

Issues Surrounding Pre-Conviction Abstention Conditions on Persons Suffering from Illicit Substance Addictions

A L A N A H A N N A F O R D

ABSTRACT

Onerous bail conditions result in an increase of administration of justice offences and unnecessary detention in remand centres. Non-violent offenders suffering from substance addictions are disproportionately faced with the risk of increased detention time and “double charges” for use of illicit substances that is both a condition violation and an independent offense. The psychological effects associated with violating such conditions is counter-productive to a rehabilitation-oriented justice system. People suffering from conditions may feel forced to use in secret and may fear obtaining clean needle kits and access to other harm reduction resources. Abstention conditions effectively force people suffering from addictions to keep their use private, which increases the risk of overdose and decreases the likelihood that they will seek treatment independently out of fear of harsh legal consequences. There is the possibility of a successful section 12 *Charter* argument against the imposition of onerous bail conditions on people suffering from addictions as cruel and unusual punishment.

The federal government has taken steps to enable a more compassionate and individualized assessment of condition violations without requiring automatic charges. The new federal scheme may see a reduction in the remand population, but it remains to be seen if it has an impact in the frequency of abstention conditions ordered in Manitoba. The meth crisis in Manitoba requires cooperation from all levels of government as well as increased public health funding to treat people suffering from addictions in long term facilities.

Keywords: meth crisis; bail conditions; remand; addictions; administration of justice offences; Bill C-75

I. INTRODUCTION

Manitoba is experiencing an unprecedented increase in methamphetamine use; straining health, law enforcement, court, and corrections resources. The current approach of ordering abstinence from substance conditions for non-violent offenders at the undertaking or judicial interim release stage is unreasonable. In similar circumstances, lower courts in other jurisdictions have refused to enforce abstinence clauses on alcoholics. People suffering from addictions who have committed non-violent offenses should not be ordered to abide by abstinence conditions without increased access to treatment resources. Tackling the “Meth Crisis” in Winnipeg requires a public health approach that has an emphasis on reasonable rehabilitation for accused persons.

Criminal charges by Winnipeg Police Services for methamphetamine possession has increased by 809% since 2012.¹ There has been a 1700% increase in methamphetamine related emergency room visits since 2013.² There is an average of ten to twenty Manitoba Liquor Store thefts per day in Winnipeg, which the Winnipeg Police Services are attributing to the increase in use of methamphetamine in the city.³ There has been a 19% increase in property crime between 2017-2018 and a 77% increase in shoplifting under \$5000 in Winnipeg.⁴ Prosecutions related to Methamphetamine use have increased 18,125% in the last twenty years.⁵

The “war on drugs” prohibition mentality in Canada has had the effect

¹ Manitoba, Illicit Drug Task Force, *Recommendations to Reduce the Use and Effects of Illicit Drugs Within Manitoba’s Communities*, (Winnipeg: IDTF, 28 June 2019) at 1, online: <www.winnipeg.ca/-Illicit-Drug-Task-Force-Report.pdf> [perma.cc/367Q-EZXZ] [*Drug Task Force*].

² *Ibid.*

³ “Retailers Face ‘Darkest Time in Winnipeg History’ as the Rates Surge, Security Firm CEO Says”, *CBC News* (30 October 2019), online: <www.cbc.ca/news/canada/manitoba/shoplifting-thefts-liquor-stores-retailers-security-winnipeg-1.5340767> [perma.cc/B4GU-W3MM].

⁴ “2018 Annual Statistical Report” (last modified 20 November 2019), online (pdf): *Winnipeg Police Service* <www.winnipeg.ca/police/AnnualReports/2018/2018_wps_annual_report_english.pdf> [perma.cc/7SCL-2MB3] at 2.

⁵ *Drug Task Force*, *supra* note 1 at 3.

of arbitrarily criminalizing people suffering from addictions.⁶ This article will consider the treatment of persons suffering from substance addictions at the pre-conviction point in the criminal justice system, including the undertaking, the bail process and during remand detention. While improvements have been made to combat the devastating effects of addiction and its links to increased criminal activity in Manitoba at the sentencing phase, there is a substantial lack of resources for accused persons who are in the pre-conviction phase of the criminal justice process. Onerous undertaking conditions and judicial interim release conditions, excessive administration of justice offence charges and the ongoing remand overpopulation crisis are all significant issues within the Manitoba criminal justice system. As an important note, this paper is not meant to establish that perpetrators of violent crimes, firearms offences or gang-related activity such as high-level drug trafficking should be treated with excessive leniency. This paper is concerned with the treatment of people suffering from addictions who commit non-violent offenses, such as possession for personal use and administration of justice offenses, due to their addictions and ongoing drug use.

Continued disproportionate prosecution of non-violent drug related offenses committed by persons addicted to illicit drugs, specifically administration of justice offenses, is not an appropriate response, nor does it encourage rehabilitation. Persons suffering from addictions can be subject to a revolving door of charges based on onerous undertaking and interim release abstention conditions that, in effect, make it more difficult for them to access rehabilitative treatments. Continuous contact with remand facilities and the criminal justice system has an erosion effect on section 11(d) and 11(e) *Charter* rights; there are strong arguments that both unreasonable interim release conditions and prolonged detention in remand facilities are a violation of section 12 of the *Charter*.

This article will first set out the background of law of the right to reasonable bail prescribed under section 11(e) of the *Charter*, following with a discussion the increasing trends administration of justice offenses and overcrowding of remand centres. This article will then set out the judicial treatment of abstention conditions for alcoholics and the potential

⁶ Diane Riley, "Drugs and Drug Policy in Canada: A Brief Review & Commentary" (1998), online: *Canadian Foundation for Drug Policy* <sencanada.ca/content/sen/committee/371/ille/library/riley-e.htm> [perma.cc/W38Z-X3AE].

application of that body of law to abstention conditions for people suffering from illicit substance addictions. The social and psychological effects of abstention conditions on people suffering from addictions themselves will then be explored; followed by an introduction and brief discussion of court-ordered treatment conditions.

This article will then explore some *Charter* issues that all of the above topics raise through a detailed discussion of sections 11(e) and 12 based on current academic research and jurisprudence. Next, the recent changes to the *Criminal Code* made by Bill C-75 will be examined with an emphasis on how these changes may impact the enforcement of abstention conditions. This article will finish with a look at how the provincial government of Manitoba is responding to the meth crisis with public health initiatives and recommendations on further steps.

II. LEGAL BACKGROUND

A. Right to Reasonable Bail

The *Canadian Charter of Rights and Freedoms* section 11(e) guarantees that any person charged with an offence has the right to not be denied reasonable bail without just cause.⁷ This right has two distinct aspects: (1) the right to not be denied bail without “just cause” and (2) the right to “reasonable bail.”⁸ This section of the paper will focus on the conditions that can be applied with judicial discretion onto accused persons and if certain conditions, such as abstention and treatment conditions on persons suffering from addictions, are objectively “reasonable” for the purposes of section 11(e).

When a person has been charged with a crime, they can be released before their trial on a judicial interim release, otherwise known as bail.⁹ The accused can also be released with conditions imposed by the judge or justice so long as such conditions are justified by the Crown.¹⁰ Release is to be ordered in accordance with the “ladder principle”, meaning that a more onerous form of release cannot be ordered unless it is shown by the Crown

⁷ Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter].

⁸ *R v Antic*, 2017 SCC 27 at para 21 [Antic].

⁹ *Ibid.*

¹⁰ *Ibid.*

why a “less onerous form is inappropriate.”¹¹ *Criminal Code* subsections 515(1) to (3) are the current codification of the ladder principle.¹² The least onerous form of release is without conditions, and the other provisions within subsection 515(2) are ordered in escalating restriction on the liberty interests of the accused.¹³ Of interest to this paper is the meaning and intention behind the inclusion of the words “with such conditions as the justice directs” in every potential release term within section 515.¹⁴

Subsection 515(4) outlines the conditions that a justice may authorize as a part of the judicial interim release.¹⁵ Such conditions included in the *Criminal Code* are: reporting to a designated person at ordered times, remaining within a certain area or jurisdiction, notification of change in address, abstaining from communicating with certain persons, abstaining from going to certain places, surrendering passports, and complying with any other condition specified.¹⁶

R v Antic sets out principles and guidelines for the application of bail provisions; in regard to subsection 515(4) the Court states:

Terms of release imposed under s. 515(4) may “only be imposed to the extent that they are necessary” to address concerns related to the statutory criteria for detention and to ensure that the accused can be released. They must not be imposed to change an accused person’s behaviour or to punish an accused person.¹⁷

Conditions imposed on an accused who is applying for judicial interim release must be connected to one of the three grounds for detention as articulated by subsection 515(10) of the *Criminal Code*.¹⁸ These grounds are: (1) to ensure attendance in court; (2) public safety and the likelihood of reoffending upon release and; (3) maintaining confidence in the administration of justice.¹⁹

¹¹ *Ibid* at para 29.

¹² RSC 1985, c C-46, ss 515(1)-(3) [*Criminal Code*].

¹³ *Ibid*, s 515(2).

¹⁴ *Ibid*, s 515.

¹⁵ *Ibid*, s 515(4).

¹⁶ *Ibid*.

¹⁷ *Antic*, *supra* note 8 at para 67(j) [emphasis added].

¹⁸ *Criminal Code*, *supra* note 12, s 515(10); *Antic*, *supra* note 8 at para 67.

¹⁹ *Criminal Code*, *supra* note 12, s 515(10).

If an offender is an Indigenous person, reasonable bail includes the application of *Gladue* to their release assessment.²⁰ Reasonable bail must take into account what is reasonable for the Indigenous accused with consideration of the systemic issues that many Indigenous people are facing including surety requirements and their ability to abide by conditions.²¹ Indigenous persons are overrepresented in prison populations as well as disproportionately experience issues with substance abuse, addiction and homelessness in Winnipeg.²² It is important to note that while the issues that are affecting Indigenous people in terms of access to treatment and other systemic barriers in the justice system is a profoundly important area of research, this paper will be focusing on the experience of people in the bail process who suffer from drug addictions in general.

Despite the Court's insistence in *Antic* that conditions are not meant to punish an accused -but presumptively innocent – person, many conditions imposed instead appear to be less concerned with “primary and secondary grounds, and are more concerned with behaviour or character modification.”²³ Conditions that monitor and modify the behaviour of an accused prior to a finding of guilt are considered by some experts to be the equivalent of a punishment prescribed on an innocent person.²⁴ Conditions that are commonly imposed onto individuals released on bail that are not expressly articulated in the *Criminal Code* include curfews, drugs and alcohol abstinence orders, drug and alcohol treatment orders, bans on possessions of cell phones, computers and internet access and house arrest.²⁵ The imposition of conditions that cannot be reasonably complied with can be

²⁰ “Set Up to Fail: Bail and the Revolving Door of Pre-trial Detention” (2014) at 19, online (pdf): *Canadian Civil Liberties Association and Education Trust* <ccla.org/cclanewsite/wp-content/uploads/2015/02/Set-up-to-fail-FINAL.pdf > [perma.cc/895H-68RF] [CCLA, “Set Up to Fail”]: “[T]he court is required to take judicial notice of the unique systemic factors which have affected aboriginal people in Canadian society in order to place in the proper context the individual applying for bail. Part of this context is the fact that aboriginal people are disproportionately denied bail.”

²¹ *Ibid.* See e.g. *R v Omeasoo*, 2013 ABPC 328 [Omeasoo].

²² Josh Brandon & Christine Maes Nino, “The Winnipeg Street Census 2018: Final Report” (2018), online (pdf): *Social Planning Council of Winnipeg* <streetcensuswpg.ca/wp-content/uploads/2018/10/2018_FinalReport_Web.pdf> [perma.cc/BE72-P633].

²³ “Reasonable Bail?” (2013) at 10, online (pdf): *John Howard Society of Ontario* <johnhoward.on.ca/wp-content/uploads/2014/JHS-Reasonable-Bail-report-final.pdf> [perma.cc/5SLQ-AQ9Z] [John Howard Society, “Reasonable Bail”].

²⁴ *Ibid.*

²⁵ CCLA, “Set Up to Fail”, *supra* note 20 at 10.

considered to be unconstitutional, and an infringement of an accused's section 11(e) rights.²⁶

A recent study in Ontario considered one hundred and fifty-eight accused persons with conditions imposed on their judicial release: ninety-nine people were required to abstain from drugs, ninety-seven were required to abstain from alcohol and twelve were required to enter court mandated programs or treatment.²⁷ Typically, accused persons are subject to an average of six additional conditions as a part of their release.²⁸ While many conditions do have merit and often a nexus with the crime allegedly committed by the accused, there is a trend for some conditions to be vague, ambiguous, or focus on character improvement such as "seek treatment" for drug or alcohol dependency.²⁹ Where conditions imposed included abstention from drugs or alcohol, the likelihood of a breach increases.³⁰

Abstention conditions are not limited to judicial interim release. As per subsection 499(2)(g) of the *Criminal Code*, officers who are releasing accused persons from custody on an undertaking are also expressly permitted by the *Criminal Code* to authorize alcohol and drug abstention conditions.³¹ These conditions are imposed on an accused by peace officers, often prior to the appearance of the accused in court. Paragraph 11(e) applies broadly to all forms of interim release, including undertaking to appear.³²

B. Administration of Justice Offences

Criminal Code subsection 145(3) creates the offence of failing to comply with a condition of undertaking or recognizance, meaning that any person who fails to abide by the conditions imposed on them as a part of the judicial interim release or undertaking is liable to be charged with a separate hybrid offence for violating those conditions:³³

²⁶ *Ibid* at 2.

²⁷ John Howard Society, "Reasonable Bail", *supra* note 23 at 11.

²⁸ *Ibid*.

²⁹ *Ibid* (this study was conducted in Ontario. A Manitoba defense counsel interviewed for the purpose of this paper has not experienced excessively vague conditions ordered in Manitoba courts).

³⁰ *Ibid* at 12.

³¹ *Criminal Code*, *supra* note 12, s 499(2)(g).

³² *R v Pearson*, [1992] 3 SCR 665 at para 48, [1992] SCJ No 99 [*Pearson*]. A discussion of the changes to this section as set out in Bill C-75 will occur later on in this paper.

³³ *Supra* note 12, s 145(3), as it appeared on 17 December 2019.

Failure to comply with condition of undertaking or recognizance

145(3) Every person who is at large on an undertaking or recognizance given to or entered into before a justice or judge and is bound to comply with a condition of that undertaking or recognizance³⁴

Generally, section 145 governs all offences collectively known as administration of justice offences, which are offences that occur prior to sentencing that are the result of breaching a judicial order or judicially-created offences.³⁵

In 2011/2012 administration of justice offences that were the result of a breach of a bail condition made up 44% of cases where the most serious charge involved was the administration of justice offence itself.³⁶ In 2014/15, 51% of cases where the administration of justice offence was the most serious offence the accused was charged with, a custodial sentence was ordered.³⁷ In 2014/2015 there were approximately 75,000 ongoing administration of justice cases throughout Canada.³⁸ Manitoba has the second highest rate of failure to comply with an order charges in Canada.³⁹ Webster and colleagues propose that the reason for the increase in remand populations is due to the evolution of a culture of risk-aversion behaviour by criminal justice decision makers.⁴⁰ The idea that increasing conditions for pre-trial release will reduce crime is actually creating more “crime” where administration of justice offences are increasing despite a decline in the total crime and violent crime rates.⁴¹ Release of some accused persons can leave the justice system vulnerable to criticisms from the public and reduce

³⁴ *Ibid.*

³⁵ *Ibid.*, s 145; Marie Manikis & Jess De Santi, “Punishing while Presuming Innocence: A Study on Bail Conditions and Administration of Justice Offences” (2019) 60:3 C de D 873 at 877, 879.

³⁶ CCLA, “Set Up to Fail”, *supra* note 20 at 8 (in both criminal and federal courts).

³⁷ Department of Justice, *Bail Violations, AOJOs and Remand* (Fact Sheet) (Ottawa: Research and Statistics Division, October 2017), online: <www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2017/oct01.html> [perma.cc/4226-PR2M] [DOJ, *Bail*].

Canada, Office of the Federal Ombudsman for Victims of Crime, *Administration of Justice Offenses: Getting Fair Outcomes for Victims in Canada’s Criminal Justice System* (Ottawa: OFOVC, 2017), online: <www.victimsfirst.gc.ca/res/pub/GFO-ORE/AJO.html> [perma.cc/ZA7D-ZGUL].

³⁹ DOJ, *Bail*, *supra* note 37.

⁴⁰ Cheryl Marie Webster, Anthony N Doob & Nicole M Meyers, “The Parable of Ms. Baker: Understanding Pre-Trial Detention in Canada” (2009) 21:1 Current Issues Crim Justice 79 at 99.

⁴¹ *Ibid.*

confidence in the criminal justice system as a whole if such persons reoffend while on pre-trial release.⁴² Conversely, the benefits of releasing an accused person prior to trial are not always appreciated by the general public.⁴³

Administration of justice offences do not disappear if the underlying charge is resolved, even with an acquittal entered for the original offence.⁴⁴ Additionally, because breach of conditions are separate criminal offences, appearing in bail court for a breach of condition in addition to the underlying primary offence makes it more likely that more onerous conditions, or possibly prolonged detention may be imposed on an accused.⁴⁵ Often once an accused person is charged with an administration of justice offence and are released they are usually subject to more conditions than they were for the initial offense.⁴⁶

In practice, administration of justice offences can have the effect of “cycling” people through the justice system for longer periods of time and with a significant increase in punitive potential than what would be contemplated for the original charge.⁴⁷

C. Remand Centre Overcrowding

There is a disproportionate amount of people detained in remand centres awaiting trial compared to those that have been found legally guilty of an offence.⁴⁸ Over the last ten years in Manitoba, an average of 66% of the population of remand centres were accused persons who were waiting on disposition of their charges.⁴⁹ In 2007, Manitoba had the highest average remand count in Canada; 90 per 100,000 residents.⁵⁰ It is important to remember that accused persons who are remanded have yet to be convicted of a crime, and are therefore legally innocent.

⁴² *Ibid* at 100.

⁴³ *Ibid* at 101.

⁴⁴ CCLA, “Set Up to Fail”, *supra* note 20 at 9.

⁴⁵ *Ibid* at 9–10.

⁴⁶ Senate, *Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada: Final Report of the Standing Senate Committee on Legal and Constitutional Affairs* (June 2017) at 139 (Chair: Hon Bob Runciman), online: <sencanada.ca/en> [perma.cc/ZZ5T-WCRG] [*Delaying Justice*].

⁴⁷ John Howard Society, “Reasonable Bail”, *supra* note 23 at 10.

⁴⁸ CCLA, “Set Up to Fail”, *supra* note 20 at 11.

⁴⁹ Manitoba Justice, *Remand Percentage* (Manitoba: Manitoba Justice, last visited 16 May 2020), online: <www.gov.mb.ca/justice/cjism/remand.html> [perma.cc/5GLC-5RLD].

⁵⁰ Webster, Doob & Myers, *supra* note 40 at 84.

Remand centres and pre-trial detention have long been criticized for the harsh treatment of legally innocent people.⁵¹ Pre-trial detention can cause personal hardships such as loss of employment, negative financial outcomes, loss of housing, loss of access to treatment programs, and infrequent visitation with family.⁵² The centres themselves have been criticized for overcrowding of inmates, lack of access to medical care, and heightened violence.⁵³

D. Judicial Treatment of Abstention Conditions on Alcoholics

The Alberta Provincial Court case, *R v Omeasoo* dealt with an abstention from alcohol condition imposed on a woman who suffered from alcoholism as a part of her release conditions for a minor offence.⁵⁴ Omeasoo was later involved in an assault, but because she was intoxicated at the time, she was also charged with a breach of her undertaking despite being the victim of the assault.⁵⁵ Omeasoo was an Indigenous person, and the Provincial Court Justice did take this into account, as well as her upbringing by alcoholic parents.⁵⁶ The Court found that reasonable conditions must be “oriented towards ensuring compliance with the goals of judicial interim release. It must operate in such a fashion to ensure the accused’s attendance in court, ensure the safety of the public and/or maintain confidence in the administration of justice.”⁵⁷ Conditions that an accused “cannot or almost certainly will not comply with” were not found to be reasonable in *Omeasoo*.⁵⁸ *Omeasoo* used the analogy of ordering an alcoholic not to drink is the same in principle as ordering a clinically depressed person to “just cheer up.”⁵⁹

⁵¹ Nathan Jon Shubael Gorham, *Wrongful Pre-Trial Detention in the Toronto Bail System* (LLM Thesis, University of Toronto, 2015) [unpublished], online: <space.library.utoronto.ca/bitstream/1807/89032/3/Gorham_Nathan_J_201511_LLM_thesis.pdf> [perma.cc/ZP8P-RWZA].

⁵² *Ibid* at 53–54.

⁵³ *Ibid* at 54.

⁵⁴ *Supra* note 21.

⁵⁵ *Ibid* at para 6.

⁵⁶ *Ibid* at para 8.

⁵⁷ *Ibid* at para 30.

⁵⁸ *Ibid*.

⁵⁹ *Ibid* at para 37.

A similar case arose in Nova Scotia, *R v Denny*, where the accused was released on judicial interim release with an alcohol abstention condition.⁶⁰ She was found intoxicated in a private residence by the police with no recollection of why the police were called.⁶¹ The Court found that ordering abstention conditions on alcoholics in some cases may put the accused's health and well-being at risk if they are suffering from alcohol addiction.⁶² *Denny* also cites studies that make the strong proposition that "prohibiting someone with an alcohol addiction from having any access to it may give rise to potentially lethal withdrawal effects unless arrangements are put in place for immediate access to emergency medical treatment."⁶³ The judge in *Denny* refused to enforce the abstention condition because the Court did not have the jurisdiction to order the accused to access and enter immediate treatment.⁶⁴

Omeasoo and *Denny* can be read to stand for the principle that alcoholics should not be required to abstain from alcohol as a condition of their release if it is highly unlikely for them to be able to do so or if their health would be at immediate risk if they were denied access to alcohol. Abstention conditions should, rather, be tailored to the individual accused and be reasonable for the accused to comply with under reasonable circumstances. Such reasonable circumstances may include abstention conditions to further the objectives of an ongoing treatment plan. There must also be consideration of if the accused is agreeing to abide by a condition to secure release, where actual compliance with the condition is wholly unrealistic.⁶⁵

However, the provincial judge in *Denny* made it clear that the decision was influenced by the fact that alcohol is a legal and a highly available product that is sold to people who are legally allowed to purchase it.⁶⁶ *Denny* makes an implicit distinction made in this line of cases between alcoholism and an addiction to illicit drugs – namely, that the court considers if the substance itself that is the source of addiction is legal.

Conditions that require the abstention from illicit drugs for accused persons charged with drug-based offences or with offences they allegedly committed while under the influence of illicit substances will typically meet

⁶⁰ 2015 NSPC 49 [*Denny*].

⁶¹ *Ibid* at para 8.

⁶² *Ibid* at para 15.

⁶³ *Ibid*.

⁶⁴ *Ibid* at para 17.

⁶⁵ *Omeasoo*, *supra* note 54 at para 40.

⁶⁶ *Supra* note 60 at para 17.

the secondary detention criteria of preventing the accused from reoffending. Some advocates and academics in British Columbia are pushing to reframe the narrative of addiction as a criminal justice issue to an issue centered in public health.⁶⁷

1. The Effect of Abstention Conditions on People Suffering from Drug Addictions

Outside of the medical dangers associated with withdrawal, abstention conditions can force persons suffering from addictions to use drugs in secret, consequentially avoiding safe spaces and resources, such as clean needle kits, out of fear of breaching such conditions.⁶⁸ Fear of punishment for breaching abstention conditions can also force persons suffering from addictions to refuse to seek help in the event of a potential overdose, or to fear seeking out resources that offer addictions support. Abstention conditions may cause people suffering from addictions to be dishonest with probation officers, lawyers, and other members of the law enforcement community.⁶⁹ In effect, abstention conditions may actually operate in opposition of the rehabilitation goals of the Court when ordering them; persons with addictions are less likely to seek help and treatment for fear of further criminal prosecution, harsher conditions, or increased jail time.⁷⁰ In practice, 40.9% of abstention conditions ordered in Manitoba are regarding the consumption of illicit drugs (45.5% are for alcohol).⁷¹

Adding abstention from illicit drugs as a condition to judicial interim release has been considered a double punishment for people suffering from drug addictions because of the illegality of the substance.⁷² Persons who are suffering from narcotic addictions may face charges for breach of conditions and possession of narcotics as they are two separate offenses.⁷³ If a person

⁶⁷ Haley Hrymak, *The Opioid Crisis as a Health Crisis Not Criminal Crisis: Implications for the Criminal Justice System* (LLM Thesis, University of British Columbia, 2018) [unpublished], online: <open.library.ubc.ca/cIRcle/collections/ubctheses> [perma.cc/8ARZ-S36H].

⁶⁸ *Ibid.*

⁶⁹ *Ibid.* at 51.

⁷⁰ *Ibid.*

⁷¹ CCLA, “Set Up to Fail”, *supra* note 20 at 56.

⁷² John Howard Society, “Reasonable Bail”, *supra* note 23 at 12.

⁷³ Manakis & De Santi, *supra* note 35 at 895.

has abstention conditions through a probation order as well, they may be held accountable for three separate offences based on the one behaviour.⁷⁴

E. Treatment Conditions

In some cases, it may be appropriate for the court to order treatment as a condition of judicial interim release; but some experts in British Columbia argue that the increased trend to order rehabilitation plans as a component of bail plans is contrary to the purpose of bail and is in actuality an attempt to change the character of the accused.⁷⁵ Treatment conditions ordered at the interim release stage are not as common in Manitoba as in Ontario.⁷⁶ The success of a person fulfilling these conditions depends almost entirely on the availability of programs and resources that suit their needs.

In Manitoba, one advocate spoke to the wait time of getting into treatment centres, even if the treatment condition was proposed by defense counsel... “It’s not uncommon to have a condition that the accused attend AFM for an assessment ... [but] ...even if the accused is successful in getting bail, they could sit for months in jail waiting for a space to open up.”⁷⁷

Currently in Manitoba, there are three types of drug treatment services offered for people suffering from addictions: Rapid Access to Addictions Medicine clinics (“RAAM Clinics”), detox centres, and long-term treatment. Crown organizations, such as the Addictions Foundation of Manitoba, offer long-term treatment programs in Winnipeg; as of January 2019, the wait time to access treatment was fifty-two days for men and two hundred and six days for women.⁷⁸ Other non-profit agencies in Winnipeg, such as Main Street Project, offer emergency non-medical detoxification but do not offer long-term treatment. RAAM clinics are newer initiatives that have locations in Winnipeg, Brandon, Thompson, and Selkirk.⁷⁹ These clinics have very limited hours (some only open two hours per week) and do not offer detox or long-term treatment services. RAAM clinics do coordinate with mental

⁷⁴ *Ibid.*

⁷⁵ Hrymak, *supra* note 67 at 52.

⁷⁶ CCLA, “Set Up to Fail”, *supra* note 20 at 59.

⁷⁷ Defence Counsel – Manitoba, Remarks (2019) [Defence Counsel] (“AFM” refers to the Addictions Foundation of Manitoba).

⁷⁸ Sean Kavanagh, “Wait Time for Addiction Treatment Rises, Manitoba Liberals Say”, *CBC News* (14 January 2019), online: <www.cbc.ca/news/canada/manitoba/funding-treatment-wait-times-addictions-mental-health-manitoba-1.4977568> [perma.cc/5LMA-SBAG].

⁷⁹ *Ibid.*

health professionals and can prescribe addiction combating drugs such as naloxone and methadone.⁸⁰ There are also privately-owned facilities that offer long-term treatment and rehabilitation for a fee.

III. DISCUSSION: *CHARTER* ISSUES

A. Abstention Conditions

The *Charter* section 11(e) guarantees the right to reasonable bail free from onerous conditions. The jurisprudence from lower courts in other jurisdictions shows that abstention conditions should not be imposed on alcoholics that have no reasonable ability of compliance with such conditions. It flows from this argument that the same type of conditions should not be imposed on persons suffering from substances addictions involving illicit drugs. There is general consensus in the literature that onerous conditions operate to effectively punish the accused prior to a finding of guilt through due process, which is contrary to the presumption of innocence protected by section 11(d) of the *Charter*.⁸¹

Treatment conditions can be considered a more reasonable route for the objective of treating the root of substance abuse issues, but the order for treatment must serve one of the three objectives of detention in order to be constitutionally valid. For crimes involving illicit drugs or where the accused was intoxicated at the time of the offence, treatment conditions may not be seen as arbitrary and unreasonable to order. In Manitoba, one advocate stated that it was common for both the defence counsel and the Court to include treatment conditions as a component of the bail plan.⁸² The primary barrier to release where acceptance into a treatment program is a condition is the substantial wait time associated with access to publicly funded treatment resources.

In the article, “Antic: What the Supreme Court said and Did Not Say about Bail”, Fitzgerald proposes that the conditions imposed as per subsection 515(4) are not qualitative “rungs” on the ladder as set out in

⁸⁰ Joel Schlesinger, “Help in a Hurry” (2018), online: *Wave* <www.wavemag.ca/2018/11/help-in-a-hurry.php> [perma.cc/UTF2-QSZX] (Access to services in Northern and rural areas is even more onerous. The geographical limits of access to addictions services is unfortunately outside the scope of this paper but should be acknowledged as a serious barrier to addiction treatment in of itself).

⁸¹ John Howard Society, “Reasonable Bail”, *supra* note 23 at 10. The *Charter* protected right to presumption of innocence is discussed further later on in this paper.

⁸² Defense Counsel, *supra* note 77.

subsection 515(2).⁸³ The addition of conditions to the appropriate form of release, or “rung”, is a form of judicial consideration of the individual characteristic of the accused, and bail courts “should not approach the imposition of conditions with the same hesitance with which they consider imposing a stricter form of release.”⁸⁴ The imposition of conditions prevents the Court from having to move up the ladder to a more restrictive form of release.⁸⁵

Conditions imposed should be connected to a primary, secondary, or tertiary ground. The bail system has flaws, and the imposition of abstention conditions is a significant challenge and threat to the liberty interests of people with addictions. Abstention conditions are applied differently throughout every jurisdiction in Canada.⁸⁶ However, there are situations where abstention conditions are appropriate, such as where the individual is a threat to public safety when they are intoxicated.⁸⁷ An accused with an unreasonable condition as a part of their judicial interim release would not have a practicable section 52 remedy – the laws governing the bail process are not unconstitutional. In *Antic*, the SCC found that proper judicial interpretation of the *Criminal Code* bail provisions did not amount to a finding that the law itself engaged section 11(e).⁸⁸ An individual accused could seek a 24(1) remedy, where the action of the government is infringing their *Charter* protected rights.⁸⁹ However, if Fitzgerald’s interpretation of *Antic* is to be followed, and so long as there is no error in application of the ladder principle, it is possible that onerous conditions may not engage section 11(e).

In his article entitled “Beyond Boudreault: Challenging Choice, Culpability, Punishment”, Skolnik takes a different approach to the interaction of onerous bail conditions and the *Charter* when analyzing the Supreme Court’s decision in *R v Boudreault*.⁹⁰ In *Boudreault*, the Court found that the imposition of mandatory victim surcharges

⁸³ Oliver Fitzgerald, “*Antic*: What the Supreme Court Said and Did Not Say about Bail” (WL Can, 2018).

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ CCLA, “Set Up to Fail”, *supra* note 20 at 56.

⁸⁷ *Ibid* at 57.

⁸⁸ *Antic*, *supra* note 8 at para 61.

⁸⁹ Terry Skolnik, “Beyond Boudreault: Challenging Choice, Culpability, Punishment” (WL Can, 2019).

⁹⁰ *Ibid.*

disproportionately affected poor individuals, therefore these charges amounted to cruel and unusual punishment and were a breach of section 12 of the *Charter*.⁹¹ Skolnik argues that *Boudreault* supports the proposition that bail conditions requiring abstinence from both alcohol and drugs are “unconstitutional where defendants’ personal circumstances severely restrict their freedom of choice whether to comply with those conditions.”⁹² Freedom of choice for people suffering from addictions has been discussed by the Supreme Court before in *Insite*, where “severe drug addiction results in a loss of control that impairs the free choice to do drugs”; the Court in *Insite* rejected the argument that choice played a factor in health issues associated with addictions.⁹³

Section 12 of the *Charter* is the right to not to be subjected to any cruel and unusual treatment or punishment.⁹⁴ If a punishment is found to be “grossly disproportionate” under section 12, there is a “constitutional remedy in relation to the penalty, but” the criminalization of the conduct itself remains valid and “punishable by an alternative form of penalty.”⁹⁵ In *R v Smith*, the Court was tasked with determining the constitutional validity of subsection 5(2) of the *Narcotics Control Act*:

The undisputed fact that the purpose of s. 5(2) of the Narcotic Control Act is constitutionally valid is not a bar to an analysis of 5(2) in order to determine if the minimum has the effect of obliging the judge in certain cases to impose a cruel and unusual punishment, and thereby is a *prima facie* violation of s. 12.⁹⁶

Section 12 works in conjunction with section 7 (everyone has the right not to be deprived of like liberty and security of the person) and section 9 (protection against arbitrary detention) of the *Charter* when the state is imposing a “treatment or punishment” on individuals.⁹⁷ The standard for cruel and unusual punishment is gross disproportionality; the test as set out by the Supreme Court is if Canadians would find the punishment

⁹¹ 2018 SCC 58 [*Boudreault*].

⁹² Skolnik, *supra* note 89.

⁹³ *Ibid*; *PHS Community Services Society v Canada (Attorney General)*, 2011 SCC 44 at paras 101, 106.

⁹⁴ *Supra* note 7, s 12.

⁹⁵ *R v Malmo-Levine; R v Caine*, 2003 SCC 74 at para 149.

⁹⁶ *R v Smith*, [1987] 1 SCR 1045 at para 52, 1987 CarswellBC 198 [*Smith*] [emphasis added].

⁹⁷ *Charter*, *supra* note 7, ss 7, 9, 12.

abhorrent or intolerable, or if the “punishment prescribed is so excessive as to outrage standards of decency.”⁹⁸

Pre-trial interim release conditions would not meet the first arm of the test for “punishment” as articulated by the Supreme Court in *R v KRJ*, where (1) it must be a consequence of a conviction.⁹⁹ The Court has not yet defined what “treatment” means in the context of section 12, but has referred to the broad definition of treatment to mean “a process or manner of behaving towards or dealing with a person or thing”¹⁰⁰ and “there must be some more active state process in operation, involving an exercise of state control over the individual, in order for the state action in question, whether it be positive action, inaction or prohibition, to constitute ‘treatment’ under section 12.”¹⁰¹ In *Charkaoui v Canada*, the Supreme Court found that detention without the means to challenge the terms may render the detention arbitrarily indefinite and that “onerous conditions of release that seriously restrict a person’s liberty without affording an opportunity to challenge the restrictions” may also be cruel and unusual.¹⁰² Whether conditions of judicial interim release meet the definition of a “treatment” is questionable as it is possible to apply to vary the terms of a release order as set out in subsection 523(2) of the *Criminal Code*.¹⁰³ Skolnik makes the argument that merely because judicial discretion exists, personal circumstances of the accused may increase the difficulty of applying to the point of effectual impossibility.¹⁰⁴ For example, if the person suffering from addiction is dependent on legal aid for their representation, it is possible that access to variation applications would be difficult based on funding concerns or the perceived inaccessibility to the nuances of the justice system. If the Court were to accept this line of reasoning, it is possible that release conditions could be found to be “treatments” and therefore engaging section 12.

The next step in the section 12 analysis is to determine if the treatment is cruel and unusual such that it is grossly disproportionate. *Boudreault*

⁹⁸ *Smith*, *supra* note 96 at para 54; *R v Morrissey*, 2000 SCC 39 at para 26.

⁹⁹ 2016 SCC 31.

¹⁰⁰ *Chiarelli v Canada (Minister of Employment & Immigration)*, [1992] 1 SCR 711 at 735, 90 DLR (4th) 289.

¹⁰¹ *Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519 at 611, 107 DLR (4th) 342.

¹⁰² 2007 SCC 9 at para 96.

¹⁰³ *Criminal Code*, *supra* note 12, s 523(2).

¹⁰⁴ Skolnik, *supra* note 89.

shows the Court's willingness to look at vulnerable groups of offenders who "live in serious poverty...have precarious housing situations... [and] struggle with addiction" when determining if a specific punishment or treatment is disproportionate to that group.¹⁰⁵ Consideration of individual circumstances is not a new concept to the Supreme Court; *R v Gladue* and later, *R v Ipeelee*, both affirm that a framework for consideration of aboriginal offenders must be applied in sentencing and supervision orders, or LTSO's, post-release.¹⁰⁶ In *Ipeelee*, the Court also states "there is nothing in the *Gladue* decision which would indicate that the background and systemic factors should not also be taken into account for other, non-Aboriginal offenders."¹⁰⁷

Abstention conditions are ordered with judicial discretion; they are not mandatory and they can be varied by application to the Court. Skolnik's reasoning post-*Boudreault* is valid for a section 12 claims against mandatory fines for systemically disadvantaged groups, it is unclear that even if bail conditions passed the threshold for "treatment" that they would then be found to be so grossly disproportionate by the Court to be a violation of section 12. From an academic perspective, the argument is viable enough to proceed with a chance of success on a case-by-case basis. However, from a policy perspective, pursuing section 12 claims based on abstention conditions could be a burden on limited legal aid resources. Such action could leave courts open to an onslaught of claims in cases where judicial interim release abstention conditions were validly enacted and in the public interest to impose. This has the potential to undermine the intent and purpose of the bail system as a whole where abstention conditions are actually appropriate.

B. Remand Overcrowding

Accused persons who are in remand awaiting trial are legally innocent people subject to state detention and therefore a restriction on their *Charter* protected section 7 right to life, liberty, and security of the person, as well as a potential infringement of the presumption of innocence under section 11(d) of the *Charter*.¹⁰⁸ Prolonged detention in remand centres is, in effect,

¹⁰⁵ *Supra* note 91 at paras 54, 86.

¹⁰⁶ *R v Gladue*, [1999] 1 SCR 688 at para 66, 171 DLR (4th) 385; *R v Ipeelee*, 2012 SCC 13 [*Ipeelee*].

¹⁰⁷ *Supra* note 106 at para 77.

¹⁰⁸ Gorham, *supra* note 51 at 56.

a punitive measure on legally innocent persons. Conditions can be so harsh that time served in remand is eligible for a 1.5 day credit, however, if an accused is acquitted there is no recourse for the time they spent in detention prior to their trial.¹⁰⁹ Often pleading guilty to the charges results in less time spent in remand than if the accused follows through in asserting their right to a trial.¹¹⁰ There is a positive correlation with being held in remand and pleading guilty – some people will plead guilty just to escape remand conditions.¹¹¹ There is also a positive correlation with an accused being subject to pre-trial detention and ultimately being found guilty.¹¹²

Administration of justice offences accounted for 68% of admissions to remand in 2008/2009.¹¹³ There is typically no access to treatment for addictions in remand centres for accused persons, in contrast to the options for treatment and alternative sentencing available for sentenced offenders.¹¹⁴ Other advocates believe that the treatment of accused persons in remand centres may also be eligible for a section 12 application for cruel and unusual punishment and a 24(1) remedy.¹¹⁵

IV. DISCUSSION: BILL C-75, SOLUTIONS, AND CRITICISMS

There are clear *Charter* issues that can be raised surrounding abstention conditions and the bail process in general. Parliament enacted Bill C-75 in part as a response to the mounting criticism to the bail system.

A. Undertakings

Bill C-75 removed the express mention of abstention from drugs and alcohol conditions as conditions a peace officer can order on an undertaking to appear.¹¹⁶ Subsection 501(3)(k) of Bill C-75 still allows for a

¹⁰⁹ CCLA, “Set Up to Fail”, *supra* note 20 at 9.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid* at 10.

¹¹² *Ibid.*

¹¹³ DOJ, *Bail*, *supra* note 37.

¹¹⁴ *Delaying Justice*, *supra* note 46 at 135.

¹¹⁵ Justin Ling, “Canada’s Prisons are Failing” (12 August 2019), online: *The Canadian Bar Association* <www.nationalmagazine.ca/en-ca/articles/law/in-depth/2019/canada-s-prisons-are-failing> [perma.cc/RS5Y-P55].

¹¹⁶ Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, 2nd Sess, 42nd Parl, 2019, cl 215 [Bill C-75].

discretion when awarding “any other specified condition for ensuring the safety and security of any victim or any witness to the offence.”¹¹⁷ If peace officers continue to impose abstention conditions on undertaking to appear notices now that Bill C-75 has come into force, the validity of such notices may be subject to an argument of statutory interpretation: removal of the express provision authorizing the ordering of abstention conditions may have indicate that it is Parliament’s intent to limit or eliminate their use in the undertaking process.

1. Judicial Interim Release Conditions

The *Criminal Code* previously did not authorize abstention from drug and alcohol conditions under judicial interim release.¹¹⁸ Bill C-75 did not change judicial discretion to order additional reasonable conditions under the new subsection 515(4)(f).¹¹⁹

2. Administration of Justice Offenses

The most significant change that will impact people with addictions who fail to comply with abstention conditions are the changes to section 524 of the *Criminal Code*, which was previously titled “Arrest of Accused on Interim Release” but has been renamed to “Proceedings Respecting Failure to Comply with Release Conditions.”¹²⁰ Subsection 145(3), which makes it an offence to fail to comply with conditions of orders and undertaking remains largely unchanged in substance.¹²¹

Criminal Code subsection 524(4) previously governed the “Retention of Accused”:

(4) Where an accused described in paragraph (3)(a) is taken before a judge and the judge finds

(a) that the accused has contravened or had been about to contravene his summons, appearance notice, promise to appear, undertaking or recognizance...

...

¹¹⁷ *Ibid.*

¹¹⁸ *Criminal Code*, *supra* note 12, s 515(4).

¹¹⁹ *Ibid.*, s 515(4)(f) (becomes 515(4)(h), comply with any other reasonable conditions specified in the order that the justice considers desirable); Bill C-75, *supra* note 116.

¹²⁰ *Criminal Code*, *supra* note 12, s 524; Bill C-75, *supra* note 116, cl 234 (changed *Criminal Code* sections 524 to 523.1).

¹²¹ Bill C-75, *supra* note 116 (*Criminal Code*, *supra* note 12, s 145(3) became s 145(4) “failure to comply with undertaking” and 145(5) “failure to comply with order.” The penalties remain the same).

he shall cancel the summons, appearance notice, promise to appear, undertaking or recognizance and order that the accused be detained in custody unless the accused, having been given a reasonable opportunity to do so, shows cause why his detention in custody is not justified within the meaning of subsection 515(10).¹²²

This section substantially restricted the options of the judge when dealing with violations of conditions and the onus is on the accused to show why detention is not justified in the circumstances. The new subsection 523.1(3) in Bill C-75 expanded the powers of judges to properly assess the circumstances of the condition breach:

Powers- Judge or Justice

(3) If the judge or justice who hears the matter is satisfied that the accused failed to comply with a summons, appearance notice, undertaking or release order or to attend court as required and that the failure did not cause a victim physical or emotional harm, property damage or economic loss, the judge or justice shall review any conditions of release that have been imposed on the accused and may, as the case may be,

(a) take no action;

(b) cancel any other summons, appearance notice, undertaking or release order in respect of the accused and, as the case may be,

(i) make a release order under section 515, or

(ii) if the prosecutor shows cause why the detention of the accused in custody is justified under subsection 515(10), make an order that the accused be detained in custody until the accused is dealt with according to law and if so detained, the judge or justice shall include in the record a statement of the judge's or justice's reasons for making the order;¹²³

The new approach to administration of justice offences is much more compassionate and allows for consideration of individual circumstances, and the circumstance of the breach to be taken into account when determining if the accused should be detained as a consequence of the breach. A violation of a condition that did not cause any harm to a victim or property will automatically lead to detention with a reverse onus on the accused will no longer be the default position. Under the new provisions, the Crown must show why detention is necessary. In theory, if a condition is unreasonable or too onerous such that it will be impossible for the accused to comply with it, and the breach did not cause harm, the judge or justice does not have to cancel the release and order detention. The judge or justice

¹²² *Supra* note 12, ss 145(3), 524(4) [emphasis added].

¹²³ Bill C-75, *supra* note 116, cl 234 [emphasis added].

can cancel the onerous release order and make a new release order under section 515 or dismiss the administration of justice charge altogether.¹²⁴

The federal government's approach is consistent with the belief that abstention conditions are warranted in some cases to protect the public from accused offenders that truly are a risk if they are intoxicated. Some advocates disagree with this approach: "[i]t is positive to give discretion to not lay charges... [but it would be better to] remove stupid non-violent, non-dangerous breaches from the code altogether."¹²⁵ The *Criminal Code* still allows for discretionary orders of abstention clauses; violation of these clauses still require a hearing to determine the consequences; court time and resources will still be used in the process.

This approach to administration of justice offenses will hopefully address issues with overpopulation in remand centres. What it does not do is address the concerns and fear of people suffering from addictions revolving in and out of the justice system for minimal breaches of onerous conditions. Discretion to vary the consequences of the breach does not remove the fear associated with violating a court order. Addicts may still feel the need to avoid safe spaces and use in secret to avoid law enforcement intervention and constant contact with the criminal justice system. Varying the consequences does not necessarily make a violation of a condition less stressful for the people suffering for addictions; the social isolation and fear of seeking resources to help with addictions will still exist despite the changes to the *Criminal Code*.

There is only so much that the federal government can do, or is willing to do, to mitigate the disproportionate impact that abstention conditions have on people suffering from addiction.¹²⁶ Bill C-75 is a step in the right direction, but the changes are still recent enough that it remains to be seen if the new legislation actually has led to a reduction of abstention conditions ordered overall. Bill C-75 may ultimately have no effect on the frequency of conditions ordered; but it appears that application of the new administration of justice provisions may reduce unnecessary detention and escalating penalties for people already struggling with addictions.

¹²⁴ *Ibid.*

¹²⁵ Justin Ling, "Trial and Error: Criminal Justice Reform" (24 May 2018), online: *The Canadian Bar Association* <www.nationalmagazine.ca/en-ca/articles/law/hot-topics-in-law/2019/trial-and-error-criminal-justice-reform> [perma.cc/9L3F-QNSU].

¹²⁶ Hrymak, *supra* note 67 at 75 (some advocates call for decriminalization of substances for personal use, which would be in the power of the federal government. A discussion on the politics and practicality of decriminalization is outside the scope of this paper).

Addiction is not a solely criminal matter; many academics, health organizations, and advocates are calling for increased funding for treatments, detox, and counselling that can help treat the root cause of addictions.¹²⁷ Reshaping the provincial approach to the meth crisis as a health issue and not primarily a matter of criminality is an important and necessary step to reduce addictions and the increase in crime related to substance abuse.

B. Manitoba's Approach

In June 2019, the Government of Manitoba's Illicit Drug Task Force released their final report *Recommendations to reduce the use and effects of illicit drugs within Manitoba's communities*.¹²⁸ Recommendations in the report included: developing recreation activities, increase 24/7 safe spaces, expand the capacity of Winnipeg Drug Treatment Court, expand Drug Treatment Court to other cities, co-ordinate a "continuum of care" including increasing detoxification centres and increasing long-term care, expanding RAAM clinics and establishment of a centralized harm-reduction distribution point (for clean needle kits and access to other life-saving tools such as naloxone).¹²⁹ The report did not go beyond making recommendations to establish how such changes should be implemented in the province. The report also did not go so far as to recommend safe injection sites, despite evidence from Vancouver indicating that safe injection sites are reducing harm and overdose deaths by 35%.¹³⁰

In the 2019 fall election, the Conservative government ran on a platform promising \$20 million dollars for thirty beds in a new provincially run short-term detox facility, new recovery and drop in centres, new RAAM clinics and increased community outreach.¹³¹ There has not been any more information released from the province on timelines for these promises, nor has there been any information released on provincial intent to increase

¹²⁷ *Ibid* at 78.

¹²⁸ *Drug Task Force*, *supra* note 1.

¹²⁹ *Ibid*.

¹³⁰ "The Safety" (last visited 18 December 2019), online: *InSite for Community Safety* <www.communityinsite.ca/science.html> [perma.cc/YC42-EXXC] (statistical sample was of people living within 500m of the safe injection site).

¹³¹ Ian Froese, "Tories Announce 3-Component Plan to Tackle Manitoba's Meth Problem", *CBC News* (7 August 2019), online: <www.cbc.ca/news/canada/manitoba/tory-meth-strategy-announcement-1.5239102> [perma.cc/69ZL-K6AW].

access to long term treatment, or further expansion of the capacity of Winnipeg's Drug Treatment Court.

The Province needs to divert more funding to establishing long-term treatment facilities, supplement the funding for non-profits that supply such services, and work on decreasing wait times for access to publicly funded services. If the Courts are going to continue to order abstention and treatment conditions on persons with addictions, there needs to be support systems in place so that people suffering from addictions will not be set up to fail from the moment they are released or spend unnecessary time in detention waiting on access to court ordered services.

V. CONCLUSION

The challenges facing the Province of Manitoba in light of the Meth Crisis are extensive and complex. There is no easy solution to reducing criminal activity, increasing public health resources, and reducing drug abuse in the Province. The solution does not lie in punishing people who are already suffering from addiction-based illnesses for non-violent offenses. The continuous application of onerous abstention conditions has quickly become a *Charter* infringing practice, with sections 7, 11(d), 11(e), and 12 all potentially infringed at some point in the pre-conviction process. The federal government has chosen to amend the *Criminal Code* to ease the pressure on remand facilities that are dealing with overpopulation issues and allow more judicial discretion when assessing violations of conditions. The Province now needs to take the next steps of increase public health funding and access to long-term treatment facilities.

Onerous bail and undertaking abstention conditions ordered for people suffering from substance addictions should be found to be unreasonable; defense counsel, the Crown and Judges should avoid excessive use of such conditions if the individual circumstances of the accused indicates (and the judge agrees) that they would be incapable of compliance. Treatment conditions may be a reasonable alternative, but the delay in accessing such treatments is causing legally innocent persons to be detained in remand for an excessive and unacceptable amount of time.

The changes to the administration of justice offense provisions as set out in Bill C-75 appear to be a step in the right direction in terms of allowing judges to be more lenient on people suffering from addictions who have breached a condition of their release. Judicial discretion to avoid stacking

charges on people suffering from addictions may avoid the section 11(d) and 11(e) *Charter* issues. However, there is still judicial discretion to order any condition that is reasonable, so it remains to be seen if there is an actual decrease in administration of justice offense charges brought before the Courts and a decrease in ultimate convictions that stem from breaches.

The meth crisis in Manitoba is not going to be substantially resolved without cooperation and compassion from our federal and provincial governments, courts, corrections, non-profits and health services. Addiction does not exist in a vacuum - a multi-faceted problem requires a multi-faceted solution.

