

THE MENTAL HEALTH **COURT**

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What is Mental Health Court?

- A problem-solving court established to address the special needs of mentally ill offenders
- Deals with legal issues concerning mentally ill accused:
 - Fitness
 - Criminal responsibility
 - Assessments for legal purposes

Common Misconceptions

- That having an accused appear in Mental Health Court is an automatic ticket to assessment and treatment for Mental Health issues
- Assessment and Treatment in this context are governed by specific provisions in the Criminal Code
- If legal thresholds are met, then mentally ill offenders may be assessed for fitness or criminal responsibility

Unfit to Stand Trial

CC s. 2: Unfit to stand trial means unable on account of mental disorder to conduct a defence at any stage of the proceedings before a verdict is rendered or to instruct counsel to do so, and, in particular, unable on account of mental disorder to

Unfit to Stand Trial

- Understand the nature or object of the proceedings; or
- Understand the possible consequences of the proceedings; or
- Communicate with counsel

Legal Test for Fitness

“Limited Cognitive Capacity” Test is the standard for fitness to stand trial.

R. v. Taylor (1992), 17 C.R. (4th) 371 (Ont. C.A.)

Taylor Test Questions

Questions in aid of assessing fitness to stand trial:

- Do you know where you are?
- What is the role of the justice of the peace or the judge?
- What is the role of defence counsel?
- What is the role of the prosecutor or Crown Attorney?
- Do you know the charges against you?
- What pleas are available to you?
- Do you know the possible consequences of being found guilty? Not guilty?
- Do you understand what it means to take an oath?
- Do you know the consequences of lying under oath?

Legal Test for Fitness

Thus, under *Taylor*, if the s. 2 criteria of the *Code* are met, then the following factors will not vitiate fitness to stand trial:

- that the accused suffers from a delusion, even though it may relate to the subject matter of the trial—unless the delusion impairs the understanding of the rudimentary nature of the court proceeding;
- that the accused suffers from a mental disorder that may cause him or her to conduct a defence in a manner that others may not consider to be in the best interest of the accused;
- that the mental disorder of the accused may cause the accused to act in a way that will disrupt the trial; or,
- that the mental disorder of the accused prevents him or her from having a trusting or amicable relationship with counsel.

Overview of Procedure

- Fitness concern is brought to the attention of the court
- Accused may be screened for fitness
- Court orders a fitness assessment under section 672.11 if there are reasonable grounds
- Upon completion of assessment, court conducts a fitness hearing
- Evidence at hearing usually in form of psychiatric opinion and/or testimony from accused

Same Day Turnaround in 102

- Ability to streamline this procedure in 102
- Staff psychiatrist attends daily
- Most assessments and hearings are completed the same day

Treatment Orders

- If a mentally ill accused is found unfit to stand trial, then he or she may be subject to a Treatment Order, which lasts a maximum of 60 days.
- Only time when a court can order involuntary treatment

Not Criminally Responsible

- C.C. s. 16 (1)
- No person is criminally responsible for an act or omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong

Procedure on NCR applications

- NCR issue is brought to the attention of the Court
- Court orders an NCR assessment under s. 672.11 C.C., if there are reasonable grounds
- Upon completion of assessment, case may proceed to NCR hearing
- Evidence at hearing usually in the form of psychiatric opinion

Ontario Review Board

- If an individual is found unfit (and there's no Treatment Order or it's expired) or is found NCR, then that person will be bound by a disposition, usually initially made by the ORB and reviewed yearly by the ORB thereafter
- If such a person is ordered detained, then they may also be residing in hospital
- If the unfit accused becomes fit, he/she is returned to court to proceed with the case
- The NCR accused may eventually be absolutely discharged by the ORB

What else does Mental Health Court do?

- Mental Health Diversion
- Crown approves Mental Health Diversion for mentally ill offenders, where appropriate
- Mental Health Workers provide support and assistance to individuals in the Mental Health Diversion Program
- Upon successful completion, charges are stayed.

Eligibility for Mental Health Diversion

- The individual suffers from a mental disorder or developmental delay.
- It must have contributed to the commission of the offence.
- The offence must be appropriate for diversion.
- There must be a reasonable prospect of conviction.
- It must not be inconsistent with public safety to divert the case.

Factors Crowns consider:

- Public safety, including potential harm to the public posed by the offender's non-compliance with supervision or treatment;
- The seriousness of the offence, including any injury;
- The criminal record of the offender, and;
- The likelihood the accused will comply with the requirements of diversion.

What else does Mental Health Court do?

- Bail
- Guilty pleas and sentencings
- Mental Health court workers assist accused with bail plans, community support services even if the individual is not approved for MHD.