

# Bail

## Summary

Bail is also called Judicial Interim Release.

If a person is arrested, they may be released from custody on a promise to appear or on an appearance notice with a requirement to appear in court on a date stated on the document. In addition, a person may be served with a summons to appear in court on a date stated on the summons.

Sometimes, however, a person is kept in custody after being arrested. In such a case, they have the right to be given a hearing for judicial interim release, commonly known as a bail application. The purpose of the hearing is to request release from custody until their trial is held. The hearing must be made available within 24 hours of arrest, or as soon as possible after that if a magistrate is not available within the 24-hour period.

The court considers three issues at the bail application. One is whether detention is necessary to make sure that the accused attends court. The second is whether detention is necessary for the protection or safety of the public. The third is whether the detention is necessary to maintain confidence in the administration of justice.

The accused may be released by signing a promise (known as a **recognizance** or an **undertaking**) to attend court as required and may be released with or without a **surety**. A **surety** is a person who puts up or guarantees to put up real property or money that may be forfeited (lost) if the accused fails to appear for court, breaches conditions, or becomes involved in new criminal activity. A **surety** usually must have no criminal record and have a full-time job, house, or other real property of value.

There are normally conditions placed on a **recognizance**, such as: personal appearances at all court hearings, no contact or communication with the **complainant**, residing at a certain address, not possessing weapons, obeying a curfew, attending treatment or counselling, reporting to a bail supervision program as required, and not using alcohol or drugs. The court must only impose conditions that are necessary to address the three issues (attending court, public safety, and maintaining confidence in the administration of justice).

If not released after a bail application, the accused may be able to apply

## Lesson Plan Overview

Criminal law is an area of law that deals with criminal offences and consequences when someone is found guilty.

This lesson plan introduces students to the concept of bail and when an accused will be released on bail.

## Activities & Discussion Questions:

- 1) Why do you think accused people are released on bail?
- 2) Answer the Quiz.

## Glossary:

**Complainant** – the victim of the alleged offence.

**Recognizance** (or undertaking) – a promise by the accused to attend court as required.

**Surety** – a person who puts up or guarantees to put up real property or money that may be lost if the accused fails to appear for court, breaches bail conditions, or becomes involved in new criminal activity.

## Relevant Law:

*Criminal Code of Canada* – section 515

*Charter of Rights and Freedoms* – section 11

at a later date for a bail review in a higher court (the Court of Queen's Bench or the Court of Appeal).

### *The Criminal Code of Canada*

**515 (1)** Subject to this section, when an accused who is charged with an offence other than an offence listed in section 469 is taken before a justice, the justice shall, unless a plea of guilty by the accused is accepted, make a release order in respect of that offence, without conditions, unless the prosecutor, having been given a reasonable opportunity to do so, shows cause, in respect of that offence, why the detention of the accused in custody is justified or why an order under any other provision of this section should be made.

**(2)** If the justice does not make an order under subsection (1), the justice shall, unless the prosecutor shows cause why the detention of the accused is justified, make a release order that sets out the conditions directed by the justice under subsection (4) and, as the case may be,

- (a)** an indication that the release order does not include any financial obligations;
- (b)** the accused's promise to pay a specified amount if they fail to comply with a condition of the order;
- (c)** the obligation to have one or more sureties, with or without the accused's promise to pay a specified amount if they fail to comply with a condition of the order;
- (d)** the obligation to deposit money or other valuable security in a specified amount or value, with or without the accused's promise to pay a specified amount if they fail to comply with a condition of the order; or
- (e)** if the accused is not ordinarily resident in the province in which they are in custody or does not ordinarily reside within 200 kilometres of the place in which they are in custody, the obligation to deposit money or other valuable security in a specified amount or value, with or without the accused's promise to pay a specified amount by the justice if they fail to comply with a condition of the order and with or without sureties.

**(2.01)** The justice shall not make an order containing the conditions referred to in one of the paragraphs (2)(b) to (e) unless the prosecution shows cause why an order containing the conditions referred to in the preceding paragraphs for any less onerous form of release would be inadequate.

**(2.02)** 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.

**(2.03)** For greater certainty, before making an order requiring that the accused have a surety, the justice shall be satisfied that this requirement is the least onerous form of release possible for the accused in the circumstances.

**(2.1)** If, under subsection (2) or any other provision of this Act, a judge, justice or court makes a release order with a requirement for sureties, the judge, justice or court may name particular persons as

sureties.

**(2.2)** If, by this Act, the appearance of an accused is required for the purposes of judicial interim release, the accused shall appear personally but the justice may allow the accused to appear by videoconference or, subject to subsection (2.3), by audioconference, if the technological means is satisfactory to the justice.

**(2.3)** If the accused cannot appear by closed-circuit television or videoconference and the evidence of a witness is to be taken at the appearance, the consent of the prosecutor and the accused is required for the appearance of the accused by audioconference.

**(3)** In making an order under this section, the justice shall consider any relevant factors, including,

**(a)** whether the accused is charged with an offence in the commission of which violence was used, threatened or attempted against their intimate partner; or

**(b)** whether the accused has been previously convicted of a criminal offence.

**(4)** When making an order under subsection (2), the justice may direct the accused to comply with one or more of the following conditions specified in the order:

**(a)** report at specified times to a peace officer, or other person, designated in the order;

**(b)** remain within a specified territorial jurisdiction;

**(c)** notify a peace officer or other person designated in the order of any change in their address, employment or occupation;

**(d)** abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order, except in accordance with any specified conditions that the justice considers necessary;

**(e)** abstain from going to any place or entering any geographic area specified in the order, except in accordance with any specified conditions that the justice considers necessary;

**(f)** deposit all their passports as specified in the order;

**(g)** comply with any other specified condition that the justice considers necessary to ensure the safety and security of any victim of or witness to the offence; and

**(h)** comply with any other reasonable conditions specified in the order that the justice considers desirable.

**(4.1)** When making an order under subsection (2), in the case of an accused who is charged with

**(a)** an offence in the commission of which violence against a person was used, threatened or attempted,

**(a.1)** a terrorism offence,

**(b)** an offence under section 264 (criminal harassment),

**(b.1)** an offence under section 423.1 (intimidation of a justice system participant),

**(b.2)** an offence relating to the contravention of any of sections 9 to 14 of the Cannabis Act,

**(c)** an offence relating to the contravention of any of sections 5 to 7 of the Controlled Drugs and Substances Act,

**(d)** an offence that involves, or the subject-matter of which is, a firearm, a cross-bow, a prohibited weapon, a restricted weapon,

a prohibited device, ammunition, prohibited ammunition or an explosive substance, or

(e) an offence under subsection 20(1) of the Security of Information Act, or an offence under subsection 21(1) or 22(1) or section 23 of that Act that is committed in relation to an offence under subsection 20(1) of that Act, the justice shall add to the order a condition prohibiting the accused from possessing a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all those things, until the accused is dealt with according to law unless the justice considers that such a condition is not required in the interests of the safety of the accused or the safety and security of a victim of the offence or of any other person.

**(4.11)** Where the justice adds a condition described in subsection (4.1) to an order made under subsection (2), the justice shall specify in the order the manner and method by which

(a) the things referred to in subsection (4.1) that are in the possession of the accused shall be surrendered, disposed of, detained, stored or dealt with; and

(b) the authorizations, licences and registration certificates held by the person shall be surrendered.

**(4.12)** Where the justice does not add a condition described in subsection (4.1) to an order made under subsection (2), the justice shall include in the record a statement of the reasons for not adding the condition.

**(4.2)** Before making an order under subsection (2), in the case of an accused who is charged with an offence referred to in subsection (4.3), the justice shall consider whether it is desirable, in the interests of the safety and security of any person, particularly a victim of or witness to the offence or a justice system participant, to include as a condition of the order

(a) that the accused abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order, except in accordance with any specified conditions that the justice considers necessary;

(a.1) that the accused abstain from going to any place or entering any geographic area specified in the order, except in accordance with any specified conditions that the justice considers necessary; or

(b) that the accused comply with any other condition specified in the order that the justice considers necessary to ensure the safety and security of those persons.

**(4.3)** The offences for the purposes of subsection (4.2) are

(a) a terrorism offence;

(b) an offence described in section 264 or 423.1;

(c) an offence in the commission of which violence against a person was used, threatened or attempted; and

(d) an offence under subsection 20(1) of the Security of Information Act, or an offence under subsection 21(1) or 22(1) or section 23 of that Act that is committed in relation to an offence under subsection 20(1) of that Act.

**(5)** Where the prosecutor shows cause why the detention of the accused in custody is justified, the justice shall order that the accused be detained in custody until he is dealt with according to law and shall include in the record a statement of his reasons for making the order.

**(6)** Unless the accused, having been given a reasonable opportunity to do so, shows cause why the accused's detention in custody is not justified, the justice shall order, despite any provision of this section, that the accused be detained in custody until the accused is dealt with according to law, if the accused is charged

**(a)** with an indictable offence, other than an offence listed in section 469,

**(i)** that is alleged to have been committed while at large after being released in respect of another indictable offence pursuant to the provisions of this Part or section 679 or 680,

**(ii)** that is an offence under section 467.11, 467.111, 467.12 or 467.13, or a serious offence alleged to have been committed for the benefit of, at the direction of, or in association with, a criminal organization,

**(iii)** that is an offence under any of sections 83.02 to 83.04 and 83.18 to 83.23 or otherwise is alleged to be a terrorism offence,

**(iv)** that is an offence under subsection 16(1) or (2), 17(1), 19(1), 20(1) or 22(1) of the Security of Information Act,

**(v)** that is an offence under subsection 21(1) or 22(1) or section 23 of the Security of Information Act committed in relation to an offence referred to in subparagraph (iv),

**(vi)** that is an offence under section 99, 100 or 103,

**(vii)** that is an offence under section 244 or 244.2, or an offence under section 239, 272 or 273, subsection 279(1) or section 279.1, 344 or 346 that is alleged to have been committed with a firearm, or

**(viii)** that is alleged to involve, or whose subject-matter is alleged to be, a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, any ammunition or prohibited ammunition or an explosive substance, and that is alleged to have been committed while the accused was under a prohibition order within the meaning of subsection 84(1);

**(b)** with an indictable offence, other than an offence listed in section 469 and is not ordinarily resident in Canada,

**(b.1)** with an offence in the commission of which violence was allegedly used, threatened or attempted against their intimate partner, and the accused has been previously convicted of an offence in the commission of which violence was used, threatened or attempted against any intimate partner of theirs;

**(c)** with an offence under any of subsections 145(2) to (5) that is alleged to have been committed while they were at large after being released in respect of another offence under the provisions of this Part or section 679, 680 or 816; or

**(d)** with having committed an offence punishable by

imprisonment for life under any of sections 5 to 7 of the Controlled Drugs and Substances Act or the offence of conspiring to commit such an offence.

**(6.1)** If the justice orders that an accused to whom subsection (6) applies be released, the justice shall include in the record a statement of the justice's reasons for making the order.

**(7)** If an accused to whom subsection (6) applies shows cause why their detention in custody is not justified, the justice shall make a release order under this section. If the accused was already at large on a release order, the new release order may include any additional conditions described in subsections (4) to (4.2) that the justice considers desirable.

**(8)** [Repealed, 2019, c. 25, s. 225]

**(9)** For the purposes of subsections (5) and (6), it is sufficient if a record is made of the reasons in accordance with the provisions of Part XVIII relating to the taking of evidence at preliminary inquiries.

**(9.1)** Despite subsection (9), if the justice orders that the accused be detained in custody primarily because of a previous conviction of the accused, the justice shall state that reason, in writing, in the record.

**(10)** For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds:

- (a)** where the detention is necessary to ensure his or her attendance in court in order to be dealt with according to law;
- (b)** where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, or any person under the age of 18 years, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; and
- (c)** if the detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including

- (i)** the apparent strength of the prosecution's case,
- (ii)** the gravity of the offence,
- (iii)** the circumstances surrounding the commission of the offence, including whether a firearm was used, and
- (iv)** the fact that the accused is liable, on conviction, for a potentially lengthy term of imprisonment or, in the case of an offence that involves, or whose subject-matter is, a firearm, a minimum punishment of imprisonment for a term of three years or more.

**(11)** Where an accused who is charged with an offence mentioned in section 469 is taken before a justice, the justice shall order that the accused be detained in custody until he is dealt with according to law and shall issue a warrant in Form 8 for the committal of the accused.

**(12)** A justice who orders that an accused be detained in custody under this section may include in the order a direction that the accused abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order, except in accordance with such conditions specified in the order as the justice considers necessary.

**(13)** A justice who makes an order under this section shall include in the record of the proceedings a statement that he or she considered the safety and security of every victim of the offence when making the order.

**(14)** If an order is made under this section, the justice shall, on request by a victim of the offence, cause a copy of the order to be given to the victim.

### *The Canadian Charter of Rights and Freedoms*

11. Any person charged with an offence has the right

**(a)** to be informed without unreasonable delay of the specific offence;

**(b)** to be tried within a reasonable time;

**(c)** not to be compelled to be a witness in proceedings against that person in respect of the offence;

**(d)** to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

**(e)** not to be denied reasonable bail without just cause;

**(f)** except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

**(g)** not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

**(h)** if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

**(i)** if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.