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# Submission to the Senate Committee on Legal and Constitutional Affairs

## Re: Bill C-14, An Act to amend the Criminal Code and the National Defence Act (mental disorder)

**Submitted by:** The Canadian Psychiatric Association  
and the Canadian Academy of Psychiatry and the Law

**Authored by:** Dr. Johann Brink  
Board Member, Canadian Psychiatric Association  
President, Canadian Academy of Psychiatry and the Law  
Vice President, Medical Affairs and Research  
Forensic Psychiatric Services Commission  
BC Mental Health & Substance Use Services, PHSA

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On February 8, 2013 the federal government introduced Bill C-54, known as the Not Criminally Responsible Reform Act. Parliament has reintroduced the Act, with amendments, as Bill C-14. The Bill proposes changes to the current legislative regime governing accused persons who have been found Not Criminally Responsible on account of Mental Disorder (NCRMD); namely to enhance public safety and address the needs of victims. The Canadian Psychiatric Association, in consultation with members of the Canadian Academy of Psychiatry and the Law, has examined the proposed amendments and concludes that the not criminally responsible (NCR) provisions of the criminal code are functioning well and do not need major reform.

The NCRMD regime rests on the centuries old moral judgment that some people with major mental illness should not be held responsible for their actions when their actions stem directly from acute mental illness. The embodiment of this moral compass is recognition of the need for, and provision of: treatment, detention until risk to the safety of the public has dissipated, and oversight of decision making processes. Such a regime, subject to regular supervision by the Review Board, enhances public safety by focusing on treatment and recovery, enhancing understanding of the harm that has been caused, and the gradual, earned, safe, and supervised reintegration into society. This model, which does not rely on punitive, demonising or stigmatising elements for its success, is effective in that it reduces risk for reoffending 6-7 fold as compared to mentally ill offenders released from prison.

So, why the need for change?

Firstly, the plight of victims, who have experienced devastating loss and have had their sense of safety and decency compromised by the actions of a mentally ill accused person, needs to be heard and addressed. The CPA fully supports the proposed changes in Bill C-14 to enhance the engagement and notification of victims in the oversight process. We caution however, that the limits to the degree to which such perspectives can influence the regime must be acknowledged and accepted, and that the interests of society are best advanced when the therapeutic pathway is protected. The CPA recognises that some victims may not find solace in mere engagement with the Review Board process, and recommends that additional supports, such as restorative justice processes which can facilitate healing and assist to reduce reoffending, be explored.

Secondly, the safety of the public must be paramount. Bill C-14 introduces four aspects in support of this perceived need: creating a new category of 'high risk accused' using in part an individual's index offense to determine the 'high risk' designation; reducing the frequency of review for such persons, restricting community involvement for 'high risk' offenders, and changing the definition of "significant threat". All four will ultimately undermine the rehabilitation of those in the forensic system and compromise the success of the current regime, all without increasing public safety.

The creation of a new "high risk accused" category codifies risk as contingent upon the nature and severity of the index offence. While the notion that "past behaviour is the best predictor of future behaviour" has empirical support in offender populations without mental illness, there is no scientific evidence that this applies to NCRMD accused persons. This notion therefore, is misplaced in characterising certain persons as posing by definition, a higher risk for future reoffending. That the nature and severity of certain past behaviours may offend the sensibilities of victims and the public is beyond doubt. However, the proper way forward is not to demonise the accused, but rather requires enhanced efforts to improve the accused's awareness and understanding of the harm done. Certain accused persons pose, and will continue to pose, a high risk for reoffending; the existing mechanisms for the assessment of risk, detention and annual review present appropriate means to ensure that higher risk accused persons are not released into the community.

Best practice in forensic mental health dictates that risk is managed best when subject to regular review, with treatment and supervision strategies amended accordingly. This enhances treatment alliance and facilitates management appropriate to identified risk and need. Bill C-14 will impact access to aspects of formal legal review, with NCRMD accused having less opportunity for benefit from external review, and will be unable to benefit from safe and secure, gradual community reintegration strategies, all components of empirically informed best practice in forensic mental health.

The Association does not support the change in definition of "significant threat". The introduction into legislation of stigmatising and demonising terms such as "brutal" and

“heinous” serves only to stigmatise those in need of treatment, while contributing nothing to enhance the safety of the public.

The CPA has serious concerns regarding unintended consequences harmful to the safety of the public, NCRMD accused, and forensic systems.

Firstly, the new NCRMD regime will be rendered less attractive as a strategy for defence, resulting in an increase in the number of those with severe mental illness in prison settings, from where they will emerge potentially untreated and a serious risk to the safety of the public. Secondly, those found NCRMD will experience the regime as punitive, oppressive, stigmatising and less responsive to their risk level, or treatment and recovery needs. This will impact negatively on treatment engagement and recovery, resulting in longer hospital stays and higher cost without enhancing public safety.

The CPA cautions that some of the wording changes proposed by Bill C-14 are vulnerable to Charter challenges and expensive litigation. For example, the stated intent to make the legislation apply to any NCRMD accused presently in the system would likely be deemed in contravention of the Canadian Charter of Rights and Freedom. Also, detention as a “high risk accused” in a hospital when clinical, rehabilitation needs and assessed risk level would support access to the community as part of rehabilitation, could be deemed as “cruel and unusual punishment”.

## **Recommendations**

The CPA believes that that the proposed changes to the legislation will not improve public safety, and may well increase public peril.

The CPA recommends that the “high risk accused” category based on the seriousness of the index offence be abandoned.

The CPA recommends that the proposed definition in Section 10 of “significant threat” not be passed.

The CPA suggests that instead of creating a high-risk category, public safety could be improved by removing summary offences from the NCR regime. This would allow the NCRMD services to be more focused and specialized to treat truly higher-risk persons.

## **Contact:**

Hélène Côté, Canadian Psychiatric Association  
hcote@cpa-apc.org  
1-613-234-2815 (232) or 613-297-5038