

**CRIMINAL CODE**

**COURT OF APPEAL PRACTICE NOTE**

**CAPN No. 2006-02**

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**INFORMING AND PROCESSING OF SURETIES  
UPON JUDICIAL INTERIM RELEASE APPLICATIONS  
AND REVIEW OF JUDICIAL INTERIM RELEASE APPLICATIONS**

**Background and Purpose**

1. From time to time the Court has to hear, pursuant to the provisions of the Criminal Code of Canada, Judicial Interim Release (JIR) applications and applications to review applications.
2. The purpose of this note is to: outline the expectations the Court has, of counsel or applicants, if unrepresented by counsel, and, of those offering to become sureties to support applications; and to outline the respective roles and functions of: the Court, counsel for applicants, applicants if unrepresented by counsel, and Court Officers who are Justices of the Peace, in respect of sureties and the taking of recognizances on an application for judicial interim release.

### **Practice Note**

1. The Court will not initiate an inquiry as to the suitability of a prospective surety or sureties proposed in an application, since the Court has neither the mandate nor the investigative resources to do so.
2. It is the role of the Crown whose mandate it is to protect the public interest to initiate an inquiry (where the Crown determines it is required) as to the suitability of a surety or sureties.
3. In addition to providing the Court and Crown counsel with the name or names of any and all sureties proposed in an application, the applicant, if not represented by counsel, or counsel for the applicant shall ensure that each such surety attends at the Court and is available to be examined by counsel, before the Court Officer, as to that person's suitability as a surety. The Court Officer shall give a proposed surety a true copy of the handout attached as Appendix "A" to this Practice Note, and review the content of the same with the proposed surety.
4. At the appropriate stage in an application or the review of an application, the applicant, if unrepresented by counsel, or counsel for the applicant, shall cause each and all proposed sureties to be sworn before the Justice of the Peace using the normal witness oath or affirmation to provide information as to: the proposed surety's identity; the address and other contact information of the proposed surety; the proposed surety's understanding of his or her role and responsibilities as a surety; the means that surety has to honour his or her obligations as a surety, if the recognizance is breached; and the proposed surety's understanding of his or her potential liability under a Recognizance.
5. If the Crown challenges the suitability of a particular surety, and that challenge is disputed by the appellant, the matter will be brought before a judge who will hear such evidence and consider such matters as may be necessary to make a determination with respect to the suitability of a surety.
6. Evidence given by a surety shall be subject to cross-examination by the Crown and challenge by such further evidence as the Crown, with the Court's leave, may wish to adduce regarding the suitability of a prospective surety. Once such evidence has been adduced and argument, if any, made by

the parties regarding the suitability of a person as a surety, the Court will make a determination respecting the same.

7. Where Judicial Interim Release is ordered with a surety or sureties, the Court Officer, or Justice of the Peace, shall forthwith ensure completion of the documentation necessary to give effect to the Court's order.
8. The Court Officer shall provide the proposed surety with a copy of the affidavit to be completed for the proposed surety's execution in the form appended as Appendix "B" to this Practice Note, and shall review the content of the affidavit with the prospective surety.
9. Thereafter, the Court Officer will review with the proposed surety the content of the recognizance which the proposed surety will be asked to sign.
10. Should the proposed surety wish to do so, the proposed surety will be given the opportunity to seek legal counsel or other advice before executing the documentation in question.
11. After the proposed surety has had the opportunity to review the affidavit and recognizance, and take counsel if he or she wishes to do so, and only after the proposed surety has indicated a willingness to execute both documents, will the Court Officer take the proposed surety's affidavit and then permit the proposed surety to sign the recognizance.
12. If the proposed surety does not wish to sign the affidavit and the recognizance, or wishes to seek further legal or other advice before signing the same, the Court Officer shall report that information immediately to the judge who presided over the matter.

AUTHORIZED BY:

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## **Appendix "A"**

### **HANDOUT FOR ALL SURETIES ON RECOGNIZANCES**

#### **What it means to be a Surety: What You Need to Know**

##### **Acting as a Surety is a Serious Matter**

A surety is someone who agrees to take responsibility for ensuring that a person accused of a crime complies with the conditions of his/her release. Those terms and conditions are set out in a court order known as a Recognizance. Being a surety is a serious commitment. Before you accept this responsibility, there are a number of things you should consider:

- If the accused person fails to obey all of the terms and/or conditions of the court order, you could lose the money you have pledged.
- Before signing a recognizance and any associated affidavit you may wish to obtain independent legal advice.
- You should not agree to be a surety if you do not have confidence in the accused person to honour the legal commitments he or she made in his or her recognizance or if you do not believe that you can supervise the accused person in the community.
- You should be aware that your responsibility as a surety continues until the case is completely over. In some cases, this may take a long time.
- You should know and understand that accepting a fee, or being paid now or later, in return for acting as a surety is a criminal offence.

##### **Responsibilities of a Surety**

As a surety you are responsible for:

- Making sure the accused person comes to court on time and on the right dates.

- Making sure you are aware of all conditions of the recognizance (bail order).
- Making sure that the accused person obeys all conditions of the recognizance.
- Reporting to the police or a crown prosecutor any failure of the accused person to obey any condition of the recognizance.

You should be aware of all of the conditions in a recognizance. Be sure you understand them. Ask if you don't understand what something means before signing it and consider whether you truly understand its nature or need independent legal advice before signing any document.

Once you are accepted as a surety, you must sign an affidavit attesting to your net worth (i.e, your means to honour your obligation to pay under the recognizance if you are called upon to do so), and a recognizance. If an accused person that you have signed for fails to obey the court order, you may have to pay the specified amount of money pledged as a surety.

You should be aware that it is a criminal offence to sign a false affidavit.

### **Ending Your Obligations as a Surety**

- Should you decide that you are no longer willing, or able, to supervise the accused person, you may attend at the court that issued the recognizance and apply in writing to the court to be relieved of your duties. The Court will immediately schedule the matter to be heard before a judge. The Court will then order any accused person concerned to be committed to custody and an order of Committal will be issued. Unless a judge otherwise orders, only when the accused is actually rendered into custody will you as a surety be relieved of your obligation to the Crown under the Recognizance.

### **Failure to Obey a Court Order**

- If the person released on a recognizance that you have signed is found guilty of breaching the terms of that recognizance, while you are acting as a surety,

the Crown may ask the Court to make you pay the money you pledged as a surety. A hearing may be scheduled in the Supreme Court. You and the accused person will be given at least 10 days notice of the date and place of the hearing.

- The hearing will give you an opportunity to explain why you should not lose your money.
- The judge may order that you pay all, part, or none of your money.

Appendix "B"

In the Court of Appeal

*In the Matter of the Release on Recognizance of*

\_\_\_\_\_  
I, \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_ make oath  
(or affirm) and say:

1. That I am a proposed Surety on behalf of \_\_\_\_\_, in the within  
Recognizance named; and that I make oath (or affirm) and say that I am worth  
property to the amount of \_\_\_\_\_ dollars, over and above all encumbrances, and  
over and above what will pay my debts, and every other sum for which I am now  
bail, or which I am liable as surety or endorser or otherwise.

2. That I have read the Handout for All Sureties on Recognizances attached as  
Appendix "A" to this Affidavit and understand the same. [Alternately where the  
surety cannot read substitute the following wording: That I have been read the  
Handout for All Sureties on Recognizances attached as Appendix "A" to this  
Affidavit and understand the same.]

3. That I understand it is a criminal offence to make a false statement under oath  
or affirmation.

The above named \_\_\_\_\_ was )  
SWORN (or AFFIRMED) at )  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, )  
before me. )

\_\_\_\_\_  
JUSTICE OF THE PEACE