OPEN LETTER

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November 4, 2024 – Letter on behalf of the Black Action Defence Committee, Canadian Association of Black Lawyers, and the Black Legal Action Centre regarding Ontario's Calls for Bail Reform

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We write in response to the recent calls for criminal justice and bail reform made by the Ontario government and echoed by police associations. Cumulatively, our organisations have worked tirelessly over the past five decades to address systemic issues in the criminal justice system, particularly those thatimpact Black People in Canada. The Ontario government seeks to roll back the successes we have achieved. We stress that the proposed reforms are misguided and fail to promote public safety. If implemented, these reforms will disproportionately harm Black People in Canada without a correlated improvement in public safety. The proposed reforms, in short, would be damaging to all Ontarians and, by extension, Canadians.

Falsely, the Province asserts that a 'catch-and-release' standard exists in our bail system. Such unsubstantiated claims are offensive and directly undermine public confidence in the administration of the criminal justice system. Lawyers from our organisations work daily in the criminal bail courts and assert, without reservation, that no such catch-and-release system exists. The Province's position suggests that experienced judges and justices of the peace cannot be trusted to balance matters of public safety with the right to reasonable bail enshrined in the *Canadian Charter of Rights and Freedoms*.

Our organisations support bail and other criminal justice reforms that will improve the system and reduce the disproportionate representation of Black People, Indigenous People and other racialized persons interacting with the criminal justice system. The changes proposed by the Ontario government would do the opposite and increase those disparities exponentially.

Ontario's jails are already overcrowded and underfunded. They do not provide effective rehabilitation opportunities and programs for inmates. Black People are overrepresented in Ontario's corrections system, making up only 5% of the general population but accounting for 14% of adults in provincial jails.[1] Often, this means being housed in small cells designed for two occupants, now housing up to four inmates, in a phenomenon known as 'quadruple bunking', in unhygienic and inhumane conditions. Courts across the province have been critical of the provincial government's intransigence in addressing this issue.[2] Bail reforms designed with the intention of housing *more* individuals inside these facilities would entrench cruel and inhumane treatment against inmates.

Our history is replete with examples of the sorts of harm caused when bail is not made available to accused persons. The case of Mr. Umar Zameer serves as a telling example. Mr. Zameer was charged with the first-degree murder of Toronto Police Service Constable Jeffrey Northrup. He was acquitted three years later. The changes demanded by Ontario's provincial government would have Mr. Zameer languish in custody for almost three years. Mr. Zameer was not a risk or danger to the police or our communities. His release was the result of the Court's intelligent weighing of the circumstances and facts of the case alongside the proposed bail plan. The careful and reasoned thought necessary to reach these evaluations must be left to Ontario's experienced judges and justices of the peace.

The superficial appeal of a 'three-strike' rule requiring that accused persons be detained pending trial quickly fades upon closer examination. The "three strikes" rule has no place in how our bail system is governed. Such a rule is divorced from safety considerations. The over-policing of Black communities will mean that the three-strikes rule would have a disproportionate impact on Black, Indigenous and other racialized people. Principles, not the rules of baseball, must govern how our bail system operates.

Furthermore, calls for the reintroduction of mandatory minimum sentences are premised on the erroneous and fictional belief that judges are handing out ineffective sentences. There is, in fact, no social science research suggesting that the current approach to sentencing is somehow 'soft-on-crime.' Starting in 1995 with Bill C-68, Canada began experimenting with mandatory minimum sentencing as a mechanism to curb crime rates. The imposition of mandatory minimum

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[1] Department of Justice Canada, "Overrepresentation of Black People in the Canadian Criminal Justice System" (December 15, 2022), online: https://www.justice.gc.ca/eng/rp-pr/jr/obpccjs-spnsjpc/index.html.

[2] See for example, *R. v. Jama,* 2021 ONSC 4871, *R. v. Persad,* 2020 ONSC 188, *R. v. Pimentel,* 2022 ONSC 3023*, R. v. Champagnie,* 2024 ONSC 4960, and *R. v. D.T.*, 2024 ONSC 4690.

sentencings resulted in an 8% increase in the number of Black inmates in the ten-year period from 51% in 2010/2011 to 59% 2019/2020.[3]

With the benefit of hindsight, we can state conclusively that mandatory minimum sentences do not lower crime rates.[4] Rather, they reinforce the pre-existing racial inequalities within the criminal justice system, nurture distrust of the police within minority communities, and cause immeasurable social and psychological harm to individuals, families, and entire communities.[5] [6]

Requiring accused persons to submit to the use of an ankle monitor as a condition of bail is unnecessary. The current system already requires that the Court evaluates the circumstances to determine the types of conditions best suited to grant an accused's release. This process tasks them with considering factors such as community supervision, financial pledges, and ankle monitors. A new requirement *mandating* the use of ankle monitors would at best be redundant, and at worst an unjustly harsh burden on accused persons whose situations do not suggest they are a 'flight risk.'

Canada is often praised as a bastion of multiculturalism, taking pride in the ethno-cultural and racial diversity of its population. Yet, as a testament to the continued effects of Canada's colonial past, racialized groups continue to experience discrimination, racism, and other forms of injustice.[7] These inequalities are on full display in the operation of the criminal justice system, where Black People outnumber all other racial groups currently incarcerated in provincial facilities.[8]

At a minimum, the statistics are unacceptable. They call on us to take seriously the issue of anti-Black racism and demand that we - collectively - do better. Doing better does not and cannot include the Ontario government's proposed bail reforms that would shatter families, and fracture communities. We therefore strongly oppose these proposed reforms.

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[3] Department of Justice Canada, "The Impact of Mandatory Minimum Penalties on Indigenous, Black and Other Visible Minorities," *JustFacts* (2017), Research and Statistics Division, online: https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2017/oct02.html.

[4] Mary Allen, "Mandatory minimum penalties: An analysis of criminal justice system outcomes for selected offences," *Juristat* (2017). Statistics Canada catalogue no. 85-002-X, online: https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2017001/article/54844-eng.pdf?st=nRM6SFsI

[5] *Supra* note 1.

[6] *Supra* note 3.

[7] Owusu-Bempah, Akwasi, Maria Jung, Firdaous Sbaï, *et al.,* "Race and Incarceration: The Representation and Characteristics of Black People in Provincial Correctional Facilities in Ontario, Canada" (2021) 13:4 *Race and Justice,* online: https://journals.sagepub.com/doi/full/10.1177/21533687211006461.

[8] Statistics Canada. "Table 35-10-0154-01 Average Counts of Adults in Provincial and Territorial Correctional Programs." DOI: https://doi.org/10.25318/3510015401-eng.

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