

Full Text: Volume 4E

Contents

Mental Health Issues

Mental Illness

Introduction

Taxonomy and Terminology

Topics

Misc Definitions Relating to Mental Disorders

Assessment for Fitness and Criminal Responsibility

General Principles

Ordering Assessment

Procedure

Form and Content of Order

Duration of Order

Consequences of Order

Custody During Order

Assessment Reports

Admissibility of Assessment Reports

Exceptions

Fitness to Stand Trial

General Principles

"Unfit to Stand Trial"

Procedure for Determining Fitness

Court Obligation to Try Fitness When Raised

Power to Appoint of Counsel

Verdict on Fitness

Finding Accused Fit

Finding Accused Unfit

Treatment

Case Digests

See Also

Treatment of an Accused Unfit to Stand Trial

General Principles

Not Criminally Responsible Due to Mental Disorder

General Principles

Mental Disorder and "Disease of the Mind"
Self-Induced State

"Appreciating" vs "Knowing"

Nature and Quality of Act

Meaning of "Wrong"

Analysis

Procedure

Assessment

Timing

Ruling NCR

Consequences of NCR Finding

Consequences of Failure to Find NCR

Application For High Risk Designation

Case Digests

Appeal of Mental Illness Dispositions

Grounds of Appeal

Notice of Appeal

Suspension of Disposition

Powers of Court of Appeal

Review Board

Review Board Powers

Order Assessment

Composition of Board

Powers and Rules of Board

Regulations

Recording of Proceedings

See Also

Review Board Detention and Bail

Arrest and Release

Attendance

Interprovincial Transfers

Review Board Publication Bans

Legislation

See Also

Dual Status Offenders

Legislation

Application For High Risk Designation

Legislation

Review Board Disposition Hearings

Legislation

Dispositions by Courts or Review Boards

Victims

Conditions re Protected Persons

Other Conditions

Warrant of Committal

Treatment Disposition

Custody

Stay of Proceedings

Topics

Review Board Hearing Procedure

General Principles

Parties

Notice of Hearing

Form of Hearing

Defence Counsel

Victims

Review of Review Board

Legislation

Mental Health Issues

Mental Illness

This page was last substantively updated or reviewed *January 2015*. (Rev. # 79480)

< [Procedure and Practice](#) < [Mental Illness](#)

Introduction

An accused's mental health condition may be relevant to a proceedings in several ways. An accused who is "unable on account of mental disorder to conduct a defence" or is unable "to instruct counsel" may be unfit to stand trial.^[1] An accused who was at the time of the offence "incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong" may be subject to a finding of "Not Criminally Responsible".

A distinction between the two broad categories of how mental illness may affect criminal proceedings, is to consider that NCR relates to mental state of accused *at the time of the offence*, while fitness relates to the mental state of the accused *at the time of the proceedings*.

Finally, certain jurisdictions have a specialized mental health court system that diverts certain cases that involve offences that sufficiently relate to a mental illness and are amendable to some form of treatment and supervision.

Provincial Assessments

Certain provinces have legislation that permits court ordered assessments of the accused where he has reason to believe he has a mental disorder.^[2]

1. see PART XX.1
2. e.g. s. 21 of the Mental Health Act, RSO 1990, c M.7, s 21

Taxonomy and Terminology

the evaluation of psychiatric conditions is generally done using the standard set out in the "Diagnostic and Statistical Manual of Mental Disorders" (DSM-5).^[1]

The introduction of DSM-5 in 2013 removed to the familiar "multi-axial" analysis approach to assessments. Instead, under the DSM-5 disorders are grouped into an "internalizing group", relating to internalized conditions like depression or schizophrenia, and "externalizing group", relating to externalized conditions including substance abuse and impulsivity.

Diagnoses include:

- Adjustment disorder
- Alcohol use disorder
- Anxiety disorders:
 - social anxiety
 - panic disorder
 - agoraphobia
 - generalized anxiety disorder
- Attention Deficit or Hyperactivity disorder
- autism spectrum disorder
- bipolar disorder
- delirium
- dementia
- depressive disorder
- impulse control and conduct disorders
- disassociative disorder
- fetal alcohol spectrum disorder
- Huntington's disease
- hoarding disorder
- intellectual disability
- factitious disorder
- obsessive-compulsive disorder
- paraphilia disorder

- personality disorder
- posttraumatic stress disorder
- psychopathy
- schizophrenia spectrum disorder and related

1. for further details see Bloom and Schneider, "mental disorder and the law: a primer for

legal and mental health professionals" (2nd edition), Chapter 1.

Topics

Special Consequences for Mental Disorders

- Not Criminally Responsible Due to Mental Disorder (mental state during offence)
 - Application For High Risk Designation
- Fitness to Stand Trial (mental state during proceedings)

Evidence

- Assessment for Fitness and Criminal Responsibility

Review Board

- Powers of the Review Board
- Review Board Detention and Bail
- Dual Status Offenders
- Review Board Disposition Hearings
- Review Board Publication Bans
- Appeal of Mental Illness Dispositions
- Review of Review Board

Young Offenders

- Mental Disorder in Youth Justice

Misc Definitions Relating to Mental Disorders

PART XX.1 Mental Disorder Interpretation Definitions

672.1 (1) In this Part,
"accused" includes a defendant in summary conviction proceedings and an accused in respect of whom a verdict of not criminally responsible on account of mental disorder has been rendered; (accusé)

"assessment" means an assessment by a medical practitioner or any other person who has been designated by the Attorney General as being qualified to conduct an assessment of the mental condition of the accused under an assessment order made under section 672.11 [*assessment orders defined*] or 672.121 [*review board may order assessment*], and any incidental observation or examination of the accused; (évaluation)

"chairperson" includes any alternate that the chairperson of a Review Board may designate to act on the chairperson's behalf; (président)

"court" includes a summary conviction court as defined in section 785 [*summary convictions – definitions*], a judge, a justice and a judge of the court of appeal as defined in section 673 [*Pt. XXI – appeals – definitions*]; (tribunal)

"disposition" means an order made by a court or Review Board under section 672.54 [*available dispositions*], an order made by a court under section 672.58 [*treatment disposition*] or a finding made by a court under subsection 672.64(1) [*finding re high-risk accused – requirements*]; (décision)

"dual status offender" means an offender who is subject to a sentence of imprisonment in respect of one offence and a custodial disposition under paragraph 672.54(c) [*order of detention to a hospital*] in respect of another offence; (contrevenant à double statut)

"high-risk accused" means an accused who is found to be a high-risk accused by a court under subsection 672.64(1) [*finding re high-risk accused – requirements*]; (accusé à haut risque)

"hospital" means a place in a province that is designated by the Minister of Health for the province for the custody, treatment or assessment of an accused in respect of whom an assessment order, a disposition or a placement decision is made; (hôpital)

"medical practitioner" means a person who is entitled to practise medicine by the laws of a province; (médecin)

"party", in relation to proceedings of a court or Review Board to make or review a disposition, means

- (a) the accused,
- (b) the person in charge of the hospital where the accused is detained or is to attend pursuant to an assessment order or a disposition,
- (c) an Attorney General designated by the court or Review Board under subsection 672.5(3) [*Attorneys General may be parties*],
- (d) any interested person designated by the court or Review Board under subsection 672.5(4) [*interested person may be a party*], or
- (e) where the disposition is to be made by a court, the prosecutor of the charge against the accused; (parties)

"placement decision" means a decision by a Review Board under subsection 672.68(2) [*placement decision by Review Board*] as to the place of custody of a dual status offender; (ordonnance de placement)

"prescribed" means prescribed by regulations made by the Governor in Council under section 672.95 [*power to make regulations re mental disorder provisions*]; (Version anglaise seulement)

"Review Board" means the Review Board established or designated for a province pursuant to subsection 672.38(1) [*authority to establish a review board*]; (commission d'examen)

"verdict of not criminally responsible on account of mental disorder"

means a verdict that the accused committed the act or made the omission that formed the basis of the offence with which the accused is charged but is not criminally responsible on account of mental disorder. (verdict de non-responsabilité criminelle pour cause de troubles mentaux)

Reference

(2) For the purposes of subsections 672.5(3) [*Attorneys General may be parties*] and (5) [*notice of hearing*], paragraph 672.86(1)(b) [*interprovincial transfers – consent of AG*] and subsections 672.86(2) [*interprovincial transfers – accused in custody*] and (2.1) [*interprovincial transfers – transfer if accused not in custody*], 672.88(2) [*review board of receiving province – agreement*] and 672.89(2) [*other interprovincial transfers – agreement*], in respect of a territory or proceedings commenced at the instance of the Government of Canada and conducted by or on behalf of that Government, a reference to the Attorney General of a province shall be read as a reference to the Attorney General of Canada.

1991, c. 43, s. 4; 2005, c. 22, s. 1; 2014, c. 6, s. 2.

[*annotation(s) added*]

– CCC

Assessment for Fitness and Criminal Responsibility

This page was last substantively updated or reviewed *January 2021*. (Rev. # 79480)

< [Procedure and Practice](#) < [Mental Illness](#)

General Principles

A court may order an assessment under s. 672.11 for the purpose of determining if the accused is unfit to stand trial or was suffering from a mental disorder so as to be exempt from criminal responsibility. Before a Court may order such an assessment, it is necessary that the Court have "reasonable grounds to believe" that the evidence from an assessment would be necessary to determine the issue in question.

Assessment order

672.11 A court having jurisdiction over an accused in respect of an offence may order an assessment of the mental condition of the accused, if it has reasonable grounds to believe that such evidence is necessary to determine

(a) whether the accused is unfit to stand trial;

(b) whether the accused was, at the time of the commission of the alleged offence, suffering from a mental disorder so as to be exempt from criminal responsibility by virtue of subsection 16(1) [*defence of mental disorder*];
(c) whether the balance of the mind of the accused was disturbed at the time of commission of the alleged offence, where the accused is a female person charged with an offence arising out of the death of her newly-born child;
(d) the appropriate disposition to be made, where a verdict of not criminally responsible on account of mental disorder or unfit to stand trial has been rendered in respect of the accused;
(d.1) whether a finding that the accused is a high-risk accused should be revoked under subsection 672.84(3) [*high-risk accused – review*]; or
(e) whether an order should be made under section 672.851 [*recommendation by review board – requirements*] for a stay of proceedings, where a verdict of unfit to stand trial has been rendered against the accused.

1991, c. 43, s. 4; 1995, c. 22, s. 10; 2005, c. 22, s. 2; 2014, c. 6, s. 3.
[*annotation(s) added*]

– CCC

When an assessment order is made under section 672.1 an accused can be directed into the custody of either the hospital or the detention center. There is nothing prohibiting do use of either facility throughout the detention process.^[1]

Fitness/NCR Assessment Order vs a DO/LTO Assessment Order

A s. 672.11 order is separate from a DO/LTO Assessment which is made under s. 752.21.

1. *Ontario v Phaneuf*, 2010 ONCA 901 (CanLII), 97 CPC (6th) 281, *per curiam*

Ordering Assessment

The authority to order an assessment for criminal responsibility or fitness to stand trial is found in s. 672.12 which states:

Where court may order assessment

672.12 (1) The court may make an assessment order at any stage of proceedings against the accused of its own motion, on application of the accused or, subject to subsections (2) [*limitation on prosecutor’s application for assessment of fitness*] and (3) [*limitation on prosecutor’s application for assessment of criminal responsibility*], on application of the prosecutor.

Limitation on prosecutor’s application for assessment of fitness

(2) Where the prosecutor applies for an assessment in order to determine whether the accused is unfit to stand trial for an offence that is prosecuted by way of summary conviction, the court may only order the assessment if

- (a) the accused raised the issue of fitness; or
- (b) the prosecutor satisfies the court that there are reasonable grounds to doubt that the accused is fit to stand trial.

Limitation on prosecutor's application for assessment

(3) Where the prosecutor applies for an assessment in order to determine whether the accused was suffering from a mental disorder at the time of the offence so as to be exempt from criminal responsibility, the court may only order the assessment if

- (a) the accused puts his or her mental capacity for criminal intent into issue; or
- (b) the prosecutor satisfies the court that there are reasonable grounds to doubt that the accused is criminally responsible for the alleged offence, on account of mental disorder.

1991, c. 43, s. 4.

– CCC

Onus and Burden

Every person is presumed sane (s. 16(2)) until established otherwise by the party advancing the issue (s. 16(3)). It must be proven on a balance of probabilities.

Defence of mental disorder

16 [*omitted (1)*]

Presumption

(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) [*defence of mental disorder*], until the contrary is proved on the balance of probabilities.

Burden of proof

(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.

R.S., 1985, c. C-46, s. 16; R.S., 1985, c. 27 (1st Supp.), s. 185(F); 1991, c. 43, s. 2.
[*annotation(s) added*]

– CCC

Standard of Proof

The standard does not need to amount to a level of balance of probabilities.^[1]

The court just be satisfied on a "credibility based probability" to believe that the assessment is "necessary for one of the enumerated purposes".^[2]

"reasonable grounds"

An accused who merely exhibits "odd behaviour" in the course of the offence is not sufficient to warrant "reasonable grounds" and permit the ordering of the assessment.^[3]

The fact that there is an opinion that NCR is a viable defence to the charges is also not sufficient to form reasonable grounds to order the assessment.^[4]

The presence of a mental disorder by itself is not sufficient to order an assessment.^[5]

Party Requesting Assessments

Assessments can be ordered under s. 672.12 by either the court, accused, or crown. The judge cannot order an assessment where it is not requested by either side and is explicitly opposed by both.^[6]

The Crown has a further restrictions under s. 672.12(2) and (3) to make the request. The accused must raise their fitness or responsibility and further there must be "reasonable grounds" to doubt the accused fitness or criminal responsibility.

Court Jurisdiction

The Court of Appeal has no power to order an assessment under s.672.11(b) to determine if the accused was not criminally responsible.^[7]

Timing

An application for an assessment can be made "at any stage of proceedings against the accused" (s. 672.12(1)).

The assessment can be ordered even *after* a trial where there is medical evidence, oral or affidavit, that establishes grounds for an assessment.^[8]

Evidence

Expert evidence is almost always necessary to make a finding on an accused's sanity.^[9]

1. *Sealy, ibid.*, at para 107
2. *R v Sammut*, 2017 ONCJ 302 (CanLII), per Javed J, at para 35
R v Goudreau, 2015 ONSC 6758 (CanLII),

per P Smith J
contra *R v Isaac*, 2009 ONCJ 662 (CanLII),
250 CCC (3d) 565, per Schneider J, at para
24

3. *R v Isaac*, 2009 ONCJ 662 (CanLII), 250 CCC (3d) 565, per Schneider J, at para 24
R v Sun, [1999] O.J. No. 2821 (Ont. S.C.)(*no CanLII links)
4. *Isaac*, *supra* at para 24
R. v. Muschke, [1997] B.C.J. No. 2825 (B.C.S.C.)
5. *Isaac*, *supra* at para 24
R v Taylor, 1992 CanLII 7412 (ON CA), 77 CCC (3d) 551, per Lacourcière JA
6. *R v Piette*, 2005 BCSC 1724 (CanLII), 36 CR (6th) 181, per Wedge J
7. *R v Resler*, 2011 ABCA 82 (CanLII), 502 AR 218, per Rowbotham JA
8. *R v Brown*, 2006 BCSC 1581 (CanLII), 214 CCC (3d) 151, per Powers J
R v Laidley, 2001 ABQB 781 (CanLII), [2001] AJ No 1221, per Lee J
9. *R v Quenneville*, 2010 ONCA 223 (CanLII), 207 CRR (2d) 360, per Goudge JA, at para 28 verdict can be drawn from facts alone

Procedure

It has been suggested that the court needs sworn evidence either in the form of an affidavit or testimony before an assessment is ordered.^[1] Contrary-wise, it has been suggested that no particular form of evidence is needed. The court only needs a "basis for the belief must be clear and plainly appear on the record of the proceedings".^[2] It is also said that there only need to be "tangible grounds or arguments that indictable that an assessment order is called for".^[3] Where there is no disagreement between parties, there may be less reason to hold to a strict standard of proof.^[4]

1. *R v Muschke*, 1997 CanLII 838 (BC SC), 121 CCC (3d) 51, per Pitfield J
2. *R v Goudreau*, 2015 ONSC 6758 (CanLII), per P Smith J, at paras 29 to 30
R v Isaac, 2009 ONCJ 662 (CanLII), 250 CCC (3d) 565, per Schneider J, at para 23
3. *R v Sealy*, 2010 QCCQ 4504 (CanLII), per Mascia J, at para 107
4. *R v Pang*, 2020 YKTC 34 (CanLII), at para 18

Form and Content of Order

Contents of assessment order

672.13 (1) An assessment order must specify

- (a) the service that or the person who is to make the assessment, or the hospital where it is to be made;
- (b) whether the accused is to be detained in custody while the order is in force; and
- (c) the period that the order is to be in force, including the time required for the assessment and for the accused to travel to and from the place where the assessment is to be made.

Form

(2) An assessment order may be in Form 48 [*forms*] or 48.1 [*forms*].
1991, c. 43, s. 4; 2005, c. 22, s. 4.

Duration of Order

General rule for period

672.14 (1) An assessment order shall not be in force for more than thirty days.

Exception in fitness cases

(2) No assessment order to determine whether the accused is unfit to stand trial shall be in force for more than five days, excluding holidays and the time required for the accused to travel to and from the place where the assessment is to be made, unless the accused and the prosecutor agree to a longer period not exceeding thirty days.

Exception for compelling circumstances

(3) Despite subsections (1) [*assessment order maximum 30 days*] and (2) [*assessment order maximum 30 days – exception for fitness*], a court or Review Board may make an assessment order that remains in force for sixty days if the court or Review Board is satisfied that compelling circumstances exist that warrant it.

1991, c. 43, s. 4; 2005, c. 22, s. 5.

[*annotation(s) added*]

Extension

672.15 (1) Subject to subsection (2) [*maximum duration of extensions for assessment*], a court or Review Board may extend an assessment order, of its own motion or on the application of the accused or the prosecutor made during or at the end of the period during which the order is in force, for any further period that is required, in its opinion, to complete the assessment of the accused.

Maximum duration of extensions

(2) No extension of an assessment order shall exceed thirty days, and the period of the initial order together with all extensions shall not exceed sixty days.

1991, c. 43, s. 4; 2005, c. 22, s. 6.

[annotation(s) added]

– CCC

Consequences of Order

Assessment order takes precedence over bail hearing

672.17 During the period that an assessment order made by a court in respect of an accused charged with an offence is in force, no order for the interim release or detention of the accused may be made by virtue of Part XVI [*Pt. XVI – Compelling Appearance of an Accused Before a Justice and Interim Release (s. 493 to 529.5)*] or section 679 [*release pending appeal*] in respect of that offence or an included offence.

1991, c. 43, s. 4; 2005, c. 22, s. 8.

– CCC

Application to vary assessment order

672.18 Where at any time while an assessment order made by a court is in force the prosecutor or an accused shows cause, the court may vary the terms of the order respecting the interim release or detention of the accused in such manner as it considers appropriate in the circumstances.

1991, c. 43, s. 4; 2005, c. 22, s. 9(F).

– CCC

No treatment order on assessment

672.19 No assessment order may direct that psychiatric or any other treatment of the accused be carried out, or direct the accused to submit to such treatment.
1991, c. 43, s. 4.

– CCC

When assessment completed

672.191 An accused in respect of whom an assessment order is made shall appear before the court or Review Board that made the order as soon as practicable after the assessment is completed and not later than the last day of the period that the order is to be in force.

1997, c. 18, s. 81; 2005, c. 22, s. 10.

– CCC

Custody During Order

Presumption against custody

672.16 (1) Subject to subsection (3) [*presumption of custody in certain circumstances*], an accused shall not be detained in custody under an assessment order of a court unless

- (a) the court is satisfied that on the evidence custody is necessary to assess the accused, or that on the evidence of a medical practitioner custody is desirable to assess the accused and the accused consents to custody;
- (b) custody of the accused is required in respect of any other matter or by virtue of any other provision of this Act; or
- (c) the prosecutor, having been given a reasonable opportunity to do so, shows that detention of the accused in custody is justified on either of the grounds set out in subsection 515(10) [*justification for detention in custody*].

Presumption against custody — Review Board

(1.1) If the Review Board makes an order for an assessment of an accused under section 672.121 [*review board may order assessment*], the accused shall not be detained in custody under the order unless

- (a) the accused is currently subject to a disposition made under paragraph 672.54(c) [*order of detention to a hospital*];
- (b) the Review Board is satisfied on the evidence that custody is necessary to assess the accused, or that on the evidence of a medical practitioner custody is desirable to assess the accused and the accused consents to custody; or
- (c) custody of the accused is required in respect of any other matter or by virtue of any other provision of this Act.

Residency as a condition of disposition

(1.2) Subject to paragraphs (1.1)(b) [*presumption against custody (review board) – necessary for assessment*] and (c) [*presumption against custody (review board) – necessary for other reasons*], if the accused is subject to a disposition made under paragraph 672.54(b) [*conditional discharge – review board*] that requires the accused to reside at a specified place, an assessment ordered under section 672.121 [*review board may order assessment*] shall require the accused to reside at the same place.

Report of medical practitioner

(2) For the purposes of paragraphs (1)(a) [*presumption against custody – necessary for assessment*] and (1.1)(b) [*presumption against custody (review board) – necessary for assessment*], if the prosecutor and the accused agree, the evidence of a medical practitioner may be received in the form of a report in writing.

Presumption of custody in certain circumstances

(3) An assessment order made in respect of an accused who is detained under subsection 515(6) [*reverse onus offences*] or 522(2) [*order detention for 469 offences unless accused shows cause*] shall order that the accused be detained in custody under the same circumstances referred to in that subsection, unless the accused shows that custody is not justified under the terms of that subsection.

1991, c. 43, s. 4; 2005, c. 22, s. 7.

[*annotation(s) added*]

– CCC

Assessment Reports

Assessment report

672.2 (1) An assessment order may require the person who makes the assessment to submit in writing an assessment report on the mental condition of the accused.

Assessment report to be filed

(2) An assessment report shall be filed with the court or Review Board that ordered it, within the period fixed by the court or Review Board, as the case may be.

Court to send assessment report to Review Board

(3) The court shall send to the Review Board without delay a copy of any report filed with it pursuant to subsection (2) [*assessment report to be filed with review board*], to assist in determining the appropriate disposition to be made in respect of the accused.

Copies of reports to accused and prosecutor

(4) Subject to subsection 672.51(3) [*exception where disclosure dangerous to any person*], copies of any report filed with a court or Review Board under subsection (2) [*assessment report to be filed with review board*] shall be provided without delay to the prosecutor, the accused and any counsel representing the accused.

1991, c. 43, s. 4; 2005, c. 22, s. 11.

[*annotation(s) added*]

– CCC

Admissibility of Assessment Reports

Section 672.21 designates statements by accused in the course of assessments or treatments to be "protected". These protected statements are not admissible except for the purpose of determining fitness, determining placement or disposition, perjury proceedings, and other limited purposes.

Definition of "protected statement"

672.21 (1) In this section, "protected statement" means a statement made by the accused during the course and for the purposes of an assessment or treatment directed by a disposition, to the person specified in the assessment order or the disposition, or to anyone acting under that person's direction.

Protected statements not admissible against accused

(2) No protected statement or reference to a protected statement made by an accused is admissible in evidence, without the consent of the accused, in any proceeding before a court, tribunal, body or person with jurisdiction to compel the production of evidence.

[*omitted (3)*]

1991, c. 43, s. 4; 2005, c. 22, s. 12; 2014, c. 6, s. 5.

Accused statements made in the assessment report are not admissible at sentencing.^[1]

The consent to undergo an assessment does not translate to consent to collect evidence against the accused. The statements cannot be used for establishing planning or deliberation.^[2]

1. *R v Bennight*, 2010 BCSC 1334 (CanLII), per Grauer J

2. *R v Genereux*, 2000 CanLII 17020 (ON CA), 154 CCC (3d) 362, per Abella JA

Exceptions

672.21

[omitted (1) and (2)]

Exceptions

(3) Notwithstanding subsection (2) [*protected statements not admissible against accused*], evidence of a protected statement is admissible for the purpose of

- (a) determining whether the accused is unfit to stand trial;
- (b) making a disposition or placement decision respecting the accused;
- (c) determining, under section 672.84 [*review of finding – high-risk accused*], whether to refer to the court for review a finding that an accused is a high-risk accused or whether to revoke such a finding;
- (d) determining whether the balance of the mind of the accused was disturbed at the time of commission of the alleged offence, where the accused is a female person charged with an offence arising out of the death of her newly-born child;
- (e) determining whether the accused was, at the time of the commission of an alleged offence, suffering from automatism or a mental disorder so as to be exempt from criminal responsibility by virtue of subsection 16(1) [*defence of mental disorder*], if the accused puts his or her mental capacity for criminal intent into issue, or if the prosecutor raises the issue after verdict;
- (f) challenging the credibility of an accused in any proceeding where the testimony of the accused is inconsistent in a material particular with a protected statement that the accused made previously; or
- (g) establishing the perjury of an accused who is charged with perjury in respect of a statement made in any proceeding.

1991, c. 43, s. 4; 2005, c. 22, s. 12; 2014, c. 6, s. 5.
[annotation(s) added]

Fitness to Stand Trial

< [Procedure and Practice](#) < [Mental Illness](#)

General Principles

Purpose

The purpose of the fitness to stand trial test is to ensure that the accused is to be able to "participate in the proceedings in a meaningful way" so as to "minimum standards of fairness and accords with principles of fundamental justice".^[1]

History

At common law, an accused must fit to stand trial. The 1892 Criminal Code incorporated the common law requirement.^[2] The 1991 Criminal Code amendments creating Part XX.1 defined the meaning of "fitness to stand trial" in the Code as a codification of the common law.^[3]

Right to Counsel

An accused who is subject to an assessment order is entitled to counsel in order to render the trial fair.^[4]

Presumption of Fitness

Fitness to Stand Trial Presumption of fitness

672.22 An accused is presumed fit to stand trial unless the court is satisfied on the balance of probabilities that the accused is unfit to stand trial.

1991, c. 43, s. 4.

– CCC

1. *R v Morrissey*, 2007 ONCA 770 (CanLII), 227 CCC (3d) 1, per Blair JA (3:0), at paras 35 to 36
2. *R v Jaser*, 2015 ONSC 4729 (CanLII), per Code J, at para 37
3. *Jaser, ibid.*, at para 38
4. *R v Waranuk*, 2010 YKCA 5 (CanLII), 291 BCAC 47, per Bennett JA

"Unfit to Stand Trial"

Under section 2, the phrase "unfit to stand trial" is defined:

Definitions

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

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

...

R.S., 1985, c. C-46, s. 2; R.S., 1985, c. 11 (1st Supp.), s. 2, c. 27 (1st Supp.), ss. 2, 203, c. 31 (1st Supp.), s. 61, c. 1 (2nd Supp.), s. 213, c. 27 (2nd Supp.), s. 10, c. 35 (2nd Supp.), s. 34, c. 32 (4th Supp.), s. 55, c. 40 (4th Supp.), s. 2; 1990, c. 17, s. 7; 1991, c. 1, s. 28, c. 40, s. 1, c. 43, ss. 1, 9; 1992, c. 20, s. 216, c. 51, s. 32; 1993, c. 28, s. 78, c. 34, s. 59; 1994, c. 44, s. 2; 1995, c. 29, ss. 39, 40, c. 39, s. 138; 1997, c. 23, s. 1; 1998, c. 30, s. 14; 1999, c. 3, s. 25, c. 5, s. 1, c. 25, s. 1(Preamble), c. 28, s. 155; 2000, c. 12, s. 91, c. 25, s. 1(F); 2001, c. 32, s. 1, c. 41, ss. 2, 131; 2002, c. 7, s. 137, c. 22, s. 324; 2003, c. 21, s. 1; 2004, c. 3, s. 1; 2005, c. 10, s. 34, c. 38, s. 58, c. 40, ss. 1, 7; 2006, c. 14, s. 1; 2007, c. 13, s. 1; 2012, c.1, s. 160, c. 19, s. 371; 2013, c. 13, s. 2; 2014, c. 17, s. 1, c. 23, s. 2, c. 25, s. 2; 2015, c. 3, s. 44, c. 13, s. 3, c. 20, s. 15; 2018, c. 21, s. 12; 2019, c. 13, s. 140; 2019, c. 25, s. 1.

– CCC

Section 672.22 creates a presumption that the accused is fit to stand trial.

Elements

A person is unfit if "owing to mental disorder":^[1]

- does not understand The nature and object of the proceedings against him, or
- Does not understand the personal import of the proceedings, or,
- Is unable to communicate with counsel.

Standard

The test for fitness is not onerous. It only requires a "limited cognitive capacity" to communicate with counsel and understand the process.^[2] Even "the presence of delusions do not vitiate the accused's fitness to stand trial unless the delusion distorts the accused's rudimentary understanding of the judicial process".^[3]

"Communication"

The main inquiry on the element of "communication" with legal counsel should be upon whether the accused has the "ability to seek and receive legal advice".^[4]

"Limited Cognitive Capacity" (LCC)

The proper approach to considering fitness is to apply a "limited cognitive capacity" test, not an "analytic capacity" test.^[5] This also means that the accused need not be capable of acting in their own "best interests".^[6]

It is not necessary "that he or she be capable of exercising analytical reasoning in making a choice to accept the advice of counsel or in coming to a decision that best serves her interest".^[7]

The mere fact that the accused "may not be capable of acting in his best interests during his trial is not sufficient to warrant a finding that he is unfit to stand trial".^[8]

The LCC test should fail where the accused's disorder is "so potent and extensive that it cannot be said that the person is capable of following the evidence, communicating rationally with counsel, or giving evidence which is responsive to the case for the Crown".^[9]

Inquiry into Fitness

A judge may inquire into fitness to the accused only to the extent of considering the ability to "recount the facts of his offences in such a way that counsel may prepare a defence".^[10]

Ability to Recall and Amnesia

The accused's ability to recall and recite recollections of the events immediately before a surrounding the offence at issue is not a pre-condition for fitness to stand trial.^[11]

An accused who has no recollection of the incident at issue due to retrograde amnesia does not, on its own, render the accused unable to communicate with counsel.^[12]

Testimonial Competence

Testimonial competence is not a component of the test for fitness to stand trial.^[13]

Delusions

The presence of "delusions" alone will not vitiate fitness unless it goes to the requirements of fitness.^[14]

After Conviction

The provisions relating to fitness to stand trial do not apply after a conviction has been rendered and the sentencing phase has begun.^[15] This also means that it is not possible to order an assessment for that purpose either.^[16]

Conducting the Defence

An accused is incapable of :^[17]

- distinguishing between available pleas;
- does not understand the nature or purpose of the proceeding including the respective roles of the judge, jury and counsel;
- is unable to understand the nature or purpose of the proceedings;
- is unable to communicate with counsel, converse with counsel rationally or make critical decisions on counsel's advice; or
- is unable to take the stand, if necessary.

The absence of memory alone is not in itself sufficient to render the accused unfit to stand trial.^[18]

Communicate with Counsel

The inquiry into the capacity to communicate with counsel is limited to whether the accused can recount facts so that counsel can present a defence.^[19]

The requirement means the ability to "hear, understand and respond" in a rational but not necessarily self-interested manner.^[20]

1. *R v Steele*, 1991 CanLII 3882 (QC CA), 63 CCC (3d) 149, *per curiam*
R v Eisner, 2015 NSCA 64 (CanLII), 327 CCC (3d) 567, *per Beveridge JA*, at para 89
2. *R v Taylor*, 1992 CanLII 7412 (ON CA), 77 CCC (3d) 551, [1992] OJ No 2394, *per Lacourcière JA*
See also *R v Whittle*, 1994 CanLII 55 (SCC), [1994] 2 SCR 914, *per Sopinka J*
3. *Taylor*, *supra*
See also *R v Micheal*, 2015 ONSC 148 (CanLII), *per Morgan J*
4. *R v Morrissey*, 2007 ONCA 770 (CanLII), 227 CCC (3d) 1, *per Blair JA* (3:0), at para 29
5. *R v Taylor*, 1992 CanLII 7412 (ON CA), 77 CCC (3d) 551, *per Lacourcière JA*, at p. 567 ("The "limited cognitive capacity" test strikes an effective balance between the objectives of the fitness rules and the constitutional right of the accused to choose his own defence and to have a trial within a reasonable time.")
6. *Taylor*, *ibid.* ("In asking the court to require that the accused be able to act in his own best interests, the respondent is asking this court to adopt the higher threshold "analytic capacity" test for determining the accused's fitness to stand trial. This test has clearly been rejected by the courts.")
7. *Whittle*, *supra*
8. *Steele*, *supra*, at para 92
Micheal, *supra*, at para 12
9. *Taylor*, *ibid.*
10. *R v Jobb*, 2008 SKCA 156 (CanLII), 239 CCC (3d) 29, *per Smith JA* (3:0), at para 43
11. *Morrissey*, *supra*
12. *R v Eisnor*, 2015 NSCA 64 (CanLII), 327 CCC (3d) 567, *per Beveridge JA* -- accused shot and killed wife, could not remember incident due to brain damage from shooting self in the head
Morrissey, *supra*
13. *Morrissey*, *supra*, at para 25
14. *Taylor*, *ibid.*
15. *Jaser*, *supra*, at paras 45 to 46
16. *Jaser*, *supra*, at para 55

19. *R v Jobb*, 2008 SKCA 156 (CanLII), 239 CCC (3d) 29, per Smith JA ("According to that test, the court's assessment of an accused's ability to conduct a defence and to communicate with and instruct counsel is limited to an inquiry into whether an accused can recount to his or her counsel the necessary facts relating to the offence in such a way that counsel can then properly present a defence.")

Morrissey, supra, at para 27 (The requirement that the accused be able to communicate with counsel includes "relat[ing] the facts concerning the offence".)

20. *Eisner, supra*, at para 155

17. *Eisner, supra*, at para 90

18. *Eisner, supra*, at para 157

Procedure for Determining Fitness

The first step for determination of fitness is to request a fitness assessment under s. 672.11.^[1]

Criminal Responsibility

1. see more Assessment for Fitness and

Court Obligation to Try Fitness When Raised

Obligation to Try Issue (Judge trial)

Trial of issue by court

672.27 The court shall try the issue of fitness of an accused and render a verdict where the issue arises

- (a) in respect of an accused who is tried or is to be tried before a court other than a court composed of a judge and jury; or
- (b) before a court at a preliminary inquiry or at any other stage of the proceedings.

1991, c. 43, s. 4.

– CCC

Obligation to Try Issue (Judge and Jury)

Trial of issue by judge and jury

672.26 Where an accused is tried or is to be tried before a court composed of a judge and jury,

- (a) if the judge directs that the issue of fitness of the accused be tried before the accused is given in charge to a jury for trial on the indictment, a jury composed of the number of jurors required in respect of the indictment in the province where the trial is to be held shall be sworn to try that issue and, with the consent of the accused, the issues to be tried on the indictment; and
- (b) if the judge directs that the issue of fitness of the accused be tried after the accused has been given in charge to a jury for trial on the indictment, the jury shall be sworn to try that issue in addition to the issues in respect of which it is already sworn.

1991, c. 43, s. 4.

– CCC

Court May Raise Issue

Court may direct issue to be tried

672.23 (1) Where the court has reasonable grounds, at any stage of the proceedings before a verdict is rendered, to believe that the accused is unfit to stand trial, the court may direct, of its own motion or on application of the accused or the prosecutor, that the issue of fitness of the accused be tried.

Burden of proof

(2) An accused or a prosecutor who makes an application under subsection (1) [*power of court to try issue of fitness at any time*] has the burden of proof that the accused is unfit to stand trial.

1991, c. 43, s. 4.

[*annotation(s) added*]

– CCC

Delay Trying Issue Until Crown Election is Made

Postponing trial of issue

672.25 (1) The court shall postpone directing the trial of the issue of fitness of an accused in proceedings for an offence for which the accused may be prosecuted by indictment or that is punishable on summary conviction, until the prosecutor has elected to proceed by way of indictment or summary conviction.

Idem

(2) The court may postpone directing the trial of the issue of fitness of an accused

(a) where the issue arises before the close of the case for the prosecution at a preliminary inquiry, until a time that is not later than the time the accused is called on to answer to the charge; or

(b) where the issue arises before the close of the case for the prosecution at trial, until a time not later than the opening of the case for the defence or, on motion of the accused, any later time that the court may direct.

1991, c. 43, s. 4.

– CCC

Power to Appoint of Counsel

Counsel

672.24 (1) Where the court has reasonable grounds to believe that an accused is unfit to stand trial and the accused is not represented by counsel, the court shall order that the accused be represented by counsel.

Counsel fees and disbursements

(2) Where counsel is assigned pursuant to subsection (1) [*order counsel for believed unfit self-rep person*] and legal aid is not granted to the accused pursuant to a provincial legal aid program, the fees and disbursements of counsel shall be paid by the Attorney General to the extent that the accused is unable to pay them.

Taxation of fees and disbursements

(3) Where counsel and the Attorney General cannot agree on the fees or disbursements of counsel, the Attorney General or the counsel may apply to the registrar of the court and the registrar may tax the disputed fees and disbursements.

1991, c. 43, s. 4; 1997, c. 18, s. 82.

[*annotation(s) added*]

– CCC

Verdict on Fitness

When fitness finding not necessary

Acquittal

672.3 Where the court has postponed directing the trial of the issue of fitness of an accused pursuant to subsection 672.25(2) [*circumstances where issue of fitness is postponed*] and the accused is discharged or acquitted before the issue is tried, it shall not be tried.

1991, c. 43, s. 4.

[*annotation(s) added*]

– CCC

Finding Accused Fit

Proceeding continues where accused is fit

672.28 Where the verdict on trial of the issue is that an accused is fit to stand trial, the arraignment, preliminary inquiry, trial or other stage of the proceeding shall continue as if the issue of fitness of the accused had never arisen.

1991, c. 43, s. 4.

– CCC

Where continued detention in custody

672.29 Where an accused is detained in custody on delivery of a verdict that the accused is fit to stand trial, the court may order the accused to be detained in a hospital until the completion of the trial, if the court has reasonable grounds to believe that the accused would become unfit to stand trial if released.

1991, c. 43, s. 4.

Finding Accused Unfit

Verdict of unfit to stand trial

672.31 Where the verdict on trial of the issue is that an accused is unfit to stand trial, any plea that has been made shall be set aside and any jury shall be discharged.

1991, c. 43, s. 4.

– CCC

Subsequent proceedings

672.32 (1) A verdict of unfit to stand trial shall not prevent the accused from being tried subsequently where the accused becomes fit to stand trial.

Burden of proof

(2) The burden of proof that the accused has subsequently become fit to stand trial is on the party who asserts it, and is discharged by proof on the balance of probabilities.

1991, c. 43, s. 4.

– CCC

Prima facie case to be made every two years

672.33 (1) The court that has jurisdiction in respect of the offence charged against an accused who is found unfit to stand trial shall hold an inquiry, not later than two years after the verdict is rendered and every two years thereafter until the

accused is acquitted pursuant to subsection (6) [*where prima facie case not made*] or tried, to decide whether sufficient evidence can be adduced at that time to put the accused on trial.

Extension of time for holding inquiry

(1.1) Despite subsection (1) [*prima facie case to be made every two years*], the court may extend the period for holding an inquiry where it is satisfied on the basis of an application by the prosecutor or the accused that the extension is necessary for the proper administration of justice.

Court may order inquiry to be held

(2) On application of the accused, the court may order an inquiry under this section to be held at any time if it is satisfied, on the basis of the application and any written material submitted by the accused, that there is reason to doubt that there is a prima facie case against the accused.

Burden of proof

(3) At an inquiry under this section, the burden of proof that sufficient evidence can be adduced to put the accused on trial is on the prosecutor.

Admissible evidence at an inquiry

(4) In an inquiry under this section, the court shall admit as evidence

(a) any affidavit containing evidence that would be admissible if given by the person making the affidavit as a witness in court; or

(b) any certified copy of the oral testimony given at a previous inquiry or hearing held before a court in respect of the offence with which the accused is charged.

Conduct of inquiry

(5) The court may determine the manner in which an inquiry under this section is conducted and may follow the practices and procedures in respect of a preliminary inquiry under Part XVIII [*Pt. XVIII – Procedure on Preliminary Inquiry (s. 535 to 551)*] where it concludes that the interests of justice so require.

Where prima facie case not made

(6) Where, on the completion of an inquiry under this section, the court is satisfied that sufficient evidence cannot be adduced to put the accused on trial, the court shall acquit the accused.

1991, c. 43, s. 4; 2005, c. 22, ss. 13, 42(F).

[*annotation(s) added*]

– CCC

Treatment

- [Treatment of an Accused Unfit to Stand Trial](#)

Case Digests

- [Mental Illness \(Cases\)](#)

See Also

- [Justice department review of section 16](#)

Treatment of an Accused Unfit to Stand Trial

This page was last substantively updated or reviewed *January 2015*. (Rev. # 79480)

< [Procedure and Practice](#) < [Mental Illness](#)

General Principles

Upon making a finding that an accused is not fit to stand trial. It is open to the Crown to apply for a treatment order under s. 472.58.

A treatment order under s. 672.58 can only be made with the consent of the hospital.^[1]

Treatment disposition

672.58 Where a verdict of unfit to stand trial is rendered and the court has not made a disposition under section 672.54 [*available dispositions*] in respect of an accused, the court may, on application by the prosecutor, by order, direct that treatment of the accused be carried out for a specified period not exceeding sixty days, subject to such conditions as the court considers appropriate and, where the accused is not detained in custody, direct that the accused submit to that treatment by the person or at the hospital specified.

1991, c. 43, s. 4.

– CCC

672.59 (1) No disposition may be made under section 672.58 [*treatment disposition*] unless the court is satisfied, on the basis of the testimony of a medical practitioner, that a specific treatment should be administered to the accused for the purpose of making the accused fit to stand trial.

Evidence required

(2) The testimony required by the court for the purposes of subsection (1) [*criteria for disposition for treatment re fitness*] shall include a statement that the medical practitioner has made an assessment of the accused and is of the opinion, based on the grounds specified, that

- (a) the accused, at the time of the assessment, was unfit to stand trial;
- (b) the psychiatric treatment and any other related medical treatment specified by the medical practitioner will likely make the accused fit to stand trial within a period not exceeding sixty days and that without that treatment the accused is likely to remain unfit to stand trial;
- (c) the risk of harm to the accused from the psychiatric and other related medical treatment specified is not disproportionate to the benefit anticipated to be derived from it; and
- (d) the psychiatric and other related medical treatment specified is the least restrictive and least intrusive treatment that could, in the circumstances, be specified for the purpose referred to in subsection (1) [*criteria for disposition for treatment re fitness*], considering the opinions referred to in paragraphs (b) and (c).

1991, c. 43, s. 4.

– CCC

Notice required

672.6 (1) The court shall not make a disposition under section 672.58 [*treatment disposition*] unless the prosecutor notifies the accused, in writing and as soon as practicable, of the application.

Challenge by accused

(2) On receiving the notice referred to in subsection (1) [*notice required before treatment order permitted*], the accused may challenge the application and adduce evidence for that purpose.

1991, c. 43, s. 4; 1997, c. 18, s. 87.

[*annotation(s) added*]

– CCC

Exception

672.61 (1) The court shall not direct, and no disposition made under section 672.58 [*treatment disposition*] shall include, the performance of psychosurgery or electro-convulsive therapy or any other prohibited treatment that is prescribed.

Definitions

(2) In this section,

"electro-convulsive therapy" means a procedure for the treatment of certain mental disorders that induces, by electrical stimulation of the brain, a series of generalized convulsions;

"psychosurgery" means any procedure that by direct or indirect access to the brain removes, destroys or interrupts the continuity of histologically normal brain tissue, or inserts indwelling electrodes for pulsed electrical stimulation for the purpose of altering behaviour or treating psychiatric illness, but does not include neurological procedures used to diagnose or treat intractable physical pain, organic brain conditions, or epilepsy, where any of those conditions is clearly demonstrable.

1991, c. 43, s. 4.

– CCC

Consent of hospital required for treatment

672.62 (1) No court shall make a disposition under section 672.58 [*treatment disposition*] without the consent of

- (a) the person in charge of the hospital where the accused is to be treated;
- or
- (b) the person to whom responsibility for the treatment of the accused is assigned by the court.

Consent of accused not required for treatment

(2) The court may direct that treatment of an accused be carried out pursuant to a disposition made under section 672.58 [*treatment disposition*] without the consent of the accused or a person who, according to the laws of the province where the disposition is made, is authorized to consent for the accused.

1991, c. 43, s. 4.

[*annotation(s) added*]

Effective date of disposition

672.63 A disposition shall come into force on the day on which it is made or on any later day that the court or Review Board specifies in it, and shall remain in force until the Review Board holds a hearing to review the disposition and makes another disposition.

1991, c. 43, s. 4; 2005, c. 22, s. 23.

1. *R v Conception*, 2014 SCC 60 (CanLII),
[2014] 3 SCR 82, *per* Rothstein and Cromwell

JJ

Not Criminally Responsible Due to Mental Disorder

This page was last substantively updated or reviewed *January 2021*. (Rev. # 79480)

< [Procedure and Practice](#) < [Mental Illness](#)

General Principles

The defence of mental disorder is codified in section 16 of the Canadian Criminal Code which states, in part:

Defence of mental disorder

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 was wrong.

[*omitted (2) and (3)*]

R.S., 1985, c. C-46, s. 16; R.S., 1985, c. 27 (1st Supp.), s. 185(F); 1991, c. 43, s. 2.

This section recognizes the principle of law that a person who suffers from a mental disorder which renders him incapable of making rational or autonomous choices should *not* be held criminally responsible.^[1]

This provision only applies where the individual has a guilty verdict entered. Section 16 will have the effect of avoiding a conviction being entered and a penalty being imposed.

There are two forms of this defence. To establish a claim of mental disorder the party raising the issue must show on a balance of probabilities first that the person committed the act, that the person committing the act was:

1. suffering from a mental disorder; and,
2. unable to appreciate the "nature and quality" of the act, or
3. did not know it was "wrong".^[2]

Glanville Williams in *Textbook of Criminal Law* (2nd Ed.), at p. 644 characterized the questions as 1) whether the accused "know that he was, for instance, sticking a knife in someone?"; 2) whether the accused know he was killing someone?"

The inquiry under s. 16(1) is whether "the accused lacks the capacity to rationally decide whether the act is right or wrong and hence to make rational choice about whether to do it or not".^[3]

Delusions that "make the accused perceive an act which is wrong as right or justifiable" can remove the ability to make rational choices and engage s. 16(1).^[4] However, not all offences committed while in a state of delusion will trigger s. 16(1).^[5]

The test to be applied is found in s.672.34:

Verdict of not criminally responsible on account of mental disorder

672.34 Where the jury, or the judge or provincial court judge where there is no jury, finds that an accused committed the act or made the omission that formed the basis of the offence charged, but was at the time suffering from mental disorder so as to be exempt from criminal responsibility by virtue of subsection 16(1) [*defence of mental disorder*], the jury or the judge shall render a verdict that the accused committed the act or made the omission but is not criminally responsible on account of mental disorder.

1991, c. 43, s. 4.
[*annotation(s) added*]

– CCC

1. *R v Ejigu*, 2016 BCSC 2278 (CanLII), per Davies J, at para 333 (“The provisions recognize the fundamental principles of law that a person who suffers from a mental illness which renders them incapable of making a rational and autonomous choice should not be held to be criminally responsible.”)
R v Chaulk, 1990 CanLII 34 (SCC), [1990] 3 SCR 1303, per Lamer CJ
R v Swain, 1991 CanLII 104 (SCC), [1991] 1 SCR 933, per Lamer CJ
R v Oommen, 1994 CanLII 101 (SCC), [1994] 2 SCR 507, per McLachlin J
2. *R v Borsch*, 2007 MBCA 111 (CanLII), 53 CR (6th) 76, per Freedman JA
3. *Oommen*, *supra*, at p. 518
4. *Oommen*, *supra*, at p. 520
5. *R v Ratti*, 1991 CanLII 112 (SCC), [1991] 1 SCR 68, per Lamer CJ, at p. 113
R v Richmond, 2016 ONCA 134 (CanLII), 334 CCC (3d) 315, per Cronk JA, at para 54 (“ Not every mental disorder, even those that are delusion-driven, will trigger a s. 16 defence. The concept of “wrong” embodied in s. 16(1) contemplates knowledge that an act was morally – not legally – wrong in the circumstances, according to the ordinary moral standard of reasonable members of the community.”)

Mental Disorder and "Disease of the Mind"

Section 2 of the Code defines Mental Disorder as a "disease of the mind".

"Mental disorder" and "disease of the mind" are both legal terms, not medical terms.^[1]

Disease of the mind encompasses mental illnesses, disorders and mental impairments, both naturally occurring and those resulting from injury or consumption of materials.^[2] It is a legal construct, regardless of its medical dimension. It is then a determination of the judge and not medical experts.^[3] A finding of a disease of the mind is a question of law based on the evidence before the court.^[4]

Disease of the mind "embraces any illness, disorder or abnormal condition which impairs the human mind and its functioning, excluding however, self-induced states caused by alcohol or drugs, as well as transitory mental states such as hysteria or concussion."^[5]

If there is a disease of the mind, it must be shown to be connected with the accused state of mind at the time of the offence. Specifically, that the disease of the mind caused the accused to be impaired. It must be a sufficiently serious disorder.^[6]

Central to the inquiry is the effect of the mental disorder upon the accused's capacity.^[7]

The applicant should present expert evidence about "the cause, nature and symptoms of the abnormal condition" and how that condition is viewed and characterized medically.^[8]

The judge should take into account "the internal cause factor, the continuing danger factor and other policy considerations."^[9] Internal causes refers to malfunctioning mind due to the accused's psychological and emotional make-up.^[10]

Expert medical opinion on whether a condition constitutes a "mental disorder" is largely irrelevant to whether the "condition should be classified legally as a disease of the mind".^[11]

Sleep Walking

Somnambulism cannot be categorically rejected from being a "disease of the mind". The determination will depend on the evidence.^[12]

Examples

Disease of the mind has been found to include:

- some types of psychopathy ^[13]
- retardation^[14]
- sleep walking^[15]
- anxiety^[16]
- toxic psychosis^[17]
- delerium tremens^[18]

However, some conditions that do not cause cognitive impairment have been considered insufficient, such as being concurrently mute and deaf.^[19]

1. *R v Stone*, 1999 CanLII 688 (SCC), [1999] 2 SCR 290, per Bastarache J, at para 195
R v SH, 2014 ONCA 303 (CanLII), 310 CCC (3d) 455, per Watt JA, at paras 75, 76
2. *R v Rabey*, 1980 CanLII 44 (SCC), [1980] 2 SCR 513, per Ritchie J
Stone, supra, at p. 197
R v Cooper, 1979 CanLII 63 (SCC), [1980] 1 SCR 1149, per Dickson J
3. *Cooper*, *ibid.*
Stone, supra, at para 195
R v Parks, 1992 CanLII 78 (SCC), [1992] 2 SCR 871, per La Forest J, at pp. 898 to 899
R v Rabey, 1977 CanLII 48 (ON CA), 17 OR (2d) 673 (CA), per Martin JA, at pp. 12-13
R v Simpson, 1977 CanLII 1142 (ON CA), O.R. (2d) 129, per Martin JA ("The term "disease of the mind" is a legal concept, although it includes a medical component, and what is meant by the term is a question of law for the Judge")
4. *R v Charest*, 1990 CanLII 3425 (QC CA), 57 CCC (3d) 312, per curiam
5. *Cooper*, supra, at p. 1159
6. *R v Sullivan*, 1995 CanLII 8931 (BC CA), 96 CCC (3d) 135, per Hinds JA
7. *SH*, supra, at paras 78{{{3}}}
8. *SH*, supra, at para 79
9. *SH*, supra, at para 80
Stone, supra, at para 203
10. *SH*, supra, at para 80
Rabey, supra, at para 59
11. *R v Luedecke*, 2008 ONCA 716 (CanLII), 236 CCC (3d) 317, per Doherty JA
12. *Luedecke*, *ibid.*
13. *R v Cooper*, 1979 CanLII 63 (SCC), [1980] 1 SCR 1149, per Dickson J
See also *Simpson*, supra
R v Kjeldsen, 1980 ABCA 49 (CanLII), 53 CCC (2d) 55, per Harradence JA appealed to 1981 CanLII 218 (SCC), [1981] 2 SCR 617
14. *R v MSR*, 1996 CanLII 8294 (ON SC), 112 CCC (3d) 406, per Lofchik J
15. *R v Parks*, 1992 CanLII 78 (SCC), [1992] 2 SCR 871, per La Forest J
16. eg. *R. v. McLeod* (1980), 1980 CanLII 313 (BC CA), 52 C.C.C. (2d) 193 (B.C.C.A.)
17. eg. *R. v. Mailloux* (1985), 1985 CanLII 3580 (ON CA), 25 C.C.C. (3d) 171(*complete citation pending*)
18. eg. *R. v. Malcolm* (1989), 1989 CanLII 214 (MB CA), 50 C.C.C. (3d) 172(*complete citation pending*)
19. *R v Isaac*, 2009 ONCJ 662 (CanLII), 250 CCC (3d) 565, per Schneider J

Self-Induced State

A state of psychosis that is entirely due to self-induced consumption of alcohol cannot form the basis of a NCRMD defence.^[1] The defence can only apply where the mental disorder is the "source" of the incapacity, "in spite of the intoxication".^[2]

</ref> Self-Induce states are presumed to be exempted from the rule of s. 16.^[3]

To determine whether self-induced states can still avail to s. 16, the courts should consider (a) internal cause factors and (b) continuing danger theory.^[4]

Where a state of psychosis is induced by drug, there may be application of s. 16.^[5]

1. *R v Turcotte*, 2013 QCCA 1916 (CanLII), RJQ 1743, *per curiam*, at para 118 (" To summarize, self-induced intoxication does not, in and of itself, rule out the defence of mental disorder, except when, as in *Bouchard-Lebrun*, it is the single cause of the psychosis. The defence of mental disorder must not, however, turn into another form of self-induced intoxication.")
R v Bouchard-Lebrun, 2010 QCCA 402 (CanLII), 260 CCC (3d) 548, *per curiam* appealed to SCC
2. *Turcotte, ibid.*, at para 118
3. *Cooper, supra*, at p. 1159
4. *R v Bouchard-Lebrun*, 2011 SCC 58 (CanLII), [2011] 3 SCR 575, *per LeBel J*
5. e.g. *R v Patel*, 2019 ONCJ 833 (CanLII), *per Konyer J*

"Appreciating" vs "Knowing"

The verb "appreciating" in section 16 is distinguished from "knowing" in that the appreciation requires a degree of mental analysis on the part of the accused while knowing connotes a bare awareness but not necessarily an understanding or analysis of knowledge or experience.^[1]

The act of "appreciating" means "a second stage in a mental process requiring the analysis of knowledge or experience in one manner or another."^[2]

The act of "knowing" means a "base awareness, the act of receiving information without more".^[3] Appreciation of the "nature and quality" of the act does not require that the "act be accompanied by appropriate feeling about the effect of the act on other people" or that the accused "lacks appropriate feelings for the victim or lacks feelings of remorse or guilt for what he has done". The absence of such feelings is often common among certain people who commit repeated serious offences.^[4]

The act of appreciating means appreciating the "physical character" and "physical consequences" of your actions.^[5]

1. *R v Kjeldsen*, 1981 CanLII 218 (SCC), [1981] 2 SCR 617, *per McIntyre J*
R v Barnier, 1980 CanLII 184 (SCC), [1980] 1 SCR 1124, *per Estey J*
2. *Barnier, ibid.*, at p. 11
3. *Barnier, ibid.*, at p. 11
4. *R v Simpson*, 1977 CanLII 1142 (ON CA), 35 CCC (2d) 337, *per Martin JA*
5. *Kjeldsen, supra*

Nature and Quality of Act

The "nature and quality" refers to the "physical character of the act."^[1] The accused is not responsible where the offence was "really not his act".^[2]

This requirement does not extend to include a mere lack of the "appropriate feelings of remorse or guilt for what she has done".^[3]

1. *R v Schwartz*, 1976 CanLII 165 (SCC), [1977] 1 SCR 673, per Martland J
2. *Schwartz*, *ibid.*
3. *R v Ejigu*, 2016 BCSC 2278 (CanLII), per Davies J, at para 345
R v Simpson, 1977 CanLII 1142 (ON CA),

(1977), 16 OR (2d) 129 (CA), per Martin JA, at p. 14 ("Appreciation of the nature and quality of an act does not import a requirement that the act be accompanied by appropriate feeling about the effect of the act on other people.")

Meaning of "Wrong"

The meaning of the word "wrong" was held to be restricted to "morally wrong" and not "legally wrong".^[1]

The meaning of "morally wrong" is determined from "the perspective of society or the perspective of reasonable people."^[2]

A person will be unaware of the wrong-ness of an act where he is "deprived of the capacity for rational perception and hence rational choice about the rightness or wrongness of his acts".^[3]

The question is whether mental disorder renders them incapable of knowing that their act is not moral on reasonable social standards.^[4]

The question is not however whether the offender "was capable of knowing only that an end or objective served by his or her act was morally desirable."^[5]

The lack of appreciation must be specific to the particular act that was the subject of the offence. It is not a question of "general capacity".^[6]

In assessing capacity to appreciate morally wrong conduct, the focus should be upon "the thinking process of the accused, not their actual knowledge of wrongness". This requires delving into "the thought process, ... coherence, logic, rationality" of the person. Did his condition deprive him of an ability to properly appreciate his conduct?^[7]

The issue is whether the accused possessed the capacity to "rationally decide" whether the acts were "right or wrong" so as to choose whether to do the acts.^[8] They cannot "rationally decide" where they perceive the acts as "right or justifiable".^[9]

Those who have the capacity to "capacity to know that society regards his actions as morally wrong ... cannot be said to lack the capacity to know right from wrong".^[10] This is true even when "he believed that he had no choice but to act, or that his acts were justified".^[11] But a person who believes the conduct is justified according to the "norms of society"--or a person not able to assess the wrongness of his conduct against "societal norms"--would be unable to know right from wrong.^[12]

1. *R v Chaulk*, 1990 CanLII 34 (SCC), [1990] 3

SCR 1303, per Lamer CJ at 1351 [SCR]
Prior to Chaulk 1990, the standard was simply

"legally wrong"

2. *R v Longridge*, 2018 ABQB 145 (CanLII), per Renke J, at para 111 ("Morally wrong" means morally wrong from the perspective of society or the perspective of reasonable people. ...An accused may consider an act to be a moral act and may feel morally compelled to do the act, but because of his or her mental disorder the person may be incapable of knowing that the act is not a moral act by reasonable social standards. That is, the accused may believe that he or she is doing the morally right thing by doing an act, but because of mental disorder the accused is not capable of knowing what reasonable people consider to be right and wrong.")
3. *R v Szostak*, 2012 ONCA 503 (CanLII), 289 CCC (3d) 247, per Rosenberg JA, at para 57
4. *Longridge*, supra, at para 111
5. *Longridge*, supra, at para 111
6. *Longridge*, supra, at para 112
R v Oommen, 1frs91994 CanLII 101 (SCC), [1994] 2 SCR 507, per McLachlin J, at p. 516
7. *R v Schartz*, 1976 CanLII 165 (SCC), [1977] 1 SCR 673, per Martland J
Longridge, supra, at para 113
8. *Oommen*, supra ("The crux of the inquiry is whether the accused lacks the capacity to rationally decide whether the act is right or wrong and hence to make a rational choice about whether to do it or not. The inability to make a rational choice may result from a variety of mental disfunctions; as the following passages indicate these include at a minimum the states to which the psychiatrists testified in this case -- delusions which make the accused perceive an act which is wrong as right or justifiable, and a disordered condition of the mind which deprives the accused of the ability to rationally evaluate what he is doing.") *R v Warsing*, 2000 BCSC 388 (CanLII), BCTC 166, at para 122
9. *Warsing*, *ibid.* at para 122
10. *R v Dobson*, 2018 ONCA 589 (CanLII), 48 CR (7th) 410, per Doherty JA, at para 24
11. *Dobson*, *ibid.*, at para 24
12. *Dobson*, supra, at para 24

Analysis

Trial Steps

Where an NCR defence is being raised, the proper sequence should be as follows:^[1]

1. Determine whether the accused committed the actus reus of the charged offence. If the answer is yes, proceed to step 2.
2. Determine whether the accused is criminally responsible for taking the action described in step 1. If the answer is yes, proceed to step 3.
3. Determine what offence the accused committed.

Presumption

There is a presumption that a person is "not ... suffer[ing] from a mental disorder so as to be exempt from criminal responsibility".^[2]

Burden of Proof

The party raising the issue of NCR has the burden.^[3] Proof must be established on the balance of probabilities.^[4]

Procedure

Who Can Raise NCR

Defence counsel may not advance an NCR defence against the instructions of the accused. It must be accused not the counsel who asks.^[5]

The Crown can only raise NCR if the accused puts his mental condition into issue or if the accused is convicted.^[6]

Evidence

A jury is not required to accept an uncontradicted expert opinion that there is a "strong circumstantial case for an NCR finding."^[7] A jury can accept or reject the evidence in the "same manner as any other evidence".^[8] The jury can accord less weight to the opinion if it is not based on proven facts or were based on assumptions.^[9]

An appellate court reviewing an expert opinion must consider "whether there was a rational basis for rejecting it".^[10]

1. *R v Worrie*, 2019 ONSC 4924 (CanLII), per Barnes J, at para 3
R v David, 2002 CanLII 45049 (ON CA), 169 CCC (3d) 165, per Simmons JA, at paras 55 to 56
2. s. 16(2)
3. s. 16(3)
R v Chaulk, 1990 CanLII 34 (SCC), [1990] 3 SCR 1303, per Lamer CJ (found this presumption violated s. 11(d) but was justified under s. 1 of the Charter)
4. s. 16(2)
R v Schoenborn, 2010 BCSC 220 (CanLII), per Powers J, at para 233 ("No one can know for sure whether Mr. Schoenborn at the time of killing his children was suffering from a mental disorder that rendered him incapable of knowing that it was wrong. However, as I said at the beginning of this decision, the burden is not on Mr. Schoenborn to show that it is sure that s. 16 applies, but rather that the evidence must show that it is more likely than not that s. 16 applies. All of the evidence must be considered without sympathy or prejudice to anyone. I must consider all of the evidence with care and with a certain amount of skepticism.")
5. *R v Szostak*, 2012 ONCA 503 (CanLII), 289 CCC (3d) 247, per Rosenberg JA, at para 80 see also *Role of the Defence Counsel*
6. *R v Swain*, 1991 CanLII 104, [1991] 1 SCR 933, per Lamer CJ see also .s 672.12(3)
7. *R v Richmond*, 2016 ONCA 134 (CanLII), 334 CCC (3d) 315, per Cronk JA, at para 57
8. *Richmond*, *ibid.*, at para 57
9. *R v Molodowic*, 2000 CSC 16 (CanLII), [2000] 1 SCR 420, per Arbour J, at para 7
10. *Molodowic*, *ibid.*
Richmond, *supra*, at para 58

Assessment

- Assessment for Fitness and Criminal Responsibility

Timing

The accused may raise the defence of "NCR at any time during the course of a trial, including after a finding of guilt but before a conviction is entered."^[1]

The accused may lead evidence of NCR either during trial or after a verdict of guilt. However, if done after verdict, the defence cannot argue that there was no *mens rea*.^[2]

1. *R v Swain*, 1991 CanLII 104, [1991] 1 SCR 933, per Lamer CJ, at para 71

2. *R v Brown*, 2006 BCSC 1581 (CanLII), 214 CCC (3d) 151, per Powers J

Ruling NCR

Consent by an accused to be declare NCR does not require the same standard as a guilty plea under s. 606(1.1). ^[1]

1. *R v Quenneville*, 2010 ONCA 223 (CanLII),

207 CRR (2d) 360, per Goudge JA

Consequences of NCR Finding

Effect of verdict of not criminally responsible on account of mental disorder

672.35 Where a verdict of not criminally responsible on account of mental disorder is rendered, the accused shall not be found guilty or convicted of the offence, but

- (a) the accused may plead autrefois acquit in respect of any subsequent charge relating to that offence;
- (b) any court may take the verdict into account in considering an application for judicial interim release or in considering what dispositions to make or sentence to impose for any other offence; and
- (c) the Parole Board of Canada or any provincial parole board may take the verdict into account in considering an application by the accused for parole or for a record suspension under the *Criminal Records Act* in respect of any other offence.

1991, c. 43, s. 4; 2012, c. 1, ss. 145, 160.

– CCC

Once a finding has been made the judge shall make a decision on disposition under s. 672.45:

Hearing to be held by a court

672.45 (1) Where a verdict of not criminally responsible on account of mental disorder or unfit to stand trial is rendered in respect of an accused, the court may of its own motion, and shall on application by the accused or the prosecutor, hold a disposition hearing.

Transmittal of transcript to Review Board

(1.1) If the court does not hold a hearing under subsection (1) [*disposition hearings – power to start hearing*], it shall send without delay, following the verdict, in original or copied form, any transcript of the court proceedings in respect of the accused, any other document or information related to the proceedings, and all exhibits filed with it, to the Review Board that has jurisdiction in respect of the matter, if the transcript, document, information or exhibits are in its possession.

Disposition to be made

(2) At a disposition hearing, the court shall make a disposition in respect of the accused, if it is satisfied that it can readily do so and that a disposition should be made without delay.

1991, c. 43, s. 4; 2005, c. 22, ss. 14, 42(F).

[*annotation(s) added*]

– CCC

NCR verdict cannot be considered where the Code requires a harsher punishment due to a previous conviction (s. 672.36).

Verdict not a previous conviction

672.36 A verdict of not criminally responsible on account of mental disorder is not a previous conviction for the purposes of any offence under any Act of Parliament for which a greater punishment is provided by reason of previous convictions.

1991, c. 43, s. 4.

– CCC

Application for Federal Employment

Definition of “application for federal employment”

672.37 (1) In this section, application for federal employment means an application form relating to

(a) employment in any department, as defined in section 2 of the *Financial Administration Act*;

(b) employment by any Crown corporation as defined in subsection 83(1) of the *Financial Administration Act*;

- (c) enrolment in the Canadian Forces; or
- (d) employment in connection with the operation of any work, undertaking or business that is within the legislative authority of Parliament.

Application for federal employment

(2) No application for federal employment shall contain any question that requires the applicant to disclose any charge or finding that the applicant committed an offence that resulted in a finding or a verdict of not criminally responsible on account of mental disorder if the applicant was discharged absolutely or is no longer subject to any disposition in respect of that offence.

Punishment

(3) Any person who uses or authorizes the use of an application for federal employment that contravenes subsection (2) [*prohibition of federal govt to inquire of NCR finding for employment*] is guilty of an offence punishable on summary conviction.

1991, c. 43, s. 4.

[*annotation(s) added*]

– CCC

Consequences of Failure to Find NCR

Where evidence falls short of making out a mental disorder that renders the accused not criminally responsible the evidence can be used to raise doubt on whether there is specific intent.^[1]

1. *R v Kam*, 2020 BCSC 893 (CanLII), at para 103 ("Evidence of a mental condition that falls short of a mental disorder that renders the accused not criminally responsible, may raise a reasonable doubt as to whether the accused had the necessary specific intent.")
R v Robinson, 2010 BCSC 368 (CanLII), per Joyce J, at para 110 ("Such consideration does not create the notion of diminished responsibility, which does not exist in our law.

Rather it simply recognizes that if the accused was suffering from some sort of mental condition at the time of the offence, that mental condition is a circumstance that might affect whether or not he formed the necessary specific intent.")

R v Bailey, 1996 CanLII 2524 (BC CA), 111 CCC (3d) 122, per Donald JA, at paras 13 to 15

Application For High Risk Designation

- Application For High Risk Designation

Case Digests

Appeal of Mental Illness Dispositions

This page was last substantively updated or reviewed *January 2015*. (Rev. # 79480)

< [Procedure and Practice](#) < [Mental Illness](#)

< [Procedure and Practice](#) < [Appeals](#)

Grounds of Appeal

Appeals Grounds for appeal

672.72 (1) Any party may appeal against a disposition made by a court or a Review Board, or a placement decision made by a Review Board, to the court of appeal of the province where the disposition or placement decision was made on any ground of appeal that raises a question of law or fact alone or of mixed law and fact.

Limitation period for appeal

(2) An appellant shall give notice of an appeal against a disposition or placement decision in the manner directed by the applicable rules of court within fifteen days after the day on which the appellant receives a copy of the placement decision or disposition and the reasons for it or within any further time that the court of appeal, or a judge of that court, may direct.

Appeal to be heard expeditiously

(3) The court of appeal shall hear an appeal against a disposition or placement decision in or out of the regular sessions of the court, as soon as practicable after the day on which the notice of appeal is given, within any period that may be fixed by the court of appeal, a judge of the court of appeal, or the rules of that court.
1991, c. 43, s. 4; 1997, c. 18, s. 88.

– CCC

Appeal on the transcript

672.73 (1) An appeal against a disposition by a court or Review Board or placement decision by a Review Board shall be based on a transcript of the proceedings and any other evidence that the court of appeal finds necessary to admit in the interests of justice.

Additional evidence

(2) For the purpose of admitting additional evidence under this section, subsections 683(1) [*powers of court of appeal – interests of justice*] and (2) [*parties entitled to adduce evidence and be heard*] apply, with such modifications as the circumstances require.

1991, c. 43, s. 4.

[*annotation(s) added*]

– CCC

Notice of Appeal

Notice of appeal to be given to court or Review Board

672.74 (1) The clerk of the court of appeal, on receiving notice of an appeal against a disposition or placement decision, shall notify the court or Review Board that made the disposition.

Transmission of records to court of appeal

(2) On receipt of notification under subsection (1) [*notice of appeal to be given to court or Review Board*], the court or Review Board shall transmit to the court of appeal, before the time that the appeal is to be heard or within any time that the court of appeal or a judge of that court may direct,

- (a) a copy of the disposition or placement decision;
- (b) all exhibits filed with the court or Review Board or a copy of them; and
- (c) all other material in its possession respecting the hearing.

Record to be kept by court of appeal

(3) The clerk of the court of appeal shall keep the material referred to in subsection (2) [*transmission of records to court of appeal*] with the records of the court of appeal.

Appellant to provide transcript of evidence

(4) Unless it is contrary to an order of the court of appeal or any applicable rules of court, the appellant shall provide the court of appeal and the respondent with a transcript of any evidence taken before a court or Review Board by a stenographer or a sound recording apparatus, certified by the stenographer or in accordance with subsection 540(6) [*transcription of record taken by sound recording apparatus*], as the case may be.

Saving

(5) An appeal shall not be dismissed by the court of appeal by reason only that a person other than the appellant failed to comply with this section.

1991, c. 43, s. 4; 2005, c. 22, s. 42(F).

[*annotation(s) added*]

– CCC

Suspension of Disposition

Automatic suspension of certain dispositions

672.75 The filing of a notice of appeal against a disposition made under section 672.58 [*treatment disposition*] suspends the application of the disposition pending the determination of the appeal.

1991, c. 43, s. 4; 2014, c. 6, s. 13.

[*annotation(s) added*]

– CCC

Application respecting dispositions under appeal

672.76 (1) Any party who gives notice to each of the other parties, within the time and in the manner prescribed, may apply to a judge of the court of appeal for an order under this section respecting a disposition or placement decision that is under appeal.

Discretionary powers respecting suspension of dispositions

(2) On receipt of an application made pursuant to subsection (1) [*application respecting dispositions under appeal*] a judge of the court of appeal may, if satisfied that the mental condition of the accused justifies it,

(a) by order, direct that a disposition made under section 672.58 [*treatment disposition*] be carried out pending the determination of the appeal, despite section 672.75 [*automatic suspension of certain dispositions*];

(a.1) by order, direct that a disposition made under paragraph 672.54(a) [*absolute discharge – review board*] be suspended pending the determination of the appeal;

(b) by order, direct that the application of a placement decision or a disposition made under paragraph 672.54(b) [*conditional discharge – review*]

board] or (c) [*order of detention to a hospital*] be suspended pending the determination of the appeal;
(c) where the application of a disposition is suspended pursuant to section 672.75 [*automatic suspension of certain dispositions*] or paragraph (b) [*discretionary powers respecting suspension of dispositions – suspending placement*], make any other disposition in respect of the accused that is appropriate in the circumstances, other than a disposition under paragraph 672.54(a) [*absolute discharge – review board*] or section 672.58 [*treatment disposition*], pending the determination of the appeal;
(d) where the application of a placement decision is suspended pursuant to an order made under paragraph (b), make any other placement decision that is appropriate in the circumstances, pending the determination of the appeal; and
(e) give any directions that the judge considers necessary for expediting the appeal.

Copy of order to parties

(3) A judge of the court of appeal who makes an order under this section shall send a copy of the order to each of the parties without delay.

1991, c. 43, s. 4; 2014, c. 6, s. 14.

[*annotation(s) added*]

– CCC

Effect of suspension of disposition

672.77 Where the application of a disposition or placement decision appealed from is suspended, a disposition, or in the absence of a disposition any order for the interim release or detention of the accused, that was in effect immediately before the disposition or placement decision appealed from took effect, shall be in force pending the determination of the appeal, subject to any disposition made under paragraph 672.76(2)(c) [*discretionary powers respecting suspension of dispositions – xxx*].

1991, c. 43, s. 4.

[*annotation(s) added*]

– CCC

Powers of Court of Appeal

Powers of court of appeal

672.78 (1) The court of appeal may allow an appeal against a disposition or placement decision and set aside an order made by the court or Review Board, where the court of appeal is of the opinion that

- (a) it is unreasonable or cannot be supported by the evidence;
- (b) it is based on a wrong decision on a question of law; or
- (c) there was a miscarriage of justice.

Idem

(2) The court of appeal may dismiss an appeal against a disposition or placement decision where the court is of the opinion

- (a) that paragraphs (1)(a) [*powers of court of appeal – set aside unreasonable order*], (b) [*powers of court of appeal – set aside error of law*] and (c) [*powers of court of appeal – set aside miscarriage of justice*] do not apply; or
- (b) that paragraph (1)(b) [*powers of court of appeal – set aside error of law*] may apply, but the court finds that no substantial wrong or miscarriage of justice has occurred.

Orders that the court may make

(3) Where the court of appeal allows an appeal against a disposition or placement decision, it may

- (a) make any disposition under section 672.54 [*available dispositions*] or any placement decision that the Review Board could have made;
- (b) refer the matter back to the court or Review Board for re-hearing, in whole or in part, in accordance with any directions that the court of appeal considers appropriate; or
- (c) make any other order that justice requires.

1991, c. 43, s. 4; 1997, c. 18, s. 89.

[*annotation(s) added*]

672.79 [Repealed, 2005, c. 22, s. 26]

672.8 [Repealed, 2005, c. 22, s. 26]

– CCC

Review Board

Review Board Powers

Order Assessment

Review Board may order assessment

672.121 The Review Board that has jurisdiction over an accused found not criminally responsible on account of mental disorder or unfit to stand trial may order an assessment of the mental condition of the accused of its own motion or on application of the prosecutor or the accused, if it has reasonable grounds to believe that such evidence is necessary to

- (a) make a recommendation to the court under subsection 672.851(1) [*recommendation by review board – requirements*];
- (b) make a disposition under section 672.54 [*available dispositions*] in one of the following circumstances:
 - (i) no assessment report on the mental condition of the accused is available,
 - (ii) no assessment of the mental condition of the accused has been conducted in the last twelve months, or
 - (iii) the accused has been transferred from another province under section 672.86 [*interprovincial transfers*]; or
- (c) determine whether to refer to the court for review under subsection 672.84(1) [*review of finding – high-risk accused – requirements*] a finding that an accused is a high-risk accused.

2005, c. 22, s. 3; 2014, c. 6, s. 4.
[*annotation(s) added*]

– CCC

Composition of Board

Review Boards Review Boards to be established

672.38 (1) A Review Board shall be established or designated for each province to make or review dispositions concerning any accused in respect of whom a verdict of not criminally responsible by reason of mental disorder or unfit to stand trial is

rendered, and shall consist of not fewer than five members appointed by the lieutenant governor in council of the province.

Treated as provincial Board

(2) A Review Board shall be treated as having been established under the laws of the province.

Personal liability

(3) No member of a Review Board is personally liable for any act done in good faith in the exercise of the member's powers or the performance of the member's duties and functions or for any default or neglect in good faith in the exercise of those powers or the performance of those duties and functions.

1991, c. 43, s. 4; 1997, c. 18, s. 83.

– CCC

Right to Silence

The board has no authority to compel an accused to testify.^[1]

Attendance

The board may compel the accused to attend any hearing that concerns him.^[2]

Members of Review Board

672.39 A Review Board must have at least one member who is entitled under the laws of a province to practise psychiatry and, where only one member is so entitled, at least one other member must have training and experience in the field of mental health, and be entitled under the laws of a province to practise medicine or psychology.

1991, c. 43, s. 4.

– CCC

Chairperson of a Review Board

672.4 (1) Subject to subsection (2) [*chairperson of Review Board – transitional*], the chairperson of a Review Board shall be a judge of the Federal Court or of a superior, district or county court of a province, or a person who is qualified for appointment to, or has retired from, such a judicial office.

Transitional

(2) Where the chairperson of a Review Board that was established before the coming into force of subsection (1) [*chairperson of Review Board*] is not a judge or other person referred to therein, the chairperson may continue to act until the expiration of his or her term of office if at least one other member of the Review Board is a judge or other person referred to in subsection (1) [*chairperson of Review Board*] or is a member of the bar of the province.

1991, c. 43, s. 4.

– CCC

Quorum of Review Board

672.41 (1) Subject to subsection (2) [*quorum of Review Board – transitional*], the quorum of a Review Board is constituted by the chairperson, a member who is entitled under the laws of a province to practise psychiatry, and any other member.

Transitional

(2) Where the chairperson of a Review Board that was established before the coming into force of this section is not a judge or other person referred to in subsection 672.4(1) [*chairperson of Review Board*], the quorum of the Review Board is constituted by the chairperson, a member who is entitled under the laws of a province to practise psychiatry, and a member who is a person referred to in that subsection or a member of the bar of the province.

1991, c. 43, s. 4.

– CCC

Majority vote

672.42 A decision of a majority of the members present and voting is the decision of a Review Board.

1991, c. 43, s. 4.

– CCC

1. *New Brunswick Review Board v Boucher*,
1999 CanLII 14744 (NB CA), 141 CCC (3d)
221, per Drapeau JA (3:0)

2. *New Brunswick Review Board v Boucher*,
ibid.

Powers and Rules of Board

Powers of Review Boards

672.43 At a hearing held by a Review Board to make a disposition or review a disposition in respect of an accused, the chairperson has all the powers that are conferred by sections 4 and 5 of the Inquiries Act on persons appointed as commissioners under Part I of that Act.

1991, c. 43, s. 4; 2005, c. 22, s. 42(F).

– CCC

Compel Testimony

The authority to compel testimony under s. 672.43 does not permit the board to compel the accused to testify.^[1]

Rules of Review Board

672.44 (1) A Review Board may, subject to the approval of the lieutenant governor in council of the province, make rules providing for the practice and procedure before the Review Board.

Application and publication of rules

(2) The rules made by a Review Board under subsection (1) [*power to make rules for review board*] apply to any proceeding within its jurisdiction, and shall be published in the Canada Gazette.

Regulations

(3) Notwithstanding anything in this section, the Governor in Council may make regulations to provide for the practice and procedure before Review Boards, in particular to make the rules of Review Boards uniform, and all regulations made under this subsection prevail over any rules made under subsection (1) [*power to make rules for review board*].

1991, c. 43, s. 4.

– CCC

1. Boucher v. New Brunswick (Review Board)
(1999), 141 CCC (3d) 221, 218 N.B.R. (2d)
194 (C.A.) (complete citation pending)

W(C) v Manitoba (Mental Health Review Board), 1994 CanLII 16690 (MB CA), 23 CRR (2d) 376, per Twaddle JA, at para 35

Regulations

Regulations

672.95 The Governor in Council may make regulations

- (a) prescribing anything that may be prescribed under this Part; and
- (b) generally to carry out the purposes and provisions of this Part.

1991, c. 43, s. 4.

– CCC

Recording of Proceedings

Record of proceedings

672.52 (1) The court or Review Board shall cause a record of the proceedings of its disposition hearings to be kept, and include in the record any assessment report submitted.

Transmittal of transcript to Review Board

(2) If a court holds a disposition hearing under subsection 672.45(1) [*disposition hearings – power to start hearing*], whether or not it makes a disposition, it shall send without delay to the Review Board that has jurisdiction in respect of the matter, in original or copied form, a transcript of the hearing, any other document or information related to the hearing, and all exhibits filed with it, if the transcript, document, information or exhibits are in its possession.

Reasons for disposition and copies to be provided

(3) The court or Review Board shall state its reasons for making a disposition in the record of the proceedings, and shall provide every party with a copy of the disposition and those reasons.

1991, c. 43, s. 4; 2005, c. 22, ss. 19, 42(F).

– CCC

Section 672.52(3) requires the board to give reasons for their decisions.^[1] A mere conclusory statement adopting the recommendation of the treatment team without explanation of what test was applied is not sufficient.^[2]

The sufficiency of reasons is the same as judicial decisions. The reasons should be "read as a whole, in the context of the evidence, the issues and the arguments at trial, together with 'an appreciation of the purposes or functions for which they are delivered'".^[3] The question is whether "when read in light of the evidence before it and the nature of its statutory task, the Tribunal's reasons adequately explain the bases of its decision".^[4]

Proceedings not invalid

672.53 Any procedural irregularity in relation to a disposition hearing does not affect the validity of the hearing unless it causes the accused substantial prejudice.

1991, c. 43, s. 4.

– CCC

1. *R v Thome*, 2018 ABCA 385 (CanLII), *per curiam*, at paras 18 to 19
R v Sehmbi, 2019 ABCA 117 (CanLII), at para 20
2. *R v Rackel*, 2019 ABCA 170 (CanLII), *per curiam*, at para 5 ("Merely reciting the recommendations of the treatment team, and

- then accepting them, will not be sufficient if it is unclear if the team applied the right legal test, or whether the Board has actually turned its mind to that test. A conclusory statement that the appellant represents a significant risk to the safety of the public is insufficient.")
3. *Sehmbi*, *supra*, at para 20

See Also

- [Review Board Disposition Hearings](#)

Review Board Detention and Bail

< [Procedure and Practice](#) < [Mental Illness](#) < [Review Board](#)

Arrest and Release

Enforcement of Orders and Regulations Execution of warrant anywhere in Canada

672.9 Any warrant or process issued in relation to an assessment order or disposition made in respect of an accused may be executed or served in any place in Canada outside the province where the order or disposition was made as if it had been issued in that province.

1991, c. 43, s. 4; 1997, c. 18, s. 91; 2005, c. 22, s. 35(F).

– CCC

Arrest without warrant for contravention of disposition

672.91 A peace officer may arrest an accused without a warrant at any place in Canada if the peace officer has reasonable grounds to believe that the accused has contravened or wilfully failed to comply with the assessment order or disposition or any condition of it, or is about to do so.

1991, c. 43, s. 4; 2005, c. 22, s. 36.

– CCC

Release or delivery of accused subject to paragraph 672.54(b) disposition order

672.92 (1) If a peace officer arrests an accused under section 672.91 [*arrest without warrant for contravention of disposition*] who is subject to a disposition made under paragraph 672.54(b) [*conditional discharge – review board*] or an assessment order, the peace officer, as soon as practicable, may release the accused from custody and

- (a) issue a summons or appearance notice compelling the accused's appearance before a justice; and
- (b) deliver the accused to the place specified in the disposition or assessment order.

No release

(2) A peace officer shall not release an accused under subsection (1) [*release or delivery of accused subject to paragraph 672.54(b) disposition order*] if the peace officer believes, on reasonable grounds,

- (a) that it is necessary in the public interest that the accused be detained in custody having regard to all the circumstances, including the need to
 - (i) establish the identity of the accused,
 - (ii) establish the terms and conditions of a disposition made under section 672.54 [*available dispositions*] or of an assessment order,
 - (iii) prevent the commission of an offence, or
 - (iv) prevent the accused from contravening or failing to comply with the disposition or assessment order;
- (b) that the accused is subject to a disposition or an assessment order of a court, or Review Board, of another province; or
- (c) that, if the accused is released from custody, the accused will fail to attend, as required, before a justice.

Accused to be brought before justice

(3) If a peace officer does not release the accused, the accused shall be taken before a justice having jurisdiction in the territorial division in which the accused is arrested, without unreasonable delay and in any event within twenty-four hours after the arrest.

Accused subject to paragraph 672.54(c) disposition order

(4) If a peace officer arrests an accused under section 672.91 [*arrest without warrant for contravention of disposition*] who is subject to a disposition under paragraph 672.54(c) [*order of detention to a hospital*], the accused shall be taken before a justice having jurisdiction in the territorial division in which the accused is arrested without unreasonable delay and, in any event, within twenty-four hours.

Justice not available

(5) If a justice described in subsection (3) [*accused to be brought before justice*] or (4) [*accused subject to paragraph 672.54(c) disposition order*] is not available within twenty-four hours after the arrest, the accused shall be taken before a

justice as soon as practicable.
1991, c. 43, s. 4; 2005, c. 22, s. 36.
[*annotation(s) added*]

– CCC

Where justice to release accused

672.93 (1) A justice shall release an accused who is brought before the justice under section 672.92 [*release or detention of person subject to s. 672.54(b) disposition order*] unless the justice is satisfied that there are reasonable grounds to believe that the accused has contravened or failed to comply with a disposition or an assessment order.

Notice

(1.1) If the justice releases the accused, notice shall be given to the court or Review Board, as the case may be, that made the disposition or assessment order.

Order of justice pending decision of Review Board

(2) If the justice is satisfied that there are reasonable grounds to believe that the accused has contravened or failed to comply with a disposition or an assessment order, the justice, pending a hearing of a Review Board with respect to the disposition or a hearing of a court or Review Board with respect to the assessment order, may make an order that is appropriate in the circumstances in relation to the accused, including an order that the accused be returned to a place that is specified in the disposition or assessment order. If the justice makes an order under this subsection, notice shall be given to the court or Review Board, as the case may be, that made the disposition or assessment order.

1991, c. 43, s. 4; 2005, c. 22, s. 36.

– CCC

Powers of Review Board

672.94 Where a Review Board receives a notice given under subsection 672.93(1.1) [*where justice to release accused – notice*] or (2) [*order of justice pending decision of review board*], it may exercise the powers and shall perform the duties mentioned in sections 672.5 [*procedure at disposition hearing*] and 672.81 to

672.83 [*review and appeal of dispositions and orders*] as if the Review Board were reviewing a disposition.

1991, c. 43, s. 4; 2005, c. 22, s. 36.

– CCC

Attendance

Under s. 672.85 authorizes the Review Board Chair to compel the attendance of an NCR accused person.^[1] It does not permit the Chair to put any conditions on the attendance order.^[2]

Power to Compel Appearance Bringing accused before Review Board

672.85 For the purpose of bringing the accused in respect of whom a hearing is to be held before the Review Board, including in circumstances in which the accused did not attend a previous hearing in contravention of a summons or warrant, the chairperson

- (a) shall order the person having custody of the accused to bring the accused to the hearing at the time and place fixed for it; or
- (b) may, if the accused is not in custody, issue a summons or warrant to compel the accused to appear at the hearing at the time and place fixed for it.

1991, c. 43, s. 4; 2005, c. 22, ss. 32, 42(F).

– CCC

1. *R v Carlyle*, 2019 YKSC 38 (CanLII), per E.M. Campbell J, at para 216 (“Section 672.85 grants the Chairperson of a review board the power to compel the attendance of a NCR accused person to a hearing at the time and place fixed by the YRB. Section 672.85 does

not expressly give the Chairperson power to attach conditions to that order other than the time and place of the hearing.)

2. *Carlyle*, *ibid.*

Interprovincial Transfers

Interprovincial Transfers

Interprovincial transfers

672.86 (1) An accused who is detained in custody or directed to attend at a hospital pursuant to a disposition made by a court or Review Board under paragraph 672.54(c) [*order of detention to a hospital*] or a court under section 672.58 [*treatment disposition*] may be transferred to any other place in Canada where

- (a) the Review Board of the province where the accused is detained or directed to attend recommends a transfer for the purpose of the reintegration of the accused into society or the recovery, treatment or custody of the accused; and
- (b) the Attorney General of the province to which the accused is being transferred, or an officer authorized by that Attorney General, and the Attorney General of the province from which the accused is being transferred, or an officer authorized by that Attorney General, give their consent.

Transfer where accused in custody

(2) Where an accused who is detained in custody is to be transferred, an officer authorized by the Attorney General of the province where the accused is being detained shall sign a warrant specifying the place in Canada to which the accused is to be transferred.

Transfer if accused not in custody

(2.1) An accused who is not detained in custody may be transferred to any other place in Canada where

- (a) the Review Board of the province from which the accused is being transferred recommends a transfer for the purpose of the reintegration of the accused into society or the recovery or treatment of the accused; and
- (b) the Attorney General of the province to which the accused is being transferred, or an officer authorized by that Attorney General, and the Attorney General of the province from which the accused is being transferred, or an officer authorized by that Attorney General, give their consent.

Order

(3) Where an accused is being transferred in accordance with subsection (2.1) [*interprovincial transfers – transfer if accused not in custody*], the Review Board of the province from which the accused is being transferred shall, by order,

- (a) direct that the accused be taken into custody and transferred pursuant to a warrant under subsection (2) [*interprovincial transfers – accused in*

custody]; or

(b) direct that the accused attend at a specified place in Canada, subject to any conditions that the Review Board of the province to or from which the accused is being transferred considers appropriate.

1991, c. 43, s. 4; 2005, c. 22, s. 34.

– CCC

Delivery and detention of accused

672.87 A warrant described in subsection 672.86(2) [*interprovincial transfers – accused in custody*] is sufficient authority

(a) for any person who is responsible for the custody of an accused to have the accused taken into custody and conveyed to the person in charge of the place specified in the warrant; and

(b) for the person specified in the warrant to detain the accused in accordance with any disposition made in respect of the accused under paragraph 672.54(c) [*order of detention to a hospital*].

1991, c. 43, s. 4.

– CCC

Review Board of receiving province

672.88 (1) The Review Board of the province to which an accused is transferred under section 672.86 [*interprovincial transfers*] has exclusive jurisdiction over the accused, and may exercise the powers and shall perform the duties mentioned in sections 672.5 [*procedure at disposition hearing*] and 672.81 to 672.84 [*review and appeal of dispositions and orders*] as if that Review Board had made the disposition in respect of the accused.

Agreement

(2) Notwithstanding subsection (1) [*review board of receiving province – powers*], the Attorney General of the province to which an accused is transferred may enter into an agreement subject to this Act with the Attorney General of the province from which the accused is transferred, enabling the Review Board of that province to exercise the powers and perform the duties referred to in subsection

(1) [*review board of receiving province – powers*] in respect of the accused, in the circumstances and subject to the terms and conditions set out in the agreement.
1991, c. 43, s. 4; 2014, c. 6, s. 17.

– CCC

Other interprovincial transfers

672.89 (1) If an accused who is detained in custody under a disposition made by a Review Board is transferred to another province otherwise than under section 672.86 [*interprovincial transfers*], the Review Board of the province from which the accused is transferred has exclusive jurisdiction over the accused and may continue to exercise the powers and shall continue to perform the duties mentioned in sections 672.5 [*procedure at disposition hearing*] and 672.81 to 672.84 [*review and appeal of dispositions and orders*].

Agreement

(2) Notwithstanding subsection (1) [*other interprovincial transfers – powers*], the Attorneys General of the provinces to and from which the accused is to be transferred as described in that subsection may, after the transfer is made, enter into an agreement subject to this Act, enabling the Review Board of the province to which an accused is transferred to exercise the powers and perform the duties referred to in subsection (1) [*other interprovincial transfers – powers*] in respect of the accused, subject to the terms and conditions and in the circumstances set out in the agreement.

1991, c. 43, s. 4; 2014, c. 6, s. 18.

– CCC

Review Board Publication Bans

< [Procedure and Practice](#) < [Mental Illness](#) < [Review Board](#)

Legislation

Order restricting publication — sexual offences

672.501 (1) Where a Review Board holds a hearing referred to in section 672.5 [*procedure at disposition hearing*] in respect of an accused who has been declared not criminally responsible on account of mental disorder or unfit to stand trial for an offence referred to in subsection 486.4(1) [*order restricting publication – sexual offences*], the Review Board shall make an order directing that any information that could identify a victim, or a witness who is under the age of eighteen years, shall not be published in any document or broadcast or transmitted in any way.

Order restricting publication — child pornography

(2) Where a Review Board holds a hearing referred to in section 672.5 [*procedure at disposition hearing*] in respect of an accused who has been declared not criminally responsible on account of mental disorder or unfit to stand trial for an offence referred to in section 163.1 [*child pornography*], a Review Board shall make an order directing that any information that could identify a witness who is under the age of eighteen years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of section 163.1 [*child pornography*], shall not be published in any document or broadcast or transmitted in any way.

Order restricting publication — other offences

(3) Where a Review Board holds a hearing referred to in section 672.5 [*procedure at disposition hearing*] in respect of an accused who has been declared not criminally responsible on account of mental disorder or unfit to stand trial for an offence other than the offences referred to in subsection (1) [*order restricting publication – sexual offences*] or (2) [*order restricting publication – child pornography*], on application of the prosecutor, a victim or a witness, the Review Board may make an order directing that any information that could identify the victim or witness shall not be published in any document or broadcast or transmitted in any way if the Review Board is satisfied that the order is necessary for the proper administration of justice.

Order restricting publication

(4) An order made under any of subsections (1) to (3) [*order restricting publication – various offences*] does not apply in respect of the disclosure of information in the course of the administration of justice if it is not the purpose of the disclosure to make the information known in the community.

Application and notice

(5) An applicant for an order under subsection (3) [*order restricting publication – other offences*] shall

- (a) apply in writing to the Review Board; and
- (b) provide notice of the application to the prosecutor, the accused and any other person affected by the order that the Review Board specifies.

Grounds

(6) An applicant for an order under subsection (3) [*order restricting publication – other offences*] shall set out the grounds on which the applicant relies to establish that the order is necessary for the proper administration of justice.

Hearing may be held

(7) The Review Board may hold a hearing to determine whether an order under subsection (3) [*order restricting publication – other offences*] should be made, and the hearing may be in private.

Factors to be considered

(8) In determining whether to make an order under subsection (3) [*order restricting publication – other offences*], the Review Board shall consider

- (a) the right to a fair and public hearing;
- (b) whether there is a real and substantial risk that the victim or witness would suffer significant harm if their identity were disclosed;
- (c) whether the victim or witness needs the order for their security or to protect them from intimidation or retaliation;
- (d) society's interest in encouraging the reporting of offences and the participation of victims and witnesses in the criminal justice process;
- (e) whether effective alternatives are available to protect the identity of the victim or witness;
- (f) the salutary and deleterious effects of the proposed order;
- (g) the impact of the proposed order on the freedom of expression of those affected by it; and
- (h) any other factor that the Review Board considers relevant.

Conditions

(9) An order made under subsection (3) [*order restricting publication – other offences*] may be subject to any conditions that the Review Board thinks fit.

Publication of application prohibited

(10) Unless the Review Board refuses to make an order under subsection (3) [*order restricting publication – other offences*], no person shall publish in any document or broadcast or transmit in any way

- (a) the contents of an application;
- (b) any evidence taken, information given or submissions made at a hearing under subsection (7) [*order restricting publication – hearing may be held*]; or
- (c) any other information that could identify the person to whom the application relates as a victim or witness in the proceedings.

Offence

(11) Every person who fails to comply with an order made under any of subsections (1) to (3) [*order restricting publication – various offences*] is guilty of an offence punishable on summary conviction.

Application of order

(12) For greater certainty, an order referred to in subsection (11) [*order restricting publication – breach of order*] also prohibits, in relation to proceedings taken against any person who fails to comply with the order, the publication in any document or the broadcasting or transmission in any way of information that could identify a victim or witness whose identity is protected by the order.

2005, c. 22, ss. 17, 64.

[*annotation(s) added*]

– CCC

Definition of disposition information

672.51 (1) In this section, "**disposition information**" means all or part of an assessment report submitted to the court or Review Board and any other written information before the court or Review Board about the accused that is relevant to making or reviewing a disposition.

Disposition information to be made available to parties

(2) Subject to this section, all disposition information shall be made available for inspection by, and the court or Review Board shall provide a copy of it to, each party and any counsel representing the accused.

Exception where disclosure dangerous to any person

(3) The court or Review Board shall withhold some or all of the disposition information from an accused where it is satisfied, on the basis of that information and the evidence or report of the medical practitioner responsible for the assessment or treatment of the accused, that disclosure of the information would be likely to endanger the life or safety of another person or would seriously impair the treatment or recovery of the accused.

Idem

(4) Notwithstanding subsection (3) [*exception where disclosure dangerous to any person*], the court or Review Board may release some or all of the disposition information to an accused where the interests of justice make disclosure essential in its opinion.

Exception where disclosure unnecessary or prejudicial

(5) The court or Review Board shall withhold disposition information from a party other than the accused or an Attorney General, where disclosure to that party, in the opinion of the court or Review Board, is not necessary to the proceeding and may be prejudicial to the accused.

Exclusion of certain persons from hearing

(6) A court or Review Board that withholds disposition information from the accused or any other party pursuant to subsection (3) [*exception where disclosure dangerous to any person*] or (5) [*exception where disclosure unnecessary or prejudicial*] shall exclude the accused or the other party, as the case may be, from the hearing during

- (a) the oral presentation of that disposition information; or
- (b) the questioning by the court or Review Board or the cross-examination of any person concerning that disposition information.

Prohibition of disclosure in certain cases

(7) No disposition information shall be made available for inspection or disclosed to any person who is not a party to the proceedings

- (a) where the disposition information has been withheld from the accused or any other party pursuant to subsection (3) [*exception where disclosure dangerous to any person*] or (5) [*exception where disclosure unnecessary or prejudicial*]; or
- (b) where the court or Review Board is of the opinion that disclosure of the disposition information would be seriously prejudicial to the accused and that, in the circumstances, protection of the accused takes precedence over the public interest in disclosure.

Idem

(8) No part of the record of the proceedings in respect of which the accused was excluded pursuant to subparagraph 672.5(10)(b)(ii) [*removal or absence of accused – removal for safety*] or (iii) [*removal or absence of accused – removal for safety, determination hearing*] shall be made available for inspection to the accused or to any person who is not a party to the proceedings.

Information to be made available to specified persons

(9) Notwithstanding subsections (7) [*prohibition of disclosure in certain cases*] and (8) [*proceedings without accused not disclosable*], the court or Review Board may make any disposition information, or a copy of it, available on request to any person or member of a class of persons

- (a) that has a valid interest in the information for research or statistical purposes, where the court or Review Board is satisfied that disclosure is in the public interest;
- (b) that has a valid interest in the information for the purposes of the proper administration of justice; or
- (c) that the accused requests or authorizes in writing to inspect it, where the court or Review Board is satisfied that the person will not disclose or give to the accused a copy of any disposition information withheld from the accused pursuant to subsection (3) [*exception where disclosure dangerous to any person*], or of any part of the record of proceedings referred to in subsection (8) [*proceedings without accused not disclosable*], or that the reasons for withholding that information from the accused no longer exist.

Disclosure for research or statistical purposes

(10) A person to whom the court or Review Board makes disposition information available under paragraph (9)(a) [*copy of disposition order for statistical or research purposes*] may disclose it for research or statistical purposes, but not in any form or manner that could reasonably be expected to identify any person to whom it relates.

Prohibition on publication

(11) No person shall publish in any document or broadcast or transmit in any way

- (a) any disposition information that is prohibited from being disclosed pursuant to subsection (7) [*prohibition of disclosure in certain cases*]; or
- (b) any part of the record of the proceedings in respect of which the accused was excluded pursuant to subparagraph 672.5(10)(b)(ii) [*removal or absence of accused – removal for safety*] or (iii) [*removal or absence of accused – removal for safety, determination hearing*].

Powers of courts not limited

(12) Except as otherwise provided in this section, nothing in this section limits the powers that a court may exercise apart from this section.

1991, c. 43, s. 4; 1997, c. 18, s. 85; 2005, c. 22, ss. 18, 42(F), c. 32, s. 22; 2014, c. 6, s. 8.

[*annotation(s) added*]

– CCC

See Also

- Statutory Publication Ban on Court Proceedings

Dual Status Offenders

< Procedure and Practice < Mental Illness < Review Board

Legislation

**PART XX.1
Mental Disorder
Interpretation
Definitions**

672.1 (1) In this Part [*Pt. XX.1 – Mental Disorder (s. 672.1 to 672.95)*],

...

"dual status offender" means an offender who is subject to a sentence of imprisonment in respect of one offence and a custodial disposition under paragraph 672.54(c) [*order of detention to a hospital*] in respect of another offence; (contrevenant à double statut)

...

[*omitted (2)*]

1991, c. 43, s. 4; 2005, c. 22, s. 1; 2014, c. 6, s. 2.

[*annotation(s) added*]

– CCC

"Dual Status" offenders are those who are subject to incarceration while at the same time and being detained by the Review Board.

Dual Status Offenders Where court imposes a sentence

672.67 (1) Where a court imposes a sentence of imprisonment on an offender who is, or thereby becomes, a dual status offender, that sentence takes precedence over any prior custodial disposition, pending any placement decision by the Review Board.

Custodial disposition by court

(2) Where a court imposes a custodial disposition on an accused who is, or thereby becomes, a dual status offender, the disposition takes precedence over any prior sentence of imprisonment pending any placement decision by the Review Board.

1991, c. 43, s. 4; 1995, c. 22, s. 10; 2005, c. 22, s. 25.

– CCC

The consequence of s. 672.67, is that a sentence made for a criminal offence before a judge or justice will take precedence over any disposition that the Review Board can impose.

Definition of Minister

672.68 (1) In this section and in sections 672.69 [*Minister and Review Board access*] and 672.7 [*notice of discharge and warrant of committal*], Minister means the Minister of Public Safety and Emergency Preparedness or the Minister responsible for correctional services of the province to which a dual status offender may be sent pursuant to a sentence of imprisonment.

Placement decision by Review Board

(2) On application by the Minister or of its own motion, where the Review Board is of the opinion that the place of custody of a dual status offender pursuant to a sentence or custodial disposition made by the court is inappropriate to meet the mental health needs of the offender or to safeguard the well-being of other persons, the Review Board shall, after giving the offender and the Minister reasonable notice, decide whether to place the offender in custody in a hospital or in a prison.

Idem

(3) In making a placement decision, the Review Board shall take into consideration

- (a) the need to protect the public from dangerous persons;
- (b) the treatment needs of the offender and the availability of suitable treatment resources to address those needs;
- (c) whether the offender would consent to or is a suitable candidate for treatment;
- (d) any submissions made to the Review Board by the offender or any other party to the proceedings and any assessment report submitted in writing to the Review Board; and
- (e) any other factors that the Review Board considers relevant.

Time for making placement decision

(4) The Review Board shall make its placement decision as soon as practicable but not later than thirty days after receiving an application from, or giving notice to, the Minister under subsection (2) [*placement decision by Review Board*], unless the Review Board and the Minister agree to a longer period not exceeding sixty days.

Effects of placement decision

(5) Where the offender is detained in a prison pursuant to the placement decision of the Review Board, the Minister is responsible for the supervision and control of the offender.

1991, c. 43, s. 4; 2005, c. 10, s. 34.

[*annotation(s) added*]

– CCC

Minister and Review Board entitled to access

672.69 (1) The Minister and the Review Board are entitled to have access to any dual status offender in respect of whom a placement decision has been made, for the purpose of conducting a review of the sentence or disposition imposed.

Review of placement decisions

(2) The Review Board shall hold a hearing as soon as is practicable to review a placement decision, on application by the Minister or the dual status offender who is the subject of the decision, where the Review Board is satisfied that a significant change in circumstances requires it.

Idem

(3) The Review Board may of its own motion hold a hearing to review a placement decision after giving the Minister and the dual status offender who is subject to it reasonable notice.

Minister shall be a party

(4) The Minister shall be a party in any proceedings relating to the placement of a dual status offender.

1991, c. 43, s. 4; 2005, c. 22, s. 42(F).

– CCC

Notice of discharge

672.7 (1) Where the Minister or the Review Board intends to discharge a dual status offender from custody, each shall give written notice to the other indicating the time, place and conditions of the discharge.

Warrant of committal

(2) A Review Board that makes a placement decision shall issue a warrant of committal of the accused, which may be in Form 50 [*forms*].

1991, c. 43, s. 4.

[*annotation(s) added*]

– CCC

Detention to count as service of term

672.71 (1) Each day of detention of a dual status offender pursuant to a placement decision or a custodial disposition shall be treated as a day of service of the term of imprisonment, and the accused shall be deemed, for all purposes, to be lawfully confined in a prison.

Disposition takes precedence over probation orders

(2) When a dual status offender is convicted or discharged on the conditions set out in a probation order made under section 730 [*order of discharge*] in respect of an offence but is not sentenced to a term of imprisonment, the custodial disposition in respect of the accused comes into force and, notwithstanding subsection 732.2(1) [*probation order – coming into force*], takes precedence over any probation order made in respect of the offence.

1991, c. 43, s. 4; 1995, c. 22, s. 10.

[*annotation(s) added*]

– CCC

Application For High Risk Designation

This page was last substantively updated or reviewed *February 2020*. (Rev. # 79480)

< [Procedure and Practice](#) < [Mental Illness](#)

Legislation

High-Risk Accused Finding

672.64 (1) On application made by the prosecutor before any disposition to discharge an accused absolutely, the court may, at the conclusion of a hearing, find the accused to be a high-risk accused if the accused has been found not criminally responsible on account of mental disorder for a serious personal injury offence, as defined in subsection 672.81(1.3) [*review of dispositions – definition of serious personal injury offence*], the accused was 18 years of age or more at the time of the commission of the offence and

- (a) the court is satisfied that there is a substantial likelihood that the accused will use violence that could endanger the life or safety of another person; or
- (b) the court is of the opinion that the acts that constitute the offence were of such a brutal nature as to indicate a risk of grave physical or psychological harm to another person.

Factors to consider

(2) In deciding whether to find that the accused is a high-risk accused, the court shall consider all relevant evidence, including

- (a) the nature and circumstances of the offence;
- (b) any pattern of repetitive behaviour of which the offence forms a part;
- (c) the accused's current mental condition;
- (d) the past and expected course of the accused's treatment, including the accused's willingness to follow treatment; and
- (e) the opinions of experts who have examined the accused.

Detention of high-risk accused

(3) If the court finds the accused to be a high-risk accused, the court shall make a disposition under paragraph 672.54(c) [*order of detention to a hospital*], but the accused's detention must not be subject to any condition that would permit the accused to be absent from the hospital unless

- (a) it is appropriate, in the opinion of the person in charge of the hospital, for the accused to be absent from the hospital for medical reasons or for any purpose that is necessary for the accused's treatment, if the accused is escorted by a person who is authorized by the person in charge of the hospital; and
- (b) a structured plan has been prepared to address any risk related to the accused's absence and, as a result, that absence will not present an undue risk to the public.

Appeal

(4) A decision not to find an accused to be a high-risk accused is deemed to be a disposition for the purpose of sections 672.72 to 672.78 [*review board – appeals*].

For greater certainty

(5) For greater certainty, a finding that an accused is a high-risk accused is a disposition and sections 672.72 to 672.78 [*review board – appeals*] apply to it. 1991, c. 43, s. 4; 2005, c. 22, s. 24; 2014, c. 6, s. 12. [*annotation(s) added*]

672.65 and 672.66 [No sections 672.65 and 672.66]

– CCC

Review Board Disposition Hearings

Disposition Hearings

Status quo pending Review Board hearing

672.46 (1) If the court does not make a disposition in respect of the accused at a disposition hearing, any order for the detention of the accused or any release order, appearance notice, summons or undertaking in respect of the accused that is in force at the time the verdict of not criminally responsible on account of mental disorder or unfit to stand trial is rendered continues in force, subject to its terms, until the Review Board makes a disposition.

Variation

(2) Despite subsection (1) [*status quo pending Review Board hearing*], a court may, pending a disposition by the Review Board in respect of the accused, on cause being shown, vacate the detention order, release order, appearance notice, summons or undertaking referred to in that subsection, and make any other order for the detention of the accused or any other release order that the court considers to be appropriate in the circumstances, including an order directing that the accused be detained in custody in a hospital.

1991, c. 43, s. 4; 2005, c. 22, s. 42(F); 2019, c. 25, s. 276.

[*annotation(s) added*]

– CCC

Review Board to make disposition where court does not

672.47 (1) Where a verdict of not criminally responsible on account of mental disorder or unfit to stand trial is rendered and the court makes no disposition in respect of an accused, the Review Board shall, as soon as is practicable but not later than forty-five days after the verdict was rendered, hold a hearing and make a disposition.

Extension of time for hearing

(2) Where the court is satisfied that there are exceptional circumstances that warrant it, the court may extend the time for holding a hearing under subsection (1) [*review board to make disposition where court does not*] to a maximum of ninety days after the verdict was rendered.

Disposition made by court

(3) Where a court makes a disposition under section 672.54 [*available dispositions*] other than an absolute discharge in respect of an accused, the Review Board shall, not later than ninety days after the disposition was made, hold a hearing and make a disposition in respect of the accused.

Exception — high-risk accused

(4) Despite subsections (1) to (3) [*certain provisions re board disposition where court does not*], if the court makes a disposition under subsection 672.64(3) [*detention of high-risk accused*], the Review Board shall, not later than 45 days after the day on which the disposition is made, hold a hearing and make a disposition under paragraph 672.54(c) [*order of detention to a hospital*], subject to the restrictions set out in that subsection.

Extension of time for hearing

(5) If the court is satisfied that there are exceptional circumstances that warrant it, the court may extend the time for holding a hearing under subsection (4) [*exception – high-risk accused*] to a maximum of 90 days after the day on which the disposition is made.

1991, c. 43, s. 4; 2005, c. 22, ss. 15, 42(F); 2014, c. 6, s. 6.
[*annotation(s) added*]

– CCC

Review Board to determine fitness

672.48 (1) Where a Review Board holds a hearing to make or review a disposition in respect of an accused who has been found unfit to stand trial, it shall determine whether in its opinion the accused is fit to stand trial at the time of the hearing.

Review Board shall send accused to court

(2) If a Review Board determines that the accused is fit to stand trial, it shall order that the accused be sent back to court, and the court shall try the issue and render a verdict.

Chairperson may send accused to court

(3) The chairperson of a Review Board may, with the consent of the accused and the person in charge of the hospital where an accused is being detained, order that the accused be sent back to court for trial of the issue of whether the accused is unfit to stand trial, where the chairperson is of the opinion that

- (a) the accused is fit to stand trial; and
- (b) the Review Board will not hold a hearing to make or review a disposition in respect of the accused within a reasonable period.

Appellate Review

There is no right of appeal for any finding made under s. 672.48 for fitness.^[1]

1. *R v Paré*, 2001 CanLII 19270 (ON CA), 159

CCC (3d) 222, *per curiam* (3:0)

Dispositions by Courts or Review Boards

Dispositions by a Court or Review Board

Terms of Dispositions

Dispositions that may be made

672.54 When a court or Review Board makes a disposition under subsection 672.45(2) [*disposition hearings – obligation to make disposition*], section 672.47 [*disposition hearing where court does not*], subsection 672.64(3) [*detention of high-risk accused*] or section 672.83 [*disposition by Review Board*] or 672.84 [*review of finding – high-risk accused*], it shall, taking into account the safety of the public, which is the paramount consideration, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused, make one of the following dispositions that is necessary and appropriate in the circumstances:

- (a) where a verdict of not criminally responsible on account of mental disorder has been rendered in respect of the accused and, in the opinion of the court or Review Board, the accused is not a significant threat to the safety of the public, by order, direct that the accused be discharged absolutely;
- (b) by order, direct that the accused be discharged subject to such conditions as the court or Review Board considers appropriate; or
- (c) by order, direct that the accused be detained in custody in a hospital, subject to such conditions as the court or Review Board considers appropriate.

1991, c. 43, s. 4; 2005, c. 22, s. 20; 2014, c. 6, s. 9.
[*annotation(s) added*]

There is no presumption of dangerousness under s. 672.54.^[1]

Before an NCR accused can be denied liberty, the Crown must show that the person is a "significant risk to the public".^[2]

Analysis

The reviewing board must determine the risk to the public by considering whether at the time of the review, based on the evidence, is there "some certainty" that the NCR accused poses a "significant threat to the safety of the public".^[3]

A "significant threat" means a "risk of serious physical or psychological harm" from criminal conduct, whether violent or not.^[4] It is not enough to speculate or be uncertain of the probability of the risk. It must be based on evidence.^[5]

Where a "significant risk" is found, the board must choose the "least onerous and restrictive disposition" that maintains public safety.^[6]

Under s. 672.54(a), where the evidence does not support "with some certainty" that the NCR accused is a significant threat to the public, the NCR accused must be discharged absolutely.^[7]

Significant threat to safety of public

672.5401 For the purposes of section 672.54 [*available dispositions*], a significant threat to the safety of the public means a risk of serious physical or psychological harm to members of the public — including any victim of or witness to the offence, or any person under the age of 18 years — resulting from conduct that is criminal in nature but not necessarily violent.

2014, c. 6, s. 10.

– CCC

Appellate Review

On appeal, the reviewing court should not "quickly" overturn the board's "expert opinion" on how to manage a risk to the public.^[8]

1. *Winko v British Columbia (Forensic Psychiatric Institute)*, 1999 CanLII 694 (SCC), [1999] 2 SCR 625, per McLachlin J, at para 49
2. *Winko, ibid.*, at para 49 ("There must be evidence of a significant risk to the public before the court or Review Board can restrict the NCR accused's liberty.")
3. *Winko, ibid.*, at para 62.3
R v Rackel, 2019 ABCA 170 (CanLII), per curiam, at para 6
4. *Rackel, supra*, at para 6
Winko, supra, at paras 62.2, 62.3
5. *Rackel, supra*, at para 6
6. *Rackel, supra*, at para 6
Winko, supra, at paras 43, 62.9

7. *Rackel, supra*, at para 6
8. *R v Conway*, 2010 SCC 22 (CanLII), [2010] 1 SCR 765, per *Abella J*, at para 95

Victims

Victim impact statement

672.541 If a verdict of not criminally responsible on account of mental disorder has been rendered in respect of an accused, the court or Review Board shall

- (a) at a hearing held under section 672.45 [*disposition hearings*], 672.47 [*disposition hearing where court does not*], 672.64 [*finding re high-risk accused*], 672.81 [*mandatory 12 month review of dispositions*] or 672.82 [*discretionary review of dispositions*] or subsection 672.84(5) [*high-risk accused – review of conditions*], take into consideration any statement filed by a victim in accordance with subsection 672.5(14) [*procedure at disposition hearing – victim impact statements*] in determining the appropriate disposition or conditions under section 672.54 [*available dispositions*], to the extent that the statement is relevant to its consideration of the criteria set out in section 672.54 [*available dispositions*];
- (b) at a hearing held under section 672.64 [*finding re high-risk accused*] or subsection 672.84(3) [*high-risk accused – review*], take into consideration any statement filed by a victim in accordance with subsection 672.5(14) [*procedure at disposition hearing – victim impact statements*], to the extent that the statement is relevant to its consideration of the criteria set out in subsection 672.64(1) [*finding re high-risk accused – requirements*] or 672.84(3) [*high-risk accused – review*], as the case may be, in deciding whether to find that the accused is a high-risk accused, or to revoke such a finding; and
- (c) at a hearing held under section 672.81 [*mandatory 12 month review of dispositions*] or 672.82 [*discretionary review of dispositions*] in respect of a high-risk accused, take into consideration any statement filed by a victim in accordance with subsection 672.5(14) [*procedure at disposition hearing – victim impact statements*] in determining whether to refer to the court for review the finding that the accused is a high-risk accused, to the extent that the statement is relevant to its consideration of the criteria set out in subsection 672.84(1) [*review of finding – high-risk accused – requirements*].

1999, c. 25, s. 12(Preamble); 2005, c. 22, s. 21; 2014, c. 6, s. 10.
[*annotation(s) added*]

– CCC

Conditions re Protected Persons

Additional conditions — safety and security

672.542 When a court or Review Board holds a hearing referred to in section 672.5 [*procedure at disposition hearing*], the court or Review Board shall consider whether it is desirable, in the interests of the safety and security of any person, particularly a victim of or witness to the offence or a justice system participant, to include as a condition of the disposition that the accused

- (a) abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the disposition, or refrain from going to any place specified in the disposition; or
- (b) comply with any other condition specified in the disposition that the court or Review Board considers necessary to ensure the safety and security of those persons.

2014, c. 6, s. 10.

[*annotation(s) added*]

– CCC

Other Conditions

Treatment not a condition

672.55 (1) No disposition made under section 672.54 [*available dispositions*] shall direct that any psychiatric or other treatment of the accused be carried out or that the accused submit to such treatment except that the disposition may include a condition regarding psychiatric or other treatment where the accused has consented to the condition and the court or Review Board considers the condition to be reasonable and necessary in the interests of the accused.

(2) [Repealed, 2005, c. 22, s. 22]

1991, c. 43, s. 4; 1997, c. 18, s. 86; 2005, c. 22, s. 22.

[*annotation(s) added*]

– CCC

Section 672.55 does "require that an accused.. [to] have the capacity to consent ... to the treatment referred to in the condition." It presumes "valid consent to treatment has been, or will be, otherwise obtained".^[1]

For consent to be given, the accused must be "must understand all information relevant to the operation of the condition, and appreciate the reasonably foreseeable consequences of agreeing to the condition". It does not require that they have insight into their medical condition.^[2]

Section 672.56(1) provides a method of varying conditions placed upon an NCR accused.

Section 672.56(1.1) addresses the category of high-risk offenders which places the added requirements set out in s. 672.64.

Delegated authority to vary restrictions on liberty of accused

672.56 (1) A Review Board that makes a disposition in respect of an accused under paragraph 672.54(b) [*conditional discharge – review board*] or (c) [*order of detention to a hospital*] may delegate to the person in charge of the hospital authority to direct that the restrictions on the liberty of the accused be increased or decreased within any limits and subject to any conditions set out in that disposition, and any direction so made is deemed for the purposes of this Act to be a disposition made by the Review Board.

Exception — high-risk accused

(1.1) If the accused is a high-risk accused, any direction is subject to the restrictions set out in subsection 672.64(3) [*detention of high-risk accused*].

Notice to accused and Review Board of increase in restrictions

(2) A person who increases the restrictions on the liberty of the accused significantly pursuant to authority delegated to the person by a Review Board shall

- (a) make a record of the increased restrictions on the file of the accused;
- and
- (b) give notice of the increase as soon as is practicable to the accused and, if the increased restrictions remain in force for a period exceeding seven days, to the Review Board.

1991, c. 43, s. 4; 2014, c. 6, s. 11.
[*annotation(s) added*]

– CCC

Section 672.56(2) acts as a "final liberty safeguard, allowing for a second-look at those hospital decisions that have such serious ramifications for the liberty of the NCR accused".^[3] This notice requirement is invoked only where the liberty status "clearly deviates from the NCR accused's liberty

norm". The change must be so significant that a reasonable person would think the Board should be called to consider a change in circumstances.^[4]

1. *Ohenhen (Re)*, 2018 ONCA 65 (CanLII), per Tulloch JA, at para 57
2. *Ohenhen (Re)*, *ibid.*, at para 58
3. *Campbell (Re)*, 2018 ONCA 140 (CanLII), 139 OR (3d) 401, per Fairburn JA, at para 64
4. *Campbell*, *ibid.*, at para 67 (notice is required "where the change in liberty status clearly deviates from the NCR accused's liberty norm

must the hospital notify the Board. The change in liberty status must be so significant that a reasonable person, considering all of the circumstances, would think that the Board should be called on to consider whether the hospital properly applied the least onerous and least restrictive test ahead of the next annual review.")

Warrant of Committal

Warrant of committal

672.57 Where the court or Review Board makes a disposition under paragraph 672.54(c) [*order of detention to a hospital*], it shall issue a warrant of committal of the accused, which may be in Form 49 [*forms*].

1991, c. 43, s. 4.
[*annotation(s) added*]

– CCC

Treatment Disposition

Treatment disposition

672.58 Where a verdict of unfit to stand trial is rendered and the court has not made a disposition under section 672.54 [*available dispositions*] in respect of an accused, the court may, on application by the prosecutor, by order, direct that treatment of the accused be carried out for a specified period not exceeding sixty days, subject to such conditions as the court considers appropriate and, where the accused is not detained in custody, direct that the accused submit to that treatment by the person or at the hospital specified.

1991, c. 43, s. 4.
[*annotation(s) added*]

– CCC

Criteria for disposition

672.59 (1) No disposition may be made under section 672.58 [*treatment disposition*] unless the court is satisfied, on the basis of the testimony of a medical practitioner, that a specific treatment should be administered to the accused for the purpose of making the accused fit to stand trial.

Evidence required

(2) The testimony required by the court for the purposes of subsection (1) [*criteria for disposition for treatment re fitness*] shall include a statement that the medical practitioner has made an assessment of the accused and is of the opinion, based on the grounds specified, that

- (a) the accused, at the time of the assessment, was unfit to stand trial;
- (b) the psychiatric treatment and any other related medical treatment specified by the medical practitioner will likely make the accused fit to stand trial within a period not exceeding sixty days and that without that treatment the accused is likely to remain unfit to stand trial;
- (c) the risk of harm to the accused from the psychiatric and other related medical treatment specified is not disproportionate to the benefit anticipated to be derived from it; and
- (d) the psychiatric and other related medical treatment specified is the least restrictive and least intrusive treatment that could, in the circumstances, be specified for the purpose referred to in subsection (1) [*criteria for disposition for treatment re fitness*], considering the opinions referred to in paragraphs (b) and (c).

1991, c. 43, s. 4.
[*annotation(s) added*]

– CCC

Notice

Notice required

672.6 (1) The court shall not make a disposition under section 672.58 [*treatment disposition*] unless the prosecutor notifies the accused, in writing and as soon as practicable, of the application.

Challenge by accused

(2) On receiving the notice referred to in subsection (1) [*notice required before treatment order permitted*], the accused may challenge the application and adduce evidence for that purpose.

1991, c. 43, s. 4; 1997, c. 18, s. 87.

[*annotation(s) added*]

– CCC

No Lobotomies or Electro-shock

Exception

672.61 (1) The court shall not direct, and no disposition made under section 672.58 [*treatment disposition*] shall include, the performance of psychosurgery or electro-convulsive therapy or any other prohibited treatment that is prescribed.

Definitions

(2) In this section,

"electro-convulsive therapy" means a procedure for the treatment of certain mental disorders that induces, by electrical stimulation of the brain, a series of generalized convulsions; (*sismothérapie*)

"psychosurgery" means any procedure that by direct or indirect access to the brain removes, destroys or interrupts the continuity of histologically normal brain tissue, or inserts indwelling electrodes for pulsed electrical stimulation for the purpose of altering behaviour or treating psychiatric illness, but does not include neurological procedures used to diagnose or treat intractable physical pain, organic brain conditions, or epilepsy, where any of those conditions is clearly demonstrable. (*psychochirurgie*)

1991, c. 43, s. 4.

[*annotation(s) added*]

– CCC

Hospital Must Agree to Treatment

Consent of hospital required for treatment

672.62 (1) No court shall make a disposition under section 672.58 [*treatment disposition*] without the consent of

- (a) the person in charge of the hospital where the accused is to be treated;
or
- (b) the person to whom responsibility for the treatment of the accused is assigned by the court.

Consent of accused not required for treatment

(2) The court may direct that treatment of an accused be carried out pursuant to a disposition made under section 672.58 [*treatment disposition*] without the consent of the accused or a person who, according to the laws of the province where the disposition is made, is authorized to consent for the accused.

1991, c. 43, s. 4.

[*annotation(s) added*]

– CCC

Date of Disposition

Effective date of disposition

672.63 A disposition shall come into force on the day on which it is made or on any later day that the court or Review Board specifies in it, and shall remain in force until the Review Board holds a hearing to review the disposition and makes another disposition.

1991, c. 43, s. 4; 2005, c. 22, s. 23.

– CCC

Custody

Continued detention in hospital

672.49 (1) In a disposition made pursuant to section 672.47 [*disposition hearing where court does not*] the Review Board or chairperson may require the accused to continue to be detained in a hospital until the court determines whether the accused is fit to stand trial, if the Review Board or chairperson has reasonable grounds to believe that the accused would become unfit to stand trial if released.

Copy of disposition to be sent to court

(2) The Review Board or chairperson shall send a copy of a disposition made pursuant to section 672.47 [*disposition hearing where court does not*] without delay to the court having jurisdiction over the accused and to the Attorney General of the province where the accused is to be tried.

1991, c. 43, s. 4.

– CCC

Stay of Proceedings

Stay of Proceedings Recommendation by Review Board

672.851 (1) The Review Board may, of its own motion, make a recommendation to the court that has jurisdiction in respect of the offence charged against an accused found unfit to stand trial to hold an inquiry to determine whether a stay of proceedings should be ordered if

(a) the Review Board has held a hearing under section 672.81 [*mandatory 12 month review of dispositions*] or 672.82 [*discretionary review of dispositions*] in respect of the accused; and

(b) on the basis of any relevant information, including disposition information within the meaning of subsection 672.51(1) [*definition of disposition information*] and an assessment report made under an assessment ordered under paragraph 672.121(a) [*review board may order assessment – make recommendations*], the Review Board is of the opinion that

(i) the accused remains unfit to stand trial and is not likely to ever become fit to stand trial, and

(ii) the accused does not pose a significant threat to the safety of the public.

Notice

(2) If the Review Board makes a recommendation to the court to hold an inquiry, the Review Board shall provide notice to the accused, the prosecutor and any party who, in the opinion of the Review Board, has a substantial interest in protecting the interests of the accused.

Inquiry

(3) As soon as practicable after receiving the recommendation referred to in subsection (1) [*recommendation by review board – requirements*], the court may hold an inquiry to determine whether a stay of proceedings should be ordered.

Court may act on own motion

(4) A court may, of its own motion, conduct an inquiry to determine whether a stay of proceedings should be ordered if the court is of the opinion, on the basis of any relevant information, that

- (a) the accused remains unfit to stand trial and is not likely to ever become fit to stand trial; and
- (b) the accused does not pose a significant threat to the safety of the public.

Assessment order

(5) If the court holds an inquiry under subsection (3) [*recommendation by review board – inquiry of recommendation by court*] or (4) [*recommendation by review board – inquiry of recommendation by court – grounds*], it shall order an assessment of the accused.

Application

(6) Section 672.51 [*issuing disposition*] applies to an inquiry of the court under this section.

Stay

(7) The court may, on completion of an inquiry under this section, order a stay of proceedings if it is satisfied

- (a) on the basis of clear information, that the accused remains unfit to stand trial and is not likely to ever become fit to stand trial;
- (b) that the accused does not pose a significant threat to the safety of the public; and
- (c) that a stay is in the interests of the proper administration of justice.

Proper administration of justice

(8) In order to determine whether a stay of proceedings is in the interests of the proper administration of justice, the court shall consider any submissions of the prosecutor, the accused and all other parties and the following factors:

- (a) the nature and seriousness of the alleged offence;
- (b) the salutary and deleterious effects of the order for a stay of proceedings, including any effect on public confidence in the administration of justice;
- (c) the time that has elapsed since the commission of the alleged offence and whether an inquiry has been held under section 672.33 [*review of prima facie case*] to decide whether sufficient evidence can be adduced to put the accused on trial; and
- (d) any other factor that the court considers relevant.

Effect of stay

(9) If a stay of proceedings is ordered by the court, any disposition made in respect of the accused ceases to have effect. If a stay of proceedings is not ordered, the finding of unfit to stand trial and any disposition made in respect of the accused remain in force, until the Review Board holds a disposition hearing and makes a disposition in respect of the accused under section 672.83 [*disposition by Review Board*].

2005, c. 22, s. 33.

[*annotation(s) added*]

Appeal

672.852 (1) The Court of Appeal may allow an appeal against an order made under subsection 672.851(7) [*recommendation by review board – judicial stay*] for a stay of proceedings, if the Court of Appeal is of the opinion that the order is unreasonable or cannot be supported by the evidence.

Effect

(2) If the Court of Appeal allows the appeal, it may set aside the order for a stay of proceedings and restore the finding that the accused is unfit to stand trial and the disposition made in respect of the accused.

2005, c. 22, s. 33.

[*annotation(s) added*]

Topics

- [Review Board Hearing Procedure](#)
- [Review Board Publication Bans](#)
- [Application For High Risk Designation](#)

Review Board Hearing Procedure

< [Procedure and Practice](#) < [Mental Illness](#) < Review Board

General Principles

Procedure at disposition hearing

672.5 (1) A hearing held by a court or Review Board to make or review a disposition in respect of an accused, including a hearing referred to in subsection 672.84(1) [*review of finding – high-risk accused – requirements*] or (3) [*high-risk*]

accused – review], shall be held in accordance with this section.
[omitted (2), (3), (4), (5), (5.1) and (5.2)]

Order excluding the public

(6) Where the court or Review Board considers it to be in the best interests of the accused and not contrary to the public interest, the court or Review Board may order the public or any members of the public to be excluded from the hearing or any part of the hearing.

[omitted (7), (8), (8.1), (8.2) and (9)]

Removal or absence of accused

(10) The court or the chairperson of the Review Board may

- (a) permit the accused to be absent during the whole or any part of the hearing on such conditions as the court or chairperson considers proper; or
- (b) cause the accused to be removed and barred from re-entry for the whole or any part of the hearing

- (i) where the accused interrupts the hearing so that to continue in the presence of the accused would not be feasible,
- (ii) on being satisfied that failure to do so would likely endanger the life or safety of another person or would seriously impair the treatment or recovery of the accused, or
- (iii) in order to hear, in the absence of the accused, evidence, oral or written submissions, or the cross-examination of any witness concerning whether grounds exist for removing the accused pursuant to subparagraph (ii).

Rights of parties at hearing

(11) Any party may adduce evidence, make oral or written submissions, call witnesses and cross-examine any witness called by any other party and, on application, cross-examine any person who made an assessment report that was submitted to the court or Review Board in writing.

Request to compel attendance of witnesses

(12) A party may not compel the attendance of witnesses, but may request the court or the chairperson of the Review Board to do so.

Video links

(13) If the accused so agrees, the court or the chairperson of the Review Board may permit the accused to appear by closed-circuit television or videoconference for any part of the hearing.

Adjournment

(13.1) The Review Board may adjourn the hearing for a period not exceeding thirty days if necessary for the purpose of ensuring that relevant information is available to permit it to make or review a disposition or for any other sufficient reason.

Determination of mental condition of the accused

(13.2) On receiving an assessment report, the court or Review Board shall determine whether, since the last time the disposition in respect of the accused was made or reviewed there has been any change in the mental condition of the accused that may provide grounds for the discharge of the accused under paragraph 672.54(a) [*absolute discharge – review board*] or (b) [*conditional discharge – review board*] and, if there has been such a change, the court or Review Board shall notify every victim of the offence that they are entitled to file a statement in accordance with subsection (14) [*procedure at disposition hearing – victim impact statements*].
[omitted (13.3) and (14)]

Copy of statement

(15) The court or Review Board shall ensure that a copy of any statement filed in accordance with subsection (14) [*procedure at disposition hearing – victim impact statements*] is provided to the accused or counsel for the accused, and the prosecutor, as soon as practicable after a verdict of not criminally responsible on account of mental disorder is rendered in respect of the offence.

Presentation of victim statement

(15.1) The court or Review Board shall, at the request of a victim, permit the victim to read a statement prepared and filed in accordance with subsection (14) [*procedure at disposition hearing – victim impact statements*], or to present the statement in any other manner that the court or Review Board considers appropriate, unless the court or Review Board is of the opinion that the reading or presentation of the statement would interfere with the proper administration of justice.

Inquiry by court or Review Board

(15.2) The court or Review Board shall, as soon as practicable after a verdict of not criminally responsible on account of mental disorder is rendered in respect of an offence and before making a disposition under section 672.45 [*disposition hearings*], 672.47 [*disposition hearing where court does not*] or 672.64 [*finding re high-risk accused*], inquire of the prosecutor or a victim of the offence, or any person representing a victim of the offence, whether the victim has been advised of the opportunity to prepare a statement referred to in subsection (14) [*procedure at disposition hearing – victim impact statements*].

Adjournment

(15.3) On application of the prosecutor or a victim or of its own motion, the court or Review Board may adjourn the hearing held under section 672.45 [*disposition hearings*], 672.47 [*disposition hearing where court does not*] or 672.64 [*finding re high-risk accused*] to permit the victim to prepare a statement referred to in subsection (14) [*procedure at disposition hearing – victim impact statements*] if the court or Review Board is satisfied that the adjournment would not interfere with the proper administration of justice.

(16) [Repealed, 2015, c. 13, s. 22]

1991, c. 43, s. 4; 1997, c. 18, s. 84; 1999, c. 25, s. 11(Preamble); 2005, c. 22, ss. 16, 42(F); 2014, c. 6, s. 7; 2015, c. 13, s. 22; 2019, c. 25, s. 277.
[*annotation(s) added*]

– CCC

Constitution

The review board has jurisdiction to decide constitutional issues.^[1]

Section 672.5(6) excluding the public does not violate s. 7 or 15 of the Charter.^[2]

1. *R v Conway*, 2010 SCC 22 (CanLII), [2010] 1 SCR 765, per Abella J (9:0)
2. *Blackman v British Columbia (Review Board)*, 1995 CanLII 3437 (BC CA), 95 CCC (3d) 412, per Taylor JA (3:0)

Parties

672.5
[*omitted (1) and (2)*]

Attorneys General may be parties

(3) On application, the court or Review Board shall designate as a party the Attorney General of the province where the disposition is to be made and, where an accused is transferred from another province, the Attorney General of the province from which the accused is transferred.

Interested person may be a party

(4) The court or Review Board may designate as a party any person who has a substantial interest in protecting the interests of the accused, if the court or Review Board is of the opinion that it is just to do so.

[*omitted (5), (5.1), (5.2), (6), (7), (8), (8.1), (8.2), (9), (10), (11), (12), (13), (13.1), (13.2), (13.3), (14), (15), (15.1), (15.2), (15.3) and (16)*]

1991, c. 43, s. 4; 1997, c. 18, s. 84; 1999, c. 25, s. 11(Preamble); 2005, c. 22, ss. 16, 42(F); 2014, c. 6, s. 7; 2015, c. 13, s. 22; 2019, c. 25, s. 277.

– CCC

Notice of Hearing

672.5

[omitted (1), (2), (3) and (4)]

Notice of hearing

(5) Notice of the hearing shall be given to the parties, the Attorney General of the province where the disposition is to be made and, where the accused is transferred to another province, the Attorney General of the province from which the accused is transferred, within the time and in the manner prescribed, or within the time and in the manner fixed by the rules of the court or Review Board.

Notice

(5.1) At the victim's request, notice of the hearing and of the relevant provisions of the Act shall be given to the victim within the time and in the manner fixed by the rules of the court or Review Board.

Notice of discharge and intended place of residence

(5.2) If the accused is discharged absolutely under paragraph 672.54(a) [*absolute discharge – review board*] or conditionally under paragraph 672.54(b) [*conditional discharge – review board*], a notice of the discharge and accused's intended place of residence shall, at the victim's request, be given to the victim within the time and in the manner fixed by the rules of the court or Review Board.

[omitted (6), (7), (8), (8.1), (8.2), (9), (10), (11), (12), (13), (13.1), (13.2), (13.3), (14), (15), (15.1), (15.2), (15.3) and (16)]

1991, c. 43, s. 4; 1997, c. 18, s. 84; 1999, c. 25, s. 11(Preamble); 2005, c. 22, ss. 16, 42(F); 2014, c. 6, s. 7; 2015, c. 13, s. 22.

[annotation(s) added]

– CCC

Form of Hearing

672.5

[omitted (1)]

Hearing to be informal

(2) The hearing may be conducted in as informal a manner as is appropriate in the circumstances.

[omitted (3), (4), (5), (5.1), (5.2), (6), (7), (8), (8.1), (8.2), (9), (10), (11), (12), (13),

(13.1), (13.2), (13.3), (14), (15), (15.1), (15.2), (15.3) and (16)]
1991, c. 43, s. 4; 1997, c. 18, s. 84; 1999, c. 25, s. 11(Preamble); 2005, c. 22, ss. 16,
42(F); 2014, c. 6, s. 7; 2015, c. 13, s. 22; 2019, c. 25, s. 277.

– CCC

The board has "inquisitorial duties", which a duty to "search out and consider evidence". This duty applies whether or not the accused is present or not.^[1]

1. *R v Lepage*, 2006 CanLII 37775 (ON CA),

214 CCC (3d) 105, per Juriansz JA (3:0)

Defence Counsel

672.5

[omitted (1), (2), (3), (4), (5), (5.1), (5.2) and (6)]

Right to counsel

(7) The accused or any other party has the right to be represented by counsel.

Assigning counsel

(8) If an accused is not represented by counsel, the court or Review Board shall, either before or at the time of the hearing, assign counsel to act for any accused

- (a) who has been found unfit to stand trial; or
- (b) wherever the interests of justice so require.

Counsel fees and disbursements

(8.1) Where counsel is assigned pursuant to subsection (8) [*assigning counsel*] and legal aid is not granted to the accused pursuant to a provincial legal aid program, the fees and disbursements of counsel shall be paid by the Attorney General to the extent that the accused is unable to pay them.

Taxation of fees and disbursements

(8.2) Where counsel and the Attorney General cannot agree on the fees or disbursements of counsel, the Attorney General or the counsel may apply to the registrar of the court and the registrar may tax the disputed fees and disbursements.

Right of accused to be present

(9) Subject to subsection (10) [*removal or absence of accused*], the accused has the right to be present during the whole of the hearing.

[*omitted (10), (11), (12), (13), (13.1), (13.2), (13.3), (14), (15), (15.1), (15.2), (15.3) and (16)*]

1991, c. 43, s. 4; 1997, c. 18, s. 84; 1999, c. 25, s. 11(Preamble); 2005, c. 22, ss. 16, 42(F); 2014, c. 6, s. 7; 2015, c. 13, s. 22; 2019, c. 25, s. 277.

[*annotation(s) added*]

– CCC

Amicus Curae

Section 672.5(8) permits the board to appoint an *amicus curae*".^[1]

Victims

672.5

[*omitted (1), (2), (3), (4), (5), (5.1), (5.2), (6), (7), (8), (8.1), (8.2), (9), (10), (11), (12), (13), (13.1) and (13.2)*]

Notice to victims — referral of finding to court

(13.3) If the Review Board refers to the court for review under subsection 672.84(1) [*review of finding – high-risk accused – requirements*] a finding that an accused is a high-risk accused, it shall notify every victim of the offence that they are entitled to file a statement with the court in accordance with subsection (14) [*procedure at disposition hearing – victim impact statements*].

Victim impact statement

(14) A victim of the offence may prepare and file with the court or Review Board a written statement describing the physical or emotional harm, property damage or economic loss suffered by the victim as the result of the commission of the offence and the impact of the offence on the victim. Form 48.2 [*forms*] in Part XXVIII [*Pt. XXVIII – Miscellaneous (s. 841 to 849)*], or a form approved by the lieutenant governor in council of the province in which the court or Review Board is exercising its jurisdiction, must be used for this purpose.

[*omitted (15), (15.1), (15.2), (15.3) and (16)*]

1991, c. 43, s. 4; 1997, c. 18, s. 84; 1999, c. 25, s. 11(Preamble); 2005, c. 22, ss. 16, 42(F); 2014, c. 6, s. 7; 2015, c. 13, s. 22.

[*annotation(s) added*]

– CCC

Review of Review Board

< [Procedure and Practice](#) < [Mental Illness](#) < [Review Board](#)

Legislation

Review of Dispositions

Mandatory review of dispositions

672.81 (1) A Review Board shall hold a hearing not later than twelve months after making a disposition and every twelve months thereafter for as long as the disposition remains in force, to review any disposition that it has made in respect of an accused, other than an absolute discharge under paragraph 672.54(a) [*absolute discharge – review board*].

Extension on consent

(1.1) Despite subsection (1) [*mandatory 12 month review of dispositions*], the Review Board may extend the time for holding a hearing to a maximum of twenty-four months after the making or reviewing of a disposition if the accused is represented by counsel and the accused and the Attorney General consent to the extension.

Extension for serious personal violence offence

(1.2) Despite subsection (1) [*mandatory 12 month review of dispositions*], at the conclusion of a hearing under this section the Review Board may, after making a disposition, extend the time for holding a subsequent hearing under this section to a maximum of twenty-four months if

- (a) the accused has been found not criminally responsible for a serious personal injury offence;
- (b) the accused is subject to a disposition made under paragraph 672.54(c) [*order of detention to a hospital*]; and
- (c) the Review Board is satisfied on the basis of any relevant information, including disposition information within the meaning of subsection 672.51(1) [*definition of disposition information*] and an assessment report made under an assessment ordered under paragraph 672.121(a) [*review board may order assessment – make recommendations*], that the condition of the accused is not likely to improve and that detention remains necessary for the period of the extension.

Definition of serious personal injury offence

(1.3) For the purposes of subsection (1.2) [*extension for serious personal violence offence*], serious personal injury offence means

(a) an indictable offence involving

- (i) the use or attempted use of violence against another person, or
- (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person; or

(b) an indictable offence referred to in section 151 [*sexual interference*], 152 [*invitation to sexual touching*], 153 [*sexual exploitation*], 153.1 [*sexual exploitation of disabled*], 155 [*incest*], 160 [*bestiality*], 170 [*parent or guardian procuring sexual activity*], 171 [*householder permitting prohibited sexual activity*], 172 [*corrupting children*], 271 [*sexual assault*], 272 [*sexual assault with a weapon or causing bodily harm*] or 273 [*aggravated sexual assault*] or an attempt to commit such an offence.

Extension on consent — high-risk accused

(1.31) Despite subsections (1) to (1.2) [*mandatory 12 month review of dispositions and extensions*], the Review Board may extend the time for holding a hearing in respect of a high-risk accused to a maximum of 36 months after making or reviewing a disposition if the accused is represented by counsel and the accused and the Attorney General consent to the extension.

Extension — no likely improvement

(1.32) Despite subsections (1) to (1.2) [*mandatory 12 month review of dispositions and extensions*], at the conclusion of a hearing under subsection 672.47(4) [*exception – high-risk accused*] or this section in respect of a high-risk accused, the Review Board may, after making a disposition, extend the time for holding a subsequent hearing under this section to a maximum of 36 months if the Review Board is satisfied on the basis of any relevant information, including disposition information as defined in subsection 672.51(1) [*definition of disposition information*] and an assessment report made under an assessment ordered under paragraph 672.121(c) [*review board may order assessment – determine high-risk accused*], that the accused's condition is not likely to improve and that detention remains necessary for the period of the extension.

Notice

(1.4) If the Review Board extends the time for holding a hearing under subsection (1.2) [*extension for serious personal violence offence*] or (1.32) [*review of dispositions – Extension – no likely improvement*], it shall provide notice of the extension to the accused, the prosecutor and the person in charge of the hospital where the accused is detained.

Appeal

(1.5) A decision by the Review Board to extend the time for holding a hearing under subsection (1.2) [*extension for serious personal violence offence*] or (1.32) [*review of dispositions – Extension – no likely improvement*] is deemed to be a disposition for the purpose of sections 672.72 to 672.78 [*review board – appeals*].

Additional mandatory reviews in custody cases

(2) The Review Board shall hold a hearing to review any disposition made under paragraph 672.54(b) [*conditional discharge – review board*] or (c) [*order of detention to a hospital*] as soon as practicable after receiving notice that the person in charge of the place where the accused is detained or directed to attend requests the review.

Review in case of increase on restrictions on liberty

(2.1) The Review Board shall hold a hearing to review a decision to significantly increase the restrictions on the liberty of the accused, as soon as practicable after receiving the notice referred to in subsection 672.56(2) [X].

Idem

(3) Where an accused is detained in custody pursuant to a disposition made under paragraph 672.54(c) [*order of detention to a hospital*] and a sentence of imprisonment is subsequently imposed on the accused in respect of another offence, the Review Board shall hold a hearing to review the disposition as soon as is practicable after receiving notice of that sentence.

1991, c. 43, s. 4; 2005, c. 22, ss. 27, 42(F); 2014, c. 6, s. 15.

[*annotation(s) added*]

– CCC

Discretionary review

672.82 (1) A Review Board may hold a hearing to review any of its dispositions at any time, of its own motion or at the request of the accused or any other party.

Review Board to provide notice

(1.1) Where a Review Board holds a hearing under subsection (1) [*discretionary review of dispositions – holding hearing*] of its own motion, it shall provide notice to the prosecutor, the accused and any other party.

Review cancels appeal

(2) Where a party requests a review of a disposition under this section, the party is deemed to abandon any appeal against the disposition taken under section 672.72 [*grounds and limitations of appeal from review board decision*].

1991, c. 43, s. 4; 2005, c. 22, s. 28.

[*annotation(s) added*]

Disposition by Review Board

672.83 (1) At a hearing held pursuant to section 672.81 [*mandatory 12 month review of dispositions*] or 672.82 [*discretionary review of dispositions*], the Review Board shall, except where a determination is made under subsection 672.48(1) [*Review Board to determine fitness*] that the accused is fit to stand trial, review the disposition made in respect of the accused and make any other disposition that the Review Board considers to be appropriate in the circumstances.

(2) [Repealed, 2005, c. 22, s. 29]

1991, c. 43, s. 4; 1997, c. 18, s. 90; 2005, c. 22, ss. 29, 42(F).
[*annotation(s) added*]

Review of finding — high-risk accused

672.84 (1) If a Review Board holds a hearing under section 672.81 [*mandatory 12 month review of dispositions*] or 672.82 [*discretionary review of dispositions*] in respect of a high-risk accused, it shall, on the basis of any relevant information, including disposition information as defined in subsection 672.51(1) [*definition of disposition information*] and an assessment report made under an assessment ordered under paragraph 672.121(c) [*review board may order assessment – determine high-risk accused*], if it is satisfied that there is not a substantial likelihood that the accused — whether found to be a high-risk accused under paragraph 672.64(1)(a) [*finding re high-risk accused – requirements – endanger life*] or (b) [*finding re high-risk accused – brutal nature*] — will use violence that could endanger the life or safety of another person, refer the finding for review to the superior court of criminal jurisdiction.

Review of conditions

(2) If the Review Board is not so satisfied, it shall review the conditions of detention imposed under paragraph 672.54(c) [*order of detention to a hospital*], subject to the restrictions set out in subsection 672.64(3) [*detention of high-risk accused*].

Review of finding by court

(3) If the Review Board refers the finding to the superior court of criminal jurisdiction for review, the court shall, at the conclusion of a hearing, revoke the finding if the court is satisfied that there is not a substantial likelihood that the accused will use violence that could endanger the life or safety of another person, in which case the court or the Review Board shall make a disposition under any of paragraphs 672.54(a) to (c) [*absolute discharge – review board – circumstances*].

Hearing and disposition

(4) Any disposition referred to in subsection (3) [*high-risk accused – review*] is subject to sections 672.45 to 672.47 [*certain provisions re NCR disposition hearings*] as if the revocation is a verdict.

Review of conditions

(5) If the court does not revoke the finding, it shall immediately send to the Review Board, in original or copied form, a transcript of the hearing, any other document or information related to the hearing, and all exhibits filed with it, if the transcript, document, information or exhibits are in its possession. The Review Board shall, as soon as practicable but not later than 45 days after the day on which the court decides not to revoke the finding, hold a hearing and review the conditions of detention imposed under paragraph 672.54(c) [*order of detention to a hospital*], subject to the restrictions set out in subsection 672.64(3) [*detention of high-risk accused*].

Appeal

(6) A decision under subsection (1) [*review of finding – high-risk accused – requirements*] about referring the finding to the court for review and a decision under subsection (3) [*high-risk accused – review*] about revoking the finding are deemed to be dispositions for the purpose of sections 672.72 to 672.78 [*review board – appeals*].

1991, c. 43, s. 4; 2005, c. 22, s. 30; 2014, c. 6, s. 16.

[*annotation(s) added*]

– CCC

1. *R v Lepage*, 2006 CanLII 37775 (ON CA), 214 CCC (3d) 105, per *Juriansz JA* (3:0)

Retrieved from "http://criminalnotebook.ca/index.php?title=Full_Text:Volume_4E&oldid=79480"

