

Position paper: Bill C-14

About the CLA

The Criminal Lawyers' Association (CLA) is one of the largest specialty legal organizations in Canada, with nearly 1,800 members. We are a voice for criminal justice and civil liberties. The CLA is regularly consulted by governments and the media regarding issues that are important to the administration of criminal justice. We also assist our members in every aspect of the practice of criminal litigation. The Association is governed by an executive and board of directors elected by the membership. The organization is also a regular intervener at the Supreme Court of Canada.

Executive summary

There is a bail crisis in Canada. But it is a crisis of detention, not release. And it is a crisis that most keenly impacts vulnerable populations. Before passing any legislation impacting bail, Parliamentarians must grapple with this core fact about our bail system.

Bill C-14 is an omnibus criminal justice bill that includes a number of amendments beyond the bail provisions that have brought the most media attention. Several of these changes are welcome revisions that will reduce inefficiencies, improve outcomes, and bring harmony to the *Criminal Code* as a whole. The CLA endorses these amendments, set out in detail below.

Some of the changes, however, will worsen our crisis of detention and must be altered or abandoned entirely. In particular, the CLA objects to the proposed restrictions on the availability of conditional sentences, the introduction of an intermediate standard of proof in reverse onus bail hearings, the removal of the principle of restraint from consideration in such hearings, and the elimination of judicial oversight regarding the publication of the names of young persons charged with criminal offences. We set out recommendations below that will help achieve the aims of Bill C-14 while reducing or eliminating risk to the most vulnerable Canadians caught up in our criminal justice system.

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1. The CLA supports the following proposed amendments

- **Section 320.24(4) *Criminal Code***: Adding driving prohibitions as potential sanctions for manslaughter and criminal negligence causing bodily harm or death, committed with a vehicle.
- **Sections 718.05, 718.06, 718.07 *Criminal Code***: Codifying the sentencing objectives of denunciation and deterrence as primary considerations for offences involving motor vehicle theft with violence, breaking and entering, and those for the benefit of a criminal organization.

2. Understanding the crisis of detention in Canada

Almost 80% of incarcerated persons in Canada are awaiting trial or sentencing and have not been found guilty of any offences.¹ Indigenous persons are overrepresented in this statistic: 30% (Indigenous males) and 42% (Indigenous females).² These people experience the worst conditions our justice system has to offer. Overcrowding and lockdowns are frequent features of this environment, as is limited access to recreation, health care, and basic programming.³ As one Superior Court Judge recently put it, “a reasonable member of the public would certainly be shocked at the conditions in prison.”⁴

Complaints about pre-trial detention facilities rose 55% in the last year. Overcrowding (including triple-bunking in cells made for two people), frequent lockdowns, inadequate health care, Indigenous inmates with no access to a native inmate liaison officer, and inmates with mental health issues being placed in segregation are the top complaints.⁵ Nearly all Ontario jails are operating at 123% capacity.⁶ Triple-bunking is the norm at many provincial facilities, and at some facilities, like the Ottawa-Carleton Detention Center, the possibility of quadruple-bunking looms.⁷ Complaints about lack of medical care are also on the rise.⁸ And segregation has been ramping up since 2019 despite the Ontario Human Rights Commission urging the province to phase out segregation in its jails.⁹ Lockdowns, that limit access to phone, shower, yard, and other basic human activities, are often the result of staffing shortages.

Imprisonment does not reduce recidivism. Recidivism rates are similar for those who are imprisoned and those given a community sanction. Longer sentences are rather associated with a 3% *increase* in recidivism.¹⁰ Programming is almost non-existent in many pre-trial

¹ Canadian Civil Liberties Association, [Still Failing: The Deepening Crisis of Bail and Pre-trial Detention in Canada](#) (2024); Statistics Canada, “[Correctional Services Statistics](#)” (2025).

² Canada, Department of Justice, “[Just Facts: The Overrepresentation of Indigenous People in the Criminal Justice System](#)” (November 2024).

³ *R. v. Hall*, 2022 SCC 64, at [para. 118](#); *R. v. Myers*, 2019 SCC 18, at [para. 26](#).

⁴ *R. v. Jordan Brennan*, unreported detention review decision of Doyle J., dated 7 September 2023, at p. 18.

⁵ CBC News, “[Ombudsman sounds alarm about ‘growing state of crisis’ in Ontario jails](#)” (June 25, 2025).

⁶ Toronto Star, “[Ontario’s jail conditions are inhumane and disgraceful, judges say. Criminals serving shorter sentences as a result](#)” (July 11, 2025).

⁷ Criminalization and Punishment Project, “[Press Release: From Prisoners at Ottawa-Carleton Detention Centre Demanding an End to Deplorable Conditions of Confinement](#)” (April 17, 2025).

⁸ CBC News, “[Former Ontario inmates says complaints system is broken after docs reveal medical concerns, abuse allegations](#)” (July 14, 2023).

⁹ Ontario, “[2022 data release of inmates in Ontario](#)” (2002).

¹⁰ Canada. [The effect of prison on criminal behaviour](#) (November 1999).

custodial facilities. Harsh prison conditions leave people—many with trauma and childhood abuse—with further physical and emotional scars that they are ill-equipped to deal with. Treatment of mental illness and substance abuse is practically non-existent. And custody is intensely destabilizing, removing people from community and family supports. Put simply, pre-trial detention conditions are criminogenic and do not keep us safe.¹¹

Remand centres fall under provincial jurisdiction. Provincial governments have thus far seemed unwilling to ameliorate the deplorable conditions in pre-trial custody. Criminal courts have been left to deal with these issues with the limited tools at their disposal. They have done so in two ways:

First, sentences are reduced to account for remand conditions. Conditions of pre-trial detention result in more lenient sentences than would otherwise be appropriate. Judges have highlighted the disgraceful and inhumane conditions requiring a substantial sentencing reduction:

- Justice Michael Gibson found the remand conditions of a person convicted of sexually assaulting his six-year-old stepdaughter “inhumane” and “unworthy of us as a society”¹²
- Justice Clayton Conlan found the remand conditions of a person convicted of offences including human trafficking, sexual assault, and unlawful confinement, to be a systemic problem that derogates substantially from the appropriate standard of justice in Canada.¹³
- Justice Andras Schreck found the unduly harsh remand conditions of a person convicted of offences including human trafficking, assault causing bodily harm, and unlawful confinement to be a systemic problem to which “[t]he government’s response has been to do nothing.” He further commented that, “[f]ailing to maintain basic standards of treatment of presumptively innocent prisoners is wholly unacceptable, as is ignoring repeated judicial expressions of concern.”¹⁴

Judges have granted sentence reductions from anywhere between 3- and 18-months for deplorable remand conditions.¹⁵ These sentence reductions are necessary to recognize the extra punishment imposed by these conditions. But they mean that other sentencing goals established by Parliament—like rehabilitation, deterrence, and separation from society—take on a secondary significance in the balance of sentencing.

Second, serious and meritorious cases are stayed to remedy offenders’ mistreatment in pre-trial detention. Conditions of pre-trial detention are so bad that, in some cases, judges have no choice but to stay trial proceedings.

- One judge stayed first-degree murder charges against three men in an alleged “execution-style” killing due to their treatment at Maplehurst Correctional Centre. A crisis intervention team conducted a strip search of all inmates in Unit 8, zip tied their wrists, and left some in their boxers in the hall for up to two days. Justice Clayton

¹¹ Canadian Civil Liberties Association, “[No longer prison sentences do not reduce crime](#)” (September 16, 2022).

¹² *R. v. R.D.*, [2024 ONSC 6549](#), at para. 67.

¹³ *R. v. Park*, [2025 ONSC 547](#), at para. 39, citing *R. v. R.D.*, [2024 ONSC 6549](#), at para. 67.

¹⁴ *R. v. Donacien*, [2024 ONSC 3573](#), at para. 28.

¹⁵ Toronto Star, “[Ontario’s jail conditions are inhumane and disgraceful, judges say. Criminals are serving shorter sentences as a result](#)” (July 11, 2025).

Conlan found this was an act of vengeance and retribution for an inmate's assault on a correctional officer.¹⁶

- Another judge stayed murder charges against a person alleged to have stabbed another inmate twice because the person was held in solitary confinement for more than 1600 days. Justice John Fregeau found the pre-trial detention conditions were prolonged, abhorrent, egregious, and intolerable and required a stay of proceedings.¹⁷

In both cases, the remand conditions prevented a judge or jury from every deciding the case on its merits. The crisis of detention in Canada is having a serious impact on the criminal justice system's capacity to try meritorious cases and to impose just sentences.

3. Restricting the conditional sentence of imprisonment is not necessary and will have a disproportionate impact on Indigenous people

Recommendation: Remove clauses 43(1) and (2) from Bill C-14.

Bill C-14 significantly restricts the availability of conditional sentences. This sanction is a term of imprisonment served in the community where (1) the fit sentence would be less than two years and (2) a community sentence would not endanger the public. An offender serving a conditional sentence is placed on harsh terms tailored to their risk and rehabilitative requirements, like house arrest and mandatory treatment or counseling. Where an offender fails to comply with these conditions, the conditional sentence collapses and they are sent to prison.

Bill C-14 removes the conditional sentence from the “menu” of sentencing for (1) sexual exploitation of a person with a disability, (2) sexual assault, and (3) any offence of a sexual nature involving a victim under the age of 18, so long as the Crown proceeds by indictment. As a practical matter, this amendment means that judges sentencing for these offences will have no choice but to send the offender to jail.

The CLA opposes this amendment for two reasons.

First, **the amendment is unnecessary**. Conditional sentences are almost never imposed for indictable sexual offences in Canada. In 2020, the Supreme Court released its decision in *Friesen*, sending “a strong message that sexual offences against children are violent crimes that wrongfully exploit children’s vulnerability and cause profound harm to children, families and communities” and directing trial courts that “[s]entences for these crimes must increase”.¹⁸ The Court directed that “mid-single digit penitentiary terms for sexual offences against children are normal and that upper-single and double-digit penitentiary terms should be neither unusual nor reserved for rare and exceptional circumstances”. Subsequent decisions have held that the logic of *Friesen* applies to adult victims of sexual violence. In *RS*, the Court of Appeal for Ontario allowed the Crown’s sentence appeal from a conditional sentence imposed for a sexual assault on an adult woman at trial, holding that “[c]onditional sentences will rarely, if ever, be proportionate in the context of violent sexual assault cases”.¹⁹ The wrongfulness of these crimes “will normally require penitentiary sentences in the 3 to 5-year range”.²⁰

¹⁶ *R. v. Whitlock*, 2025 ONSC 6006.

¹⁷ *R. v. Capay*, 2019 ONSC 535

¹⁸ *R v Friesen*, 2020 SCC 9 at para 5.

¹⁹ *R v RS*, 2023 ONCA 608 at para 4 [emphasis added].

²⁰ *Ibid.*

Canadian courts take sexual violence very seriously. Offenders who commit sexual assault against adult victims can expect to receive sentences starting at three years in a federal penitentiary. Offenders who commit sexual crimes against children can expect to receive a minimum of five years in prison, and often much more. Parliament does not need to intervene to send more sexual offenders to jail.

The CLA's second objection is that **the amendment will have a disproportionate impact on Indigenous people**. The conditional sentence was introduced in 1996 as part of a "watershed" bill marking "the first codification and significant reform of sentencing principles in the history of Canadian criminal law".²¹ Parliament's objectives in enacting this legislation where (i) to reduce the use of prison as a sanction and (ii) to expand the use of restorative principles in sentencing.²² In particular, Parliament was concerned with the over-incarceration of Indigenous people. At that time, Indigenous persons were 3 percent of the Canadian population but 12 percent of all federal inmates.²³ The conditional sentence was one tool in this legislative package to impose punitive sentences while trying to mitigate the "crisis" of Indigenous over-incarceration.²⁴

The 1996 Parliament's purpose was thwarted in part by the subsequent Conservative government's enactment of similar legislation to Bill C-14. In 2007, the Harper government passed legislation prohibiting conditional sentences for "serious personal injury offences".²⁵ In 2012, the same government passed an omnibus bill introducing sweeping "law and order" reforms to the *Criminal Code*, including a suite of mandatory minimum sentences and significant additional restrictions to the conditional sentence.²⁶ For the decade between 2012 to 2022, when the Trudeau government repealed many of these restrictions,²⁷ the conditional sentence was effectively precluded as a sentencing option in serious cases—the very cases for which it had been specifically designed.

It should come as no surprise that from 1996 to 2022, the crisis of Indigenous over-incarceration in Canada got much, much worse. To repeat, in 1996 Indigenous persons were over-represented in prison by a factor of four, making up 3% of the general population but 12% of prisoners. In 2022/2023, Indigenous adults made up 30% of admissions to provincial and territorial correctional services, despite only accounting for 4% of the adult population.²⁸ These figures are worse for Indigenous women and youth, who accounted for 42% and 40%, respectively, of provincial and territorial custody admissions.²⁹ The figures are starker still in the federal penitentiary system. In 2023, we passed a grim milestone: the Office of the

²¹ *R v Gladue*, [1999] 1 SCR 688 at para 39.

²² *R v Proulx*, 2000 SCC 5 at para 15.

²³ Solicitor General of Canada, Consolidated Report, *Towards a Just, Peaceful and Safe Society: The Corrections and Conditional Release Act -- Five Years Later* (1998) at pp. 142-55.

²⁴ *R v Gladue*, [1999] 1 SCR 688 at para 64.

²⁵ *An Act to amend the Criminal Code (conditional sentence of imprisonment)*, SC 2007, c 12, s 1.

²⁶ *Safe Streets and Communities Act*, SC 2012, c 1.

²⁷ *An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*, SC 2022, c 15.

²⁸ Department of Justice Canada, "JustFacts: The Overrepresentation of Indigenous People in the Criminal Justice System" (Nov 2024), available online: <<https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2024/nov.html>>. Figures are even higher for federal custody admissions. Indigenous adults make up 33% of admissions to federal custody.

²⁹ Department of Justice Canada, "JustFacts: The Overrepresentation of Indigenous People in the Criminal Justice System" (Nov 2024), available online: <<https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2024/nov.html>>. Figures are even higher for federal custody admissions. Women make up 49% of female federal admissions.

Correctional Investigator reported that “Indigenous women now account for half of all women in Canadian penitentiaries”.³⁰

The mass incarceration of Indigenous people is not just a problem of quantity. It is also a problem of quality. Time and again, courts and correctional watchdogs have reported that when Indigenous persons are incarcerated, they experience measurably harsher conditions than their non-Indigenous counterparts. As the Supreme Court held in *Ewert*, “the gap between Indigenous and non-Indigenous offenders has continued to widen on nearly every indicator of correctional performance”.³¹ The following are some representative concerns:

- Indigenous prisoners are more likely to receive higher security classifications than non-Indigenous prisoners, restricting their liberty within the institution;³²
- Indigenous prisoners are more likely to be separated from the general population and isolated in segregation or sent to a Structured Intervention Unit than non-Indigenous prisoners;³³
- Indigenous prisoners are less likely to be released in the community on parole than non-Indigenous prisoners;³⁴
- Prison staff are more likely to use force against non-Indigenous prisoners, even controlling for their age, risk, security level, gender, and sentence length;³⁵ and
- During the pandemic, Indigenous prisoners were significantly more likely to be infected with COVID-19.³⁶

Even these numbers fail to tell the full story. Indigenous persons who live in community stand to be uniquely impacted by incarceration. If incarcerated, they will be taken to an institution many hours from their home. They will be surrounded by state officials who do not speak their language. If they have children, they will be apprehended in a chilling echo of the Sixties Scoop.

³⁰ Office of the Correctional Investigator media release, “Correctional Investigator Releases Updated Findings on the State of Indigenous Corrections in Canada” (Nov 2023), available online: <<https://oci-bec.gc.ca/en/content/correctional-investigator-releases-updated-findings-state-indigenous-corrections-canada>>.

³¹ *Ewert v Canada (Attorney General)*, 2018 SCC 30 at para 60.

³² Canada, Office of the Correctional Investigator, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act—Final Report* (Ottawa: OCI, 22 October 2012), available online: <<https://www.canada.ca/en/correctional-service/corporate/library/correctional-investigator/response-other-report/response-report-spirit-matters-aboriginal-people-corrections-conditional-release-act.html>>.

³³ Anthony N Doob and Jane B Sprott, “Understanding the Operation of Correctional Service Canada’s Structured Intervention Units: Some Preliminary Findings” (26 October 2020), available online: <https://johnhoward.ca/wp-content/uploads/2020/10/UnderstandingCSC_SIUDoobSprott26-10-2020-1.pdf>

³⁴ Canada, Office of the Auditor General, *2016 Fall Reports of the Auditor General of Canada: Report 3—Preparing Indigenous Offenders for Release* (Ottawa: OAG, 2016), available online: <www.oag-bvg.gc.ca/internet/English/parl_oag_201611_03_e_41832.html>.

³⁵ Canada, Office of the Correctional Investigator, *Annual Report 2020-2021* (Ottawa: Office of the Correctional Investigator, 2021), available online: <<https://oci-bec.gc.ca/en/content/office-correctional-investigator-annual-report-2020-2021>>.

³⁶ OCI 2020-2021 Annual Report, *supra* note 4 at iii, citing Canada, Office of the Correctional Investigator, *Third COVID-19 Status Update* (Ottawa: Office of the Correctional Investigator, 2021), available online: <<https://oci-bec.gc.ca/en/media/279>>.

The conditional sentence was designed to give judges a tool to mitigate this harm. There will be cases where nothing less than a real term of imprisonment is proportionate to the moral wrongfulness of the crime. But judges must retain some discretion to impose a tailored sanction that can punish offending conduct and protect the community while safeguarding against the immense and disproportionate harm incarceration poses to Indigenous defendants.

Bill C-14's amendments to the conditional sentence regime remove this discretion, without exception. The CLA's position is that they must therefore be discarded.

The CLA wishes to raise one further concern with respect to the language in the proposed s. 742.1(c.2) in clause 43(2) of Bill C-14. This language is vague and will invite litigation about what constitutes an offence "of a sexual nature" or "for a sexual purpose", and over what precisely "involves" means. This provision is necessarily overbroad and will capture offences like those recently discussed in *Senneville*: 18-year-old adults receiving sexual images from friends and declining or forgetting to delete them.³⁷ To the extent that Parliament is inclined to limit conditional sentences, it should be done through specific reference to specific offences to promote clarity and efficiency in the justice system.

4. The revised language in the reverse onus provisions of bail need clarification

Recommendation: Bill C-14 should be amended to add the following clarifying provision to s. 515 of the *Criminal Code*:

Standard of proof

(3.1) In making an order under this section, a justice shall apply the standard of proof on a balance of probabilities.

In principle, the CLA opposes reverse onus provisions in the test for bail. Restricting the liberty of persons presumed innocent is an extraordinary measure. The state should bear the onus of establishing that detention is justified in all cases.

However, the CLA recognizes that reverse onus provisions have withstood constitutional scrutiny and are now an established part of the Canadian legal landscape. It is open to Parliament to identify particular offences of public concern and require defendants charged with those offences to establish why they should be released. We raise two issues with Bill C-14's amendments to the reverse onus provisions. that has significant potential for delay and confusion.

First, Bill C-14 proposes to change the standard of proof in reverse onus bail hearings. Currently, where the accused bears the onus of justifying their release, they must "show cause as to why the accused's detention is not justified".³⁸ Bill C-14 adds to this language as follows:

515(6) Unless the accused, having been given a reasonable opportunity to do so, shows cause why the accused's detention in custody is not justified **by clearly demonstrating that their proposed release plan addresses the risks posed by the accused as they relate to the grounds referred to in subsection**

³⁷ See *Québec (Attorney General) v Senneville*, 2025 SCC 33.

³⁸ *Criminal Code*, RSC 1985, c C-46, s. 515(6).

(10), the justice shall order, despite any provisions of this section, that the accused be detained in custody until the accused is dealt with according to law.

This language risks reviving the discredited and discarded “intermediate standard of proof” for reverse onus bail hearings. The standard of proof is a fundamental concept in Canadian law. It defines the degree of proof required before a tribunal can make a finding in favour of the party seeking relief. In criminal cases, the accused’s liberty interest requires the Crown to prove guilt beyond a reasonable doubt. In civil cases, proof is required only on a balance of probabilities. Where the decision-maker is satisfied that the fact in issue is probably true, they take that fact as established in the proceedings before them. The civil standard of proof also applies to other issues in a criminal trial unrelated to guilt or innocence—such as the question of bail.

Before the Supreme Court’s landmark decision in *FH v McDougall* in 2008, Canadian courts struggled with a third standard of proof somewhere in between the civil and criminal standards.³⁹ The application of this intermediate standard of proof depended on the circumstances of the case and the seriousness of the allegations. Judges struggled with the idea that someone who was merely “probably” liable would face serious consequences to their reputation or livelihood.⁴⁰ Canadian courts split over whether this elevated standard of proof should be resolved within the balance of probabilities standard⁴¹ or by defining it separately as “something more than a balance of probabilities”.⁴² This split and the challenge of defining the intermediate standard caused significant uncertainty and debate over which standard applied in each case and how it could be satisfied.

The Supreme Court put an end to this uncertainty with *FH v McDougall*. Writing for a unanimous court, Justice Marshall Rothstein held that “it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities.”⁴³ The intermediate standard, requiring some higher percentage of certainty than 50% +1, involved too much abstraction and caused too much uncertainty and additional litigation in the lower courts. Absent Parliamentary intervention, Justice Rothstein held that it was time to put the intermediate standard to bed.

The CLA’s concern is that lower courts might read the new “clearly demonstrating” language in Bill C-14’s reverse onus bail conditions as the statutory intervention required to revive the intermediate standard of proof. That is what has happened in post-*FH v McDougall* judgments interpreting provisions requiring proof “on clear and convincing evidence”.⁴⁴ The intermediate standard would inject unnecessary confusion and would waste precious court time in our overloaded bail courts. For all the reasons the Supreme Court rejected the intermediate standard in *FH v McDougall*, it should be rejected in the law of bail.

The CLA’s position is that this potential consequence can be remedied through the addition of a provision that clarifies that the standard of proof in bail hearings is on a balance of probabilities, whether the Crown or defendant bears the onus.

³⁹ *FH v McDougall*, [2008] 3 SCR 41.

⁴⁰ *Ibid* at para 26.

⁴¹ See *Burns Estate v Mellon* (2002), 48 OR (3d) 641 (CA) at para 18.

⁴² See *Jory v College of Physicians and Surgeons of British Columbia*, [1985] BCJ No 320 (SC) at para 14.

⁴³ *Ibid* at para 40.

⁴⁴ See *Penner v Niagara (Police Services Board)*, [2013] 2 SCR 125 at paras 60 and 123.

Second, the CLA has concerns about the impact of increasing the number of provisions caught by reverse onus. These amendments would significantly increase both the time required for bail hearings to proceed and the duration of the hearings themselves. Canada already faces a serious problem of bail delay. Expanding reverse onus provisions will only exacerbate this issue, resulting in longer periods of pretrial detention and, consequently, the loss of housing, treatment opportunities, shelter, and vital family and community supports for those awaiting bail — all without any corresponding benefit to public safety.

Section 11(e) of the Charter guarantees the right not to be denied bail without “just cause” and the right to bail on reasonable terms and conditions.⁴⁵ The relationship between the right to bail and the presumption of innocence is fundamental to an understanding of Section 11(e). In *R v Simonelli*, Justice D.E. Harris stayed charges for two accused charged with serious offences, including firearms and criminal organization offences, due to unconstitutional delays in permitting them to have a bail hearing.⁴⁶ In finding systemic issues of bail delay, Justice D.E. Harris reemphasized the importance of timely bail hearings:

Every facet of an accused’s life is profoundly effected by pre-trial detention. It is incontrovertible that the entitlement to bail release when appropriate is fundamental to criminal justice. The principles applicable to bail developed by the courts over the years are, however, of little consequence unless bail is decided promptly following arrest. Expeditious hearing of bails is a first order of priority. In the hierarchy of judicial hearings, a bail hearing must be the first in line, ahead even of trials. The pertinent jurisprudence and the directives in the *Criminal Code* are unequivocal on the subject.⁴⁷ Delays in obtaining bail hearings have at times resulted in stays of criminal charges⁴⁸ or sentence reductions.⁴⁹

The principle that release should be favoured at the earliest reasonable opportunity, and on the least onerous grounds consistent with the statutory criteria for detention, is fundamental and must be rigorously upheld. Expanding the number of reverse onus provisions would undermine this principle by creating additional delays in the scheduling and conduct of bail hearings, prolonging their duration, and increasing the likelihood of charges being stayed as a result of these systemic delays.

⁴⁵ *R. v. Pearson*, 1992 CanLII 52 (SCC), [1992] 3 S.C.R. 665 (S.C.C.), at para. 45; *R. v. Morales*, 1992 CanLII 53 (SCC), [1992] 3 S.C.R. 711 (S.C.C.), at paras. 57-58; *R. v. Antic*, 2017 SCC 27 at paras. 36-37.

⁴⁶ *R v Simonelli*, 2021 ONSC 354.

⁴⁷ *R v Simonelli*, 2021 ONSC 354 at para 30.

⁴⁸ See for example: *R. v. Alhajsalem*, 2023 ONCJ 540; *R v. Simonelli*, 2021 ONSC 354; *R. v. Jevons*, 2008 ONCJ 559.

⁴⁹ See for example: *R. v. M.D.*, 2021 ONCJ 314.

5. The principle of restraint remains fundamental to reverse onus bail hearings

Recommendation: Remove clause 515(2.4) from Bill C-14.

Bill C-14 seeks to remove the principle of restraint from consideration for those accused in reverse onus situations. The CLA acknowledges that, in reverse onus situations, the accused bears the burden of demonstrating why their continued detention is not justified. However, this does not imply that all possible conditions of release should automatically be imposed. The obligation to ensure appropriate bail orders lies with the judicial official and these conditions must be the least onerous in the circumstances of the case. The principle of restraint remains a cornerstone of Canada’s bail system. The CLA opposes this amendment for two reasons.

First, this amendment undermines the principle of restraint and is contrary to the guidance from the Supreme Court of Canada, most recently in *R v Zora*. Justice Sheila Martin reiterated that bail conditions “must be minimal, necessary, reasonable, the least onerous in the circumstances, and sufficiently connected to a risk listed in s. 515(10).”⁵⁰ The principle of restraint is foundational to our bail system and the setting of bail conditions. It recognizes the need to address risk, all the while protecting the presumption of innocence and the right to reasonable bail.⁵¹ Justice Martin highlighted: “Restraint has a constitutional dimension, a legislative footing, and is not only recognized in case law, but was also recently expressly reinforced by the amendments that came into force on December 18, 2019.”⁵²

Recognizing the principle of restraint in the context of reverse onus bail hearings does not equate to imposing fewer conditions or compromising community safety. Rather, it ensures that only appropriate and necessary conditions are applied. The principle of restraint must always be assessed in light of public safety considerations. It serves to ensure that any conditions imposed are meaningfully connected to the specific statutory risks identified, and not applied for gratuitous or punitive purposes.

Second, the CLA is concerned that the proposed amendment risks encouraging the imposition of an increased number of overly onerous conditions—conditions that are disproportionate to the specific risk presented by the individual before the court. This concern is not new.⁵³ Canadian bail courts have long faced criticism for imposing conditions that are “which are unnecessary, unreasonable, unduly restrictive, too numerous, or which effectively set the accused up to fail.”⁵⁴ A condition that merely seems “good to have”, but is not necessary for the accused’s release, is not appropriate.⁵⁵ The principle of restraint serves as a reminder to all justice system actors to remain focused on the specific risks identified before the court and to impose only those conditions that meaningfully address those risks.

The over-imposition of bail conditions is a matter of particular concern for Indigenous accused persons, especially in Canada’s northern and remote communities.⁵⁶ Over time,

⁵⁰ *R v Zora*, 2020 SCC 14 at para 24.

⁵¹ s. 11(e) of the *Canadian Charter of Rights and Freedoms*.

⁵² *R v Zora*, 2020 SCC 14 at para 26.

⁵³ In *R v Antic*, 2017 SCC 27, the Supreme Court of Canada set out the proper approach the Code’s bail provisions when considering the overuse of cash bail and sureties. See also, *R v Zora*, 2020 SCC 14 at para 26; Canadian Civil Liberties Association, *Still Failing: The Deepening Crisis of Bail and Pre-trial Detention in Canada* (2024); Statistics Canada, “[Correctional Services Statistics](#)” (2025).

⁵⁴ *R v Zora*, 2020 SCC 14 at para 26.

⁵⁵ *R. v. Birtchnell*, 2019 ONCJ 198 at para 40.

⁵⁶ *R v Zora*, 2020 SCC 14 at para 79.

successive amendments to the *Criminal Code* have expanded the number of reverse onus provisions and encouraged judicial officers to consider a broader range of conditions before granting release. This can make getting bail for an accused more difficult. While the *Criminal Code* applies uniformly across the country, the practical realities of bail vary significantly depending on geography.

In Nunavut, for instance, some communities have populations of fewer than one thousand residents. Community members often live under heightened police presence and surveillance. Many of these communities also experience disproportionate levels of poverty, addiction, and mental illness, including the effects of Fetal Alcohol Spectrum Disorder. Critical resources remain scarce. In numerous communities, there are no shelters available for individuals who require an alternative address, nor are there residential substance use treatment programs. Moreover, unlike in provinces such as Ontario and Quebec, there is no government-funded territorial ankle-monitoring system in Nunavut.⁵⁷

Indigenous persons already face systemic barriers to obtaining bail, rooted in the ongoing legacy of colonialism. Parliament enacted section 493.2 of the *Criminal Code* for this very reason—to require judicial officers to give particular attention to the circumstances of Indigenous accused when making bail determinations. Section 493.2 of the *Criminal Code* embodies the principle of restraint as it applies to vulnerable and marginalized individuals. Excluding its application in reverse onus situations would significantly undermine its remedial purpose and limit its practical effect for Indigenous accused.

6. Judges must maintain oversight over exceptions to the general rule that young persons charged with criminal offences cannot be identified

Recommendation: Remove clause 70 from Bill C-14.

The *Youth Criminal Justice Act* protects the identity of young persons charged with a criminal offence. A young person’s identity is not to be published except in limited circumstances.⁵⁸ Rehabilitation and reintegration are the primary goals of the youth criminal justice system.⁵⁹ Publicizing information pertaining to the identity of a young person has the potential to be so stigmatizing and harmful in its consequences that it can hinder their eventual rehabilitation. It can impact not only others perception of the young person but also their perception of themselves. Young persons have diminished moral blameworthiness.⁶⁰

That is why the *Youth Criminal Justice Act* strictly prohibits the publication of the young person’s name, except in limited circumstances approved by a youth court judge. Under section 110(4), a judge can lift the publication ban if there is reason to believe the young person is a danger to others and publication of information is necessary to assist in apprehending the young person. Judicial oversight is necessary to safeguard the young person’s presumption of

⁵⁷ J. Rogin, “Gladue and Bail: The Pre-Trial Sentencing of Aboriginal People in Canada” (2017), 95 *Can. Bar. Rev.* 325; Lisa Monchalin, *The Colonial Problem: An Indigenous Perspective on Crime and Injustice in Canada* (North York: University of Toronto Press, 2016); Will McNair & Shannon O’Connor, “Polar Bail: An Introduction to Community Bail System in Nunavut”, *For the Defense* 38:4; Cassandra Richards, *Learning From Those on the Ice: The Impact of Bill C-75 on Nunavummiut*, 2020 51-1 *Ottawa Law Review* 157, 2020.

⁵⁸ *YCJA*, s. 110.

⁵⁹ *YCJA*, s. 3 (Declaration of Principle).

⁶⁰ *R. v. I.M.*, [2025 SCC 23](#)

innocence and, if later found guilty of an offence, to minimize any impact on that young person's future rehabilitation and reintegration that can result from having their identity revealed to the public.

The proposed section 110(4.1) removes this judicial oversight. It allows police to publish the identity of a young person if they have reasonable grounds to believe the young person has committed an offence, the young person is an imminent danger to the public, publication is necessary to apprehension, and a court order could not be obtained with reasonable diligence. The police have no obligation to consider the impact on the young person's eventual rehabilitation and reintegration when publishing their identity, or to take into account that in the age of the internet, information that enters the public domain can never be fully removed from it. Judicial officers are available throughout Canada, 24 hours a day, 365 days a year, to issue emergency orders. The CLA opposes this amendment and insists that judicial oversight is a crucial precondition to any exceptions to the rule that young persons must not be publicly identified.

7. The *Youth Criminal Justice Act* should not absolutely prohibit disclosure of youth investigative records to defence counsel regardless of relevance

Recommendation: Remove clauses 71 and 72 and subject them to further study, with inputs from relevant stakeholders.

Part 6 of the *Youth Criminal Justice Act* highly restricts the sharing of records that identify a young person as being dealt with under the Act. Section 118(1) prohibits access to a record except in accordance with s. 114 to 116. Section 129 provides that no person given access to a record under s. 129 shall disclose that information to any other person, except in accordance with the Act. This regime furthers the rehabilitative goals of the *Youth Criminal Justice System* by tightly regulating who can have access to youth records and on what conditions.

One of the recognized exceptions is where an accused person requires access to a youth record to make full answer and defence. The Act provides that youth records may be provided to accused persons or their counsel in those circumstances. An example of such a record would be the criminal record of a young person who is a material witness in the trial of an adult accused. The Attorney General can alert defence counsel to the existence of the record and invite the accused to apply for it under ss. 125(2) and 119(1)(q) of the Act.

Through clauses 71 and 72, Bill C-14 creates a new category of youth record: records of a police investigation that do not result in a charge or an extrajudicial measure. Under the proposed s. 119(4.1), such a record could only ever be disclosed to a peace officer or the Attorney General to make a decision about that young person or to a peace officer for the purpose of investigating an offence. The full answer and defence exception does not apply.

This means that if young person A is investigated as a suspect in a murder case, but police decide to charge young person B instead, under the new s.119(4.1), defence counsel for young person B would never know that young person A was ever a suspect.

This consequence obviously raises very serious constitutional concerns for the right to make full answer and defence, which includes the right to any information in the investigative file that could possibly assist the defence.⁶¹ This right is an essential safeguard against wrongful

⁶¹ *R v Stinchcombe*, [1991] 3 SCR 326; *R v Gubbins*, 2018 SCC 44 at para 18.

convictions. Bill C-14's amendments to the *Youth Criminal Justice Act* appear to seriously undermine this right.

As drafted, the CLA is strongly opposed to clauses 71 and 72 of Bill C-14. The *Youth Criminal Justice Act's* records regime is complex and requires input from multiple stakeholders. We recommend these clauses be removed and subject to further study.

8. Conclusion

Bill C-14 contains provisions that the CLA supports. We agree that a harmonized framework for driving prohibitions, and codified sentencing objectives for organized crime are sensible reforms that will improve the administration of justice.

However, other provisions risk exacerbating Canada's crisis of detention. The evidence is clear: Nearly 80% of incarcerated persons in Canada are awaiting trial, not serving sentences. Many are awaiting bail hearings. Indigenous people are grotesquely overrepresented. Conditions in remand facilities have deteriorated to the point where judges are reducing sentences or even staying convictions to remedy the treatment of those presumed innocent.

The CLA urges Parliament to adopt Bill C-14's beneficial reforms while removing or substantially amending those provisions that will worsen conditions for vulnerable Canadians, create litigation and delay, and undermine principles fundamental to our justice system. Public safety and fundamental justice are not competing values—both can and must be achieved.