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# Time to overhaul Canada's unjust bail system

Jailing the accused until their guilt or innocence has been decided at trial is a habit that borders on an addiction

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Legal reformers have grown tired of appealing for improvements to the impractical series of rules, conventions and whimsy that govern bail, writes Daniel Brown.

**By:** Daniel Brown Published on Tue Mar 22 2016

Bail has been an open sore on the criminal justice system for as long as crimes have been prosecuted. Instead of being invoked as a last ditch measure, jailing the accused until their guilt or innocence has been decided at trial is a habit that borders on an addiction.

Legal reformers have grown tired of appealing for improvements to the impractical series of rules, conventions and whimsy that govern bail. Thankfully, a noteworthy new voice burst into the debate this month, with the publication of a stark criticism of the status quo by Julie Lauzon, a Justice of the Peace in the Ottawa region.

In a stinging opinion piece Lauzon unmasked the bail system as being a travesty. "I can no longer call it a court of law," Lauzon said. "Unfortunately, Ottawa's bailout court, and others, have devolved into dysfunctional and punitive bodies, devoid of rule of law."

Jails are packed — at great monetary and human cost — with people who remain innocent until proven otherwise. The toll is catastrophic, if largely invisible. Marriages are ruined. Jobs are lost. Education is interrupted. Mortgages go into default. Children are traumatized by the loss of a parent or even removed from their custody. Pretrial detention can also significantly impair the ability of an accused person to prepare their defence by limiting access to their lawyer and essential witnesses.

In every unfortunate prisoner who is paraded into bail court hours or days after arrest stands a potentially innocent man or woman whose life has been turned upside down. A great many are desperate, devastated

and will agree to just about anything if they can go home, regardless of whether or not the restrictions on their liberty sought by the prosecutor are proportional, reasonable or necessary to protect the public.

Time and again, defence lawyers have witnessed the wreckage that results from a denial of bail or overly restrictive bail conditions. The justice system is replete with examples where an accused person was held in jail for months or years pending trial only to be acquitted — or worse, to have the charges withdrawn on the morning of trial due to a lack of evidence. This reality is far from unusual in a system where one's liberty at the bail stage is judged on the basis of untested evidence that is essentially read into the court record by the prosecutor without the benefit of meaningful scrutiny.

To be sure, many arrests result in convictions. Some defendants are caught red-handed. Some undeniably present a threat to the public if released pending trial. But the presence of this minority obscures a much larger, shifting mass of cases where a defendant may have been falsely accused, arrested based on unconstitutionally obtained evidence, implicated by faulty eyewitness identification or a host of other evidentiary failures.

A recent report on bail from the John Howard Society noted that two-thirds of those in provincial jails are in there awaiting a bail hearing or trial and that 70 per cent of these detainees are charged with nonviolent offences. These men and women comprise the most vulnerable members of our community, including marginalized racial groups, those with mental health issues, the impoverished, and the uneducated. Yet, in an age when we are bombarded with crime stories by 24/7 news reports, our default position in court is to embrace fear and safety at all costs.

What is needed now is a ground-altering slate of bail reforms that would align with our belief in essential fairness and the presumption of innocence while saving tens of millions of dollars that are wasted each year in unnecessary pretrial incarceration.

Bail courts are crying out for more resources and a culture of improved judgment. We have to have sufficient bail courts — some of them running at night — to ensure that detainees are not forced to endure excruciating days of waiting for their possible release. In addition, appropriate resources should be given to the Crown Attorney's office to ensure senior prosecutors are available to give each bail case a critical review predicated not on a presumption of detention, but on whether evidence and circumstances truly warrant depriving a defendant of his or her most prized possession — freedom.

Many detainees ought to be released with minimal restrictions directly from a police station. For those who cannot, it is incumbent on jail authorities to deliver them to court in time for a prompt bail hearing. This will help ensure that friends and family members offering themselves as bail supervisors will not be forced to take multiple days off work on account of a dysfunctional bail process.

Reforms such as these are neither onerous nor impractical. They would save far more resources than are currently consumed by our sputtering bail system. They require nothing more than committed political leaders and a renewed public acceptance of the fact that no apology or admission of failure can ever replace liberty lost.

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