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(Thompson Centre)
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COURT OF QUEEN'S BENCH OF MANITOBA

IN THE MATTER OF: The *Criminal Code* of Canada

AND IN THE MATTER OF: The *Canadian Charter of Rights and Freedoms*

BETWEEN:	)	**APPEARANCES:**
	)	
HER MAJESTY THE QUEEN,	)	Heather Leonoff and
	)	Michael Bodner
	)	for the Crown
- and -	)	
	)	
LESLEY ANN BALFOUR,	)	
	)	Rohit Gupta and
(Accused)	)	Boris Bytensky
Applicant,	)	for the (Accused) Applicants
	)	
AND BETWEEN:	)	
	)	
HER MAJESTY THE QUEEN,	)	
	)	
- and -	)	
	)	
DWAYNE GREGORY YOUNG,	)	
	)	
(Accused)	)	Judgment delivered:
Applicant.	)	November 14, 2019

MARTIN J.

> *"At the heart of a free and democratic society is the liberty of its subjects. Liberty lost is never regained and can never be fully compensated for; therefore, where the potential exists for the loss of freedom for even a day, we, as a free and democratic society, must place the highest emphasis on ensuring that our system of justice minimizes the chances of an unwarranted denial of liberty."*

Iacobucci J. (***R. v. Hall***, 2002 SCC 64, [2002] 3 S.C.R. 309 (QL), at para. 47.)

I. INTRODUCTION

[1] This is a disturbing chronicle of a dysfunctional bail system.

[2] Lesley Ann Balfour and Dwayne Gregory Young are residents of different northern Manitoba Indigenous communities. Each were arrested and charged with ***Criminal Code*** offences. Their cases are completely unrelated except for one common feature; they both experienced difficulty having timely bail applications. Because of this, in time, each made an application for a declaration that their ss. 7, 9, 11(e) and 12 rights as guaranteed by the ***Charter of Rights and Freedoms*** had been violated. Each sought a judicial stay of proceedings of their charges, and costs.

[3] As it worked out, their ***Charter*** applications were not ready to be heard at their scheduled trials in January 2019. I refused to adjourn the trials, despite the Crown's willingness to consent to Mr. Young's release at that point.

[4] Just before her trial, Ms. Balfour's charges were withdrawn, or stayed, by the Crown. Immediately after his trial, I found Mr. Young not guilty. Normally, that would have been the end of the matters as a judicial stay of proceedings of

their charges, as a remedy for the alleged ***Charter*** breaches, was then moot. That was not to be.

[5] In substance, their applications alleged not only individual ***Charter*** breaches, but that the breaches were overlaid by systemic issues affecting northern Manitobans respecting bail; especially for Indigenous persons living in remote communities or reserves. Thus, because of the apparent importance of the issue, they wanted to proceed with their ***Charter*** applications, anchoring the ongoing validity of their applications in the costs remedy.

[6] For various reasons, their applications were not perfected or ready to be heard until May 31, 2019. The record comprised of affidavits from the accused, many northern Manitoba lawyers and others, along with dozens of court transcripts. The briefs were extensive, as was the oral hearing. This is my ruling. For ease of reference, any section numbers stated means they are from the ***Criminal Code***, unless otherwise stated.

[7] As a bit of a roadmap, I will set the stage by generally describing the bail system in the north for the Thompson judicial area, then set out the salient facts of Ms. Balfour's and Mr. Young's arrests and bail applications, then other facts generally about the bail system in northern Manitoba and then my analysis and conclusion.

[8] First though, some opening comments will help frame the decision, all of which spring from the Crown's submission. The Crown says:

- that evidence of systemic problems should be ignored as it is not relevant to these assertions, which are breaches of an individual's ***Charter*** rights. I disagree. Certain systemic features directly impacted Ms. Balfour and Mr. Young; the evidence is critical to understanding how and why, and it informs other legal considerations;
- that much of what happened to Ms. Balfour and Mr. Young was, in effect, their own doing - for example by saying "ok" to a remand longer than three clear days, or by counsel suggesting such remands. As will be seen, I categorically reject this. In almost all instances, they and their lawyers went along with what was essentially inevitable, there was no real choice;
- the focus of my analysis should be on s. 11(e) of the ***Charter***, the right of a person charged with an offence not to be denied reasonable bail without just cause, rather than other catalogued breaches under ss. 7, 9 and 12. I agree; here, s. 11(e) is broad enough to encompass the specific elements in a holistic manner; and
- that if I find Ms. Balfour's or Mr. Young's ***Charter*** rights were violated, the Crown is not seeking to justify such violation under s. 1 of the ***Charter***. Given my findings, that is an astute concession.

II. BAIL IN NORTHERN MANITOBA

[9] To grasp the significance or meaning of some events to Ms. Balfour's and Mr. Young's experiences, it would be beneficial to concisely set the stage of how criminal justice starts in northern Manitoba.

[10] Aside from Winnipeg, the Thompson judicial area likely handles the largest volume of criminal cases in Manitoba, and from the largest geographic area. Over the last decade the caseload has grown exponentially. At least 16 outlying communities depend on Thompson's court services, particularly for bail. All are good distances away with some being very isolated, such as Gods River, Lynn Lake or Tadoule Lake. Most, but not all communities are serviced by an RCMP detachment. In turn, Thompson court services often relies on Crown attorneys, Judicial Justices of the Peace ("JJP's") and defence lawyers from Winnipeg.

[11] When a person is arrested, depending on the charge, the RCMP may be able to quickly release that person on various minor forms of bail.

[12] Often though, for more serious charges or for individuals already on bail, the RCMP may be concerned about release and will usually consult with an on-call Crown attorney about release. Together they decide whether to oppose the accused's release. Around the same time, normally shortly after arrest, the accused will speak by phone to a private or Legal Aid lawyer.

[13] If the RCMP do not release the accused, a judicial officer, such as a JJP, will need to make the bail decision. As such, an on-call JJP deals with the RCMP officer and the accused, in an audio-recorded telephone "appearance". Most often, if not inevitably, the accused agrees to the JJP's offer of a remand in custody in order to have a lawyer help with their bail application, because they know the RCMP is opposed to their release.

[14] Once remanded in custody, an accused stays in the RCMP detachment cells until they can be taken to Thompson. When and how this happens depends on the location, weather, day of the week, holidays, resources and manpower. Accused are either flown or driven to Thompson.

[15] When in Thompson, accused are initially held in the RCMP detachment jail cells, as there is no other jail in Thompson. The cells are not designed for this; a local judge described the idea of a multi-day stay in these cells as inhumane. There is limited cell capacity. As suitable, accused are driven to court by Sheriffs for an appearance. The Sheriffs have few holding cells at the courthouse. Accused have to be rotated in and out from the RCMP detachment to the court, a few kilometres away. It is an inefficient use of time and manpower that affects court proceedings.

[16] Moving on, when an accused arrives in Thompson, one of a few things may happen:

- if brought to court, they may appear before a judge for a bail application, or their case may be adjourned to the next court date – with or without actually getting into court - to allow them to see duty counsel, who needs to get the file information, as does the Crown, all in preparation for a bail application; or
- they may not be brought to court at all, but rather remanded in custody overnight with their personal appearance waived, by the court or counsel.

Notionally, any of these steps are an "appearance".

[17] By Provincial Judges Court policy, affecting only the Thompson Provincial Court, if bail is not applied for at an appearance, an accused person is to be adjourned to a "custody coordination docket", most often well beyond the ***Criminal Code***'s three-day remand limit, up to a maximum of four weeks. During that time, an accused can apply to be brought forward to the next available custody court date as long as two clear days' notice is given to the Crown. The custody coordination court is not a court of record, it is an administrative docket.

[18] The rationale for this policy seems to be to cut down on the number of appearances in court, and relieve the strain on resources. Of note, there is nothing in the policy directive to ensure an accused has a timely bail application, nor even recognition that an accused must consent to an in-custody remand greater than three clear days, nor that the court ensure an accused understands what is happening – either the process or their options.

[19] When remanded to the custody coordination docket, the accused will be taken from Thompson to another jail somewhere in the province as soon as possible. Usually, but not necessarily, that would first be 400 kilometres away to The Pas Correctional Centre, the closest facility, and then often to another facility in central or southern Manitoba. Some young offenders may be temporarily held in The Pas Correctional Centre, but are then moved to southern Manitoba as there is no facility for them in the north.

[20] After remand to the custody coordination docket, many accused wait for a Legal Aid application to be processed and a lawyer to be appointed. This can take

weeks, all the while an accused may not speak to a lawyer. Legal Aid appointed counsel are by far the most prevalent type of representation for criminal matters in the north.

[21] There are three resident Thompson provincial judges. They, and counsel, regularly work outside of Thompson at circuit points. Up to the time of this hearing, Thompson Provincial Court dealt with in-custody matters on Monday, Tuesday and Thursday. The dockets are extremely busy. In-custody accused would be brought in from across the province or appear by video link. Constant remands were the norm. Also, by policy of the Chief Provincial Judge, the court was required to close by about 5:00 p.m. As such, routinely, accused were "timed out" or adjourned, often with their appearance "waived", to another date without their matter being dealt with.

[22] Another significant point must be borne in mind. Remand custody is substantially unlike being a sentenced prisoner in a correctional facility or penitentiary. Particularly in northern Manitoba, being in remand custody awaiting some court process or trial is physically and emotionally stressful for many reasons, especially for first offenders and young offenders.

[23] Northern Manitoba residents who are held waiting for bail are moved repeatedly, often driving great distances while locked in crammed vans and in foul weather. It is unsafe for Sheriffs and accused alike, and adds to the chaos of the northern justice system as personal or video appearances are unreliable. Many accused do not stay in remand in the north but are transferred to central or

southern Manitoba. Almost all are away from their home community such that personal visits with their counsel, family, children or supports are few and far between, if at all. Telephone communication to lawyers or families is difficult, infrequent and expensive. Accused are housed with all manner of inmates from a mix of backgrounds and temperaments – some of whom are violent, addicted to drugs or alcohol, or have mental health issues. Lawyers deposed that many clients have lost their employment, or have been attacked or threatened, while in remand waiting for bail hearings. Some accused consider pleading guilty just to get out of remand custody.

[24] Recently, in ***R. v. Myers***, 2019 SCC 18, 375 C.C.C. (3d) 293 (QL), at paras. 26 and 27, the Supreme Court of Canada had this to say about pre-trial detention, or in-custody remand prisoners:

> **26** Nonetheless, on any given day in Canada, nearly half of the individuals in provincial jails are accused persons in pre-trial custody ... It must be said that the conditions faced by such individuals are often dire. Overcrowding and lockdowns are frequent features of this environment, as is limited access to recreation, health care and basic programming ... Moreover, as is the case elsewhere in our criminal justice system, Indigenous individuals are overrepresented in the remand population, accounting for approximately one quarter of all adult admissions ...
>
> **27** As this Court has recognized, the experience of pre-trial detention can have serious detrimental impacts on an accused person's ability to raise a defence ... It also comes at a significant cost in terms of their loss of liberty, the impact on their mental and physical well-being and on their families, and the loss of their livelihoods ... The high cost of pre-trial detention was recognized at the time the *Bail Reform Act* was before Parliament: *House of Commons Debates*, at p. 3115. The issue remains just as relevant today.
>
> [citations omitted]

These comments apply equally to the situation in northern Manitoba.

[25] With this backdrop, I will continue to explain the system to the extent necessary by reference to Ms. Balfour's and Mr. Young's experiences.

III. MS. BALFOUR'S ARREST AND BAIL

[26] At the time of her arrests, Ms. Balfour was a 25-year-old single mother of four children, aged five to nine years old. She was born and lived in Norway House, a remote but reasonably accessible settlement about 800 kilometres (by road) north of Winnipeg and about 300 kilometres from Thompson. She had no criminal record.

[27] On September 26, 2017, Ms. Balfour was arrested for assault charges. She was released by the RCMP on the same day by an undertaking to an officer-in-charge and a promise to appear; a minor form of bail.

[28] On November 1, 2017, she was again arrested and charged with assault related charges, and breach of her earlier undertaking. A video conference was held with a JJP from Winnipeg. Ms. Balfour indicated she had spoken to a Legal Aid lawyer. The RCMP, having spoken to Crown counsel, was opposed to her release. When offered the option to have a lawyer assist with a bail application she agreed, and was remanded to Thursday, November 2 in Thompson Provincial Court. She was held in the RCMP detachment overnight and then taken by Sheriffs for the multi-hour drive to Thompson, arriving just around 4:30 p.m.

[29] Ms. Balfour appeared in court at 4:56 p.m. Duty counsel confirmed that Ms. Balfour had not yet spoken to Legal Aid counsel in the cells. The judge replied "... you [duty counsel] need a chance to speak to her and we'll have her by video

on Monday, does that make sense [duty counsel]?" [i] He agreed. Discussion followed about her other charges. As a result, duty counsel then suggested a remand to the custody coordination docket on November 24. The judge agreed and revoked her previous bail. Court closed at 5:01 p.m.

[30] To be clear, Ms. Balfour had not spoken to the lawyer who spoke for her; nor was she asked by the judge whether she understood the process or whether she agreed to be remanded in custody for 22 days. She was wholly unfamiliar with the court process. She barely said four words in total. She was relegated to a bystander.

[31] For context, stepping back a few moments, earlier the judge said "we're closing down at 5:00". [ii] At that point, there were four or five people waiting to appear in court. Most were adjourned to Monday, November 6, some without appearing in court at all. No bail or other notable issues were heard for any of these people.

[32] After court, Ms. Balfour was held overnight in the RCMP detachment. The next morning she was driven to The Pas Correctional Centre. There she was given medical attention, the first time since her arrest. On November 7, she was moved to the Brandon Correctional Centre. And then on November 8, to the Women's Correctional Centre near Winnipeg. I emphasize, this type of movement of remand prisoners is not unusual.

[33] Fifteen days after her appearance in Thompson, on November 17, she first spoke to a lawyer. He had been assigned to represent her by Legal Aid, as he was

one of two duty counsel routinely appointed to Norway House cases, where her charges were from.

[34] Consistent with the policy, Ms. Balfour did not appear on the custody coordination docket on November 24. Her counsel arranged to adjourn her matter to December 7. She knew nothing about it.

[35] On December 7, the court again ran out of time. The judge summed up how Ms. Balfour's matter was dealt with:

> All right so we're waiving the appearance for Leslie Balfour. I've made a note that we've timed out, that it was on for bail; December the 11th Thompson video for bail application. [iii]

This was an instance where her counsel initiated the remand; however, it was acquiescence to the inevitable custom in Thompson Provincial Court.

[36] Virtually the rest of the docket and accused were dealt with similarly. Two people asked that their bail applications be heard, it was 4:46 p.m. Neither were heard. The judge remarked about one accused:

> ... in a perfect world he'd have his bail hearing but we've run out of time and I have a directive from, from the Chief Judge not to be sitting past five o'clock in Thompson so that's the problem we're running into. [iv]

Later, the judge repeated he was "given strict instructions" not to sit past 5:00, and that he had gotten in trouble for doing so before. [v] Ultimately to another accused, who expected his matter to be disposed of, and to be released based on the Crown's agreement, the judge said:

> ... And a consent release I'm told so that you're supposed to be getting out. So I'd like to deal with it today but I've just run out of time unfortunately. [vi]

Instead of being released, the person was remanded in custody another four days until the next custody court date. Back to Ms. Balfour.

[37] On December 11, the judge - not the same one as before - apologized, mentioned the strict timeframes she was under, the volume of people being dealt with, and that they were just shuffling people around to no advantage as accused were still being timed out. Ms. Balfour appeared by video after the judge already waived and adjourned many people because they timed out.

[38] The following exchange took place between Ms. Balfour's lawyer and the judge:

Defence:	Leslie Balfour we will not have time for this.
Court:	No.
Defence:	I, what day would be appropriate?
Court:	What, what is it for?
Defence:	She was looking on a, to attempt a bail.
Court:	Oh
Defence:	Contested, it's a contested bail application.
Court:	I think you just keep trying until you get lucky I guess, I don't know.
...	
Court:	I mean I can't tell you where the – – there's not magical days where there's - -
Defence:	It, it's a - -
Court:	- - going to be time for anything really. [vii]

Ms. Balfour's father was present to sign bail. She told counsel she would plead guilty if that meant she could get out. After counsel's prodding, Ms. Balfour's matter went over one day, to December 12.

[39] I pause again. Another person appeared who had served more time in custody than her sentence was agreed to be, by the Crown and defence lawyers. She was also timed out and remanded overnight in custody. [viii] According to unchallenged affidavit evidence of many experienced northern lawyers, this was not an isolated result. It may not have been common, but it was not unusual.

[40] On December 12, the Crown consented to Ms. Balfour's release on certain conditions, including that she live with her parents rather than in her own home in the same community. But, the Crown revoked its consent when it was clear the parents' home was next door to the complainant's home. Thus, she was remanded in custody, a week, to December 19, but this time at her counsel's suggestion. Ms. Balfour protested, "How come I can't just -- ... go home to my own house?" [ix] From the transcripts, it appears that there was a loose practice against releasing an accused to some communities where the allegations arose from, even if their home was there.

[41] Fortunately, Ms. Balfour's lawyer managed to have her matter brought forward to December 14. Unknown to her lawyer, and to Ms. Balfour, her matter was waived without her appearance to another date because the court was timing out again. When counsel did address her matter, he managed to have the remand reset for December 18, but ultimately to no avail - she was timed out again on December 18.

[42] Ms. Balfour then appeared on December 19 by video from Winnipeg. The Crown was now opposed to her release. It was the same judge from December

12, and bail was granted. Ms. Balfour was to live at her own home and have her father as surety. But this time, her father could not be in court because he had been to court too many times already, when the other bail attempts had been aborted.

[43] Counsel then addressed all the failed bail attempts, saying that they would be filing a ***Charter*** application. The judge said:

> ... I think it is a concern that people are timed out regularly and that there's not enough resources in this jurisdiction but it's not something I can address today. [x]

[44] Her father signed surety documents on December 20. Ms. Balfour was being held near Winnipeg. As I understand it in such situations, because the province took her to Winnipeg to detain her there, they absorb the cost to return her to where she was to live. But, there were no flights available from Winnipeg to Norway House on December 20. So Ms. Balfour stayed in the jail administration building overnight. She was able to get a flight to Norway House on December 21. However, that was not the end of her saga.

[45] There is a shortage of housing in Norway House. As Ms. Balfour was in custody since November 2, and her youngsters were staying with her parents, the Band had given her house to others. So, when she returned home somebody else was living in her home, and they refused to leave. Ms. Balfour, fearing she would be arrested if she did not live at that address (as her bail required), lived with those people until they left her house after Christmas.

[46] Things were better until May 7, 2018, when unwanted guests came over and left alcohol in her home. The next day the RCMP arrested her for breaching her bail condition to abstain from alcohol. The process repeated itself; again, she was held in custody at the RCMP detachment; the RCMP were opposed to her release, and; she consented to an in-custody remand for a lawyer to help with her bail. Again, she was taken to Thompson. There however, on May 10, the Crown consented to her release. But again, she had to wait several days to be released as her father had to attend and sign the surety once more.

[47] Just before trial in January 2019, the Crown stayed proceedings, her charges were dropped.

[48] All in, from her arrest on November 1 until her release on December 21, she spent approximately 51 days in jail, and another five or so in May 2018.

IV. MR. YOUNG'S ARREST AND BAIL

[49] Mr. Young was 28 years old when he was arrested on January 1, 2018 in Thompson. He was charged with aggravated assault for an incident from October 2017 at his home in Split Lake. He had continued living in Split Lake since then, except when he was away for work at Hydro camps. On January 2, after a call with a JJP, he agreed to a remand in custody to January 4 for counsel to help with his bail application.

[50] On January 4, counsel suggested a remand to the next custody docket, on January 8, because "we ran out of time". [xi] To be clear, again, I do not consider this to have been a consent remand by Mr. Young; it was inevitable because of

the system. It was near 5:20 p.m. Many other accused were also dealt with summarily, usually in their absence because it took too long to shuttle them into court.

[51] On January 8, his bail application was heard in Thompson Provincial Court. The Crown was opposed to his release. The judge wanted further information to confirm the victim's address and that Mr. Young still had a job available to him. Seemingly for efficiency, the judge seized herself of the bail application. It was slated to be remanded to January 18, but counsel persuaded the judge to remand it to January 10, to see if he could get the information and finish the application then.

[52] Unfortunately, on January 10 the judge was away sick. Mr. Young's matter was adjourned to January 18, the judge's next available date. While Mr. Young said, "ok" when called up, without his lawyer there, the remand was inevitable. I do not consider him to have consented to an eight-day remand in custody.

[53] On January 11, his counsel asked if the matter could be brought forward, as Mr. Young was about to lose his job. Predictably, the presiding judge refused because the initial judge seized herself of the application.

[54] On January 18, logistical issues arose with Mr. Young being in The Pas Correctional Centre. The seized judge then unseized herself, to let another judge do the bail hearing. Later that day, another judge became available. At that point, that judge wanted to run through the docket list quickly because they had "very little time left". [xii] About eight matters were then dealt with. Most were slated for

disposition, but all were put over to other dates, often without the accused actually appearing in court.

[55] Mr. Young's lawyer explained the situation to the presiding judge, requesting a bail hearing. "Well it's not happening today" the judge answered; essentially there was no time as it was after 5:00 p.m. After considerable back and forth, with counsel raising concerns about the right to bail and that Mr. Young would not consent to a remand, the matter was put over to Monday, January 22. The judge commented that:

> ... Mr. Young is entitled to have his bail within a reasonable time and it's getting to the point where we're stretched, getting stretched beyond that ... .[xiii]

[56] On January 22, common themes arose: there was a large docket to deal with; the court was running short of time, and; many people were remanded in custody, including one person who had never been in jail before, had been threatened in jail, and was likely to be released by consent.

[57] Mr. Young was near the end of the list. The judge told counsel the bail hearing would not happen that day, explaining, "I don't know what happened today, it's been such a, such a busy day." Counsel objected to the remand. The judge noted that Mr. Young had been "timed out" numerous times. He was remanded to the next day.[xiv]

[58] On January 23, Mr. Young's bail application eventually went ahead. The Crown was opposed to his release. Counsel indicated that Mr. Young did have employment, which he confirmed as of January 9, and also raised a jurisdictional

question because of all the delays. Ultimately, considering the allegations and Mr. Young's criminal record, and that the bail plan would have Mr. Young living in his home community for one week a month, where the offence took place, the judge denied bail.

[59] Of note, the judge candidly stated that since Mr. Young's arrest:

> ... there has been a reflection of a somewhat broken system in northern Manitoba where bail hearings are certainly not, and I think everybody would agree with this, being held in the most timely of fashions, particularly where we have a system where persons usually make their first and sometimes their second appearance in person in custody and often thereafter, in most cases thereafter they appear by video. In circumstances where we have video appearances from all over the province, from Winnipeg, from Brandon, from The Pas, from Milner [Lac Du Bonnet] and so on where often matters time out and we don't actually hear the bail matters by the end of any given business day. And I'm not going to go through all the dates here. Clearly the, the three-day rule and adjournments longer than that without the accused's consent have not strictly been followed. [xv]

And further:

> ... [counsel], I say that with all sincerity my earlier comments. This is something that, this is a big issue, quite frankly, and, and you've appropriately identified it for the court that there is a lot of this going on where we're timing out and we're doing adjournments well in excess of the three-day rule without the consent of an accused person, and so you have very correctly and importantly identified that issue for the court. I'm just of the view that I don't think I have jurisdiction to do more than rule on bail today. [xvi]

[60] On January 26, the judge recalled the matter to court. He made similar comments about time outs, but also placed responsibility on defence counsel for not having the employment information confirmed when the bail hearing first started on January 8, and not taking other steps to deal with Mr. Young which he

said would have allowed the court to prioritize his application and avoid many remands.

[61] A bail review was initiated months later in the Court of Queen's Bench. Mr. Young's detention in custody pending trial was affirmed. As noted, after trial, Mr. Young was found not guilty on the merits of the evidence.

[62] All in, Mr. Young spent 23 days in custody from arrest to his bail hearing.

V. OTHER FACTS: "*This is Crazy*", "*We can't Manage*"

[63] Moving beyond the specifics of these two accused, there are some ominous observations in other evidence respecting the northern bail system generally.

[64] Affidavit evidence makes it clear that there are many factors contributing to delayed hearings including transportation, Crown processes in providing case disclosure to counsel, appointment of counsel by Legal Aid, court policies, isolation of accused from home communities, and difficulties dealing with legal counsel or potential bail sureties because of distant remand locations. Notable as well is that a Crown attorney's stance on bail or disposition of a case was often not communicated to the next Crown attorney handling the case, and in some instances Crown counsel did not consider themselves bound by a previous Crown attorney's position on bail.

[65] Local Thompson lawyers summarized their experiences in a December 2018 affidavit. They gave evidence that:

> 31. ... individuals have been remanded despite the [C]rown position being no time going forward, only because the volume of individuals in custody need to be remanded because the court is adhering to being closed

> by the 4:00 – 5:00 pm deadline. Individuals have had their time in custody extended because of lack of resources.
>
> . . . . .
>
> 38. .... the phenomenon of matters not being reached in bail court is one that is long standing and has, generally, remained constant for some time. This is not a problem that existed only to the applicants in this matter.
>
> 39. These types of delays were the general rule, not the exception. From our own experience and from what we regularly observed in court, we do believe these factors caused a large number of accused individuals in custody significant delays in having their matters heard.
>
> [emphasis added]

The factors they were referring to at para. 39 of the affidavit include many I have mentioned, including transportation woes; the lack of a remand facility in Thompson despite the very high volumes of cases and in-custody accused; local court policies, including the custody coordination policy; and issues with the Crown's and Legal Aid's practices and processes.

[66] Further, a former Crown attorney deposed:

- she could not recall a single time where the court was able to substantially address every case on a bail court docket;
- because there were no holding cells in Thompson, for remand or sentenced prisoners, often accused whose matter was adjourned from Monday or Tuesday to Thursday would be driven the 400 kilometres to The Pas Correctional Centre to be held there in the interim; and
- many accused spent months on the court custody coordination docket waiting for Legal Aid lawyers to be appointed and contact them.

Critically, this Crown attorney deposed that she "witnessed thousands of accused be practically denied the right to reasonable bail due to [a] crippling lack of resources." [xvii]

[67] Transcripts of parts of the days Ms. Balfour or Mr. Young were slated for an appearance plainly demonstrate systemic problems with continual references to:

- the lack of time and the volume of matters to be dealt with;
- the difficulty in Sheriffs shuttling accused from out-of-town locations to Thompson, and between the RCMP detachment cells and the court;
- many accused being "timed out" and remanded in custody or their appearance waived;
- challenges for lawyers to effectively deal with clients jailed far away;
- relatives who drove long distances to sign for bail only to wait and then, at the end of the day, be told that the accused would be remanded in custody without the hearing; and
- accused for whom the Crown was not opposed to release (either for bail or disposition) being further remanded in custody because they were timed out. I have mentioned several examples already; there are more. Equally unsettling were occasions when defence counsel were asked to choose which client to deal with in court, and which to remand in custody.

[68] Lastly, I note the reflections of an exasperated local judge on February 8, 2018:

> Judge: Well we never had problem[s] like this where every day
>
> Defence: We're timing out.
>
> Judge: You know, you, you have, like, one like this every month but this is, this is this is crazy.
>
> Defence: Is there a change in protocol remanding people to custody now unnecessarily or is there --
>
> Judge: I think it's just volume.
>
> Defence: -- just not enough --
>
> Judge: It's just volume and we can't manage --
>
> Crown: A little bit.
>
> Judge: -- and we've got, we're short Crowns, we're short everything and it, it's not something that you can fix by, you know, making one small little change. It's a lot of things. [xviii]

VI. ANALYSIS

General Legal Principles

[69] As noted by Moldaver J. in ***R. v. Vassell***, 2016 SCC 26, [2016] 1 S.C.R. 625, an 11(b) ***Charter*** rights case, at para. 3:

> ... when a violation is raised, courts must be careful not to miss the forest for the trees ... .

[70] I will not quote or list the litany of comments from courts at all levels across this country, including the Supreme Court of Canada, about the principles of fundamental justice and Canadian values that breathe life into the ***Criminal Code*** bail provisions and related ***Charter*** rights. The comments are legion. They are consistent with the passage opening this decision. The concepts are not difficult.

[71] Only a few basic rules are at play in this situation. I will not go into much detail, but rather set out four overarching concepts only.

[72] First, timely bail hearings must be a high priority — they are a constitutional right. Waiver of the hearing or a related process must be clear and informed. In ***Myers***, at para. 25, the Chief Justice of Canada wrote:

> **25** Today, the right not to be denied reasonable bail without just cause, which is enshrined in s. 11(*e*) of the *Canadian Charter of Rights and Freedoms,* operates as a key organizing principle of Part XVI of the *Criminal Code: R. v. Pearson*, [1992] 3 S.C.R. 665, at p. 691. This right has also been affirmed repeatedly by this Court, most recently in *St-Cloud*, in which the Court held that "in Canadian law, the release of accused persons is the cardinal rule and detention, the exception" (para. 70 (emphasis added)), and in *Antic*, in which it stated that "'release is favoured at the earliest reasonable opportunity and ... on the least onerous grounds'".
>
> [some citations omitted, emphasis added]

Further, the Ontario Court of Appeal observed in ***R. v. Zarinchang***, 2010 ONCA 286, 99 O.R. (3d) 721 (QL), at para. 39 that:

> Unreasonably prolonged custody awaiting a bail hearing gives rise to a breach of s. 11(e) of the Charter ... .

There, a delay of 24 days to have a bail hearing was found to be a breach of s. 11(e), regardless that the bail was then denied. The same court also affirmed a delay of 12 days to be a breach of the accused's s. 11(e) rights in ***R. v. B.(S.)***, 2014 ONCA 527, 121 O.R. (3d) 145 (QL), at para. 17.

[73] Second, unless a police officer releases a person he has arrested, which he must do if sensible, the officer shall take that person before a justice to be dealt with according to law. That means taking the person before a justice (in person,

by video or teleconference) without unreasonable delay, and in any event within 24 hours if a justice is available, or as soon as possible if a justice is not available within the 24 hours (s. 503). I pause to caution that the next two points apply to all situations, except where the charges fall under s. 469 (such as notably, murder offences, including accessory after the fact or conspiracy to commit murder).

[74] Third, when a person is taken before a justice, one of two scenarios will unfold:

i. "Crown onus" situations - the most common - where the accused must be released without conditions unless the prosecutor shows cause why the accused should be detained in custody or why conditions should be imposed (ss. 515(1) – (5)).

   Vigilance is required so that a Crown onus situation is not misconstrued or misapplied. Notionally it is not the accused who must apply for bail, he is entitled to be released unless the Crown asks for his detention, or for increasingly stringent bail according to the ladder principle (see ***R. v. Antic***, 2017 SCC 27, [2017] 1 S.C.R. 509). Presumptively, an accused is to be released on the least onerous form of bail, unless the Crown shows otherwise; and

ii. "reverse onus" situations where an accused is required to show cause why their detention is not justified (ss. 515(6) – (9)); in other words, the accused must demonstrate conditions upon which he can meet the bail criteria set out in s. 515(10). Expressly, the accused must be given

a reasonable opportunity to show cause; this includes without undue delay.

[75] Critically, regardless of a Crown or reverse onus scenario, an accused can be remanded in custody, but for no more than three clear days unless the accused consents to a longer remand (s. 516(1)). Thus, the proceeding must be continued within the three clear days, or if the third day falls on a holiday (including Sunday but not Saturday, unless another holiday falls on that day) then the next day that is not a holiday. [xix]

[76] Fourth, it is a matter of common sense, and law, that the court must ensure that an accused understands s. 516(1) and its implications, and the section must be strictly adhered to. Although addressing different release/detention provisions of the ***Criminal Code***, at para. 41 in ***Myers***, the court made comments that are analogous here:

> **41** ... The reviewing judge's exercise of this supervisory authority must ultimately be guided by the overarching purpose of the provision, which is to prevent an accused person from languishing in pre-trial custody and to ensure a prompt trial by subjecting lengthy detentions to judicial oversight. As a result, adjournments must always be used in a manner that safeguards and is consistent with the right of the accused to a prompt and thorough review of his or her detention when the 90-day mark is reached. Reviewing judges must rely on good sense and experience in order to ensure that adjournments enhance rather than undermine the purpose of the s. 525 detention review.
>
> [emphasis added]

An in-custody remand cannot be routine or perfunctory, the remand must be for a good reason. Lack of court resources or time is not a good or valid reason (***R. v. Reilly***, 2019 ABCA 212, 88 Alta. L.R. (6th) 17 (QL)). And, such remands cannot be done consecutively with the effect of sidestepping the accused's right

to object on the one hand, or consent on the other, to longer delays. Notably, this concept also applies to remands for less than three clear days, where an accused need not consent.

[77] Having set out these basic precepts, this is a convenient place to deal with some miscellaneous issues and findings.

Miscellaneous Comments

[78] First, in coming to any conclusions, I am mindful of the Crown's caution that I not extrapolate forward what happened to these two accused, and others as reflected in the transcripts, in late 2017 and early 2018. In other words, in effect, I should treat the evidence as old news that may not be an accurate reflection of today's situation in the Thompson judicial area. I am wary of the merit of that position.

[79] The last affidavits were sworn at the end of December 2018, about five months before the hearing. That evidence makes it abundantly clear that all of the problems I noted were still at play then, almost a year after Ms. Balfour's and Mr. Young's experiences. So for example, there was no suggestion that the custody coordination or court closing policies have been amended. And, at the hearing in May 2019, counsel for the accused disagreed that the problems were resolved. Nevertheless, as always, scrutiny is warranted as to whether material changes have been implemented that have purged the problems.

[80] Second, there are elementary systemic problems in northern Manitoba for bail in the Thompson judicial area such that many accused were denied the basic

right to a proper and timely bail hearing. This even happened in some instances where the Crown was consenting to their release. All of this is clear from the transcripts, let alone various judges' comments and evidence of northern lawyers of their firsthand experiences.

[81] Not only was the bail system cumbersome, in many instances it collapsed. Critically, accused were timed out from having a bail application and were consistently remanded, with or without consent, for no proper reason other than a lack of resources. It is assembly line justice; the human element was marginalized as an accused, the person whose freedom is at stake and who is presumed innocent, was sidelined. Many factors haphazardly conspired against an accused receiving a meaningful and timely bail application. This was so pervasive, so insidious that even the standard bearers of the judicial system, judges, Crown counsel and defence counsel, frequently succumbed to the deficiencies instead of resolutely insisting upon the constitutionally protected safeguards implicit in an individual's s. 11(e) ***Charter*** rights.

[82] Third, in saying this, I acknowledge being professionally acquainted with many of the local players as I am frequently in Thompson Queen's Bench. They are good, engaged and concerned judges, lawyers and staff. Their work is draining, often harrowing, as not only do they work in Thompson, but they constantly circuit to remote courts working long days with high volumes of cases in makeshift settings. I am convinced they were doing their best within the resource limits that were imposed on them. Their frustration and good intentions

are clear, but they were overwhelmed. Globally, systemic issues were not being adequately addressed or managed by those with the power to make the meaningful, profound changes that were necessary. Devising stopgap measures to attempt to do more, with the resources available, is near futile.

Ms. Balfour's and Mr. Young's Situations

[83] Turning to Ms. Balfour, of concern specific to her s. 11(e) ***Charter*** right having been violated:

- I find she did not consent on November 2 to a 22-day remand until November 24. As the court was aware, she had not spoken to counsel and no effort was made to ensure she understood what was to happen or to seek her consent as required by law. She was dealt with as she was primarily because of the court closing and custody coordination policies, with other factors contributing such as no nearby remand facilities, the Legal Aid lawyer appointment process and a cumbersome Crown disclosure policy;
- she was timed out on both December 7 and then December 11. In effect, these were not consent remands or for an acceptable reason; she was compelled to remand to December 12 because of a lack of resources. The aggregate remands in this timeframe (December 7 – 12) were not within the three clear days' rule, despite one day (Sunday) being a holiday. To step back, I am assuming a valid consent by her

appointed lawyer for remand from November 24 to December 7, despite her not knowing about it; and

- on December 12, the bail hearing was ultimately aborted and she was remanded to December 19, but at her lawyer's suggestion. However, the lawyer then had it advanced to December 14, but it timed out then, as did the next date of December 18, so it went over to December 19. The time from December 14 until the bail was heard on December 19 was not within the three clear days' requirement. Again, it was forced by timing out.

[84] The Crown asserts her rights were not violated because her bail plan was not ready until December 12 and she requested delay to December 19. I disagree. The bail plan was not complicated and realistically could have been made much earlier but for the remand on November 2. If the entire matter arose in Winnipeg, it would have been dealt with within days, not seven weeks. For the reasons stated, aside from the November 24 – December 7 remand, I do not accept that Ms. Balfour, through counsel or otherwise, voluntarily remanded or waived her bail hearing to December 12 or 19.

[85] As to the May 2018 bail, I do not find a ***Charter*** breach. But, the whole event lays bare the systemic flaws and waste, especially in light of the Crown appropriately agreeing to her release once she got to Thompson. With proper consideration, and regard for the realities of the situation, she should have been released by a JJP at the first telephone appearance rather than be held for five

days. This highlights another area of concern. While I need not decide whether there was a ***Charter*** breach starting with the JJP telephone hearing, as urged by counsel, it is clear that the critical purpose of the JJP hearing – to meaningfully deal with release - was undermined because Crown and defence counsel were not more active participants.

[86] Nevertheless, all in, Ms. Balfour was timed out on November 2, December 7, 11, 14 and 18. She did not consent to the initial 22-day remand from November 2. Two other sets of sequential remands exceeded the s. 516(1) three clear days' rule; as she did not consent as required by law. These are clear breaches of the ***Criminal Code*** bail provisions. Regardless that it was a reverse onus situation, overall, I find that her s. 11(e) ***Charter*** right not to be denied reasonable bail without just cause was breached by these unjustifiable time outs and the resulting delay.

[87] As to Mr. Young, of concern specific to his s. 11(e) ***Charter*** right having been violated:

- on January 4 he was timed out and remanded to January 8, when his bail application started and was remanded to January 10 for more information, at which point the seized judge was sick. The next day another judge refused to hear it because the first judge seized herself. It was remanded to January 18 when, because of logistical issues, the judge unseized herself;

- Mr. Young then timed out on January 18 and also on the next date, January 22; and
- on January 23 the bail was heard and denied.

All in, Mr. Young timed out on January 4, 18 and 22.

[88] The Crown asserts that the judge seizing herself was reasonable and defence counsel did not act prudently in not withdrawing the application when offered. To be fair, after a point the judge refused to allow it to be withdrawn. Further, they say her illness was unfortunate but not to be considered as undue delay. Finally, they suggest that the last chunk of delay, January 18 - 23, was comparatively short and should not amount to a ***Charter*** violation.

[89] The difficulty here again is that Mr. Young was repeatedly timed out, and the overall delay was significant, from January 4 - 23. The bail should have been heard on January 4, or 18 or 22, or in between, but could not because of resource issues. And, the ultimate remand from January 18 - 23, when the bail was finally heard and completed, was a breach of s. 516(1). While not as egregious as Ms. Balfour's situation, nonetheless the delay here is unacceptable, particularly given the complicit institutional or systemic factors. I find Mr. Young's 11(e) ***Charter*** right was breached.

[90] These findings lead to a discussion of an appropriate remedy under s. 24(1) of the ***Charter***, which may generally include a stay of proceedings, a reduction of a sentence, or costs. At a minimum here, a robust statement of judicial condemnation is required, which I will address further in my conclusion. At this

point in this judgment, it is enough to simply and strongly find that the bail practices in play in northern Manitoba, related to the Thompson judicial area, should shock the conscience of any reasonable person.

[91] As noted, both applicants sought a stay of proceedings of their charges but that remedy is now moot. Thus, I will not address such a remedy in an in-depth way. As commented by the Ontario Court of Appeal in ***Zarinchang***, at para. 66, a stay of charges may be "... an appropriate price for society to pay in order to correct a serious systemic failure in the bail system ...". Such a far-reaching remedy may be available in an appropriate case similar to the ones here, such as happened in ***R. v. Jevons***, 2008 ONCJ 559, [2008] O.J. No. 4397.

[92] In 2014, the Ontario Court of Appeal dealt with the point in ***B.(S.)***, noting the Supreme Court of Canada's instruction on stays of proceedings in ***R. v. Babos***, 2014 SCC 16, [2014] 1 S.C.R. 309 (QL), for a s. 24(1) ***Charter*** remedy. The headnote of ***Babos*** provides a succinct summary of the test:

> ... A stay of proceedings for an abuse of process will only be warranted in the clearest of cases. Two types of state conduct may warrant a stay. The first is conduct that compromises the fairness of an accused's trial (the "main" category). The second is conduct that does not threaten trial fairness but risks undermining the integrity of the judicial process (the "residual" category). The test for determining whether a stay of proceedings is warranted is the same for both categories and consists of three requirements: (1) there must be prejudice to the accused's right to a fair trial or to the integrity of the justice system that will be manifested, perpetuated or aggravated through the conduct of the trial, or by its outcome, (2) there must be no alternative remedy capable of redressing the prejudice, and (3) where there is still uncertainty over whether a stay is warranted after steps 1 and 2, the court must balance the interests in favour of granting a stay against the interest that society has in having a final decision on the merits.
>
> When the residual category is invoked, the first stage of the test is met when it is established that the state has engaged in conduct that is

> offensive to societal notions of fair play and decency, and that proceeding with a trial in the face of that conduct would be harmful to the integrity of the justice system. At the second stage of the test, the focus is on whether an alternate remedy short of a stay of proceedings will adequately dissociate the justice system from the impugned state conduct going forward. Finally, the court must decide whether staying the proceedings or having a trial despite the impugned conduct better protects the integrity of the justice system. This inquiry necessarily demands balancing. The court must consider such things as the nature and seriousness of the impugned conduct, whether the conduct is isolated or reflects a systemic and ongoing problem, the circumstances of the accused, the charges he or she faces, and the interests of society in having the charges disposed of on the merits.

While ***Babos***, was not a s. 11(e) bail ***Charter*** violation case, ***B.(S.)*** was. There the court counselled, at para. 16 that "The remedy of a stay of proceedings is justified only in the clearest of cases, reflecting the fact that this is the most drastic of remedies available to a criminal court: ***Babos***, at para. 30 ... ". Here, I would have given serious consideration to a stay of proceedings, particularly for Ms. Balfour, if it was not moot.

[93] For these accused, that then leaves their request for costs. They have not asked for a specific amount but their lawyers have expended more than 100 hours of time each, and collectively incurred over $10,000 of out-of-pocket expenses. The Crown asserts that costs are inappropriate because there is no evidence of financial loss caused by the remand appearances, and these proceedings are not a valid basis for costs. Further, for Mr. Young they say he suffered no extreme hardship as his bail was denied anyway. For Ms. Balfour they say the delay was in part her fault, or her counsel agreed to in-custody remands from time to time. As should be obvious, I reject these propositions.

[94] Once more, I turn to ***Zarinchang***, at paras. 67 – 71 for general principals. In upholding a costs award, the court noted that costs in a criminal case are rarely imposed; they are reserved for marked and unacceptable departures from reasonable, expected standards (***R. v. 974649 Ontario Inc.***, 2001 SCC 81, [2001] 3 S.C.R. 575).

[95] Also, last month the Alberta Court of Appeal released ***Alberta v. Alberta (Legal Aid)***, 2019 ABCA 369, [2019] A.J. No. 1326. Of particular note for general principals of costs awards in criminal cases, are paras. 7, 11 and 13:

> **7** The general rule is that costs will not be ordered against the Crown absent serious misconduct on the part of the Crown other than in exceptional circumstances or "systemic failures so extraordinary as to be virtually unique in character": ... This is because the Crown is not an ordinary litigant, but conducts prosecutions not for its own benefit but for the public interest: ... .
>
> [citations omitted]
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> . . . . .
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> **11** In ***Garcia***, the Court said that before an award of costs may be made against the Crown, it is important to consider "both the public importance of the legal issue raised on the appeal and the significance of the outcome of the appeal to the individual respondent" (para 26). It said that costs may be awarded where "the public interest is high and the appeal has little or no significance to the particular respondent". Again, on the facts in ***Garcia***, costs against the Crown were not allowed.
>
> . . .
>
> **13** In ***Tiffin***, the Court, referencing ***Garcia*** at para 13, ***Foster*** at para 63, and ***Taylor*** at para 54, said there are two instances when costs may be awarded against the Crown: cases of misconduct by the Crown, and in other exceptional circumstances where "fairness requires that the individual litigant not carry the financial burden flowing from his or her involvement in the litigation" (paras 94-95). The court said such exceptional circumstances require more than "a case of general importance, or that a person has suffered losses for which he or she is not responsible". It is the court's inherent power to protect against abuse of

> process that underlies the exceptional circumstances. Again, no costs were allowed in this instance.

[96] In approving a costs award, at para. 71 in ***Zarinchang***, the court stated:

> **71** We would apply the same reasoning to the trial judge's award of costs of $3,600 for counsel's attendances in bail court caused by the failure of the system. We would not interfere with the exercise of the trial judge's discretion to award these costs. In this case, the systemic problem of delay was recognized in York Region for some time -- at least a year and no doubt for some time before the regional Crown Attorney found it necessary to appoint a committee to study the matter. The circumstances in which the respondent was placed were entirely predictable. The record demonstrates that many others were similarly affected. This is one of those rare cases where a costs award was appropriate.

R. v. Brown, 2009 ONCA 633, 247 C.C.C. (3d) 11, was also a case where a costs remedy was granted in a bail situation for violations of ss. 503 and 516(1) of the ***Code***, and hence breaches of ss. 7, 9 and 11(e) of the ***Charter***. One small, perhaps obvious point: the Crown concedes that the court running out of time, or systemic dysfunctionality, is its responsibility.

[97] As is no doubt clear, the violations of Ms. Balfour's and Mr. Young's ***Charter*** rights were directly related to long-standing and glaring systemic issues. The breaches were predictable; arguably they were in part institutionalized by court policy, albeit an unintended consequence. The issue of processing the potential release of an arrested person in the Thompson judicial area of northern Manitoba, from the local RCMP office through to the court, is a vital one dealing with a bail system that must be designed to ensure no person's liberty is improperly usurped. This is of special concern, as many of these communities are Indigenous and many of those citizens suffer the effects of colonization as so starkly set in ***Gladue*** and

Ipeelee. Overrepresentation of Indigenous people in jail, including in-custody remands, is an infamous stain on Canada's justice system. Aside from a sanction, there is a strong public interest component in Ms. Balfour's and Mr. Young's cases that necessitates that they, or their counsel, do not bear the whole burden of shining a floodlight on this situation. The public interest aspect has transcended Ms. Balfour's and Mr. Young's immediate interests. No other remedy than costs remains available.

[98] The junior counsel doggedly ran with the cases at significant personal expense of time and money. The senior counsel also devoted substantial unpaid time, coming from outside of Manitoba to assist the junior lawyer, in what he perceived to be a wrong that needed to be made right. And they advanced the claim reasonably, without unnecessary steps or legal wrangling.

[99] I set relatively low to moderate costs of $5,000 for each counsel for all preparation, briefs, and argument in Thompson. I also order full reimbursement of out-of-pocket expenses or disbursements. If that sum cannot be agreed between counsel, I will hear argument and set it.

[100] In the end, Ms. Balfour and Mr. Young will receive nothing for the breaches of their individual ***Charter*** rights, but their lawyers will be reimbursed their expenses and receive partial compensation for their efforts.

VII. CONCLUSION

[101] I find that Ms. Balfour's and Mr. Young's s. 11(e) ***Charter*** rights were violated. A stay of proceedings in respect of either is moot. An order of costs is

just. It is required because of the importance of the issue, as a matter of fairness, and to restore some integrity to the northern Manitoba justice system.

[102] Consistent with another caution from the Crown, I agree it is beyond the scope of this application, and my role, to make any specific declarations, orders or even recommendations aimed at fixing the systemic shortfalls and ensuring northern Manitobans in the Thompson judicial area enjoy the same protection of the law and constitutional rights as other Manitobans and Canadians. Having said that, no doubt if substantial changes are not made, if the problems persist, then at some point a stay of proceedings or significant damages, through a civil ***Charter*** lawsuit, will be the only effective remedies to motivate the powers that be to move appropriately on this issue.

[103] While I may not have jurisdiction to order the government to correct the problems, I would be remiss if I had not expressed my concerns in the strongest terms. I make two final observations; one for the short term, one for the long term.

[104] First, short term, all participants must examine their role and how their acquiescence has fed the problem. Renewed vigour, attention and empathy is required. It follows that the first JJP telephone appearance, timing out, the custody coordination policy, Crown disclosure and appointment of counsel processes must be addressed now, likely in part by an immediate injection of court resources until more fulsome solutions can be implemented.

[105] Second, respecting the long term, I am aware that other jurisdictions have faced similar problems. In ***Reilly***, the Alberta Court of Appeal overturned a stay of proceedings (because of the judge's analytical error) from an area of the province where systemic bail issues were rife, and where reforms had not taken hold. Nevertheless, at para. 52, the Court highlighted that:

> **52** As ***Myers*** reaffirms at para. 38, "Delays in routine bail and detention matters are a manifestation of the culture of complacency denounced by this Court in *Jordan*, and must be addressed". The time limits in the *Criminal Code* must be met on time, every time, for every detained person. The government must indeed design a system that is able to handle "any bail volume" at any time. Section 503(1) of the *Criminal Code* and s. 9 of the *Charter* do not say that they only apply "when funding permits", or that they are inapplicable during the implementation of new procedures. ...

[106] In all the circumstances here, it should be plain that consideration should be given to an independent, comprehensive review of the system, processes, technology, training and facilities affecting in-custody accused on remand, from arrest onward, in northern Manitoba particularly as it is connected to the Thompson judicial area and remote communities. Unless the system has radically reformed in the last months, it will remain a problem that will unjustly affect more people. Likely fresh eyes are prudent; definitely, a fresh commitment is urgently required.

Martin J.

Endnotes:

i Transcript, November 2, 2017, pg 8
ii Transcript, November 2, 2017, pg 1
iii Transcript, December 7, 2017, pg 3
iv Transcript, December 7, 2017, pg 9
v Transcript, December 7, 2017, pg 17
vi Transcript, December 7, 2017, pg 19
vii Transcript, December 11, 2017, pgs 45-46
viii Transcript, December 11, 2017, pg 47
ix Transcript, December 12, 2017, pg 13
x Transcript, December 19, 2017, pg 14
xi Transcript, January 4, 2018, pg 1
xii Transcript, January 18, 2018, pg 1
xiii Transcript, January 18, 2018, pg 19
xiv Transcript, January 22, 2018, pg 56
xv Transcript, January 23, 2018, pg 32
xvi Transcript, January 23, 2018, pg 38
xvii Affidavit, Jacqueline Halliburn, sworn December 17, 2018 para 40
xviii Transcript, February 8, 2018, pg 52

xix ***The Interpretation Act*** R.S., c. I-23, s. 1:

26. Where the time limited for the doing of a thing expires or falls on a holiday, the thing may be done on the day next following that is not a holiday.

27(1). Where there is a reference to a number of clear days or "at least" a number of days between two events, in calculating that number of days the days on which the events happen are excluded.

35(1). ***holiday*** means any of the following days, namely, Sunday; New Year's Day; Good Friday; Easter Monday; Christmas Day; the birthday or the day fixed by proclamation for the celebration of the birthday of the reigning Sovereign; Victoria Day; Canada Day; the first Monday in September, designated Labour Day; Remembrance Day; any day appointed by proclamation to be observed as a day of general prayer or mourning or day of public rejoicing or thanksgiving; and any of the following additional days, namely,

(a) in any province, any day appointed by proclamation of the lieutenant governor of the province to be observed as a public holiday or as a day of general prayer or mourning or day of public rejoicing or thanksgiving within the province, and any day that is a non-juridical day by virtue of an Act of the legislature of the province, and

(b) in any city, town, municipality or other organized district, any day appointed to be observed as a civic holiday by resolution of the council or other authority charged with the administration of the civic or municipal affairs of the city, town, municipality or district;