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## **BCCLA Celebrates Important Supreme Court of Canada Decision on Bail Conditions**

The BC Civil Liberties Association is celebrating a significant decision on bail conditions handed down today from the Supreme Court of Canada (“SCC). The highest court in Canada released its decision in *R. v. Zora*, a case on appeal from the British Columbia Court of Appeal regarding the offence of breaching a bail condition. In a unanimous decision, the SCC held that the offence of breaching a bail condition under section 145(3) of the *Criminal Code* requires a subjective, as opposed to an objective, mental fault element (*mens rea*).

The result of this decision means a more forgiving standard will be applied to those accused of breaching bail conditions, which are often onerous and disproportionately affect vulnerable and marginalized people.

**Megan Tweedie, BCCLA Litigation Staff Lawyer** states: “The BC Civil Liberties Association applauds this decision as a step in the right direction for drastically reforming Canada’s overly punitive bail system. The highest court in Canada has affirmed bail conditions must be consistent with the presumption of innocence. This decision will have a far-reaching impact on communities who are over-policed, including Indigenous communities and people who are homeless or living in poverty, using substances, or dealing with mental health challenges. This is an important step in ending punitive bail conditions as a revolving door to the criminal justice and prison systems.”

“The offence of breaching a bail condition is extremely common and often involves questionable conditions imposed upon vulnerable and marginalized people. A charge or conviction for breaching bail conditions typically makes it far more difficult for a person facing charges to be released from jail in the future, and, if the accused is released, it will be on even more stringent conditions. By applying a subjective *mens rea* (knowledge or intention) to breach of bail offences, fewer people will be unjustly charged and kept in the criminal justice system for what could have been an unintended breach of an unreasonable condition that is unrelated to the actual offence,” further states **Tweedie**.



The BCCLA intervened in this important criminal justice case to argue that the offence of breaching a bail condition imports a subjective standard of *mens rea*, the conclusion ultimately reached by the SCC. A subjective *mens rea* means that the Crown must establish that the accused breached a bail condition *knowingly or recklessly* (and not merely inadvertently). The SCC acknowledged that the fault element for breach of bail conditions has significant civil liberties implications and that bail conditions must be consistent with the presumption of innocence. The SCC further acknowledged that numerous and onerous bail conditions can create a cycle of incarceration, especially among the most vulnerable.

The BCCLA was represented in this case by Roy Millen, Alexandra Luchenko and Danny Urquhart of Blake, Cassels & Graydon LLP, Vancouver.

The SCC's decision is available [here](#).

The BCCLA's factum in this case is available [here](#).

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