

# **Appeals and Bail Reviews**

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*Criminal Law for Legal Support Staff*

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## ALBERTA COURT OF QUEEN'S BENCH BAIL REVIEW APPLICATIONS

Judicial interim release (or 'bail') for people accused of committing crimes is initially determined by a Justice of the Peace or a judge in the Provincial Court of Alberta. Sometimes people they are ordered to be detained in custody. Sometimes they are released from custody. Sometimes there are too many, or overly onerous, conditions on their release documents. Sometimes the conditions on their release documents are insufficient. All of these circumstances can lead to a bail review if they occur as the result of flawed reasoning, or if there has been a change of circumstances since the original order.

Sections 520 and 521 of the *Criminal Code* permit a judge to review an order made pursuant to the following provisions of the *Criminal Code*:

- 515(2): release on undertaking with conditions
- 515(5): detention in custody
- 515(6): detention in custody as a result of reverse onus on accused person
- 515(7): release with conditions despite reverse onus in s. 515(6)(a), (c) & (d) on accused person
- 515(8): release with conditions despite reverse onus in s. 515(6)(b) on accused person
- 515(12): no communication order
- 515.1: a consent variation on an undertaking or recognizance
- 523(2)(b): detention or release after a preliminary inquiry but before trial

Section 520 governs applications made by an accused person and section 521 governs applications made by the prosecutor.

Bail review hearings are more closely aligned with appeals than with a hearing *de novo*. In *R v Lysyk* (2002) (Alta QB), Chief Justice Wachowich held that a bail review must be premised on either:

- a reversible error in the bail judge's reasoning ;
- a change in circumstances ; or

- relevant new evidence.<sup>1</sup>

In *R v T(QH)* (2004) (Alta QB), Watson J. (as he then was) expanded on the *Lysyk* factors by adding another ground for bail reviews: whether the interests of justice would be served by the continued detention of an accused person.<sup>2</sup> Both *T(QH)* and *Lysyk* are in agreement that “a reviewing Judge should be apprehensive about interfering with a bail Judge’s order.”<sup>3</sup>

At the end of a bail review application, the justice may dismiss the application or vacate the previous order and make any other order provided for in section 515 that is warranted. A justice may also adjourn the application before or during proceedings, but an accused person must consent to adjournments longer than three days.

### **Scheduling a Bail Review Application**

In Edmonton, bail reviews are scheduled through Queen’s Bench Criminal at (780) 422-2410. In Calgary, bail reviews are scheduled through the Crown Prosecutor’s Office at (403) 297-6853. When scheduling a bail review, the following steps should be taken:

1. Call Queen’s Bench Criminal or Calgary Crown Prosecutor’s office and ask to schedule a Queen’s Bench bail review;
2. A clerk will assist in selecting a review date. The date must be two clear days prior to the trial date and two clear days from the scheduling date. Only eight reviews are scheduled per day in Edmonton and only four reviews are scheduled per day in Calgary. The reviews must be less than 30 minutes in length or a special sitting is required;
3. Once the date is booked over the phone, fill out the Bail Review Application Form (see the Appendix), which is available at the courthouse in Edmonton and from the Calgary prosecutor’s office in Calgary:
  - a) Every line in the form must be filled out. If a line does not apply in a particular case, it should be filled out with the words “not applicable”;
  - b) Where the form requires the section number and brief description of the offences charged, remember to include the description of the offence (i.e. if a person is

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<sup>1</sup> *R v Lysyk*, 2003 ABQB 256 (Alta QB) at paras 16-20.

<sup>2</sup> *R v T(QB)*, 2004 ABQB 526 (Alta QB) at para 48

<sup>3</sup> *Lysyk*, *supra* note 1 at para 20; *T(QH)*, *supra* note 2 at para 49. See also *R v McKinnon*, 2004 ABQB 604 (Alta QB) at paras 34 & 37 in which Justice Burrows holds that the reviewing judge in a bail review should substitute his conclusion for that of the original justice.