CANADIAN CRIMINAL JUSTICE ASSOCIATION

LEGISLATIVE BRIEF

ONTARIO BILL 75
Keeping Criminals Behind Bars Act, 2025
1st Session, 44th Legislature

February 2026

Background on the CCJA

Founded in 1919, the Canadian Criminal Justice Association (CCJA) is one of Canada's longest-serving non-governmental organizations bringing together professionals and lay-persons to promote rational, informed, and responsible public policy for a more humane, equitable, and effective justice system. Having testified before various Parliamentary committees on numerous occasions, our Association consists of approximately 300 members from across the country and publishes the peer-reviewed *Canadian Journal of Criminology and Criminal Justice*, and the *Justice Report*. We also organize and host the Canadian Congress on Criminal Justice, most recently hosting our 39th edition in Banff, Alberta.

Purpose of Brief

We appreciate the opportunity to provide our views on Ontario Bill 75, the *Keeping Criminals Behind Bars Act,* introduced by the Solicitor General of Ontario in late 2025.

The Canadian Criminal Justice Association strongly challenges the provisions under Schedule 2 of the bill, which seek to require cash deposits as a condition for judicial interim release (bail). The CCJA submits that these provisions are not constitutional, are draconian and inequitable in nature, and have concerning practical implications for the administration of justice in Ontario.

Summary of the Bill

Bill 75 is a government bill which was introduced in the Ontario Legislature on November 25, 2025, by the Solicitor General of Ontario, the Hon. Michael S. Kerzner. Made up of 7 schedules, it notably seeks to amend the *Bail Act* in Schedule 2, to, among other things:

- Require a cash security deposit in the full amount ordered by the court once the accused person is released on bail.
- Require a cash security deposit in the full amount ordered by the court for the surety of an individual released on bail.

Analysis

The Unconstitutionality of Provincial Cash Bail Requirements

Criminal Justice policy in Canada is a shared responsibility between the Federal government and provincial and territorial governments. Section 91(27) of the *Constitution Act* (1867) expressly states that the Parliament of Canada has exclusive legislative authority over criminal law and the procedure in criminal matters[1], while section 92(14) devolves legislative authority over the administration of Justice to provinces and territories[2]. Schedule 2 of Bill 75 proposes to impose cash bail deposits as a requirement for bail through the Ontario legislature, despite the fact that bail legislation falls under the exclusive authority of the federal government per our constitution.

For the purpose of section 91(27) of the *Constitution Act*, procedure in Criminal matters includes the legislation of judicial interim release (bail), which exists as federal statute under section 515 of the *Criminal Code*. Provincial and territorial governments are only responsible for conducting bail hearings and enforcing conditions (the administration of justice). In *Antic,* the Supreme Court of Canada writes that "bail provisions are federal law and must be applied consistently and fairly in all provinces and territories"[3], which would include section 515 and its interpretation. Thus, provincial governments do not possess the constitutional authority to legislate in areas pertaining to bail, and doing so would create an inconsistency within the federal framework.

Barring that line of reasoning, the principle of mandatory cash deposits for bail is inconsistent with the existing federal statutory framework and its respective jurisprudence. Notably, the Criminal Code already establishes the parameters around cash deposits for bail. Section 515(2)(e) outlines that cash deposits may be imposed for the purposes of bail in exceptional circumstances, such as the accused not residing within 200 kilometres, or not residing in the

[1] *Constitution Act*, 1867 (UK), 30 & 31 Vict, c 3, s 91(27), reprinted in RSC 1985, Appendix II, No 5.
[2] Constitution Act, 1867 (UK), 30 & 31 Vict, c 3, s 92(14), reprinted in RSC 1985, Appendix II, No 5.
[3] *R. v. Antic*, 2017 SCC 27 at para 6, [2017] 1 SCR 509.

province in which they are in custody.[4] Section 515(2.02) further specifies that cash deposits should only be resorted to by the court if a promise to pay is not feasible:

> "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".[5]

In *Antic,* the Supreme Court of Canada explicitly proscribes the approach taken by Bill 75. While under schedule 2, the default position for the accused would be a cash deposit requirement, the court writes that "an unconditional release on an undertaking is the default position when granting release".[6] Additionally, the ladder principle, codified in the *Criminal Code*, was reinforced by the Supreme Court. Citing *Anoussis,* it specified that*:*

> "release is favoured at the earliest reasonable opportunity and, having regard to the [statutory criteria for detention], **on the least onerous grounds**"[7].

In defining the degrees of onerousness, the court states that "a recognizance with sureties is one of the most onerous forms of release", and by extension, "a recognizance is functionally equivalent to cash bail". Consequently, the court is very clear in establishing that "cash bail should be relied on only in exceptional circumstances".[8] Bill 75 is at odds with this federal standard, by relying on cash bail by default, as opposed to reserving it for exceptional circumstances as mandated by the Supreme Court of Canada.

By requiring cash deposits in every bail case, Bill 75 both exceeds provincial constitutional authority by intruding into Parliament's exclusive jurisdiction over criminal law and procedure, and directly conflicts with binding federal law and Supreme Court of Canada jurisprudence. It disregards the statutory scheme set out in section 515 of the *Criminal Code*, and undermines the ladder principle affirmed in *Antic*, which mandates release at the earliest opportunity on the least onerous conditions. For those reasons, schedule 2 is constitutionally unsound.

The Proposal is Draconian in Nature

Mandatory cash bail requirements are draconian in both design and effect, as they impose severe liberty-restricting consequences on accused persons who are legally presumed innocent. As the Supreme Court of Canada emphasized in *Antic*, bail must be compatible with the presumption of innocence and the right not to be denied reasonable bail without just cause.[9] A regime that

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[4] *Criminal Code*, RSC 1985, c C-46, s 515(2)(e) (Can.).
[5] *Criminal Code*, RSC 1985, c C-46, s 515(2.02) (Can.).
[6] *R. v. Antic*, 2017 SCC 27, [2017] 1 S.C.R. 509 at para. 67(c)
[7] *R v Antic*, 2017 SCC 27, [2017] 1 SCR 509 at para. 67(d) (citing *R c Anoussis*, 2008 QCCQ 8100 at para. 22)
[8] *R. v. Antic*, 2017 SCC 27, [2017] 1 S.C.R. 509 at para. 67(a-k)
[9] *R. v. Antic*, 2017 SCC 27, [2017] 1 S.C.R. 509 at para. 67(a)

conditions liberty on the immediate availability of cash fundamentally undermines this presumption by substituting financial capacity for individualized risk assessment.

Crucially, the proposed scheme applies indiscriminately to all accused persons, including first-time offenders and individuals with no criminal record. The imposition of a cash requirement is therefore not tethered to past conduct, demonstrated risk, or dangerousness, but instead operates as a blunt economic filter. This creates a two-tiered system of justice in which wealth, rather than legal merit or public safety considerations, determines pre-trial liberty.

Moreover, the practical effects of pre-trial detention are severe, and given the previous point, would disproportionately affect low-income individuals. An accused who cannot afford bail is unable to work, pursue education, care for dependents, or meaningfully participate in their own defence, even if they are ultimately acquitted. For instance, multiple studies "causally link pre-trial detention to the erosion of employment prospects".[10] Paradoxically, loss of employment is considered a criminogenic factor.[11]

The government's contention that courts retain discretion to set low bail amounts does little to mitigate these concerns. In practice, average bail amounts frequently range between $1,000 and $2,669[12], sums that remain prohibitive for many accused persons living below or near the poverty line.

Finally, it bears emphasis that the criminal justice system already provides mechanisms to address non-compliance with bail conditions. Breach of bail constitutes a separate criminal offence, with attendant sanctions under the *Criminal Code*. The imposition of mandatory cash bail therefore adds a redundant and disproportionate layer of punishment, rather than addressing any demonstrable gap in enforcement or public safety.

Practical Implications on the Administration of Justice

Beyond its constitutional and normative deficiencies, the imposition of mandatory cash bail would have profound and deleterious consequences for the administration of justice, which is directly the responsibility of the provincial government. Ontario's correctional facilities are already operating under conditions of severe overcrowding, driven largely by the overuse of pre-trial detention. Official data indicates that approximately 80% of men in provincial custody are held in remand, while an alarming 85% of incarcerated women are legally innocent and detained

[10] Smith, S. S. (2022). *How pretrial incarceration diminishes individuals' employment prospects*. Federal Probation, 86(3). https://www.uscourts.gov/about-federal-courts/probation-and-pretrial-services/federal-probation-journal/2022/12/how-pretrial-incarceration-diminishes-individuals-employment-prospects

[11] Rege, M., Skardhamar, T., Telle, K., & Votruba, M. (2019). *Job displacement and crime: Evidence from Norwegian register data*. **Labour Economics, 61**, 101761. https://doi.org/10.1016/j.labeco.2019.101761

[12] Canadian Civil Liberties Association & Canadian Civil Liberties Education Trust. (2014, July). *Set up to fail: Bail and the revolving door of pre-trial detention* [p. 41]. https://ccla.org/wp-content/uploads/2021/07/Set-up-to-fail-FINAL.pdf

prior to trial.[13] The introduction of mandatory cash bail would predictably exacerbate this crisis by increasing the number of accused persons unable to secure release.

Overcrowding in correctional facilities has well-documented consequences on the administration of justice due to the heightened risk of abuse in pre-trial detention. The Ontario Ombudsman's annual report for 2024-25 flagged a 55% increase in human rights complaints in correctional institutions compared to 2023-24, largely driven by overcrowding[14]. In turn, those complaints have resulted in stayed proceedings and reduced sentences.[15] By increasing the remand population, mandatory cash bail heightens the likelihood of such abuses and, paradoxically, weakens the prosecution of serious offences, harms accused persons, and directly undermines public confidence in the administration of justice.

Finally, while the Act is designed to reduce the likelihood of violent offenders getting out on bail, cash bail does not reliably target dangerous offenders. Mandatory cash bail may both over-incapacitate individuals who pose little risk and under-incapacitate those who may pose genuine threats but possess financial means. Ultimately, there is no reliable empirical evidence to suggest that cash bail significantly contributes to better outcomes[16], and immediate issues in Ontario such as overcrowding risk compromising the administration of Justice in the province.

Conclusion

Beyond the clear intrusion on federal jurisdiction, taken together, these potential unintended consequences of Schedule 2 of Bill 75 call into question whether mandatory cash bail advances any of the recognized purposes of bail law. Under the *Criminal Code*, bail serves three primary objectives: ensuring attendance in court, maintaining public safety, and preserving confidence in the administration of justice.[17] The CCJA contends that if passed unamended, these provisions would not improve public safety, and would instead be injurious to public confidence in the administration of Justice in Ontario. Given the currently problematic correctional landscape in Ontario driven by overcrowding, imposing measures that would increase the likelihood of pre-trial detention for a large number of legally innocent, low-risk individuals, would further exacerbate existing gaps. Rather than promoting justice or safety, mandatory cash bail would result in an inequitable and ineffective statutory regime that is inconsistent with federally mandated standards. Therefore, the CCJA calls on the Ontario Standing Committee on Justice Policy to amend Bill 75 to remove cash bail requirements.

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[13] Ireton, J., & Ouellet, V. (2025, December 8). *Ontario jails set to hit overcrowding record as bail reform looms, data shows: CBC analysis finds 85% of incarcerated women in Ont. are on remand — a rate higher than for men*. CBC News. https://www.cbc.ca/news/canada/ontario-jails-overcrowding-data-9.7003336

[14] Ombudsman Ontario. (2025, June 25). *2024–2025 annual report*. p. 4 https://www.ombudsman.on.ca/resources/reports/annual-reports

[15] Ibid 14

[16] Scheadler, T. R., Radney, A., Smith, B. L., et al. (2025). *A scoping review of the relationships between cash bail, failure to appear, re-arrest, health and well-being, race, and gender*. American Journal of Criminal Justice. https://doi.org/10.1007/s12103-025-09860-5

[17] Government of Canada. (2025). *Backgrounder: The bail process*. https://www.justice.gc.ca/eng/cj-jp/bail-caution/index.html