



David Asper Centre for Constitutional Rights UNIVERSITY OF TORONTO

The Honourable Sean Fraser

Minister of Justice and Attorney General of Canada

House of Commons

Ottawa, Ontario

Canada

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November 12, 2025

Dear Minister Fraser,

Re: Bill C-14, Bail and Sentencing Reform Act

I am the Executive Director of the David Asper Centre for Constitutional Rights at the Henry N.R. Jackman Faculty of Law, University of Toronto. I write to provide the Centre's position respecting Bill C-14 from a constitutional law perspective.

As an institution dedicated to constitutional justice and human rights for vulnerable individuals and groups, the Asper Centre opposes both Bill C-14 and the broader vision of so-called bail and sentencing reform it is intended to reflect.

Bail has become a high-profile and oft-discussed issue in recent years. We are deeply concerned that it has done so by trading on unjustified fears and a selective reporting of facts and incidents. The result has been a public conversation unmoored from the reality of Canada's bail system, including the alarming rates at which individuals accused of crimes in Canada are subject to detention prior to trial, and how and why our *Charter* provides persons charged with an offence the right not to be denied reasonable bail without just cause.

A casual observer may be aware that there have been a handful of recent incidents where an accused has committed a crime while out on bail. They are very unlikely to be aware that Canada's jails are overflowing with individuals accused of a crime but not yet tried (i.e., the legally innocent) – an average of over 19,000 accused in 2023/2024 – and that roughly half of our combined jail and prison population is there because they are being detained awaiting trial. While the former incidents deserve attention, they cannot justify and should not overshadow the reality that individuals who are charged with a crime but who are to be presumed innocent are already subject to startling levels of incarceration in Canada.

Nor should these individual incidents overshadow what the empirical evidence tells us: pretrial detention of the criminally accused does not prevent crime, in the aggregate.¹ This is partly because we are not very good at predicting who is likely to commit a criminal offence if released prior to trial.² It is also partly because detaining individuals while they await trial *increases* the likelihood that the individual will commit offences after the charges are resolved and any sentence is completed. The reasons for this latter point are easy enough to understand. Individuals detained for trial often face job losses or other adverse labour outcomes because of their detention.³ Individuals detained awaiting trial are also often exposed to harsh conditions and violence while they are detained, increasing their own propensity for crime.⁴ The result is that increased pre-trial detention is likely to make our communities less safe over the long run, counter-intuitive as that may sound at first blush.

Yet, instead of answering and responding to the public's misplaced fears and assumptions about our flawed bail system, the government's "tough-on-crime" legislative package adopts them. Bill C-14 would attempt to make it harder for individuals to be granted release before trial in myriad ways. This includes adding to the cases wherein the accused bears the burden of showing why their detention is not justified, in exception to the normal rule that government must make the case for detention ("reverse-onus" provisions). The bill also contains various "tough-on-crime" sentencing measures, such as mandating consecutive sentencing for certain offences, the cumulative result of which is a more severe approach to both bail and sentencing.

By failing to address the constitutional deficits plaguing the bail system, while accepting and even furthering the doubtful premise that too many individuals are being released on bail in Canada, Bill C-14 is likely to do far more harm than good.

The necessary starting point for assessing our bail system is the *Charter* and the constitutional limits it places on government detentions. Most notably, the *Charter*, at s. 11(e), provides persons with a right not be denied reasonable bail without just cause. This guarantee requires both that any conditions placed on an individual's release be reasonable *and* that any departure from an individual's basic entitlement to being released on bail be for a "just cause". Thus, under the ladder principle, affirmed by the Supreme Court in *Antic* and enshrined in the *Criminal Code* (the "*Code*"), the default position is the unconditional release of the merely accused. The government is then entitled to make its case for conditions on release or outright pre-trial detention, with the onus on the government increasing with each increasing rung of the ladder (i.e., the onus increases as the severity of the deprivation of liberty increases, rung by rung).⁵ Reverse onus

¹ A. Doob & T. King, "Bail, Pretrial Detention, and Evidence: Research Summaries Compiled from *Criminological Highlights*" (Sep 2025) *Criminological Highlights* (Special Issue) at p. 3 – 5 (and citations therein).

² *Ibid* at 3 (and citations therein).

³ *Ibid* at 5 (and citations therein).

⁴ *Ibid* (and citations therein).

⁵ *R v Antic*, [2017 SCC 27](#) at paras 29 and 44.

provisions are only justifiable in “narrow” and adequately tailored circumstances, where there is a special case for departing from the normal rule, and only to the extent an accused adequately retains the right to prove their detention is not justified.⁶

The principle underlying the ladder principle is that persons are presumed innocent of offences for which they are merely accused. The basic right to enjoy one’s personal freedoms unless or until one is convicted in a fair trial is a defining feature of constitutionalism and the rule of law, in Canada and in every constitutional democracy. In the words of the Supreme Court, this protection, which safeguards the liberty rights of the merely accused, “is an essential element of an enlightened criminal justice system.”⁷ Were it otherwise, even the most slight, politicized, or false accusations could result in government detentions, without trial.

Nevertheless, our bail system and the ladder principle that governs it also gives substantial weight to the countervailing problem of public safety. The *Code* provides that the mere accused can be detained to ensure court attendance or as necessary for public safety, if the accused presents a “substantial likelihood” of re-offence.⁸ The Supreme Court of Canada has also expressly affirmed the *Code*’s authorization to detain the mere accused if the detention is necessary to maintain confidence in the administration of justice.⁹ Under this *Code* provision, pre-trial detention may be ordered based upon the apparent strength of the prosecution’s case, the gravity of the offence, the circumstances surrounding the commission of the offence, and the severity of the prison sentence if the accused is convicted.¹⁰ All of this is in addition to the several conditions that can, and in practice almost always are (often unjustifiably¹¹), imposed on individuals who are released on bail.

Despite public rhetoric and fears to the contrary, the evidence we have suggests that courts have not been reluctant to use these powers of pre-trial detention and that these powers are more than sufficient – when properly applied – to detain individuals who pose a *bona fide* threat to public safety. Indeed, and as stated, the evidence we have suggests that we have an alarming problem of over-incarcerating the criminally accused, via over-reliance upon the above and related provisions.

Statistics Canada, for instance, has reported a decades long increase in the number of individuals in pre-trial detention in our detention centres. In 2000/2001, Statistics Canada

⁶ *R v Pearson*, [1992 CanLII 52](#), [1992] 3 SCR 665 (SCC).

⁷ *R v Antic*, [2017 SCC 27](#) at para 1.

⁸ See *Criminal Code*, s. 515(10)(a)-(b).

⁹ *R v St-Cloud*, [2015 SCC 27](#); *Criminal Code*, s. 515(10)(c).

¹⁰ [Bill C-14](#) would add the number or gravity of any outstanding charges against an accused as circumstances a justice is to consider with respect to detention on administration of justice grounds. See s. 23(11).

¹¹ See especially, Berger, L., Myers N.M, and Deshman, A. (February 2024) *Still Failing: The Deepening Crisis of Bail and Pre-Trial Detention in Canada*. Canadian Civil Liberties Association and Education Trust. Final Report at 3.5 [[CCLA Final Report](#)]. While the CCLA has provided a valuable service with respect to its reporting on the actual practice of our bail courts, it also serves as a reminder that the government is not providing or apparently collecting the information necessary for any real, evidence-based approach to bail reform.

reported 7,401 individuals in pre-trial detention out of a total of 18,724 individuals in the jails of reporting provinces and territories (39.5%).¹² By 2005/2006, the figures stood at 11,040 and 20,794 (53.1%). In every year since, the figure has always constituted more than 50% of the relevant population at the provincial and territorial levels. In the last two reporting years, the trend has accelerated at an alarming rate: 16,194 of 22,319 (72.6%) and 19,335 of 25,350 (76.3%) in 2022/2023 and 2023/2024, respectively. If one includes the adult population in a federal facility, where individuals are held in pre-trial detention, 16,194 out of Canada's total reported adult prison population of 34,986 (46.3%) was an individual who had been accused, but not convicted, of a crime.¹³

These data demonstrate our bail system problem is different than the one envisioned by Bill C-14. They demonstrate that the presumption of innocence is more constitutional aspiration than reality in Canada. Thousands of individuals are being detained before any trial, and for periods of time that are lengthy enough to produce a system where approximately every second person in our jails or prisons is a person awaiting trial.

This problem goes well beyond the problem of excessive pre-trial detention. As the Supreme Court has recognized, our bail system disproportionately detains vulnerable and impoverished accused, including the Indigenous accused especially.¹⁴ Our bail system also detains legally innocent individuals in conditions that are *harsher* than the conditions imposed on convicted offenders in corrections facilities.¹⁵ Finally, individuals who are released are often subject to onerous conditions well in excess of the principles articulated in *Antic*. Among other things, this over-use of conditions on release is a contributing cause to pre-trial detention, because individuals are often later detained for the breach of bail conditions (e.g., failing to attend a court appearance or failing to make curfew), despite the lack of cause to detain the individual when the offence was first charged.¹⁶

If the government was serious about meaningful bail reform, the appropriate first step would be to collect and publish the information that is required to diagnosis and then address the problems at hand: How many accused are being released, and under what conditions? What do know about how often individuals released on bail re-offend, and how does that compare to rates of offence of the population at large?

¹² Statistics Canada. [Table 35-10-0154-01 Average counts of adults in provincial and territorial correctional programs](#).

¹³ Statistics Canada. [Table 35-10-0155-01 Average counts of offenders in federal programs, Canada and regions](#). The denominator reflects the actual total in-count figure for provincial and territorial facilities (22,319) and federal facilities (12,667) for 2022/2023. The actual in-count figures at the federal level include federal and provincial or territorial offenders in a federal facility and those temporarily detained in a federal facility. Given the reported increase of pre-trial detentions in 2023/2024, and trends in federal incarceration data, it is likely that the figure was materially higher than 46.3% in 2023/2024.

¹⁴ See, e.g., *R v Summers*, [2014 SCC 26](#) at paras 66 - 67.

¹⁵ See, e.g., *R v Summers*, [2014 SCC 26](#) at paras 2 and 49.

¹⁶ See [CCLA Final Report](#), *supra* note 7 at 3.5. For a discussion of these and related issues, and the actual practice of bail court and the use of conditions, see The David Asper Centre For Constitutional Rights, "Charter: A Course - A podcast about Canadian Constitutional Law & Litigation, S3E1: Bail and Section 11(e) of the Charter" (Sep 2023), <https://aspercentre.ca/charter-a-course/>.

Given that such questions remain largely answered, we are deeply concerned that the government has elected to pursue a fact-defying “tough-on-crime” approach that is reminiscent of the failed “tough-on-crime” approaches that defined government policy in the two decades previous. In this first go round, tough sounding mandatory minimum sentencing laws may have soothed the public mood, but they were frequently declared unconstitutional because of their failure to address the diversity of the accused persons who actually come before sentencing court judges, and because of the *Charter’s* prohibition against cruel and unusual punishment more generally.

While today’s primary target – the criminally accused but not convicted – may be different, the government’s approach is a similar affront to the *Charter* values underlying our constitutional system. As recognized by the Supreme Court in *Antic*, the *Charter* and the presumption of innocence mandates a bail system that places the onus on the government to justify any departures from the constitutional default that the merely accused should be released, without condition, pending trial. Real bail reform would begin to address why we are detaining the merely accused at alarming levels, both absolutely and in comparison to peer countries, why we have made no progress in mitigating or alleviating the disproportionate impact that our bail laws and practices are having on vulnerable and impoverished communities, and why we have not addressed the many other problems plaguing the current system, from the lack of necessary information gathering and reporting to the harsh conditions endured by individuals awaiting trial.

The Asper Centre opposes Bill C-14 and calls for it to be rescinded.

Yours truly,

A handwritten signature in dark ink, appearing to read "Cheryl Milne". The signature is fluid and cursive, with the first name "Cheryl" written in a larger, more prominent script than the last name "Milne".

Cheryl Milne
Executive Director