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COLUMBIA

VIA EMAIL

Ref. 618795

August 10, 2021

Her Worship Lisa Helps  
Mayor of the City of Victoria  
1 Centennial Square  
Victoria, BC V8W 1P6  
Email: [LHelps@victoria.ca](mailto:LHelps@victoria.ca); [mayor@victoria.ca](mailto:mayor@victoria.ca); [mayorandcouncil@victoria.ca](mailto:mayorandcouncil@victoria.ca)

Dear Mayor Helps:

Thank you for your letter of July 9, 2021, regarding the release of accused persons on bail.

In my role as Attorney General, except in the most extraordinary circumstances, I am not involved in individual cases, nor do I have authority over the judiciary. Under our system of law, the judicial branch of government is separate and independent from the executive branch of government.

In your letter, you ask about options for keeping accused in custody. Within 24 hours of their arrest, arrested persons must be released or be brought before a judge for a bail hearing. “Judicial interim release,” also known as bail, occurs when a judge or justice releases an accused into the community, with or without conditions, after a charge has been laid and pending trial. Under our system of law, accused persons, even those facing serious charges, have the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal. This principle is fundamental to the right, guaranteed under s. 11(e) of the *Canadian Charter of Rights and Freedoms*, not to be denied reasonable bail without just cause.

As your letter notes, Parliament has directed the courts to exercise a “principle of restraint” in bail hearings, and give primary consideration to the release of the accused at the earliest reasonable opportunity, on the least onerous conditions that are appropriate in the circumstances and are reasonably practicable for the accused to comply with (*Criminal Code*, s 493.1).

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For most offences, an accused person can only be detained in custody pending trial if the Crown can satisfy the Court that detention is necessary to secure the accused's attendance in court, to ensure the protection or safety of the public, or maintain confidence in the administration of justice, pursuant to s. 515(10) of the *Criminal Code*. In most circumstances, Crown Counsel bear the burden of proof to show that an accused should be detained.

An accused can be released on conditions that are intended to protect the public, including terms that allow for close monitoring through bail supervisors, police or a private person known as a surety. Pursuant to s. 515(13), judges are required to consider the safety and security of every victim of an offence when making release orders. The form of bail used in a particular case will depend on the nature of the offence the accused is alleged to have committed, the background of the accused, and the risk the accused would present if released. Non-compliance with a term of bail can result in a new charge for breaching bail, a revocation of bail, or both.

Judges, in determining bail, are bound by the legal and procedural rules laid out in the *Criminal Code*. Bail provisions under the *Criminal Code* are the responsibility of the federal Department of Justice and may only be amended by the federal government. If you are of the view that the *Criminal Code* provisions related to these matters require amendment, you may wish to share your views with the Honourable David Lametti, Minister of Justice and Attorney General of Canada. Minister Lametti is responsible for proposing such amendments to Parliament and may be reached at:

The Honourable David Lametti, PC, QC, MP  
Minister of Justice and Attorney General of Canada  
House of Commons  
Ottawa ON K1A 0A6  
Email: [MCU@Justice.gc.ca](mailto:MCU@Justice.gc.ca)

In your letter, you also refer to matters of public safety as well as resourcing for police to support accused who are released in the community. The Ministry of Public Safety and Solicitor General has administrative responsibility for policing and public safety. Accordingly, the Honourable Mike Farnworth, Minister of Public Safety and Solicitor General, has been copied on this correspondence for his consideration.

Please be assured that in cases involving crimes where public safety is at risk, the importance of the protection of the public is taken into full and proper consideration. We know that an integrated approach is necessary to address the factors that contribute to prolific problematic behavior and justice, health, social services and community partners must work together to support timely and coordinated access to support services. The Ministry of Attorney General is committed to working towards this goal within the scope of our legal authority.

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Thank you for taking the time to write expressing your concerns. I hope you find this information of assistance.

Yours truly,

A handwritten signature in black ink, appearing to be 'D. Eby', written in a cursive style.

David Eby, QC  
Attorney General and  
Minister Responsible for Housing

pc: The Honourable Mike Farnworth