



EMPOWERMENT REPORT

(The Newsletter of the Empowerment Council)

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Proposed Government Bill Could Impact Clients in the Forensic System

By Roy Bonadonna, Empowerment Council Volunteer

As many of you probably already know, very recently the federal government tabled a *Not Criminally Responsible Reform Act* which seeks to amend the existing legislation with respect to offenders found not criminally responsible (NCR). The reason for doing this, according to the government, is to ensure that public safety comes first and to further protect victims. As well, this proposed legislation aims to promote greater victim involvement in the whole NCR process.

So what are the actual amendments the government is proposing?

First, as already noted, the changes would explicitly make public safety the prime consideration in the decision making process of both the court and of the Review Boards with respect to those found NCR.

Second, the proposed legislation seeks to create a new “high-risk” designation of the NCR accused person who has committed a serious personal injury offence, and who is deemed to be an ongoing threat to public safety. These proposed amendments focus on those acts deemed “brutal” which indicate an ongoing risk of substantial harm to the public. Those judged to be “high-risk” will not be eligible for either an absolute or a conditional discharge, and the designation can only be revoked by a court at the request of a Review Board. With respect to privileges, “high-risk” NCR clients would not be allowed into the community unescorted, and even escorted passes will only be permitted in very narrow circumstance. With respect to Review Board hearings, “high-risk” patients could have their waiting times for a Review Board Hearing extended to three years instead of the usual one year.



What can we say about these proposed amendments? Well, in many respects it’s hard to say at this early stage of the process. These are still *proposed* amendments to the *Criminal Code*, and they have yet to become law, although a majority government practically ensures that they eventually will do so and the Bill has already passed second reading.

What is really disconcerting, however, is how it appears that the government has only listened to one side of this equation, namely public safety and victim rights while almost totally ignoring the rights and voices of those who will be immediately impacted by these changes, namely the individuals who come in contact with the system.

Also, by denying patients an annual Review Board hearing they are saying, in effect, that people cannot, and do not, improve and get well, which is simply not true. The fact is that many clients do improve, often within a year or even less from the time of the incident. I know this from personal experience.

There is much here to be concerned about, but as I mentioned above it is too early to say exactly how these proposed amendments will effect those found NCR. If you are worried about how this may affect you, feel free to call the Empowerment Council office and we will certainly try to answer some of your questions and address your concerns.

NCR - A Legal Primer

By Jennifer Chambers, Empowerment Council Coordinator

Criminally Insane - what term sounds scarier than that? In Canada the correct term is actually *Not Criminally Responsible*, and most people found NCR are not violent. I know people found NCR who did things as small as leaving newspaper articles, one of which could be interpreted to be threatening, on their doctor's doorstep, driving a car in the wrong direction on the highway when confused, or spitting on a police officer. Most people who HAVE done something violent are not NCR.

The reason NCR is a legal option is that there are two parts to what is considered a crime - the act and the intent to commit that act. What this option is about is intent. People often do not understand that a person can be mentally or emotionally disturbed and still intend to commit a crime and be guilty. However, if the person's state of mind meant they did not INTEND a crime - for example if he/she believed what they did was necessary to save a life - then they are not criminally responsible. Compare it to someone having a heart attack while driving a car and running over someone. That person did not intend to go out and commit harm, they could not help it. Therefore, they should not be treated the same as a person who deliberately ran someone over. (It is not fair for them to have to listen to victim impact statements, for instance.) For the law to be just, this option has to exist, or people will be punished who never intended to do anything wrong.

Being found NCR is not "getting off easy". More often than not, people are locked up and controlled for much longer than they would have been if found guilty of the crime. (This is sometimes a result of bad legal advice.)



Over the last two decades, I've worked with comrades from the Queen Street Patients Council, the Mental Health Legal Advocacy Coalition and the Empowerment Council to ensure that the voice of people in the mental health system who have been found NCR is heard by the courts. We were the first

people to ever bring this voice to the Supreme Court and there have been many rulings in our favour. The challenge has been to get these rulings reflected in how the justice system operates.

I encourage people in the system who have been found NCR to provide the excerpts from the Supreme Court of Canada's ruling in *Winko* (outlined in the box on page three) for your lawyer to apply at your Review Board hearing.

The Supreme Court ruled that the law governing people found NCR does not violate the *Canadian Charter of Rights and Freedoms* **only** if the courts and Review Boards abide by the law. In *Winko* the Supreme Court described how the law is to be put into practice in a way that does not violate the *Charter* rights. The Supreme Court also acknowledged that the law has not always been properly followed.



The Empowerment Council (EC) is seeking CAMH clients who would like to promote the Bill of Rights on program and centre-wide committees.

As a client on a committee you are responsible for speaking up as a representative of the EC, promoting the values of CAMH clients and meeting regularly with the EC to report on your advocacy efforts.

For those selected, we are offering an orientation session on how to be a strong advocate for clients. Contact 416-535-8501, Ext. 33013 or email

ec.volunteer@camh.ca for more information. Please send a sentence to two about your area of interest (mental health or addiction) and tell us why you want to volunteer with the EC.

The law according to the Supreme Court (in *Winko*):

1. The NCR accused does not have to prove anything. There is no presumption of **dangerousness permitted by law**. If the evidence does not support the conclusion that the NCR is a significant risk, the NCR need do nothing; the only possible order is an absolute discharge.”
2. “**Dangerousness**” has a **specific, restricted meaning**. “The threat posed must be **supported by the evidence...**” There must be a **real risk of physical or psychological harm** and this **harm must be serious and criminal**.
3. The Review Board has a duty to **investigate facts which support release**, as well as detention.
4. “If the court or Review Board **fails to positively conclude**, on the **evidence**, that the NCR offender poses a significant threat to the safety of the public, it must grant an **absolute discharge**”. In other words, if the court or Review Board “harbours doubts” or can not resolve whether someone is a significant risk to the safety of the public, they **must** unconditionally discharge.
5. “In all cases, the Review Board must make the disposition that is the **least restrictive possible** of the liberty of the NCR accused.”
6. The Review Board has a duty “**to consider the personal needs of the accused**” (such as a need for trauma therapy or aboriginal healing practice).

EMPOWERMENT COUNCIL GENERAL MEMBERSHIP FORM

EC Statement of Purpose: *To conduct system wide advocacy on behalf of clients.*

CONTACT INFORMATION: *(Please Print Clearly)*

Name _____ Address _____

City _____ Postal code _____

Telephone _____ Email address _____

I have used mental health and/or addiction services (*check those that apply*):

College Street site _____ *Queen Street site* _____ *Other: Mental Health* _____

Russell Street site _____ *White Squirrel Way site* _____ *Other: Addiction* _____

I support the purpose of the Empowerment Council:

Signature _____

Send to: **Empowerment Council, 33 Russell Street, Room 2008, and Toronto, ON M5S 2S1**
Or fill out a membership form online at our website: www.empowermentcouncil.ca

SAFE INEJECTION SITES IN TORONTO

By Tucker Gorden, Empowerment Council Systemic Advocate in Addictions

Back in 2012 there was a brief period of time where the City of Toronto was discussing establishing safer injections sites, also known as drug consumption sites. Shortly after the report¹ that was commissioned by the City was released, which recommended two sites be created in Toronto and one in Ottawa, debate on the issue subsided, and was left tabled at “more studies are needed”.

The year prior, the Supreme Court, in a unanimous decision, overturned the federal government’s refusal to re-issue an exemption that allowed Insite, a safe injection site in Vancouver, to keep running, saying: “It is arbitrary, regardless of which test for arbitrariness is used, because it undermines the very purposes of the CDSA — the protection of health and public safety. It is also grossly disproportionate: during its eight years of operation, Insite has been proven to save lives with no discernable negative impact on the public safety and health objectives of Canada.”²

Safer sites are not a novel idea. They’ve been present in Europe since 1986, and currently there are more than ninety consumption sites (mostly for injection, some for smoking) between Europe (72), Australia and Canada (1), with the majority being in the E.U.³ Proponents note that these sites generally help reach isolated populations, reduce harms, reduce public nuisance related crime, don’t encourage any increase in new people taking up the drugs and increase contact with other social services for current drug users. Evidence supporting such claims can be seen in the submissions to the Supreme Court, the earlier cited study, and the EMCDDA report “European

report on drug consumption rooms”, which looked at data from over forty sites.⁴

Objections often raised, besides concern about crime, tend to focus on “enabling”, its twin pillar, the need to “hit rock bottom” and why society should spend money on this. In regards to the need to hit rock bottom and enabling, seeing as there is a high correlation between trauma and problematic drug use, it seems slightly absurd that more of the same will reverse the use, at least for all people. Isolation into a community of others with problematic use will mean that leaving the community means a loss of friends, which can be a barrier.⁵ Further, feeling isolated and ill-treated by a society isn’t likely to make one want to participate more. I would argue that hope and desires outside of whatever problematic behaviour a person feels they have, are of more benefit than coercion and disregard in helping people make a change in their life.

In regards to the financial reasons, it isn’t as clear. We do have a finite number of resources, be it space or financial. However, we already pay to incarcerate people for drug use, and the majority of us in Canada have access to public health insurance (ex. OHIP) so the public is already paying medical costs after an illness is acquired.

Lastly, some may object on moral grounds, that drugs outside of medical purposes should never be used, and that regardless of the reasons for use (recreational, self-medication, social, etc), and the effects on the rest of society, people should be punished for use. Such an ethical debate falls outside the realm of evidence.



¹ Toronto and Ottawa Supervised Consumption Assessment <http://toscastudy.ca/toscastudy.ca/Home.html>

² Supreme Court ruling on Insite <http://www.canlii.org/en/ca/scc/doc/2011/2011scc44/2011scc44.pdf>

³ Ch. 11 of European Monitoring Centre for Drugs & Drug Addiction (EMCDDA) “Monograph 10”, 2010

⁴ “European report on drug consumption rooms” 2004

⁵ Shore “Recent Trends in Drug Use in New Zealand 2006-2011”

<http://www.massey.ac.nz/massey/fms/Colleges/CollegeofHumanitiesandSocialSciences/Shore/reports/IDMS2011FinalReport.pdf>