Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(Toronto Region)

B E T W E E N:

CORPORATIONS OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION AND THE CRIMINAL LAWYERS' ASSOCIATION

Applicants

\- and -

HIS MAJESTY IN RIGHT OF ONTARIO

Respondent

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The Claim made by the Applicants appears on the following page.

THIS APPLICATION will come on for a hearing:

☒ In person
☐ By telephone conference
☐ By video conference

at the Ontario Superior Court of Justice at 330 University Avenue Toronto, Ontario M5G 1R7 on a day to be set by the Registrar.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date ____________________ Issued by ____________________

Local Registrar
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APPLICATION

1. The Applicants, Corporations of the Canadian Civil Liberties Association and the Criminal Lawyers' Association, apply under Rule 14.05 of the *Rules of Civil Procedure* for:

(a) a declaration that section 8.0.1 of the *Bail Act* and its accompanying regulation, O. Reg. 278/26, are of no force and effect to the extent that they encroach on the federal government's exclusive jurisdiction over criminal law;

(b) alternatively, a declaration that the above provisions are inoperative to the extent that they conflict with federal law;

(c) in the further alternative, a declaration that the above provisions violate the right not to be denied reasonable bail without just cause and the presumption of innocence (respectively enshrined in sections 11(*e*) and 11(*d*) of the *Canadian Charter of Rights and Freedoms*) and are thus of no force and effect;

(d) an order granting the Applicants public interest standing to bring this application; and

(e) such further and other relief as this Honourable Court may deem just.

2. The grounds for this application are as follows.

I. OVERVIEW

3. Canada's Constitution carefully divides powers between the federal and provincial governments. The federal government has exclusive jurisdiction over criminal law, of which the law of bail forms an important part.

4. Bail often has a financial component. Under the *Criminal Code of Canada*, a court may (1) release an accused person on bail with a promise to pay a certain sum if they violate their bail or, in limited exceptional circumstances, (2) require an upfront cash deposit. A promise to pay is not cash bail; it is a commitment to forfeit a specified sum only if the accused later breaches a bail condition. No money changes hands unless the accused breaches.

5. This application concerns Ontario's attempt to unconstitutionally rewrite the law of bail by eliminating the promise to pay.

6. Earlier this year, Ontario enacted Bill 75, the *Keeping Criminals Behind Bars Act, 2026*, which amended the province's *Bail Act* to require cash deposits from anyone released on a promise to pay. The details were left to be prescribed by regulation. On August 13, 2026, the government published that regulation; it took effect on August 17. The regulation requires anyone released on a promise to pay or their surety to deposit cash within two business days or face provincial prosecution. The Act and the regulation are referred to collectively in this application as the "cash bail provisions."

7. The cash bail provisions encroach on exclusive federal jurisdiction over criminal law. Even if Ontario could legislate in this area, the cash bail provisions conflict with the *Criminal Code*, which expressly requires courts to favour promises to pay over cash deposits. What Parliament made the exception, Ontario has made the rule.

8. Alternatively, the cash bail provisions violate the right not to be denied reasonable bail without just cause guaranteed in section 11(e) of the *Charter of Rights and Freedoms* and undermine the presumption of innocence in s. 11(*d*). Ontarians will remain in jail because they cannot afford to pay cash bail or cannot find a surety able to deposit cash immediately after their

release. That is neither reasonable nor just.

9. For these reasons and those that follow, the Court should declare the cash bail provisions unconstitutional and of no force and effect.

II. PUBLIC INTEREST STANDING SHOULD BE GRANTED

10. The Canadian Civil Liberties Association (CCLA) is a national non-profit and non-governmental organization that was established in 1964 to protect and promote respect for and observance of fundamental human rights and civil liberties. The CCLA pursues this objective in several ways, including by engaging with the public, testifying before legislative committees, and litigating. The CCLA has thousands of supporters across the country from a wide variety of communities, occupations, and interests.

11. Founded in 1971, the Criminal Lawyers' Association (CLA) is the voice of the criminal defence bar in Ontario. The CLA's advice and perspective are sought by all levels of government and the judiciary on issues relating to legislation and the administration of criminal justice. With over 1,800 criminal defence lawyers comprising its membership, the CLA is now one of the largest specialty legal organizations in Canada.

12. The CCLA and CLA have historically fought against threats to fundamental rights, freedoms, and civil liberties. Both organizations have experience litigating issues in their own right and are often granted intervener status in courts across Canada. The CCLA has been granted public interest standing in over 20 cases and has intervened in over 343 cases.

13. The CCLA and CLA meet the test for public interest standing.

14. The test for public interest standing is threefold: (1) whether there is a serious justiciable issue raised; (2) whether the applicant has a real stake or a genuine interest in it; and (3) whether, in all the circumstances, the proposed suit is a reasonable and effective means of bringing the issue before the courts.

15. First, this case raises a serious justiciable issue: Ontario has overstepped its constitutional authority. This Application squarely engages the courts' role in ensuring that governments act within their lawful authority. There is no doubt that this Court has both the institutional capacity and legitimacy necessary to adjudicate the issues that the Application raises.

16. Second, the CCLA and CLA have a real and continuing interest in safeguarding the right of presumptively innocent, criminally accused persons not to be denied reasonable bail without just cause. This case concerns whether provincial governments have the legislative competence to curtail this right.

17. Third, from a practical and pragmatic point of view, and in light of the particular nature of the challenge, this application is a reasonable and effective means to bring a case of public importance before this Honourable Court. The cash bail provisions present an immediate risk to the rights of accused persons across Ontario to obtain bail, particularly for those who are financially disadvantaged. It is inevitable that accused persons across Ontario will at some point challenge this legislation because it will interfere with their constitutional right to reasonable bail. However, many will lack the means and wherewithal to do so. Adjudicating this application from public interest litigants will prevent the disruption that would result from widespread concurrent challenges. It will ensure access to justice while promoting certainty and stability in the law. The CCLA and the CLA, together with their substantial membership, have the resources and

experience to litigate the application effectively and in the interests of all criminally accused persons.

18. It would accordingly be an efficient and worthwhile use of this Court's scarce judicial resources to hear and decide this application.

III. Bill 75, *Keeping Criminals Behind Bars Act, 2026*

19. When a person is arrested, they may be released by police or brought before the court for a bail hearing. At a bail hearing, the presiding justice determines whether the accused person should be released or detained pending trial.

20. The justice may order an accused's release with or without conditions and with or without a surety. A surety, who is usually a friend or family member of the accused person, assumes legal responsibility to ensure that the accused person complies with their bail conditions.

21. The financial component of bail is governed by section 515 of the *Criminal Code*. A justice may order release on a promise by the accused or a surety to pay a specified amount of money if the accused breaches a bail condition. Only in exceptional circumstances may a justice require an accused or a surety to deposit cash before the accused can be released. The *Criminal Code* requires a justice to favour a promise to pay over a cash deposit if the accused or the surety has reasonably recoverable assets. Cash deposits are the exception, not the norm.

22. Through Bill 75, Ontario seeks to override this valid expression of federal legislative jurisdiction. The Act amends Ontario's *Bail Act* by adding a cash bail provision under s. 8.0.1. Until now, the *Bail Act* largely addressed the government's procedure for collecting debts in the event of a bail breach—for example, by enforcing a lien on a surety's property.

23. Section 8.0.1 extends the *Bail Act* into new terrain. It mandates that when a release order includes a promise to pay, the accused or their surety must make a cash deposit. If they do not, they are guilty of a provincial offence. Section 8.0.1 states:

> **Security deposit**
>
> **8.0.1** (1) The following requirements apply with respect to a release order referred to in section 515 of the *Criminal Code* (Canada) made in respect of an accused:
>
> 1. If the order sets out the accused's promise to pay a specified amount if the accused fails to comply with a condition of the order, the accused shall pay the amount specified in the order to the person specified in the regulations, at the time and in the manner specified in the regulations.
>
> 2. If the order sets out a surety's promise to pay a specified amount if the accused fails to comply with a condition of the order, the surety shall pay the amount specified in the order to the person specified in the regulations, at the time and in the manner specified in the regulations.
>
> **Offence**
>
> (2) A person who fails to comply with subsection (1) is guilty of an offence.

24. Section 8.0.1 left key details to be prescribed by regulation—including how much must be deposited, to whom, and by when.

25. On August 13, 2026, the Government of Ontario published *O. Reg. 278/26: Security Deposits* and Information Form Sureties. The Regulation, which took effect on August 17 and applies to all release orders with a promise to pay from then on, prescribes those details. It requires anyone released on a promise to pay to deposit cash within two business days or face provincial prosecution. The Regulation states in s. 2(1):

> An amount a person is required to pay under subsection 8.0.1 (1) of the Act shall be paid in cash or by money order or bank draft payable to the Minister

of Finance within two business days of the accused's release from custody pursuant to the release order.

IV. THE CASH BAIL PROVISIONS ENCROACH ON AN AREA OF EXCLUSIVE FEDERAL JURISDICTION

26. Section 91(27) of the *Constitution Act, 1867* grants the federal government exclusive jurisdiction to legislate "The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters." This authority encompasses legislating the procedural steps—from the laying of a charge through its final resolution.

27. Whether to release a person on bail and, if so, on what conditions, is a critical component of procedure in criminal matters. The law governing bail aims to protect the public while safeguarding the rights of individuals facing untried criminal allegations.

28. The federal government has the sole jurisdiction to make the laws that courts use to determine whether and on what conditions to release a person accused of a crime.

29. In pith and substance, the cash bail provisions directly intrude on this area of exclusive federal jurisdiction by effectively prescribing conditions of entitlement to bail. Ontario cannot formally amend the substantive law of bail. But the dominant purpose of the cash bail provisions is to have that practical effect.

30. The key effect of the cash bail provisions is to make cash bail effectively a mandatory condition of release and to make release more difficult to obtain. Promises to pay are routinely imposed in bail orders. But now an accused or a surety who makes a promise to pay must either post cash bail or risk prosecution for a provincial offence. This is not a meaningful choice. By making non-payment an offence, an accused or their surety has no lawful choice but to provide

cash upfront. The predictable reality that many will be unable to do so belies the cash bail provisions for what they are: an improper attempt to place bail out of reach for many accused persons.

31. While provincial governments may create provincial offences, they cannot use that power to encroach on exclusive federal jurisdiction over criminal law. Provincial offences must target areas within provincial competence. Criminal law is not one of those areas.

32. Although section 92(14) of the *Constitution Act, 1867* gives the provinces jurisdiction over the "Administration of Justice in the Province," this power is limited to the operation and enforcement of criminal justice. Provinces may administer criminal law, but they may not legislate its substance or procedure. The cash bail provisions rewrite the federal bail regime. They do not administer it.

33. Provincial governments do have a constitutionally permitted role to play in the bail process. One of the provinces' roles is to administer the forfeiture of money or property when an accused person breaches their bail conditions. Sections 770 and 771 of the *Criminal Code* set out the process courts must follow to determine whether the amount set in the release order should be forfeited upon a breach. If Bill 75 targeted only the process that follows a validly imposed forfeiture order, it is unlikely that such provisions would encroach on federal jurisdiction.

34. That is not what the cash bail provisions do. Instead, the provisions effectively prescribe when and how an accused person may be released on bail. These are quintessential matters of criminal procedure and cannot be sustained as valid provincial legislation.

35. The provisions' purpose is apparent from the telling comments of the Solicitor General of

Ontario, who characterized Bill 75 as an attempt to fill alleged "holes in the federal bail system" and "strengthen compliance" within the bail system. Disagreement or dissatisfaction with federal action is not a source of provincial power. A provincial government's objection to how the federal government exercises its jurisdiction over a given matter does not confer jurisdiction over that matter on the province. Jurisdiction is assigned by the Constitution, not by objection to its exercise.

36. In sum, the cash bail provisions are outside the legislative competence of the province. They should be declared of no force or effect.

V. THE CASH BAIL PROVISIONS CONFLICT WITH THE *CRIMINAL CODE OF CANADA*

37. In the alternative, even if the cash bail provisions are a valid exercise of provincial legislative jurisdiction, they are in direct conflict with the *Criminal Code*'s comprehensive scheme for judicial interim release. Applying the doctrine of paramountcy, they should be declared inoperative.

38. Under the doctrine of paramountcy, a provincial law that conflicts with a valid federal law is inoperative to the extent of the incompatibility. Whether a provincial government has the legislative competence to pass the law is beside the point when assessing a law under the paramountcy doctrine. Valid federal law trumps conflicting provincial law.

39. The cash bail provisions conflict with the *Criminal Code*. The clearest conflict is with section 515(2.02), which expressly favours a promise to pay over cash bail. It states:

> The justice shall favour a promise to pay an amount over the deposit of an amount of money if the accused or the surety, if applicable, has reasonably recoverable assets.

40. In other words, if a promise to pay would suffice, a justice cannot impose cash bail.

Parliament has exercised its exclusive jurisdiction over criminal law and procedure and decided, through section 515(2.02), that most release orders should not require an upfront cash deposit.

41. The cash bail provisions create a direct operational conflict with, and frustrate the purpose of, the *Criminal Code*'s bail regime. They eliminate the very distinction Parliament drew between a contingent promise and an actual deposit. A justice who, applying the *Criminal Code*'s requirements, orders a promise to pay ends up, by force of provincial legislation, imposing the financial consequence Parliament prohibited. Dual compliance is impossible: the *Criminal Code* demands release on a promise alone, absent exceptional circumstances. The provincial scheme mandates a cash bail. The cash bail provisions do not merely supplement the *Criminal Code*. They contradict its operative legal consequence. They are incompatible with the animating purpose of the federal scheme, which is to ensure presumptively innocent accused persons are not detained as a result of their inability to post cash bail, which can only be imposed where it is strictly necessary.

42. Parliament chose to move away from cash bail more than half a century ago. The Canadian Committee on Corrections, created in 1965 by order in council, conducted a comprehensive study of bail law. The Committee found that Canada's bail system relied too heavily on cash bail. This overreliance on cash bail meant that "the ability of the accused to marshal funds or property in advance" decided whether they would be released or jailed while awaiting trial.

43. The 1972 *Bail Reform Act* aimed to address these concerns by strictly limiting cash bail. Then-Justice Minister John Turner, speaking in the House of Commons, explained that requiring cash bail could operate "harshly against poor people." He said that "cash bail in this bill is only a last resort."

44. Parliament's decision to only exceptionally allow cash bail flows from the constitutionally

recognized principle of restraint. Section 515(2)(a) to (e) of the *Criminal Code* sets out increasingly onerous types of release conditions that a justice may order. These are:

> **(a)** an indication that the release order does not include any financial obligations;
>
> **(b)** the accused's promise to pay a specified amount if they fail to comply with a condition of the order;
>
> **(c)** the obligation to have one or more sureties, with or without the accused's promise to pay a specified amount if they fail to comply with a condition of the order;
>
> **(d)** the obligation to deposit money or other valuable security in a specified amount or value, with or without the accused's promise to pay a specified amount if they fail to comply with a condition of the order; or
>
> **(e)** if the accused is not ordinarily resident in the province in which they are in custody or does not ordinarily reside within 200 kilometres of the place in which they are in custody, the obligation to deposit money or other valuable security in a specified amount or value, with or without the accused's promise to pay a specified amount by the justice if they fail to comply with a condition of the order and with or without sureties.

45. Each type of release is more onerous than the one preceding it. As the most onerous form of release, cash bail is at the bottom of the list.

46. The *Criminal Code* requires a justice to order the least onerous form of release from the above list unless the Crown shows that it should not be the case. Section 515(2.01) of the *Criminal Code* says:

> The justice shall not make an order containing the conditions referred to in one of the paragraphs (2)(b) to (e) unless the prosecution shows cause why an order containing the conditions referred to in the preceding paragraphs for any less onerous form of release would be inadequate.

47. Through the cash bail provisions, Ontario has attempted to override the federally codified principle of restraint. What Parliament made exceptional with the *Bail Reform Act*, the Ontario has

made routine. Even if dual compliance were possible—which is doubtful—the provincial scheme would still frustrate Parliament's express purpose. The *Criminal Code* deliberately distinguishes promises from deposits and requires courts to prefer the former. Parliament's objective was to ensure that accused persons are not detained solely because they cannot raise funds in advance. By converting every promise to pay into a mandatory cash deposit, the provisions defeat that purpose. The provincial law does not merely overlap with the federal scheme; it undermines the clear objective Parliament sought to achieve.

48. On either branch of the paramountcy analysis, the provincial law cannot stand. It should be declared inoperative.

VI. THE CASH BAIL PROVISIONS VIOLATE THE *CHARTER* RIGHTS TO REASONABLE BAIL AND THE PRESUMPTION OF INNOCENCE

49. In the further alternative, the cash bail provisions unjustifiably limit the *Charter*'s guarantee of the presumption of innocence and the right to reasonable bail. These rights are, respectively, enshrined in ss. 11(*d*) and (*e*) of the *Charter*.

50. The right "not to be denied reasonable bail without just cause" reflects a core principle of our criminal justice system: pre-trial detention is the exception, not the norm. An accused person is presumed innocent and should not be jailed while awaiting trial unless detention is justified by the recognized grounds: the risk of flight, the protection of public safety, or maintaining confidence in the administration of justice. The Supreme Court of Canada has confirmed that s. 11(*e*) of the *Charter* and the presumption of innocence require treating cash bail as a "last resort." Imposing cash bail where a promise to pay would suffice is contrary to the intent of the *Bail Reform Act* and inconsistent with ss. 11(*d*) and (*e*). Ontario's cash bail provisions do exactly what the Supreme

Court has said the *Charter* forbids.

VII. Relief Requested

51. For the reasons above, the CCLA and CLA request a declaration that the cash bail provisions are of no force and effect because they encroach on the federal government's exclusive jurisdiction over criminal law, pursuant to s. 52(1) of the *Constitution Act, 1982*. Alternatively, the CCLA and the CLA request a declaration that the provisions are inoperative because they conflict with valid federal law. In the further alternative, the CCLA and CLA request a declaration that the provisions are of no force and effect because they violate the right not to be denied reasonable bail without just cause and the presumption of innocence.

52. The CCLA and CLA also seek an order granting them public interest standing.

53. The CCLA and CLA seek such further and other relief as counsel may advise and this Honourable Court may permit.

54. The CCLA and CLA do not seek costs on this application and ask that no costs be awarded against them.

55. Such further and other grounds as counsel may advise and this Honourable Court may permit.

VIII. Evidence to Be Relied Upon

56. The following evidence will be used at the hearing of this application:

a. Affidavit evidence as counsel may advise;

b. Such other evidence as counsel may advise and this Honourable Court may permit.

DATED at Toronto, Ontario this 17th day of August, 2026.

HENEIN HUTCHISON ROBITAILLE LLP

Matthew Gourlay
Stephanie DiGiuseppe
Brandon Chung
Jacob Roth

Counsel for the Applicants, CCLA and CLA

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FORM 14F

Courts of Justice Act

INFORMATION FOR COURT USE

ONTARIO

SUPERIOR COURT OF JUSTICE

(General heading)

INFORMATION FOR COURT USE

1. This proceeding is an: ☐ action ☑ application

2. Has it been commenced under the *Class Proceedings Act, 1992*? ☐ yes ☑ no

3.a. If the proceeding is an action, does the Small Claims Court have jurisdiction, based on the value and nature of the claim(s)? ☐ yes ☑ no

Select "yes" if the action is valued up to $50,000 and the claims are limited to the payment of money and/or the recovery of personal property.

3.b. If yes to question 3.a., have you obtained leave of the Superior Court of Justice to commence this action? ☐ yes ☐ no ☐ n/a

Note:

- *If the answer to question 3.b. is "no", you are not entitled to commence this action in the Superior Court of Justice unless you first obtain leave of the court (see s. 23 of the* Courts of Justice Act*).*
- *If the answer to question 3.b. is "yes", provide a copy of the order granting leave with your statement of claim or notice of action.*

4. If the proceeding is an action, does Rule 76 (Simplified Procedure) apply? ☐ yes ☑ no

Note: Subject to the exceptions found in subrule 76.01(1), it is MANDATORY to proceed under Rule 76 for all cases in which the money amount claimed or the value of real or personal property claimed is $200,000 or less.

5. Is the party commencing this proceeding under legal disability, as defined in rule 1.03 of the *Rules of Civil Procedure*? ☐ yes ☑ no

Note:

- *A party under disability MUST be represented by a litigation guardian.*
- *A litigation guardian authorized to act without a court order MUST file an affidavit of litigation guardian (in Form 4D) (unless the litigation guardian is the Children's Lawyer or the Public Guardian and Trustee).*
- *A litigation guardian MUST instruct a lawyer to act in the proceeding.*

See Rules 7 and 15 for details about who may act as a litigation guardian without a court order, the process to be appointed litigation guardian if a court order is required, and the duties of litigation guardians.

6. This proceeding (action or application) is in respect of:

*(Select the **one** item that **best** describes the nature of the main claim or order sought in the proceeding.)*

Administrative law (other than judicial review and constitutional law)	☐	Mortgage or charge	☐
	☐	Motor vehicle accident	☐
Application to commence proceeding	☐	Municipal law	☐
Application – not otherwise listed	☐	Partnership law	☐
Bankruptcy or insolvency law	☐	Personal property security (including repair and storage lien)	☐
Collection of liquidated debt	☐		
Constitutional law	☑	Product liability	☐
Construction law (other than construction lien)	☐	Professional malpractice (other than medical)	☐
Construction lien	☐	Real property (including commercial leases; excluding mortgage or charge)	☐
Contract law	☐		
Corporate law	☐	*Solicitors Act* assessment – application for	☐
Defamation	☐	Tort: economic injury (other than from medical or professional malpractice)	☐
Drainage Act proceeding	☐		
Employment or labour law	☐	Tort: human trafficking (*Prevention of and Remedies for Human Trafficking Act, 2017*)	☐
Foreign judgment – application to recognize and enforce	☐	Tort: personal injury (other than from motor vehicle accident)	☐
Intellectual property law	☐		
Judicial review	☐	Trusts, fiduciary duty	☐
Medical malpractice	☐	Wills, estates	

Date: Aug 17, 2026

Name of filer

RCP-E 14F (May 1, 2025)