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CAEFS / ACSEF

Canadian Association of Elizabeth Fry Societies Association canadienne des sociétés Elizabeth Fry

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BY EMAIL

July 10, 2023

Subject: Canada's Bail System

Dear Premiers,

We are national organizations trained and tasked with responding to the impacts of Canada's courts and prisons coast to coast to coast. We are writing to you today about your collective efforts related to bail reform. Our positions provide us the expertise to understand that the law reforms you have inspired will not improve public safety: they will actively work against it.

Not only will the reforms you have advanced result in individuals being held in prison conditions that irreparably hinder their futures, but they will also interrupt their self-development, and produce chronic stress and trauma, for them and for their communities. We know causing harm is not your intention, and the goals of your efforts are to ensure that Canadian institutions contribute to public safety. We share this goal; our organizations work toward it every day. As such, we ask for your collaboration to advance an informed public discussion, and to effect evidence-based bail reform that will improve the safety of our society.

We have been collectively calling for changes in our bail system for years, as Canada's bail system is facing a state of crisis. However, this is not a crisis of leniency or lack of judicial capacity, but rather a crisis of access to justice. The bail reforms, like increasing reverse onus provisions, that you recently put forward in your January 13th letter directed to the Prime Minister, shift the focus from the provincial government's responsibility to that of the federal government.ⁱ Yet, reverse onus provisions will not correct the dysfunction within Canada's bail system; they will further burden an already exhausted system. Canada's pre-trial detention rates are an international embarrassment that call into question whether the right to the presumption of innocence can be taken at all seriously in this country. At present, the percentage of people in pre-trial detention among national incarceration rates overall in Canada is 37%, compared to 11% in England and 22% in the United States.ⁱⁱ

Section 11(e) of *The Canadian Charter of Rights and Freedoms (Charter)* enshrines the right to not be denied bail without just cause. This constitutional protection exists because, in Canada, we believe that people are innocent until proven guilty. Yet, our provincial jails are overflowing



with people who are in pre-trial detention on charges for which they have had no trial, let alone a conviction. As of 2019, this applies to approximately 71% of all people held in provincial prisonsⁱⁱⁱ nationally, with higher numbers in certain provinces.

Provincial prisons in Canada are warehousing people who face multiple social barriers, addiction, and mental health considerations. In short, they are warehousing disadvantaged people. Conditions inside these prisons should be of salient concern to you: many people are double, and triple bunked, sleeping on thin mattresses on floors next to metal toilets, confined in small cells for 23 hours daily, and there are alarming rates of deaths in custody^{iv}. The punishment, deprivation, and systemic discrimination in Canadian prisons constitute a national human rights crisis^v.

As public leaders in a democratic society, you are entrusted with the responsibility to ensure that the narratives you put forward are accurate and will not worsen social problems. You are uniquely positioned to imbue the public with sound, evidence-based information in order to share awareness about societal processes and institutions which many people may not interact with in their day-to-day lives.

Unfortunately, you have sparked a public discussion toward bail reform that is eliciting fear and is rooted in outlying examples of egregious violence. It encourages a dangerous call to erode due process by drawing on emotive, politicized narratives, and misinforms the public about the limits and processes within Canada's core institutions.

You still have the opportunity to play a leadership role in this work by convening stakeholders in order to underscore the principled purposes and limits of the law. We also call on you to employ the power and responsibility you have to work alongside us to acknowledge and transform the dysfunctionality within our bail system in a responsible manner that will improve public safety and contribute to an informed public dialogue.

Canada's bail system and the social costs of incarceration

Canada's bail system is currently detaining more people than ever. This causes intensely negative outcomes for the individuals and communities that are most directly impacted by the criminal justice system, and completely overwhelms the system itself. Existing issues in our bail system perpetuate a larger cycle of poverty, discrimination, and incarceration that can be largely avoided with appropriate community supports and social services. As recognized



repeatedly by the Supreme Court of Canada, Canada is in a crisis of over-detention and over-criminalization, especially of the country’s most cumulatively disadvantaged populations.^{vi}

Incarceration for any length of time can have devastating consequences, and the evidence is clear: keeping people in pre-trial custody creates significant harm to individuals who are at risk of becoming incarcerated, to their families and communities, and to the public good.^{vii} Moreover, it is well established that incarceration is not just harmful to those who experience it, but to the frontline staff who work in prisons: people who work in penal institutions face significantly elevated mental health and substance use issues relative to the general public.^{viii}

We must not forget that most people are not incarcerated for accusations of the serious violence in which your reforms are rooted^{ix}. Yet, depriving any individual of their liberty comes at a steep cost: lost jobs, lost housing, and disruption to families and communities. This is why bail is strictly assessed on a case-by-case basis by the courts, and why stringent punishment of those charged with crimes does not benefit public safety^x.

In light of the deplorable conditions incarcerated people face, increasing reliance on pre-trial detention makes it significantly more likely that an individual will plead guilty just to be released from jail, raising concerns about wrongful convictions.^{xi} “Tightening” the bail system and increasing reliance on pre-trial detention will have discriminatory outcomes and undermine efforts to combat systemic discrimination and the legacies of colonialism. The evidence continually demonstrates that overall, public safety is served not by widespread and punitive use of incarceration, but by enhancing social welfare supports such as increasing investments in education and health care, keeping people in the community, and improving reintegration programs and supports for those who have been incarcerated.

Reverse onus laws decrease access to justice in a culture where justice is already inaccessible to many

Placing the onus on the state to prove cause for detention does not mean that there are systemic deficiencies in the courts’ abilities to assess the appropriateness of bail^{xii}. Instead, placing the onus on the state increases fairness and *justness* within justice processes. Reverse onus provisions fail to acknowledge the inequality in power and resources between an accused person and the state. They invert and erode the foundational principle of the presumption of innocence.



The examples of outlying and egregious violence which led to the joint action on your part did not result from an absence of judicial capacity but were the results of the failure of multiple overwhelmed social systems and institutions. Despite this, because of the letter you wrote and addressed to the Prime Minister, the reactionary Bill C-48 was drafted. This Bill, if passed in its present state, would discount the representative substance and context of what occurs within Canada’s courtrooms and prisons. Most frighteningly, Bill C-48 includes many concerning reverse onus provisions, including for individuals charged with intimate partner violence when an accused person has been previously charged with intimate partner violence, *even* when those previous charges have been absolutely or conditionally discharged^{xiii}. In addition, the Bill adds reverse onus for charges for other weapon offences, including the use of “knives and bear spray.”^{xiv}

In the instance of the additional reverse onus provisions for firearms, one might assume that these measures would only impact individuals who are in illegal possession of such firearms. However, firearms provisions in the *Criminal Code* encompass a wide range of behaviours, including, as the Supreme Court of Canada ruled in 2015, individuals accused of “licensing offences which involve little or no moral fault and little or no danger to the public.”^{xv}

Because of the complexity of circumstances and considerations relevant to assessing criminal charges, and because economic and social capital plays such a vital role in justice outcomes, when an individual’s freedom is at stake, the state bears the onus of proving that detention is justified, rather than an accused person having to “demonstrate to the court that they should be released by showing that there is no just cause for their detention.”^{xvi}

Bill C-48’s preamble announces that the bill “seek[s] to better ensure the protection of public safety and to maintain public confidence in the administration of justice.”^{xvii} We respectfully submit that the most foundational requirements of public confidence in the administration of justice are dually, a public who are meaningfully informed of justice processes, and a constitutionally abiding legal system which makes rational decisions rooted in evidence, and is free of political interference.

Responsible, informed action is needed:

1. We ask you not to trust us, but to learn for yourselves. Please listen to the voices of people who have experienced incarceration in Canada, and please listen to us, as representatives of the sector who work to resolve these issues everyday. Please go



into provincial prisons such as the Vanier Centre for Women, the Elgin Middlesex Detention Centre or the Edmonton Remand Centre, Fort Sask. We know that if you witnessed, as we do, the scale of suffering, hopelessness, and loss of life occurring **daily** in institutions across Canada, that you will not be calling for more people who cannot afford justice to be kept within these prisons, in misalignment with the fundamental legal principles upon which our system is founded.

2. We implore you to conduct a comprehensive review of the bail system that can include measuring its efficacy in protecting public safety, as well as its compliance with *Charter* rights, case law, and international standards. Doing so will require an evidence-based, transparent approach that sets current baselines and commits to periodic reviews and external evaluations.

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<https://www.oppa.ca/OPPAMedia/OPPA/40/40ff69b9-9abd-4bfd-8640-d2fd1a472ad2.pdf>

https://www.prisonstudies.org/sites/default/files/resources/downloads/world_pre-trial_list_4th_edn_final.pdf

King (May 2023) Toronto Star: There is a Problem with Our Bail System, But It's Not What Politicians Say.

<https://ccla.org/wp-content/uploads/2022/12/Ontario-Deaths-in-Custody-on-the-Rise-2022-8.pdf>

Holly Pelvin, Doing uncertain time: Understanding the experiences of punishment in pre-trial custody (2017),

online: https://tspace.library.utoronto.ca/bitstream/1807/80896/3/Pelvin_Holly_201711_PhD_thesis.pdf ; Ontario

Human Rights Commission, Report on conditions of confinement at Toronto South Detention Centre, online:

<https://www.ohrc.on.ca/en/report-conditionsconfinement-toronto-south-detention-centre> ; East Coast Prison

Justice Society, Conditions of Confinement in Men's Provincial Jails in Nova Scotia, online:

<https://www.eastcoastprisonjustice.ca/conditions-of-confinement-report.html> ; Protecteur du citoyen,

"Unacceptable detention conditions" (29 November 2018), online:

<https://protecteurducitoyen.qc.ca/en/news/press-releases/2017-2018-annual-report-unacceptable-detention-conditions>.

[Bail Reform and Fundamental Rights - CAEFS](#)

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A 2017 report by the Independent Review of Ontario Corrections finds: “When early intervention and prevention strategies fail; when health, social service and education programs, interventions and opportunities are inadequate, denied or rejected; when poverty, mental illness, addiction and trauma overwhelm individuals, there can be conflict with the law.”

Ricciardelli, R. (2019). Also serving time: Canada’s provincial and territorial correctional officers. University of Toronto Press.

<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2021/index-en.aspx>

Globe and Mail, It Sounds Good, But Tougher Bail Laws And More Cops Won’t Improve Public Safety, KENT ROACH AND CHERYL WEBSTER (April 2023) <https://www.theglobeandmail.com/opinion/article-it-sounds-good-but-tougher-bail-laws-and-more-cops-wont-improve-public>

Wrongful convictions constitute yet another established crisis in the Canadian judicial and penal systems, resulting from lack of access to justice: [The proposed Miscarriage of Justice Review Commission Act \(David and Joyce Milgaard’s Law\)](#)

“The usual rule in bail proceedings is that the burden is on the prosecution to demonstrate to the court that there is just cause to detain the accused person pending trial. The three statutory grounds for pre-trial detention are: to ensure the appearance of the accused in court when required, to protect the safety of the public, and to maintain confidence in the administration of justice. In a reverse onus proceeding, the presumption is that the accused person will be detained while awaiting their trial, unless they can demonstrate to the court that they should be released by showing that there is no just cause for their detention” (from Bill C-48 preamble)

[Criminalized Black Women’s Experiences of Intimate Partner Violence in Canada \(sagepub.com\)](#)

<https://www.justice.gc.ca/eng/csj-sjc/pl/charter-charte/c48.html>

[Bail Reform and Fundamental Rights - CAEFS](#)

<https://www.justice.gc.ca/eng/csj-sjc/pl/charter-charte/c48.html>

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