



Case in Brief: **R. v. Myers**

Judgment of March 28, 2019 | On appeal from the Supreme Court of British Columbia
Neutral citation: 2019 SCC 18

Judges have to make sure that people put in jail while they wait for trial really need to be there, the Supreme Court has ruled.

When someone is charged with a crime, they are presumed innocent until proven guilty in court. This is why after an arrest, an accused person is normally released on bail to wait for their trial. However, in special situations, a judge may decide to keep the person in jail after their arrest. This is called “remand” or “pre-trial detention.” A person can be put in pre-trial detention because it’s the only way to make sure they show up for court, to keep the public safe, or to protect public confidence in the justice system. Even if a person is eventually found guilty, the presumption of innocence means that pre-trial detention is supposed to be a last resort.

In Canada, many people are kept in jail while waiting for their trials. On any given day, about half of people in jail in Canada are waiting for their trial and have not been found guilty. Being in jail makes it harder for them to defend themselves. People kept in jail before trial may be more likely to plead guilty. Being in jail also affects their mental and physical well-being, family life, and jobs. A judge is supposed to look at the situation 90 days after the person was ordered to go to pre-trial detention.

Mr. Myers was arrested in January 2016 and charged with several crimes, including some firearms crimes. He had been found guilty of other crimes before, and was on probation when he was arrested. He stayed in jail to finish that previous sentence. But by October, the only reason he was in custody was because of his new charges from January. He asked for bail for the first time in November 2016. The bail judge didn’t think the conditions suggested by Mr. Myers’ lawyer were enough to protect the public, and said no. Mr. Myers was supposed to get a detention review after 90 days, but waited many months longer. The new judge said he could only release Mr. Myers if there was unreasonable delay or some change in his situation. Mr. Myers didn’t make any arguments in response, so he wasn’t released. But he appealed, saying the judge’s approach to the law was wrong. (Most cases get appealed to a court of appeal, but courts of appeal don’t have the power to look at bail review decisions. So Mr. Myers had to appeal directly to the Supreme Court of Canada.)

The problem was that courts across Canada didn’t agree how 90-day detention reviews worked. Some said a person could only be released if their case was taking too long (if there was an “unreasonable delay”). Others said someone could be released even if there wasn’t an unreasonable delay. Some people thought that anyone who didn’t have a bail hearing when they were first arrested didn’t have a right to a review. Others said everyone should get a review, no matter how they came to be in custody.

The Supreme Court unanimously said these detention reviews are automatic. The jail or the prosecutor must apply for a hearing 90 days after the last order putting (or keeping) the person in custody. The judge then has to schedule a review hearing as soon as possible. The only question the judge has to decide is whether keeping the person in jail is legally necessary to make sure they attend trial, to keep the public safe, or to protect public confidence in the justice system. Delay is just one thing a judge can look at. But delays don’t necessarily have to be “unreasonable.” What matters is the effect keeping the person in jail would have on them, now or in the future. For example, a judge should consider whether the person will spend longer in pre-trial detention than their sentence would be if they were found guilty. After hearing from both sides, the judge has to give the person a decision about why they have to stay in jail (or why they can leave, with or without conditions).

The Court said that judges have special obligations to make sure detention is justified and that trials are on track. Many accused people don’t have lawyers, and so judges have to take extra care to make sure things are fair. Judges can make orders to speed up trials, especially when people are held in pre-trial detention.

Breakdown of the Decision: *Unanimous*: Chief Justice Richard [Wagner](#) allowed the appeal, even though it was moot by the time the decision was made (Justices [Abella](#), [Moldaver](#), [Karakatsanis](#), [Gascon](#), [Côté](#), [Brown](#), [Rowe](#), and [Martin](#) agreed)

More information (case # 37869): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: [decision](#) and detention order (not available online) (Supreme Court of British Columbia)
