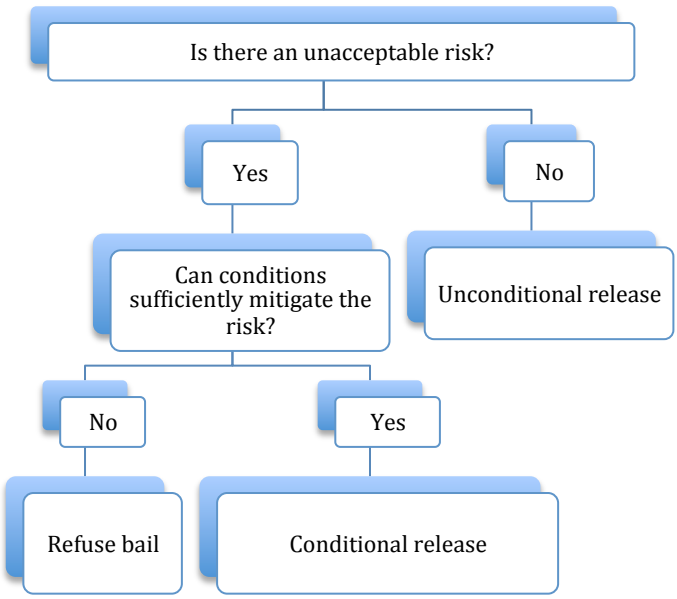
The *Bail Act* has been amended on numerous occasions. After gaining assent in 2013 and taking effect in 2014, after only 5 weeks of operation and spurred by adverse media coverage, the NSW Premier and Attorney General commissioned a further review of the Act. Following its publication, the government immediately introduced the Bail Amendment Bill 2014. As Brown and Quilter commented, this rushed political process demonstrated the "denigration of judicial expertise and lack of concern with evidence and process; power of the 'shock jocks', tabloids and police, the political failure to understand and defend fundamental legal principles". The *Bail Amendment Act 2014* was passed by Parliament 17 September 2014.	
	R v Lago looks at the assessment of risk in the bail act, and the complicated series of presumptions on "unacceptable risks". Most cases recognize that "no grant of bail is risk free", however, as the offender's liberty is at stake, a suspicion or fear of the worst possibility in the offender's release is not sufficient to refuse bail. In this case, while the applicant had not yet been tried, s17 required that the seriousness of the offence and the strength of the prosecution case to be taken into account. The *Bail Act* makes it clear that the seriousness of the allegation is a matter that might give rise to an unacceptable risk even though that allegation had not yet been proved beyond reasonable doubt. Where the allegations include offences of extreme violence such as murder, the Court may conclude on that basis alone that there are unacceptable risks involved in the release of the alleged offender. The case did not go to trial for two years, and so the Court provided the accused with conditional release bail, as it was believed that a series of conditions could mitigate the unacceptable risks. Those conditions included conduct conditions pursuant to s25 of the *Bail Act* and enforcement conditions pursuant to s30 of the *Bail Act*.
	R v Hawi looked specifically at Sections 18, 19 and 20 of the *Bail Act*. **S18** Bail decisions possible when there are no unacceptable risks: a) A decision to release the person without bail b) A decision to dispense with bail c) A decision to grant bail (without the imposition

	of bail conditions) **S19** Bail decisions possible when there is an unacceptable risk: a) A decision to grant bail b) A decision to refuse bail **S20** When can bail be refused 1) A bail authority may refuse bail for an offence only if the bail authority is satisfies that there is an unacceptable risk that can't be sufficiently mitigated by the imposition of bail conditions 2) Bail can't be refused for an offence for which there is a right to release under the Part. Mr Hawi's likelihood of appearance in court was not doubted, and he had already surrendered his passport. It can be difficult however, to calculate the risk of an accused fleeing when they know they are accused of a serious offence. The spontaneous and unpredictable nature of the accused which gave rise to the offence, and his continued relationship with known offenders resulted in conditional bail under the *Bail Act* where his ability to contact or associate with certain nominated individuals was limited and described in Schedule 1 to these reasons. It is known that some people will spend time in jail, bail refused, only to be later acquitted at trial. The *Bail Act* endeavors to balance the need to protect the community from unacceptable risk and the need to respect the liberty of citizens awaiting trial. It is critically important that every individual is treated separately and that as a society, we never rush to general conclusions about guilt or innocence.
In NSW, both the DPP and the police hold discretion as to whether a charge will be laid, and whether to accept a plea bargain to a lesser charge. S153 of the *Criminal Procedure Act 1986* states: **1)** If an accused person: **a)** Is arraigned on an indictment for an offence, and **b)** Can lawfully be convicted on the indictment of some other offence not charged in the indictment, he or she may plead "not guilty" of the offence charged in the indictment, but "guilty" of the other offence.	*GAS;SJK* discusses principles affecting plea bargains. The prosecution alone holds responsibility of deciding the charges laid against the accused; not the judge. The prosecution had been told that if a charge of manslaughter were to be substituted for the charge of murder, they would plead guilty. Thus, a new presentation was filed on that understanding. However, the charging of the appellants was a matter for the prosecutor. Secondly, it is the accused person alone who must decide whether to plead guilty to the charge preferred. That decision must be made freely and, in this case, it was made with the benefit of legal

2) The Crown may elect to accept the "guilty" plea or may require the trial to proceed on the charge of which the accused person is arraigned. The prosecution can thus accept a plea to a lesser charge without judicial approval.	advice. Such a decision is not made with any foreknowledge of the sentence that will be imposed. Thirdly, it is for the sentencing judge alone to decide the sentence to be imposed. For that purpose, the judge must find the relevant facts. In the case of a plea of guilty, any facts beyond what is necessarily involved as an element of the offence must be proved by evidence, or admitted formally (as in an agreed statement of facts), or informally (as occurred in the present case by a statement of facts from the bar table which was not contradicted). There may be significant limitations to a judge's capacity to find potentially relevant facts in a given case. In *GAS;SJK*, the limitation arose from the absence of evidence as to who killed the victim, and the absence of any admission from either appellant that his involvement was more than that of an aider or abettor. Fourthly, there may be an understanding between the prosecution and the defence as to the evidence that will be led, or admissions that will be made, but that does not bind the judge, except in the practical sense that the judge's capacity to find facts will be affected by the evidence and the admissions. In deciding the sentence, the judge must apply to the facts as found the relevant law and sentencing principles. It is for the judge, assisted by the submissions of counsel, to decide and apply the law. Fifthly, an erroneous submission of law may lead a judge into error and, if that occurs, the usual means of correcting the error is through the appeal process. It is the responsibility of the appeal court to apply the law. If a sentencing judge has been led into error by a erroneous legal submission by counsel, that may be a matter to be taken into account in the application of the statutory provisions and principles which govern the exercise of the appeal court's jurisdiction.
	An indication that over-charging is still an issue in relation to the overall bargaining process is provided by Adams J in *Sutton*: Jay Sutton was indicted upon the charge of murder. He pleaded guilty to manslaughter, which was accepted by the prosecutor in full discharge of the indictment. When looking at the evidence however, there was not and could not have been