

What Victims of Crime Should Know About



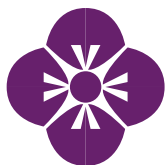
Not Criminally
Responsible Accused

New  Nouveau
Brunswick
C A N A D A

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Jointly published by:



**Public Legal Education
and Information Service
of New Brunswick**

P.O. Box 6000
Fredericton, NB E3B 5H1
Telephone: (506) 453-5369
Fax: (506) 462-5193
Email: pleisnb@web.ca
www.legal-info-legale.nb.ca

and



Public Safety
P.O. Box 6000
Fredericton, NB E3B 5H1
www.gnb.ca/0276/index-e.asp

The purpose of this pamphlet is to explain to victims of crime what happens when the Court finds the person accused of the crime to be “**not criminally responsible**” due to mental illness. Many people, including victims, are unsure of how the justice system handles cases involving mentally disordered accused. People often think that mentally disordered accused are acquitted which is not the case. This pamphlet explains the role of the **Criminal Code Review Board** in assessing the accused and making a disposition. It will also help victims understand their rights such as making *victim impact statements* at Review Board Hearings, obtaining information about the accused, and finding out about the status of the case.

What does a finding of ‘not criminally responsible’ mean?

A finding of ‘not criminally responsible’ means that the judge or jury has reached a verdict that:

- the accused committed the offence;
- the accused, at the time of the offence, had a mental disorder that prevented him or her from appreciating the nature and quality of the offence; and
- the accused did not know that it was wrong.

What happens when the Court finds an accused 'not criminally responsible'?

In order to determine what happens to the accused, the Court will either:

- hold a disposition hearing and issue an initial disposition order and the Review Board would then have 90 days from the time of the verdict to hold a hearing;

or

- refer the case to the Review Board, established under the *Criminal Code*, for disposition. The Review Board must make an initial disposition within 45 days of the verdict unless the Court extends the time up to a period of 90 days.

What is the Review Board?

The Review Board is appointed under the *Criminal Code* to make or review the disposition of accused persons who have been found unfit for trial or *not criminally responsible by reason of a mental disorder*.

The Board is made up of at least five members. The chairperson must be a judge, retired judge or person qualified to be appointed as a judge. There must be at least one licensed psychiatrist. When the Board sits to review cases, at least three members must be present, including the chairperson and the psychiatrist.

What kinds of dispositions can the Court or the Review Board order?

The Court or the Review Board may make the following decisions about the mentally disordered accused:

- the accused may be *detained in a psychiatric facility* until the Review Board recommends a conditional or absolute discharge;
- the accused may be allowed to live in the community under supervision of mental health officials. This is called a *conditional discharge*;
- the accused may receive an *absolute discharge*. This means the accused is released directly into the community.

These three dispositions do not necessarily reflect a progression over time for all accused persons. In some cases the accused may be released into the community immediately, without any detention in a psychiatric hospital.

How often will the Review Board reassess the “not criminally responsible” accused?

The Review Board must conduct an annual assessment of accused persons who are sent to a psychiatric facility or receive a conditional discharge. However, the Review Board may review cases more frequently, if it is in the best interest of the accused and public safety to do so.

How do victims find out about Review Board Hearings?

When the Review Board sets a date for the initial disposition hearing it informs Victim Services. Victim Services will contact the victims to tell them that they may register with Victim Services if they want to know the date and location of the hearing and to be informed of future hearings. The Review Board will communicate with Victim Services about the dates of hearings and the outcomes of those hearings. Victim Services will inform registered victims. They will also explain to victims that they have the right to prepare written *victim impact statements* for consideration at Review Board hearings.

Do victims have any role at the Review Board Hearings?

Yes. If victims decide to prepare written *victim impact statements*, Victim Services is responsible for sending them to the Review Board Chair for distribution and consideration at the hearing. If there is a significant change in the information on how the crime has affected them, victims may update their victim impact statements for subsequent Review Board hearings. The Review Board will consider *victim impact statements* as one of several factors in determining the 'disposition' of the accused in 'not criminally responsible' cases.

May victims read their Victim Impact Statement at Review Board Hearings?

Victims can indicate in their *victim impact statements* that they would like to read their statements at Review Board hearings. They can also tell the Victim Services Coordinator who will advise the Review Board Chair. Hearings are held in the location where the accused lives (in a secure facility or in the community). Permission to present victim impact statements at the hearing is subject to the approval of the Review Board.

If the victim has permission to attend a hearing is there any financial help available for travel?

There may be. If the Review Board agrees to the victim's request to present his or her *victim impact statement* at the hearing, the victim must make his or her own travel arrangements. Contact Victim Services before the hearing for information on eligibility for financial assistance for travel to the hearing and what expenses are covered.

What if victims only want information about Review Board outcomes?

Even if victims do not wish to make victim impact statements, they can still register with Victim Services to get information about the outcome of hearings. Victim Services will contact registered victims to share and explain the appropriate information. If victims do not make this request at the time of the 'not criminally responsible' verdict, they may still contact Victim Services later to register.

What happens at Review Board Hearings?

The Review Board makes a disposition order. To do so, the Review Board considers factors such as psychiatric reports, long term care assessment reports and other relevant reports on the mental health of the accused and evidence from witnesses. The Review Board must determine whether there has been any change in the circumstances of the accused since the last time the disposition was made or reviewed that may provide grounds for the discharge of the accused. In making a disposition order, the Board has a dual role of balancing the need to protect the public from dangerous persons and addressing the needs of the accused.

If the Review Board orders a conditional discharge, can it place restrictions on the accused?

Yes, the Review Board may order “conditions of release” such as living in a specified place of residence, keeping the peace and being of good behaviour, and requiring the accused to attend a community mental health centre for follow-up with a psychiatrist and other healthcare professionals. They may prohibit the accused from using illicit drugs and alcohol or possessing firearms or other weapons and restrict the accused from travelling within and/or outside his or her community of residence.

The Board may also restrict the accused from contacting the victim or others. A victim who has concerns should ask Victim Services to inform the Crown prosecutor to request this condition.

What if the accused disobeys a condition?

If an accused disobeys conditions in the disposition order, it could result in his or her arrest, an appearance in Court and/or a review of the matter by the Review Board. For example, if the accused breaks a condition by contacting a victim, the victim should call the police. The police may arrest the accused without warrant if they have reason to believe a breach has taken place. If arrested, the accused will go before the Court which will determine whether he or she breached a condition of the disposition order. The Court could release the accused back into the community or order the detention of the accused at a hospital until there is a Review Board hearing. The Review Board can hold a discretionary hearing at any time to review a matter.

Can victims get other information about the 'not criminally responsible' accused?

Yes. In addition to being notified of hearing dates, locations and outcomes, victims may also be informed of the following:

- If an accused is on conditional discharge in the community, the name of the community;

- If the accused is hospitalized, the name of the facility;
- If the accused is transferred to another province for treatment purposes;
- If the accused dies while detained in a psychiatric hospital.

How long will the victim continue to get notices about hearings and other information?

The victim who is registered with Victim Services will continue to be notified of hearings and outcomes for as long as he or she wishes to receive annual review information or until the Review Board has given the accused an absolute discharge.

Can the victim see the accused's medical records?

The victim does not have access to the accused's medical files and psychiatric reports. These are confidential documents. The victim is only entitled to information on the status of the accused as outlined above. When an accused receives an absolute discharge, under privacy laws the victim no longer has access to information. However, depending on the circumstances, the Review Board may release limited information such as notifying victims of an accused's release date.

Where can victims get more information and support?

For more information on support services for victims of crime, contact the nearest Department of Public Safety, Victim Services office:

Bathurst	547-2924
Bouctouche	743-7251
Burton	357-4035
Campbellton	789-2388
Edmundston	735-2543
Fredericton	453-2768
Grand Falls	473-7706
Miramichi	627-4065
Moncton	856-2875
Richibucto	523-7150
Saint John	658-3742
Shediac	533-9100
St. Stephen	466-7414
Tracadie-Sheila	394-3690
Woodstock	325-4422

Other publications for victims of crime include: *Services for Victims of Crime*, *Victim Impact Statements*, *Vulnerable Victims of Crime* and *Being a Witness*.

