

**Criminal**

# FOLA, Criminal Lawyers' Association stress 'presumption of innocence' in bail reform submission

By **Amanda Jerome**

(February 1, 2023, 4:19 PM EST) -- Both the Federation of Ontario Law Associations (FOLA) and the Criminal Lawyers' Association (CLA) made submissions to Ontario's Standing Committee on Justice Policy's review of the bail system, stressing respect for the "presumption of innocence" and the "right to reasonable bail." The review, which is being held after five police officers were killed at the end of 2022, also received submissions from the Police Association of Ontario (PAO) and the Toronto Police Service (TPS).

FOLA, which made its submission public ahead of the committee hearings on Jan. 30-31, reminded the committee that "an effective bail system is one which respects the presumption of innocence and the Charter right to reasonable bail."

"Courts at all levels have repeatedly made decisions which underscore these requirements. Ontario's courts are subject to binding appellate jurisprudence on the considerations made during a bail hearing," the letter, signed by FOLA chair Douglas Judson, explained.



FOLA chair Douglas Judson

The letter also noted that "these processes are outlined by the *Criminal Code*, which is federal legislation."

FOLA threw its support behind the CLA's submissions, which it had the "opportunity to review."

"We trust that, as a representative body with members across Ontario, our position will meaningfully factor into your deliberations," the letter concluded.

The CLA's submission, presented to the committee on Jan. 31, emphasized that the "availability of bail should not be restricted over one case."

The CLA, whose submission was provided in writing to *The Lawyer's Daily*, noted that the legislative framework for bail is "grounded in the 'ladder principle' which requires a justice to consider the least onerous forms of release that is appropriate in the circumstances."

"This analysis is informed by the grounds of detention, which include whether the individual is a flight risk, whether there is a substantial likelihood of reoffence, and whether detention is necessary in order to maintain confidence in the administration of justice," the CLA added, noting that a justice "has a wide discretion with respect to which conditions to impose, and these conditions can be carefully crafted to address the specific concerns related to that individual."

The submission acknowledged that there is "no way to reduce risk completely, outside of detaining every single individual who is charged, which is not only counter to Charter principles but also completely unfeasible in terms of the resources and space in the jails."

"As it stands," the submission noted, "the courts tend to be risk-averse when it comes to deciding bail."

The CLA also stressed that the "impact of being held in custody awaiting trial can be catastrophic."

"Individuals can lose their employment, housing, and community supports. Meanwhile, the conditions in pre-trial custody are often harsh, with little to no programming available. People who are struggling with addictions, mental health issues receive little to no care. Racialized individuals are detained at higher rates than non-racialized people in Ontario," the submission explained, noting that "any tightening of bail provisions will no doubt have an even further disproportionate impact on marginalized people."

According to its submission, the CLA "supports the use of community resources to provide supervision and programming to individuals as they await their trials."

"Programs such as the Bail Beds program through the John Howard Society have provided the possibility for supervised residential program for those without a surety or stable housing, and allow clients to access services," the CLA noted, finding that the "Ministry's contract with Recovery Science to provide GPS ankle monitoring also allows those facing economic barriers to access bail in a way that is closely monitored."

The CLA also noted that the police "have a role in ensuring that people released on bail are compliant with their conditions, and executing warrants for those who are alleged to have breached."

"The Courts can hold those who fail to properly supervise accountable," the submission added.

While the CLA acknowledged there is "no way to completely eliminate the risk of re-offence while an individual is on bail," it urged the committee to "remember that, absent the most dangerous and extreme cases, an individual will eventually be released back into the community."

"The safety of the community is not enhanced by removing discretion of the justice system to allow for individuals to be released on bail, where appropriate, with carefully considered conditions. It is important that we strive for a system which respects the presumption of innocence and the right to reasonable bail, which supports individuals in the community as much as possible," the CLA concluded.

Police Association of Ontario president Mark Baxter made submissions to the committee on Jan. 31. His submission was on the "front-line reality of how the current bail system is failing to keep Ontarians safe," a PAO press release explained.

"Every day our members go to work to keep communities throughout Ontario safe. But an obstacle to doing that work is the current bail system, especially as it relates to people who are known to be dangerous," said Baxter.

"Members of the policing community, and the communities they serve, are frustrated that the bail system is failing to prioritize their safety. They're frustrated that a known offender is apprehended one day and back to committing the same crime the next," Baxter added in a statement.

According to the PAO's release, "people should not be denied bail unreasonably, but as it relates to chronic offenders and those who have been apprehended while in possession of a prohibited weapon, the public expects that in the name of public safety they will not be released unless there is a compelling reason and a sensible plan to ensure that they are not at risk of reoffending while awaiting trial."

The PAO's position is that "currently, there are not enough resources to ensure a sensible plan is in place and being followed."

"Accused persons who immediately pose a risk to public safety are routinely released on bail, and confidence in the criminal justice system is consistently undermined as a result; leaving our community members at risk and feeling unsafe," said Baxter, stressing that the "entire bail cycle needs a reform to fix this system that is failing Ontarians and there are steps that can be taken right away to start working on solutions."

The PAO submitted two ways in which governments can "immediately start addressing" bail reform: "evaluating the practice of dropping bail condition breaches from a list of charges by chronic offenders in order for the court to be aware of previous breaches of bail conditions before making a recommendation" and a "consistent framework and enforcement to ensure that individuals released with conditions are complying with those conditions with adequate policing resources for dedicated bail enforcement units."

Chief of the Toronto Police Service, Myron Demkiw, appeared before the standing committee on Jan. 31, calling for bail reform for those charged with firearms offences.

"Toronto, along with many other communities across Ontario and Canada, continue to deal with a troubling number of incidents of gun and gang violence, and far too often, they involve individuals who are out on bail at the time. Even more troubling is that the charges these individuals are on bail for are, frequently, other firearms offences," he said.

Chief Demkiw noted that the TPS called for reform in May 2022, "well before any of the most recent tragic, senseless and often preventable killings of police officers in this province."

"Some may attempt to characterize our ideas as a knee-jerk reaction by law enforcement. They clearly are not. They reflect a deep and long-standing concern about the impact of serious gun violence on our communities; a concern which is absolutely underscored when that violence is perpetrated on those who protect the public," he added.

*If you have any information, story ideas or news tips for The Lawyer's Daily please contact Amanda Jerome at [Amanda.Jerome@lexisnexis.ca](mailto:Amanda.Jerome@lexisnexis.ca) or 416-524-2152.*