

Chapter 8: Mental Illness in Court

Canada's Legal System

In Canada Two elements must be identified in order for criminal guilt to be established. Also known as the acts reus and Mens Rea.

Actus Reus: A Wrongful deed.

Mens Rea: Criminal Intent

Fitness to Stand Trial

- In order to be tried fairly, individuals must have some understanding of the charges and proceedings. A defendant who is deficient in these domains, possibly because of mental disorder may be considered unfit to stand trial.
- The fitness standard is found in section 2 of the criminal code: A defendant is unfit to stand trial if 1) Cannot conduct a defence on account of mental disorder, 2) Unable to understand the nature or object of proceedings, 3) unable to understand possible consequences of proceedings, 4) Unable to communicate with counsel.
- The defence or crown may raise the issue of a defendants fitness. Also noted in the code is that the burden of proving unfitness is on the party who raises the issue.

Unfit to stand trial: Refers to an inability to conduct a defence at any stage of the proceedings on account of a persons mental disorder.

An individual with a mental illness who is arrested and charged with an offence cannot be held in custody for longer than 60 days while awaiting court ordered assessment. There is a five day limit but extensions can be granted. 5000 fitness evaluations are conducted annually in Canada. The typical wait time for an assessment is 3 weeks.

Fitness Screening Instruments

Studies have shown that long stays in mental facilities were unnecessary for most of the fitness decisions. Many fitness decisions could be made quickly by using a screening instrument.

1)*** **Fitness Interview Test Revised (Fit-R)**: Comes in the form of a semi-structured interview and asses 3 psychological abilities from the criminal codes fitness standard.

FIT- R Screening Method	Criteria in which Evaluator Assesses
Understand the nature of proceedings	Factual knowledge of criminal Procedure: Defendants understand of arrest process. The nature and severity of the current charges. The role of key participants.
Understand the possible Consequences of Proceedings :	Appreciation of personal involvement in proceedings: Appreciation of range of and nature of possible penalties and defences.
Communication with Counsel:	Ability to participate in defence: Defendants ability to communicate facts. Defendants ability to relate to his/her attorney. Defendants ability to plan legal strategy.

Each response is rated on a 3 point scale system. 0 indicating little to no impairment and 2 indicating severe impairment. The final decision involves 3 stages: 1) determining existence of a mental disorder. 2) Determining defendants capacity regarding 3 above statements. 3) Examining the previous information.

2) **Competency Screening Test (CST)**: The CST contains 22 unfinished sentences that respondent must finish. The items measure 3 things; The potential for a constructive relationship between defendant and lawyer, Defendants understanding of the court process, the ability of the defendant to emotionally cope with the criminal process. Responses are scored using a 3 point system. A score of 0 would mean low level of understanding. Score of 2 would be assigned for a high level of understanding.

3) **Competency to Stand Trial Assessment Instrument (CAI)** : The CAI assesses 13 functions corresponding to a defendants ability to participate in the criminal process on behalf of his or her best interests. Each function is represented in a statement with two or three sample questions. Evaluations are rated on a scale between 1-5. 1 Meaning total lack of capacity for function, 5 meaning no impairment of individual.

4) **Interdisciplinary Fitness Interview (IFI)**: The IFI is a semi structured interview measuring three areas of competency: Functional memory, appropriate relationship with lawyer, understanding of the justice system. There are 4 main sections; Legal items, psychopathological items, overall evaluation, consensual judgement.

5) **MacArthur Competence assessment tool—Criminal Adjudication:** A structured interview containing 22 items that assess competency in three areas: Factual understanding of the legal system and adjudication process, Reasoning ability, Understanding of own legal situation and circumstances.

Distinguishing between the unfit and Fit

In a study conducted measuring the differences between 80 referred and 80 non-referred defendants a number of differences were noted. Significant differences; referred defendant more likely to live alone, have a current violent offence, be diagnosed as psychotic, has had previous hospitalization. Non-referred defendants tended to have previous arrests and substance abuse problems. The presence of Psychosis is not sufficient to unfit.

How is Fitness Restored?

Most common form of treatment is medication. Defendants sometimes may argue for not taking medication because of the serious side effects.

Once individual is Found Unfit

Proceedings against person who is found unfit are stopped until fitness is regained. In Canada a judge may order that the defendant be detained in hospital or conditionally discharged (House arrest). If defendant becomes fit trial will resume. Assessments and dispositions are conducted by the review board after 90 days if the individual is still unfit. Individuals who continue to be unfit are reviewed annually.

Courts also now have the ability to grant an absolute discharge if the defendant is unlikely to ever become fit, the accused does not pose a threat to society, the stay of proceedings is in the interests of proper administration of justice.

Prima Facie Case: Case in which the Crown Prosecutor must prove there is sufficient evidence to bring the case to trial.

Mental State at the Time of Offence

In a legal context, insanity removes the responsibility for performing a particular act because of uncontrollable impulses or delusions, such as hearing voices. In 1992 Bill c-30 allowed the following changes:

- The term not guilty by reason of insanity was changed to “Not criminally responsible on account of mental disorder

- The wording of the insanity standard was changed to “No person is criminally responsible for an act committed or an omission made while suffering from mental disorder the rendered the person unable to appreciate the nature and quality of the act”

- Review Boards were created. These legal bodies were mandated to oversee the care and disposition of defendants found unfit or NCRMD.

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3 specific elements to insanity defences today:

- 1) A defendant must be found to be suffering from a defect of reason/ Disease of the mind.
- 2) A defendant must not know the nature and quality of the act he or she is performing
- 3) A defendant must not know that what he or she is doing is wrong.

Insanity: Not being sound of mind, being mentally deranged and irrational. Also the impairment of mental or emotional functioning that affects perceptions, beliefs and motivations at the time of the offence.

Raising the Issue of Insanity

Studies have found that few defendants use the insanity defence. Less than 1% of felony cases in the U.S have used insanity defence. Approximately 25% of defendants who argue insanity defence succeed. There are only 2 situations where the Crown can raise the issue of insanity.

- 1) Following a guilty Verdict; If the crown believes the defendant needs psychiatric treatment and a mental facility is best suited for the defendants needs.

- 2) If the defence states the defendant has a mental illness the crown can argue it.

Assessing Insanity

An insanity defence requires psychiatric assessment. The Rogers Criminal Responsibility Assessment Scale is the only instrument of its kind and has five scales it measures on.

- 1) Patient Reliability
- 2) Organicity
- 3) Psychopathology
- 4) Cognitive Control
- 5) Behavioural Control

Each scale has 30 items which are given a score from 0-6, higher values representing a greater severity.

Once a Defendant is found NCRMD

When deciding a disposition the court and review board must choose the option least limiting to the defendant. Four main criteria are considered: 1) Public safety, 2) Mental state of defendant, 3) reintegration of defendant into society, 4) other needs of defendant.

- 1) If the defendant is not a threat to society or poses low risk for reoffending, the court or review board can issue an **absolute discharge**; the defendant is then released into the community without restrictions on his or her behaviour.
- 2) A second option is a **Conditional Discharge**; The defendant is released but must meet certain conditions, such as not possessing firearms. Failure to comply may result in the defendant being incarcerated or sent to psychiatric facility.
- 3) **Capping**; Refers to the maximum period of time a person with a mental illness can be affected by his/her disposition. Ex: If the offence committed constituted a 10 year incarceration period regularly, then the individual can only be kept for a period equal to that. If the individual is still perceived to be dangerous then they could be involuntarily committed to a secure hospital.

Automatism

There is a two stage process for addressing defences of automatism.

First: the judge must decide whether there is sufficient evidence that a jury could find the defendants behaviour was involuntary. The following factors are considered: Psychiatric assessments, Severity of triggering events, History of automatic behaviour.
Second: the trial judge must determine if the condition is a mental disorder (insane) or non-mental disorder (non-insane) automatism.

If the judge decides the condition is a result of external factors the defence can argue non-insane automatism. If the judge decides the defendant acted due to mental disorder then the trial will continue as a NCRMD case.

Automatism refers to unconscious, involuntary behaviour; the person committing the act is not aware of what they are doing.

There are two forms of automatism; non-insane, insane.

Non insane automatism: Refers to involuntary behaviour that occurs because of an external factor.

Insane Automatism: Refers to an involuntary action that occurs because of mental disorder.

Case of R. V Parks; Man gets up in the middle of the night and drives to his in-laws place and kills them with no recollection of doing so.

Difference between NCRMD and Automatism Cases

-A successful non-insane automatism defence verdict means the individual is not guilty and released without conditions.

-A NCRMD verdict may result in defendant being sent to mental health facility.

- Insane automatism verdicts are treated like NCRMD rulings.

Intoxication as Defence

- Self induced intoxication resulting in a state similar to automatism is not available as a defence for a general intent offence— an offence that requires only intention to commit the act.

- Also intoxication is not recognized as a defence for violent crimes.

Defendants with Mental Disorders

- In a study examining males from Edmonton Remand Centre 92% of the sample had a lifetime prevalence of psychiatric disorders.

- Individuals with mental illness are likely to be arrested at disproportionately high rates compared with those who do not have a mental illness.

- Individuals with mental illness are less adept at committing crimes therefore are more likely to get caught.

- Individuals with mental illness are more likely to plead guilty, possibly because of an inability to access good legal representation.

-Offenders with schizophrenia or a major affective disorder had a 43% likelihood of re-arrest. Those with substance abuse issues had a 46% chance of re-arrest.

Are people with mental illnesses violent?

- Individuals with a major mental disorder, especially those individuals with substance abuse or dependency were significantly more likely to commit a crime than those without a mental disorder.
- Research indicates that prior violence and substance abuse seem to have much greater effects on the likelihood of future violence than psychiatric diagnoses such as schizophrenia.
- Mentally disordered offenders were found less likely to reoffend violently than offenders who did not have a major psychological or psychiatric disorder.
- Overall the notion that people with mental illness are more violent may not be a completely accurate view.

Treatment of Offenders with Mental Disorders

- Some of the treatment goals identified for those with mental disorders include symptom reduction, decreased length of stay in facility and no need to be re-admitted to hospital.
- For those who experience active psychotic symptoms such as delusions, hallucinations, suspicion and noncompliance with medication there are two key treatment options. Anti-psychotic drugs and behaviour therapy.
- Medication can help control psychotic symptoms, behaviour therapy can help ensure that patients take the medication consistently.
- Community Treatment Order:** Allows the offender who has a mental illness to live in the community with stipulation that he or she will agree to treatment or detention in the event his or her condition deteriorates.
- Diversion:** A decision not to prosecute, but rather have the individual undergo an educational or community service program. Also an option for the courts dealing with offenders with mental illness who are facing minor charges. The court can divert the offender into a treatment program rather than have him or her go through the court process.

Mental Health Courts

These courts attempt to redirect those with mental health needs back into the mental health care system rather than the criminal justice system. Mental health courts have 4 main objectives. **1)** To divert accused individuals bearing minor charges and offer them an alternative, **2)** Facilitate evaluation of defendants fitness to stand trial, **3)** Ensure treatment for defendants mental disorder, **4)** Decrease the cycle that mentally disordered offenders experience by becoming repeat offenders. Mental health courts offer rehabilitation as opposed to punitive measures.

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