Making the Case for Bail Reform

by Melanie Webb

"The right not to be denied reasonable bail without just cause is an essential element of an enlightened criminal justice system."

So say the first words of the latest Supreme Court decision dealing with the principles of bail in the first instance, *R. v. Antic*.[1] That right is, of course, enshrined in s. 11(e) of the *Charter of Rights and Freedoms*.

But do we really operate today in a criminal justice system that is "enlightened"?

Defence counsel have become well-acquainted with the frustrating reality of a bail system that suffers from numerous deficiencies. One need not be a particularly astute observer to notice that as it operates today, it frequently fails the most vulnerable and marginalized who find themselves repeatedly in contact with the justice system.

The indigent and those who struggle with addiction or mental health issues face tremendous hurdles in trying to attain bail in the first place. They are all too often told they "need a surety," and one with significant assets, or at least warned that if they try to run the bail on their own recognizance, they run the high risk of detention. This over-reliance on surety releases in Ontario poses the most significant barrier for those who for whatever reason may not have a network that includes suitable sureties with "sufficient" assets.

Assuming the accused gets to the point wherein bail is granted, they all too often have a plethora of conditions imposed upon them, which are of dubious relevance to the allegations. It is no wonder that an accused who is struggling enough in day-to-day life has difficulty complying with a litany of new rules and restrictions imposed upon them, and end up inevitably drawn back into the system, over and

over again. It is a well-known principle, from well before *Antic* was ever released, that all conditions should be "no more than is necessary" and should relate to the circumstances of the case, but we know that in practice, bail courts typically operate quite differently. A desperate person will often consent to virtually any conditions simply to get out of jail.

Numerous studies and reports on the bail system have been released over recent years. The concerns and issues identified in each successive report often echo the ones that precede them, and the authors all seem to reiterate similar recommendations.[2]

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Yet despite the same recommendations being made over the years from various stakeholders, justice system participants, and advocacy groups, one might be forgiven for thinking that little, if any, effort is being made to implement those recommendations.

Bail reform is long overdue.

I. Looking Back: The Bail System As It Used To Be

A. *The Friedland Study*

Over half a century has passed since Professor Martin Friedland's seminal study of the Toronto bail courts, one that sampled some 6000 cases over the course of six months.[3] Friedland would later reflect upon the impact of his work in publications since.[4]

The original study revealed the serious consequences that were visited upon an accused detained pending trial, being not only physical and psychological endangerment, but the deleterious impact upon the ultimate outcome: the likelihood of being acquitted, and the quantum of sentence.

At the time of the study, over 90% of people charged with criminal offences were being arrested, as opposed to summoned, and 85% of those held in custody until their first court appearance.[5] Bail was very much discretionary, and a cash deposit was generally required in practice. Friedland pointed out the unfairness this posed to those who were unable to raise it and recommended the elimination of this practice. It would later come to pass that over time, the over-emphasis on "cash bail" would evolve into an over-emphasis on surety release as we see it today, despite bail reform that would soon follow Friedland's work in the 1970s.

Besides the elimination of the requirement for cash bail, Friedland recommended that police be given greater powers of release, and that greater pressure be placed upon police to actually do so.[6] This concern regarding the use of police powers to release would prove to be one that would be repeated for decades to come, up until the present.

Friedland concluded that release practices in the Toronto courts were operating in "an ineffective, inequitable, and inconsistent manner"—words which might as well apply to the entire country today.[7]

B. *Progress Since: The Bail Reform Act and Beyond*

The findings and conclusions from Friedland's work would be instrumental in informing the legislation to come, which was the *Bail Reform Act*, S.C. 1970-71-72, c. 37. The *Act* codified the reasons a person could be detained in custody, made clear that the onus was on the Crown to show why the accused should be detained, encouraged police to release accused before their first appearance, established the ladder principle, and limited the use of cash bail. This was the last major overhaul of the bail provisions.

Reverse onus provisions were enacted shortly afterwards, however, in the mid-1970s. It survived constitutional scrutiny. New legislation to expand the reverse onus provisions would be introduced in 2006, prompted by public outcry to the notorious 2005 Boxing Day shooting in Toronto, and a rash of gun violence that year. As Friedland points out, the expansion of the reverse onus provisions have likely significantly contributed to the increase in the number of people detained in custody.[8] There are now a wide array of offences that turn a bail hearing into a reverse onus, as set out in s. 515(6) of the *Criminal Code*—which include failure to appear or failure to comply with recognizance, undertaking, or summons.

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By 2007, Professor Friedland warned, "The pendulum has swung too far in the direction of requiring sureties, rather than using release on one's own undertaking or recogni-

zance." About two-thirds of those who appear for a bail hearing in Toronto were required to find sureties, and only about half of this number were released. Less than 10% of those held for a bail hearing were actually released on their own undertaking or recognizance. He observed:

> What appears to be happening is that the requirement to find sureties has taken the place of cash bail as a method of holding accused persons in custody.... The majority of persons who are caught up in the criminal-justice system, many of whom are not from the community where they are arrested, have difficulty finding sureties. Those deciding whether to release a person on bail impose high hurdles, perhaps thinking that there will be less criticism from the public and the media if they keep people in custody. . .[9]

Some of the causes identified in the growth of the remand population included misunderstanding by police of the scope of their authority to release and a resultant under-use of that authority, as well as risk aversion at all levels (including police, prosecutors, defence counsel, and judicial officers).

Friedland concluded that the bail system required more careful examination than before, despite the advances made by the *Bail Reform Act*.

That was a decade ago.

In 2012, the fourth annual national symposium on criminal justice reform, "Reinventing Criminal Justice," was held in Victoria, the topic at issue that year being the bail system and remand populations. Issues under consideration included: why remand populations were growing while crime rates were declining, why accused were serving remand time as opposed to custodial sentences, the impact on vulnerable communities, and the effect on public safety. Some of the causes identified in the growth of the remand population included *misunderstanding by police* of the scope of their authority to release and a resultant under-use of that authority, as well as *risk aversion* at all levels (including police, prosecutors, defence counsel, and judicial officers). Both of these concerns would be repeated in other reports to follow.[10]

It was also apparent, based upon review of the literature, that there was an increase in the laying of administration of justice charges, accused presenting with more complex histories, and a greater number of reverse onuses that had been legislated, which necessitated more court time being expended.

Twenty-nine recommendations were developed from the symposium.[11] These included:

- Joint educational programming for all justice system participants on bail principles
- Real-time consultation by police with prosecutors on bail decisions
- Policies on police discretion on release following arrest
- Police and prosecution policies favouring release where the most serious charges were only administration of justice charges
- Reduced reliance on cash and surety bails
- Community alternatives to bail, such as the bail supervision program or bail hostels, to manage the risk of the accused in the community, and other innovative alternatives to detention
- Applying a "principle of *restraint*" regarding restrictive conditions
- Practical measures to reduce non-compliance with conditions (e.g. automated reminders of court dates)
- Greater consistency in the application of police and prosecution policies consistent with the bail provisions of the *Criminal Code* within and between jurisdictions
- Development of local bail committees to address issues and problems with the bail process in the jurisdiction
- Judicial and administrative practices including:
    - Increased use of "smart technology" throughout the bail process, from disclosure to implementation of the bail decision
    - The use of specialized bail courts, experienced police, prosecutors, legal aid duty counsel and judicial officers and a more strategic use of provincial judges in special circumstances
    - Only "meaningful" adjournments, the goal being to get to trial at the earliest possible time
    - Early access to resources needed to implement release decisions (e.g. telephone access)
    - Encouraging counsel to agree on the facts for purposes of a bail review to avoid the need of a transcript

Only two years later, in 2014, the Canadian Civil Liberties Association and Education Trust released a lengthy report on bail and pretrial detention, which would be ultimately heavily relied upon in the CCLA submissions as an intervener on *Antic*, and frequently cited in the decision itself.[12] Their study involved observation and analysis of the processes in eight bail courts in five provinces or territories, interviewing criminal justice professionals on their experiences, as well as analysis of the literature. Once

again, the problems that loomed large were:

- police failing to exercise discretion to release
- excessive use of sureties (especially in Ontario and Yukon)
- overly restrictive bail conditions
- detention for administration of justice-type charges
- inefficiency resulting in a large proportion of adjournments and not much actual court time spent addressing bail matters.

The CCLA and Education Trust released another series of recommendations, which are not summarized here, but many of which repeat things stated before.

II. Where Are We Today?

A. *"The Wyant Report"*

In December 2016, the Ontario Ministry of the Attorney General released *Bail and Remand in Ontario*, a report authored by the Honourable Raymond E. Wyant, former chief justice of the provincial court of Manitoba.[13] It provides a plain-spoken but illuminating point of view of an experienced judge, and former defence lawyer and Crown, from outside Ontario.

In the background prefacing his report, Justice Wyant aptly noted:

> Several noteworthy reports have been released in recent years that are critical of the bail and remand system and which contain recommendations for improvement. Some of these reports have been anecdotal and some have involved scholarly research. Their common theme is that the criminal justice system in Canada is failing in the way it detains individuals accused of criminal offences. . . all presumed innocent of the charges laid against them. [Emphasis added.]

Wyant went on to list a number of failures identified in the literature, reproduced below:

- that the police detain too many individuals accused of criminal offences and do not exercise their powers of release appropriately
- that prosecution services through their policies and actions inappropriately oppose bail in too many instances
- that police, judicial officers, both judges and justices of the peace, do not exercise appropriate discretion in releasing people awaiting trial and do not apply the *Criminal Code* release provisions appropriately
- that there is too much of a delay in hearing applications for release
- that too many unnecessary conditions are imposed on accused persons that inevitably, given the delay in time to trial, bring many back into custody on breach charges where the person does not necessarily pose a risk to society
- that sureties are overused
- that community alternatives to remand custody are underfunded, inadequate and not universally available in all jurisdictions
- that individuals housed in correctional or detention centres are kept in conditions that are dehumanizing and overcrowded and that cause administrative headaches
- that resources available to both private defence counsel and to legal aid are inappropriate and lacking
- that too many vulnerable people or people accused of less serious offences are being detained and denied release which exacerbates the issues they face
- that too many Indigenous Persons are detained in jail far outnumbering the percentage of their numbers in society as a whole.

The commissioning of this report arose from the request of the MAG and the Ministry of Community Safety and Correctional Services in Ontario to review the bail and remand system in Ontario, and to "develop a strategy to address challenges." Aside from a review of the literature, the report was also the culmination of the author's observations of police processes, detention centres, and bail proceedings in two Ontario jurisdictions, Ottawa and Brantford,[14] as well as interviews with a wide array of stakeholders.

As the author of the report put it, it is clear that Ontarians are not served equally by the justice system. Certain services, programs, and community supports are available in some jurisdictions, and not available in others. Some places are more efficient in some ways than others (for example, places that happen to have a "bail vettor" Crown). Local practices vary from place to place, and even from one justice of the peace to another in the same jurisdiction. Some locales have provincial judges who will help deal with bail hearings when the courts are overwhelmed—but others do not.[15] This clearly has an impact on the accused who circulate through the system. There is clearly inequity and disparity in how justice is dispensed, depending on where one happens to be charged, and before whom they happen to have their bail hearing.

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Wyant was critical of the administrative inefficiency and waste in our courts, the "shuffling of paperwork" and repeated appearances while waiting for information or disclosure. Such can come as no surprise, especially in the *Jordan* era. He was also blunt in

his criticism of issues such as the over-reliance on sureties:

> Again, it must be emphasized that this over-reliance on surety use in Ontario can and does lead to lengthy and unnecessary delays in the release of individuals who should be released. This puts undue pressure on remand facilities and is prejudicial to the rights of the accused. There are cases where an accused, even with no record and obtaining the consent of the Crown for release, spend several days in custody arranging their plan for sureties when they could have been and should [have] been released days earlier but for the requirement to have sureties. One case in Toronto, where a woman with no record spent six days in custody putting her plan together, for a consent bail, is one I won't soon forget. In that case, sureties were required by the Crown in order to obtain their consent to release and the accused agreed to a number of conditions, few of which related to the risk she posed in the community or the offence. This person was, in my opinion, completely entitled to be released without sureties and with a minimum of conditions. Sometimes it seems as if sureties are imposed for no particular reason other than it is the expected thing to do.[16]

Defence counsel must not be cowed by a sense that objecting is futile—or that the deck is stacked against them in an unfair system. If one simply accepts a situation as being the status quo, then things will only remain the same or deteriorate even further.

Upon reading this report, one wonders how the system had evolved to the point where sureties had essentially become the default position in bail court, and accused were being remanded over and over again, or otherwise likely to be detained, if they did not have one. One might suggest that perhaps it is because when counsel (on both sides of the bar) are first introduced to the system, they see and accept it without question—this is the way it is, and there will be no persuading the court otherwise.

By way of example, Wyant was perplexed to observe counsel failing to object to the Crown's unnecessary aggressive tone and line of questioning of sureties:

> I observed instances where the cross examination by the Crown was unnecessarily aggressive and intimidating. Some sureties are treated like accused or accomplices. In fact, on one occasion in Brantford, I came close to standing up and objecting myself to the line of questioning and the tone of Crown counsel when defence counsel did not. I later asked defence counsel in that case why he/she did not object to the line and tone of questioning and the answer was that it would be to no avail since the justices of the peace would always rule in favour of the Crown and allow all sorts of inappropriate questions in any event. In that case and in some others, the sureties were treated as if they themselves were on trial. It was unnecessary and inappropriate...

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Wyant also questioned the need to have sureties testify in court in the first place, even on contested applications, barring exceptional circumstances, when the surety verification process could be dealt with outside of the courtroom. He pointed to the fact that by comparison, on a bail pending appeal, after an accused has been convicted, no longer presumed innocent, affidavit evidence is simply filed as part of the application, without the need for sureties having to take the stand and testify. This is indeed a point born of common sense, yet time and time again, counsel are compelled to call their sureties because that is the requirement by the particular justice of the peace before whom they happen to be standing. Rarely do we see counsel dare to proceed on the basis of submissions alone, even though there is actually no legal requirement for a surety to be present and to testify on a bail hearing.[17]

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Wyant deplored the practice of calling the accused on the bail application, when expected to do so by the justice of the peace, and how Crowns and some justices of the peace were engaging in inappropriate lines of questioning of the accused:

> In the end, my conclusion is that contested bail applications in Ontario have the appearance of being conducted against the law (de facto reverse onus), unfairly weighted towards the Crown, unduly and unnecessarily long which denies applicants right to reasonable bail at the earliest opportunity and have aspects that are contrary to the letter and spirit of the law (the accused testifying) and in some

cases treat sureties without the measure of respect that they deserve.[18]

As a possible sign of improvement in the way arrests and bails are processed in some ways, the author pointed out that in some jurisdictions, such as Ottawa, around 60% or greater of those arrested are released by police without ever coming into detention. Perhaps that can be taken as a sign that some police forces are exercising more discretion on their powers of release. On the other hand, in other places that figure was quite a bit lower: once again, another sign of inconsistency in how accused may be treated, depending on what town or city in which they are charged.

There were other statistics cited: over 70% of those held for a bail hearing were able to have one within one to three days of arrest, and half of those had bail decided on their first appearance. But, at the same time, about 45% of those detained by police apparently never try for bail. That is an alarmingly high proportion.

Wyant acknowledges the reality of risk aversion as a factor in the bail system (no-one wants to be responsible for a decision that may result in terrible consequences), but urges learning to work past this, and create a culture from within that supports the exercise of discretion. This would seem to be a psychological hurdle which will not be easily overcome, and not overnight. But perhaps identifying and acknowledging the problem is a first step.

The report was complimentary of certain programs, such as the bail verification and supervision programs, that he observed, and certain community supports which provide services for the most vulnerable accused, and urges expansion of such programs, and increased funding and support for these agencies. Of course, again, these types of programs are only available in some, but not all areas across the province, just as with the specialized Gladue Court in Toronto, which was also highly commended.

In sum, Wyant provided a total of 67 recommendations. As one might expect, many of them related to yet a further study of various issues being undertaken, as well as some streamlining of Legal Aid and administrative matters, and modifications to the operations of "weekend and statutory holiday" courts and bail verification supervision programs. Others related to a review and revision of MAG policy on issues such as: the right to reasonable bail, the ladder principle, the principle of restraint in the use of sureties, and imposing conditions of release—again, all things that had been recommended earlier, by, for instance, the Fourth National Symposium of four years earlier. Still others include:

- expanding education on police powers of release
- providing police access to Crowns for advice on release
- pressing for legislative changes that would expand police powers of release, including empowering the police to impose certain conditions which they currently cannot do
- the expansion of the bail vettor program to other locations in Ontario
- ending the widespread practice of requiring sureties, and move to a system of requiring sureties only in cases of greatest need
- practising restraint on the use of conditions on release orders, and elimination or curtailment of certain specific types of conditions
- the repeal of reverse onus provisions for breach of bail
- consideration of a pilot project of not laying charges on minor breach of bail allegations
- review by the chief justice of the practice of having the justices of the peace conducting all bail applications, with a view to having judges perform this function instead
- MAG review of bail procedures to ensure consistent structures, policies, and practices across the province, while still being aware of issues unique to a particular jurisdiction

Ultimately, Wyant makes a compelling case for "significant and substantive change," which is evidently required at all levels: local, provincial, and federal. He suggests that it may take another overhaul for the provisions in the *Code* to change some of the current problems in the culture of bail, much as, he points out, changes in the *Youth Criminal Justice Act* (YCJA) changed the culture of detention in the youth system.

A recalibration seems to be in order.

B. *R. v. Antic*

Since *Pearson* and *Morales* in 1992, and *Hall* in 2002, there had been little consideration of the modern-day bail provisions by the Supreme Court of Canada, until *R. v. St-Cloud* in 2015.

And so it was that much of the language in *R. v. Antic* was hailed as a refreshing affirmation of the "ladder principle"—something which was codified 45 years ago by the *Bail Reform Act*—and helpful language to remind the court of the fundamental principles in decision-making on bail to bolster an argument for release.

The key part of the decision can be found at para. 67, where Wagner J., for the Court, outlines the guiding principles and guidelines to be adhered to when applying the bail provisions in a contested hearing." These include the "ladder principle" in applying the least restrictive form of release, and in compelling the Crown to justify a more restrictive form of release. An unconditional undertaking is the starting point by default, and a surety recognizance should not be imposed unless all of the less onerous forms have been considered and rejected as inappropriate. A cash bail should also be relied upon only in exceptional circumstances, and should be no higher than necessary to satisfy any concerns that would warrant detention, and must be propor-

tionate to the means of the accused and the circumstances of the case. Conditions of bail should be imposed only "to the extent that they are necessary" to address the statutory criteria of detention.

In truth, none of these principles can be seen as anything ground-breaking or new, but they do serve as a handy and pointed reminder from the highest Court in the land of what should be applied on a day-to-day basis, in every courtroom, in every town, in every province and territory.

How do we retrain ourselves to be less risk averse, for example? Defence lawyers are not immune to this characteristic either: counsel would prefer to be on the safe side, bring their sureties to court, and have them testify, rather than risk detention of their client.

III. Looking Ahead: Hope for the Future

Coming two years after *St-Cloud*, which was also authored by Wagner J., the *Antic* decision seems to inject hope among the defence bar that perhaps this will turn things around.

But will *Antic* result in a lasting impact upon bail culture, or is it simply one more in a line of Supreme Court decisions, studies, papers, and reports, that reflect upon a malfunctioning system still to be repaired? Will we continue to see the same problems—or worse—20 years hence, and echo the same complaints?

All the scholarly literature, statistics, studies, and social commentary in the world will not change the system, without it translating into action on the ground.

There is some reason for optimism. As of the time of the writing of this article, changes for the better seem to be underway at the College Park courthouse in Toronto, which appear to be along the lines of some of what was recommended in the Wyant report and others. This includes the embedding of a Crown at the police station to provide advice to police. Ottawa has apparently also implemented this step for their local region, along with other positive developments reported earlier this year:

- Hiring a duty counsel to serve as a "bail co-ordinator" for the courthouse
- Assigning a lawyer to the detention centre to provide legal advice, facilitate applications for legal aid certificates, and prepare them for bail hearings
- Expanding the John Howard Society's bail supervision and verification program to the courthouses in Perth, Pembroke and L'Orignal, while also offering enhanced services in Ottawa on weekends and statutory holidays.
- Adding up to 20 new "bail beds" that will give low-risk offenders a place to stay in the community while awaiting trial.[19]

These are promising steps. One hopes that similar practical improvements will be implemented in jurisdictions across the province, modified according to local need.

However, some changes must be made at the "molecular level," so to speak, to truly change the culture of bail. How do we retrain ourselves to be less *risk averse,* for example? Defence lawyers are not immune to this characteristic either: counsel would prefer to be on the safe side, bring their sureties to court, and have them testify, rather than risk detention of their client. Some would also simply consent to the imposition of more conditions than necessary rather than engage in a full-blown argument on the issue.

Changing the culture of bail requires a fundamental readjustment of our collective thinking.

Realistically speaking, we cannot expect that changes in Crown policies will come overnight. Or that another overhaul of the bail provisions in the *Code* will be anything but years away, although the federal government has affirmed their commitment to examining the issue of bail reform.

But let us not wait for the system to change. Let us do our part to change the system ourselves.

With that in mind, below are a few recommendations for defence counsel running their first bail hearings, or who otherwise would welcome a refresher:[20]

1. Review the recommendations in the Wyant report, if not the entire report itself, and consider how you as defence counsel can advocate effectively on your client's behalf to resist inappropriate practices in bail court. It may be worth citing excerpts from the Wyant report in bail court, or at least referring the Crown to some of the recommendations. There is nothing quite so effective as quoting your opponent's words, or at least words from a report commissioned by your employer, in support of your own argument.
2. In formulating a release plan, explore alternatives to a surety release, such as a bail verification and supervision program, or arrangements with other social supports, if available in your jurisdiction.
3. In preparing for your bail hearing, be aware of issues such as whether it is a reverse onus or not, and why, whether or not the accused is already on any conditions of a recognizance or probation order and what they are, whether the Crown is bringing a "s. 524 application," etc. When it comes to youth

matters, be sure to understand the relevant provisions of the *Youth Criminal Justice Act*. Do not assume that the Crown's representations on issues such as onus, or whether or not the accused is already on any forms of release, are correct.

4. In running your bail hearing, do not necessarily accept the allegations being read in without question. You may need to question the Crown, either in advance of the hearing or on the record about issues relating to the investigation that should give pause to the justice on the strength of the Crown's case.[21] It is not uncommon for a police synopsis to bear little to no resemblance to what the disclosure actually alleges. At the least, it certainly rarely presents a balanced view of the case. If necessary, request that the officer-in-charge attend, although this does run the risk of delaying the bail hearing.
5. Do not let things slide even if you receive pushback from a justice of the peace. Object to improper questioning of sureties during the course of cross-examination.
6. Don't be afraid to simply suggest relying on submissions, rather than calling the sureties or the accused, which takes up a great deal of court time, and is less than ideal especially in the case of the accused testifying.
7. Remember that *Gladue* applies at a bail hearing.
8. Remind the court of the language in *Antic* and adherence to the "ladder principle," which has been codified for the past 45 years. Argue against the imposition of unnecessary and unconstitutional bail conditions, especially "behavioural" bail conditions. Do not "leap" to house arrest even where the allegations are seemingly serious.
9. For someone who may have no assets or sureties who have assets, stress to the court every person's constitutional right to reasonable bail, absent just cause, together with the presumption of innocence, even where the charges are serious. Where an accused would be otherwise releasable, poverty must not be an impediment to bail.

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NOTES:

[1] *R. v. Antic*, 2017 SCC 27, 2017 CarswellOnt 8134 (S.C.C.).

[2] As but a few examples: John Howard Society of Ontario. *Reasonable Bail?* 2013, online: http://www.johnhoward.on.ca/wp-content/uploads/2014/07/JHSO-Reasonable-Bail-report-final.pdf; Canadian Civil Liberties Association and Education Trust. *Set up to Fail: Bail and the Revolving Door of Pre-trial Detention*, by Abby Deshman and Nicole Myers, 2014, online: https://ccla.org/dev/v5/3doc/CCLA3set3up3to3fail.pdf; Legal Aid Ontario. *A legal aid strategy for bail*, 2016, online: http://www.legalaid.on.ca/en/publications/paper-legal-aid-strategy-for-bail-2016-11.asp; Ministry of the Attorney General. *Bail and Remand in Ontario*, by Raymond E. Wyant, 2016, online: https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/wyant/.

[3] Martin L. Friedland, *Detention Before Trial: A Study of Criminal Cases Tried in the Toronto Magistrates Courts* (Toronto: U. of T. Press, 1965).

[4] Martin L. Friedland, *My Life in Crime and Other Academic Adventures* (Toronto: U. of T. Press, 2007; Martin L. Friedland, "The Bail Reform Act Revisited," (2012) 16 *Can. Crim. L. Rev.* 315.

[5] Friedland (1965), *supra* note 3 at p. 174.

[6] Friedland (2007), *supra* note 4 at pp. 96-98.

[7] Indeed, Friedland also suggests as much in 2012: Friedland (2012), *supra* note 4 at p. 316.

[8] *Ibid.* at p. 320

[9] Friedland (2007), *supra* note 4 at p. 105.

[10] See, for example, the very recent Wyant report for the Ontario Ministry of the Attorney General (2016), *supra* note 2 and in particular the section on "Release by Police."

[11] *Reinventing Criminal Justice: The Fourth National Symposium. Final Report*. Jan. 13-14, 2012, online: http://icclr.law.ubc.ca/sites/icclr.law.ubc.ca/files/publications/pdfs/4th%20National%20Criminal%20Justice%20Symposium.pdf.

[12] CCLA, Deshman and Myers, 2014, *supra* note 2.

[13] Ontario Ministry of the Attorney General (2016), *supra* note 2.

[14] The author explained that these two jurisdictions were selected because they were thought to be similar in respects to communities in Saskatchewan which were also being studied.

[15] Wyant also noted that in most other jurisdictions outside of Ontario, it was provincial court judges who were responsible for bail, not justices of the peace. This may be another contributing factor to why Ontario has such a high population of those in pretrial detention.

[16] Ontario Ministry of the Attorney General (2016), *supra* note 2.

[17] *R. v. Brooks*, 2001 CarswellOnt 1423, 153 C.C.C. (3d) 533 (Ont. S.C.J.); *R. v. V.(J.)*, 2002 CarswellOnt 854, 163 C.C.C. (3d) 507 (Ont. S.C.J.).

[18] Ontario Ministry of the Attorney General (2016), *supra* note 2.

[19] See the CBC report, online: http://www.cbc.ca/news/canada/ottawa/yasir-naqvi-bail-changes-justice-system-1.3951207.

[20] The Law Society of Upper Canada has a useful guide on "How to Prepare and Conduct a Bail Hearing," online: http://www.lsuc.on.ca/For-Lawyers/Manage-Your-Practice/Practice-Area/Criminal-Law/How-to-Prepare-and-Conduct-a-Bail-Hearing/. It is worth a review as a basic primer on procedure, although the part about the

operation of ss. 519(9.1) and 719(3) of the *Criminal Code* needs updating.

[21] For example: whether there were other witnesses whose statements contradicted the version proffered by the complainant, whether statements obtained were hearsay, whether the complainant or Crown witnesses happen to have a criminal record or outstanding charges and are on particular conditions, whether police failed to interview relevant witnesses or seize surveillance footage or otherwise investigate obvious issues, etc. Also note to the court any arguable defences, including obvious *Charter* issues.