional Affairs on October 18, 2023. In introducing the amendment, the senator said:

> By requiring a statement in the record of proceedings as to how a justice has considered section 493.2 of the code, our amendment seeks to address the fact that judges sometimes do not properly take this provision into consideration, which can have a devastating effect on racialized people in the criminal justice system.
>
> …
>
> You have a much more deliberate, substantial process that the justice has to follow in following section 493.2. …

[82] Further debate ensued during the Committee hearing about whether the provision was necessary and while at least one senator observed it was more "educational" than necessary, the amendment was supported by most. One senator summed up the reason for the amendment as follows:

> This is aimed at judges — they are obliged to focus their attention on these issues. The appellate courts, whether it's

> the Superior Court dealing with appeals from justices of the peace, or the courts of appeal, the principles whereby the appeal requires the trial judge to give reasons are well known, otherwise it negates the right of appeal. The common law obligation exists when it comes to giving reasons, but the legislator feels the need to be more precise to attract the attention of the judge and the public.

[83] Section 515(13.1) places an additional accountability on judges to ensure they determine whether an accused is Aboriginal or a member of another vulnerable group; and if so, they consider the particular circumstances by requiring them to reference explicitly how they accomplished both considerations.

Application of s. 515(13.1)

[84] Counsel at the review hearing advised they could find no judicial consideration of this section, but this Court was able to find two cases decided by the same judge of the Newfoundland Provincial Court (*R v White*, [2025] NJ No 13 (NLPC), and *R v JL,* [2025] NJ No 58 (NLPC)).

[85] In *R v White*, the judge applied the provisions of 493.2 and 515(13.1) in the context of a decision about whether to grant bail to the accused, a man of Indigenous heritage, who was charged with a number of offences, including robbery arising out of a sawed-off shotgun allegedly placed against the head of the complainant, and six failures to comply with court orders, including two failures to appear in court. The bail judge referenced *R v Tullaugak* (*supra*) in discussing the purpose of the obligation under s. 493.2 and how bail judges should implement it by being “open to the reality that certain bail conditions can discriminate against disadvantaged and/or vulnerable people - eg those in poverty cannot make cash deposits or report in person to police stations far away from their residence or fail to appear in court because they can’t afford transportation costs” (para 27). The bail judge further noted that he was mandated by

s. 515(13.1) to set out how he considered s. 493.2 in assessing bail. He referenced the Alberta Court of Appeal comments in the *Rain* decision, that s. 493.2 requires that "particular attention" be given to the applicant's Aboriginal status when the bail judge is considering the 515(10) factors, and it is not intended to override the provisions in s. 515(10). In other words, the granting or denial of bail he said is based on clear statutory consideration and s. 493.2 is not a free-standing basis for release. He noted that Indigenous communities are entitled to the same protection from offenders that non-Indigenous communities have. In that case, he found that he did not have any evidence that the accused's Indigenous status negatively affected him and being Indigenous without more was not a basis for release. He concluded that the accused's Indigenous status did not play a significant role in his assessment.

[86] The second judgment addressing 515(13.1) was issued by the same judge, *R v JL*, where a young Indigenous person was charged with 31 offences over seven months, including 14 breaches of court orders. Again the judge was provided with little to no information about the accused's Indigenous status and no evidence he had been negatively affected by colonization, and so the judge concluded his Indigenous status had no impact on his consideration of release when he applied the factors in s. 515(13.1).

[87] I note that this judge did not take judicial notice of any systemic and background factors affecting Indigenous people generally.

Application of s. 493.2 and 515(13.1) to this case

[88] Against this background, in this case, there was no explicit reference to Mr. James' Indigenous heritage either by counsel or the bail judge. However, as the

Crown noted in submissions, there was little doubt that the bail judge knew he was Yukon First Nation because: his name is a name well-known in the Yukon First Nation community in Carcross, his place of residence was in a primarily Indigenous community, and then his next place of residence was in Mayo, with a relative named Ms. Hager, also a prominent name in the Yukon First Nations community. Further, there was reference during the hearing to Carcross/Tagish First Nation and Kwanlin Dün First Nation Indigenous court workers assisting Mr. James to comply with his bail conditions, and there was reference to the proposal for his participation in community or cultural or religious activities in the direct line-of-sight supervision of an Indigenous court worker.

[89] Defence counsel also advised the Court that the accused had been struggling on an ongoing basis with the abuse of alcohol, had formed a therapeutic relationship with a counsellor who was cooperating with the Forensic Complex Care Team to provide counselling to the accused. Defence counsel advised as part of the proposed release plan that it was critical to Connective that the accused continue in that course of treatment and counselling so he could benefit from the supervised housing and rehabilitation program they offer. Defence counsel further noted during the hearing that Mr. James' second alleged breach before the Court was due to the death of his father under a bridge in Carcross as a result of his addiction.

[90] Other than these facts, there was no mention of Mr. James' status as a Yukon First Nation person or any other information about his personal circumstances — and, as I said, the bail judge did not reference this factor nor did she reference ss. 493.2 or 515(13.1).

[91] The Crown argued that although the *Criminal Code* sections are mandatory, explicit compliance with them would not have changed the outcome. All that could have been done differently was something similar to what the Newfoundland judge did in *JL* and *White*, a statement from the bail judge that she knew that Mr. James was a Yukon First Nations member, and that she considered what information she had about his circumstances as a Yukon First Nations person in coming to her decision. The Crown says in this case, following the interpretation in *R v AI* of justified intervention only if an error of law could have resulted in the release of the accused, any error of law occurring from the bail judge's failure to reference these sections does not justify intervention in her decision.

[92] Although I am not bound by any of these decisions, consistent with *EB*, *Papequash*, and *Vickers*, I find that the failure of the bail judge to reference the mandatory obligation to determine that the accused was Aboriginal, to pay particular attention to his circumstances as an Aboriginal accused, and to show how she has taken those into account in her decision was an error of law.

[93] While I agree with the Crown that the bail judge's knowledge that he was a Yukon First Nation member and the systemic and background factors affecting Yukon First Nations was implicit, the fact that she did not comply with the requirements in the *Code* and provide any reference to her consideration of his circumstances as an Aboriginal accused and how that may have affected her decision or not gives rise to the error.

[94] The bail judge's failure to apply a "*Gladue*" lens to the allegations before the Court as well as to the accused's criminal record — especially the breaches in both

instances — did not do justice to the requirement to consider within the s. 515(10) factors, which I acknowledge cannot be superseded in the overall analysis of bail, circumstances applicable to Indigenous persons. For example, the accused's failure to comply with court orders may be because of his living arrangements in more remote areas, his lack of constant and consistent supports, his addiction issues, and difficult family circumstances as exemplified by the tragic death of his father in February. I note that the bail judge did acknowledge the tragic death of his father while he was on release in Mayo and observed that this news:

> [26] … triggered a relapse and perhaps provides some explanation for the most recent allegations of failure to comply with the release conditions.

But there was no link made between that fact and observation and the broader context of his status as an Indigenous person.

[95] Further, as noted by the court in *EB*, not all breaches are created equal, and the Supreme Court of Canada in *Zora*, as I have said earlier, elaborated on how Indigenous people may suffer from over-policing, and that breaches that may be victimless, and not necessarily pose a substantial likelihood that the accused may re-offend. While the bail judge did properly consider circumstances other than the breaches, Mr. James' failures in this area were a factor that weighed heavily in her decision that the proposed plan would not satisfy the concerns on the secondary ground.

[96] The court in *EB* noted that the consideration of the circumstances of an Indigenous person may have more influence in the balancing of the factors on the tertiary grounds. For example, one of the considerations on the tertiary ground could be the over-incarceration of Indigenous people due to systemic and background factors, including over-policing and institutional biases, especially in the pre-trial detention

context, which could, in turn, affect the public confidence in the administration of justice — and this was not considered by the bail judge in this case.

[97] In sum, this error justifies my intervention and a *de novo* consideration.

iii) Failure to consider whether the release plan met the concerns on secondary and tertiary grounds

[98] Even though it is not necessary, I will address this final basis of the application for review. Defence states that the bail judge did not consider whether the release plan met the concerns she expressed and that this was an error of law.

[99] I do not agree that this was an error of law. The judge referenced Connective as a structured environment, but noted it is a place that he could walk away from. She also noted the strict release conditions imposed on him during the past two releases, and reviewed the proposed conditions for this release. She concluded that the secondary and tertiary ground concerns arising from his past criminal conduct, along with the substantive offences, and the breaches — both ones before the Court and previous convictions for breaches — could not be addressed with the proposed plan.

[100] Although I am not sure whether the defence argued this, with respect to the tertiary grounds, the judge did review the four enumerated factors, which, of course, involve a review of circumstances beyond the breaches and showed how, in her view, they militated against release, even with the structured plan.

***De novo* proceeding**

[101] I will now turn to the determination of bail in this reverse onus context. I will consider the release plan provided in May but I understood from the last time we were

together at the hearing, both counsel said that they would be interested in making further submissions on the plan. Is that still the case?

[PROCEEDINGS]

[102] Although I am not bound by the bail judge's conclusions, due to the error I have identified and the fact this is a *de novo* proceeding, I just want to note that her decision is well-articulated and clearly sets out tests and many of the factual considerations, so I will give weight to those aspects which are not affected by the error.

[103] The first one of those is that there is no evidence or concern that detention is necessary to ensure Mr. James' attendance in court, which is the primary ground, given his ties to the community.

[104] There are serious concerns in this case on secondary grounds. The seriousness of the substantive offence before the Court, his criminal record, especially the November 2023 conviction for sexual assault and including his failures to comply with court orders, and the breaches before the Court are significant considerations in determining whether Mr. James has met his onus of showing that his detention is not necessary for the protection and safety of the public, and there is not a substantial likelihood that he will on release commit a criminal offence or interfere with the administration of justice.

[105] However, the release plan proposed — the plan today is the same as the one that was proposed on May 9th — in my view, addresses the secondary ground concerns of ensuring public protection and safety. While the conditions of his release were strict in the past, these conditions are much more strict. He is to reside at Connective, or more specifically the Supervised Housing and Reintegration Program

("SHARP") that provides safe and secure housing and wrap-around supports to individuals on conditional release from federal and territorial institutions.

[106] SHARP is located on the grounds of the Whitehorse Correctional Centre in a separate part of the building. It has 24/7 staff, including a supervisor whose office oversees the exit, and a body of rules that apply to all residents. All residents must satisfy the admission criteria and be accepted by the residence manager or the regional director after they have reviewed the Correctional file or the Information, including the criminal record. The rules include abstention from alcohol and non-prescription drugs; provision of a breath sample by each resident after every return to the facility from being out; and calling in to confirm the resident's location when they are permitted to leave.

[107] In addition to abiding by the rules of the residence, Mr. James has proposed to be subject to additional conditions, the most stringent of which is that he cannot leave the residence unless for counselling, treatment, or legal appointments on arrangements that are approved by the bail supervisor. For all other departures, he must be accompanied by an approved responsible adult, approved by the bail supervisor, and remain in their line of sight at all times.

[108] This is a much more structured and restrictive release condition than he has had in the past, where he was limited to a curfew on the first occasion at his residence and on the second occasion, although it was a remain in the residence or on the property condition unless in line of sight of a responsible adult, that residence was that of a relative and was not a rule-based structured environment like SHARP.

[109] As noted by the Crown at the hearing (not today but the earlier hearing day) on this bail review, SHARP can be relied upon as a kind of surety and even more so

because their professional reputation and existence depends on ensuring their residents continue to comply with their release conditions. Both counsel noted that SHARP staff do not hesitate to call police immediately when there is a suspected breach of conditions by the residents.

[110] While no plan is foolproof and, as the bail judge rightly noted, SHARP is not a lock-down facility so he could walk away, the institutional setting, the 24/7 professional staffing, the rules, and the additional conditions satisfy me that there is not a substantial likelihood that he will commit further offences if released under this plan.

[111] In coming to this conclusion, I have, of course, considered that Mr. James is Indigenous, based on some of the facts presented at the May 9th hearing and also the background that defence counsel provided today.

[112] Specifically, Mr. James is 30 years old. He is a citizen of Carcross/Tagish First Nation. His mother and grandmother were residential school survivors. His father abandoned him when he was two and his mother passed away when he was 10. He was raised by his grandmother, who struggled with her own addictions, and he lacked structure and support and struggled with low self-esteem during his youth. Although he graduated from Grade 8, he is not able to read or write. Essentially, defence counsel says that he was left to raise himself. He self-medicated through alcohol and he gravitates towards opportunities to go out on the land, as this isolates him from alcohol and helps him to heal.

[113] He recognizes now that his first priority is to address the substance abuse and psychological issues, and this is evidenced by the recent positive therapeutic

relationship that he has established Chad Nichols, which indeed was a condition of his acceptance into SHARP.

[114] Mr. James' personal circumstances are directly related to the systemic and background factors affecting many other Yukon First Nations' members stemming from the impacts of colonization and residential schools: family and stability dysfunction, addiction, low education, and intergenerational trauma. Although it does not excuse his past conduct, it may help to provide an explanation for it and, more importantly, it helps in developing a release plan that best meets the goals of public safety and protection.

[115] Working to overcome an addiction, the way Mr. James is starting to do, will help address the public safety and protection concerns by reducing his substantial likelihood of reoffending. His residence at SHARP will facilitate this ongoing treatment, interaction, and relationships, and, in turn, help to meet these goals. The structure of the rules, the continual supervision, the restrictions on his movements, and the peer and staff support available at SHARP are all helpful for someone who has led what seems to have been a chaotic existence when one reviews his background, his criminal record, and the time spent in custody.

[116] I just want to speak briefly to the criminal record and the breach offences before the Court.

[117] With respect to the criminal record, there is no information provided on the individual circumstances of past breaches but I do note, as the courts did in *Zora* and *EB* that breaches can exist across a wide spectrum. Without knowing the details surrounding these breaches, it is difficult to know how much weight to give them.

[118] We do have some details about the two breaches currently before the Court. The first one, recognizing that all the facts are not yet known, appears to be on the more minor end of the scale, as after a warning about complying with his curfew from the RCMP, Mr. James was not at his residence 27 minutes after curfew, although he was there the following morning. The second breach was explained in part by the shock of his father's death. Both are victimless offences, like all administrative breaches, and I am mindful of the effect of breach conditions that was described in *Zora*, which I talked about earlier that can lead to a vicious cycle of restrictions, more breaches, and pre-trial detention.

[119] With respect to the criminal record, I note that the convictions for assault — not sexual assault — were relatively dated: 2013, 2015, and 2020. So while I do not minimize the number of administration of justice breaches and convictions on Mr. James' criminal record, I accept that a structured and restricted release plan like the one here will go a long way to reducing his substantial likelihood of reoffending either substantively or on administration of justice charges.

[120] With respect to the tertiary grounds, I will not repeat the explanation of what that ground is, which was set out earlier in my decision, but I note that the bail judge in her decision adequately reviewed the four factors enumerated in the legislation and, as the Crown noted at the earlier review hearing, these four factors support the necessity of detention in order to preserve the public's confidence in the administration of justice. I agree with this but the inquiry does not end there, as all of the circumstances must be considered, including the accused's circumstances which, in turn, include his status as a Yukon First Nations person, and it also requires an assessment of the release plan.

[121] The proposed release plan has the added benefit of facilitating and encouraging Mr. James' therapeutic relationship with his counsellor, it encourages and supports further treatment, and provides him with additional supports in a safe environment. So in the context of the presumption of innocence that exists for Mr. James and the general overrepresentation of Indigenous people in pre-trial detention, I am of the view that the restrictive release plan proposed will not cause a reasonably informed member of the public to lose confidence in the administration of justice.

[122] So, I therefore conclude that Mr. James has shown cause that his detention is not justified on the secondary and tertiary grounds.

[DISCUSSIONS]

[123] Mr. Kashies James is released on the following conditions:

- $1,000 promise to pay;
- he must not communicate directly or indirectly with G.B.-G.;
- he must not go to or enter any known place of residence, employment, or education of G.B.-G.;
- he must reside at Connective, specifically SHARP, and abide by the rules of the residence;
- he must report to the bail supervisor immediately upon release, and thereafter, when and in the manner directed by the bail supervisor;
- he must not possess or consume alcohol and/or illegal drugs that have not been prescribed for him by a medical doctor;

- he must not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off sales, bar, pub, tavern, lounge, or nightclub;
- he must not possess any firearms, ammunition, explosive substance, or any weapon as defined by the *Criminal Code*;
- he must attend and actively participate in programming for alcohol and substance abuse as directed by the bail supervisor;
- he must stay inside the SHARP residence and only leave for the purposes of attending assessments, treatment, counselling, or legal appointments as directed in writing by the bail supervisor;
- he shall not leave the residence for any other purpose unless in the company of a responsible adult approved by the bail supervisor for the purposes of attending cultural, spiritual, or community events, and shall be in the line of sight of the responsible approved adult at all times.

  [DISCUSSIONS]

[124] He will be released into the custody of Mr. Ryan Lee at SHARP.

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DUNCAN C.J.