

Youth Mental Health and Justice Forum

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DEFINITION OF UNFIT TO STAND TRIAL

SECTION 2 of *Criminal Code*:

“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, in particular unable on account of mental disorder to ...

- a) understand the nature or object of the proceedings,
- b) understand the possible consequences of the proceedings, or
- c) communicate with counsel;

FITNESS TO STAND TRIAL

BASIC PRINCIPLES

- Reason for rule: Inequitable to try someone who is either not present or doesn't have presence of mind
- Involves mental capacity for circumscribed task(s) only at time of trial
- Current threshold for fitness in Ontario, (*R. v. Taylor*, 1992 Ont. CA)
 - Limited cognitive capacity test – rudimentary factual understanding is sufficient
 - Ability to act in own best interests unnecessary
- Fitness is best assessed on a sliding scale
- Hallucination and delusion not synonymous with being unfit

GOOD REASONS TO ORDER A FITNESS ASSESSMENT

- Specific information seen or heard that accused does not understand and/or cannot participate in court process
- Evidence of hallucinations and delusions impacting on the accused's understanding/ability to participate
- Evidence of significant disordered thought or confusion
- Evidence of difficulty processing information
- Accused seems perplexed
- Inability to concentrate
- Apathy/Withdrawal
- Muteness
- Marked disruptive behaviour together with evidence of abnormal affect/perception/thought processes/delusions
- Information or evidence of marked impairment of mood (significant depression or elation)

BAD REASONS TO ORDER A FITNESS ASSESSMENT

- The accused has a psychiatric history (with no clear evidence of active mental illness)
- The accused or counsel asks that the accused go to hospital
- The accused is homeless
- To understand how and why the accused became a habitual criminal
- The accused is angry and loud (with no evidence/history of mental disorder)
- The accused's family conveys that the accused should be in hospital and not in jail
- The accused is unkempt, disheveled, or malodorous
- The allegations are bizarre, or disclose that the accused's behaviour at the relevant time was bizarre
- The accused interrupts the proceedings (with no evidence/history of mental disorder)

NCR – Legal Aspects

NCR-MD DEFENCE in the *Criminal Code*

- S.16(1)
 - No person is criminally responsible for an act committed or an 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 is wrong
- S.16(2)
 - Every person is presumed not to suffer from a mental disorder so as to be exempt from criminal responsibility by virtue of subsection (1), until the contrary is proved on a balance of probabilities
- S.16(3)
 - The burden of proof that an accused was suffering from a mental disorder so as to be exempt from criminal responsibility is on the party that raises the issue

NCR – Clinical Aspects

- Mental state at the time of offence is key
 - Mental state is invariably surmised
- Inquiry is necessarily investigative and reconstructive
 - Context and motive
 - Pre-existing animus
 - ‘Similar fact’ episodes
 - Affective state at the time
 - Role of psychopathology
- Psychosis not synonymous with absent criminal responsibility
 - Psychosis = background light
 - Mental state driving the act and extent of influence at the critical moment = laser beam

NCR – Clinical Aspects (cont'd)

- Psychological Assessment and Testing – if needed re:
 - Diagnosis
 - Authenticity and Malingering
 - e.g. SIRS, etc.
 - Insanity criteria met? (RCRAS, Rogers, 1984)

- Other Consultations – if needed
 - Toxicological
 - Neurological
 - Sleep study

NCR– Clinical Aspects (cont'd)

Clinical assessment of accused (psychiatric assessment and focussed review of offence particulars and mental state)

RE: Appreciating Nature and Quality of the Act

- Tell me everything that happened, starting the day (week or months) before the offence and at the time?
- Anything upsetting occur?
- What were you thinking?
- What were you feeling?
- Had anything changed, in terms of your feelings about the victim or his or her feelings about you?
- What was to be gained by (doing whatever the accused did)?
- What did you want to happen?
- What was the result?
- How was the victim reacting to all of this? Was he or she afraid? Did he or she seem to be in pain? Did you notice blood
- What did you think was happening to him or her?
- How did the victim's response to your actions affect you?

NCR– Clinical Aspects (cont'd)

RE: Knowing Act was Legally and Morally Wrong:

- Why did you make that choice?
- Did you have any second thoughts?
- What might have happened if you didn't?
- Where did your right to do that action come from?
- Are there laws that might have something to say about that kind of behaviour?
- Are there laws that you feel are more important, that exempt you from the laws most people have to abide by?
- Were you concerned about getting caught, and what would have happened to you if you had been caught?
- Do you think you would have done what you did if there was a police officer on the scene, or if someone else had been there in the room observing you (for example a friend, clergy, parent, etc.)?

Mental Health Act

- **Judge's order for examination**
 - 21.(1) Where a judge has reason to believe that a person who appears before him or her charged with or convicted of an offence suffers from mental disorder, the judge may order the person to attend a psychiatric facility for examination.
- **Senior physician's report**
 - (2) Where an examination is made under this section, the senior physician shall report in writing to the judge as to the mental condition of the person. R.S.O. 1990, c. M.7, s. 21.
- **Judge's order for admission**
 - 22.(1) Where a judge has reason to believe that a person in custody who appears before him or her charged with an offence suffers from mental disorder, the judge may, by order, remand that person for admission as a patient to a psychiatric facility for a period of not more than two months.
- **Senior physician's report**
 - (2) Before the expiration of the time mentioned in such order, the senior physician shall report in writing to the judge as to the mental condition of the person. R.S.O. 1990, c. M.7, s. 22.

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