Court File No. CV-26-00016332-0000

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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

Applicants/
Moving Parties

- and -

**HIS MAJESTY IN RIGHT OF ONTARIO**

Respondent/
Responding Party

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# FACTUM OF THE APPLICANTS/MOVING PARTIES

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August 24, 2026


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## PART I — OVERVIEW

1. For over half a century, Parliament has treated cash bail as exceptional. The *Criminal Code*'s detailed scheme for pre-trial release directs courts to favour a promise to pay over a cash deposit, reserving the latter for rare circumstances when it is necessary to secure the accused's compliance. Parliament made this choice for a reason: to ensure that the pre-trial liberty of those presumed innocent does not depend on access to cash.

2. Ontario disagrees with Parliament's choice and has decided to rewrite the rules. Bill 75, the *Keeping Criminals Behind Bars Act, 2026*, requires an accused released on a promise to pay (or their surety) to deposit the full amount of the pledge in cash with the provincial government. A regulation that took effect on August 17, 2026, requires payment within two business days of release. Failure to pay is a provincial offence. These measures are referred to below as the "cash bail provisions."

3. The cash bail provisions are plainly unconstitutional. They are irreconcilable with both the division of powers in the *Constitution Act, 1867* and the rights enshrined in the *Charter*.

4. The Constitution allows only Parliament, not the provinces, to make laws governing criminal procedure. The cash bail provisions cross that line: they are designed to keep more accused persons in pre-trial detention by altering the conditions of release and making bail harder to obtain. This provincial attempt to modify the federally prescribed bail regime impermissibly invades Parliament's exclusive jurisdiction under s. 91(27) of the *Constitution Act, 1867*.

5. Even if Ontario had this authority, the doctrine of federal paramountcy prohibits its laws from overriding or frustrating the purpose of validly enacted federal legislation. Yet the cash bail provisions do just that. The *Code* directs courts to "favour a promise to pay an amount over the deposit of an amount of money" if the promisor has "reasonably recoverable assets". Ontario's new regime

reverses that approach by requiring a cash deposit every time a court orders a promise to pay.

6. These mandatory cash deposits lack the individualization and restraint that Canada's bail regime demands. Ontario imposes the same cash requirement in every case. This violates what the *Charter* guarantees to all accused persons: the right to be presumed innocent and not to be denied reasonable bail without just cause. The cash bail provisions unjustifiably infringe ss. 11(*d*) and (*e*).

7. These three constitutional defects require declaring the cash bail provisions of no force or effect or inoperative. If this Court reserves its judgment, it should issue an injunction in the interim.

## PART II — FACTS

### A. CANADA'S BAIL REGIME: THE *CRIMINAL CODE* BAIL PROVISIONS

8. The *Code* contains a comprehensive regime that governs bail across the country. Release of presumptively innocent accused persons is the "default position" under our constitutional order and the *Code*'s regime.[1] Section 515(1) provides that a justice "shall" order release unless the Crown "show[s] cause" why detention is justified.[2] Section 515(10) identifies the three grounds that may justify detention: flight risk (the "primary" ground), public safety (the "secondary" ground), and public confidence (the "tertiary" ground).

9. The *Code* also prescribes the terms on which a court may release an accused person — terms that must be reasonable, individualized, and restrained in accordance with s. 11(*e*) of the *Charter*. Any conditions must be "sufficiently linked" to specific risks the accused poses in relation to the primary, secondary, or tertiary grounds for detention, and they must go no further than necessary to address those risks.[3] Section 493.1 directs courts to exercise restraint and release an

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1 *R. v. Antic*, 2017 SCC 27 [***Antic***], at paras. 21, 42.
2 Except in limited situations where s. 515(6) places the onus on the accused to show why detention is not justified.
3 *R. v. Zora*, 2020 SCC 14 [***Zora***], at paras. 6-7, 63-64, 66, 86, 91, 93, 100-102.

accused on the "least onerous conditions that are appropriate in the circumstances," and s. 493.2 does the same with specific respect to Indigenous or vulnerable accused. Consistent with those principles, s. 515(2) distinguishes increasingly onerous forms of release in the following order:

(a) release without financial obligations;

(b) release on an accused's promise to pay if they fail to comply with the release order;

(c) release with one or more sureties, with or without the accused's promise to pay;

(d) release with the obligation to deposit money or other valuable security, with or without a promise to pay;

(e) if an accused is not ordinarily resident in the province or within 200 km of the place where they are in custody, release with the obligation to deposit money or other valuable security, with or without a promise to pay and with or without sureties.

10. A justice must ordinarily move through these forms of release sequentially. Section 515(2.01) provides that a justice may not impose a more onerous form of release unless the Crown shows why every less onerous form "would be inadequate." This is called the "ladder principle."[4]

11. Parliament has codified the self-evident proposition that a "promise to pay" — an accused or surety's promise to pay money into court if the accused breaches — is less onerous than cash bail. This proposition finds clear expression in both s. 515(2) and s. 515(2.02) of the *Code.*

12. Section 515(2) places cash bail atop the ladder (in paragraphs (d) and (e), above). Cash bail has occupied this position for over 50 years, since the enactment of the *Bail Reform Act* in 1972.

13. Section 515(2.02) expressly directs a justice to favour a promise to pay over a cash deposit: a justice "shall favour a promise to pay an amount over the deposit of an amount of money if the

[4] *Antic*, 2017 SCC 27, at para. 4. Due to recent amendments, the ladder principle no longer applies to reverse onus cases (Bill C-14, *Bail and Sentencing Reform Act, 2026,* 1st Sess., 45th Parl., 2026, cl. 27-28). But see *R. v. A.K.*, 2026 ONSC 2262, at paras. 61-62, in which Harris J. recognized that this change "is of little moment" because of the requirement of restraint and because "[t]he basic precepts of bail are immutable wherever the onus falls."

accused or the surety, if applicable, has reasonably recoverable assets." This provision came into force in 2019 — a recent and unambiguous reaffirmation of Parliament's views on cash bail.

14. The wider history of Parliament's treatment of cash bail is reviewed in detail below. For now, it suffices to say that the decision to reserve cash bail for "exceptional circumstances" has been reaffirmed consistently over decades — including this very year, in Bill C-14.

15. The *Code* provides a means to realize on financial conditions (both promises to pay and cash bails) through "estreatment."[5] Monies are not automatically forfeited due to a breach. A certificate of default must be issued and an estreatment hearing must be fixed under s. 771 of the *Code*. The accused and sureties are given notice and can argue why any promised amounts should not be forfeited. The presiding justice has discretion to determine what, if any, forfeiture to order. Under s. 771(3), anyone against whom forfeiture is ordered becomes a "judgment debtor of the Crown."

## B. ONTARIO'S *BAIL ACT*

16. Ontario's *Bail Act* is principally concerned with creating provincial machinery to secure and collect amounts relating to bail obligations created under the *Code*. Section 1 permits a Crown Attorney to place a lien on a surety's land for the amount they have promised to pay. Section 2 permits a lien where a surety is ordered to pay following an estreatment hearing under s. 771 of the *Code*. Section 8 provides further collection machinery for debts owing to the Crown under s. 771, while s. 8.1 permits Ontario to obtain prescribed financial information from sureties.

17. Until the cash bail provisions, the *Bail Act* did not interfere with the *Code*'s rules respecting the grounds for detention, forms of release, or the conditions of release. This changed with Bill 75.

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5 See *Canada (Attorney General) v. Horvath*, 2009 ONCA 732, at paras. 23-26.

## C. Ontario's Cash Bail Provisions

### (i) *Keeping Criminals Behind Bars Act, 2026* (Bill 75)

18. Bill 75, the *Keeping Criminals Behind Bars Act, 2026*, was introduced in the Legislature on November 25, 2025. It received royal assent on June 2, 2026.

19. Bill 75 extended the *Bail Act* into new terrain by adding a cash bail provision. Section 8.0.1 now mandates that when a release order includes a promise to pay from an accused or their surety, that person must deposit an equivalent amount of cash. Failure to do so is a provincial offence punishable by a fine of up to $5,000.[6] Section 8.0.1(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.

20. When it was enacted, s. 8.0.1 left key details to be prescribed by regulation. The section itself is silent on the mechanics of payment, such as when any amounts must be paid.

### (ii) O. Reg. 278/26: Security Deposits and Information From Sureties

21. On August 13, 2026 — two and a half months after the *Keeping Criminals Behind Bars Act, 2026* came into force — Ontario published O. Reg. 278/26. It took effect on August 17, 2026.

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[6] *Bail Act*, R.S.O. 1990, c. B.1, s. 8.0.1(2); *Provincial Offences Act*, R.S.O. 1990, c. P.33, s. 61.

22. The Regulation prescribes the mechanics that s. 8.0.1 left undetermined. Section 2(1) now requires any accused person or surety who makes a promise to pay to deposit the cash value of that promise within two business days of release, on pain of committing an offence.

## PART III — LAW AND ARGUMENT

### A. THE CASH BAIL PROVISIONS ARE UNCONSTITUTIONAL ON FEDERALISM GROUNDS[7]

23. A two-stage framework applies to the review of legislation on federalism grounds.[8] At the characterization stage, the court identifies the law's "pith and substance." At the classification stage, the court determines whether the law, in pith and substance, falls within one of the enacting body's heads of power. If it does not, the law is unconstitutional. Even if a law falls within provincial jurisdiction, it may still be inoperative due to the doctrine of federal paramountcy.

24. Applying this framework, the cash bail provisions are outside Ontario's constitutional authority or, if not, paramountcy renders them inoperative.

#### (i) Characterization: the pith and substance of the provisions is to keep more accused persons in pre-trial detention by making bail harder to obtain

25. A law's pith and substance is its "main thrust, or dominant or most important characteristic" or its "leading feature or true character."[9] Identifying the pith and substance turns on the law's purpose and effects, each of which is informed by both intrinsic and extrinsic evidence.[10]

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7 The federalism issue is addressed first both because it is the most straightforward way to resolve this application and because it "logically precedes" the *Charter* issues (*Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at p. 949; *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, at para. 82).

8 *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48, at para. 86 (citations omitted).

9 *Sanis Health Inc. v. British Columbia*, 2024 SCC 40, at para. 43, citing *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, [***GGPPA References***], at para. 51; *R. v. Morgentaler*, [1993] 3 S.C.R. 463, at pp. 481-83.

10 *Reference re Impact Assessment Act*, 2023 SCC 23 [***IAA Reference***], at para. 62, citing *Reference re Firearms Act (Can.)*, 2000 SCC 31, [***Firearms Reference***], at para. 17; *Canadian Western Bank v. Alberta*, 2007 SCC 22 [***Canadian Western Bank***], at para. 27; *Reference re Genetic Non-Discrimination Act*, 2020 SCC 17 [***GNDA Reference***], at para. 34; *GGPPA References*, 2021 SCC 11, at para. 51.

26. Here, the pith and substance of the cash bail provisions is to keep more accused persons in pre-trial detention by altering the conditions of release and making bail harder to obtain.

### (a) *Purpose of the Keeping Criminals Behind Bars Act, 2026*

27. **The intrinsic evidence of purpose** — that is, "material contained within the four corners of the law"[11] — demonstrates that Ontario's goal is to make the federal bail regime more stringent.

28. The law's title, while not determinative, "is an important form of intrinsic evidence."[12] Bill 75's title lays Ontario's purpose bare: the *Keeping Criminals Behind Bars Act, 2026*. It conveys, in unmistakable terms, that Ontario's objective is to keep more "criminals" — who are, of course, presumptively innocent accused persons — in pre-trial detention.

29. The law's preamble is also a relevant input. Preambles "are useful in constitutional litigation in order to illustrate the 'mischief' the legislation is designed to cure and the goals Parliament sought to achieve."[13] The preamble to the *Keeping Criminals Behind Bars Act, 2026* states that one of its purposes is "[r]eforming the bail system to protect Ontario communities."[14] Here again Ontario demonstrates that its goal is to change the federally enacted bail system. The apparent reason for this is a belief that accused persons who are released on bail — what the Supreme Court has described as the "default position," in light of the *Charter* right to reasonable bail and the presumption of innocence[15] — pose safety risks to communities in Ontario. Ontario seeks to replace Parliament's judgment of how best to respond to those risks with its own.

30. The law's text speaks for itself. It is expressly an extension of the federal bail regime. Where

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11 *IAA Reference*, 2023 SCC 23, at para. 62.

12 *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5, at para. 46, quoting *GNDA Reference*, 2020 SCC 17, at para. 35. See also *GGPPA References*, 2021 SCC 11, at para. 58.

13 *GGPPA References*, 2021 SCC 11, at para. 59 (citations omitted).

14 *Keeping Criminals Behind Bars Act, 2026*, Preamble (emphasis added).

15 *Antic*, 2017 SCC 27, at para. 67(c).

a release order made under s. 515 of the *Code* includes a promise to pay, the accused or surety "shall pay" that amount of the promise into court in cash within 48 hours of the order being made. A person who fails to do so is guilty of "an offence."[16] The provision does not regulate a collateral issue that happens to touch on bail; it directly prescribes what must happen when a release order is made.

31. **The extrinsic evidence of purpose** — "Hansard debates, the minutes of parliamentary committees and relevant government publications," among other things[17] — also reflects Ontario's purpose of making release harder to obtain and imposing harsher conditions when release occurs.

32. At first reading of the bill, the sponsoring minister, Solicitor General Michael Kerzner, said that Ontario was "tightening bail requirements to protect communities."[18]

33. At second reading, the Solicitor General expressly tied the deterrent effect of cash bail to the proposed legislative changes. His speech makes clear that the true purpose of the cash bail provisions is not to support provincial efforts at debt collection or any other administrative procedure. It is to create a new consequence of being arrested, to alter the coercive effect of a promise to pay, and to address Ontario's dissatisfaction with how the federal bail regime operates:

> One of the things we have done, and the Attorney General will talk about it more, is having mandatory full-cash security deposits. What does this mean? It means that when you are leaving jail or our correctional facilities with a court-ordered condition, it's the court that will set the terms. We just can't have a promise that you're going to be good. There has to be **consequences** for what you have done. […]
>
> With this change, it might strike a chord in somebody that's coming back into their community: Don't do it again. Don't be a repeat and violent offender. Don't do it. People forget why you're in jail. So let me re-explain that: … You have been arrested by the police—you've been placed there awaiting trial, and some of the people who have been arrested awaiting trial, let me tell you, are really bad people. They're a threat to our community. They're a risk to our right to live safely. […]

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16 *Bail Act*, R.S.O. 1990, c. B.1, s. 8.0.1; O. Reg. 278/26, ss. 2(1), 2(2).
17 *IAA Reference*, 2023 SCC 23, at para. 62.
18 Ontario, Legislative Assembly, *Hansard*, 44th Parl., 1st Sess. ("***Hansard***") (November 25, 2025) [Application Record ("**AR**"), Tab 7A, at p. 78] [A1568] (emphasis added).

> We all see the violent crime in the province is a problem. We all know that something needs to be done, and far too often, these dangerous and often repeat offenders are let back on the streets because the system is broken and it just isn't good enough. **The proposed changes in the *Keeping Criminals Behind Bars Act* underscores our government's commitment to crack down on violent crime and to keep our communities safe. That is the purpose of these changes, and it will have that effect**. […]
>
> **The current bail system is failing the people of the province. It's allowing dangerous offenders, repeat offenders, back on the streets and putting innocent people at risk every day. This has to stop**. And even if they're not actually at risk, they feel at risk, and that has an effect on people. […]
>
> We're taking action and delivering on our promise to fix the broken bail system by **making bail more real and consequential for people accused of serious crimes**.[19]

34. Although the Solicitor General mentioned that the "proposed amendments would help Ontario increase the power to collect bail debts,"[20] the speech above reveals the government's true focus: substantively and significantly toughening the federal bail regime through cash bail.

35. Before the Standing Committee on Justice Policy (to which the bill was referred after the second reading), the Solicitor General made several significant comments:

- Ontario's goal of keeping accused persons in pre-trial detention was made clear: "We want to keep the murderers, the drug traffickers, the rapists — the most egregious examples of criminality committed by individuals — locked up where they belong."[21]

- The Solicitor General tied the amendments to improving bail compliance and emphasized Ontario's dissatisfaction with the federal government's approach. He said that the amendments would make it "harder for offenders to manipulate the bail system by making the onus on people who break the law to observe the security deposit."[22]

- When confronted with the reality that the cash bail provisions would operate unduly harshly against lower income families, the Solicitor General said they would not, because "the courts will decide on the amount" and will "take into consideration the circumstances."[23] The upshot is that the courts will have to incorporate the realities of cash

19 *Hansard* (December 9, 2025) (Hon. M. Kerzner) [AR, Tab 7A, at p. 86] [A1577] (emphasis added).
20 *Hansard* (December 9, 2025) (Hon. M. Kerzner) [AR, Tab 7A, at pp. 83-86] [A1574-77] (emphasis added).
21 Ontario, Legislative Assembly, Standing Committee on Justice Policy, *Hansard* ("**Committee Proceedings**") (April 15, 2026) (Hon. M. Kerzner) (AR, Tab 7G, at p. 164] [A1655] (emphasis added).
22 Committee Proceedings (April 15, 2026) (Hon. M. Kerzner) [AR, Tab 7G, at pp. 164-165] [A1655-56].
23 Committee Proceedings (April 15, 2026) (Hon. M. Kerzner) [AR, Tab 7G, at p. 166] [A1657].

bail into consideration of the amount of their promise to pay — substantively altering the calculus on bail. The Solicitor General said this was necessary to increase "deterrence."[24]

36. At third reading, the Attorney General confirmed that the law was designed to address perceived gaps in the federal bail system: "The current bail system needs to be better. It is still allowing dangerous, repeat offenders — and sometimes dangerous, repeating offenders — back on the streets and putting innocent people's lives at risk."[25] He described the law as "delivering on our promise to <u>fix the broken bail system by making bail more real and consequential for people accused of serious crimes</u>."[26] The Associate Solicitor General for Auto Theft and Bail Reform also said that the government was "advocating for stricter bail practices."[27]

37. The government's statements outside the Legislature echo these sentiments. Its backgrounder describes the legislation as part of a "comprehensive bail reform strategy" intended to "strengthen bail accountability," "keep violent, repeat offenders off the streets," and "hold offenders accountable."[28] Other public statements framed Bill 75 as an effort to "toughen" and "fix" what Ontario described as a broken bail system, namely by keeping violent and repeat offenders detained.

38. These statements do not describe the cash bail provisions as merely regulating a matter incidentally connected to crime prevention or the administration of justice, like administering debt collection. While the government has, at times, cited its ability to garnish wages,[29] these objectives are plainly ancillary to the paramount purpose revealed by the government's consistent messaging and the legislation itself: the cash bail provisions are designed to alter the federal regime by making

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24 Committee Proceedings (April 15, 2026) (Hon. M. Kerzner) [AR, Tab 7G, at p. 169] [A1660].

25 *Hansard* (May 12, 2026) (Hon. D. Downey) [AR, Tab 7J, at p. 245] [A1736].

26 *Hansard* (May 12, 2026) (Hon. D. Downey) [AR, Tab 7J, at p. 246] [A1737] (emphasis added).

27 *Hansard* (May 12, 2026) (Hon. Z. Hamid) [AR, Tab 7J, at p. 248] [A1739].

28 Ontario Ministry of the Solicitor General, "Backgrounder, *Keeping Criminals Behind Bars Act, 2025*" (August 14, 2026) ("**Ontario Backgrounder**") [AR, Tab 7O, at p. 319] [A1810].

29 See, e.g., *Hansard* (December 9, 2025) (Hon D. Downey) [AR, Tab 7B, at p. 87] [A1578]; *Hansard* (May 11, 2026) [AR, Tab 7J, at p. 248 [A1739]; Ontario Backgrounder [AR, Tab 7O, at p. 321] [A1812]; Ontario, "Ontario Strengthening Bail Requirements to Protect Communities" (August 14, 2026) [AR, Tab 7P, at p. 336] [A1827].

bail harder to obtain and more restrictive if obtained.

### (b) *Effects of making cash bail mandatory*

39. Both the law's legal effects and its practical effects factor into its pith and substance. Legal effects include "those effects that 'flo[w] directly from the provisions of the statute itself,' while practical effects are those ''side' effects [that] flow from the application of the statute which are not direct effects of the provisions of the statute itself.'"[30]

40. **The legal effects** of the law have already been explained. The cash bail provisions obligate accused persons and sureties to pay any promised monies into court — an obligation that will likely attach to most bail orders, given that promises to pay are routinely imposed.[31] Breach of this obligation is a provincial offence punishable by a $5,000 fine.

41. In this way, the provisions make cash bail a *de facto* mandatory condition of release and alter bail if granted in Ontario. The provisions eliminate the monetary pledge without deposit — one of the principal forms of release that Parliament has established — which can be set based on the assets a person has available, not just their available cash. The cash bail provisions replace that routine form of release with one that both Parliament and the Supreme Court have decreed must be exceptional.

42. This new obligation is a legal effect that substantively distinguishes the cash bail provisions from the other sections in the *Bail Act* that support debt collection. Those other sections provide the government with the means to secure obligations (e.g., by registering a lien after a surety has been ordered to pay under s. 771 of the *Code*).[32] None of those sections creates a new obligation

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30 *IAA Reference*, 2023 SCC 23, at para. 63, citing *Kitkatla Band v. British Columbia (Minister of Small Business, Tourism and Culture)*, 2002 SCC 31, at para. 54. See also *GGPPA References*, 2021 SCC 11, at para. 51.

31 Affidavit of Marianne Salih (August 18, 2026) ("**Salih Affidavit**"), at paras. 9-11 [AR, Tab 10, at pp. 781-782] [A2278-79].

32 See *Bail Act*, R.S.O. 1990, c. B.1, ss. 1, 2, 8, 8.1.

on an accused person or a surety: obligations to pay result solely from an order made by a justice under the *Code*. In contrast, the cash bail provisions create a present obligation to pay money that no court has ordered. This difference is critical because it demonstrates that Ontario is trying to alter the terms and conditions of release, not simply trying to facilitate debt collection.

43. **The practical effects** of the law are not yet fully apparent, but they are predictable. *Antic* already recognizes that cash bail tends to operate unfairly against accused persons.[33] Marianne Salih, an experienced Ontario criminal lawyer, expands on this unfairness in her affidavit.

44. Ms. Salih has represented hundreds of clients at bail hearings. Many of her clients are legally aided, have extremely limited means, and live with mental health issues, addictions, housing insecurity, or other forms of disadvantage. Their proposed sureties — often family members or friends — likewise have modest means. Despite all of this, virtually every surety release she has seen includes a promise to pay with significant amounts (e.g., ranging from $2,000 to tens of thousands).[34] These amounts can be promised by both sureties and accused persons.

45. Ms. Salih explains that mandatory cash bails will make bail practically unattainable for many of those who would otherwise secure release. Promises to pay can be made because the money becomes payable only on breach and forfeiture. Requiring the same amount to be deposited within 48 hours changes the nature of this obligation in two key ways.

46. First, because many will not be able to deposit the amount of their pledge, they will be forced to choose between being released knowing payment is impossible or telling the court that they will not be able to make the provincial payment and risking detention.[35]

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[33] *Antic*, 2017 SCC 27, at paras. 26-27.
[34] Salih Affidavit, at paras. 5, 10 [AR, Tab 10, at pp. 780-781] [A2277-78].
[35] Salih Affidavit, at para. 13 [AR, Tab 10, at p. 782] [A2279].

47. Second, even if the accused or their surety could produce the required cash deposits within 48 hours of a bail order being made, the vast majority of them would endure significant financial hardship — with the likely result being that some sureties would no longer be willing or able to act. Ms. Salih affirms that many of her clients and sureties live cheque-to-cheque and that it is "common that the pledges ordered by the court constitute most of, or the entirety of, the surety's savings or a substantial portion of their monthly income." The deposits mandated by the cash bail provisions could thus place accused persons, sureties, and their families "in a precarious financial situation, impacting their ability to meet basic needs such as food and shelter."[36] Before the cash bail provisions, financial promises were made knowing that, in the event of a breach, the accused or the surety may have to forfeit a promised sum; but the practical reality was that they could begin planning for that possibility only after their promise was made. This is no longer possible.

48. The bottom line is that releasable accused persons will be detained or their release will be delayed, not because a justice has found detention necessary, but because Ontario has made immediate access to cash a mandatory condition. The inevitable results reveal the cash bail provisions for what they are: in pith and substance, the provisions seek to keep more accused persons in pre-trial detention by altering the conditions of release and making bail harder to obtain.

#### (ii) Classification: the cash bail provisions are a provincial invasion of Parliament's exclusive jurisdiction to make criminal procedure

49. Properly characterized, the cash bail provisions exceed the scope of provincial jurisdiction. They properly fall within *Parliament's* exclusive jurisdiction over "The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters," which is assigned by s. 91(27) of the *Constitution Act, 1867*. Bail — including its terms and

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36 Salih Affidavit, at paras. 10, 14 [AR, Tab 10, at p. 783] [A2278, 80].

conditions, with which the cash bail provisions seek to interfere — forms part of that "Procedure."

### (a) *Bail is a matter of federal criminal procedure*

50. Unlike the hotly contested scope of the power to make substantive criminal law,[37] the federal power to legislate criminal procedure is well settled. That power is broad. It includes the rules governing how an accused is dealt with while the prosecution remains alive and everything integral to that process. A line of cases stretching back to at least 1949 makes this clear:

- In *Attorney-General of Quebec v. Attorney-General of Canada* (1949), Taschereau J. (as he then was) construed s. 91(27) as the "power to determine what shall or what shall not be criminal and to determine the steps to be taken in prosecutions and other criminal proceedings before the courts."[38]

- In *Di Iorio* (1976), Dickson J. (as he then was) relied on Taschereau J.'s reasons above to reject "the view which would confine criminal procedure to that which takes place within the courtroom on a prosecution."[39] He understood procedure in "a broad sense" as encompassing the *Code*'s "rules by which … police powers are exercised, the right to counsel, search warrants, interim release, procuring attendance of witnesses."[40]

- In *Lechasseur* (1981), Laskin C.J. held that the federal criminal law power included the jurisdiction to legislate procedure for the laying of an information. These were matters of procedure because they "initiated" the criminal process and were "integral to the process."[41]

- In *Demers* (2004), Iacobucci and Bastarache JJ. held that criminal procedure also included the procedure through which accused persons are declared unfit to stand trial (e.g., whether they could be detained for assessment, compelled to undergo treatment, etc.). They rejected the argument that a finding of unfitness passed the matter over to provincial jurisdiction (as it does for those found not criminally responsible whose criminal processes have concluded). In their view, the accused remained "subject to a criminal accusation and pending proceedings."[42] Relying on *Lechasseur*, they explained that "[f]rom the time a person is accused of a crime under the *Criminal Code*, the criminal process is validly engaged and its hold on the accused found unfit to stand trial is established;" as a result, "the authority to establish a scheme to administer the rights of the accused found unfit to stand trial flows from

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37 The traditional criminal law power test set out in the *Margarine Reference* (i.e., prohibition, penalty, criminal law purpose) applies more straightforwardly to substantive criminal laws (see *Firearms Reference*, 2000 SCC 31, at para. 27 (citations omitted); *GNDA Reference*, 2020 SCC 17, at para. 67). This application focuses on procedure.

38 *Attorney-General of Quebec v. Attorney-General of Canada*, [1945] S.C.R. 600, at p. 603.

39 *Di Iorio v. Warden of the Montreal Jail*, [1978] 1 S.C.R. 152 [***Di Iorio***], at p. 209.

40 *Di Iorio*, [1978] 1 S.C.R. 152, at p. 209 (emphasis added); *Ritcey v. The Queen*, [1980] 1 S.C.R. 1077, at p. 1081.

41 *Attorney General of Quebec v. Lechasseur*, [1981] 2 S.C.R. 253 [***Lechasseur***], at p. 262.

42 *R. v. Demers*, 2004 SCC 46 [***Demers***], at para. 22.

Parliament's jurisdiction on criminal law, including criminal procedure."[43]

51. Bail falls within the broad scope of criminal procedure that these cases have established. It is integral to the criminal process. Part XVI of the *Code*, which is titled "Compelling Appearance of Accused Before a Justice and Interim Release," demonstrates this inextricable relationship. Arrests effected pursuant to this part are "part of a larger scheme for causing an individual who is alleged to have committed a crime to appear in court to face charges,"[44] where they also have the opportunity to seek judicial interim release. This is an essential moment in the criminal process not just because it is mandated by the *Code*,[45] but because the procedure and rigour set out therein ensure respect for the *Charter* rights to the presumption of innocence and reasonable bail. Before any further steps in the criminal process take place, it falls to the courts to determine whether the accused remains in custody or is released pending trial and, if released, on what form of release.[46]

52. The cash bail provisions invade this exclusive federal jurisdiction over bail. They augment or amend the terms and conditions of release set out in the *Code*. The province's goal is to change whether and how accused persons are released after they are charged with a crime — something reserved for Part XVI and, more importantly, Parliament. This is outside the province's jurisdiction.[47]

#### (b) *Ontario's efforts to cloak its amendments to the federal bail regime in provincial legislation should be rejected*

53. There are four provincial heads of power that Ontario might rely on to try to salvage the cash

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[43] *Demers*, 2004 SCC 46, at paras. 21-25 (emphasis added). See also *Reference Re Youth Court*, (1998) 46 C.C.C. (3d) 203, 1998 CanLII 5677 (N.B. C.A.), at para. 31 ("In general, 'criminal procedure' would include the laying of an information and the procedural steps which follow, such as judicial interim release.")

[44] *R. v. Wilson*, 2025 SCC 32, at para. 62 (citations omitted).

[45] See *R v. A.A.*, 2022 ONSC 4310, at para. 47.

[46] See generally *R. v. Myers*, 2019 SCC 18 [***Myers***], at para. 24.

[47] The Legislature's Standing Committee on Justice Policy has recognized this. In a 2023 report on bail reform, the Committee stated that "[b]ail is a matter of criminal procedure" and that bail reforms — including cash bail — "fall within federal jurisdiction." Standing Committee on Justice Policy, "Report on the Modernization of the Bail System: Strengthening Public Safety" (2023), at pp. 7-13, 22 [AR, Tab 7Z, at pp. 385-391, 400] [A1876-82, 91].

bail provisions. But the provisions are not properly classified under any of them.

54. **First, Ontario might rely on s. 92(14) of the *Constitution Act, 1867***. This section supplies Ontario with jurisdiction over the "Administration of Justice in the Province." It gives provinces a suite of powers to enact measures relating to court administration relating to criminal law, but not its substance or procedure. This includes the ability to organize courts, appoint provincial judicial officers, staff and fund the justice system, maintain and discipline police forces, conduct coroners' inquests, investigate organized crime, and examine failures in the administration of justice.[48] It may even permit the regulation of some features of how its courts function.[49] Still, "[w]hatever this provision encompasses it cannot be invoked to interfere with the legislative authority of Parliament in relation to the criminal law, including the procedure in criminal matters, bestowed by s. 91(27)."[50]

55. *Starr* illustrates the dividing line well. Ontario established a public inquiry to investigate allegations that Patricia Starr and the Tridel Corporation had conferred benefits on public officials in circumstances resembling the *Code* offence of fraud on the government. The Supreme Court held that Ontario exceeded its constitutional authority because the inquiry's focus was "virtually indistinguishable" from the *Code* offence and because it was "in pith and substance, a substitute police investigation and preliminary inquiry into a specific offence."[51] This invaded a field already occupied

48 *Reference re Young Offenders Act (P.E.I.)*, [1991] 1 S.C.R. 252, at p. 264 ("constitute, maintain and organize provincial courts" staffed by provincially appointed judges); *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43, at para. 33 (provinces provide the "infrastructure and staff necessary to operate the courts," establish schemes for legal representation, and vote the funds necessary to operate the justice system); *O'Hara v. British Columbia*, [1987] 2 S.C.R. 591, at paras. 14-23 (provincial authority over the appointment, control and discipline of municipal and provincial police, upholding an inquiry into alleged police misconduct and confirming provincial authority over coroners' inquiries); *Di Iorio*, [1978] 1 S.C.R. 152 (inquiry into organized crime and identifying the police, criminal investigations, prosecutions, corrections and the court system as aspects of the administration of justice); *MacKeigan v. Hickman*, [1989] 2 S.C.R. 796, at p. 835 (jurisdiction to inquire into the "investigation, charging, prosecution, conviction and subsequent release" of Donald Marshall Jr.).

49 *Jones v. A.G. of New Brunswick*, [1975] 2 S.C.R. 182 (regulating the language use in provincial courts).

50 *Lechasseur*, [1981] 2 S.C.R. 253, at p. 261 (emphasis added).

51 *Starr v. Houlden*, [1990] 1 S.C.R. 1366, at p. 1402.

by Parliament and exceeded what s. 92(14) permits.

56. The cash bail provisions suffer from an analogous constitutional defect. They seek to rewrite the federal bail regime by creating new conditions of release. This is not the administration or implementation of federal policy; it is an effort to alter the balance struck by that policy and do indirectly what Ontario cannot do directly to the *Code*. Ontario can provide the bail court, appoint the justice, employ the clerk, operate the jail, enforce a debt, and carry out the release order once made. But s. 92(14) does not permit it to alter Parliament's decisions about the appropriate forms of release.

57. **Second, Ontario might rely on s. 92(13) or s. 92(16)**. These are residual powers that confer jurisdiction relating to "Property and Civil Rights in the Province" and "Generally all Matters of a merely local or private Nature," respectively.[52] To a degree, these provisions confer the power to pursue crime-related goals — but only through legislation genuinely directed at and anchored in matters genuinely within provincial jurisdiction. The province cannot invoke crime prevention to legislate the operation of criminal procedure directly. Two Supreme Court cases confirm this point.

58. *Chatterjee* demonstrates why a regime that has some ostensibly criminal elements — the civil forfeiture regime in Ontario's *Civil Remedies Act* — may fall within the ambit of property and civil rights. Justice Binnie's reasons explain that the Constitution permits a province to "enact measures to deter criminality and to deal with its financial consequences <u>so long as those measures are taken in relation to a head of provincial competence and do not compromise the proper functioning of the *Criminal Code*</u>."[53] Attaching "civil consequences to criminal acts" anchored in provincial heads of legislative power is permissible.[54] That is what civil forfeiture is: through that regime, Ontario sought to "make crime in general unprofitable, to capture resources tainted by crime so as to make them

52 See *Reference re Assisted Human Reproduction Act*, 2010 SCC 61, at para. 134 (citations omitted).
53 *Chatterjee v. Ontario (Attorney General)*, 2009 SCC 19, at para. 40 [***Chatterjee***].
54 *Chatterjee*, 2009 SCC 19, at para. 40.

unavailable to fund future crime and to help compensate private individuals and public institutions."[55] These are provincial objects, not legal cover for provincial interference in federal legislation.

59. The cash bail provisions are nothing like the *Civil Remedies Act*. That statute created a free-standing forfeiture regime directed at property. It did not regulate the conduct of a criminal proceeding. It did not alter any order made under the *Code*. It did not determine who would be released pending trial or on what terms. Yet the cash bail provisions do all of these things. They convert a contingent promise made under s. 515 into an immediate obligation to pay under threat of punishment. That is not suppressing the conditions that foster crime. Rather, it is dictating the conditions of release.

60. *Goodwin* is also instructive. In that case, Karakatsanis J. considered British Columbia's automatic roadside prohibition regime for impaired driving. Drivers who failed or registered a "warn" on an approved screening device could immediately lose their licence, have their vehicle impounded, and incur significant monetary penalties and fees. Justice Karakatsanis upheld the provincial regime as valid because its dominant purpose was not criminal in nature; it was "the licensing of drivers, the enhancement of traffic safety and the deterrence of persons from driving while impaired by alcohol."[56] This fell within the provincial power over "the regulation of highway traffic" and "ensuring highway safety," which are matters within provincial jurisdiction under s. 92(13) and s. 92(16).[57]

61. The cash bail provisions lack that essential provincial anchor. Driving is a provincially regulated and licensed activity, the conditions of which provinces have overseen without controversy since the 1940s.[58] The same is not true for the conditions of bail. Ontario has no independent

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55 *Chatterjee*, 2009 SCC 19, at para. 4.
56 *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46 [***Goodwin***], at para. 29.
57 *Goodwin*, 2015 SCC 46, at paras. 31-34.
58 See *Goodwin*, 2015 SCC 46, at para. 31, citing *Provincial Secretary of Prince Edward Island v. Egan*, [1941] S.C.R. 396, *O'Grady v. Sparling*, [1960] S.C.R. 804; *Ross v. Registrar of Motor Vehicles et al.*, [1975] 1 S.C.R.5.

jurisdiction over the terms on which an accused is released pending trial. Those terms are part of criminal procedure and can only be prescribed by Parliament.

62. **Third, Ontario might rely on s. 92(15).** This section provides for "The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in [s. 92]." A province can thus "create an offence to enforce or support a constitutionally valid provincial law or program."[59]

63. But this power only arises to the extent that it is tied to a matter that is properly provincial. The province must therefore first establish that the cash bail provisions fall within a matter it is constitutionally competent to enact. For the reasons above, they do not.

64. The bottom line is that Ontario cannot arrogate constitutional jurisdiction to itself just by invoking crime prevention. Were it otherwise, the exclusivity of Parliament's authority over criminal procedure would be illusory: a province could alter federal procedure by recasting its intervention as crime prevention. Virtually every rule governing bail can be justified in the language of public safety, deterrence, or crime prevention. On that logic, a province could create new reverse onuses, prescribe who may act as a surety, mandate detention for particular offences, or impose its own rules governing conditions of release. It could alter rules of criminal evidence because existing rules allowed too many prosecutions to fail. These may all be crime prevention objectives, but they do not convert criminal procedure into a matter of provincial jurisdiction. Crime prevention may explain why a province wishes to legislate; it cannot expand the subjects on which the Constitution permits it to legislate.

65. The cash bail provisions are thus not properly classified as falling under any head of provincial jurisdiction. They are a provincial attempt to address Ontario's disagreement with the federal

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59 *Scowby v. Glendenning*, [1986] 2 S.C.R. 226, at para. 3.

approach to bail. But that disagreement cannot be a source of provincial power. The Constitution assigns jurisdiction, and it has assigned the matter of bail exclusively to Parliament under s. 91(27).

### (iii) Paramountcy: the cash bail provisions should be declared inoperative

66. Even if the cash bail provisions were a valid exercise of provincial legislative jurisdiction, the doctrine of federal paramountcy would render them inoperative to the extent of their conflict with the *Code*'s bail regime.[60] Paramountcy can arise in either of two ways: when there is an operational conflict, such that complying with both laws is impossible, or when the provincial law frustrates the purpose of the federal legislation.[61] Both of these arise here.

#### (a) *Operational conflict between the cash bail provisions and s. 515 of the Code*

67. Operational conflict arises from the "impossibility of dual compliance": when "one enactment says 'yes' and the other says 'no', such that compliance with one is defiance of the other."[62] The cash bail provisions create this type of intractable conflict with two key sections of the *Code*'s bail regime.

68. First, the provisions conflict with s. 515(2.01), which codifies the "ladder principle." This 'ladder' starts with an order without financial obligations, then moves to a promise to pay, and eventually goes all the way up to cash bail — the most onerous form of release. This section requires a justice not to order any condition without the Crown showing why a less onerous rung on the ladder would be inadequate. A justice is not free to skip the promise-to-pay rung simply because a province has made that option operate like cash bail. But following the cash bail provisions, a justice ordering a promise to pay is also ordering a cash bail. It is now impossible to do what the

60 *Desgagnés Transport Inc. v. Wärtsilä Canada Inc.*, 2019 SCC 58, at para. 99.
61 *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5 [***Orphan Well***], at para. 65.
62 *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, 2005 SCC 13, at para. 14; *Orphan Well*, 2019 SCC 5, at para. 65; *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161, at p. 191.

*Code* says must sometimes be done: order a promise to pay without deposit.

69. Second, s. 515(2.02) of the *Code* expressly requires justices to favour a promise to pay over a cash deposit. It specifies that a justice "shall favour a promise to pay an amount over the deposit of an amount of money" if there are reasonably recoverable assets. This provision is unambiguous: if a promise to pay would suffice, a justice cannot impose cash bail. But the cash bail provisions require the opposite. A justice who, applying the *Code*, determines that a promise to pay is appropriate now sees that order transformed by provincial law into the form of release Parliament disfavoured.

70. Ontario may say that dual compliance is still possible, because the justice orders a promise to pay and the accused or surety later deposits cash under provincial law. If that is dual compliance, it is only in form. Section 515(2.02) does not merely regulate the label attached to a release order; it protects the substantive distinction between a promise to pay and a cash deposit. Ontario's legislation makes it impossible to observe that distinction because it functionally eliminates the promise to pay.

#### (b) *The cash bail provisions frustrate the purpose behind Parliament's carefully calibrated bail regime*

71. The provincial law also frustrates the purpose of the federal scheme. Frustration of purpose arises where "imposing an obligation to comply with provincial legislation would in effect frustrate the purpose of a federal law."[63] Parliament's intent is critical here. To establish frustration of purpose, "the party relying on the doctrine must first establish the purpose of the relevant federal statute, and then prove that the provincial legislation is incompatible with this purpose."[64]

72. Parliament's purpose in enacting the ladder principle (s. 515(2.01)) and the preference for

[63] *Murray-Hall v. Quebec (Attorney General)*, 2023 SCC 10, at para. 84 (citations omitted).

[64] *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, at para. 26, citing *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, at para. 66; *Canadian Western Bank*, 2007 SCC 22, at para. 75.

promises to pay over cash bails (s. 515(2.02)) is clear: cash bail is the exception, not the rule. As the Supreme Court reviewed in *Antic*, Parliament built this clear purpose into the 1972 *Bail Reform Act*.[65]

73. The *Bail Reform Act* was the result of empirically demonstrated concerns with the state of bail in Canada. Before 1972, detention was presumed absent an application for bail and bail itself was highly discretionary. As Iacobucci J. explained in *Hall*, at the time the *Code* "gave virtually no guidance" on bail.[66] Seminal studies like Professor Martin Friedland's *Detention Before Trial* and the Ouimet Report revealed that magistrates routinely required accused persons to deposit cash before release and that "the bail system's overreliance on cash bail limited the possibility of release for many accused persons."[67] The result, as Professor Friedland observed, was that "the ability of the accused to marshall funds or property in advance" determined whether he or she would be released.[68]

74. The *Bail Reform Act* was designed "to reform a system that many experts saw as punitive, arbitrary, and inconsistent with the presumption of innocence" and, as part of that, address the injustice of indiscriminate use of cash bail.[69] In Parliament, the sponsoring Minister of Justice noted that requiring cash in advance could "operate harshly against poor people" and that "cash bail … is only a last resort," limited to when "the alleged offender was not ordinarily resident in the community where he was in custody."[70] The Act also codified the "ladder principle."

75. Parliament has actively reaffirmed this legislative choice through decades of successive amendments to the bail regime. Two of these were very recent.

76. In June 2019, Bill C-75 incorporated s. 515(2.02) into the *Code*. Again, this section requires

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65 See *Antic*, 2017 SCC 27, at paras. 21-31.
66 *R. v. Hall*, 2002 SCC 64 [***Hall***], at para. 56 (per Iacobucci J., dissenting but not on this point).
67 *Antic*, 2017 SCC 27, at para. 26, citing Martin L. Friedland, *Detention before Trial: A Study of Criminal Cases Tried in the Toronto Magistrates' Courts* (Toronto: U of T Press, 1965) [***Detention Before Trial***], at p. 176.
68 *Antic*, 2017 SCC 27, at para. 26, citing *Detention before Trial*, at p. 176.
69 See *Myers*, 2019 SCC 18, at para. 22, citing *Detention before Trial*.
70 See *Antic*, 2017 SCC 27, at para. 28 (citations omitted).

justices to prefer promises to pay over cash deposits. This post-*Antic* amendment is a powerful signal of purpose because it was not strictly necessary. *Antic* had already interpreted the *Code* in light of the constitutional guarantees in ss. 11(*d*) and (*e*) and held that cash bail must be a last resort.[71] *Antic* was binding. Parliament did not need to restate it, but it did so in an exceptional effort to "dispel doubts or to avoid controversy."[72] It chose to tell bail courts as clearly as possible how to apply s. 515 correctly and consistently with the *Charter:* cash bail is simply not an option when a promise to pay suffices.

77. In July 2026, Bill C-14, the *Bail and Sentencing Reform Act*, came into force. The federal government was clear that the intent behind the Act was to "make bail stricter and harder to get, including in cases of repeat and violent offending" — essentially what Ontario says its own legislation now does.[73] Bill C-14 altered the law of bail in significant ways (e.g., by expanding the circumstances in which a reverse onus applies and removing the ladder principle in those cases). But it left cash bail untouched at the top of the s. 515(2.01) ladder, reserved only for "exceptional circumstances."[74]

78. The purpose of the federal scheme is thus to ensure that presumptively innocent accused persons are not detained because they cannot post cash. The scheme strikes a delicate balance between accused persons' *Charter* rights and the need to make sure bail is effective.

79. The cash bail provisions upset this balance and frustrate Parliament's clear purpose. They convert every promise to pay into a mandatory cash deposit, eliminating the distinction Parliament drew between a contingent promise and an actual deposit. What Parliament preserved as a last resort, Ontario has made the norm. This frustration should render the cash bail provisions inoperative.

80. One Superior Court judge has already reached this very conclusion. On a bail review,

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71 See *Antic*, 2017 SCC 27, at para 67.

72 See *Schreiber v. Canada (Attorney General)*, 2002 SCC 62, at para. 74 (citations omitted).

73 Canada, "Canada introduces sweeping reforms to make bail laws stricter and toughen sentencing laws" (October 23, 2025) [AR, Tab 7AA, at p. 409] [A1900].

74 *Antic*, 2017 SCC 27, at para. 67(h) (emphasis added).

Cowan J. found that an accused person was releasable with pledges from both the accused and a surety. While the amounts ordered were appropriate as pledges, depositing those amounts in cash was not. *Redacted pursuant to a publication ban under s. 517 of the Criminal Code* [redacted] In his view, the doctrine of paramountcy rendered those provisions inoperative.

81. This conclusion confirms the unconstitutional dilemma justices now face when a release order should include a promise to pay: federal law directs them to favour the promise; provincial law transforms that promise into a cash bail. Paramountcy does not permit that result — especially because, as Wagner J. (as he then was) observed in *Antic*, "the bail provisions are federal law and must be applied consistently in all provinces and territories."[76] Ontario's attempt to create a cash bail regime is inoperative to the extent of its inconsistency with the *Code*.

## B. <u>THE CASH BAIL PROVISIONS INFRINGE ACCUSED PERSONS' *CHARTER* RIGHTS</u>

### (i) <u>Section 11(*e*): the cash bail provisions deny reasonable bail</u>

82. Section 11(*e*) of the *Charter* guarantees that a person charged with an offence has the right "not to be denied reasonable bail without just cause." The right to reasonable bail has two distinct components: "(1) the right to "reasonable bail" in terms of quantum of any monetary component and any other conditions that might be imposed; and (2) the right not to be denied bail without 'just cause.'"[77] The reasonableness component — which is the focus of this *Charter* challenge — "protects accused persons from unreasonable terms and conditions of bail."[78]

83. The "principles for reasonable bail" that the Supreme Court endorsed in *Antic* create a

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75 *R. v. MD* (2026), Court File No. CR-26-00000233-00BR (Sup. Ct. J.) [***MD***]. at para. 23.
76 *Antic*, 2017 SCC 27, at para. 6.
77 *R. v. St-Cloud*, 2015 SCC 27, at para. 27.
78 *Zora*, 2020 SCC 14, at para. 20.

"consistent and complementary approach under which the relevant rights in the *Charter* and the salient protections in the *Code* animate all aspects of the bail system."[79] This makes sense because, as Lamer C.J. observed in *Pearson*, "s. 11(*e*) transforms the basic entitlement [set out in the system enacted by the *Bail Reform Act*] into a constitutional right."[80] This drive towards harmonious interpretation of s. 11(*e*) and the entitlements of the *Code* coheres with other areas of *Charter* jurisprudence where the reasonableness of a law is informed by its statutory context and purpose.[81]

84. Reasonableness under s. 11(*e*) necessarily requires "the individualized approach mandated for the impositions of any bail conditions," including those imposed through the *Code*.[82] As Martin J. made clear in *Zora*, "[a]ll participants in the bail system also have a duty to uphold the presumption of innocence and the right to reasonable bail," and "the 'automatic imposition of bail conditions that cannot be connected rationally to a bail-related need is not in harmony with the presumption of innocence."[83] Both the *Charter* and the *Code* eschew "standard, routine, or boilerplate conditions."[84] Accordingly, to be statutorily and *Charter*-compliant, the conditions selected must be necessary, reasonable, least onerous, capable of compliance, and tailored.[85]

85. In this case, the cash bail provisions offend s. 11(*e*) because they impose cash bail in every case where a promise to pay is ordered, eliminating a key tool necessary to ensure that bail orders have appropriately individualized and restrained conditions. Ontario's imposition of mandatory cash bail whenever a promise to pay is ordered is both a "legislated form of release" that is unreasonable (because applying it in every case is antithetical to the constitutional requirement of reasonable,

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79 *Zora*, 2020 SCC 14, at paras. 5, 75.
80 *R. v. Pearson*, [1992] 3 S.C.R. 665, at p. 691.
81 See, e.g., *Goodwin*, 2015 SCC 46, at paras. 55-57, 67-68; *R. v. Pike*, 2024 ONCA 608, at paras. 33-77.
82 *Zora*, 2020 SCC 14, at para. 75 (emphasis added).
83 *Zora*, 2020 SCC 14, at para. 101, citing *R. v. A.D.M.*, 2017 NSPC 77, at para. 29; *Antic*, 2017 SCC 27.
84 *Zora*, 2020 SCC 14, at para. 100.
85 *Zora*, 2020 SCC 14, at paras. 20, 83-85, 100-102.

individualized bail) and inevitably results in a "specific ter[m] of release ordered by a justice or a judge" that is unreasonable (because it will be imposed in specific cases notwithstanding that it is not appropriate).[86] Imposing a blanket cash bail requirement without any individualized determination that cash is necessary, reasonable, or proportionate in the circumstances is not reasonable.

86. *Antic* makes clear that mandatory cash bail cannot be constitutional. That case "determine[d] the proper approach to applying [s. 515(2) of the *Code*], one that is consistent with the right not to be denied reasonable bail without just cause under s. 11(*e*) and with the presumption of innocence."[87] Justice Wagner held that cash bail was a lawful but exceptional form of release, appropriate only when less onerous alternatives are unavailable, and even then not in amounts that are so high that they would effectively amount to a detention order in the circumstances of the accused's case. Put differently, "where a monetary condition of release is necessary and a satisfactory personal recognizance or recognizance with sureties can be obtained, a justice or a judge cannot impose cash bail."[88] Ontario's cash bail provisions impermissibly attempt to reverse these basic holdings.

87. *Antic* also makes two important practical observations that further demonstrate why mandatory cash bail cannot be reasonable.

88. First, *Antic* notes that Parliament included cash bail as an option "for added flexibility, not because it is more effective than other release conditions in ensuring compliance with bail terms."[89] The Supreme Court has thus rejected the premise on which mandatory cash bail rests: that having cash "on the table" creates a stronger incentive to comply. But although cash bail and promises to pay create the same incentive to comply, they impose very different immediate burdens. These realities

86 See *Antic*, 2017 SCC 27, at para. 42.
87 *Antic*, 2017 SCC 27, at para. 6.
88 *Antic*, 2017 SCC 27, at para. 49 (emphasis added); see also *ibid.*, at para. 67(h), (i).
89 *Antic*, 2017 SCC 27, at para. 48.

mean that imposing cash bail in every case, as Ontario seeks to do, cannot be reasonable.

89. Second, *Antic* recognizes that cash bail may operate unfairly precisely because release becomes dependent on access to funds. *Antic* therefore requires a cash amount to remain within an individual's "readily available means."[90] But the cash bail provisions show no sensitivity to the realities of what an individual may be able to produce on 48 hours' notice. A surety may promise $50,000 because they own a home against which that amount could be recoverable, while being unable to produce $50,000 in cash in two days. Requiring that deposit in every case is unreasonable.

90. All of this coheres with the decision of Healy J.C.Q. (as he then was) in *Anoussis* (a case repeatedly cited with approval in *Antic*), which recognized that a judge imposing cash bail without justification "would quite likely be an order for unreasonable bail within the meaning of section 11(*e*) of the *Charter* precisely because it was granted without reason or justification."[91]

91. The constitutional imperative to individualize bail and apply restraint is also apparent from how a failure to do so will operate against marginalized populations. In *Zora*, Martin J. identified as a "reality of bail" that "onerous conditions disproportionately impact vulnerable and marginalized populations,"[92] including racialized and Indigenous accused. The cash bail provisions impermissibly ignore this reality. They apply to every promise to pay, regardless of the accused or surety's income, housing status, personal circumstances, or risk. They allow no discretion to dispense with cash because a pledge is sufficient, because of a lack of risk, because the surety owns readily recoverable property but lacks liquid funds, or because requiring the deposit would be disproportionate in the circumstances.[93] None of this is reasonable.

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90 *Antic*, 2017 SCC 27, at paras. 56–59, 67(i).

91 *R. c. Anoussis*, 2008 QCCQ 8100, at para. 31.

92 *Zora*, 2020 SCC 14, at para. 79. See also *R. v. Summers*, 2014 SCC 26, at paras. 66-67; *R. v. Morris*, 2021 ONCA 680, at paras 1, 123.

93 Even if a justice could consider the cash bail provisions as an inevitable consequence of a promise to pay, doing

92. Finally, Ontario cannot evade s. 11(*e*) by characterizing the deposit as separate from the bail order simply because payment occurs after release and is enforceable through a provincial offence. In *G*, the Supreme Court considered a s. 15 infringement resulting from the interaction of Ontario's *Christopher's Law* with the federal *Criminal Code* and *Criminal Records Act*. Justice Karakatsanis held that because the provincial regime was "layered on top of the consequences" of federal criminal law findings "by design," the constitutional analysis had to consider the combined effect of multiple statutes.[94] Along the same lines, the constitutional analysis must account for the net effect of Ontario's decision to legislate a provincial prosecution scheme that attaches new obligations and consequences to federal bail orders. The provincial cash bail requirement effectively becomes part of the legal burden of bail and, for the reasons above, violates s. 11(*e*).

### (ii) <u>Section 11(*d*): the cash bail provisions offend the presumption of innocence</u>

93. The cash bail provisions violate s. 11(*d*), which protects the presumption of innocence,[95] because they infringe s. 11(*e*). Section 11(*e*) "entrenches the effect of the presumption of innocence at the pre-trial stage of the criminal trial process."[96] The result is that "[t]he presumption of innocence is only satisfied in the bail process when the requirements of s. 11(*e*) are met."[97] Accordingly, the cash bail provisions' infringement of s. 11(*e*) also condemns them under s. 11(*d*).

### (iii) <u>Section 1: any infringements cannot be demonstrably justified</u>

94. Ontario cannot meet its burden to justify these infringements as reasonable limits under s. 1 of the *Charter*. It requires *evidence*, not just inference or argument, to show that the cash bail

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so would put them in the untenable position of having to undermine Parliament's scheme, as *MD* demonstrates.

94 *Ontario (Attorney General) v. G,* 2020 SCC 38, at para. 51.

95 See generally *Zora*, 2020 SCC 14, at para. 20 (citations omitted); *Myers*, 2019 SCC 18, at para. 1.

96 *Antic*, 2017 SCC 27, at para. 1.

97 *Zora*, 2020 SCC 14, at para. 20.

provisions meet the *Oakes* test.[98] But Ontario has filed nothing to support its claims of justification and proportionality.[99] The analysis need not go further.

## C. INJUNCTIVE RELIEF IS NECESSARY DURING THE PERIOD OF ANY RESERVE

95. If this Court reserves judgment on the application, it should issue an interlocutory injunction in the meantime. This requires satisfying the tripartite *RJR-MacDonald* test.[100] The test is met here.

96. **A serious issue** arises from the Applicants' constitutional challenge, for the reasons above.

97. **Irreparable harm** — that is, harm that cannot be quantified in monetary terms or adequately compensated — is inevitable.[101] Consistent with Ontario's stated purpose, the cash bail provisions will keep more presumptively innocent people behind bars — especially the most vulnerable and marginalized — even though the valid federal scheme entitles them to release. As Rosenberg J.A. said in *Downes*, courts "can take judicial notice that the ordinary consequences of pre-trial custody involve a severe loss of liberty."[102] And, as Iacobucci J. observed in *Hall*, "Liberty lost is never regained and can never be fully compensated for."[103]

98. **The balance of convenience** turns on which course presents the greater risk of harm pending a final outcome. Legislation is generally presumed to serve the public interest.[104] But the government "does not have a monopoly on the public interest," which "in *Charter* litigation, is not unequivocal or asymmetrical."[105] Sometimes the public interest requires suspending unconstitutional legislation.

99. This is one such case. The interests of justice support issuing an interlocutory injunction to

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98 *R. v. Ndhlovu*, 2022 SCC 38 [***Ndhlovu***], at para. 118, citing *R. v. Sharpe*, 2001 SCC 2, at para. 78.
99 *Ndhlovu*, 2022 SCC 38, at para. 126.
100 *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 [***RJR***], at p. 337.
101 *RJR*, [1994] 1 S.C.R. 311, at pp. 334, 341.
102 *R. v. Downes* (2006), 205 C.C.C. (3d) 488, 2006 CanLII 3957 (Ont. C.A.), at para. 28.
103 *Hall*, 2002 SCC 64, at para. 47 (per Iacobucci J., dissenting but not on this point). See also Salih Affidavit.
104 See *Harper v. Canada (Attorney General)*, 2000 SCC 57, at paras. 9-10.
105 *RJR*, [1994] 1 S.C.R. 311, at p. 343 (citations omitted).

maintain the system of bail that Parliament has deemed appropriate since 1972.

100. The risks of failing to issue the injunction are serious. The constitutional infirmity of the cash bail provisions is clear,[106] as are the risks of reviving an approach to bail that Parliament determined operated unduly harshly against marginalized people over 50 years ago. Suspending the operation of the cash bail provisions only means that the federal bail regime — with all its public safety protections — would continue to operate as Parliament intended it.

101. The risks of issuing the injunction pale in comparison. No evidence supports Ontario's assertion that this law protects citizens from crime. Ontario's own conduct undercuts any claim of urgency: it waited 76 days after s. 8.0.1 came into force to enact the regulations that made it operative. Any interest Ontario asserts in enforcing the provisions can wait for a ruling on their constitutionality.

## PART IV — ORDERS REQUESTED

102. The Applicants respectfully request a declaration that s. 8.0.1 of the *Bail Act* and O. Reg 278/26 are of no force or effect, pursuant to s. 52(1) of the *Constitution Act, 1982*. In the alternative, they request a declaration that those instruments are inoperative, pursuant to the doctrine of federal paramountcy. In the further alternative, they request a declaration that those instruments unjustifiably infringe s. 11(*d*) and s. 11(*e*) of the *Charter* and therefore are of no force or effect. Additionally, if this Court reserves judgment, it should issue an interlocutory injunction.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 24th day of August 2026.

**HENEIN HUTCHISON ROBITAILLE LLP**
Matthew Gourlay | Stephanie DiGiuseppe
Brandon Chung | Jacob Roth

[106] See *RJR*, [1994] 1 S.C.R. 311, at pp. 333-334 (emphasizing that requiring that all legislation be enforced until it is struck down "might in some instances be to condone the most blatant violation of *Charter* rights.").

**SCHEDULE A — LIST OF AUTHORITIES**

1. *R. v. Antic*, 2017 SCC 27
2. *R. v. Zora*, 2020 SCC 14
3. *R. v. A.K.*, 2026 ONSC 2262
4. *Canada (Attorney General) v. Horvath*, 2009 ONCA 732
5. *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927
6. *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44
7. *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48
8. *Sanis Health Inc. v. British Columbia*, 2024 SCC 40
9. *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11
10. *R. v. Morgentaler*, [1993] 3 S.C.R. 463
11. *Reference re Impact Assessment Act*, 2023 SCC 23
12. *Reference re Firearms Act (Can.)*, 2000 SCC 31
13. *Canadian Western Bank v. Alberta*, 2007 SCC 22
14. *Reference re Genetic Non-Discrimination Act*, 2020 SCC 17
15. *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5
16. *Attorney-General of Quebec v. Attorney-General of Canada*, [1945] S.C.R. 600
17. *Di Iorio v. Warden of the Montreal Jail*, [1978] 1 S.C.R. 152
18. *Ritcey v. The Queen*, [1980] 1 S.C.R. 1077
19. *Attorney General of Quebec v. Lechasseur*, [1981] 2 S.C.R. 253
20. *R. v. Demers*, 2004 SCC 46
21. *Reference Re Youth Court*, (1998) 46 C.C.C. (3d) 203, 1998 CanLII 5677 (N.B. C.A.)
22. *R. v. Wilson*, 2025 SCC 32
23. *R v. A.A.*, 2022 ONSC 4310

24. *R. v. Myers*, 2019 SCC 18

25. *Reference re Young Offenders Act (P.E.I.)*, [1991] 1 S.C.R. 252

26. *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43

27. *O'Hara v. British Columbia*, [1987] 2 S.C.R. 591

28. *MacKeigan v. Hickman*, [1989] 2 S.C.R. 796

29. *Jones v. A.G. of New Brunswick*, [1975] 2 S.C.R. 182

30. *Starr v. Houlden*, [1990] 1 S.C.R. 1366

31. *Reference re Assisted Human Reproduction Act*, 2010 SCC 61

32. *Chatterjee v. Ontario (Attorney General)*, 2009 SCC 19

33. *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46

34. *Scowby v. Glendenning*, [1986] 2 S.C.R. 226

35. *Desgagnés Transport Inc. v. Wärtsilä Canada Inc.*, 2019 SCC 58

36. *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5

37. *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, 2005 SCC 13

38. *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161

39. *Murray-Hall v. Quebec (Attorney General)*, 2023 SCC 10

40. *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53

41. *R. v. Hall*, 2002 SCC 64

42. *Schreiber v. Canada (Attorney General)*, 2002 SCC 62

43. *R. v. St-Cloud*, 2015 SCC 27

44. *R. v. Pearson*, [1992] 3 S.C.R. 665

45. *R. v. Pike*, 2024 ONCA 608

46. *R. c. Anoussis*, 2008 QCCQ 8100

47. *R. v. Summers*, 2014 SCC 26

48. *R. v. Morris*, 2021 ONCA 680

49. *Ontario (Attorney General) v. G,* 2020 SCC 38

50. *R. v. Ndhlovu*, 2022 SCC 38

51. *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311

52. *R. v. Downes* (2006), 205 C.C.C. (3d) 488, 2006 CanLII 3957 (Ont. C.A.)

53. *Harper v. Canada (Attorney General)*, 2000 SCC 57

## SCHEDULE B — TEXT OF STATUES, REGULATION & BY-LAWS

### *Bail Act*, R.S.O. 1990, c. B.1

**Registration of certificate of lien**

**1 (1)** In cases where a release order referred to in section 515 of the *Criminal Code* (Canada) is made in respect of an accused, the Crown Attorney may register, in the proper land registry office, a certificate of lien against the land mentioned in the certificate for an amount equal to the amount a surety has promised to pay in the release order if the accused fails to comply with a condition of the order.

**Sale of land in the event of default**

**2** If the surety referred to in subsection 1 (1) fails to pay to the Crown any amount the surety has been ordered to pay under section 771 of the *Criminal Code* (Canada), the Crown may enforce the lien by sale of the real property against which it is registered in the same manner as a sale to realize on a mortgage.

**Collection of amounts owed to the Crown**

**8 (1)** The Minister of Finance may take one or more of the measures described in section 11.1.1, 11.1.2 or 11.1.4 of the *Ministry of Revenue Act* to enforce the collection of a debt to the Crown under section 771 of the *Criminal Code* (Canada) if the Minister responsible for the administration of this Act has entered into a memorandum of understanding under section 11.1 of the *Ministry of Revenue Act* for the Minister of Finance to provide collection services.

**Application of ss. 11.1.1, 11.1.2 and 11.1.4 of *Ministry of Revenue Act***

**(2)** None of the measures described in section 11.1.1, 11.1.2 or 11.1.4 of the *Ministry of Revenue Act* shall be taken with respect to debt referred to in subsection (1) of this section unless,

- (a) the Minister responsible for the administration of this Act has entered into a memorandum of understanding with the Minister of Finance for the purpose of authorizing the Ministry of Finance to take such measures; and
- (b) such measures are taken in accordance with,
  - (i) the terms set out in the memorandum of understanding referred to in clause (a), and
  - (ii) any other requirements, limitations, conditions or terms prescribed by the regulations.

**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. 2026, c. 7, Sched. 2, s. 6.

**Information from sureties, etc.**

**8.1 (1)** A person described in subsection (2) shall provide, in accordance with the regulations and at the times specified in the regulations, such information as is prescribed in the regulations.

**Who may be required to provide information**

**(2)** The persons referred to in subsection (1) are the following:

1. A surety.

1.1. A person named as a surety in a release order referred to in section 515 of the *Criminal Code* (Canada) for which a certificate of default has been endorsed under section 770 of that Act.

2. A person who was a surety and has become a judgment debtor of the Crown in right of Ontario under section 771 of the *Criminal Code* (Canada).

**Clarification of application**

**(3)** For greater certainty, subsection (1) applies even if no certificate of lien in respect of property of the person has been delivered or transmitted under subsection 1 (1).

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**[*Criminal Code*, R.S.C. 1985, c. C-46]**

**Release order without conditions**

**515 (1)** Subject to this section, when an accused who is charged with an offence other than an offence listed in section 469 is taken before a justice, the justice shall, unless a plea of guilty by the accused is accepted, make a release order in respect of that offence, without conditions, unless the prosecutor, having been given a reasonable opportunity to do so, shows cause, in respect of that offence, why the detention of the accused in custody is justified or why an order under any other provision of this section should be made.

**Release order with conditions**

**(2)** If the justice does not make an order under subsection (1), the justice shall, unless the prosecutor shows cause why the detention of the accused is justified, make a release order that sets out the conditions directed by the justice under subsection (4) and, as the case may be,

(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.

**Imposition of least onerous form of release**

**(2.01)** 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.

**Promise to pay favoured over deposit**

**(2.02)** 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.

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**O. Reg. 278/26: Security Deposits and Information from Sureties**

**Payment and refund of security deposits**

**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.
**(2)** The amount shall be paid to,
(a) the clerk of the Ontario Court of Justice at the court location specified in the release order; or
(b) the clerk of any court location of the Ontario Court of Justice at which criminal matters are heard if,
(i) the accused or surety is unable to attend the court location specified in the release order, or
(ii) the release order is made by a judge of the Superior Court of Justice or the Court of Appeal for Ontario.

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***Provincial Offences Act*, R.S.O. 1990, c. P.33**

**General penalty**

**61** Except where otherwise expressly provided by law, every person who is convicted of an offence is liable to a fine of not more than $5,000.

[*Constitution Act*, 1867, 30 & 31 Vict., c. 3]

**Legislative Authority of Parliament of Canada**

**91** It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

> **…**
>
> **27.** The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

**Subjects of exclusive Provincial Legislation**

**92** In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

> **…**
>
> **13.** Property and Civil Rights in the Province.
>
> **14.** The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
>
> **15.** The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
>
> **16.** Generally all Matters of a merely local or private Nature in the Province.

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[*Canadian Charter of Rights and Freedoms,* Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act, 1982* (U.K.), 1982, c. 11]

**Proceedings in criminal and penal matters**

**11 (*d*)** Any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

**11 (*e*)** Any person charged with an offence has the right not to be denied reasonable bail without just cause.

**Primacy of Constitution of Canada**

**52 (1)** The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Court File No. CV-26-00016332-0000

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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

Applicants/
Moving Parties

- and -

**HIS MAJESTY IN RIGHT OF ONTARIO**

Respondent/
Responding Party

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**CERTIFICATE**

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The person signing this certificate is satisfied as to the authenticity of every authority listed in Schedule "A".

**DATED AT Toronto, Ontario, this 24th day of August, 2026.**

Brandon Chung

*Counsel for the Applicants/Moving Parties, CCLA and CLA*

Court File No. CV-26-00016332-0000

| | | |
|---|---|---|
| **CORPORATIONS OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION AND THE CRIMINAL LAWYERS' ASSOCIATION**<br>Applicants | -and- | **HIS MAJESTY IN RIGHT OF ONTARIO**<br>Respondent |

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

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