



THE INTERIM RELEASE HEARING (BAIL HEARING)

When an individual is arrested, he is generally quickly released by the police. If that is not the case, the individual will be brought before a judge who must determine whether or not to release him before his trial. It is important to remember that at this stage of the proceedings, as at every step of the judicial process, the accused is always presumed innocent. However, despite this presumption, there are situations in which an accused will be held in custody while awaiting his trial. There are three (3) reasons why a judge can order the interim detention of an accused and, barring an exception, it will be up to the prosecution to demonstrate to the judge that the detention is necessary for at least one of those reasons.

The first reason is that the detention is necessary in order to ensure the accused will appear in court throughout the entire proceedings. In practice, it is rather rare for an accused to be detained for this reason alone. It could happen, for example, if an accused, against whom charges have been brought, nevertheless decides to leave the country. If he is arrested upon his return, he will be brought before a judge who could order his interim detention.

Detention can also be ordered if it is necessary for the protection or safety of the public. Thus, a judge will order an accused to be held in custody where he believes that if the accused is released, he might commit a new crime or harm the administration of justice by, for example, intimidating potential witnesses. To apply this second reason for detaining an accused, the judge will assess the seriousness of the crime, the circumstances in which it was committed, the likelihood that the accused will be convicted, the relationship of the accused to the victim and the accused's profile. The judge must therefore consider the accused's occupation, lifestyle, criminal record, family environment and mental state as well as any other element useful to establish his profile. In practice, this is the most common reason used to detain an accused before his trial. For example, an accused with a criminal record will often be held for this reason.

Lastly, custody may be ordered if it is necessary in order not to undermine public confidence in the administration of justice. Essentially, this reason applies to individuals accused of the most serious crimes who, if convicted, are liable to serve a long prison sentence. Practically speaking, the judge must order the accused's detention if he believes a reasonable member of the public would be shocked by the accused's release. For example, this is often the reason used by the court to refuse the release of an individual accused of murder.

Text prepared by
M^e Matthieu Poliquin,
Lawyer at
the Victoriaville
legal aid office

Contact Us

Commission des
services juridiques
Communications
Department
2 Complexe Desjardins
East Tower
Suite 1404
P.O. Box 123
Succursale Desjardins
Montreal, Québec
H5B 1B3

Telephone: (514) 873-3562
Fax: (514) 873-7046

www.csj.qc.ca

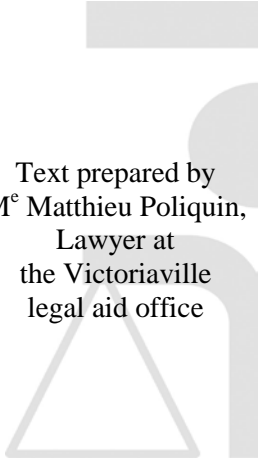
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(Continued)**

At the end of the interim release hearing, if the judge concludes that detention is necessary for at least one of the three (3) reasons, he must order that the accused be held in custody until the proceedings against him are finished. However, if he decides that detention is not justified by any of the three (3) reasons, he must release the accused.



Text prepared by
M^e Matthieu Poliquin,
Lawyer at
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legal aid office

Contact Us

Commission des
services juridiques
Communications
Department
2 Complexe Desjardins
East Tower
Suite 1404
P.O. Box 123
Succursale Desjardins
Montreal, Québec
H5B 1B3

Telephone: (514) 873-3562
Fax: (514) 873-7046

www.csj.qc.ca

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