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CHAPTER VI – CHAPITRE VI : Particular Proceedings: Specific Accused Persons Procédures particulières : Accusés particuliers	Readers are referred to the list of Related Documents at the end of this Policy for additional information. Les lecteurs peuvent se référer à la liste des documents connexes notés à la fin de cette politique pour information supplémentaire.	

MENTALLY DISORDERED ACCUSED PERSONS

1. Introduction

Mentally disordered people often come into contact with the criminal justice system. In recognition of their particular circumstances, mentally disordered accused persons may warrant special consideration within the criminal justice system, depending on the nature and circumstances of the offence and the background of the accused.

2. Scope of the Policy

Public Prosecution Services recognizes that there is a range of mental health concerns that may affect people who come into contact with the criminal justice system, some of which may warrant special consideration outside of the scope of this Policy. This Policy applies only where the accused person's mental fitness to stand trial or mental capacity for criminal intent is in issue.

3. Assessment Orders

Assessment orders are governed by sections 672.11 to 672.191 of the *Criminal Code*.

3.1 Necessity

The court determines whether an assessment is necessary. The party applying for the assessment bears the burden of proving, on reasonable grounds, that the assessment is necessary.

Where the accused applies for an assessment order, the Crown Prosecutor shall consider challenging its necessity. Unless the Crown Prosecutor is satisfied that the accused person's mental condition or capacity is uncertain, he or she shall challenge the accused to prove its necessity. The Crown Prosecutor should determine whether any prior assessment has been undertaken, and if so, the result of the assessment, the date it was conducted, and whether there are any factors that have since arisen that support the notion that a new assessment may be necessary.

3.2 Application by the Crown Prosecutor

Under section 672.12 the Crown Prosecutor may apply for an assessment order where he or she believes it is necessary. Where the Crown Prosecutor applies for an assessment order, the court will only order it where the accused raised the issue of his or her fitness to stand trial or his or her mental capacity for criminal intent, or where the Crown Prosecutor satisfies the court that there are reasonable grounds to doubt the accused person's fitness to stand trial or mental capacity for criminal intent, and in the court's discretion, the assessment is necessary.

3.3 Reasonable Grounds

The existence of reasonable grounds does not mandate an assessment order. The court has the discretion to order an assessment or not.

Sections 672.11 and 672.12 do not require specific evidence in support of the application. Medical evidence or observations of the accused person's behavior by lay witnesses or the court would be sufficient to constitute reasonable grounds.

3.4 Independent Assessments

Usually, the assessment report will assist the court, but it is not determinative of mental fitness or capacity.

In addition to the circumstances, set out in subsection 3.2 above, the Crown Prosecutor may also apply for an assessment order where he or she feels it is necessary notwithstanding that an assessment has already been done. For instance, the Crown Prosecutor may wish to apply for a subsequent assessment order to challenge an expert's opinion.

The Crown Prosecutor must obtain consent from the Regional Director or the Director of Specialized Prosecutions, as the case may be, who will obtain consent from the Director of Public Prosecutions, before retaining an expert to review a report or conduct an independent assessment on the accused.

Where the accused refuses to submit to an independent assessment, the Crown Prosecutor shall consider asking the court to draw an adverse inference or order that the accused submit to the independent assessment.

3.5 Time Period for Assessments

Generally, under section 672.14 an assessment order shall be in force for no more than thirty (30) days.

Where the assessment order is to determine whether the accused is unfit to stand trial, the assessment order shall in force for no more than five (5) 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 Crown Prosecutor and the accused agree to a longer period not exceeding thirty (30) days.

Where compelling circumstances warrant it, a court or review board may make an assessment order that remains in force for sixty (60) days.

4. Fitness to Stand Trial

Fitness to stand trial is governed by sections 672.22 to 672.33 of the *Criminal Code*.

Under section 672.22, an accused is presumed fit to stand trial unless the court is satisfied that he or she is unfit to stand trial. "Unfit to stand trial" is defined in section 2 of the *Criminal Code* as follows:

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.

Where the accused person's mental condition prevents him or her from conducting a legal defence, or instructing a lawyer to do so, the trial cannot proceed until his or her mental fitness is restored.

Whether the accused is fit to stand trial is a question for the court to decide. Where the court has reasonable grounds to believe that the accused is unfit to stand trial, it may direct that the issue be tried. The party who makes the application concerning fitness, has the burden of proving, on the balance of probabilities, that the accused is unfit to stand trial. The Crown Prosecutor shall, ordinarily, review and ensure that the expert evidence supports the application. Where the matter concerns a serious personal injury offence, the Crown Prosecutor shall, take particular care to ensure this evidentiary burden is met.

If the court finds the accused fit to stand trial, the trial continues. If the court finds that the accused is not fit to stand trial, it will discontinue proceedings until his or her mental fitness is restored.

5. Verdict of Not Criminally Responsible on Account of Mental Disorder

A verdict of not criminally responsible on account of mental disorder is governed by sections 672.34 to 672.37 of the *Criminal Code*.

In some circumstances, the mental condition of an accused at the time of the offence may have been such that, although the charge is made out against the accused, he or she is not criminally responsible on account of mental disorder.

The party who makes the application for a verdict of not criminally responsible, has the burden of proving, on the balance of probabilities, that the accused is not criminally responsible. The Crown Prosecutor shall, ordinarily, challenge an application by the accused for a verdict of not criminally responsible. Where the matter concerns a serious personal injury offence, the Crown Prosecutor shall, in every instance, challenge the application.

6. Disposition Hearings

Disposition hearings are governed by sections 672.45 to 672.63 of the *Criminal Code*.

Under section 672.45, where an accused is found to be unfit to stand trial or not criminally responsible on account of mental disorder, the court has the discretion to hold a disposition hearing or refer the matter to a review board for disposition.

In the event that a matter is referred to the review board, the Crown Prosecutor shall apply to be designated as a party at the disposition hearing pursuant to subsection 672.5(3). The Crown Prosecutor shall, where appropriate, request Victim Impact Statements in court prior to the court referral to the review board pursuant to subsection 672.5(14).

At the disposition hearing, the court or review board examines the circumstances surrounding the offence, the accused person's criminal record, psychiatric reports, and any other relevant information. The Crown Prosecutor shall ensure that any Victim Impact Statement is brought to the attention of the court or the review board. Under section 672.54 the court or review board will, after taking into consideration the need to protect the public from dangerous persons, the mental condition of the accused, the re-integration of the accused into society, and the other needs of the accused, choose the least onerous and least restrictive disposition that is appropriate.

6.1 Dispositions Concerning Fitness to Stand Trial

Under section 672.48, where a review board concludes that the accused is fit to stand trial, it will order the accused to return to court to try the issue of fitness. Under section 672.54 where the court or the review board concludes that the accused is still unfit for trial, it will order the accused to remain in custody in a psychiatric hospital or be released on a conditional discharge.

6.2 Dispositions Concerning Verdict of Not Criminally Responsible

Under section 672.54, at a disposition hearing on a verdict of not criminally responsible, the court or the review board may order an absolute discharge, a conditional discharge, or detention in a psychiatric hospital.

6.3 Mandatory Treatment

Under section 672.55 neither the court nor the review board is able to order treatment as a condition unless the accused consents and the court or the review board considers treatment reasonable and necessary.

6.4 Review Board Reassessments

6.4.1 Reassessments Concerning Fitness to Stand Trial

Under section 672.32 an accused who is unfit to stand trial, may be tried subsequently where a party can prove on the balance of probabilities that the accused has become fit to stand trial.

Under section 672.33, as circumstances require, but at least every twenty four (24) months, the review board will reassess the case to determine whether the accused is fit to stand trial. Where appropriate, the Crown Prosecutor shall attempt to demonstrate the fitness of the accused. This section also provides a continuing obligation on the Crown to be able to demonstrate every twenty-four (24) months, in the case of an adult, or every twelve (12) months, in the case of a youth, or upon application by the accused, that, if required, it can prove the charge against the accused. Where the Crown Prosecutor cannot satisfy the court that he or she has a *prima facie* case against the accused, the court will acquit the accused.

Under section 672.81, where the review board finds the accused remains unfit to stand trial, it will reassess the disposition order upon request by the accused or another party, or at least every twelve (12)

months, to determine whether the accused should continue to be held in custody in a psychiatric hospital or released on a conditional discharge. In appropriate circumstances, the review board may extend the time for holding a hearing for up to twenty four (24) months.

6.4.2 Reassessment Concerning Verdict of Not Criminally Responsible

Under section 672.81, where the court renders a verdict of not criminally responsible and the accused is subject to conditional discharge or detention in a psychiatric hospital, the review board will reassess the disposition order upon request by the accused or another party, or at least every twelve (12) months, to determine whether the threat posed by the mentally disordered accused person has changed and whether the restrictions on the accused person's liberty should be modified. In appropriate circumstances, the review board may extend the time for holding a hearing for up to twenty four (24) months.

7. **Related Documents**

None