

Minister of Justice
and Attorney General of Canada



Ministre de la Justice
et procureur général du Canada

The Honourable / L'honorable Arif Virani, P.C., M.P. / c.p., député
Ottawa, Canada K1A 0H8

October 31, 2023

His Worship Rob Douglas
Mayor of the Municipality of North Cowichan

Her Worship Michelle Staples
Mayor of the City of Duncan

Ms. Cathy Schmidt
Board Chair
Cowichan Valley School District #79

(by email)

Dear Mr. Mayor, Madam Mayor, and Ms. Schmidt:

Thank you for your correspondence concerning Canada's bail system.

As Minister of Justice and Attorney General of Canada, I understand the importance of ensuring that criminal laws keep our communities safe.

I wish to assure you that the federal, provincial, and territorial governments continue to work together to examine ways to improve the criminal justice system, including with respect to the bail regime and its implementation. On May 16, 2023, the Government of Canada introduced in the House of Commons Bill C-48, *An Act to amend the Criminal Code (bail reform)*. The Bill would amend the *Criminal Code*'s bail regime to address serious repeat violent offending with firearms, knives, bear spray, and other weapons. The Bill passed Third reading in the House of Commons on September 18, 2023, and is now being considered by the Senate. It is my hope that Bill C-48 will be passed by the Senate as quickly as possible.

Bill C-48 would also make changes at the bail stage to address the enhanced risks posed by intimate partner violence. The proposed changes were developed in close collaboration with the provinces and territories and are informed by engagement with other stakeholders, including law enforcement, community organizations, and Indigenous partners.

The Bill would make the following changes to the bail provisions of the *Criminal Code*:

- create a new “reverse onus”—in other words, where the accused must demonstrate that they should be released—to target serious repeat violent offending involving weapons
- expand the list of firearms offences that trigger a reverse onus
- broaden the reverse onus targeting repeat offenders of intimate partner violence
- clarify the meaning of the terms “prohibition order” in an existing reverse onus for offences involving weapons
- require courts to consider an accused person’s history of convictions for violence, and community safety and security concerns, when making a bail decision.

The reforms proposed in Bill C-48 are only one part of a broader solution to ensure the objectives of the bail system are being met. Law reform is an important part of maintaining and enhancing public safety, but programs, policies, and investments are also critical to fostering safer communities. This includes investments to enhance bail enforcement, as well as improving access to housing and to mental health and addictions supports. All levels of government agree that improved data collection is necessary to fully understand how the criminal justice system operates.

Canada’s bail system is the joint responsibility of federal, provincial, and territorial governments. The federal government establishes the criminal law within the bounds set by the *Canadian Charter of Rights and Freedoms*. Provincial and territorial governments are responsible for the administration of justice, including most bail hearings and enforcement of bail conditions, as well as for most facilities where people awaiting trial are held. I note that a copy of your correspondence has been sent to the Honourable Niki Sharma, Attorney General of British Columbia, which is the appropriate authority in this regard.

The Charter gives accused persons the right not to be denied reasonable bail without just cause, the right to be presumed innocent until proven guilty, and the right not to be deprived of liberty except in accordance with the principles of fundamental justice.

However, the right to bail is not absolute. Under Canada’s bail system, a person charged with a criminal offence can be detained while awaiting trial if necessary to protect the public (including victims), ensure the accused’s attendance in court, or maintain confidence in the administration of justice. The onus is on the prosecutor to show cause for detention on one of these three grounds. In cases where an accused person is granted bail, they may be subject to conditions limiting their freedom while on release; judges determine such conditions based on the nature of the alleged offence and other factors.

The law is clear that police officers and judges must not release accused persons if they believe that doing so would endanger members of the public. The *Criminal Code* prohibits a police officer from releasing an accused where the officer believes, on reasonable grounds, that there is a need to ensure the safety and security of any victim of

or witness to an offence. Similarly, when accused are brought before a judge or justice of the peace for bail, the decision maker must detain the accused where it is necessary for the protection or safety and security of victims and witnesses.

Please be assured that, as Minister of Justice and Attorney General of Canada, I am committed to making the criminal justice system fairer, more equitable, and safer for all Canadians. I greatly anticipate the Senate's swift passage of Bill C-48, which is crucial to addressing the public's concern on issues related to bail.

Thank you again for writing.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Arif Virani', with a stylized flourish.

The Honourable Arif Virani, P.C., M.P.
Minister of Justice and Attorney General of Canada