



## At a Glance: The Human and Financial Cost of Pre-trial Detention

### The Human Cost

- Individuals who are incarcerated in pre-trial custody are generally given no warning of their detention. Unexpectedly removed from their daily lives for days, weeks or months, they may face lost income and employment, housing, emergency child care, missed medication, and any number of other negative repercussions.
- Pre-trial detention is generally recognized as one of Canada's harshest forms of incarceration. The Supreme Court of Canada has stated that "an accused placed in remand is often subjected to the worst aspects of our correctional system by being detained in dilapidated, overcrowded cells without access to recreational or educational programs."<sup>1</sup> Countless lower court rulings have also recognized the overcrowded, harsh conditions of pre-trial detention facilities across the country. As stated by one Ontario court last year:

... generally, detention centres do not provide educational, retraining or rehabilitation programming for those in custody awaiting trial; and due to overcrowding, inmate turnover, labour disputes and other factors, the custodial conditions for remand prisoners can be unusually onerous.

...

Living in very overcrowded conditions, with the threat of violence among the inmates, being regularly triple bunked in a windowless cell that is 6' by 9' including a toilet and not even being able to go outside for much of the time, let alone exercise is harsh for anyone. . . . The conditions in these institutions are disturbing.<sup>2</sup>

- Academic studies of Canadian bail courts and pre-trial detention have found that:
  - There is pressure on people to plead guilty to their charge or to agree to any bail condition requested by the Crown in order to get out of detention.<sup>3</sup>
  - Conditions of release are often intrusive, unrelated to the circumstances of the alleged offence, and may be being used for punitive purposes.<sup>4</sup>
  - Standard bail conditions can significantly impair basic constitutional and statutory rights, including mobility rights; the right to life, liberty and security of the person; the right to equality; the right to dignity; and certain social and economic rights protected by the Quebec *Charter*. These conditions have particularly dramatic impacts on marginalized individuals, who may find themselves legally prohibited from accessing the basic welfare services they need in order to survive as a result of overlapping, stringent restrictions on location, contact and movement.<sup>5</sup>
  - The bail decision affects the likelihood of conviction and the type of sentence imposed: accused who are detained are more likely to receive a jail sentence, and the time they are sentenced to is likely to be longer.<sup>6</sup> Accused who are denied bail also feel considerable pressure to plead guilty to the charges.<sup>7</sup>

### The Financial Cost

- It costs about \$170 per day to keep someone in pre-trial custody;<sup>8</sup> supervising a person in the community costs around \$5 per day.<sup>9</sup>
- Canadians are currently spending \$1.9 billion each year on provincial and territorial corrections. The vast majority of that amount – about 80% - is spent on keeping people in jail.<sup>10</sup>
- Specifically, in 2010/2011, Canadian provinces and territories spent:<sup>11</sup>

Jurisdiction	Total Expenses on Adult Correctional Services	Total Custody Expenses
Newfoundland and Labrador	\$33,345,000	\$28,090,000
Prince Edward Island	\$8,699,000	\$7,076,000
Nova Scotia	\$43,623,000	\$30,642,000
New Brunswick	\$30,648,000	\$25,204,000
Quebec	\$383,371,000	\$306,406,000
Ontario	\$748,480,000	\$584,074,000
Manitoba	\$141,121,000	\$119,366,000
Saskatchewan	\$103,540,000	\$86,278,000
Alberta	\$163,271,000	\$127,198,000
British Columbia	\$229,357,000	\$171,655,000
Yukon	N/A	N/A
Northwest Territories	\$32,102,000	\$26,674,000
Nunavut	N/A	N/A
Federal	\$2,202,955,000	\$1,448,190,000

- These figures do not capture the additional costs of bail court services, transportation, duty counsel, crown counsel, judges, etc. which are necessary to process a person through the bail courts.
- In 2012, the Commission on the Reform of Ontario’s Public Services stated, “Ontario must address the trend of increasing custody remand and the additional costs associated with this trend if the province is to balance its budget by 2017-2018.”<sup>12</sup>

## Sources

<sup>1</sup> *R v Hall*, 2002 SCC 64 at para 11

<sup>2</sup> *R v Morant*, 2013 ONSC 1969 at paras 52, 55.

<sup>3</sup> Martin L Friedland, *Detention Before Trial: A Study of Criminal Cases Tried in the Toronto Magistrates’ Courts* (Toronto: University of Toronto Press, 1965).

<sup>4</sup> J Sprott & N Myers, “Set Up to Fail: The Unintended Consequences of Multiple Bail Conditions” (2011) 53:4 *Canadian Journal of Criminology and Criminal Justice* 404.

<sup>5</sup> M Sylvestre, D Bernier & C Bellot, “Zone Restrictions Orders in Canadian Courts and the Reproduction of Socio-Economic Inequality”, (2014) 4:4 *Onati Socio-Legal Series*, forthcoming; M Sylvestre *et al*, “Spatial Tactics in Criminal Courts: The Legal Geography of Conditions of Release” (forthcoming); Marie-Eve Sylvestre *et al*, “Liberté d’expression et de réunion pacifique et tactiques judiciaires de contrôle des espaces publics”, Conférence Enjeux émergents en droit public (22 May 2014).

<sup>6</sup> P Koza & A Doob, “The Relationship of Pre-trial Custody to the Outcome of a Trial” (1975) 17:4 *Criminal Law Quarterly* 391; M Dhani, “Conditional Bail Decision Making in the Magistrates’ Court” (2004) 43:1 *The Howard Journal* 27.

<sup>7</sup> G Kellough & S Wortley, “Remand for Plea. Bail Decisions and Plea Bargaining as Commensurate Decisions” (2002) 42:1 *British Journal of Criminology* 186.

<sup>8</sup> Mia Dauvergne, *Adult correctional statistics in Canada, 2010/2011*, (Ottawa: StatCan, 11 October 2012), online: Statistics Canada <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11715-eng.htm>.

<sup>9</sup> Commission on the Reform of Ontario’s Public Services, *Public Services for Ontarians: A Path to Sustainability and Excellence* (Toronto: Ontario Ministry of Finance, 2012), online: Ontario Ministry of Finance <http://www.fin.gov.on.ca/en/reformcommission/chapters/ch14.html>.

<sup>10</sup> Statistics Canada, *Table 5 Expenditures on Adult Correctional Services, by Jurisdiction, 2010/2011* (Ottawa: StatCan, 11 Oct 2012), online: Statistics Canada <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11715/tbl/tbl05-eng.htm>.

<sup>11</sup> Statistics Canada, *Table 5 Expenditures on Adult Correctional Services, by Jurisdiction, 2010/2011* (Ottawa: StatCan, 11 Oct 2012), online: Statistics Canada <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11715/tbl/tbl05-eng.htm>.

<sup>12</sup> Commission on the Reform of Ontario’s Public Services, *Public Services for Ontarians: A Path to Sustainability and Excellence* (Toronto: Ontario Ministry of Finance, 2012), online: Ontario Ministry of Finance <http://www.fin.gov.on.ca/en/reformcommission/chapters/ch14.html>.