



Preventive Detention

The judge refused to release you after you appeared in court while being held in custody for an offence and you wonder whether the time you spent in custody was properly credited as part of your sentence? Perhaps you think you were entitled to a “2 for 1” that wasn’t properly credited? There seems to be much confusion among accused persons who go through all or part of the court process while being detained, and rightly so, because there have been a lot of changes in recent years. Here is where things currently stand.

Judges have always taken into account the time spent in custody before sentencing, granting a credit of two, even exceptionally three, days for each day an accused spent behind bars before being found guilty. However, in February 2010, section 719 of the Criminal Code was amended to limit the credit to one day for each day of detention, barring circumstances justifying a credit of one and a half days for each day of detention. Furthermore, those held in custody because of a prior criminal record or because they committed a new crime while they had a case pending in court could no longer benefit from the enhanced credit.

In 2014, the Supreme Court clearly established the circumstances justifying the enhanced credit of one and a half days, circumstances that apply to virtually every accused.¹ Indeed, the Supreme Court confirmed that the enhanced credit gives proper consideration to the impact of preventive detention on the parole process as well as the harsher conditions that exist while an accused is awaiting sentencing.

In 2016, the Supreme Court ruled that excluding the availability of the enhanced credit to those held in preventive detention primarily because of their criminal record violates the Canadian Charter of Rights and Freedoms.²

Lastly, since December 13, 2018, section 719 of the Criminal Code no longer excludes any accused person from the possibility of an enhanced credit for the time spent in detention prior to sentencing.

The nonsense circulating between prison walls can therefore now be set straight: since February 2010, there is no more “2 for 1” credit, only “1.5 for 1”. And the vast majority of accused persons benefit from the enhanced credit, even if, in theory, it is not automatic. It’s therefore worthwhile to check with your legal aid lawyer to understand the calculation that will apply to you!

Don’t hesitate to have your eligibility for legal aid evaluated by making an appointment at a legal aid office near you.

To find the contact information for your legal aid office, please visit our website at www.csj.qc.ca.

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* The information set out in this document is not a legal interpretation.

The masculine is used to designate persons solely in order to simplify the text.

¹ [R v. Summers, 2014 SCC 26](#)

² [R v. Safarzadeh-Markhali, 2016 SCC 14](#)