

Sureties Part 1

As you know, the French term for “recognizance” is “engagement”. You are probably asking yourself – why use engagement when recognizance itself is already a perfectly good legal French term? Sadly that is a question that only you and I are asking ourselves. More people are likely interested in knowing how a surety can help get you out of jail at a bail hearing.

You know already that a recognizance is a formal recognition that you owe the Queen some money, which debt she will not try to collect unless there is a breach of the conditions of the recognizance. If you are the accused and you breach your conditions, the Queen is going to collect from you. If you are a surety and the accused breaches his/her conditions, the Queen is also going to be asking you for the money you promised her.

Effectively by virtue of the debt owed to the Queen, a surety becomes a very invested babysitter with specific responsibilities which remain in place until the charges to which the recognizance relates are dealt with, i.e. the accused is acquitted or convicted and sentenced.

A surety must do two things 1) make sure that the accused shows up for Court and 2) make sure that the accused observes all of the other conditions in the recognizance.

It is impossible to guarantee perfectly supervision another human being 24/7 without handcuffs or a cell and that is not what is required.

If, however, the surety fails to take appropriate steps to make sure that the accused is doing what the recognizance requires him to do, the Queen is going to take steps to collect her debt at an estreatment hearing. At an estreatment hearing, if you cannot convince the Court that you were doing enough to supervise the accused, Elizabeth is going to get part or all of the money you promised her.

One way to keep Her Majesty out of your pockets is to call the police as soon as there is even a whisper of a suggestion that the accused might breach release conditions.

So to answer our introductory question, a surety can help you get out of jail, because a surety gives the Court a special babysitter who is going to closely supervise the accused making sure that s/he behaves. In addition, since normally there is a relationship of

some sort between the accused and a surety, another factor guaranteeing the good behavior of the accused is that the accused probably does not want Elizabeth to get the surety's money.

What is required of a surety varies from one surety relationship to another; some examples will illustrate the flexible nature of the responsibility.

It is relatively easy to satisfy the obligation to make sure that the accused shows up in court: a 'phone call or check in of some sort on Court days to make sure that the accused is on his way to Court and knows what time Court starts with a follow up to make sure you know what happened in Court is probably sufficient. In addition, you should check with the lawyer who was assisting the accused so that you know that the information you were given about the next court date is correct.

However, if the accused is going to Court to be sentenced and you know that the accused is worried about going to jail (and so might not show up), a phone call is probably not going to cut it. Some sureties like to make certain that there is no slip twixt the cup and the lip and always escort the accused to Court. If you want to make sure Liz doesn't end up with part of your paycheque, this is the failsafe procedure.

Supervising compliance with other conditions can be more difficult, but common sense will assist. For example, if there is a curfew condition, you do not have to tuck the accused into bed, but you do have to make sure that s/he is inside at the start of the curfew period until the end of the curfew. If you do not live with the accused a phone call at the start of the curfew is probably sufficient if you combine that with regular random curfew checks to make sure that s/he is not simply leaving after you call.

If you are uncertain about what level of supervision is going to be adequate, a great source of information is the lawyer for the accused. That lawyer is either going to give you advice about how to protect your hard-earned cash or put you in touch with someone who can. Although every lawyer wants to get a client released, there is no point in putting that client into unsupervised situation that will simply result in more charges.

What do you tell a kid who says "Mom, I don't want to be your surety anymore."? I'll tell you next time.

Sureties Part 2

“But mom, I don’t want to be a surety anymore.” are words that must strain the patience of every parent, particularly if your child agreed to bail you out and has now changed her mind. Sadly, children are often resistant to things about which parents know best and, generally, you need to take charge in these situations. For example, when you are concerned about maintaining a relationship between your child and deceased relatives and you get the standard whine “Mommy I don’t want to see grandpa” you respond, as any good parent would, “Shut up kid and keep digging.”

However, unlike the child ordered to exhume grandpa, a surety has the right to decide at any time that s/he doesn’t want to babysit anymore, which is one of the reasons that you cannot afford to get into a “mommy knows best” debate when you have been bailed out by one of your offspring.

When I explain the bail process to a prospective surety, I find myself a bit conflicted – I want to get my client out of jail, but if the surety doesn’t have the whole picture, the surety may simply back out down the road and my client will end up back in jail anyway. So I advise my client that I am going to share the details of what has landed her in custody with the Surety as well as her criminal record. I also tell my client what the obligations and rights of the surety are and explain that she has to do exactly what her surety tells her to.

Then with a view to ensuring that the Surety knows exactly what the job is all about, I give the Surety details of the charges before the court and review the criminal record of the accused so that the Surety is not going to get a nasty surprise (and cold feed) at some point in the future.

I always tell Sureties that they have to comfortable acting as such and that nothing stops them from imposing whatever conditions they feel are necessary to make the relationship work. “If you want your accused to inhale 6 times a minute instead of 7, you can make that request.” Regardless of the conditions imposed by the Court, a Surety has to be confident that the accused is going to behave.

There are limits of course to the conditions that can be imposed and you should be aware that it is illegal, for example, to extract a fee for acting as a surety. (I acknowledge, that wrecks the babysitter analogy; who babysits that for free?) So obviously some conditions

might enter the realm of criminal conduct, but I will leave that for sureties and accused to work out for themselves.

In the NWT before you can become a Surety, you must sign a document called Form A. In Form A the Surety acknowledges that s/he knows :1) what charges the accused is facing, 2) that s/he is responsible for the accused until the charges are resolved, 3) the responsibilities of a surety 4) what happens if the accused breaches the release terms, and 5) how to stop being a surety. I have my own form which includes a reference to the criminal record of the accused and the proposed release plan that I use to confirm that I have discharged my obligations to the surety. Form A gets filed with the Court at the Show Cause Hearing to confirm for the presiding JP that the surety knows what s/he is getting into.

If you have decided that your mom is just not listening to you and you are at risk of having the Queen scoop your next pay cheque, you will want to take steps to “render” the accused. It is foolish, but not unheard of for an accused to refuse to cooperate in this exercise so you need a plan A and a plan B.

Plan A is to attend the RCMP detachment with the accused and advise the police that you no longer wish to be a Surety. You can also advise the presiding judge at a Court appearance that this is so. The RCMP will then arrest the accused who must then find another surety. Plan B is to attend before a JP or judge and advise that you do not wish to be a Surety at which point the recognizance will be cancelled and a warrant issued for the arrest of the accused.

I say it is foolish to refuse to cooperate because substitution of one surety for another is usually not a big deal but future release can be problematic if the accused had to be arrested on a warrant. If things break down, it is best for the accused to attend with her Surety, because it demonstrates an attitude that will facilitate release down the road.

Next: You didn't get released – now what?