

So You Have Been Arrested? How Can You Get Out of Jail?

BAIL

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What is bail?

Bail is a term that means conditional release before trial. The *Canadian Charter of Rights and Freedoms* says that no one is to be denied reasonable bail without just cause. Bail is only supposed to be denied if there is concern that a person charged will not appear for trial or will commit another "offence" in the community. Unlike bail you may have seen on U.S. television, which is usually a huge sum of money in cash or bond, release in Canada is not supposed to be related to financial factors, and if cash is involved at all the amount is usually small. Cash is only required on rare occasions, such as when the person charged lives more than 200 km out of town or out of province, and even then only with the consent of the Crown. Instead of cash bail Canadian courts usually require sureties.*

What is a bail hearing?

A bail or "Show Cause" hearing is a procedure where a judge or a justice of the peace determines whether a person charged with an offence should be released or held in custody pending his or her trial. It is usually presided over by a Justice of the Peace. The Crown Attorney will read in the charge and a brief summary of the allegations against the Accused.

At the bail hearing in court, the prosecutor and your lawyer present a summary of the evidence. The judge looks at ...

- whether you have a past criminal record or other charges against you;
- whether you have a steady job;
- what your family life or community life is like;
- any information about your character.
- how serious the charge is and
- whether you were violent.

The court is concerned about three issues. Firstly, the court must be satisfied that the Accused will return to court. Secondly, the court must be satisfied that if released, the Accused will not break the law. Thirdly, the court is concerned about the strength of the case against the accused person (see "*Why Would I be Denied Bail ?*" below).

Only after the court is satisfied on all three grounds will the Accused person be released on a surety bond for a specified amount of money, usually without the actual payment of cash. If the person breaches the terms of the release, the court can collect the bail money from the surety.

Why would I be denied Bail?

Detention is justified only if deemed necessary on one or more of the following grounds:

- To ensure that the accused attends court; e.g., if the accused has a history of failing to attend court or abide by other court orders, then he is not as likely to be released

- To protect the public; e.g., an accused could be detained if he has a criminal record for similar offences or a history of violence against the same complainant both work in favor of detention.
- To maintain confidence in the administration of justice; e. g. the court will consider the apparent strength of the prosecution's case the gravity of the offence, the circumstances surrounding its commission and the potential for a lengthy jail term.

Who has to onus to show that the accused should be released?

The burden of proof is generally on the Crown to show cause why the accused should not be released. That is why a bail hearing is also called a Show Cause hearing. However, there are times when that onus is reversed and it is the accused who must show why he should not be detained. The times when that will happen can be summarized as follows:

- If he is charged with an indictable offence (most serious) while he was on release from an earlier indictable offence that is still pending resolution.
- If he is charged with an indictable offence and he is not ordinarily resident in Canada.
- If he is charged with failing to comply with a condition of recognizance or undertaking, failing to attend court or failing to attend for fingerprinting while he was on release from an earlier charge that is still pending.
- If he is charged with trafficking or possession for the purpose of trafficking, or importing drugs.

Forms of Release

When the onus is on the Crown and cause has not been shown, the justice will release you on your own undertaking. However, the Crown may show cause as to why you should be released on one of the following forms of release:

- on an undertaking with such conditions as the justice directs.
- on entering into a recognizance, without sureties, in such amount and with such conditions, if any, as the justice directs, but without deposit of money or other valuable security.
- On entering into a recognizance with sureties in such amount and with such conditions, if any, as the justice directs but without deposit of money or other valuable security.
- With the consent of the Crown, on entering into a recognizance, without sureties, in such an amount and in such conditions, if any, as the justice directs and on depositing such sum of money or other valuable security as the justice directs.
- If you are not a resident of Ontario or live more than 200 km from the place of which you are in custody, on entering into a recognizance with or without sureties in such an amount and with such conditions, if any, as the justice directs, and upon depositing such sum of money or other valuable considerations as directed.

The undertaking is simply a solemn acknowledgement signed by the accused in which the accused promises to attend in court as required. It does not involve any financial implications for the accused or anyone else.

A recognizance is an acknowledgement that a person entering into a recognizance is indebted to the Crown in the amount specified. The debt is cancelled if the conditions set out in the recognizance are complied with.

Terms of Release

The court can set the following terms. It can order that the Accused not have any contact directly or indirectly with an alleged victim or to stay away from a certain place. It can also order a curfew. Occasionally, the court may order that the Accused, if released, must report to the police once or twice a week or month. If you are a surety, it is your responsibility to ensure that any court orders are obeyed.

Other Possible Terms of Release

- Surrender your passport
- Remain within Ontario
- Not enter a specific municipality
- Not possess drugs, weapons and/or alcohol
- Not Operate a Motor Vehicle
- Seek Treatment for Alcohol / Drug Abuse or Anger Management
- Not Attend with a Certain Distance of a Place / Person
- Abide by the Rules of the House
- Maintain or seek employment and/or education
- And more.