



June 3, 2025

**SENT VIA EMAIL**

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Dear Minister Fraser, Minister Anandasangaree, and Secretary Sahota,

**Re: Bail Reform**

On behalf of the CCLA, I am writing to outline our recommendations on the substance and process of any future legislation affecting bail. The CCLA possesses significant expertise on the bail system. We regularly appear before the Supreme Court on major cases interpreting s. 11(e) of the *Charter*, produce [groundbreaking reports](#) about the bail system, and [testify before Parliament](#) on criminal justice legislation affecting bail.

**1. Any changes to the bail system should be grounded in evidence.**

Bill C-48 (2023) introduced more reverse onus provisions. The growth of these provisions, which must be limited to a “narrow set of circumstances” to be constitutional, continues to erode the default position that a person presumed innocent does not carry the burden of proving they should be released.<sup>1</sup> There is no data to suggest reverse onus provisions improve public safety. This was observed when the first reverse onus provisions were introduced in the 1970s,<sup>2</sup> and echoed by former Justice Ministers David Lametti and Arif Virani in the context of Bill C-48.<sup>3</sup>

**2. The federal government must lead a plan to collect data about the bail system.**

Comprehensive data about the bail system is necessary for evidence-based policymaking. While individual stories about alleged bail noncompliance are circulated relentlessly in the headlines by some, the thousands of individuals released on bail who do not allegedly reoffend are ignored. This has created the deeply misinformed perception that the bail system is lenient. The reality is

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<sup>1</sup> *R. v. Pearson*, [1992] 3 S.C.R. 665.

<sup>2</sup> Gary T. Trotter, “Pearson and Morales: Distilling the Right to Bail” (1993) 17 *Criminal Reports* (4th), at p. 150.

<sup>3</sup> Stephanie Taylor, “[Justice Minister says Liberal bail-reform bill work, but says he can’t say how](#),” *The Canadian Press*, September 27, 2023; Anna Mehler Paperny, “[Canada proposes new bail bill despite lack of supporting data, minister says](#),” *Reuters*, May 18, 2023.

the number of people denied bail is at historically high levels.<sup>4</sup> The Senate Committee on Legal and Constitutional Affairs, in their study of Bill C-48, emphasized the need for “the federal government to work in collaboration with the provinces and territories to establish an efficient and effective means of collecting and sharing data relevant to the bail system, in a timely way.”<sup>5</sup> Former Ministers of Justice Lametti and Virani made similar observations.<sup>6</sup> Without this data, it will be difficult to measure the impact of any reforms to the bail system.

### **3. The government should proactively consult civil society in relation to any bail legislation.**

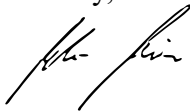
In the run-up to Bill C-48, major organizations with expertise in criminal justice and who serve racialized communities were not initially included in consultations by the Department of Justice or Minister of Justice. This limited the scope of information provided during legislative development, such as the negative impact that a proposed provision would have on Indigenous survivors of domestic abuse.<sup>7</sup>

### **4. Bail legislation should not be part of an omnibus, supply, or budget implementation bill.**

To ensure informed scrutiny and debate, legislation targeted at the bail system should be a standalone bill. And it is critical any legislation is studied by committee in the House, where individuals and organizations with diverse perspectives can provide their input as part of the democratic process. In a controversial move, Bill C-48 passed without House committee study.<sup>8</sup>

Enclosed is CCLA’s submission to the Senate Committee on Legal and Constitutional Affairs on Bill C-48, which provides further observations about the state of Canada’s bail system. I would be pleased to discuss this important file further with you and your staff.

Sincerely,



Shakir Rahim  
Director, Criminal Justice Program  
Canadian Civil Liberties Association

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<sup>4</sup> Canadian Civil Liberties Association, [Submission to the Senate Committee on Legal and Constitutional Affairs on Bill C-48](#), September 27, 2023, at p. 2. See also Nicole Myers, “[The crisis in Canada’s bail system is not one of laxity](#),” *The Globe & Mail*, July 27, 2023.

<sup>5</sup> Senate Standing Committee on Legal and Constitutional Affairs (44<sup>th</sup> Parliament, 1<sup>st</sup> Session), [Seventeenth Report: Bill C-48, An Act to amend the Criminal Code \(bail reform\)](#).

<sup>6</sup> See fn. 3.

<sup>7</sup> Fraser Needham, “[First Nations lawyer says new bail legislation unfairly targets Indigenous women](#),” *APTN News*, September 28, 2023.

<sup>8</sup> Sean Fine and Kristy Kirkup, “[Ottawa’s bail reform legislation lands in the Senate, but critics question quick House passage](#),” *The Globe & Mail*, September 20, 2023.



## **Submission to the Senate Committee on Legal and Constitutional Affairs on Bill C-48, *An Act to amend the Criminal Code (bail reform)***

### Table of Contents

Overview .....	1
The Canadian Civil Liberties Association .....	2
Bail is the safeguard of liberty for the innocent.....	2
Pre-trial detention is astronomical and rising.....	2
Indigenous and Black persons are overrepresented in pre-trial detention.....	3
Pre-trial detention conditions are horrific .....	3
Recommendation 1: Remove reverse onus provisions in Bill C-48.....	4
Reverse onus provisions lack empirical justification. ....	4
The <i>Criminal Code</i> already contains robust protections for public safety in bail decisions.....	5
Reverse onus provisions contribute to excess pre-trial detention, resulting in false guilty pleas.....	6
Recommendation 1(a): Remove the reverse onus provision for a prior IPV discharge...	7
The IPV discharge reverse onus is overbroad.....	7
The IPV discharge reverse onus violates s. 11(e) of the <i>Charter</i> .....	8
The IPV reverse onus could further criminalize Indigenous women because of dual charging.....	8
Recommendation 2: Require a statement in the record of proceedings of how a justice has considered s. 493.2 of the <i>Criminal Code</i> , pertaining to the circumstances of Aboriginal and vulnerable overrepresented accused. ....	9

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## Overview

Canada is at a moral crossroads. Our bail system is in crisis, but it is not the perceived crisis that dominates the headlines. As is often the case when the most vulnerable among us are at risk, it is a crisis in the shadows. A crisis of horrific conditions in pre-trial detention ignored, of the *Charter* right to reasonable bail eroded over decades, and a country poised to do more of the same. The Canadian Civil Liberties Association (“CCLA”) urges this committee and the Senate to exercise its function as a chamber of sober second thought on Bill C-48. Nowhere is this needed more than on the subject of bail.

Pre-trial detention in Canada is at record levels, with an increase of over 158% in the remand incarceration rate since 1986. The vast majority of individuals in provincial and territorial prisons – 71% – have not been convicted of the crime they are charged with. Judges and oversight bodies routinely describe harrowing conditions in provincial and territorial correctional facilities. Indigenous, Black, and other vulnerable groups are overrepresented in pre-trial detention.

In this context, introducing reverse onus provisions that will make bail more difficult to access is a deeply misinformed policy choice. It is also an unnecessary one. The *Criminal Code* already contains robust language to ensure public safety when making bail decisions. Incidents where individuals are accused of committing an offence while on bail warrant review. However, Bill C-48 does not represent an evidence-based or considered approach to improving the law or practice of bail.

The CCLA’s submission will focus on two proposed amendments to Bill C-48:

1. Remove new reverse onus provisions in Bill C-48.
  - a. Remove the reverse onus provision for someone with a prior discharge for intimate partner violence. This reverse onus is overbroad, violates s. 11(e) of the *Charter*, and will harm Indigenous women.
2. Require a statement in the record of proceedings of how a justice has considered s. 493.2 of the *Code*. Section 493.2 of the *Code* requires a justice “to consider the particular circumstances of Aboriginal accused and accused who belong to a vulnerable population that is overrepresented in the criminal justice system and that is disadvantaged in obtaining release.”

## **The Canadian Civil Liberties Association**

The CCLA is an independent, non-governmental, non-partisan, non-profit, national civil liberties organisation. Founded in 1964, CCLA and its membership promote respect for and recognition of fundamental human rights and civil liberties. For over fifty years, CCLA has litigated public interest cases before appellate courts, assisted Canadian governments with developing legislation, and published expert commentary on the state of Canadian law.

The CCLA's major report on pre-trial detention in Canada, *Set Up to Fail: Bail and the Revolving Door of Pre-Trial Detention*, is regularly cited by courts across the country. The CCLA routinely intervenes before courts on major cases interpreting s. 11(e) of the *Charter*, the right not to be denied reasonable bail without just cause. The CCLA intervened before the Supreme Court of Canada in landmark cases on bail, including *R. v. Antic* (2017), *R. v. Myers* (2019), and *R. v. Zora* (2020).

### **Bail is the safeguard of liberty for the innocent**

The right not to be denied reasonable bail without just cause is an essential element of an enlightened criminal justice system. It entrenches the effect of the presumption of innocence at the pre-trial stage of the criminal trial process and safeguards the liberty of accused persons.<sup>1</sup>

- The Supreme Court of Canada in *R. v. Antic* (2017)

There were 236,344 criminal cases in Canada in 2020/21. Only half resulted in a finding of guilt.<sup>2</sup> Without bail, tens of thousands of innocent people in Canada each year would be imprisoned. Before evidence is heard, before arguments are made, and before a judge or jury has passed judgment, bail is all that stands between an innocent person and a prison cell. This is why the right not to be denied reasonable bail without just cause is a constitutional right under s. 11(e) of the *Canadian Charter of Rights and Freedoms* and part of Article 9 of the *International Covenant on Civil and Political Rights*.

### **Pre-trial detention is astronomical and rising**

Canada has experienced explosive growth in the denial of bail – known as pre-trial detention – over the last several decades. The remand incarceration rate, which measures the overall number of people in pre-trial detention, increased 158% between 1986/87 and 2018/19 (from 19 adults per 100,000 to 49 adults per 100,000).<sup>3</sup> In

comparison, the overall incarceration rate in provincial and territorial prisons increased 2% during the same period (from 81.2 adults per 100,000 to 79.6 adults per 100,000).<sup>4</sup>

The vast majority of people in provincial and territorial prisons have not been found guilty of the offence(s) they are charged with. The sharp rise in pre-trial detention is reflected in the makeup of provincial and territorial prisons. In 1981, the percentage of provincial and territorial prisoners in pre-trial detention was 22%. Today, that number is 71%.

<b>Year</b>	<b>Provincial/Territorial Prison Population in Pre-Trial Detention<sup>5</sup></b>
1981/82	21%
1991/92	26%
2001/02	41%
2011/12	54%
2021/22	71%

Source: Statistics Canada. Rounded to the nearest percentage point.

Bill C-75, which some incorrectly assert created 'lenient' bail practices, has coincided with the continued increase of pre-trial detention in provincial and territorial prisons (65% in 2019/20 to 71% in 2021/22).<sup>6</sup>

### **Indigenous and Black persons are overrepresented in pre-trial detention**

As recognized by the Supreme Court of Canada, "Aboriginal people are more likely to be denied bail, and make up a disproportionate share of the population in remand custody."<sup>7</sup> Black adults are also overrepresented in admissions to provincial correctional services (NS, ON, AB, BC).<sup>8</sup> While data specific to pre-trial detention is limited, studies have confirmed disparate treatment. In Ontario, for example, "[B]lack people arrested and held in custody between 2011 and 2016 were more likely than white people to spend more than a year in pre-trial detention."<sup>9</sup>

### **Pre-trial detention conditions are horrific**

"It must be said that the conditions faced by such individuals are often dire. Overcrowding and lockdowns are frequent features of this environment, as is limited access to recreation, health care and basic programming...[Pre-trial detention] comes at a significant cost in terms of their loss of liberty, the impact on their mental and physical well-being and on their families, and the loss of their livelihoods."<sup>10</sup>

- The Supreme Court of Canada in *R. v. Myers* (2019)

In 1965, Professor Martin Friedland C.C. published *Detention Before Trial*. The book laid bare a dysfunctional bail system, galvanized the press and public opinion, and led to the enactment of the *Bail Reform Act* in 1972. Among Professor Friedland's observations were that "the conditions in institutions for persons held in custody pending trial were deplorable."<sup>11</sup>

Fifty-eight years later, Professor Friedland's words still ring true in Canada. Courts across the country routinely observe that conditions in pre-trial detention facilities in their jurisdictions are "overcrowded"<sup>12</sup> (BC), "harsh"<sup>13</sup> (AB, YT), "notorious"<sup>14</sup> (ON), "human rights violations"<sup>15</sup> (NT), "Dickensian"<sup>16</sup> (ON), and "appalling"<sup>17</sup> (ON). As one judge put it, "it is shocking that detention centres in Toronto in 2017 are consistently failing to meet minimum standards established by the United Nations in the 1950s."<sup>18</sup>

Provincial and territorial oversight bodies in Canada have raised similar alarms.

Correctional centres in British Columbia have operated at "140% overcapacity" according to their Auditor General and the province is "unable to demonstrate that it has the right amount or type of facilities to provide safe, secure custody".<sup>19</sup> The Ombudsperson of Saskatchewan observes the "Saskatoon Correctional Centre has run at or over its operational capacity since it opened 35 years ago"<sup>20</sup> with the Auditor General noting "risks of violence and illness for inmates".<sup>21</sup> In Québec, conditions at some provincial facilities "do not uphold the inmates' fundamental rights in all circumstances" according to *The Public Inquiry Commission on relations between Indigenous Peoples and certain public services*.<sup>22</sup> Deaths in custody in Ontario have nearly doubled in ten years,<sup>23</sup> a tragedy prompting the Chief Coroner to publish an expert report that implored an *Obligation to Prevent* more deaths.<sup>24</sup>

In short, Canada presides over a system of suffering in pre-trial detention that remains little changed from the 1960s.

### **Recommendation 1: Remove reverse onus provisions in Bill C-48.**

#### Reverse onus provisions lack empirical justification.

The Government of Canada has not provided data to support the proposition that reverse onus provisions or the denial of bail will reduce violent crime.

When asked if the measure is about perception or reality, Justice Minister David Lametti told Reuters in an interview that pursuing this legislation is

"probably a mixture of both." He said there are no statistics available showing more people are committing violent offences while on bail.<sup>25</sup>

- Reuters, "Canada proposes new bail bill despite lack of supporting data Minister says" (May 18, 2023)

Garry T. Trotter, author of the seminal text *The Law of Bail in Canada* and now a justice of the Court of Appeal for Ontario, made the following observation about Parliament's introduction in 1976 of the first bail reverse onus provision:

Both in the House of Commons and during the proceedings of the Standing Committee on Justice and Legal Affairs, there were calls for an empirical foundation to justify the proposed changes. As the Department of Justice had foregone an earlier opportunity to have the functioning of the *Bail Reform Act* evaluated by researchers at the Centre of Criminology, University of Toronto, the government was forced to rely upon anecdotes and speculation.<sup>26</sup>

Justice Trotter's observation is just as valid as the proceedings before this committee on Bill C-48. Legal scholars have critiqued the "proliferation of the reverse onus" by Parliament in the *Criminal Code* without empirical justification.<sup>27</sup>

The *Criminal Code* already contains robust protections for public safety in bail decisions.

The *Criminal Code* provides ample room for public safety to be taken into consideration in bail decisions and pre-trial release plans. If a person is granted bail, the *Code* permits reasonable conditions to ensure public safety. These can include requirements to report to the police, not communicate with a complainant or witness, live at a designated address under supervision, abide by a curfew, not visit certain areas, and to wear an electronic monitoring device.<sup>28</sup>

Where reasonable conditions are unable to ensure public safety, s. 515(10)(b) of the *Code* already authorizes detention for public safety reasons:

**515 (10)** For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds:

**(b)** where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, or any person under the age of 18 years, having regard to all the circumstances including any substantial likelihood that the accused will, if released

from custody, commit a criminal offence or interfere with the administration of justice;

Pre-trial detention can increase public safety risks.

Alarming, there is evidence that pre-trial detention increases risks to public safety. Poor conditions in detention centres, absence of programming, disruptions to connections in the community, and loss of employment are powerfully destabilizing forces on individuals.<sup>29</sup>

Reverse onus provisions contribute to excess pre-trial detention, resulting in false guilty pleas.

While reverse onuses lack empirical justification, they contribute to the staggering growth of Canada's rate of pre-trial detention. This should come as no surprise: reverse onuses make bail more difficult to obtain. Professor Friedland noted in a 2012 follow up to his ground-breaking work in the 1960s his view "that the reverse onus provisions have significantly contributed to the dramatic increase in the number of persons held in custody in Canada in the last twenty years."<sup>30</sup>

In addition to poor conditions in pre-trial detention, the Canadian criminal justice system is plagued by delay in matters proceeding to trial. Chronic trial delay necessitated the Supreme Court of Canada's ground-breaking decision in *R. v. Jordan*, which set strict time limits for matters to proceed to trial. Trial delay, however, has persisted in Canada.<sup>31</sup>

The combination of poor conditions and trial delay incentivizes the innocent to plead guilty.<sup>32</sup> Innocent persons in pre-trial detention face serious risks to their welfare, lost employment, and disrupted connection to their communities. The presumptive ceilings for time to a reasonable trial established in *Jordan*, 18 months for offences in provincial court and 30 months for offences in superior court, provide little solace in these circumstances.

A person can also be held in pre-trial custody for longer than they would likely be sentenced if found guilty of the underlying charge. This further pressures an individual to plead guilty in order to be released from jail with a sentence of 'time served'. This is an affront to the presumption of innocence; as held by the Supreme Court in *Antic*, "[a]n accused is presumed innocent and must not find it necessary to plead guilty solely to secure his or her release."<sup>33</sup>

**Recommendation 1(a): Remove the reverse onus provision for a prior IPV discharge.**

The CCLA recommends no reverse onus provisions be introduced, however the IPV discharge reverse onus is particularly concerning from both a policy and constitutional lens.

The IPV discharge reverse onus is overbroad.

The government has described the principal objective of Bill C-48 to address individuals engaged in 'repeat violent offending'.<sup>34</sup> The introduction of an IPV discharge reverse onus, however, will capture individuals outside of this category. If enacted, this would be the first time a reverse onus applies specifically for someone with a prior discharge under the *Criminal Code*. A reverse onus already applies for individuals with an IPV conviction, as opposed to a discharge, as a result of Bill C-75 passed in 2019.<sup>35</sup>

An absolute or conditional discharge is a finding of guilt, but not a criminal conviction and does not result in a criminal record. In order to be eligible for a discharge, four conditions must be met: (1) the offence must not have a mandatory minimum sentence, (2) the offence is not punishable by a sentence longer than 14 years, (3) a discharge is in the interest of the accused, and (4) a discharge is not contrary to the public interest.<sup>36</sup>

Judicial guidance on discharges outlines:

Generally, the first condition would presuppose that the accused is a person of good character, without previous conviction, that it is not necessary to enter a conviction against him in order to deter him from future offences or to rehabilitate him, and that the entry of a conviction against him may have significant adverse repercussions.<sup>37</sup>

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[T]he more serious the offence, the less likely it will appear that an absolute discharge, or even a conditional one, is "not contrary to public interest."<sup>38</sup>

As the requirements for a discharge above illustrate, an individual with a prior IPV discharge, but no prior IPV conviction, is unlikely to be an individual with an extensive criminal record of violent offences. On the contrary, they may be an individual with a singular finding of guilt in their life who successfully completed a rehabilitative program.<sup>39</sup> The extraordinary reversal of the burden of proof to obtain bail is particularly

disproportionate in these circumstances. The *Criminal Code* already contains adequate powers for a justice to ensure appropriate conditions are in place if an individual with a prior IPV discharge is released, or to order their detention if necessary for safety reasons.

The IPV discharge reverse onus violates s. 11(e) of the *Charter*.

Section 11(e) establishes the right not to be denied reasonable bail without just cause. The Supreme Court of Canada holds that a reverse onus is “a departure from the basic entitlement to bail [that] is sufficient to conclude that there is a denial of bail for the purpose of s. 11(e).” In order for that denial to be justified, it must occur in a “narrow set of circumstances” and be “necessary to promote the proper functioning of the bail system” and not be “undertaken for any purposes extraneous to the bail system”.<sup>40</sup> A ground for the denial of bail cannot be overbroad and the means chosen by the state cannot go further than necessary to accomplish its objective.<sup>41</sup>

The IPV discharge reverse onus is not confined to a narrow set of circumstances, not necessary to promote the proper functioning of the bail system, and overbroad to the stated objective of addressing ‘repeat violent offenders’. The provision applies to a broad range of offences and there is no evidence that the current provisions of the *Code* are dysfunctional with respect to the circumstances captured by the IPV discharge reverse onus. The strict threshold for a discharge, and the reverse onus capturing individuals with no criminal record and rehabilitative prospects, is further proof of its overbreadth.

The IPV reverse onus could further criminalize Indigenous women because of dual charging.

The CCLA understands that organizations with specific expertise on Indigenous issues and gender-based violence intend to make submissions on the unique harm posed by the IPV reverse onus for Indigenous women. We encourage the committee to rely on their expertise for detailed discussion of this issue. In short, as the *Final Report of the National Inquiry into Missing and Murdered Indigenous Women* notes:

Indigenous women may fear reporting violence because they may themselves be arrested or charged with abuse or violence. The high frequency of dual arrests made by police in responding to domestic violence situations involving Indigenous women, which has been identified in previous research carried out by Human Rights Watch, emerged as well in the stories shared by witnesses during the Truth-Gathering Process.<sup>42</sup>

Because of dual charging, Indigenous women who are survivors of intimate partner violence are unjustly criminalized. There is a heightened risk of a discharge reverse onus harming Indigenous women in this respect. It is conceivable that falsely accused Indigenous women charged with an IPV offence are likelier to plead guilty if the disposition is a discharge, because it carries fewer consequences than a conviction.

**Recommendation 2: Require a statement in the record of proceedings of how a justice has considered s. 493.2 of the *Criminal Code*, pertaining to the circumstances of Aboriginal and vulnerable overrepresented accused.**

Section 493.2 of the *Criminal Code* requires a justice to “consider the particular circumstances of Aboriginal accused and accused who belong to a vulnerable population that is overrepresented in the criminal justice system and that is disadvantaged in obtaining release.”

The CCLA recommends Bill C-48 include the amendment below to the *Criminal Code*.

**Subsection 515(14) of the Act is added:**

**Overrepresentation of Aboriginal and vulnerable populations in the criminal justice system**

(14) For Aboriginal accused and accused who belong to a vulnerable population that is overrepresented in the criminal justice system and that is disadvantaged in obtaining release, a justice who makes an order under this section shall include in the record of the proceedings how the justice considered the particular circumstances of the accused as required by section 493.2.

The preamble to Bill C-48 includes the following language:

Whereas bail decisions are informed by other important considerations, such as the need to consider the particular circumstances of accused persons, including those from populations that face disadvantages at the bail stage and are overrepresented in the criminal justice system;

However, Bill C-48 proposes no statutory provisions to further this important objective, notwithstanding the continued overrepresentation of Indigenous, Black, and other groups that face disadvantage at the bail stage in pre-trial detention.

In 2019, Bill C-75 introduced s. 493.2 to the *Criminal Code*, which requires a justice to consider the particular circumstances of Aboriginal accused and vulnerable individuals

overrepresented in the criminal justice system disadvantaged in obtaining release. However, there is limited jurisprudence interpreting or applying s. 493.2 since that date.<sup>43</sup> In addition, there are several reported cases of justices failing to apply s. 493.2, which is a legal error.<sup>44</sup> In short, s. 493.2 of the *Code* is not effecting the broad remedial purpose it was intended to have.

The amendment proposed by the CCLA would ensure a justice proactively turns their mind to s. 493.2 of the *Code* in bail decisions, which is not uniformly occurring but is the law. Requiring a justice to explain how s. 493.2 was considered would serve its broad remedial purpose. As noted in one decision in the context of *R. v. Gladue*, which requires courts to give consideration to the circumstances of Aboriginal accused in sentencing:

I do not consider it adequate for a court to simply say that *R. v. Gladue* has been taken into consideration. The parties are entitled to know what has been considered, how it has been applied and the reasons for such application. Otherwise, the courts will just be considered to be giving “lip service” to the recognition of the unique circumstances of Aboriginal offenders which our Supreme Court has clearly indicated is not acceptable in Canada.<sup>45</sup>

The proposed amendment would serve the preambulatory language of Bill C-48 and work toward reducing the overrepresentation of Black, Indigenous, and other vulnerable groups in pre-trial detention.

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<sup>1</sup> *R. v. Antic*, 2017 SCC 27, at para. 1.

<sup>2</sup> Statistics Canada, Table\_35-10-0027-01 Adult criminal courts, number of cases and charges by type of decision. <https://doi.org/10.25318/3510002701-eng>.

<sup>3</sup> Statistics Canada, *Custodial Remand in Canada, 1986/87 to 2000/01*, at p. 1. <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/85-002-x2003007-eng.pdf?st=iqSoldoc>.

Statistics Canada, *Adult and Youth Correctional Statistics in Canada 2018/2019*, at p. 4. <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2020001/article/00016-eng.pdf?st=1Og1SOIF>.

<sup>4</sup> Statistics Canada, *Average counts of adults in provincial and territorial correctional programs*. <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510015401&pickMembers%5B0%5D=1.1&cubeTimeFrame.startYear=1986+%2F+1987&cubeTimeFrame.endYear=2018+%2F+2019&referencePeriods=19860101%2C20180101>.

<sup>5</sup> Statistics Canada, Table 35-10-0154-01 - Average counts of adults in provincial and territorial correctional programs. <https://doi.org/10.25318/3510015401-eng>. N.B. Ratios in the brief table are rounded to the nearest percentage point.

<sup>6</sup> *Ibid.*

<sup>7</sup> *R. v. Summers*, 2014 SCC 26, at para. 67.

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- <sup>8</sup> Statistics Canada, *Overrepresentation of Black People in the Canadian Criminal Justice System*. <https://www.justice.gc.ca/eng/rp-pr/jr/obpccjs-spnsjpc/index.html>.
- <sup>9</sup> CBC/Reuters, “Black people awaiting trial in Ontario jails spend longer in custody than white people.” (October 20, 2017). <https://www.cbc.ca/news/canada/toronto/race-ontario-jails-wait-trial-disparity-1.4364796>.
- <sup>10</sup> *R. v. Myers*, 2019 SCC 18, at para. 26.
- <sup>11</sup> Martin L. Friedman, “The Bail Reform Act Revisited”, 16 *Canadian Criminal Law Review*, at p. 317.
- <sup>12</sup> *R. v. De Assumpcao*, 2016 BCSC 874, at para. 45.
- <sup>13</sup> *R. v. Vader*, 2017 ABQB 48, at para. 255; *R. v. Cooper-Flaherty*, 2017 NUCJ 11, at para. 42.
- <sup>14</sup> *R. v. Mitsakis*, 2022 ONSC 5390, at para. 33.
- <sup>15</sup> *R. v. Uniuqsaraq*, 2015 NUCJ 16, at para. 26.
- <sup>16</sup> *R. v. Nsiah*, 2017 ONSC 769, at para. 19.
- <sup>17</sup> *R. v. Nguyen*, 2017 ONCJ 442, at para. 39.
- <sup>18</sup> *R. v. Innis*, 2017 ONSC 2779, at para. 38.
- <sup>19</sup> Auditor General of British Columbia, *An Audit of the Adult Custody Divisions’ Correctional Facilities and Programs* (2016), at pp. 4, 6. <https://www.bcauditor.com/sites/default/files/publications/2015/special/report/AGBC%20Corrections%20report%20FINAL.pdf>. In 2019, the Auditor General found that overcrowding in the majority of correctional facilities in the province continued: *Progress Audit: Correctional Facilities and Programs*, at p. 12. [https://www.bcauditor.com/sites/default/files/publications/reports/OAGBC\\_Adult-Custody-Division\\_RPT.pdf](https://www.bcauditor.com/sites/default/files/publications/reports/OAGBC_Adult-Custody-Division_RPT.pdf).
- <sup>20</sup> Ombudsman of Saskatchewan, *Ombudsman Saskatchewan Annual Report 2016*, at p. 5. <https://ombudsman.sk.ca/app/uploads/2019/08/OMB-AR-2016.pdf>.
- <sup>21</sup> Auditor General of Saskatchewan, *Report of the Provincial Auditor to the Legislative Assembly of Saskatchewan – 2016 Report Volume 2*, at pp. 3, 169. [https://auditor.sk.ca/pub/publications/public\\_reports/2016/Volume\\_2/2016\\_V2\\_Full\\_Report.pdf](https://auditor.sk.ca/pub/publications/public_reports/2016/Volume_2/2016_V2_Full_Report.pdf). See the issue raised again in *Report of the Provincial Auditor General to the Legislative Assembly of Saskatchewan – 2021 Report Volume 1*, at pp. 91, 94. [https://auditor.sk.ca/pub/publications/public\\_reports/2021/Volume\\_1/CH08%20--%20Justice%20AG%20and%20CPP%20—Implementing%20Strategies%20to%20Reduce%20Short-Term%20Remand%20in%20Saskatoon%20and%20Area.pdf](https://auditor.sk.ca/pub/publications/public_reports/2021/Volume_1/CH08%20--%20Justice%20AG%20and%20CPP%20—Implementing%20Strategies%20to%20Reduce%20Short-Term%20Remand%20in%20Saskatoon%20and%20Area.pdf).
- <sup>22</sup> *Final Report of the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress* (2019), at p. 347. [https://www.cerp.gouv.qc.ca/fileadmin/Fichiers\\_clients/Rapport/Final\\_report.pdf](https://www.cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Rapport/Final_report.pdf).
- <sup>23</sup> Tracking (In)Justice, *Ontario Deaths in Custody on the Rise* (2022), at p. 5. <https://trackinginjustice.ca/wp-content/uploads/Ontario-Deaths-in-Custody-on-the-Rise-2022-8.pdf>.
- <sup>24</sup> Ontario Chief Coroner’s Expert Panel on Deaths in Custody, *An Obligation to Prevent* (2023). <https://files.ontario.ca/solgen-csdr-en-2023-05-05.pdf>.
- <sup>25</sup> <https://www.reuters.com/world/americas/canada-proposes-new-bail-bill-despite-lack-supporting-data-minister-says-2023-05-18>.
- <sup>26</sup> Gary T. Trotter, “Pearson and Morales: Distilling the Right to Bail” (1993) 17 *Criminal Reports* (4th), at p. 150.
- <sup>27</sup> Myles F McLellan, “Bail and the Diminishing Presumption of Innocence” (2010) 15 *Canadian Criminal Law Review*, at p. 63.
- <sup>28</sup> *Criminal Code*, R.S.C. 1985, c. C-46, s. 515(4.2). N.B. These conditions are emphasized here in relation to specified offences, but are routinely imposed by courts relation to a broad range of offences.

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- <sup>29</sup> Mark T. Berg & Beth M. Huebner, “Reentry and the Ties that Bind: An Examination of Social Ties, Employment and Recidivism” (2011) 28:2 *Justice Quarterly*, at p. 382; Daniel S. Nagin, Francis T. Cullen & Cheryl Lero Jonson, “Imprisonment and Reoffending” (2009) 38:1 *Crime & Justice*, at p. 115.
- <sup>30</sup> Martin L. Friedman, “The Bail Reform Act Revisited”, 16 *Canadian Criminal Law Review*, at p. 315.
- <sup>31</sup> CBC, “Number of cases tossed due to delays hits all-time high in N.S. courts” (August 4, 2023). <https://www.cbc.ca/news/canada/nova-scotia/courts-jordan-decision-delays-record-high-1.6926695>. CBC, “Quebec Crown calls for criminal cases to be prioritized so they’re not tossed over delays” (February 20, 2023). <https://www.cbc.ca/news/canada/nova-scotia/courts-jordan-decision-delays-record-high-1.6926695>.
- <sup>32</sup> Gail Kellough & Scot Wortley, “Remand for Plea: Bail Decisions and Plea Bargaining as Commensurate Decisions” (2002) 42:1 *Brit J Criminology*, at p. 186.
- <sup>33</sup> *R. v. Antic*, 2017 SCC 27, at para. 66.
- <sup>34</sup> Hansard, September 18, 2021, at p. 1200. <https://www.ourcommons.ca/DocumentViewer/en/44-1/house/sitting-219/hansard>;
- <sup>35</sup> *Criminal Code*, s. 515(6)(b.1).
- <sup>36</sup> *Criminal Code*, s. 730.
- <sup>37</sup> *R. v. Fallofield* (1973), 13 C.C.C. (2d) 450 (B.C.C.A.), at pp. 454-455. <https://canlii.ca/t/gbml5>.
- <sup>38</sup> *R. v. Sanchez-Pino*, 1973 CanLII 794 (ON CA), at para 18. <https://canlii.ca/t/g13f1>.
- <sup>39</sup> See, for example, *R. v. Burton*, 2008 CanLII (ON SC), at para. 31: “It is not uncommon for first time offenders to be sentenced to a conditional discharge upon completion of the PARS Program in minor domestic disputes.” <https://canlii.ca/t/1wr3c>.
- <sup>40</sup> *R. v. Antic*, 2017 SCC 27, at paras. 38-39. <https://canlii.ca/t/h41w4>.
- <sup>41</sup> *R. v. Hall*, 2002 SCC 64, at para. 39.
- <sup>42</sup> *Final Report of the National Inquiry into Missing and Murdered Indigenous Women*, at p. 634. [https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final\\_Report\\_Vol\\_1a-1.pdf](https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf).
- <sup>43</sup> See, for example, *R. v. Tullaugak*, 2021 QCCQ 13164, at para. 11: “Few decisions in relation to this provision have been rendered in Quebec.” A cursory search on CanLII, a primary legal database, reveals only 23 decision across Canada where the provision has been cited for any reason.
- <sup>44</sup> *R. v. Tyndale*, 2021 ONCJ 741, at para. 27; *Raheem-Cummings v. R.*, 2020 SKQB 342, at para. 47.
- <sup>45</sup> *R. v. Silversmith*, 2008 CanLII 601608, at para. 18. <https://canlii.ca/t/21ln4>.