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ORDER/ADDRESS OF THE HOUSE OF COMMONS ORDRE/ADRESSE DE LA CHAMBRE DES COMMUNES

NO.-N° Q-1169	BY / DE Mr. Cotler (Mount Royal)	DATE February 12, 2013 / 12 février 2013
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RETURN BY THE LEADER OF THE GOVERNMENT IN THE HOUSE OF COMMONS
DÉPÔT DU LEADER DU GOUVERNEMENT À LA CHAMBRE DES COMMUNES

Signed by Mr. Tom Lukiwski

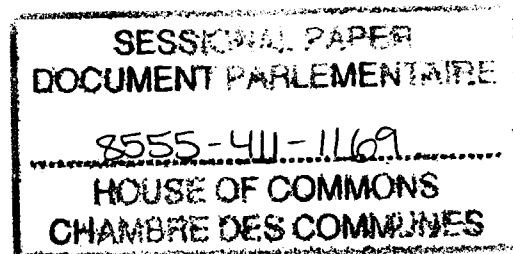
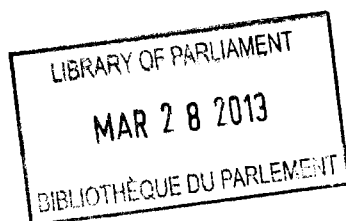
PRINT NAME OF SIGNATORY
INSCRIRE LE NOM DU SIGNATAIRE

SIGNATURE
MINISTER OR PARLIAMENTARY SECRETARY
MINISTRE OU SECRÉTAIRE PARLEMENTAIRE

MAR 27 2013

(TABLED FORTHWITH / DÉPOSÉ AUSSITÔT)

MAR 27 2013





INQUIRY OF MINISTRY DEMANDE DE RENSEIGNEMENT AU GOUVERNEMENT

PREPARE IN ENGLISH AND FRENCH MARKING "ORIGINAL TEXT" OR "TRANSLATION"
PRÉPARER EN ANGLAIS ET EN FRANÇAIS EN INDIQUANT "TEXTE ORIGINAL" OU "TRADUCTION"

QUESTION NO./N° DE LA QUESTION
Q-1169²

BY / DE
Mr. Cotler (Mount Royal)

DATE
February 12, 2013

REPLY BY THE MINISTER OF INDUSTRY AND
MINISTER OF STATE (AGRICULTURE)
RÉPONSE DU MINISTRE DE L'INDUSTRIE ET
MINISTRE D'ÉTAT (AGRICULTURE)

Signed by the Honourable Christian Paradis

PRINT NAME OF SIGNATORY
INSCRIRE LE NOM DU SIGNATAIRE

SIGNATURE
MINISTER OR PARLIAMENTARY SECRETARY
MINISTRE OU SECRÉTAIRE PARLEMENTAIRE

QUESTION

With regard to C-54, An Act to amend the Criminal Code and the National Defence Act (mental disorder): (a) in developing this legislation, on what (i) studies, (ii) case law, (iii) doctrinal sources did the government rely; (b) what statistics does the government track with respect to people found not criminally responsible (NCR) on account of mental disorder; (c) for each of the last ten years, broken down by province and territory and by type of offence, (i) how many people have been found NCR, (ii) which people found NCR have been released without conditions – **See full text of the question attached.**

REPLY / RÉPONSE

ORIGINAL TEXT
TEXTE ORIGINAL



TRANSLATION
TRADUCTION



Part (b)

Statistics Canada collects information on people found not criminally responsible (NCR) on account of mental disorder through the Integrated Criminal Court Survey (ICCS).

The Integrated Criminal Court Survey collects statistical information on adult and youth court cases involving Criminal Code and other federal statute offences. It includes information on the age and sex of the accused, case decision patterns, sentencing information regarding the length of prison and probation, and amount of fine, as well as case-processing data such as case elapsed time.

The survey definition of case is one or more charges against an accused person, which were processed by the courts at the same time (date of offence, date of initiation, date of first appearance, date of decision, or date of sentencing), and received a final decision.

Data reporting limitations: Data are not available from Quebec, Yukon and the Northwest Territories, as well as, information from superior courts in Prince Edward Island, Ontario, Manitoba and Saskatchewan. This may result in an underestimation of the number of cases with a final decision of acquitted on account of mental disorder.

Part (c) (i)

The following table presents the number of cases acquitted on account of mental disorder, adults criminal and youth courts, selected provinces and territories in Canada, 2001-2002 to 2010-2011.

Number of cases acquitted on account of mental disorder, adult criminal and youth courts, selected provinces and territories in Canada, 2001/2002 to 2010/2011

	2001/2002	2002/2003	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011
Newfoundland and Labrador - Total	0	1	1	3	1	0	0	0	0	1
Crimes against the person	0	0	1	1	0	0	0	0	0	0
Crimes against property	0	0	0	2	1	0	0	0	0	0
Other	0	1	0	0	0	0	0	0	0	1
Prince Edward Island - Total	0	0	0	0	0	0	0	0	0	0
Crimes against the person	0	0	0	0	0	0	0	0	0	0
Crimes against property	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0
Nova Scotia - Total	26	11	14	17	8	22	17	21	10	8
Crimes against the person	11	5	10	9	3	11	10	14	5	4
Crimes against property	5	4	1	4	4	6	4	0	3	2
Other	10	2	3	4	1	5	3	7	2	2
New Brunswick - Total	12	16	11	22	24	19	25	23	26	24
Crimes against the person	5	7	5	11	15	9	11	15	14	14
Crimes against property	3	2	4	5	5	5	5	1	7	4
Other	4	7	2	6	4	5	9	7	5	6
Quebec - Total
Crimes against the person
Crimes against property
Other
Ontario - Total	17	17	9	75	87	72	77	96	80	69
Crimes against the person	9	11	7	47	59	46	50	61	49	46
Crimes against property	1	1	1	10	9	11	7	12	12	6
Other	7	5	1	18	19	15	20	23	19	17
Manitoba - Total	5	5	1	7	4	5
Crimes against the person	3	3	1	6	3	4
Crimes against property	1	1	0	1	1	1
Other	1	1	0	0	0	0
Saskatchewan - Total	0	0	0	0	0	0	0	0	1	0
Crimes against the person	0	0	0	0	0	0	0	0	1	0
Crimes against property	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0
Alberta - Total	0	0	1	3	10	5	9	7	10	9
Crimes against the person	0	0	0	2	5	4	6	7	5	4
Crimes against property	0	0	0	0	4	0	1	0	2	1
Other	0	0	1	1	1	1	2	0	3	4
British Columbia - Total	41	27	38	23	36	29	21	22	17	15
Crimes against the person	28	24	28	18	28	14	12	13	10	11
Crimes against property	4	1	8	3	3	9	3	4	2	2
Other	9	2	2	2	5	6	6	5	5	2
Yukon - Total
Crimes against the person
Crimes against property
Other
Northwest Territories - Total
Crimes against the person
Crimes against property
Other
Nunavut - Total	3	1	1	0	0	0
Crimes against the person	2	1	0	0	0	0
Crimes against property	1	0	1	0	0	0
Other	0	0	0	0	0	0
Grand Total	96	72	74	143	174	153	151	176	148	131

Source: Statistics Canada, Canadian Centre for Justice Statistics, Integrated Criminal Court Survey (ICCS)

.. Data not available

Notes:

Data include counts from both the Adult and Youth components of the Integrated Criminal Court Survey.

Other includes Administration of justice offences, Other Criminal Code offences, Criminal Code traffic offences, and Other federal statute offences.

Data reporting limitations: Data are not available from Quebec, Yukon and NWT, as well as, information from superior courts in Prince Edward Island, Ontario, Manitoba and Saskatchewan. This may result in an underestimation of the number of cases with a final decision of acquitted on account of mental disorder.

Q-1169¹ — February 12, 2013 — Mr. Cotler (Mount Royal) — With regard to C-54, An Act to amend the Criminal Code and the National Defence Act (mental disorder): (a) in developing this legislation, on what (i) studies, (ii) case law, (iii) doctrinal sources did the government rely; (b) what statistics does the government track with respect to people found not criminally responsible (NCR) on account of mental disorder; (c) for each of the last ten years, broken down by province and territory and by type of offence, (i) how many people have been found NCR, (ii) which people found NCR have been released without conditions, (iii) which people found NCR have been released with conditions, (iv) how long has each person found NCR spent in treatment prior to release, (v) which people found NCR and released have been convicted of a subsequent offence, (vi) what was the nature of the subsequent offence, (vii) which people found NCR and released have been found NCR of a subsequent offence, (viii) what was the nature of the subsequent offence; (d) for each of the last ten years, what was the recidivism rate for all federal offenders; (e) broken down by province and territory, (i) which treatment facilities accept people found NCR, (ii) which of these facilities are privately owned, (iii) what is the capacity of each facility, (iv) how many people are currently housed in each facility; (f) what analysis has the government performed to determine whether this legislation will result in a need for increased capacity in these facilities; (g) what are the conclusions of this analysis; (h) what steps is the government taking to ensure adequate capacity in these facilities; (i) what funds are currently designated for (i) the construction of new facilities to house people found NCR, (ii) the expansion of existing such facilities; (j) what government programs exist to fund any such facilities that are privately owned; (k) what funds have been allocated to any such programs for each of the past ten years; (l) what steps is the government taking to mitigate Charter litigation with respect to people found NCR who may be unable to secure space in an appropriate facility; (m) has Bill C-54 been examined by the Department of Justice to ascertain consistency with the Charter; (n) which officials performed the examination, (i) when was the examination initiated, (ii) when was the examination completed, (iii) what were the conclusions of this examination; (o) when was the Minister of Justice presented with these conclusions; (p) was a report of inconsistency prepared; (q) was a report of inconsistency presented to Parliament; and (r) has there been an assessment of the litigation risk relative to the enactment of this legislation and, if so, what are the conclusions of this assessment?



INQUIRY OF MINISTRY DEMANDE DE RENSEIGNEMENT AU GOUVERNEMENT

PREPARE IN ENGLISH AND FRENCH MARKING "ORIGINAL TEXT" OR "TRANSLATION"
PRÉPARER EN ANGLAIS ET EN FRANÇAIS EN INDIQUANT "TEXTE ORIGINAL" OU "TRADUCTION"

QUESTION NO./N° DE LA QUESTION Q-1169 ²	BY / DE M. Cotler (Mont-Royal)	DATE 12 février 2013
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REPLY BY MINISTER OF INDUSTRY AND
MINISTER OF STATE (AGRICULTURE)
RÉPONSE DU MINISTRE DE L'INDUSTRIE ET
MINISTRE D'ÉTAT (AGRICULTURE)

Signé par l'honorable Christian Paradis

PRINT NAME OF SIGNATORY
INSCRIRE LE NOM DU SIGNATAIRE

SIGNATURE
MINISTER OR PARLIAMENTARY SECRETARY
MINISTRE OU SECRÉTAIRE PARLEMENTAIRE

QUESTION

En ce qui concerne le projet de loi C-54, Loi modifiant le Code criminel et la Loi sur la défense nationale (troubles mentaux) : a) pour la rédaction du projet de loi, sur quelles (i) études, (ii) cas de jurisprudence, ~~(iii) sources doctrinales le gouvernement s'est-il appuyé;~~ b) ~~quelles statistiques le gouvernement~~ recueille-t-il au sujet des personnes qui sont reconnues non criminellement responsables (NCR) pour cause de troubles mentaux; c) pour chacune des dix dernières années, selon la province, le territoire et le type d'infraction, (i) combien de personnes ont été reconnues NCR, (ii) quelles personnes reconnues NCR ont été libérées sans conditions – **Voir ci-joint pour le texte complet de la question.**

REPLY / RÉPONSE

ORIGINAL TEXT
TEXTE ORIGINAL

☐

TRANSLATION
TRADUCTION

☒

Partie (b)

Statistique Canada recueille des informations au sujet des personnes qui sont reconnues non criminellement responsables (NCR) pour cause de troubles mentaux par l'entremise de l'Enquête intégrée sur les tribunaux de juridiction criminelle (EITJC).

L'EITJC sert à recueillir de l'information statistique sur les causes devant les tribunaux pour adultes et les tribunaux de la jeunesse qui comportent des infractions au Code criminel et aux autres lois fédérales. Elle fournit de l'information sur l'âge et le sexe de l'accusé, sur les jugements, sur la durée des peines d'emprisonnement et de probation et sur le montant de l'amende, ainsi que des données sur le traitement des causes, comme le temps écoulé depuis l'introduction de la cause.

La définition de cause utilisée est la suivante : une cause regroupe toutes les accusations portées contre la même personne, dont les principales dates se chevauchent (date de l'infraction, date de l'introduction, date de la première comparution, date du jugement, date de l'imposition de la peine) et qui ont fait l'objet d'un jugement définitif.

Certaines limites existent quant à la couverture de l'enquête. Les données sur les causes où l'accusé est reconnu non criminellement responsable ne sont pas disponibles pour le Québec, le Yukon, les Territoires du Nord-Ouest ainsi que celles provenant des cours supérieures de l'Île-du-Prince-Édouard, de l'Ontario, du

Manitoba et de la Saskatchewan. L'absence de données peut avoir entraîné une sous-estimation du nombre de causes pour lesquelles cette décision a été rendue.

Partie (c)(i)

Le tableau suivant présente nombre de causes où un accusé est reconnu non criminellement responsable pour cause de trouble mentaux.

Nombre de causes où un accusé est reconnu non criminellement responsable en raison de troubles mentaux, tribunaux de juridiction criminelle pour adultes et tribunaux de la jeunesse, certaines provinces et certains territoires au Canada, 2001-2002 à 2010-2011

	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011
Terre-Neuve-et-Labrador — Total	0	1	1	3	1	0	0	0	0	1
Crimes contre la personne	0	0	1	1	0	0	0	0	0	0
Crimes contre les biens	0	0	0	2	1	0	0	0	0	0
Autres crimes	0	1	0	0	0	0	0	0	0	1
Île-du-Prince-Édouard — Total	0	0	0	0	0	0	0	0	0	0
Crimes contre la personne	0	0	0	0	0	0	0	0	0	0
Crimes contre les biens	0	0	0	0	0	0	0	0	0	0
Autres crimes	0	0	0	0	0	0	0	0	0	0
Nouvelle-Écosse — Total	26	11	14	17	8	22	17	21	10	8
Crimes contre la personne	11	5	10	9	3	11	10	14	5	4
Crimes contre les biens	5	4	1	4	4	6	4	0	3	2
Autres crimes	10	2	3	4	1	5	3	7	2	2
Nouveau-Brunswick — Total	12	16	11	22	24	19	25	23	26	24
Crimes contre la personne	5	7	5	11	15	9	11	15	14	14
Crimes contre les biens	3	2	4	5	5	5	5	1	7	4
Autres crimes	4	7	2	6	4	5	9	7	5	6
Québec — Total
Crimes contre la personne
Crimes contre les biens
Autres crimes
Ontario — Total	17	17	9	75	87	72	77	96	80	69
Crimes contre la personne	9	11	7	47	59	46	50	61	49	46
Crimes contre les biens	1	1	1	10	9	11	7	12	12	6
Autres crimes	7	5	1	18	19	15	20	23	19	17
Manitoba — Total	5	5	1	7	4	5
Crimes contre la personne	3	3	1	6	3	4
Crimes contre les biens	1	1	0	1	1	1
Autres crimes	1	1	0	0	0	0
Saskatchewan — Total	0	0	0	0	0	0	0	0	1	0
Crimes contre la personne	0	0	0	0	0	0	0	0	1	0
Crimes contre les biens	0	0	0	0	0	0	0	0	0	0
Autres crimes	0	0	0	0	0	0	0	0	0	0
Alberta — Total	0	0	1	3	10	5	9	7	10	9
Crimes contre la personne	0	0	0	2	5	4	6	7	5	4
Crimes contre les biens	0	0	0	0	4	0	1	0	2	1
Autres crimes	0	0	1	1	1	1	2	0	3	4
Colombie-Britannique — Total	41	27	38	23	36	29	21	22	17	15
Crimes contre la personne	28	24	28	18	28	14	12	13	10	11
Crimes contre les biens	4	1	8	3	3	9	3	4	2	2
Autres crimes	9	2	2	2	5	6	6	5	5	2
Yukon — Total
Crimes contre la personne
Crimes contre les biens
Autres crimes
Territoires du Nord-Ouest — Total
Crimes contre la personne
Crimes contre les biens
Autres crimes
Nunavut — Total	3	1	1	0	0	0
Crimes contre la personne	2	1	0	0	0	0
Crimes contre les biens	1	0	1	0	0	0
Autres crimes	0	0	0	0	0	0
Grand total	96	72	74	143	174	153	151	176	148	131

Source : Statistique Canada, Centre canadien de la statistique juridique, Enquête intégrée sur les tribunaux de juridiction criminelle.
.. données indisponibles

Notes :

Les données comprennent les comptes des composantes à la fois des adultes et des jeunes de l'Enquête intégrée sur les tribunaux de juridiction criminelle.

La catégorie « Autres crimes » comprend les infractions contre l'administration de la justice, les autres infractions au *Code criminel*, les délits de la route en vertu du *Code criminel*, et les infractions aux autres lois fédérales.

Limites en matière de déclaration des données : Les données ne sont pas disponibles pour le Québec, le Yukon et les Territoires du Nord-Ouest, de même que les renseignements obtenus des cours supérieures à l'Île-du-Prince-Édouard, en Ontario, au Manitoba et en Saskatchewan. Cette situation peut entraîner une sous-estimation du nombre de causes dont la décision finale était un acquittement pour cause de troubles mentaux.

Q-1169^a — 12 février 2013 — M. Cotler (Mont-Royal) — En ce qui concerne le projet de loi C-54, Loi modifiant le Code criminel et la Loi sur la défense nationale (troubles mentaux) : *a*) pour la rédaction du projet de loi, sur quelles (i) études, (ii) cas de jurisprudence, (iii) sources doctrinales le gouvernement s'est-il appuyé; *b*) quelles statistiques le gouvernement recueille-t-il au sujet des personnes qui sont reconnues non criminellement responsables (NCR) pour cause de troubles mentaux; *c*) pour chacune des dix dernières années, selon la province, le territoire et le type d'infraction, (i) combien de personnes ont été reconnues NCR, (ii) quelles personnes reconnues NCR ont été libérées sans conditions, (iii) quelles personnes reconnues NCR ont été libérées sous conditions, (iv) pendant combien de temps chaque personne reconnue NCR a-t-elle été sous traitement avant sa libération, (v) quelles personnes reconnues NCR et libérées ont été reconnues coupables d'une infraction subséquente, (vi) quelle était la nature de l'infraction subséquente, (vii) quelles personnes reconnues NCR et libérées ont été reconnues NCR d'une infraction subséquente, (viii) quelle était la nature de l'infraction subséquente; *d*) pour chacune des dix dernières années, quel a été le taux de récidive pour tous les délinquants sous responsabilité fédérale; *e*) selon la province et le territoire, (i) quels établissements de traitement acceptent les personnes reconnues NCR, (ii) parmi ces établissements, lesquels sont privés, (iii) combien de personnes peut accueillir chaque établissement, (iv) combien de personnes se trouvent actuellement dans chaque établissement; *f*) quelle analyse le gouvernement a-t-il réalisée pour déterminer si cette mesure législative exigera que ces établissements augmentent leur capacité d'accueil; *g*) quelles sont les conclusions de cette analyse; *h*) quelles mesures le gouvernement prend-il pour veiller à ce que ces établissements aient la capacité d'accueil voulue; *i*) à l'heure actuelle, quels fonds sont affectés (i) à la construction de nouveaux établissements pour héberger les personnes reconnues NCR, (ii) à l'agrandissement de ces établissements; *j*) quels programmes gouvernementaux existent pour financer les établissements privés; *k*) quels fonds ont été affectés à ce type de programmes pour chacune des dix dernières années; *l*) quelles mesures le gouvernement prend-il pour prévenir les contentieux fondés sur la Charte en ce qui concerne les personnes reconnues NCR qui pourraient ne pas être en mesure d'obtenir une place dans un établissement pertinent; *m*) le projet de loi C-54 a-t-il été examiné par le ministère de la Justice pour en assurer la conformité avec la Charte; *n*) quels responsables ont procédé à l'examen, (i) quand l'examen a-t-il été entrepris, (ii) quand l'examen a-t-il été achevé, (iii) quelles ont été les conclusions de l'examen; *o*) quand les conclusions ont-elles été présentées au ministre; *p*) un rapport de non-conformité a-t-il été produit; *q*) un rapport de non-conformité a-t-il été présenté au Parlement; *r*) a-t-on procédé à une évaluation des risques de contentieux relatifs à l'adoption de ce projet de loi et, si tel est le cas, quelles en sont les conclusions?



INQUIRY OF MINISTRY
DEMANDE DE RENSEIGNEMENT AU GOUVERNEMENT

PREPARE IN ENGLISH AND FRENCH MARKING "ORIGINAL TEXT" OR "TRANSLATION"
PRÉPARER EN ANGLAIS ET EN FRANÇAIS EN INDIQUANT "TEXTE ORIGINAL" OU "TRADUCTION"

QUESTION NO./N° DE LA QUESTION Q-1169	BY / DE Mr. Cotler (Mount Royal)	DATE February 12, 2013
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REPLY BY THE MINISTER OF JUSTICE AND
ATTORNEY GENERAL OF CANADA
RÉPONSE DU MINISTRE DE LA JUSTICE ET
PROCUREUR GÉNÉRAL DU CANADA

Signed by the Honourable Rob Nicholson

PRINT NAME OF SIGNATORY
INSCRIRE LE NOM DU SIGNATAIRE

SIGNATURE
MINISTER OR PARLIAMENTARY SECRETARY
MINISTRE OU SECRÉTAIRE PARLEMENTAIRE

QUESTION

With regard to C-54, An Act to amend the Criminal Code and the National Defence Act (mental disorder):
(a) in developing this legislation, on what (i) studies, (ii) case law, (iii) doctrinal sources did the government rely; (b) what statistics does the government track with respect to people found not criminally responsible (NCR) on account of mental disorder; (c) for each of the last ten years, broken down by province and territory and by type of offence, (i) – **See full text of the question attached.**

REPLY / RÉPONSE

ORIGINAL TEXT
TEXTE ORIGINAL



TRANSLATION
TRADUCTION



(a) In developing Bill C-54, the Government relied on a number of sources, including the relevant jurisprudence, doctrine, available statistical research, and consultations with the provinces and territories.

At their last Federal/Provincial/Territorial meeting (October 2012), Ministers recognized the importance of public safety being the paramount consideration in the *Criminal Code* Review Board decisions. Ministers also discussed proposals to make the process more responsive to the needs of victims, including a further consideration for the appropriate term for reviewing decisions in serious personal injury offence cases.

The Government relied on a consultation process involving prosecutors who appear before Review Boards. This process was developed through the Coordinating Committee of Senior Officials (CCSO), a federal/provincial/territorial body supervised by Deputy Ministers Responsible for Justice and Public Safety.

Studies

The Government also looked at the 2006 research report by Jeff Latimer and Austin Lawrence, *The Review Board Systems in Canada: An Overview of Results from the Mentally Disordered Accused Data Collection Study* (Department of Justice Canada, 2006) and the November 2012 report by Crocker et al., *Description and processing of individuals found Not Criminally Responsible on Account of Mental Disorder accused of "serious violent offences"** (Attached as Annex 1).

* A significantly amended version of this report was provided to the Department of Justice on March 18, 2013; 38 days after the introduction of Bill C-54.

Case Law

Bill C-54 was developed in a manner consistent with prevailing criminal law jurisprudence. While it would be difficult to identify all cases which informed the development of the legislation, the leading cases on the mental disorder regime such as *Winko v. British Columbia Forensic Psychiatric Institute* [1999] 2 S.C.R. 625, *R. v. Conway* [2010] 1 S.C.R. 765, *R. v. Demers* [2004] 2 S.C.R. 489, and *R. v. Swain* [1991] 1 S.C.R. 933 were relied on. Other general criminal law and *Charter* cases were also considered, including, but not limited to, *R. v. Rodgers* [2006] 1 S.C.R. 554, *R. v. Johnson* [2003] 2 S.C.R. 357, *Charkaoui v. Canada (Citizenship and Immigration)* [2008] 2 S.C.R. 326, *R. v. Lyons* [1987] 2 S.C.R. 309, and *R. v. Oakes* [1986] 1 S.C.R. 103.

Doctrinal sources

The development of Bill C-54 was informed by reference to various authoritative texts, most notably: Joan Barrett & Riun Shandler, *Mental Disorder and Canadian Criminal Law*, (looseleaf), (Toronto: Carswell, 2006), Edwin A. Tollefson & Bernard Starkman, *Mental Disorder in Criminal Proceedings*, (Carswell: 1993); Hy Bloom & Richard Schneider, *Mental Disorder and the Law: A Primer for Legal and Mental Health Professionals*, (Irwin Law, 2006); and John E. Grey, Margaret A. Shone & Peter F. Liddle, *Canadian Mental Health Law and Policy*, 2nd ed., (Markham: Lexis Nexis, 2008).

(c) As in many other areas of criminology, comprehensive and up-to-date statistical information is not available from all jurisdictions in Canada. The Canadian Centre for Justice Statistics (CCJS) at Statistics Canada gathers very limited data on cases that resulted in a verdict of Not Criminally Responsible on Account of Mental Disorder (NCR) and it does not collect data from provincial or territorial Review Boards. There is no mechanism to systematically collect Review Board data from each jurisdiction as they use different case management systems and do not collect data in a uniform fashion. Limited information is available on some Review Board websites.

The Department of Justice has sought to fill this gap in information through targeted research initiatives. The Latimer and Lawrence research report released in 2006, entitled *The Review Board Systems in Canada: An Overview of Results from the Mentally Disordered Accused Data Collection Study*^a provides information on the nature of cases processed through the Review Board system in seven provinces and territories between 1992 and 2004.

More recently, Crocker *et al.*, Douglas Mental Health University Institute, have been working on a similar research initiative entitled the *National Trajectory Project*^b which is funded by the Mental Health Commission of Canada and *Le Fonds de recherche en santé du Québec*. The research, which is both quantitative and qualitative, looks at individuals found NCR in British Columbia, Ontario and Quebec and also examines recidivism. The data for that project was collected between May 1, 2000 and April 30, 2005. The Department of Justice commissioned a data extraction from the *National Trajectory Project* which was submitted to the Department in November 2012. The data looked at those found NCR for murder, attempted murder and sexual offences.

(ii) This information would only be available from the Review Boards.

^a http://www.justice.gc.ca/eng/pi/rs/rep-rap/2006/rr06_1/p1.html

^b <https://www.ntp-ptn.org/>

(iii) This information would only be available from the Review Boards.

(iv) to (viii) See attached Annex 1.

(d) There is no annual rate of recidivism for federal offenders. Presenting an aggregated recidivism rate is difficult as there are many different variables that influence reoffending. The Correctional Service of Canada published a research summary which followed a cohort of offenders released between April 1, 1988 and March 31, 1989 and followed until June 1993. This summary indicated that the overall re-admission rate was 37.1%. This rate varied from 25.1% for those released on statutory release, to 41.6% for those on day parole, to 46.6% for those on full parole (Nouwens, Motiuk and Boe 1993).

A second study (Bonta, Rugge and Dauvergne, 2003) released by the Solicitor General of Canada reported that the overall re-conviction rate for federal offenders during the first year following release from the institution (both with and without periods of community supervision) was 44%.

(e) As mental health treatment facilities fall under provincial jurisdiction, only the provinces would have access to this information. The *Criminal Code* is clear that in order for a hospital to be able to accept people found NCR, the facility must be designated by the Minister of Health for the province. This designation process is within the jurisdiction of the provinces.

(f) and (g) Mental health treatment facilities fall under provincial jurisdiction, only the provinces would have access to information to respond to questions with respect to capacity.

(h) to (l) Only the provinces would have access to this information.

(m) Yes, the Department has reviewed Bill C-54 for consistency with the *Charter*.

(n) Proposed government legislation is reviewed for *Charter* and other legal risks throughout the policy and legislative development processes by a wide variety of counsel. The government's position is that Bill C-54 is defensible under the *Charter*. The content of the legal advice provided to the government is protected by solicitor-client privilege.

(o) Relevant legal risks are brought to the attention of senior officials and the Minister throughout the policy and legislative development processes.

(p) and (q) No such report was prepared or presented. Section 4.1 sets out the specific obligation of the Minister: the Minister must ascertain whether there is inconsistency with the *Charter*. The long-standing approach of the Department of Justice is that the Minister ascertains that there is an inconsistency between a proposed legislative measure and the *Charter* only where there is no credible argument to support the proposed measure, that is, an argument that is reasonable, *bona fide* and capable of being raised before and accepted by the courts. The Minister exercises this responsibility based on the advice of departmental officials.

(r) As with any legislative proposal, there are risks of litigation. Steps are taken to mitigate these risks through such things as ensuring that the Parliamentary and public record adequately reflects the intention of the proposed reforms so that they will be properly applied by the courts and Review Boards.

Q-1169 — February 12, 2013 — Mr. Cotler (Mount Royal) — With regard to C-54, An Act to amend the Criminal Code and the National Defence Act (mental disorder): (a) in developing this legislation, on what (i) studies, (ii) case law, (iii) doctrinal sources did the government rely; (b) what statistics does the government track with respect to people found not criminally responsible (NCR) on account of mental disorder; (c) for each of the last ten years, broken down by province and territory and by type of offence, (i) how many people have been found NCR, (ii) which people found NCR have been released without conditions, (iii) which people found NCR have been released with conditions, (iv) how long has each person found NCR spent in treatment prior to release, (v) which people found NCR and released have been convicted of a subsequent offence, (vi) what was the nature of the subsequent offence, (vii) which people found NCR and released have been found NCR of a subsequent offence, (viii) what was the nature of the subsequent offence; (d) for each of the last ten years, what was the recidivism rate for all federal offenders; (e) broken down by province and territory, (i) which treatment facilities accept people found NCR, (ii) which of these facilities are privately owned, (iii) what is the capacity of each facility, (iv) how many people are currently housed in each facility; (f) what analysis has the government performed to determine whether this legislation will result in a need for increased capacity in these facilities; (g) what are the conclusions of this analysis; (h) what steps is the government taking to ensure adequate capacity in these facilities; (i) what funds are currently designated for (i) the construction of new facilities to house people found NCR, (ii) the expansion of existing such facilities; (j) what government programs exist to fund any such facilities that are privately owned; (k) what funds have been allocated to any such programs for each of the past ten years; (l) what steps is the government taking to mitigate Charter litigation with respect to people found NCR who may be unable to secure space in an appropriate facility; (m) has Bill C-54 been examined by the Department of Justice to ascertain consistency with the Charter; (n) which officials performed the examination, (i) when was the examination initiated, (ii) when was the examination completed, (iii) what were the conclusions of this examination; (o) when was the Minister of Justice presented with these conclusions; (p) was a report of inconsistency prepared; (q) was a report of inconsistency presented to Parliament; and (r) has there been an assessment of the litigation risk relative to the enactment of this legislation and, if so, what are the conclusions of this assessment?



INQUIRY OF MINISTRY DEMANDE DE RENSEIGNEMENT AU GOUVERNEMENT

PREPARE IN ENGLISH AND FRENCH MARKING "ORIGINAL TEXT" OR "TRANSLATION"
PRÉPARER EN ANGLAIS ET EN FRANÇAIS EN INDIQUANT "TEXTE ORIGINAL" OU "TRADUCTION"

QUESTION NO./N° DE LA QUESTION Q-1169	BY / DE M. Cotler (Mont-Royal)	DATE 12 février 2013
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REPLY BY THE MINISTER OF JUSTICE AND
ATTORNEY GENERAL OF CANADA
RÉPONSE DU MINISTRE DE LA JUSTICE ET
PROCUREUR GÉNÉRAL DU CANADA

Signé par l'honorable Rob Nicholson

PRINT NAME OF SIGNATORY
INSCRIRE LE NOM DU SIGNATAIRE

SIGNATURE
MINISTER OR PARLIAMENTARY SECRETARY
MINISTRE OU SECRÉTAIRE PARLEMENTAIRE

QUESTION

En ce qui concerne le projet de loi C-54, Loi modifiant le Code criminel et la Loi sur la défense nationale (troubles mentaux) : a) pour la rédaction du projet de loi, sur quelles (i) études, (ii) cas de jurisprudence, (iii) sources doctrinales le gouvernement s'est-il appuyé; b) quelles statistiques le gouvernement recueille-t-il au sujet des personnes qui sont reconnues non criminellement responsables (NCR) pour cause de troubles mentaux; c) pour chacune des dix dernières années, selon la province, le territoire et le type d'infraction, (i) ~~Voir ci-joint pour le texte complet de la question.~~

REPLY / RÉPONSE

ORIGINAL TEXT
TEXTE ORIGINAL

☐

TRANSLATION
TRADUCTION

☒

a) Dans le cadre de l'élaboration du projet de loi C-54, le gouvernement s'est appuyé sur diverses sources, dont la jurisprudence pertinente, la doctrine, les statistiques disponibles ainsi que les consultations auprès des provinces et territoires.

Au cours de leur dernière réunion fédérale/provinciale/territoriale (octobre 2012), les ministres ont reconnu l'importance de la sécurité du public comme critère prépondérant dans les décisions rendues par les commissions d'examen en vertu du *Code criminel*. De plus, les ministres ont examiné des propositions visant à mieux adapter le processus aux besoins des victimes, notamment en ce qui concerne le délai approprié de révision des décisions dans les dossiers de sévices graves à la personne.

Le gouvernement s'est appuyé sur un processus de consultation qui a fait intervenir les procureurs ayant comparu devant les commissions d'examen. Ce processus a été mis au point grâce au Comité de coordination des hauts fonctionnaires (CCHF), un comité fédéral/provincial/territorial surveillé par les sous-ministres responsables de la justice et de la sécurité publique.

Études

Le gouvernement a aussi regardé le rapport de recherche de 2006 de Jeff Latimer et Austin Lawrence intitulé *Les systèmes de commissions d'examen au Canada : Survol des résultats de l'étude de la collecte de données sur les accusés atteints de troubles mentaux* (ministère de la Justice du Canada, 2006) et le rapport de novembre 2012 de Crocker et al., *Description et traitement des personnes accusées*

d' « infractions graves avec violence » déclarées non criminellement responsables pour cause de troubles mentaux (Annexe 1 ci-joint).

* Une version modifiée de façon significative de ce rapport a été fournie au ministère de la Justice le 18 mars, 2013; soit 38 jours après le dépôt du projet de loi C-54.

Jurisprudence

Le projet de loi C-54 a été élaboré de manière conforme à la jurisprudence qui prévaut en droit criminel. Il serait difficile de nommer toutes les décisions qui ont informé l'élaboration de cette législation, mais les décisions de principe sur le régime des troubles mentaux, comme *Winko c. Colombie-Britannique (Forensic Psychiatric Institute)* [1999] 2 R.C.S. 625, *R. c. Conway* [2010] 1 R.C.S. 765, *R. c. Demers* [2004] 2 R.C.S. 489 et *R. c. Swain* [1991] 1 R.C.S. 933, ont été étudiés. D'autres décisions portant sur le droit criminel en général et la Charte ont été considérées, notamment les décisions suivants parmi d'autres : *R. c. Rodgers*, [2006] 1 R.C.S. 554, *R. c. Johnson*, [2003] 2 R.C.S. 357, *Charkaoui c. Canada (Citoyenneté et Immigration)*, [2008] 2 R.C.S. 326, *R. c. Lyons*, [1987] 2 R.C.S. 309 et *R. c. Oakes*, [1986] 1 R.C.S. 103.

Sources doctrinales

L'élaboration du projet de loi C-54 a été étayée par des références à de nombreux textes qui font autorité, dont les plus notables sont : Joan Barrett et Riun Shandler, *Mental Disorder and Canadian Criminal Law*, (feuilles mobiles), (Toronto: Carswell, 2006), Edwin A. Tollefson et Bernard Starkman, *Mental Disorder in Criminal Proceedings*, (Carswell: 1993); Hy Bloom et Richard Schneider, *Mental Disorder and the Law: A Primer for Legal and Mental Health Professionals*, (Irwin Law, 2006); John E. Grey, Margaret A. Shone et Peter F. Liddle, *Canadian Mental Health Law and Policy*, 2^e éd., (Markham: Lexis Nexis, 2008).

c) Comme c'est le cas dans beaucoup d'autres domaines de la criminologie, des renseignements statistiques à jour et complets pour chaque province et territoire du Canada ne sont pas disponibles. Le Centre canadien de la statistique juridique (CCJS) de Statistique Canada recueille très peu de données sur les dossiers qui ont donné lieu à un verdict de non-responsabilité criminelle pour cause de troubles mentaux (NCR) et il ne recueille aucune donnée des commissions d'examen provinciales ou territoriales. Il n'existe pas de mécanisme de cueillette systématique de données des commissions d'examen de chaque territoire et province, car les commissions utilisent des systèmes différents de gestion des dossiers et elles ne recueillent pas les données selon une méthode uniforme. On trouve peu de données dans les sites Web de certaines commissions d'examen.

Le ministère de la Justice a tenté de combler cette lacune informationnelle en développant des initiatives de recherche ciblées. Le rapport de recherche Latimer et Lawrence publié en 2006 sous le titre *Les systèmes de commissions d'examen au Canada : Survol des résultats de l'étude de la collecte de données sur les accusés atteints de troubles mentaux*^a fournit des renseignements sur la nature des dossiers traités par le système des commissions d'examen dans sept provinces et territoires de 1992 à 2004.

Plus récemment, Crocker et al., l'Institut universitaire en santé mentale Douglas, mènent un projet de recherche similaire, le *Projet trajectoire nationale*^b, subventionné par la Commission de la santé mentale du Canada et le Fonds de recherche en santé du Québec. Cette recherche tant quantitative que qualitative étudie les dossiers de personnes trouvées NCR en Colombie-Britannique, en Ontario et au Québec et

^a http://www.justice.gc.ca/fra/pi/rs/rap-rep/2006/rr06_1/p1.html

^b <https://www.ntp-ptn.org/>

examine aussi les cas de récidive. Les données de ce projet ont été recueillies du 1^{er} mai 2000 au 30 avril 2005. Le ministère de la Justice a commandé une extraction du *Projet trajectoire national* qui a été soumis au Ministère en Novembre 2012. Les données portaient sur les personnes qui ont été trouvées non criminellement responsables pour meurtre, tentative de meurtre ou infraction sexuelle.

(ii) Cette information ne serait disponible qu'auprès des commissions d'examen.

(iii) Cette information ne serait disponible qu'auprès des commissions d'examen.

(iv) à (viii) Voir l'annexe 1 ci-jointe.

d) Il n'existe pas de taux annuel de récidive pour les délinquants sous responsabilité fédérale. Il est difficile de présenter un taux cumulatif de récidive, car de nombreuses variables influent sur la récidive. Le Service correctionnel du Canada a publié un sommaire de recherche dans lequel on a fait le suivi jusqu'en juin 1993 d'une cohorte de délinquants libérés entre le 1^{er} avril 1988 et le 31 mars 1989. Le sommaire indiquait que le taux d'ensemble de réadmissions était de 37,1 %. Ce taux variait de 25,1 % pour les personnes mises en liberté d'office, à 41,6 % pour celles en semi-liberté et 46,6 % pour celles ayant obtenu une libération conditionnelle totale (Nouwens, Motiuk et Boe 1993).

Selon une deuxième étude, publiée par le solliciteur général du Canada (Bonta, Rugge et Dauvergne 2003), le taux d'ensemble de nouvelles condamnations pour les délinquants sous la responsabilité fédérale ~~durant la première année suivant la libération (avec et sans période de supervision communautaire)~~ était de 44 %.

e) Comme les établissements de soins de santé mentale relèvent de la compétence provinciale, seules les provinces ont accès à ces renseignements. Le *Code criminel* précise clairement que pour qu'un hôpital puisse accepter des personnes reconnues NCR, l'établissement doit être désigné par le ministre de la Santé de la province. Le processus de désignation relève de la compétence des provinces.

f) et g) Les établissements de soins de santé mentale relèvent de la compétence provinciale, seules les provinces ont accès aux renseignements pour répondre aux questions sur la capacité d'accueil.

h) à l) Seules les provinces ont accès à ces renseignements.

m) Oui, le Ministère a vérifié le projet de loi C-54 pour s'assurer qu'il était conforme à la *Charte*.

n) De nombreux conseillers juridiques examinent la législation gouvernementale proposée en ce qui a trait aux risques relatifs à la *Charte* et aux autres risques juridiques tout au long de l'élaboration de la politique et de la législation. La position du gouvernement est que le projet de loi C-54 est défendable en ce qui a trait à la *Charte*. La teneur des conseils juridiques fournis au gouvernement est protégée par le secret professionnel de l'avocat.

o) Les risques juridiques pertinents sont portés à l'attention de hauts fonctionnaires et du ministre tout au long du processus d'élaboration de la politique et de la législation.

p) et q) Aucun rapport de ce type n'a été préparé ou présenté. L'article 4.1 précise les obligations spécifiques du ministre. Celui-ci doit vérifier si l'une des dispositions du projet de loi est incompatible avec

la *Charte*. L'approche utilisée au ministère de la Justice est que le ministre conclue qu'il y a une incompatibilité entre une mesure législative proposée et la *Charte* uniquement en l'absence d'argument digne de foi pour appuyer la mesure proposée, c'est-à-dire un argument raisonnable, *bona fide* et susceptible d'être entendu et reçu par les tribunaux. Le ministre exerce cette responsabilité d'après les conseils des fonctionnaires.

r) Comme pour toute proposition législative, il existe des risques de litige. Des mesures sont prises pour atténuer ces risques, notamment en s'assurant que les dossiers parlementaires et publics reflètent bien l'intention des réformes proposées de façon que les tribunaux et les commissions d'examen les appliquent de manière appropriée.

Q-1169 — 12 février 2013 — M. Cotler (Mont-Royal) — En ce qui concerne le projet de loi C-54, Loi modifiant le Code criminel et la Loi sur la défense nationale (troubles mentaux) : a) pour la rédaction du projet de loi, sur quelles (i) études, (ii) cas de jurisprudence, (iii) sources doctrinales le gouvernement s'est-il appuyé; b) quelles statistiques le gouvernement recueille-t-il au sujet des personnes qui sont reconnues non criminellement responsables (NCR) pour cause de troubles mentaux; c) pour chacune des dix dernières années, selon la province, le territoire et le type d'infraction, (i) combien de personnes ont été reconnues NCR, (ii) quelles personnes reconnues NCR ont été libérées sans conditions, (iii) quelles personnes reconnues NCR ont été libérées sous conditions, (iv) pendant combien de temps chaque personne reconnue NCR a-t-elle été sous traitement avant sa libération, (v) quelles personnes reconnues NCR et libérées ont été reconnues coupables d'une infraction subséquente, (vi) quelle était la nature de l'infraction subséquente, (vii) quelles personnes reconnues NCR et libérées ont été reconnues NCR d'une infraction subséquente, (viii) quelle était la nature de l'infraction subséquente; d) pour chacune des dix dernières années, quel a été le taux de récidive pour tous les délinquants sous responsabilité fédérale; e) selon la province et le territoire, (i) quels établissements de traitement acceptent les personnes reconnues NCR, (ii) parmi ces établissements, lesquels sont privés, (iii) combien de personnes peut accueillir chaque établissement, (iv) combien de personnes se trouvent actuellement dans chaque établissement; f) quelle analyse le gouvernement a-t-il réalisée pour déterminer si cette mesure législative exigera que ces établissements augmentent leur capacité d'accueil; g) quelles sont les conclusions de cette analyse; h) quelles mesures le gouvernement prend-il pour veiller à ce que ces établissements aient la capacité d'accueil voulue; i) à l'heure actuelle, quels fonds sont affectés (i) à la construction de nouveaux établissements pour héberger les personnes reconnues NCR, (ii) à l'agrandissement de ces établissements; j) quels programmes gouvernementaux existent pour financer les établissements privés; k) quels fonds ont été affectés à ce type de programmes pour chacune des dix dernières années; l) quelles mesures le gouvernement prend-il pour prévenir les contentieux fondés sur la Charte en ce qui concerne les personnes reconnues NCR qui pourraient ne pas être en mesure d'obtenir une place dans un établissement pertinent; m) le projet de loi C-54 a-t-il été examiné par le ministère de la Justice pour en assurer la conformité avec la Charte; n) quels responsables ont procédé à l'examen, (i) quand l'examen a-t-il été entrepris, (ii) quand l'examen a-t-il été achevé, (iii) quelles ont été les conclusions de l'examen; o) quand les conclusions ont-elles été présentées au ministre; p) un rapport de non-conformité a-t-il été produit; q) un rapport de non-conformité a-t-il été présenté au Parlement; r) a-t-on procédé à une évaluation des risques de contentieux relatifs à l'adoption de ce projet de loi et, si tel est le cas, quelles en sont les conclusions?



INQUIRY OF MINISTRY DEMANDE DE RENSEIGNEMENT AU GOUVERNEMENT

PREPARE IN ENGLISH AND FRENCH MARKING "ORIGINAL TEXT" OR "TRANSLATION"
PRÉPARER EN ANGLAIS ET EN FRANÇAIS EN INDIQUANT "TEXTE ORIGINAL" OU "TRADUCTION"

QUESTION NO./N° DE LA QUESTION Q-1169	BY / DE Mr. Cotler (Mount Royal)	DATE February 12, 2013
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REPLY BY THE MINISTER OF JUSTICE AND
ATTORNEY GENERAL OF CANADA
RÉPONSE DU MINISTRE DE LA JUSTICE ET
PROCUREUR GÉNÉRAL DU CANADA

Signed by the Honourable Rob Nicholson

PRINT NAME OF SIGNATORY
INSCRIRE LE NOM DU SIGNATAIRE

SIGNATURE
MINISTER OR PARLIAMENTARY SECRETARY
MINISTRE OU SECRÉTAIRE PARLEMENTAIRE

QUESTION

With regard to C-54, An Act to amend the Criminal Code and the National Defence Act (mental disorder): (a) in developing this legislation, on what (i) studies, (ii) case law, (iii) doctrinal sources did the government rely; (b) what statistics does the government track with respect to people found not criminally responsible (NCR) on account of mental disorder; (c) for each of the last ten years, broken down by province and territory and by type of offence, (i) – **See full text of the question attached.**

REPLY / RÉPONSE

ORIGINAL TEXT
TEXTE ORIGINAL



TRANSLATION
TRADUCTION



(a) In developing Bill C-54, the Government relied on a number of sources, including the relevant jurisprudence, doctrine, available statistical research, and consultations with the provinces and territories.

At their last Federal/Provincial/Territorial meeting (October 2012), Ministers recognized the importance of public safety being the paramount consideration in the *Criminal Code* Review Board decisions. Ministers also discussed proposals to make the process more responsive to the needs of victims, including a further consideration for the appropriate term for reviewing decisions in serious personal injury offence cases.

The Government relied on a consultation process involving prosecutors who appear before Review Boards. This process was developed through the Coordinating Committee of Senior Officials (CCSO), a federal/provincial/territorial body supervised by Deputy Ministers Responsible for Justice and Public Safety.

Studies

The Government also looked at the 2006 research report by Jeff Latimer and Austin Lawrence, *The Review Board Systems in Canada: An Overview of Results from the Mentally Disordered Accused Data Collection Study* (Department of Justice Canada, 2006) and the November 2012 report by Crocker et al., *Description and processing of individuals found Not Criminally Responsible on Account of Mental Disorder accused of "serious violent offences"** (Attached as Annex 1).

* A significantly amended version of this report was provided to the Department of Justice on March 18, 2013; 38 days after the introduction of Bill C-54.

Case Law

Bill C-54 was developed in a manner consistent with prevailing criminal law jurisprudence. While it would be difficult to identify all cases which informed the development of the legislation, the leading cases on the mental disorder regime such as *Winko v. British Columbia Forensic Psychiatric Institute* [1999] 2 S.C.R. 625, *R. v. Conway* [2010] 1 S.C.R. 765, *R. v. Demers* [2004] 2 S.C.R. 489, and *R. v. Swain* [1991] 1 S.C.R. 933 were relied on. Other general criminal law and *Charter* cases were also considered, including, but not limited to, *R. v. Rodgers* [2006] 1 S.C.R. 554, *R. v. Johnson* [2003] 2 S.C.R. 357, *Charkaoui v. Canada (Citizenship and Immigration)* [2008] 2 S.C.R. 326, *R. v. Lyons* [1987] 2 S.C.R. 309, and *R. v. Oakes* [1986] 1 S.C.R. 103.

Doctrinal sources

The development of Bill C-54 was informed by reference to various authoritative texts, most notably: Joan Barrett & Riun Shandler, *Mental Disorder and Canadian Criminal Law*, (looseleaf), (Toronto: Carswell, 2006), Edwin A. Tollefson & Bernard Starkman, *Mental Disorder in Criminal Proceedings*, (Carswell: 1993); Hy Bloom & Richard Schneider, *Mental Disorder and the Law: A Primer for Legal and Mental Health Professionals*, (Irwin Law, 2006); and John E. Grey, Margaret A. Shone & Peter F. Liddle, *Canadian Mental Health Law and Policy*, 2nd ed., (Markham: Lexis Nexis, 2008).

(c) As in many other areas of criminology, comprehensive and up-to-date statistical information is not available from all jurisdictions in Canada. The Canadian Centre for Justice Statistics (CCJS) at Statistics Canada gathers very limited data on cases that resulted in a verdict of Not Criminally Responsible on Account of Mental Disorder (NCR) and it does not collect data from provincial or territorial Review Boards. There is no mechanism to systematically collect Review Board data from each jurisdiction as they use different case management systems and do not collect data in a uniform fashion. Limited information is available on some Review Board websites.

The Department of Justice has sought to fill this gap in information through targeted research initiatives. The Latimer and Lawrence research report released in 2006, entitled *The Review Board Systems in Canada: An Overview of Results from the Mentally Disordered Accused Data Collection Study*^a provides information on the nature of cases processed through the Review Board system in seven provinces and territories between 1992 and 2004.

More recently, Crocker *et al.*, Douglas Mental Health University Institute, have been working on a similar research initiative entitled the *National Trajectory Project*^b which is funded by the Mental Health Commission of Canada and *Le Fonds de recherche en santé du Québec*. The research, which is both quantitative and qualitative, looks at individuals found NCR in British Columbia, Ontario and Quebec and also examines recidivism. The data for that project was collected between May 1, 2000 and April 30, 2005. The Department of Justice commissioned a data extraction from the *National Trajectory Project* which was submitted to the Department in November 2012. The data looked at those found NCR for murder, attempted murder and sexual offences.

(ii) This information would only be available from the Review Boards.

^a http://www.justice.gc.ca/eng/pi/rs/rep-rap/2006/rr06_1/p1.html

^b <https://www.ntp-ptn.org/>

(iii) This information would only be available from the Review Boards.

(iv) to (viii) See attached Annex 1.

(d) There is no annual rate of recidivism for federal offenders. Presenting an aggregated recidivism rate is difficult as there are many different variables that influence reoffending. The Correctional Service of Canada published a research summary which followed a cohort of offenders released between April 1, 1988 and March 31, 1989 and followed until June 1993. This summary indicated that the overall re-admission rate was 37.1%. This rate varied from 25.1% for those released on statutory release, to 41.6% for those on day parole, to 46.6% for those on full parole (Nouwens, Motiuk and Boe 1993).

A second study (Bonta, Rugge and Dauvergne, 2003) released by the Solicitor General of Canada reported that the overall re-conviction rate for federal offenders during the first year following release from the institution (both with and without periods of community supervision) was 44%.

(e) As mental health treatment facilities fall under provincial jurisdiction, only the provinces would have access to this information. The *Criminal Code* is clear that in order for a hospital to be able to accept people found NCR, the facility must be designated by the Minister of Health for the province. This designation process is within the jurisdiction of the provinces.

(f) and (g) Mental health treatment facilities fall under provincial jurisdiction, only the provinces would have access to information to respond to questions with respect to capacity.

(h) to (l) Only the provinces would have access to this information.

(m) Yes, the Department has reviewed Bill C-54 for consistency with the *Charter*.

(n) Proposed government legislation is reviewed for *Charter* and other legal risks throughout the policy and legislative development processes by a wide variety of counsel. The government's position is that Bill C-54 is defensible under the *Charter*. The content of the legal advice provided to the government is protected by solicitor-client privilege.

(o) Relevant legal risks are brought to the attention of senior officials and the Minister throughout the policy and legislative development processes.

(p) and (q) No such report was prepared or presented. Section 4.1 sets out the specific obligation of the Minister: the Minister must ascertain whether there is inconsistency with the *Charter*. The long-standing approach of the Department of Justice is that the Minister ascertains that there is an inconsistency between a proposed legislative measure and the *Charter* only where there is no credible argument to support the proposed measure, that is, an argument that is reasonable, *bona fide* and capable of being raised before and accepted by the courts. The Minister exercises this responsibility based on the advice of departmental officials.

(r) As with any legislative proposal, there are risks of litigation. Steps are taken to mitigate these risks through such things as ensuring that the Parliamentary and public record adequately reflects the intention of the proposed reforms so that they will be properly applied by the courts and Review Boards.

Q-1169² — February 12, 2013 — Mr. Cotler (Mount Royal) — With regard to C-54, An Act to amend the Criminal Code and the National Defence Act (mental disorder): (a) in developing this legislation, on what (i) studies, (ii) case law, (iii) doctrinal sources did the government rely; (b) what statistics does the government track with respect to people found not criminally responsible (NCR) on account of mental disorder; (c) for each of the last ten years, broken down by province and territory and by type of offence, (i) how many people have been found NCR, (ii) which people found NCR have been released without conditions, (iii) which people found NCR have been released with conditions, (iv) how long has each person found NCR spent in treatment prior to release, (v) which people found NCR and released have been convicted of a subsequent offence, (vi) what was the nature of the subsequent offence, (vii) which people found NCR and released have been found NCR of a subsequent offence, (viii) what was the nature of the subsequent offence; (d) for each of the last ten years, what was the recidivism rate for all federal offenders; (e) broken down by province and territory, (i) which treatment facilities accept people found NCR, (ii) which of these facilities are privately owned, (iii) what is the capacity of each facility, (iv) how many people are currently housed in each facility; (f) what analysis has the government performed to determine whether this legislation will result in a need for increased capacity in these facilities; (g) what are the conclusions of this analysis; (h) what steps is the government taking to ensure adequate capacity in these facilities; (i) what funds are currently designated for (i) the construction of new facilities to house people found NCR, (ii) the expansion of existing such facilities; (j) what government programs exist to fund any such facilities that are privately owned; (k) what funds have been allocated to any such programs for each of the past ten years; (l) what steps is the government taking to mitigate Charter litigation with respect to people found NCR who may be unable to secure space in an appropriate facility; (m) has Bill C-54 been examined by the Department of Justice to ascertain consistency with the Charter; (n) which officials performed the examination, (i) when was the examination initiated, (ii) when was the examination completed, (iii) what were the conclusions of this examination; (o) when was the Minister of Justice presented with these conclusions; (p) was a report of inconsistency prepared; (q) was a report of inconsistency presented to Parliament; and (r) has there been an assessment of the litigation risk relative to the enactment of this legislation and, if so, what are the conclusions of this assessment?

S E R V I N G C A N A D I A N S

RESEARCH REPORT

The Review Board Systems in
Canada: Overview of Results from
the Mentally Disordered Accused
Data Collection Study



Department of Justice
Canada

Ministère de la Justice
Canada

Canada

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*The opinions expressed within are those
of the authors and not necessarily those
of the Department of Justice Canada*

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Executive Summary

The goal of this present study is to provide basic information on Review Board systems in Canada and the people who have passed through their control. Currently, there is little information on the nature of cases found not criminally responsible on account of mental disorder (NCRMD) or unfit to stand trial (UST) that are processed through Review Board systems, including the type of offences for which accused have been charged, the psychiatric diagnoses of accused, the range of conditions imposed on accused, or the average length of time NCRMD or UST accused spend under the purview of Review Boards.

In order to fill this gap, the Department of Justice Canada introduced a data collection strategy in cooperation with Review Boards in seven provinces and territories (Prince Edward Island, Quebec, Ontario, Alberta, British Columbia, Yukon and Nunavut). This report represents the results of this data collection strategy and provides information on the nature of cases that have been processed through the Review Board systems in Canada between 1992 and 2004.

The results of this data collection process answered a considerable number of policy and operational research questions. Some of the more pertinent findings include:

- Review Board caseloads have been increasing over the last decade and are expected to continue to grow substantially over the next decade;
- Although Aboriginal people do not appear to experience the same level of over-representation as they do within the traditional criminal justice system, it does appear as though they spend substantially more time under the control of Review Boards;
- Nearly half of NCRMD/UST accused appearing before Review Boards at their initial hearing have never been convicted of a prior criminal offence;
- NCRMD/UST accused have generally committed very serious violent offences such as murder, attempted murder, assault, sexual assault, criminal harassment, threats and arson;
- Approximately three-quarters of those within the Review Board systems have been diagnosed with schizophrenia or an affective disorder, such as bi-polar disorder, schizo-affective disorder or major depression;
- One in five cases that are processed by the Review Boards are released (e.g., found fit, given an absolute discharge) after the first hearing; and
- Almost one-quarter of NCRMD/UST cases are spending at least ten years in the Review Board systems and some have been in for significantly longer.

Additional data collection is still needed, however, to provide a more comprehensive understanding of the forensic mental health system in Canada.



1. Introduction

Mental disorder, within the Canadian criminal justice system, is defined in the *Criminal Code* as a disease of the mind.¹ An individual charged with a criminal offence who has been found to suffer from a mental disorder by a mental health professional, however, is not necessarily exempt from criminal responsibility. Such a determination is based upon a strict legal test administered by a judge. Many accused who suffer from a mental disorder are therefore tried and convicted within the criminal justice system. In addition, an accused or counsel may decide that raising issues of mental illness during criminal proceedings may not even be in their best interests. Although it may avoid a criminal conviction, it can also lead to indeterminate involvement with the system responsible for managing mentally disordered accused. Thus, only a small group of accused actually raise the issue of mental illness and/or meet the legal threshold in Canada. These accused can be found not criminally responsible on account of mental disorder (NCRMD) or they can be found unfit to stand trial (UST).

1.1 Not Criminally Responsible on Account of Mental Disorder

...people who commit criminal acts under the influence of mental illnesses should not be held criminally responsible for their acts or omissions in the same way that sane responsible people are. No person should be convicted of a crime if he or she was legally insane at the time of the offence ... Criminally responsibility is appropriate only where the actor is a discerning moral agent, capable of making choices between right and wrong.²

It is a fundamental principle of the Canadian criminal justice system that an accused must possess the capacity to understand that his or her behaviour was wrong in order to be found guilty of an offence. According to section 16 of the *Criminal Code*:

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.³

While an accused found not criminally responsible on account of mental disorder by a court is not convicted in the usual sense, the verdict does not constitute an acquittal; it represents a unique third option. An accused that is found NCRMD is diverted to a provincial or territorial Review Board established pursuant to section 672.38 of the *Criminal Code*. Review Boards are specialized tribunals chaired by a judge, or an individual qualified for a judicial appointment, and comprised of at least four other members, one of which must be entitled under the laws of the particular province to practice psychiatry.

The rationale for this separate stream is that, while the accused is not criminally responsible for his or her behaviour, the public may still require protection from future dangerous behaviour.

¹ *Criminal Code*, R.S.C 1985, c. C-46, s. 2.

² *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 S.C.R. 625, 1999 CanLII 694 (S.C.C.) at para 31 [hereafter *R v. Winko*].

³ *Criminal Code*, R.S.C 1985, c. C-46, s. 16(1).

Therefore, the goal of a Review Board is to conduct an individual assessment of the accused and subsequently craft a disposition that both protects the public and attempts to provide opportunities to treat the underlying mental disorder.

While most NCRMD cases are diverted to a Review Board, the court which renders the verdict also has the authority to order a disposition if it is satisfied that it could readily do so and that a disposition should be made without delay. Under section 672.54 of the *Criminal Code*, there are three dispositions available to a court or Review Board:

- an absolute discharge;
- a conditional discharge; or
- detention in custody in a hospital.

If the court orders a conditional discharge or detention, however, the provincial or territorial Review Board is still obligated to hold a hearing and order a new disposition within 90 days. Therefore, with the exception of cases that receive an absolute discharge by the courts, Review Boards are generally responsible for determining the appropriate disposition of an accused found NCRMD.

Under section 672.54, the court or Review Board must order the disposition that is the least onerous and least restrictive to the accused. In determining such a disposition, the court or Review Board must balance the dual roles of protecting the public and treating the accused in a fair and humane manner that respects his or her rights. Section 672.54 states that the court or Review Board shall take into account “the need to protect the public from dangerous persons, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused.”

In 1999, the Supreme Court of Canada, in *R. v. Winko*, provided guidance on section 672.54 and ruled that if the accused does not pose a significant threat to the safety of the public, the court or Review Board must order an absolute discharge. This decision reflects the basic principle that the only rationale for using the state’s criminal law power to impose restraints on an individual who has been found not criminally responsible for his or her actions is the need to secure the safety of the public.⁴

The Supreme Court of Canada further clarified in *R. v. Winko* that Section 672.54 does not create a presumption of dangerousness. In other words, while the protection of society is paramount, there must be clear evidence of a significant risk to the public before a court or Review Board can maintain control over an accused through the imposition of a conditional discharge or detention order.

If the court or Review Board orders an absolute discharge, the NCRMD accused is released from further involvement with the system for the specific offence that led to the NCRMD verdict.

⁴ S. N. Verdun-Jones “Making the Mental Disorder Defence a More Attractive Option for Defendants in a Criminal Trial: Recent Legal Developments in Canada, in *Mental Disorders and the Criminal Code: Legal Background and Contemporary Perspectives*, ed. D. Eaves, R. P. Ogloff, and R. Roesch (Burnaby, BC: Mental Health, Law and Policy Institute, 2000), 39-75.



If the court or Review Board orders a conditional discharge, the accused is supervised in the community through the imposition of restrictions on his or her liberty. Typical conditions ordered by a court or Review Board during a conditional discharge specify that the NCRMD accused must:

- reside in a particular place (e.g., group home);
- abstain from illegal drugs and/or alcohol;
- submit to urinalysis testing for prohibited substances;
- abide by a specified treatment plan;
- report to a designated person (e.g., psychiatrist) on a scheduled basis; and
- refrain from possessing weapons.

Although these represent some of the most common conditions, Section 672.54 (b) states that the accused may be discharged subject to any conditions the court or Review Board considers appropriate.

If the court or Review Board orders detention, the accused will be placed in custody within a hospital. There are still times, however, when he or she will be managed within the community under conditions. The court or Review Board can delegate authority to manage the accused to the hospital where the accused has been detained. As such, the hospital administrator has the power to increase or decrease the restrictions on the NCRMD accused. Therefore, it is possible for an accused to leave hospital grounds with permission from the hospital administrator.

Until an NCRMD accused is given an absolute discharge, he or she will remain under the authority of the Review Board. In general, the Supreme Court of Canada has ruled that the indeterminate nature of this scheme does not violate an NCRMD accused's liberties protected under the *Charter of Rights and Freedoms*. However, the disposition is also not considered to be punitive in nature. As stated in *R. v. Winko*:

...it has been determined that the NCR offender is not morally responsible for his or her criminal act. Punishment is morally inappropriate and ineffective in such a case because the NCR accused was incapable of making meaningful choice upon which the punishment model is premised. Because the NCR accused's liberty is not restricted for the purpose of punishment, there is no corresponding reason for finitude. The purposes of restriction on his liberty are to protect society and to allow the NCR accused to seek treatment. This requires a flexible approach that treats the length of the restriction as a function of these dual aims and renders a mechanistic comparison of the duration of confinement inappropriate.⁵

Therefore, the principle of proportionality, which is important in the sentencing of offenders in the criminal justice system, is not a factor in determining an appropriate disposition for an NCRMD accused. That is not to say, however, that the seriousness of the offence committed by an NCRMD accused does not factor into an assessment of his or her dangerousness and ultimately the disposition. Simply, there is no legal requirement for the disposition to be proportionate to the harm caused by the particular offence. So does this imply that disposition length is not related to the seriousness of the criminal act? While there is little Canadian

⁵ *R. v. Winko* at para. 93.

research to answer this question, one study from British Columbia did find that there appeared to be a relationship between the number of days hospitalized and the seriousness of offence committed by NCRMD accused.⁶ For example, the study found that accused who had committed murder spent, on average, 1165 days hospitalised prior to release while accused who had committed theft had only spent an average of 48 days hospitalised.

Under Section 672.81, the Review Boards must hold a hearing every year in order to review the disposition. During these annual reviews, Review Boards can impose any of the three available dispositions (i.e., absolute discharge, conditional discharge, detention) and alter any of the conditions previously imposed on the accused. In addition to these annual reviews, additional mandatory reviews do occur within the year if, for example, restrictions on the liberty of an accused have been significantly increased for a period exceeding seven days or if a hospital administrator requests a review. Finally, discretionary reviews are possible upon the request of the accused or any other party.

1.2 Unfit to Stand Trial

While an accused deemed NCRMD has been found to have committed the act that formed the basis of the offence for which he or she has been charged, it is also possible that an accused is not able to participate in his or her full answer and defence on account of mental disorder. In such cases, it is considered inconsistent with the principles of fundamental justice to determine if he or she has actually committed the offence in question through a trial. Section 2 of the *Criminal Code* defines an accused as unfit to stand trial if he or she is:

...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 proceedings;
- (b) understand the possible consequences of the proceedings; or
- (c) communicate with counsel.⁷

As with an individual found NCRMD, an accused found UST by a court is also diverted to the Review Board stream. Neither the courts nor Review Boards currently have the authority, however, to order an absolute discharge for an accused found UST - they can only order a conditional discharge or detention order. Therefore, until the UST accused is deemed fit or until the charges are stayed or withdrawn, he or she will remain under the purview of the Review Board with one notable exception. The courts must review the case of a UST accused every two years in order to determine whether sufficient evidence still exists to bring the individual to trial. If the court is satisfied upon review that a *prima facie* case no longer exists, the accused is entitled to an acquittal. For youth found UST, the court must review the case every year rather than every two years according to section 141(10) of the *Youth Criminal Justice Act*.

The Supreme Court of Canada ruled in *R. v. Demers*, however, that the inability of the court or Review Board to absolutely discharge a 'permanently' unfit accused who does not pose a

⁶ J. D. Livingston, D. Wilson, G. Tien and L. Bond "A Follow-up Study of Persons Found Not Criminally Responsible on Account of Mental Disorder in British Columbia," *Canadian Journal of Psychiatry* 48 (2003): 408.

⁷ *Criminal Code*, R.S.C 1985, c. C-46, s. 2.



significant threat to society infringes liberties guaranteed under section 7 of the *Charter of Rights and Freedoms*. This issue has been addressed through a recent amendment to the *Criminal Code* introduced with the proclamation of Bill C-10 on June 30, 2005. Following the implementation of Bill C-10 on January 1, 2006, a court will be authorized to order a stay of proceedings for an accused deemed UST if:

- the accused is unlikely to ever become fit;
- the accused does not pose a significant threat to the safety of the public; and
- a stay of proceedings is in the interests of the proper administration of justice.⁸

Bill C-10 still does not provide Review Boards with the ability to absolutely discharge an accused found UST; this power will only be given to the courts.

1.3 Present Study

The goal of this present study is to provide basic information on Review Board systems in Canada and the people who have passed through their control. Currently, there is little information on the nature of NCRMD and UST cases that are processed through Review Board systems, including the type of offences for which accused have been charged, the psychiatric diagnoses of accused, the range of conditions imposed on accused, or the average length of time NCRMD or UST accused spend under the purview of Review Boards. In fact, since 1992, there has been no systematic or extensive data collected on the Review Board systems. In 2002, following a parliamentary review of the mental disorder provisions of the *Criminal Code* (Part XX.1), the Standing Committee on Justice and Human Rights recommended that:

The Department of Justice and other relevant departments and agencies, in collaboration with their provincial counterparts, collect, process, and analyze the data necessary to facilitate a further parliamentary review of Part XX.1 of the *Criminal Code*...⁹

In order to fill this gap, the Department of Justice Canada introduced a data collection strategy in cooperation with Review Boards in seven provinces and territories. This report represents the results of this data collection strategy and provides information on the nature of cases that have been processed through the Review Board systems in Canada between 1992 and 2004.

⁸ Bill C-10, *An Act to amend the Criminal Code (mental disorder) and to make consequential amendments to other Acts*, 1st session, 38th Parliament (assented to 19 May 2005), Statutes of Canada 2005, c 22.

⁹ Standing Committee on Justice and Human Rights, *Review of the Mental Disorder Provisions of the Criminal Code* (Ottawa: House of Commons, 2002), 19.

2. Method

The data collection strategy involved the manual extraction of data from administrative Review Board files in the following jurisdictions:

- Prince Edward Island;
- Quebec;
- Ontario;
- Alberta;
- British Columbia;
- Nunavut; and
- Yukon.

These seven provinces and territories represented approximately 88% of all active cases in the Review Board systems across Canada.¹⁰ It is therefore likely that most summary statements made in this report would not be significantly affected by the addition of the remaining 12% of the cases in the other six jurisdictions (i.e., Newfoundland, Nova Scotia, New Brunswick, Manitoba, Saskatchewan and the Northwest Territories). In other words, it is reasonable to assume that the aggregate results of this data collection will most often be representative of a ‘national’ response to NCRMD and UST cases in Canada. It is recognized, however, that each provincial Review Board system is autonomous and operates individually within the boundaries of the law and that some jurisdictions may face unique issues in the processing of NCRMD and UST cases. For example, if Saskatchewan and Manitoba had been included, the high proportion of Aboriginal peoples involved with the justice system in those provinces might have influenced some of the findings in this report, such as the proportion of Aboriginal accused in the sample.

2.1 Data Collection

The unit of analysis in this study is the ‘case’. A case is defined as a group of charges that are linked by a common NCRMD or UST verdict. The sample was randomly selected from all cases that were active between January 1, 1992 and December 31, 2004 in each of the seven jurisdictions. The term ‘active’ means that the case must have contained at least one hearing in the twelve-year study period. Therefore, cases that began prior to 1992 were still included if the accused had at least one hearing after December 31, 1991.¹¹

Using a pre-defined coding manual, data on particular aspects of each randomly selected case were manually recorded on a coding form.¹² The kinds of data collected included:

¹⁰ Estimate is based upon 2001 data from: R. D. Schneider, M. Forestall and S. MacGarvie. Statistical Survey of Provincial and Territorial Review Boards. (Ottawa: Research and Statistics Division, Department of Justice Canada, 2002).

¹¹ The existing Review Board systems were created in 1992 through the passing of Bill C-30; therefore, NCRMD cases that began prior to February 4, 1992 were originally under the previous system of Lieutenant Governor Warrants wherein an accused was deemed “not guilty by reason of insanity” rather than NCRMD. However, these cases were all converted into NCRMD cases after implementation of Bill C-30 and were thus included in this study.

¹² See Appendix A for the Data Collection Form.

- socio-demographic information;
- the criminal history of the accused;
- the offences for which the accused was deemed UST or NCRMD;
- the diagnoses of the accused; and
- the responses of the Review Boards (e.g., disposition and conditions).

In many instances, an NCRMD or UST accused had been charged with more than one offence. In order to provide summary statements on such cases, the most serious charge (MSC) was selected to represent the case. The MSC was determined using the Seriousness Index developed by the Canadian Centre for Justice Statistics, Statistics Canada, which ranks the seriousness of charges based upon sentence lengths and potential harm to victims.

2.2 Sample and Weighting Procedure

Table 1 provides the number of cases sampled, the total number of cases within each jurisdiction, and the weighting values. The number of cases randomly extracted from British Columbia, Ontario and Quebec were determined using a standard sample size calculator, while half of the cases were randomly selected in Alberta and the entire available caseload was drawn from Prince Edward Island, Nunavut and the Yukon.

TABLE 1: SAMPLE SIZE, POPULATION, AND WEIGHT BY JURISDICTION			
Jurisdiction	Sample Size	Population	Weight
Prince Edward Island	12	12	1.000
Quebec	350	3,777	10.791
Ontario	343	3,210	9.359
Alberta	200	400	2.000
British Columbia	295	1,252	4.244
Nunavut	8	8	1.000
Yukon	20	20	1.000
TOTAL	1,228	8,679	7.067
1. Population is the total number of UST and NCRMD cases active between 1992 and 2004 in each jurisdiction.			

In order to make summary statements that are more representative of the overall population of NCRMD and UST cases in the seven jurisdictions, all of the data presented in the Results Section have been weighted. The weighting procedure was developed based upon the total number of eligible cases in each of the seven jurisdictions. For example, in Ontario there were 3,210 cases deemed eligible for inclusion in this study. Therefore, each of the 343 cases sampled in Ontario represent 9.359 cases in the population. Since all eligible cases were selected in Prince Edward Island, Nunavut and the Yukon, these cases were given a weight of one.

3. Results

3.1 Review Board Caseloads

There were a total of 8,679 accused found NCRMD or UST in the seven participating jurisdictions during the study period (1992-2004). Table 2 provides the percentage of cases within each province or territory by the legal status of the accused. Most accused within the Review Board systems were NCRMD rather than UST, although this varied according to the jurisdiction. For example, in Ontario approximately four out of every ten cases involved a UST accused while in Quebec approximately one out of every ten cases involved a UST accused.

TABLE 2: LEGAL STATUS (NCRMD/UST) BY JURISDICTION			
Jurisdiction	NCRMD N (row%)	UST N (row %)	TOTAL N (column %)
Prince Edward Island	8 (66.7%)	4 (33.3%)	12 (0.1%)
Quebec	3,378 (89.4%)	399 (10.6%)	3,777 (43.5%)
Ontario	2,059 (64.1%)	1,151 (35.9%)	3,210 (37.0%)
Alberta	306 (76.5%)	94 (23.5%)	400 (4.6%)
British Columbia	1,036 (82.7%)	216 (17.3%)	1,252 (14.4%)
Nunavut	6 (75.0%)	2 (25.0%)	8 (0.1%)
Yukon	10 (50.0%)	10 (50.0%)	20 (0.2%)
TOTAL	6,802 (78.4%)	1,877 (21.6%)	8,679 (100%)
1. Percentages may not always total 100% due to rounding error.			

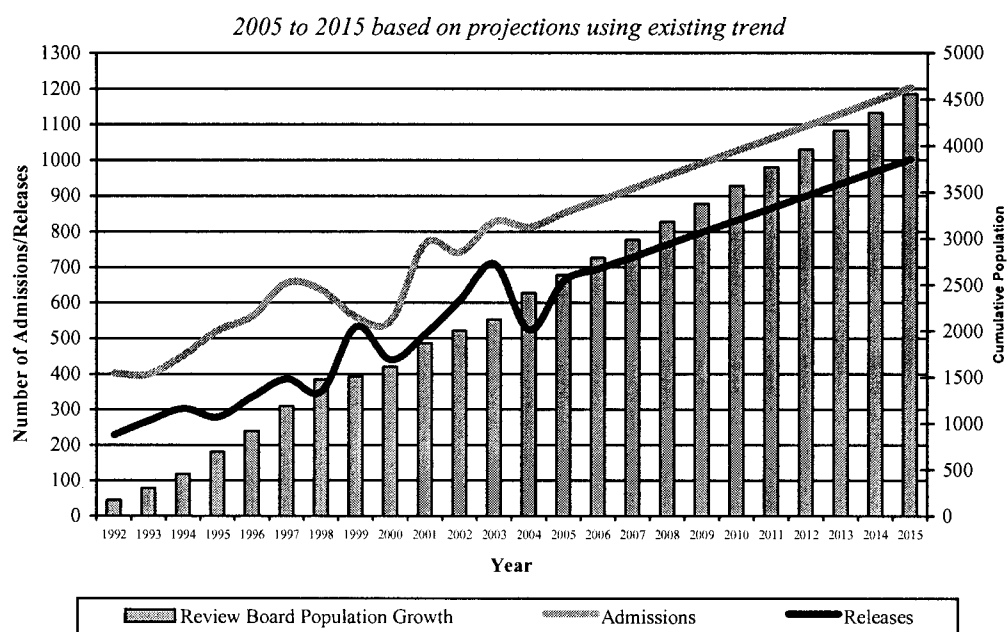
Annual admissions data in Table 3 indicate a clear increase in the absolute number of cases admitted to the Review Boards. In fact, between 1992 and 2004, there was a 102% increase in the total number of admissions. In order to determine if the increase in admissions was a result of an increase in the number of accused appearing in criminal court, the rate per 1,000 cases processed in adult court was calculated using the Adult Criminal Court Survey (ACCS) managed by the Canadian Centre for Justice Statistics, Statistics Canada. The ACCS, however, only began collecting data in 1994/95; therefore, the rates prior to this time cannot be calculated.

TABLE 3 ANNUAL ADMISSIONS BY JURISDICTION (1992-2004)													
Jurisdiction	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Prince Edward Island	2	0	1	1	0	3	0	2	0	0	0	0	0
Quebec	173	140	173	227	227	259	270	162	205	388	345	453	486
Ontario	168	215	225	206	206	253	225	215	197	234	271	234	215
Alberta	16	18	24	36	28	14	22	22	32	32	24	36	36
British Columbia	42	25	30	51	102	127	119	157	110	110	98	102	72
Nunavut	-	-	-	-	-	-	-	-	-	2	1	3	2
Yukon	0	1	1	2	1	0	1	2	3	2	3	1	2
Total	402	400	453	522	563	656	636	560	549	767	742	829	813
Percent change	-	-0%	+14%	+15%	+8%	+17%	-3%	-12%	-2%	+40%	-3%	+12%	-2%
Rate per 1,000 adult court cases	-	-	-	1.2	1.3	1.6	1.6	1.4	1.5	2.1	1.6	1.8	1.8
1. Nunavut cases prior to 2001 were handled by the Northwest Territories Review Board.													

In 1994/95, 1.2 per 1,000 cases in adult criminal court were diverted to Review Boards while in 2003/2004, this rate had increased to 1.8 per 1,000 cases – a 50% increase over the 1994/95 rate. This 50% increase in the rate is similar to the increase in the absolute number of admissions during the same time period. Therefore, the increase in Review Board admissions is clearly not the result of more accused appearing in adult criminal court. Rather, it is an indication that the courts were more likely to find an accused NCRMD/UST or that the issue of mental disorder was raised more often in court.

Figure 1 examines annual admissions and releases in order to estimate the growth in the NCRMD/UST population. Although annual releases increased along with admissions, more cases were admitted into the Review Board systems than were released each year. Therefore, there has been a substantial growth in the population between 1992 and 2004. Since 1992, the Review Board population has increased by almost 2,500 cases. Based upon projections using the last twelve years, the population is expected to continue to grow so that by the year 2015, there will be an additional 2,000 NCRMD/UST cases within the Review Board systems. This means that between 1992 and 2015, the population under the control of Review Boards is expected to increase by approximately 4,500 cases in addition to the existing 1992 population.

FIGURE 1
ANNUAL ADMISSIONS, RELEASES AND REVIEW BOARD POPULATION GROWTH (1992-2015)



1. Releases includes all cases that were given an absolute discharge or returned to court and found fit, cases where the charges were withdrawn or stayed, cases that were transferred to another province, or cases where the accused died.
2. Population growth represents the accumulated difference between admissions and releases each year.

3.2 Demographic Profile of NCRMD/UST Accused

Table 4 provides basic demographic information on accused found NCRMD and UST. Most accused (84%) within the Review Board system were male, which is consistent with the traditional criminal justice system where 83% of accused processed through adult criminal court are male.¹³

According to Table 4, UST accused were slightly older than NCRMD accused. However, the average age of all accused within the Review Board systems (median=35 years) was higher than the average age of those within the traditional criminal justice system (median=31 years).¹⁴

Although Aboriginal status is neither accurately nor consistently reported within existing criminal justice system data, it is clear that Aboriginal peoples are over-represented within most

¹³ Comparison data was drawn from the Adult Criminal Court Survey (2003/2004) managed by the Canadian Centre for Justice Statistics, Statistics Canada.

¹⁴ Ibid.

aspects of the justice system including arrests, convictions and custodial sentences.¹⁵ However, only 4% of accused within the Review Board system were reported to be Aboriginal, which is relatively consistent with the proportion of Aboriginal people in the Canadian population (i.e., approximately 3%).¹⁶ The discrepancy between the proportion of Aboriginal people in the Review Board systems and the traditional criminal justice system may largely be due to the fact that Manitoba and Saskatchewan, which both have a high proportion of Aboriginal people within their populations, are missing from the study. It is also possible that in cases involving Aboriginal people, the issue of mental disorder may not be raised as often or when it is raised, courts are less likely to find that they meet the legal test. Additional research, however, would be required to appropriately answer this question.

TABLE 4: LEGAL STATUS (NCRMD/UST) BY DEMOGRAPHIC INFORMATION			
Demographic Information	NCRMD N (column %)	UST N (column %)	TOTAL N (column %)
Gender			
Male	5,716 (84.0%)	1,561 (83.2%)	7,277 (83.9%)
Female	1,086 (16.0%)	316 (16.8%)	1,402 (16.2%)
Age			
Under 18 years	115 (1.7%)	74 (4.0%)	189 (2.2%)
18 to 25 years	1,374 (20.5%)	250 (13.6%)	1,624 (19.0%)
26 to 40 years	3,115 (46.4%)	748 (40.7%)	3,863 (45.2%)
41 to 64 years	1,987 (29.6%)	642 (34.9%)	2,629 (30.7%)
Over 64 years	123 (1.8%)	124 (6.7%)	247 (2.9%)
Median age	35 years	37 years	35 years
Aboriginal Status			
Aboriginal	284 (4.2%)	93 (4.9%)	377 (4.3%)
Non-Aboriginal	6,518 (95.8%)	1,784 (95.1%)	8,302 (95.7%)
<ol style="list-style-type: none"> Percentages may not always total 100% due to rounding error. Totals may not be exact due to the rounding of the weighted data. Age was calculated based upon the accused's age at the time of the offence. There were 127 cases that did not contain information necessary to calculate age. 			

As can be seen in Table 5, the same percentage of Aboriginal and non-Aboriginal accused referred to a Review Board were female. However, there were age differences according to gender and Aboriginal status. In general, female accused were older than male accused and non-Aboriginal accused were older than Aboriginal accused.

¹⁵ Canadian Centre for Justice Statistics, *Aboriginal Peoples in Canada* (Ottawa, Canadian Centre for Justice Statistics, Statistics Canada, 2001).

¹⁶ Ibid.

TABLE 5: MEDIAN AGE BY DEMOGRAPHIC INFORMATION		
Demographic Information	N (%)	Median Age
Aboriginal		
Male	316 (83.8%)	29 years
Female	61 (16.2%)	32 years
Non-Aboriginal		
Male	6,962 (83.9%)	35 years
Female	1,341 (16.2%)	38 years
1. Percentages may not always total 100% due to rounding error. 2. There were 127 cases that did not contain information necessary to calculate age.		

3.3 Prior Involvement with the Criminal Justice System

Due to the high number of cases in Quebec with no information on criminal history, it was necessary to remove Quebec cases from any analysis that involved criminal history. Among the total number of cases with information on prior record (N=4,902), more than half of the NCRMD/UST accused (57.2%) had a prior criminal conviction. The number of prior convictions ranged appreciably from 1 to 60, with a median of 4.

Table 6 indicates that a small percentage of NCRMD/UST cases had more than 10 prior convictions and that approximately one-third had at least one prior violent and/or sexual conviction. In general, current NCRMD cases were more likely to have a prior UST finding compared to current UST cases - 12% of NCRMD cases had a prior UST finding while only 2% of current UST cases had a prior UST finding. This suggests that some UST accused who are returned to court and found fit might then be found NCRMD.

TABLE 6: LEGAL STATUS (NCRMD/UST) BY PRIOR INVOLVEMENT			
Prior Involvement	NCRMD N (column %)	UST N (column %)	TOTAL N (column %)
Number of Prior Convictions			
No prior convictions	1,451 (42.4%)	647 (43.8%)	2,098 (42.8%)
One prior conviction	406 (11.8%)	169 (11.4%)	574 (11.7%)
Two to five prior convictions	825 (24.1%)	231 (15.6%)	1,055 (21.5%)
Six to ten prior convictions	554 (16.2%)	327 (22.2%)	882 (18.0%)
More than ten prior convictions	189 (5.5%)	104 (7.0%)	293 (6.0%)
Type of Prior Convictions			
No prior convictions	1,451 (42.4%)	647 (43.8%)	2,098 (42.8%)
Prior violent/sexual conviction	1,151 (33.6%)	561 (38.0%)	1,713 (34.9%)
Prior non-violent conviction	822 (24.0%)	269 (18.2%)	1,092 (22.3%)
Prior NCRMD Findings			
No prior NCRMD	6,141 (90.3%)	1,661 (88.5%)	7,802 (89.9%)
One prior NCRMD	573 (8.4%)	193 (10.3%)	766 (8.8%)
More than one prior NCRMD	89 (1.3%)	22 (1.2%)	111 (1.3%)
Prior UST Findings			
No prior UST	5,988 (88.0%)	1,840 (98.0%)	7,828 (90.2%)
One prior UST	666 (9.8%)	26 (1.4%)	692 (7.9%)
More than one prior UST	148 (2.2%)	11 (0.6%)	159 (1.8%)
1. Percentages may not always total 100% due to rounding error. 2. Totals may not be exact due to the rounding of the weighted data.			

As seen in Table 7, the number of prior convictions varied according demographic information, although the pattern is similar to general offenders. Adults were much more likely than youth to have a prior record, males were more likely than females, and Aboriginal accused were more likely than non-Aboriginal accused.

TABLE 7: CRIMINAL HISTORY BY DEMOGRAPHIC INFORMATION		
Demographic Information	N (%)	Mean
Gender		
Male	4,137 (84.4%)	5.2 convictions
Female	765 (15.6%)	1.8 convictions
Age		
Youth (less than 18 years)	114 (2.3%)	1.3 convictions
Adults (18 years and over)	4,758 (97.7%)	4.7 convictions
Aboriginal		
Aboriginal	333 (6.8%)	7.8 convictions
Non-Aboriginal	4,569 (93.2%)	4.4 convictions
1. Percentages may not always total 100% due to rounding error. 2. There were 30 cases that did not contain information necessary to calculate age.		



Dual-status offenders are those who are under the purview of a Review Board for an NCRMD or UST designation and are concurrently serving a sentence for a criminal conviction. Of the 8,679 accused, 11.6% were classified as dual-status offenders - there was no difference in the percentage of NCRMD cases versus UST cases.

3.4 Most Serious Index Offence

The most serious index offence refers to the offence which brought the accused to a Review Board during the study period. As Table 8 demonstrates, assault (levels I, II and III) comprised approximately four out of every ten cases within Review Board systems (40.7%) while the next most common offence was threats (9.4%), followed by murder (6.4%), criminal harassment (5.3%) and attempted murder (5.2%). Most accused within the Review Board system (72.6%) were charged with a violent offence, while 5.7% were charged with a sexual offence and 21.7% were charged with a non-violent offence. Compared to accused found NCRMD, UST accused were more likely to be charged with a sexual offence (10.6% versus 4.3%) and a non-violent offence (30.8% versus 19.2%) and less likely to be charged with a violent offence (58.5% versus 76.5%).

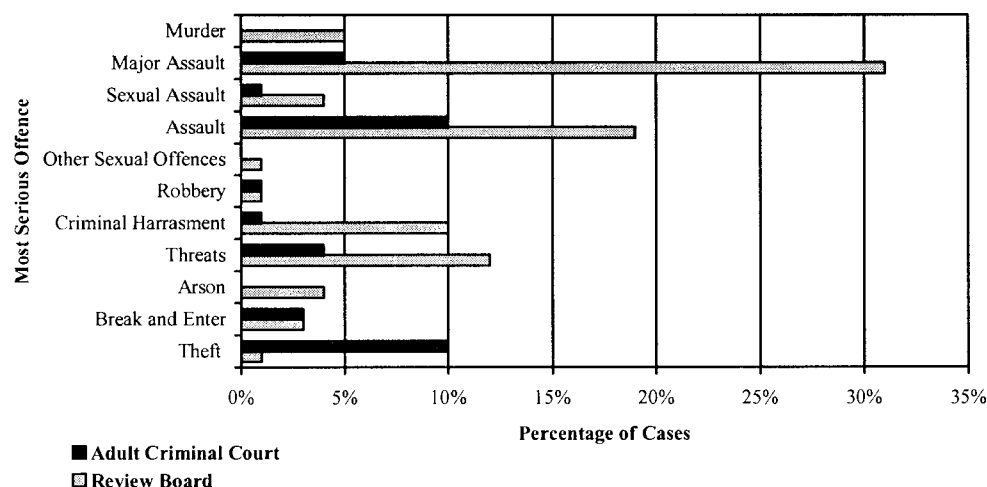
TABLE 8: LEGAL STATUS (NCRMD/UST) BY MOST SERIOUS OFFENCE			
Most Serious Offence	NCRMD N (column %)	UST N (column %)	TOTAL N (column %)
Homicide	487 (7.2%)	69 (3.7%)	555 (6.4%)
Attempted murder	441 (6.5%)	14 (0.7%)	455 (5.2%)
Major assault (level II, III)	1,494 (22.0%)	268 (14.3%)	1,762 (20.3%)
Assault (level I)	1,195 (20.4%)	571 (30.4%)	1,766 (20.4%)
Robbery	243 (3.6%)	50 (2.7%)	293 (3.4%)
Criminal harassment	430 (6.3%)	26 (1.4%)	456 (5.3%)
Threats	721 (10.6%)	98 (5.2%)	819 (9.4%)
Other violent offences	193 (2.8%)	3 (0.2%)	196 (2.3%)
Total Violent Offences	5,203 (76.5%)	1099 (58.5%)	6,302 (72.6%)
Sexual assault (level I, II, III)	250 (3.7%)	157 (8.4%)	408 (4.7%)
Other sexual offences	43 (0.6%)	42 (2.3%)	85 (1.0%)
Total Sexual Offences	293 (4.3%)	200 (10.6%)	493 (5.7%)
Arson	328 (4.8%)	40 (2.2%)	368 (4.2%)
Break and enter	209 (3.1%)	73 (3.9%)	282 (3.3%)
Theft	163 (2.4%)	99 (5.3%)	262 (3.0%)
Weapons offences	83 (1.2%)	68 (3.6%)	151 (1.7%)
Other non-violent offences	523 (7.7%)	298 (15.9%)	821 (9.5%)
Total Non-Violent Offences	1,305 (19.2%)	579 (30.8%)	1,884 (21.7%)
1. Percentages may not always total 100% due to rounding error. 2. Totals may not be exact due to the rounding of the weighted data.			

Of the 3,425 NCRMD accused with information on their prior record, 11.0% had never been convicted of a violent or sexual offence, including their current offence. Of the 1,477 UST accused with information on their prior record, 18.1% had never been convicted of a violent or sexual offence, including their current offence. In other words, a considerable number of

accused under the control of Review Boards for current non-violent behaviour had also never been convicted of a violent or sexual offence in the past.

Figure 2 provides a comparison between all cases referred to a Review Board in the year 2003 and cases with a finding of guilt in adult criminal court in the fiscal year 2003/04. There was a significant difference between general offenders and NCRMD/UST accused. Compared to those convicted in adult court, NCRMD/UST accused are much more likely to have been charged with murder, major assault, sexual assault, assault, other sexual offences, criminal harassment, threats and arson, equally likely to have been charged with break and enter and robbery, and much less likely to have been charged with theft.

FIGURE 2:
OFFENCE COMPARISON BETWEEN REVIEW BOARD CASES (2003 COHORT) AND ADULT CRIMINAL COURT CASES (2003/04)



1. The NCRMD/UST data are drawn from those accused who were transferred to a Review Board in the calendar year 2003; the ACCS data are drawn from the 2003/2004 Adult Criminal Court Survey managed by the Canadian Centre for Justice Statistics, Statistics Canada.
2. Approximately 9% of the offences committed by accused within NCRMD/UST cases and 64% of offences committed by accused within ACCS cases were not used in this comparison.



According to Table 9, youth were much more likely to have been charged with sexual offences compared to adults and seniors, adults were more likely to have been charged with violent offences compared to youth and seniors, and seniors were more likely to have been charged with non-violent offences compared to youth and adults. Compared to males, females were more likely to have been charged with non-violent offences and less likely to have been charged with sexual or violent offences. Aboriginal accused were more likely than non-Aboriginal accused to have been charged with sexual offences and less likely to have been charged with violent and non-violent offences.

TABLE 9: OFFENCE TYPE BY DEMOGRAPHIC INFORMATION			
Demographic Information	Violent N (row %)	Sexual N (row %)	Non-Violent N (row %)
Age Category			
Youth (less than 18 years)	97 (51.4%)	57 (30.1%)	35 (18.4%)
Adults (18-64 years)	5,999 (73.9%)	386 (4.8%)	1,731 (21.3%)
Seniors (over 64 years)	152 (61.8%)	18 (7.2%)	77 (31.1%)
Gender			
Male	5,318 (73.1%)	451 (6.2%)	1,508 (20.7%)
Female	984 (70.2%)	42 (3.0%)	376 (26.8%)
Aboriginal Status			
Aboriginal	265 (70.4%)	43 (11.3%)	69 (18.3%)
Non-Aboriginal	6,037 (72.7%)	450 (5.4%)	1,815 (21.9%)
1. Percentages may not always total 100% due to rounding error. 2. Age was calculated based upon the accused's age at the time of the offence.			

3.5 Primary Diagnosis

Just over half of the accused within the Review Board systems (51.7%) had a single diagnosis, while 29% had two diagnoses on file and 18.4% had three or more. The results in Table 10 represent the 'primary' diagnoses, which was determined according to the following hierarchy: schizophrenia, affective disorder, organic brain disorders, mental retardation, delusional disorders, personality disorders, substance abuse disorder, and other diagnoses. For example, if an accused was diagnosed with an affective disorder and a substance abuse disorder, the primary diagnosis was coded as an affective disorder.

When comparing NCRMD and UST accused, NCRMD accused were more likely to have been diagnosed with affective disorders and personality disorders while UST accused were more likely to have been diagnosed with mental retardation and organic brain disorders or to have not had a diagnoses on file.

TABLE 10:
LEGAL STATUS (NCRMD/UST) BY PRIMARY DIAGNOSIS

Diagnosis Type	NCRMD N (column %)	UST N (column %)	TOTAL N (column %)
Schizophrenia	3,518 (51.7%)	1,054 (56.2%)	4,571 (52.7%)
Affective disorders	1,812 (26.6%)	245 (13.1%)	2,057 (23.7%)
Delusional disorders	310 (4.6%)	77 (4.1%)	387 (4.5%)
Mental retardation	206 (3.0%)	170 (9.1%)	377 (4.3%)
Personality disorders	302 (4.4%)	45 (2.4%)	347 (4.0%)
Organic brain disorders	150 (2.2%)	125 (6.7%)	274 (3.2%)
Substance abuse disorder	166 (2.4%)	17 (0.9%)	182 (2.1%)
Other diagnoses	310 (4.6%)	95 (5.1%)	405 (4.7%)
No diagnosis on file	28 (0.4%)	49 (2.6%)	78 (0.9%)

1. Percentages may not always total 100% due to rounding error.
2. Totals may not be exact due to the rounding of the weighted data.

If an accused was diagnosed with schizophrenia and a substance abuse disorder, the substance abuse disorder diagnoses would not be reported in Table 10. Therefore, in order to understand how often each particular diagnosis occurs within the NCRMD/UST population, Table 11 provides information on all primary, secondary and tertiary diagnoses. Although not often coded as a primary diagnosis, more than one-quarter of NCRMD/UST accused had been diagnosed with a substance abuse disorder and approximately 18% with a personality disorder. The same differences between NCRMD and UST accused found in the primary diagnoses found in Table 10 were also found in Table 11.

TABLE 11:
PRIMARY, SECONDARY AND TERTIARY DIAGNOSES

Diagnosis Type	NCRMD N (%)	UST N (%)	TOTAL N (%)
Schizophrenia	3,518 (51.7%)	1,054 (56.2%)	4,571 (52.7%)
Affective disorders	1,914 (28.1%)	254 (12.5%)	2,168 (25.0%)
Substance abuse disorder	2,137 (31.4%)	365 (19.4%)	2,502 (28.8%)
Personality disorders	1,304 (19.2%)	235 (12.5%)	1,539 (17.7%)
Mental retardation	474 (7.0%)	270 (14.4%)	744 (8.6%)
Delusional disorders	403 (5.9%)	79 (4.2%)	482 (5.6%)
Organic brain disorders	207 (3.0%)	150 (8.0%)	357 (4.1%)
Other diagnoses	1,177 (17.3%)	376 (20.0%)	1,552 (17.9%)

1. Percentages do not total 100% as many accused received more than one diagnosis.
2. Totals may not be exact due to the rounding of the weighted data.

Table 12 contains information on the relationship between the primary diagnosis and demographic information. Youth were less likely than adults to have been diagnosed with schizophrenia, affective disorders or delusional disorders but much more likely to have been diagnosed with mental retardation or 'other diagnoses'. Seniors were much less likely than adults to have been diagnosed with schizophrenia and affective disorders but much more likely to have been diagnosed with delusional disorders, organic brain disorders and 'other diagnoses'.

Females were less likely than males to have been diagnosed with schizophrenia but more likely to have been diagnosed with affective disorder.

Aboriginal accused were less likely than non-Aboriginal accused to have been diagnosed with the common diagnoses (i.e., schizophrenia, affective disorders) and much more likely to have been diagnosed with mental retardation and substance abuse disorders.



TABLE 12:
PRIMARY DIAGNOSES BY DEMOGRAPHIC INFORMATION

Demographic Information	Schizophrenia N (row %)	Affective Disorders N (row %)	Delusional Disorders N (row %)	Mental Retardation N (row %)	Personality Disorders N (row %)	Organic Brain Disorders N (row %)	Substance Abuse Disorders N (row %)	Other Diagnoses N(row%)
Age Category								
Youth (less than 18 years)	61 (32.5%)	31 (16.2%)	0 (0.0%)	51 (26.9%)	11 (5.7%)	6 (3.3%)	0 (0.0%)	29 (15.4%)
Adults (18-64 years)	4,437 (54.7%)	1,941 (23.9%)	349 (4.3%)	291 (3.6%)	325 (4.0%)	181 (2.2%)	169 (2.1%)	354 (4.4%)
Seniors (over 64 years)	40 (16.1%)	42 (17.1%)	38 (15.4%)	4 (1.7%)	11 (4.6%)	87 (35.3%)	2 (0.8%)	22 (9.0%)
Gender								
Male	4,003 (55.0%)	1,520 (20.9%)	339 (4.7%)	324 (4.5%)	289 (4.0%)	257 (3.5%)	147 (2.0%)	334 (4.6%)
Female	569 (40.6%)	537 (38.3%)	48 (3.4%)	52 (3.7%)	59 (4.2%)	17 (1.2%)	35 (2.5%)	71 (5.1%)
Aboriginal Status								
Aboriginal	174 (46.3%)	67 (17.8%)	21 (5.6%)	39 (10.5%)	19 (5.0%)	11 (3.0%)	32 (8.6%)	12 (3.3%)
Non-Aboriginal	4,397 (53.0%)	1,990 (24.0%)	366 (4.4%)	337 (4.1%)	329 (4.0%)	263 (3.2%)	150 (1.8%)	393 (4.7%)

1. Percentages may not always total 100% due to rounding error or due to the fact that 78 cases (0.9%) with "no diagnoses on file" were omitted from the table.
2. Age was calculated based upon the accused's age at the time of the offence.

In addition to the general diagnoses, information was collected on Fetal Alcohol Spectrum Disorder (FASD) separately, even when it was also coded as an organic brain disorder. The results revealed that 65 accused had a suspected or confirmed diagnosis of FASD. Although this represented only 0.4% of NCRMD accused, it represented 2.1% of UST accused. As well, there were significant differences according to age and Aboriginal status. Slightly more than one in ten accused youth under 18 years of age (11.5%) had a suspected or confirmed FASD diagnoses compared to only 0.5% of adult accused. In addition, approximately 14% of Aboriginal accused had a confirmed or suspected FASD diagnosis compared to 0.2% of non-Aboriginal accused. In fact, when Aboriginal status and age are combined, the issue becomes even clearer – 73.7% of Aboriginal youth under the purview of Review Boards had a confirmed or suspected diagnosis of FASD. It should be cautioned, however, that the number of Aboriginal youth in the sample was very small. As well, given the case law in Saskatchewan that suggests a relatively high number of youth diagnosed with FASD are being found UST, the lack of data from Saskatchewan and Manitoba is particularly problematic in this instance.

As Table 13 indicates, there were also specific differences in offending behaviour according to the primary diagnosis. For example, compared to the overall percentage, accused diagnosed with mental retardation were much more likely to be charged with sexual offences and much less likely to be charged with violent offences. In addition, accused diagnosed with an organic brain disorder were also more likely to be charged with a sexual offence. Again, in comparison to the overall percentage, accused diagnosed with a delusional disorder were more likely to be charged with a violent crime as were accused diagnosed with a substance abuse disorder. Finally, accused diagnosed with an affective disorder were more likely to be charged with a non-violent crime compared to the general percentage.

TABLE 13: OFFENCE TYPE BY PRIMARY DIAGNOSIS			
Diagnosis Type	Violent N (row %)	Sexual N (row %)	Non-Violent N (row %)
Schizophrenia	3,435 (75.1%)	218 (4.8%)	919 (20.1%)
Affective disorders	1,420 (69.0%)	53 (2.6%)	584 (28.4%)
Other diagnoses	317 (78.2%)	11 (2.8%)	77 (19.0%)
Delusional disorders	319 (82.6%)	2 (0.5%)	65 (16.9%)
Mental retardation	166 (44.1%)	153 (40.5%)	58 (15.4%)
Personality disorders	254 (73.2%)	11 (3.3%)	82 (23.5%)
Organic brain disorders	196 (71.3%)	28 (10.0%)	51 (18.7%)
Substance abuse disorder	149 (81.7%)	6 (3.3%)	27 (15.0%)
No diagnosis on file	46 (59.4%)	11 (13.9%)	21 (26.7%)
Total	6,302 (72.6%)	493 (5.7%)	1,884 (21.7%)
1. Percentages may not always total 100% due to rounding error.			

3.6 Review Board Dispositions

The most common disposition among both NCRMD and UST accused during the initial Review Board hearing was detention, which was ordered in approximately half of all cases. However, NCRMD accused were much more likely to remain within the Review Board system after the initial hearing than accused found UST. This is likely due to the fact that UST accused are often mandated into treatment for sixty days between the court finding of UST and the Review Board hearing under section 672.58 of the *Criminal Code*. Once an accused found UST has been treated and/or medicated, he or she is often found legally fit to stand trial.

TABLE 14: LEGAL STATUS (NCRMD/UST) BY INITIAL DISPOSITION			
Disposition	NCRMD N (column %)	UST N (column %)	TOTAL N (column %)
Absolute discharge	852 (12.5%)	N/A	852 (9.8%)
Conditional discharge	2,372 (34.9%)	173 (9.2%)	2,545 (29.3%)
Detention	3,514 (51.7%)	909 (48.4%)	4,423 (51.0%)
Fitness determination	N/A	751 (40.0%)	751 (8.7%)
Other dispositions	64 (0.9%)	44 (2.3%)	107 (1.2%)
TOTAL	6,802 (78.4%)	1,877 (21.6%)	8,679 (100%)
<ol style="list-style-type: none"> 1. Other dispositions include cases where the charges were withdrawn or stayed, cases that were transferred to another province, or cases where the accused died. 2. Fitness determination indicates that the accused was returned to court and found fit to stand trial prior to a disposition. 3. N/A = not applicable as NCRMD cases cannot be found fit and UST cases cannot be given an absolute discharge. 4. Percentages may not always total 100% due to rounding error. 5. Totals may not be exact due to the rounding of the weighted data. 			

If absolute discharges, fitness determinations and 'other dispositions' are combined, approximately one in five cases appearing before Review Boards were released upon an initial hearing. When examining the cases that were not released upon an initial hearing, UST accused were much more likely to be given a detention order compared to NCRMD accused. Approximately 60% of NCRMD cases that were not given an absolute discharge were detained while almost 85% of UST cases that were not found fit were detained. Therefore, it appears that UST accused who remain in the Review Board system after an initial hearing are assessed as posing a greater risk than NCRMD accused who remain in the system after an initial hearing. This may be a result of the differences in diagnosis and most serious charge between UST and NCRMD cases. Compared to accused with a finding of NCRMD, accused found UST are more likely to be accused of a sexual offence and suffer from a more permanent mental disorder (e.g., mental retardation, organic brain disorders).



Table 15 describes the conditions imposed on NCRMD/UST cases that were given a conditional discharge at the initial hearing. Generally, almost all accused are directed to live in a particular location and most are mandated to take medication and/or treatment. There are several significant differences, however, between the conditions imposed in NCRMD cases and those imposed in UST cases. For example, NCRMD cases are more likely to have medication/treatment mandated and to have alcohol and/or drug restrictions imposed while UST cases are more likely to have reporting conditions, non-communication conditions with victims and others (e.g., children) and living restrictions wherein the UST accused must live with a particular person (e.g., parent). Again, this is likely due to the differences in diagnoses and offending behaviour among UST accused.

TABLE 15: LEGAL STATUS (NCRMD/UST) BY CONDITIONS IMPOSED AT INITIAL HEARING			
Condition	NCRMD N (%)	UST N (%)	TOTAL N (%)
Live in a particular location (e.g. group home)	2,147 (95.4%)	152 (89.4%)	2,298 (94.9%)
Mandated medication/treatment	1,632 (72.5%)	93 (54.6%)	1,725 (71.2%)
Alcohol/drug restrictions	1,173 (52.1%)	38 (22.4%)	1,211 (50.0%)
Weapons restrictions	563 (25.0%)	41 (24.1%)	604 (24.9%)
Reporting requirements (e.g., weekly)	445 (19.8%)	61 (35.6%)	506 (20.9%)
Attend assessment for treatment/counselling	370 (16.4%)	43 (25.4%)	413 (17.1%)
Non-communication with victim	254 (11.3%)	38 (22.2%)	292 (12.0%)
Banned from a particular location	143 (6.4%)	10 (6.2%)	154 (6.4%)
General mobility restrictions (e.g., curfew)	95 (4.2%)	12 (7.4%)	107 (4.4%)
Non-communication with others (e.g., children)	68 (3.0%)	29 (17.3%)	98 (4.0%)
Administrative conditions	87 (3.8%)	11 (6.4%)	97 (4.0%)
Transportation restrictions (e.g., driving, taking the bus)	54 (2.4%)	4 (2.5%)	59 (2.4%)
Live with a particular person (e.g., parent)	23 (1.0%)	35 (20.5%)	58 (2.4%)
Imposed custody	30 (1.3%)	6 (3.7%)	36 (1.5%)
Attend school/work	3 (0.1%)	5 (3.1%)	8 (0.3%)

1. Includes all cases that received a conditional discharge on their initial hearing.
2. Administrative conditions includes requirements to disclose psychiatric records or changes in medication to the Review Board, to allow forensic teams to conduct home visits, and to be in possession of Review Board dispositions at all times.
3. Percentages do not total 100% as accused typically received more than one condition.
4. Totals may not be exact due to the rounding of the weighted data.

Observations of the operations of Review Boards indicate that when discussing the conditions related to living in a particular location (e.g. group home), Review Board members consider the rules, regulations and operating procedures of the program or facility. Thus, when this condition is applied, the Review Board may not feel it necessary to impose other conditions that mirror those of the program or facility, such as curfew, alcohol and/or drug restrictions, reporting conditions, and weapon restrictions.

TABLE 16:
ORIGINAL DISPOSITION BY OFFENCE TYPE

Disposition	Violent N (column %)	Sexual N (column%)	Non-Violent N (column %)
Absolute Discharge	497 (7.9%)	47 (9.6%)	308 (16.4%)
Conditional Discharge	1,925 (30.6%)	150 (30.5%)	470 (24.9%)
Detention	3,394 (53.9%)	226 (45.9%)	803 (42.6%)
Fitness Determination	402 (6.4%)	67 (13.6%)	282 (15.0%)
Other dispositions	84 (1.3%)	2 (0.4%)	22 (1.2%)

1. Other dispositions include cases where the charges were withdrawn or stayed, cases that were transferred to another province, or cases where the accused died.
2. Fitness determination indicates that the accused was returned to court and found fit to stand trial prior to a disposition.
3. Percentages may not always total 100% due to rounding error.

Review Board dispositions also varied according to the most serious offence for which the accused was charged. For example, in Table 16, it can be seen that non-violent offences were more likely to receive an absolute discharge compared to violent or sexual offences. In addition, violent offences were more likely to receive detention compared to sexual or non-violent offences.

The conditions imposed on NCRMD/UST accused also seem to vary in Table 17 according to the type of offence. Although accused charged with sexual offences were much less likely to be mandated to take treatment or medication compared to accused charged with violent or non-violent offences, they were much more likely to be ordered to attend an assessment for treatment/counselling. In fact, they were at least twice as likely as violent or non-violent accused to have every other condition attached to their conditional discharge with the exception of ‘administrative conditions’. It is clear that those accused charged with sexual offences are generally more closely controlled by the Review Boards.



TABLE 17:
OFFENCE TYPE BY CONDITIONS IMPOSED AT INITIAL HEARING

Condition	Violent N (%)	Sexual N (%)	Non-violent N (%)
Live in a particular location (e.g. group home)	1,753 (94.8%)	141 (95.8%)	405 (95.5%)
Mandated medication/treatment	1,364 (73.8%)	65 (44.3%)	295 (69.6%)
Alcohol/drug restrictions	940 (50.8%)	56 (40.0%)	215 (50.7%)
Weapons restrictions	436 (23.6%)	52 (35.1%)	116 (27.5%)
Reporting requirements (e.g., weekly)	373 (20.2%)	52 (35.4%)	81 (19.0%)
Attend assessment for treatment/counselling	274 (14.8%)	54 (36.4%)	85 (20.0%)
Non-communication with victim	234 (12.6%)	45 (30.7%)	13 (3.0%)
Banned from a particular location	117 (6.3%)	19 (13.1%)	18 (4.2%)
General mobility restrictions (e.g., curfew)	72 (3.9%)	22 (14.9%)	14 (3.2%)
Non-communication with others (e.g., children)	55 (3.0%)	34 (23.3%)	8 (2.0%)
Administrative conditions	82 (4.5%)	0 (0.0%)	15 (3.6%)
Transportation restrictions (e.g., driving, taking the bus)	43 (2.3%)	6 (4.2%)	9 (2.2%)
Live with a particular person (e.g., parent)	31 (1.7%)	23 (15.5%)	4 (1.0%)
Imposed custody	25 (1.4%)	6 (4.2%)	4 (1.0%)
Attend school/work	8 (0.5%)	0 (0.0%)	0 (0.0%)

1. Includes all cases that received a conditional discharge on their initial hearing.
2. Administrative conditions include requirements to disclose psychiatric records or changes in medication to the Review Board, to allow forensic teams to conduct home visits, and to be in possession of Review Board dispositions at all times.
3. Percentages do not total 100% as accused typically received more than one condition.

As indicated in Table 18, the diagnoses of the accused also appeared to impact on Review Board dispositions. Those accused who had been diagnosed with an affective disorder or a substance abuse disorder were much more likely to receive an absolute discharge compared to accused diagnosed with schizophrenia, mental retardation, delusional disorders and organic brain disorders. Those accused who had been diagnosed with schizophrenia, a personality disorder or an organic brain disorder were more likely than others to receive a detention order.



TABLE 18: PRIMARY DIAGNOSES BY ORIGINAL DISPOSITION								
Disposition	Schizophrenia N (column %)	Affective Disorders N (column %)	Mental Retardation N (column %)	Delusional Disorders N (column %)	Personality Disorders N (column %)	Substance Abuse N (column %)	Organic Brain Disorders N (column %)	Other Diagnoses N (column %)
Absolute discharge	203 (4.4%)	425 (20.6%)	36 (9.7%)	32 (8.4%)	39 (11.1%)	32 (17.5%)	15 (5.4%)	61 (15.0%)
Conditional discharge	1,099 (24.0%)	804 (39.1%)	141 (37.5%)	144 (37.3%)	98 (28.1%)	63 (34.5%)	76 (27.7%)	116 (28.7%)
Detention	2,739 (59.9%)	719 (34.9%)	170 (45.2%)	154 (39.9%)	196 (56.3%)	73 (40.0%)	153 (55.7%)	184 (45.4%)
Fitness determination	469 (10.3%)	99 (4.8%)	28 (7.4%)	46 (11.8%)	16 (4.5%)	15 (8.1%)	9 (3.4%)	42 (10.5%)
Other dispositions	62 (1.4%)	11 (0.5%)	1 (0.3%)	10 (2.7%)	0 (0.0%)	0 (0.0%)	22 (7.9%)	2 (0.5%)
<p>1. Other dispositions include cases where the charges were withdrawn or stayed, cases that were transferred to another province, or cases where the accused died.</p> <p>2. Fitness determination indicates that the accused was returned to court and found fit to stand trial prior to a disposition.</p> <p>3. Percentages may not always total 100% due to rounding error.</p>								

Generally speaking, of the two largest categories of primary diagnosis in Table 19 – schizophrenia and affective disorders – it appears that accused with a diagnosis of schizophrenia have a more narrow breadth of conditions imposed than do those diagnosed with an affective disorder. Patterns amongst the other diagnosis categories are from smaller samples and are harder to judge. However, those diagnosed with an organic brain disorder also appear to have a relatively wide breadth of conditions imposed.

The condition to reside in a particular location is usually applied in at least 95% of cases. However, those whose primary diagnosis is organic brain disorder (87.5%) or a delusion disorder (91.9%), are slightly less likely to have this condition imposed. This observation must be balanced with the view that 12.5% of those with organic brain disorder have imposed custody as a condition, and 6.9% have a condition imposed that they must live with a particular person. In 8.1% of cases, accused with a primary diagnosis of a delusional disorder must live with a particular person as a condition. Along a similar vein, the condition to live with a particular person was imposed most often in cases where the primary diagnosis was mental retardation (13.4%). Thus, restrictions on living situation is recorded as a condition in virtually all cases.

As can be expected, 100% of patients with a primary diagnosis of substance abuse had alcohol or drug restrictions placed upon them, while only about a quarter of patients with a primary diagnosis of mental retardation or delusional disorder had a similar restriction.



TABLE 19
PRIMARY DIAGNOSES BY CONDITIONS IMPOSED AT INITIAL HEARING

Condition	Schizophrenia N (%)	Affective Disorders N (%)	Mental Retardation N (%)	Delusional Disorders N (%)	Personality Disorders N (%)	Substance Abuse N (%)	Organic Brain Disorders N (%)
Live in a particular location (e.g. group home)	984 (95.3%)	737 (95.6%)	132 (95.5%)	123 (91.9%)	87 (100%)	60 (96.6%)	66 (87.5%)
Mandated medication/treatment	825 (79.9%)	484 (62.8%)	66 (47.5%)	119 (89.1%)	69 (79.5%)	43 (69.7%)	46 (60.8%)
Alcohol/drug restrictions	510 (49.4%)	422 (54.7%)	36 (26.0%)	33 (25.0%)	56 (64.4%)	62 (100%)	51 (67.7%)
Weapons restrictions	205 (19.8%)	241 (31.2%)	46 (33.6%)	14 (10.2%)	22 (25.4%)	15 (23.8%)	26 (34.9%)
Reporting requirements (e.g., weekly)	148 (14.3%)	214 (27.7%)	34 (24.6%)	14 (10.2%)	14 (15.7%)	6 (9.7%)	21 (28.0%)
Attend assessment for treatment/counselling	125 (12.1%)	182 (23.7%)	31 (22.7%)	0 (0.0%)	13 (14.7%)	13 (20.6%)	27 (36.2%)
Non-communication with victim	47 (4.5%)	143 (18.5%)	27 (19.8%)	24 (18.3%)	14 (15.7%)	4 (6.9%)	14 (18.1%)
Banned from a particular location	8 (0.8%)	109 (14.1%)	11 (7.8%)	0 (0.0%)	14 (15.7%)	4 (6.9%)	11 (11.2%)
General mobility restrictions (e.g., curfew)	32 (3.1%)	27 (3.5%)	8 (6.0%)	20 (15.1%)	4 (4.9%)	0 (0.0%)	15 (19.4%)
Non-communication with others (e.g., children)	0 (0.0%)	51 (6.6%)	15 (11.2%)	0 (0.0%)	4 (4.9%)	4 (6.9%)	14 (18.1%)
Administrative conditions	48 (4.6%)	39 (5.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	11 (17.4%)	0 (0.0%)
Transportation restrictions (e.g., driving, bus)	20 (2.0%)	32 (4.2%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	2 (3.2%)	4 (5.6%)
Live with a particular person (e.g., parent)	9 (0.9%)	4 (0.6%)	19 (13.4%)	11 (8.1%)	4 (4.9%)	0 (0.0%)	5 (6.9%)
Imposed custody	21 (2.1%)	4 (0.6%)	1 (0.7%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	9 (12.5%)
Attend school/work	3 (0.3%)	0 (0.0%)	0 (0.0%)	1 (0.8%)	0 (0.0%)	0 (0.0%)	0 (0.0%)

1. Other dispositions include cases where the charges were withdrawn or stayed, cases that were transferred to another province, or cases where the accused died.
2. Fitness determination indicates that the accused was returned to court and found fit to stand trial prior to a disposition.
3. Percentages may not always total 100% due to rounding error.

Given the interpretation of section 672.54 by the Supreme Court of Canada in *R. v. Winko* (i.e., the court or Review Board must order an absolute discharge if the accused does not pose a significant threat to the safety of the public), it was anticipated that the dispositions given to NCRMD accused would change after 1999. Table 20 provides a pre- and post-*Winko* analysis of Review Board dispositions for accused deemed NCRMD.

TABLE 20: PRE/POST WINKO ANALYSIS OF NCRMD DISPOSITIONS		
Disposition	Pre- <i>Winko</i> N (column %)	Post- <i>Winko</i> N (column%)
Absolute discharge	361 (10.0%)	491 (15.3%)
Conditional discharge	1,184 (32.9%)	1,188 (37.1%)
Detention	2,016 (56.0%)	1,498 (46.8%)
Other dispositions	41 (1.1%)	23 (0.7%)
Total	3,602 (100%)	3,200 (100%)
<ol style="list-style-type: none"> 1. Other dispositions include cases where the charges were withdrawn or stayed, cases that were transferred to another province, or cases where the accused died. 2. Percentages may not always total 100% due to rounding error. 3. Pre-<i>Winko</i> refers to cases disposed prior to the year 2000 and post-<i>Winko</i> refers to cases disposed after 1999. 		

There was an observable change in the way in which Review Boards disposed of NCRMD cases after the *Winko* decision. Absolute discharges increased from 10% of cases up to 15% of cases, conditional discharges increased from 33% of cases up to 37% of cases, and detention orders decreased from 56% of cases down to 47% of cases. In other words, it was clear that Review Boards were drafting less onerous dispositions for NCRMD cases after the *Winko* decision.

Table 21 contains a pre- and post-*Winko* analysis of conditions imposed at the initial Review Board hearing. There were some noticeable differences. First, mandated treatment was a condition more often imposed *after* the *Winko* decision. However, this difference could be due to changes made to the *Criminal Code* in 1997. Originally, section 672.55 prohibited Review Boards from ordering psychiatric or other treatment as a condition of a disposition. However, after the amendment in 1997, Review Boards were able to attach a condition whereby the accused must adhere to psychiatric or other treatments *when the accused has consented to the condition*. Second, conditions in general were imposed less often after *Winko* including weapons restrictions, reporting requirements, non-communication conditions, administration conditions and transportation conditions. Of particular importance was the fact that custody was never imposed as a condition of a conditional discharge after *Winko*.

TABLE 21: PRE/POST WINKO ANALYSIS OF CONDITIONS IMPOSED AT INITIAL HEARING		
Condition	Pre-Winko N (%)	Post-Winko N (%)
Live in a particular location (e.g. group home)	1126 (93.4%)	1172 (96.5%)
Mandated medication/treatment	749 (62.1%)	976 (80.3%)
Alcohol/drug restrictions	572 (47.4%)	639 (52.6%)
Weapons restrictions	407 (33.7%)	197 (16.2%)
Reporting requirements (e.g., weekly)	420 (34.8%)	86 (7.1%)
Attend assessment for treatment/counselling	271 (22.5%)	142 (11.7%)
Non-communication with victim	188 (15.6%)	103 (8.5%)
Banned from a particular location	93 (7.7%)	61 (5.0%)
General mobility restrictions (e.g., curfew)	71 (5.9%)	36 (3.0%)
Non-communication with others (e.g., children)	67 (5.6%)	31 (2.5%)
Administrative conditions	80 (6.7%)	17 (1.4%)
Transportation restrictions (e.g., driving, taking the bus)	59 (4.9%)	0 (0.0%)
Live with a particular person (e.g., parent)	52 (4.3%)	6 (0.5%)
Imposed custody	35 (2.9%)	0 (0.0%)
Attend school/work	5 (0.4%)	3 (0.3%)
<ol style="list-style-type: none"> Includes all cases that received a conditional discharge on their initial hearing. Administrative conditions include requirements to disclose psychiatric records or changes in medication to the Review Board, to allow forensic teams to conduct home visits, and to be in possession of Review Board dispositions at all times. Pre-Winko refers to cases disposed prior to the year 2000 and post-Winko refers to cases disposed after 1999. Percentages do not total 100% as accused typically received more than one condition. 		

3.7 Case Processing Over Time: 1992/93 Cohort Analysis

In order to understand how cases are processed by Review Boards over time, all of the NCRMD and UST cases admitted to the Review Boards in 1992 and 1993 were tracked up until the end of 2004. Using the 1992/93 cohort allows sufficient time to pass to better understand how long accused remain in the system and how their dispositions change over time. In 1992/93, 802 new NCRMD/UST cases were admitted into the Review Board systems. Of these, 258 (32.2%) were immediately released from the system - most were given an absolute discharge or returned to court for a fitness hearing. Of the remaining 544 cases, the length of time in the Review Board systems ranged from 15 days to more than 13 years (i.e., still within the system at the end of 2004).

Table 22 provides a breakdown of the time within the system for those cases that were initially given a conditional discharge or a detention order by legal status. NCRMD cases tend to stay in the system much longer than UST cases. For example, all NCRMD cases spent at least six months in the system while almost one in four UST cases were released (i.e., found fit, charges stayed or withdrawn) within the first six months. Moreover, all UST cases were released within five years while 60% of NCRMD cases were in the system longer than five years. It should be noted, however, that after being found legally fit to stand trial, UST accused may subsequently be found NCRMD for the same offence and spend additional time under the Review Board's control.

TABLE 22:
LEGAL STATUS (NCRMD/UST) BY TIME IN THE SYSTEM
(CASES ADMITTED IN 1992/93)

Time in the System	NCRMD N (column %)	UST N (column %)	TOTAL N (column %)
Less than six months	0 (0.0%)	72 (39.0%)	72 (13.2%)
Six months to one year	32 (9.0%)	78 (42.6%)	111 (20.4%)
Greater than one year to five years	111 (30.9%)	34 (18.5%)	145 (26.7%)
Greater than five years to ten years	90 (24.9%)	0 (0.0%)	90 (16.5%)
Greater than ten years	126 (35.1%)	0 (0.0%)	126 (23.3%)
TOTAL	360 (66.2%)	184 (33.8%)	544 (100%)

1. Percentages may not always total 100% due to rounding error.
2. Totals may not be exact due to the rounding of the weighted data.

Table 23 examines differences in the length of time within Review Board systems according to demographic information, diagnoses and offence type. Male accused were much more likely to spend long periods of time within the system (i.e., greater than ten years) compared to female accused.

TABLE 23:
TIME IN THE SYSTEM BY DEMOGRAPHIC INFORMATION, DIAGNOSES AND OFFENCE TYPE
(CASES ADMITTED IN 1992/93)

Demographic Information	Less than 2 years N (row %)	2 years to 10 years N (row %)	Greater than 10 years N (row %)
Gender			
Male	203 (43.2%)	145 (30.9%)	122 (26.0%)
Female	50 (68.1%)	19 (26.1%)	4 (5.8%)
Aboriginal Status			
Aboriginal	0 (0.0%)	5 (29.6%)	13 (70.4%)
Non-Aboriginal	253 (48.1%)	159 (30.3%)	114 (21.7%)
Primary Diagnoses			
Schizophrenia	152 (41.9%)	131 (36.1%)	80 (22.1%)
Affective disorder	33 (39.3%)	17 (20.4%)	34 (40.3%)
Other	69 (69.9%)	17 (17.1%)	13 (13.0%)
Offence Type			
Violent	203 (48.0%)	109 (25.7%)	111 (26.3%)
Sexual	11 (34.7%)	5 (16.9%)	15 (48.4%)
Non-violent	39 (43.5%)	50 (56.5%)	0 (0.0%)
TOTAL	253 (46.5%)	164 (30.2%)	127 (23.3%)

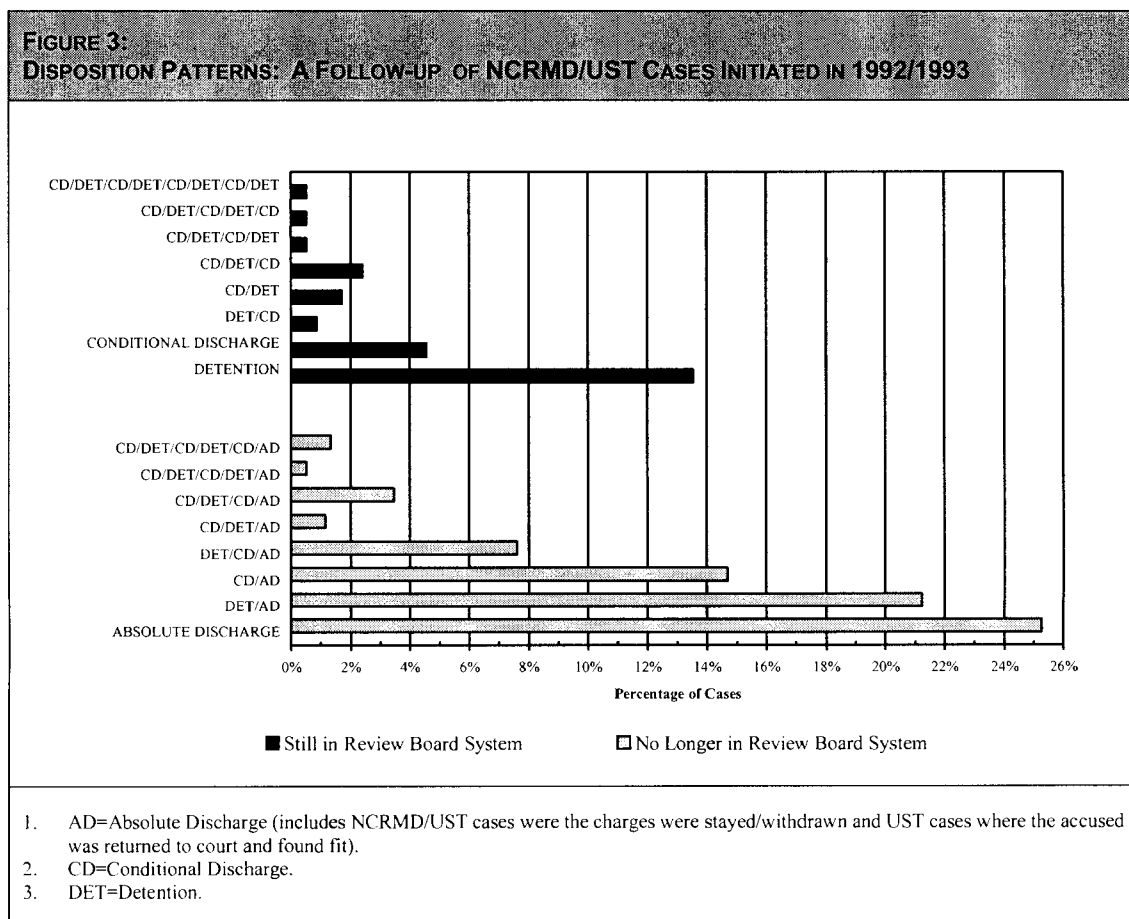
1. Percentages may not always total 100% due to rounding error.
2. Totals may not be exact due to the rounding of the weighted data.

Aboriginal accused were considerably more likely to spend long periods of time within the system compared to non-Aboriginal accused. In fact, in the cohort sample, not a single

Aboriginal accused was released within the first two-years and 70% spent at least 10 years in the Review Board system while only 22% of non-Aboriginal accused were in the system after ten years. It should be noted, however, that the number of Aboriginal accused in the cohort sample was relatively small.

In comparison to accused diagnosed with schizophrenia or 'other diagnoses', accused diagnosed with affective disorder spent more time within the system. Also, accused charged with sexual offences were more likely to spend longer periods of time in the system compared to accused charged with violent or non-violent offences. In fact, not one accused charged with a non-violent offence admitted to the Review Boards in 1992/93 was still in the system ten years later.

Figure 3 provides a graphical representation of how the 1992/93 NCRMD/UST cases were processed throughout the years up until the end of 2004. Of the 802 cases from 1992/93, 142 (17.7%) were still in the system as of December 31, 2004. Most of these were given a single detention order (8.7%) or conditional discharge order (4.6%) and nothing changed over the follow-up period.



A small percentage of cases (0.9%) moved from the original detention order to a conditional discharge, a slightly larger percentage (1.7%) moved from a conditional discharge to a detention



order and an even larger percentage (2.4%) moved from a conditional discharge to a detention order and back to a conditional discharge. The remaining cases still in the system (4.6%) were transferred back and forth between conditional discharge and detention several times.

Of those cases that were eventually released, a large percentage was released after a detention order (21.2%) or a conditional discharge (14.7%). A smaller percentage (7.6%) followed a model path from detention to conditional discharge to release and an even smaller percentage (1.2%) was released after a conditional discharge and a detention order. The remaining cases (6.6%) shuffled between detention and conditional discharge several times before eventually being released.

3.8 Attendees at Review Board Hearings

Table 24 provides information on who actually attended the first Review Board hearing. As the Review Board system is 'inquisitorial' and not 'adversarial', a lawyer for the accused is not mandatory to uphold principles of fundamental justice. However, some commentators have noted that a lawyer can be an important advocate for the legal rights and interests of NCRMD/UST accused. As can be seen in Table 24, a lawyer for the accused was present in 69.2% of Review Board hearings. The Crown was also present in almost half of all cases. Victims were recorded as attendees within Review Board files very infrequently; however, it is unknown if family members or 'other persons' may also include victims. There were a few differences between NCRMD cases and UST cases. For example, in comparison to NCRMD cases, the Crown and the lawyer for the accused were recorded as attendees more often while treating psychiatrists and accused supports were less likely to be recorded as attendees during a UST case. This suggests that UST cases may be viewed as more legalistic and less treatment oriented than NCRMD cases.

TABLE 24:
ATTENDEES AT FIRST HEARING

Attendee	NCRMD N (%)	UST N (%)	TOTAL N (%)
Accused	6,372 (93.7%)	1,503 (80.1%)	7,875 (90.7%)
Treating Psychiatrist/Psychologist	4,959 (72.9%)	1,124 (59.9%)	6,083 (70.1%)
Lawyer for Accused	4,392 (64.6%)	1,615 (86.1%)	6,008 (69.2%)
Hospital/Institution Representative	3,653 (53.7%)	925 (49.3%)	4,578 (52.8%)
Crown	2,856 (42.0%)	1,188 (63.3%)	4,044 (46.0%)
Other Persons	1,490 (21.9%)	218 (11.6%)	1,708 (19.7%)
Case Worker	1,185 (17.4%)	205 (10.9%)	1,390 (16.0%)
Family/Support for Accused	1,020 (15.0%)	166 (8.8%)	1,186 (13.7%)
Program Director	120 (1.8%)	54 (2.9%)	173 (2.0%)
Interpreter	52 (0.8%)	64 (3.4%)	116 (1.3%)
Victim	29 (0.4%)	0 (0.0%)	29 (0.3%)

1. It is possible that the family member or other person in attendance was also the victim in some cases; therefore, more victims may have attended hearings.

4. Conclusion

The results of this data collection process answered a considerable number of policy and operational research questions. Some of the more pertinent findings include:

- Review Board caseloads have been increasing over the last decade and are expected to continue to grow substantially over the next decade;
- Although Aboriginal people do not appear to experience the same level of over-representation as they do within the traditional criminal justice system, it does appear as though they spend substantially more time under the control of Review Boards;
- Nearly half of NCRMD/UST accused appearing before Review Boards at their initial hearing have never been convicted of a prior criminal offence;
- NCRMD/UST accused have generally committed very serious violent offences such as murder, attempted murder, assault, sexual assault, criminal harassment, threats and arson;
- Approximately three-quarters of those within the Review Board systems have been diagnosed with schizophrenia or an affective disorder, such as bi-polar disorder, schizo-affective disorder or major depression;
- One in five cases that are processed by the Review Boards are released (e.g., found fit, given an absolute discharge) after the first hearing; and
- Almost one-quarter of NCRMD/UST cases are spending at least ten years in the Review Board systems and some have been in for significantly longer.

There are still a number of additional questions that will be answered based upon more detailed analysis of these data in subsequent studies. For example, more detailed analysis will be performed on the data so that we can understand changes in dispositions and the conditions imposed on NCRMD/UST accused over time. As well, more analysis will be completed to better understand factors that may impact on Review Board decision-making including criminal history, the seriousness of the offence and other related factors.

In addition, there are other questions that cannot be answered with the existing data. For example, since these data were not linked to hospital files or community program files, little is known about how NCRMD/UST accused manage after Review Board hearings in terms of following conditions, adhering to treatment plans and re-engaging in criminal behaviour. Additional data collection is still needed to provide a more comprehensive understanding of the forensic mental health system in general.



Appendix A: Data Collection Form

Please ensure that ALL fields are completed using the instructions even when the information is not applicable or unknown. NO FIELD CAN BE LEFT BLANK! If you have any questions, please contact:

Jeff Latimer, Senior Researcher Officer, Research and Statistics Division
Department of Justice Canada (613) 957-9589 jeff.latimer@justice.gc.ca

SECTION A: SOCIO-DEMOGRAPHIC INFORMATION	
1. FPS Number	Fingerprint System Number refers to the RCMP identification number used in CPIC. 99999999=Unknown
2. Review Board Identification Number	The file number unique to Review Boards that allows for identification in case there is a need to re-access the file to fix data errors. If there is no file number, use the first four letters of the last name and the year of birth (e.g., SMIT69).
3. Province	1=Newfoundland 2=Prince Edward Island 3=Nova Scotia 4=New Brunswick 5=Quebec 6=Ontario 7=Manitoba 8=Saskatchewan 9=Alberta 10=British Columbia 11=Nunavut 12=Northwest Territories 13=Yukon
4. City Code	Indicate the city in which the accused is <i>currently residing</i> . Refer to the list of city codes in Appendix A (sorted alphabetically). 999=Unknown
5. Date of Birth	Month / Day / Year 99/99/99=Unknown
6. Sex	1=Male 2=Female 9=Unknown
7. Aboriginal Status	Code Non-Aboriginal only when it is clear that the accused/offender is NOT Aboriginal; otherwise code Unknown. 1=First Nation 2=Inuit 3=Métis 4=Aboriginal (unspecified) 5=Non-Aboriginal 9=Unknown
8. Marital Status	The marital status of the accused <i>at the time of the offence</i> . 1=Married 2=Common-law 3=Single (never married) 4=Other (all other choices) 9=Unknown
9. Legal Status	1=NCR Insanity (pre-1992) 2=NCR Mental Disorder 3=Unfit to Stand Trial 9=Unknown
10. Dual Status	Code 4 when it is clear that an accused is ALSO serving a sentence for a conviction BUT it is not clear if the conviction was before or after the NCR/UST finding. 1=Only UST/NCRMD 2=NCR/UST & serving a sentence for a PREVIOUS conviction 3=NCR/UST & serving a sentence for a SUBSEQUENT conviction 4=NCR/UST & serving sentence but timeframe unknown 9=Unknown

For this Section, please record the **TOTAL NUMBER** of prior convictions and information on the **FIRST** conviction, the **LAST** conviction, and the **MOST SERIOUS** conviction. If the accused only has one prior conviction, please code this information in the **LAST** conviction field, the **FIRST** conviction field AND the **MOST SERIOUS** field. If the accused has more than one conviction at one time, code the most serious conviction.

SECTION B- CRIMINAL HISTORY INFORMATION											
11. Total Number of Convictions				Code the TOTAL NUMBER of prior criminal convictions. If the accused does not have a prior conviction code 0.							
12. FIRST Conviction Date				Code the date of the very FIRST conviction (i.e., the earliest). Month / Day / Year 98/98/98=Not applicable (no prior) 99/99/99=Unknown							
13. FIRST Conviction Code				Code the offence type of the very FIRST conviction. Refer to Appendix B for a list of Offence codes. 988=Not applicable (no prior)							
14. FIRST Sentence Code				Code the most serious sentence for the very FIRST conviction (i.e., the highest number). 1=absolute discharge 2=conditional discharge 3=suspended sentence 4=fine/restitution 5=community service 6=probation 7=conditional sentence 8=custody 98=Not applicable (no prior) 99=Unknown							
15. LAST Conviction Date				Code the date of the very LAST conviction (i.e., the most recent). Month / Day / Year 98/98/98=Not applicable (no prior) 99/99/99=Unknown							
16. LAST Conviction Code				Code the offence type of the very LAST conviction. Refer to Appendix B for a list of Offence codes. 988=Not applicable (no prior)							
17. LAST Sentence Code				Code the most serious sentence for the very LAST conviction (i.e., the highest number). 1=absolute discharge 2=conditional discharge 3=suspended sentence 4=fine/restitution 5=community service 6=probation 7=conditional sentence 8=custody 98=Not applicable (no prior) 99=Unknown							
18. MOST SERIOUS Conviction Date				Code the date of the MOST SERIOUS conviction. Refer to Appendix B to determine the most serious conviction (sorted by seriousness). Month / Day / Year 98/98/98=Not applicable (no prior) 99/99/99=Unknown							
19. MOST SERIOUS Conviction Code				Code the offence type of the MOST SERIOUS conviction. Refer to Appendix B for a list of Offence codes. 988=Not applicable (no prior)							
20. MOST SERIOUS Sentence Code				Code the most serious sentence for the MOST SERIOUS conviction (i.e., the highest number). 1=absolute discharge 2=conditional discharge 3=suspended sentence 4=fine/restitution 5=community service 6=probation 7=conditional sentence 8=custody 98=Not applicable (no prior) 99=Unknown							
21. Previous UST				Code the number of previous UST findings. This field cannot be left blank. If you do not know if the accused had a previous UST, please code zero.							
22. Previous NCRMD				Code the number of previous NCRMD findings. This field cannot be left blank. If you do not know if the accused had a previous NCRMD, please code zero.							
23. Prior Sexual Offence				See Appendix B to identify sexual offences (marked with the word SEXUAL) 1=Prior sexual offence 2=No prior sexual offence 8=Not applicable (no prior)							



For this Section, please code ALL the offences that brought the accused to the Review Board for their most recent admission. Please do not include offences that were dealt with during a previous admission. If there are more than three offences, please photocopy this page and attach additional pages to the completed form.

SECTION C: INDEX OFFENCE INFORMATION											
24. Offence Date				Month / Day / Year 99/99/99=Unknown							
25. Offence Code				Refer to Appendix B for a list of Offence codes.							
26. Adjudication Date				Month / Day / Year 99/99/99=Unknown							
27. Adjudication Code				1=NCR Insanity (pre-1992) 2=NCR Mental Disorder 3=Unfit to Stand Trial 4=Stayed 5=Acquitted 6=Dismissed 7=Other (all other choices) 9=Unknown							
28. Offence Date				Month / Day / Year 99/99/99=Unknown							
29. Offence Code				Refer to Appendix B for a list of Offence codes.							
30. Adjudication Date				Month / Day / Year 99/99/99=Unknown							
31. Adjudication Code				1=NCR Insanity (pre-1992) 2=NCR Mental Disorder 3=Unfit to Stand Trial 4=Stayed 5=Acquitted 6=Dismissed 7=Other (all other choices) 9=Unknown							
32. Offence Date				Month / Day / Year 99/99/99=Unknown							
33. Offence Code				Refer to Appendix B for a list of Offence codes.							
34. Adjudication Date				Month / Day / Year 99/99/99=Unknown							
35. Adjudication Code				1=NCR Insanity (pre-1992) 2=NCR Mental Disorder 3=Unfit to Stand Trial 4=Stayed 5=Acquitted 6=Dismissed 7=Other (all other choices) 9=Unknown							

For this section, please code the most current mental health information from accused's most recent admission to the Review Board. If the accused has been discharged from the Review Board, please code information from the accused's last available admission

SECTION D: MENTAL DISORDER & TREATMENT INFORMATION										
36. Primary Diagnosis		1=Schizophrenia 2=Affective Disorders 3=Alcohol/Drug Psychoses 4=Delusional Disorders 5=Organic Brain Disorder 6=Sexual Disorders 7=Mental Retardation 8=Personality Disorders 9=Other Psychoses 10=Substance Abuse 11=Behavioural Disorders 12=Other (all other choices; please specify) 99=Unknown								
	Specify if Other:									
37. First Secondary Diagnosis		1=Schizophrenia 2=Affective Disorders 3=Alcohol/Drug Psychoses 4=Delusional Disorders 5=Organic Brain Disorder 6=Sexual Disorders 7=Mental Retardation 8=Personality Disorders 9=Other Psychoses 10=Substance Abuse 11=Behavioural Disorders 12=Other (all other choices; please specify) 99=Unknown								
	Specify if Other:									
38. Second Secondary Diagnosis		1=Schizophrenia 2=Affective Disorders 3=Alcohol/Drug Psychoses 4=Delusional Disorders 5=Organic Brain Disorder 6=Sexual Disorders 7=Mental Retardation 8=Personality Disorders 9=Other Psychoses 10=Substance Abuse 11=Behavioural Disorders 12=Other (all other choices; please specify) 99=Unknown								
	Specify if Other:									
39. Foetal Alcohol Spectrum Disorder		Code if accused is suspected or confirmed of having FASD even when it has been included in one of the above diagnoses as an organic brain disorder. 1=Suspected FASD 2=Confirmed FASD 3=No diagnosis 9=Unknown								
40. Treatment		Is the accused currently under treatment for a mental disorder? 1=Yes 2=No 9=Unknown								
41. Residence Type		Where is the accused currently residing? 1=Hospital (regular) 2=Hospital (psychiatric) 3=Detention centre (forensic) 4=Detention centre (regular) 5=Community living 9=Unknown								
42. Assigned Security Level		What is the accused's assigned level of security? Code 4 when the accused is not rated; otherwise code Unknown. 1=High 2=Medium 3=Minimum 4=Not Rated 9=Unknown								
43. Privilege Level		What level of privileges is the accused allowed in the facility? Code Not Applicable when the accused is not in a facility. Code Not Rated when the accused is not assigned a privilege level. If the accused is given more than one privilege level, code the most restrictive level. 1=Escorted 2=Accompanied 3=Supervised 4=Indirectly supervised 5=Not Rated 6=Other 8=Not applicable 9=Unknown								
44. Isolation		Was the accused ever kept in isolation? Code Not Applicable if the accused was never in a facility. 1=Yes 2=No 8=Not applicable 9=Unknown								
45. Treatment Methods		Code ALL treatment methods that are currently being used or have been used with the accused in the spaces available. Code Not Applicable when the accused is not receiving treatment. 1=Psychological 2=Social/Recreational/Vocational 3=Substance Abuse 4=Medical/Pharmacological 5=Sexologic 6=Anger Management 7=Other 8=Cognitive 98=Not applicable 99=Unknown								



Please note that this Section needs to be completed for EACH hearing in the case. If there was more than one hearing, please photocopy this page and attached additional pages to the completed form.

SECTION E: REVIEW BOARD PROCESSING INFORMATION														
46. Date of Review Board Hearing										Month / Day / Year 99/99/99=Unknown				
47. Hearing Type										Code ALL hearing types in the spaces available. 1=Initial hearing s.672.47(1) 2=Annual s.672.81(1) 3=Mandatory disposition review 672.81(2)(a) 4=Requested disposition review 672.81(2)(b) 5=Dual disposition review 672.81(3) 6=Discretionary review s.672.82 7=Enforcement s.672.94 8=Fitness review s.672.48(1) 9=Unknown				
48. Arrest Warrant										Was an arrest warrant issued to force the accused to attend the hearing? 1=Yes 2=No				
49. Recorded Attendees										Code ALL individuals who are recorded as attending the hearing in the spaces available. 1=Patient 2=Lawyer for patient 3=Crown 4=Review Board Chair 5=Interpreter 6=Review Board Psychiatrist 7=Treating psychiatrist/psychologist 8=Case Worker 9=Hospital/Institution Representative 10=Family/support for accused 11=Victim 12=Program Director 13=Review Board Member(s) 14=Other				
50. Victim Impact Statement										Was a victim impact statement presented to the Review Board? 1=Yes (orally) 2=Yes (written) 3=Yes (unknown format) 9=Unknown				
51. Disposition										What was the Review Board decision at this hearing in relation to the status of the case? 1=Absolute discharge 2=Conditional discharge 3=Detention 4=Transfer (provincial) 5=Transfer (mental health) 6=Withdrawn 7=Deceased 8=Stay 9=Fitness determination 99=Unknown				
52. Unanimous Decision										Was the Review Board decision at this hearing unanimous? 1= Yes 2=No 3=Unknown				
53. Conditions										What conditions did the Review Board recommend at this hearing? Code ALL conditions in the spaces provided. Refer to Appendix C for a list of possible conditions. Code 98 if there were no conditions and code 99 if it was a conditional discharge but the conditions were not available on file. 98=Not applicable 99=Unknown				

Description and processing of individuals found Not Criminally Responsible on Account of Mental Disorder accused of “serious violent offences”

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Final report submitted to the
Research and statistics division, Department of Justice, Canada

November 30, 2012

EXECUTIVE SUMMARY

Under Canadian law, individuals can be found Not Criminally Responsible due to Mental Disorder (NCRMD) "for an act committed or an omission made while suffering from a mental disorder than rendered the person incapable of appreciating the nature and quality of the act or omission of knowing that it was wrong." Such individuals are then under the jurisdiction of provincial or territorial Review Boards that are obliged to regularly review NCRMD dispositions (detention in hospital, conditional release, absolute discharge). In order to understand the population and processing of those individuals found NCRMD after being accused of a serious violent offence (homicide, attempted murder, or sexual offences), we analyzed data from the National Trajectory Project (NTP), a file-based study of a cohort of persons found NCRMD in Québec, Ontario and BC in the early 2000s.

At the request of the Department of Justice's Research and Statistics Division, we examined the following questions using NTP data: (1) What was the primary psychiatric diagnosis at the time of the index offence? (2) What were the initial dispositions after the NCRMD verdict for the most serious offence? (3) How many prior violent and total convictions did persons found NCRMD have, by most serious offence at verdict? (4) What was the average length of time under the Review Board and in detention (5) How many persons found NCRMD for serious violent offences had reoffended while under a Review Board disposition?

We examined data from 165 persons found NCRMD for a serious violent offence (mean age in 30s, 84% male), representing 9.2% of all NCRMD cases. There were 58 persons accused of homicide, 65 accused of attempted murder, and 42 accused of sexual offences. Approximately two-thirds of this sample had a primary psychosis disorder diagnosis, predominantly schizophrenia, at the time of the index offence; mood disorders and substance use disorders were also common, as was psychiatric comorbidity (multiple diagnoses). Most of the NCRMD persons accused of homicide (90%) or attempted murder (91%) were detained at the time of the first hearing, as were a majority of those accused of sexual offences (60%) were detained. In terms of criminal history, just under half (46%) of the sample had a prior criminal history (conviction or NCRMD finding): there were no meaningful differences across serious violent offence category (45% for homicide cases, 45% for attempted murder cases, and 50% for sexual offence cases). Approximately a third of the sample had a prior violent offence history (32%), with homicide and attempted murder accused having very similar rates (28% and 29%, respectively), in contrast to sexual offence accused (40%).

At the end of our data collection (December 31, 2008), 41% of homicide accused, 49% of attempted murder accused, and 60% of sexual offence accused had been absolutely discharged from review board jurisdiction; approximately a third of the individuals were still detained in hospital. For the entire sample of individuals with a serious violent offence, the average length of tenure under the review board was four years. For those who had been absolutely discharged, the average length of tenure at the time they were discharged was 3.2 years for homicide accused, 2.4 years for attempted murder accused, and 1.8 years for sexual offence accused. Variability in tenure was quite high. During a fixed three year follow up period, 14% of the sample committed a new offence for which they were convicted or found NCRMD, 9.8% for a violent offence and 4.9% for a non-violent offence. The rate of recidivism was similar for Individuals who were under Review Board purview (11.8%) than once those absolutely discharged (12.2%).

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CONTEXT

In an attempt to better understand the population and processing of individuals found Not Criminally Responsible on account of Mental Disorder (NCRMD) accused of “serious violent offences” (SVO), a request was submitted by the Research and Statistics division of the Department of Justice Canada to the National Trajectory Project team to answer the following questions based on available data for SVOs.

- 1) *What was the primary psychiatric diagnosis at the time of the offence?*
- 2) *What are the initial dispositions after verdict by offence category/most serious offence at verdict?*
- 3) *What is the average length of time under the purview of the Review Board (e.g., date of absolute discharge - date of verdict) by offence category/most serious offence at verdict? If they are still under the Review Board, what was their disposition status at their last hearing (hospital custody, conditional discharge)?*
- 4) *What is the average length of time in psychiatric detention by offence category/most serious offence at verdict? (if possible to assess)*
- 5) *How many previous violent convictions does this population have by offence category/most serious offence at verdict?*
- 6) *How many previous other convictions does this population have by offence category/most serious offence at verdict?*
- 7) *How many individuals found NCRMD are reconvicted for a new criminal offence (violent vs. other) while under a Review Board disposition? (or however you defined recidivism) by offence category/most serious offence at verdict.*

Data extraction

Data for the current analyses were extracted from the National Trajectory Project database (NTP). The NTP is a file-based study of individuals found NCRMD in Québec, Ontario, and British-Columbia (<https://ntp-ptn.org>):

The NTP is funded through the Mental Health Commission of Canada (MHCC) and the *Fonds de recherche en santé du Québec* (FRSQ). It examines the operation of current criminal justice provisions for individuals declared NCRMD and under the authority of a provincial or territorial review board (pursuant to s. 672.38, Criminal Code). It examines the antecedents and trajectories of NCRMD accused, including mental health and criminal justice involvement, review board decision-making, and mental health and criminal outcomes. The study includes the three largest provinces (Ontario, Québec and British Columbia), which

comprise the majority of NCRMD cases. It is a multidimensional study which involves quantitative and qualitative research projects.

Definitions

NCRMD: In line with the principles of justice that it is inappropriate to punish individuals who did not have criminal intent at the time of an offence (*mens rea* or 'guilty mind'), the insanity defence (now NCRMD) represents a legal mechanism for some offenders with serious mental illness whose crimes can be understood to be a result of their condition (Wrightsmann, Nietzel, & Fortune, 1994). In Canada, section 16 of the *Criminal Code* defines the verdict of NCRMD as "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."

Legal Dispositions: Prior to the 1992 Criminal Code changes, defendants successfully raising the NCRMD defence were automatically and indefinitely confined in an institution. After the stay of the *Swain* case in 1991 ("R. v Swain," 1991), the Supreme Court concluded that certain dispositions of the *Criminal Code* violated the rights of people with a mental illness protected by the *Canadian Charter of Rights and Freedoms*. As a result of the *Swain* case, the legislation of the Canadian *Criminal Code* outlining the oversight of individuals underwent important changes:

- 1) The creation of provincial Review Boards, quasi-judicial entities that operate independently and have jurisdiction over accused individuals found NCRMD;
- 2) These Review Boards must apply the principle that decisions should be the least restrictive and least onerous as possible following a NCRMD verdict;
- 3) The duration of indeterminate detention was clarified;
- 4) Treatment cannot be ordered by an intermediary during a disposition, and;
- 5) The establishment of annual reviews of the dispositions of NCRMD individuals. The changes made to Part XX.1 of the *Criminal Code* had important repercussions on the discharge of individuals suffering from SMI.

Furthermore, in the initial Bill to amend the *Criminal Code* (known as Bill C-30 in 1992), capping provisions were included in Part XX.1 in order to place maximum times for which individuals could be detained under Review Board dispositions. However, these provisions were subsequently repealed from the *Criminal Code* without ever having been brought into force. Little is known as to whether the duration of Review Board dispositions over NCRMD accused are consistent with the essence of what the capping provisions initially intended.

Review Boards: Provincial and territorial Review Boards are independent administrative tribunals established under the *Criminal Code of Canada* (s. 672.38 Part XX.1). They are commissioned to render or annually to revise the dispositions of offenders declared unfit to stand trial or NCRMD by a court. It is the responsibility of the Review Board to protect public safety while

also safeguarding the rights and freedoms of mentally disordered persons who are alleged to have committed an offence. The criteria which govern the Board's dispositions are contained in s. 672.54 of the Criminal Code. 672.54: *"Where a court or Review board makes a disposition pursuant to subsection 672.54(2) or section 672.47, it shall, taking into consideration the need to protect the public from dangerous persons, 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 the least onerous and least restrictive to the accused: 1) absolute discharge; 2) conditional discharge; or 3) detention in a provincial mental health institution.* These fundamental policy objectives of Part X.X.1 were affirmed by the Supreme Court of Canada in *Winko v. B.C. (Winko v. British Columbia (Forensic Psychiatric Institute) 1999)*.

In *Winko*, the Supreme Court of Canada ruled that the Review Board is required to grant an absolute discharge to an NCRMD accused unless the Review Board is satisfied that it is more likely than not, on the evidence, that the accused continues to pose a significant threat to the safety of the public. The judgment in *Winko* included the following statements of law:

A "significant threat to the safety of the public" means a real risk of physical or psychological harm to members of the public that is serious in the sense of going beyond the merely trifling or annoying. The conduct giving rise to the harm must be criminal in nature. There is no presumption that the NCR accused poses a significant threat to the safety of the public. Restrictions on his or her liberty can only be justified if, at the time of the hearing, the evidence before the court or Review Board shows that the NCR accused actually constitutes such a threat. The court or Review Board cannot avoid coming to a decision on this issue by stating, for example, that it is uncertain or cannot decide whether the NCR accused poses a significant threat to the safety of the public. If it cannot come to a decision with any certainty, then it has not found that the NCR accused poses a significant threat to the safety of the public.

In more recent case law, *R. v. Owen* (2003), the Supreme Court of Canada concluded that while the Review Board, like courts and other administrative tribunals, is required to make findings of fact regarding past events, the tribunal's central and most difficult task relates to *"prediction regarding future risk of harm"*. The court recognized the inherent challenges in balancing individual liberties against public safety.

METHODS

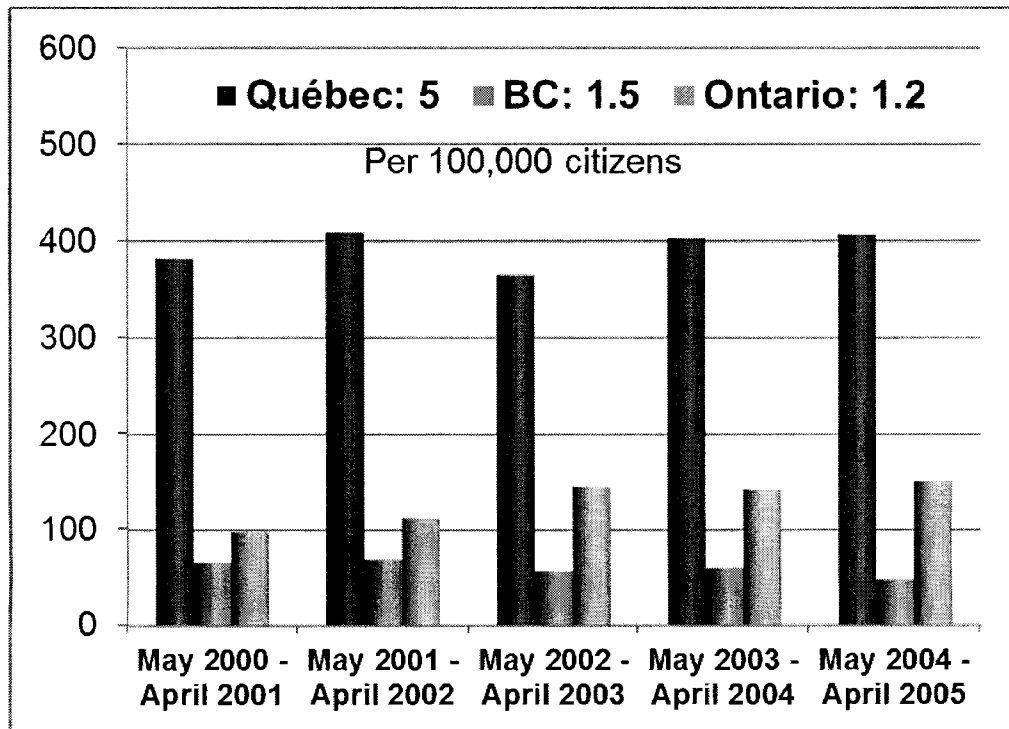
Design

This study used a cross-sectional and longitudinal design (retrospective and prospective) of individuals found NCRMD in Canada. We included cases from the three largest Canadian provinces by population (Ontario, Québec, and British Columbia), these provinces also comprised the majority of NCRMD cases (Latimer&Lawrence, 2006).

Participants

The sample selection start date took into account the *Winko* decision ("Winko v. British Columbia (Forensic Psychiatric Institute) 1999), which could have influenced the Review Board decisions thereafter, and the end date of data collection allowed for a minimum of a three-year follow-up for all cases. Our sample selection period spans from May 1, 2000 to April 30, 2005. As can be observed in Figure 1, Québec has a significantly higher number of NCRMD verdicts per capita per year than both Ontario and BC.

Figure 1. Number of NCRMD decisions per year by provincial review board.



In each province, for each individual found NCRMD during the time period between May 1, 2000 and April 30, 2005, we identified the first NCRMD verdict within that time frame (hereafter called the *index verdict*). This does not exclude the possibility that some individuals might also have had a finding of NCRMD prior to the study period (i.e. prior to May 2000).

Sample Size

The sample size in each province was determined by:

1. Annual NCRMD verdicts between May 2000 and December 2005 in each province;
2. Geographic representativeness of the population studied for Québec, given the large number of NCRMD cases (see Figure 1);
3. Budgetary and time constraints.

In **Québec** on average, 393 men and women were found NCRMD annually (see Figure 1). There were a total of **2,392 NCRMD verdicts** between May 1st 2000 and April 30th 2005, **corresponding to 1,966 distinct individuals** identified as having at least one NCRMD verdict during the study timeframe. In order to have a geographically representative sample of all 17 administrative regions of Québec, a random sampling procedure was applied for each region according to a finite population correction factor (FPC). The total number of individuals sampled in Québec is thus 1,096, producing a 2% margin of error for the whole province and a 6% margin of error for individual regions. Their first NCRMD verdict in the study period was considered as the index NCRMD verdict for the analyses (**sampled N = 1,096, weighted N=1,966**). Because data from the province of Québec were drawn using a stratified random sampling strategy to represent all administrative regions of the province, some descriptive analyses required weighting. Thus, the general description of sociodemographic data and types of offences of the total NCRMD population are weighted. All analyses focusing on the SVOs are not weighted, however.

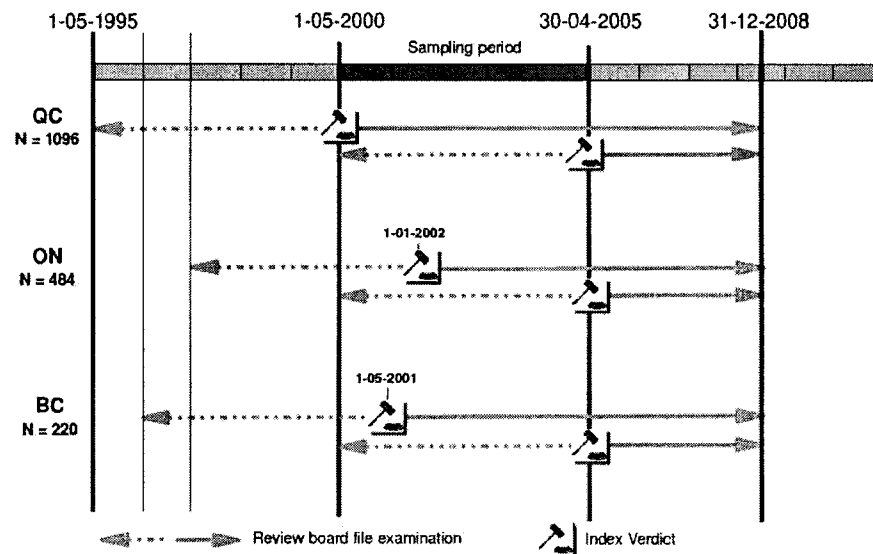
Ontario had an average of 144 NCRMD findings annually in the years captured by the study. The Ontario sample was comprised of **all adult individuals** with an NCRMD verdict between January 1, 2002, and April 30, 2005 (**N = 484**). We opted to begin with the same end date as Québec and then coded files backwards in time for the **entire population**. Due to budget and time constraints, we were only able to codeback to January 1, 2002.

British Columbia had an average of 62 NCRMD findings annually in the years captured by the study (both adult and youth). The BC sample was identified by requesting the number of new NCRMD verdicts for all men and women between May 1st 2001 and April 30th 2005 from the BC Review Board. The BC Registrar had 220 adult NCRMD individuals in this period (**N = 220**). Except for the dates of the timeframe, the procedures were identical to those of Ontario.

In summary, for BC and Ontario the full population is presented, whereas for Québec, a random sample of individuals was selected, stratified by region. Thus, weights are attributed to the Québec sample and total sample when presenting total population rates.

For each individual, Review Board hearing files were recorded and analyzed over the course of five years prior to the date of the index NCRMD verdict in order to check for previous NCRMD verdicts, up to and including December 31, 2008. The exact periods covered by data collection varies by province due to budget and time constraints (see Figure 2).

Figure 2. Sample selection timeframes by province and data source



Measures and sources of information

Forensic file information

For each individual, we reviewed Review Board files five years prior to the index NCRMD verdict in case they had a previous NCRMD finding and then forward until December 31st2008. To illustrate, for someone who was found NCRMD in September 2003, we coded information back to September 1998 (if a previous NCRMD verdict was on file) and forward until December 31, 2008 (see Figure 2 above).

From the Review Board files, we collected the following information:

- Psychiatric assessments and hearing processes;
- Characteristics of the accused and the offence;
- Locations of custody and conditional discharge;
- Custody dispositions (detention, conditional discharge and unconditional discharge) and their justifications following all Review Board hearings.

Index offence

For the purpose of the present report, the request was made to focus on three categories of "serious violent offence" (SVO) which fell under the following headings:

- 1) Homicide (and murder; *Criminal Code* s. 222, 223, 229, 230), including criminal

negligence causing death (*Criminal Code* s. 220), infanticide (*Criminal Code* s. 233, 238), manslaughter (*Criminal Code* s. 232, 234).

- 2) Attempted murder (*Criminal Code* s. 239).
- 3) Sexual offences (*Criminal Code* s. 151, 152, 153, 155, 160, 170, 171, 172, 271, 272, 273).

In order to select these cases, a combination of three variables was used: the *Criminal Code* section number, the corresponding descriptive text of the offence and the Uniform Crime Reporting Code (Canadian Centre for Justice Statistics Policing Services Program, 2012).

Psychiatric Diagnosis

We collected all information pertaining to diagnosis in the NCRMD assessment reports presented to the courts (leading to the index NCRMD verdict) and in the risk assessment reports at Review Board hearings. The diagnoses were rarely identified using standard diagnostic codes (DSM or ICD codes). Diagnoses often take into account a variety of factors and descriptors that are not necessarily described in the standard schemes. We therefore categorized diagnoses into eight broad categories that were not mutually exclusive:

1. Psychotic (e.g. schizophrenia, schizoaffective disorders, unspecified psychosis etc.);
2. Mood (e.g. depressive disorder, bipolar disorder etc.);
3. Organic (e.g., dementia),
4. Anxiety (e.g. obsessive compulsive disorder, agoraphobia);
5. Substance use (e.g., Substance misuse, alcohol and polysubstance abuse);
6. Personality (e.g. cluster B personality traits);
7. Other (e.g., intellectual disabilities, autism spectrum disorders)
8. None (e.g. no diagnosis provided in the reports).

In 7.9% of NCRMD assessment reports presented to the courts, no clear diagnosis was provided. We therefore used diagnoses from the two hearings following the verdict on the assumption that (1) there would be less missing information; and (2) further clinical evaluation could clarify the primary diagnosis and that said diagnosis would be relatively stable over time (see Appendix 1 for a detailed explanation of this procedure). In one case, no diagnosis information was available because no expert reports were found in the Review Board files. Therefore, the distribution of diagnoses for this report was calculated on 164 instead of 165 individuals.

Criminal history and recidivism

Information on lifetime criminal charges and convictions until December 2008 was coded from the Fingerprint Services (FPS) records of the Royal Canadian Mounted Police (RCMP). Requests for criminal records were submitted between June 2010 (Québec) and 2011 (BC and Ontario) in order to allow enough time for the RCMP to update records for our study time frame. This allowed for a minimum of three years follow-up post NCRMD verdict (see Figure 1 above) for all cases. Given that

NCRMD verdicts are not recorded in the FPS records in a systematic fashion, we coded new NCRMD verdicts from Review Board files and cross-checked with FPS records to avoid any double counting. All available information on offences was recorded (Criminal Code section numbers and description) and coded using the Uniform Crime Reporting Version 1.0 (Canadian Centre for Justice Statistics Policing Services Program, 2012) and the Canadian Crime Severity Index (Wallace, Turner, Matarazzo, & Babyak, 2009). Violent offences were defined as the first 10 categories of offences as described in Appendix 2, all other offences were categorized as non-violent for this study.

Ethical considerations

Ethics approval was obtained from the principal investigators' primary institutional affiliations.

RESULTS

Results will be presented in two main sections:

- 1) Population description will provide a general portrait of individuals found NCRMD for SVOs.
- 2) Process and outcome will provide a general overview of how NCRMD with an SVO index offence move through the Review Board system within the timeframe of the study.

POPULATION DESCRIPTION

Rates and distribution of SVOs

In our sample, 165 men and women were accused of a SVO for their index NCRMD verdict. This represents 9.2% of all NCRMD index offences (weighted: $n = 216$). Weighted results indicate that there are significant differences between the three provinces, with Québec having the lowest percentage (6.1%) followed by BC (10%) and Ontario (15.1%) ($X^2(2) = 43.6$; $p < 0.001$). No statistically significant differences were observed between BC and Ontario. Attempted murder accounts for 39.4% of SVOs across provinces, followed by homicide and murder (35.1%) and sex offences (25.4%). For a detailed distribution of each offence in each category see Appendix 3.

Serious Violent Offences represent a small proportion of offences with regard to the entire NCRMD population in these three provinces, attempted murders represent 3.3% (weighted $n=89$) of all NCRMD index offences (weighted $n=2,670$), homicides 2.6% (weighted $n=70$) and sex offences 2.1% (weighted $n=57$) (see Table 1 below for distribution by province).

Table 1. Distribution of type of SVO by province in the total NCRMD sample.

	Total NCRMD population			
	Québec	Ontario	British-Columbia	Total (3 provinces)
Type of index offence	1,966 (weighted ¹)	484	220	2670 (weighted)
Homicide	1.7%	5.9%	5.4%	2.6%
Attempted murder	2.8%	5.1%	2.7%	3.3%
Sexual offence	1.7%	3.9%	1.8%	2.1%

¹For weighting procedures see Methods section.

Given the differences observed in the annual number of individuals found NCRMD per province (see Figure 1), it is not surprising to observe significant differences between provinces in the distribution of the SVO ($X^2(6) = 50.4$; $p < 0.001$). Homicides represent a higher proportion of NCRMD index offences in BC than in Québec ($X^2(1) = 14.2$; $p = 0.001$). and a higher proportion of NCRMD index offences in Ontario than in Québec ($X^2(1) = 20.4$; $p < 0.001$). Attempted murder represents a higher proportion of NCRMD index offences in Ontario than in Québec ($X^2(1) = 12.5$; $p = 0.001$). Sexual offences also represent a higher proportion of NCRMD index offences in Ontario than in Québec ($X^2(1) = 8.9$; $p = 0.005$). No other differences reached statistical significance ($p > 0.05$).

Sociodemographic characteristics

No statistically significant age differences between SVOs and non-SVOs (see Table 2 below) were observed.

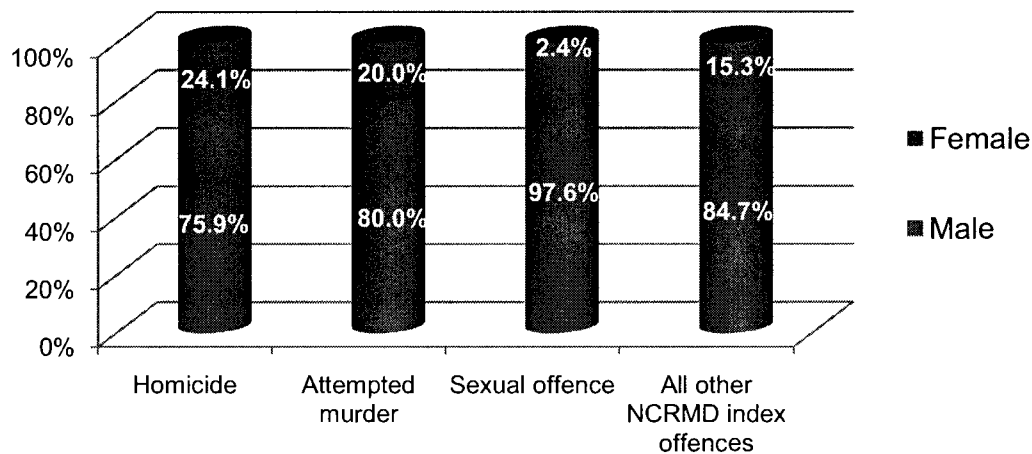
Table 2. Age at time of verdict.

Type of index offence	Age at verdict Mean (SD)
Homicide	38.7 (15.9)
Attempted murder	35.8 (12.6)
Sexual offence	32.5 (10.9)
All other NCRMD index offences	36.5 (12.4)

$F(2, 161) = 2.555$; $p = 0.081$

Women comprised a small proportion of all individuals found NCRMD (weighted $n = 13$; 15.5%). As is evidenced in Figure 3 below, a lower proportion of women found NCRMD were accused of a sexual offence (Cramer's $V = 0.232$; $p = 0.012$) compared to the three other offence categories.).

Figure 3. Gender distribution by type of SVO



From here onwards, unweighted results are presented as they are not compared to the full NCRMD population. Of the 165 men and women found NCRMD for a SVO in our sample from the three provinces, 58 were accused of homicide, 65 of attempted murder and 42 of a sexual offence.

Psychiatric diagnosis at the time of the verdict.

As can be observed in Table 3, the majority of NCRMD individuals accused of an SVO had a diagnosis in the psychosis spectrum (68.9%).

Table 3. Distribution of diagnoses (non-exclusive) at verdict as a function of type of SVO.

	Homicide n=57 n(%)	Attempted murder n=65 n(%)	Sexual offence n=42 n(%)	Total n=164¹ n(%)
Psychosis	38 (65.5%)	50 (76.9%)	25 (59.5%)	113 (68.9%)
Mood	16 (27.6%)	12 (18.5%)	11 (26.2%)	39 (23.6%)
Organic	1 (1.7%)	2 (3.1%)	1 (2.4%)	4 (2.4%)
Anxiety	1 (1.7%)	1 (1.5%)	1 (2.4%)	3 (1.8%)
Substance	14 (24.1%)	20 (30.8%)	12 (28.6%)	46 (27.9%)
Personality	7 (12.1%)	18 (27.7%)	10 (23.8%)	35 (21.2%)
Others	4 (6.9%)	11 (16.9%)	12 (28.6%)	27 (16.4%)
None specified	1 (1.7%)	0	0	1 (0.6%)

¹ Missing a diagnosis for one person.

When combining diagnoses (see Table 4), individuals accused of homicide were more likely than other groups to have a single diagnosis of psychosis spectrum disorder. In contrast, 57% of individuals accused of a sex offence tended to have a combination of disorders).

Table 4. Distribution of co-occurring diagnoses (exclusive) at the index verdict as a function of type of SVO

	Homicide n=57 n(%)	Attempted murder n=65 n(%)	Sexual offence n=42 n(%)	Total n=164 n(%)
Psychosis only	26 (44.8%)	24 (36.9%)	12 (28.6%)	62 (37.8%)
Mood only	8 (13.8%)	7 (10.8%)	6 (14.3%)	21 (12.8%)
Psychosis + Substance only	7 (12.1%)	5 (7.7%)	4 (9.5%)	16 (9.8%)
Mood + Substance only	3 (5.2%)	1 (1.5%)	1 (2.4%)	5 (3%)
Psychosis + Personality only	2 (3.4%)	5 (7.7%)	2 (4.8%)	9 (5.5%)
Psychosis + Substance + Personality only	1 (1.7%)	5 (7.7%)	2 (4.8%)	8 (4.9%)
Psychosis + Substance + Personality + Other	1 (1.7%)	2 (3.1%)	2 (4.8%)	5 (3%)
Other combinations	9 (15.5%)	16 (24.6%)	13 (31%)	38 (23%)

Victims

Table 5 below depicts the distribution of victims by type of SVO as reported in the Review Board files. Because there may be more than one victim in the index offence, the percentages do not add up to 100. Results show that for murder and attempted murder, the victims are most often a family member (58.4% and 55.4% respectively), with a parent being the most likely victim (24.1% and 24.6% respectively). A partner or spouse is the second most likely victim among family members, followed by children.

Table 5.NCRMD accused relationship to index offence victims.

	Homicide n=58 n(%)	Attempted murder n=65 n(%)	Sexual offence n=42 n(%)	Total n=165 n(%)
Victim unknown to the accused	4 (6.9%)	10 (15.4%)	18 (42.9%)	32(19.4%)
Peace Keeper/Police officer	1 (1.7%)	1 (1.5%)	0	2(1.2%)
Mental health professional	0	3 (4.6%)	3 (7.1%)	6 (3.6%)
Roommate, Co-Resident or Co-Patient	4 (6.9%)	2 (3.1%)	2 (4.8%)	8 (4.8%)
Family member (sum)	34 (60.3%)	36 (55.4%)	7 (16.7%)	77 (46.7%)
- Offspring	6 (10.3%)	5 (7.7%)	2 (4.8%)	13 (7.9%)
- Partner/spouse	10 (17.2%)	10 (15.4%)	2 (4.8%)	22 (13.3%)
- Parent	14 (24.1%)	16 (24.6%)	0	30 (18.2%)
- Other family member	4 (6.9%)	5 (7.7%)	3 (7.1%)	12 (7.3%)
Other	15 (25.9%)	13 (20%)	12 (28.6%)	40 (24.2%)

Note. Co-resident includes roommates (i.e., living independently in the community), co-patients and co-residents (i.e., living in hospital, group home or other supervised setting), 'Other' includes: neighbours, friends, coworkers, etc.

Criminal history

In order to present an accurate portrait of the criminal history of individuals found NCRMD, we used both RCMP national criminal records (FPS) as well as information contained in the Review Board files. Of the 165 individuals in the SVO sample, 162 individuals had an FPS record (for some, this included the index offence). Figure 4 depicts offences for which the individuals were previously convicted by index NCRMD verdict category.

Figure 5 depicts offences for which individuals were previously found NCRMD (or not guilty by reason of insanity if before 1992). A detailed account of all past convictions and NCRMD findings can be found in Appendix 4.

Of the total SVO sample, 46.1% had been previously convicted or found NCRMD. More specifically, 40.6% of the SVO sample had at least one past conviction and 27.3% had a past finding of NCRMD. Half (50%) of NCRMD accused of a sex offence had a previous conviction or NCRMD finding; 50% had at least one past conviction and 38.1% a prior NCRMD finding. Among NCRMD individuals accused of attempted murder, 44.6% had been previously convicted or found NCRMD; more specifically, 35.4% had at least one prior conviction and 27.7% at least one prior NCRMD finding. Finally, among NCRMD individuals accused of murder or homicide, 44.8% had a criminal history; 39.7% had at least one conviction and 19% at least one previous finding of NCRMD. Figures 3 and 4 below show the rates of violent and non-violent crimes prior to the index NCRMD finding.

Figure 4. Rate of past convictions as a function of type of NCRMD index offence

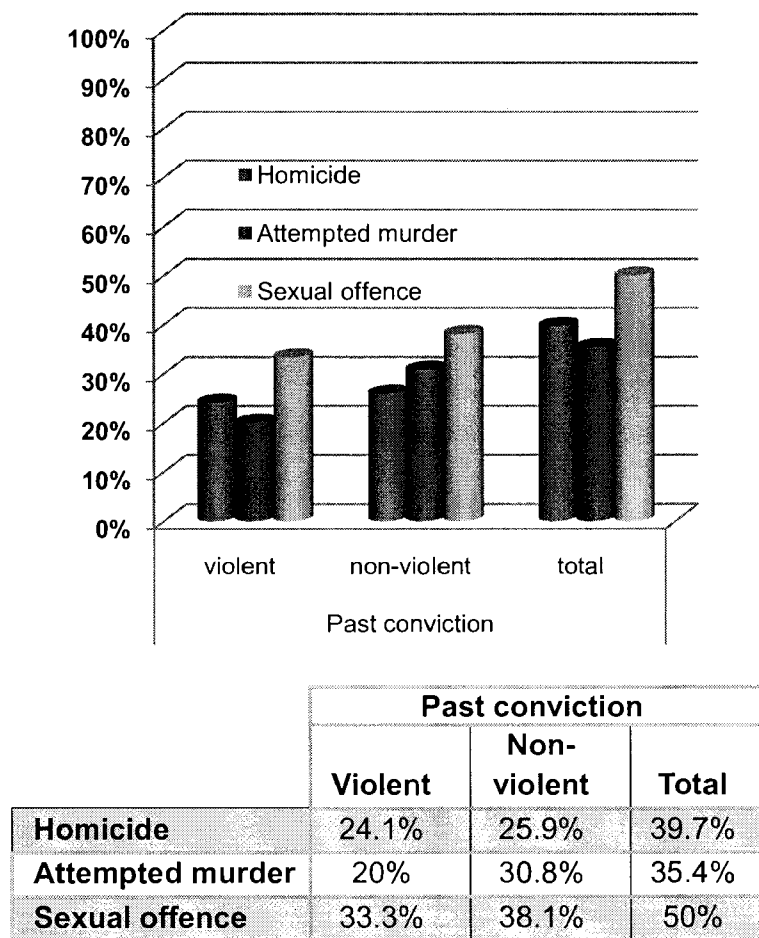
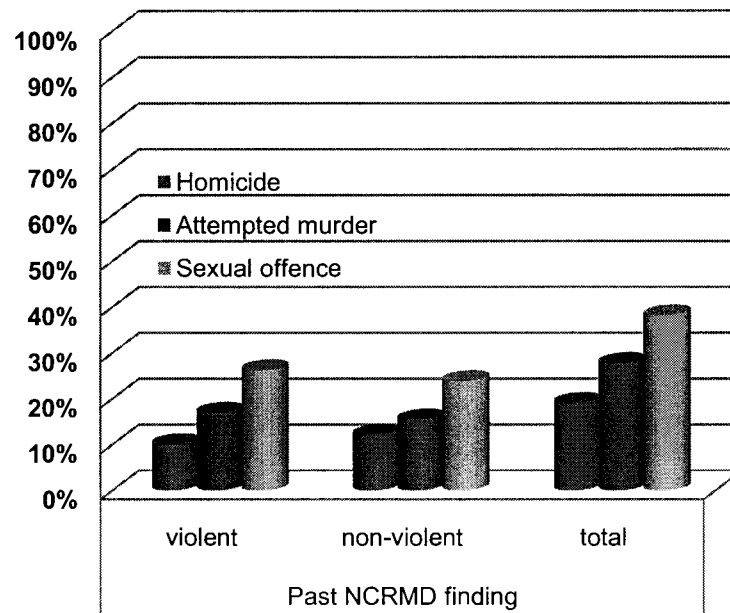


Figure 5. Rate of past NCRMD findings as a function of type of NCRMD index offence



	Past NCRMD finding		
	Violent	Non-violent	Total
Homicide	10.0%	12.1%	19.0%
Attempted murder	16.9%	15.4%	27.7%
Sexual offence	26.2%	23.8%	38.1%

Table 6 : Number of individuals with past event with a conviction or NCRMD finding (violent vs.non-violent offence) as a function of type of SVOs

	No past conviction or NCRMD	1 past conviction or NCRMD	2 past convictions or NCRMD	3 past convictions or NCRMD	4 or more past convictions or NCRMD
Homicide(n=58)					
Violent	42 (72.4%)	10 (17.2%)	2 (3.4%)	2 (3.4%)	2 (3.4%)
Non-violent	40 (69%)	9 (15.5%)	4 (6.9%)	3 (5.2%)	2 (3.4%)
Violent and/or Non-violent	32(55.2%)	14 (24.1%)	3 (5.2%)	3 (5.2%)	6 (10.31%)
Attempted murder (n=65)					
Violent	46 (70.8%)	9 (13.8%)	7 (10.8%)	0	3 (4.6%)
Non-violent	42 (64.6%)	10 (15.4%)	4 (6.2%)	1 (1.5%)	8 (12.3%)
Violent and/or Non-violent	36(55.4%)	8 (12.3%)	9 (13.8%)	2 (3.1%)	10 (15.4%)
Sexual offence (n=42)					
Violent	25 (59.5%)	8 (19%)	1 (2.4%)	1 (2.4%)	7 (16.7%)
Non-violent	25 (59.5%)	3 (7.1%)	7 (16.7%)	2 (4.8%)	5 (11.9%)
Violent and/or Non-violent	21 (50%)	2 (4.8%)	4 (9.5%)	5 (11.9%)	10 (23.8%)
All SVOs (n=165)					
Violent	113 (68.5%)	27 (16.4%)	10 (6.1%)	3 (1.8%)	12 (7.3%)
Non-violent	107 (64.8%)	22 (13.3%)	15 (9.1%)	6 (3.6%)	15 (9.1%)
Violent and/or Non-violent	89(53.9%)	24 (14.5%)	16 (9.7%)	10 (6.1%)	26 (15.8%)

A conviction or NCRMD finding could include more than one offence. In Table 6, all offences with a conviction on the same date were collapsed and counted only once in each category of the most severe offence (violent or non-violent) within that conviction or NCRMD finding. Thus, among individuals with a past conviction or NCRMD finding, the majority had been convicted or found NCRMD on less than four different events. For details of the actual number of offences see Appendix 5.

PROCESS

Initial disposition

From our sample of NCRMDs accused of a SVO under the authority of the Québec, Ontario or British Columbia Review Boards, more than half of the initial dispositions (at the time of the verdict)

were officially deferred to the Review Boards (see Table 7); however, there were inter-provincial differences. In Ontario, 93.2% ($n = 68$) of initial court dispositions were deferred to the Review Board, the results were very similar in BC (90.9%; $n = 20$ cases). The average time between verdict and first Review Board hearing was 51.2 days ($SD = 36$) in Ontario and 37.8 days in BC ($SD = 16.8$). In Québec, however, the courts provided a disposition in 94.3% of cases at the time of verdict. The Québec Review Board held a hearing on average within 60.2 days of the verdict ($SD = 53.9$). The mean time between the index verdict and the first Review Board hearing was 53.2 days ($SD = 43.4$) for the three provinces (for details see Appendix 6).

For deferred cases, little information was readily available in Review Board files as to the location of custody (prison, hospital, community) of NCRMD individuals between the verdict and the first hearing. We therefore used the address of the first hearing to determine location of custody. Thus, 89.7% of individuals accused of murder or homicide, 90.8% of cases of those accused of attempted murder and 59.5% of sexual offenders were detained at the time of the first hearing (prison or hospital).

Table 7. Court's decision regarding the NCRMD disposition by type of SVO.

	Homicide $n = 58$ $n(\%)$	Attempted murder $n = 65$ $n(\%)$	Sexual offence $n = 42$ $n(\%)$	Total $N=165$ $N(\%)$
Court's decision at verdict				
Detention	19 (32.8%)	28 (43.1%)	11 (26.2%)	58 (35.2%)
Conditional release	3 (5.2%)	3 (4.6%)	9 (21.4%)	15 (9.1%)
Absolute discharge¹	0	0	0	0
Decision deferred to the Review Board	36 (62.1%)	34 (52.3%)	22 (52.4%)	92 (55.8%)
Total	100%	100 %	100%	100%
Detained at first Review Board hearing	52 (89.7%)	59 (90.8%)	25 (59.5%)	136 (82.4%)

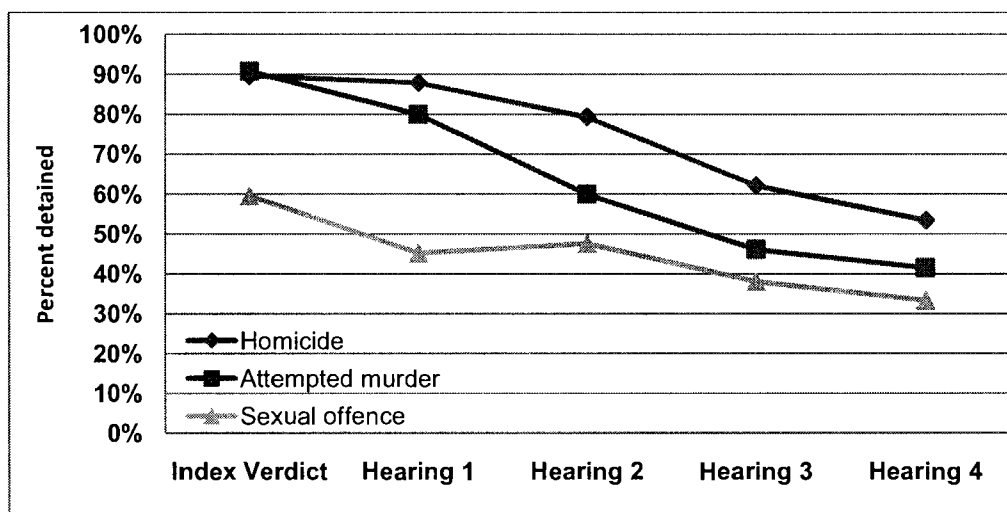
¹ Due to the study parameters (all cases were under the purview of the Review Board), it was not possible to capture any instances of absolute discharges at time of verdict.

Rates of release

Given the follow-up time for this study was limited, the results here must be interpreted with caution. We estimated the rate of absolute discharge and detention over time (see Figure 6). By the end of data collection time frame (December 31, 2008), nearly half (49.1%) of the NCRMD individuals accused of a SVO were absolutely discharged (see Table 8 below). A higher proportion of NCRMD individuals accused of a sex offence were released by the end of the study period than the

two other categories of SVOs (see Table 8); the others were still under the Review Board (84 individuals), the majority of which (64.3%, n = 54) in strict custody (detention). With the exception of the first hearing following the verdict, hearings are usually held annually, for example, the average number of days between the first and the second hearing was 327.6 days (SD = 173.31).

Figure 6. Rate of detention over time (by Review Board hearing) and type of SVO.



Individuals who received an absolute discharge during the study period had been detained on average 16 months (SD = 20.2) and under Review Board purview (detention+ conditional discharge) on average 30.1 months (SD = 23.1).

Table 8. Custody status at the end of the data collection timeframe (31stDecember 2008) by NCRMD index offence type

	Homicide n= 58 n (%)	Attempted murder n=65 n(%)	Sexual offence n=42 n (%)	Total n=165 n(%)
Legal status at the end of the study period				
Detention	19 (32.8%)	22 (33.8%)	13 (30.9%)	54 (32.7%)
Conditional release	15 (25.9%)	11 (16.9%)	4 (0.9%)	30 (18.1%)
Absolute discharge	24 (41.4%)	32 (49.2%)	25 (59.5%)	81 (49.1%)
Total	100%	100 %	100%	100%

For the 84 individuals who were still under Review Board disposition at the end of the study period, the mean time under Review Board till that time was 66.2 months (SD = 14.6).

Recidivism

One individual died within the year following the NCRMD verdict; therefore recidivism was based on 164 remaining SVO individuals. Given the design of the study, the follow-up times for each individual varied (i.e. those whose NCRMD verdict was in 2002 had six years of follow-up whereas those who had a verdict in 2005 had three years follow-up) (see Figure 2). We present the survival curves three year post-verdict for cases still under the Review Board (Figures 7a and 7b and Appendix 8), for three years post-absolute discharge (Figures 8a 8b Appendix 9) as well as for the total SVO sample collapsed, i.e. under Review Board and absolute discharge (Figures 9a and 9b and Appendix 10).

Figure 7a. Recidivism survival curve (any offence) while under the Review Board

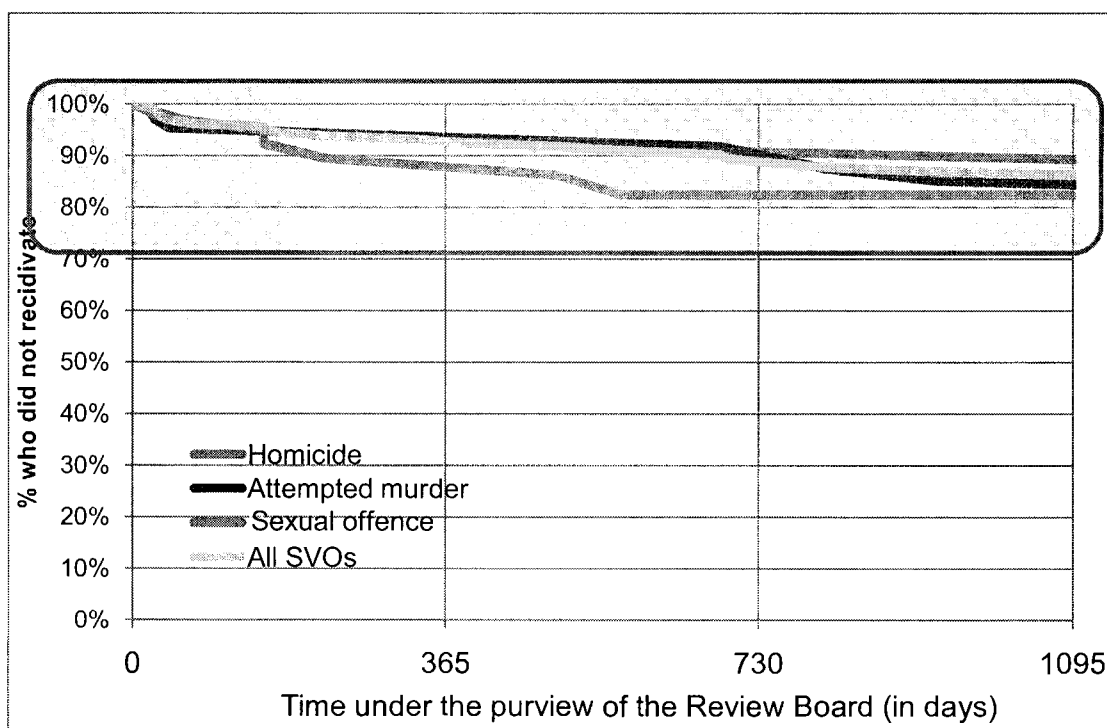
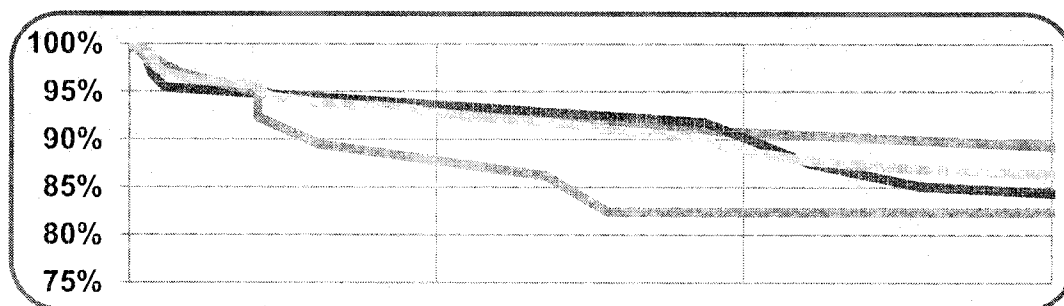


Figure 7b. Zoomed recidivism survival curve (any offence) while under the Review Board



Out of 164 individuals, 153 (93.3%) were either detained or under conditional release from the Review Board at one year; of these, 6.5% were either convicted or found NCRMD for a new offence. For the 125 (76.2%) who were under the purview of the Review Board after two years, 12 (7.2%) were either convicted or found NCRMD for a new offence. For the 110 (67.1%) still under the purview of the Review Board after three years post-index verdict, 13 (11.8%) were either convicted or found NCRMD for a new offence.

Figure 8a. Recidivism survival curve (any offence) following absolute discharge

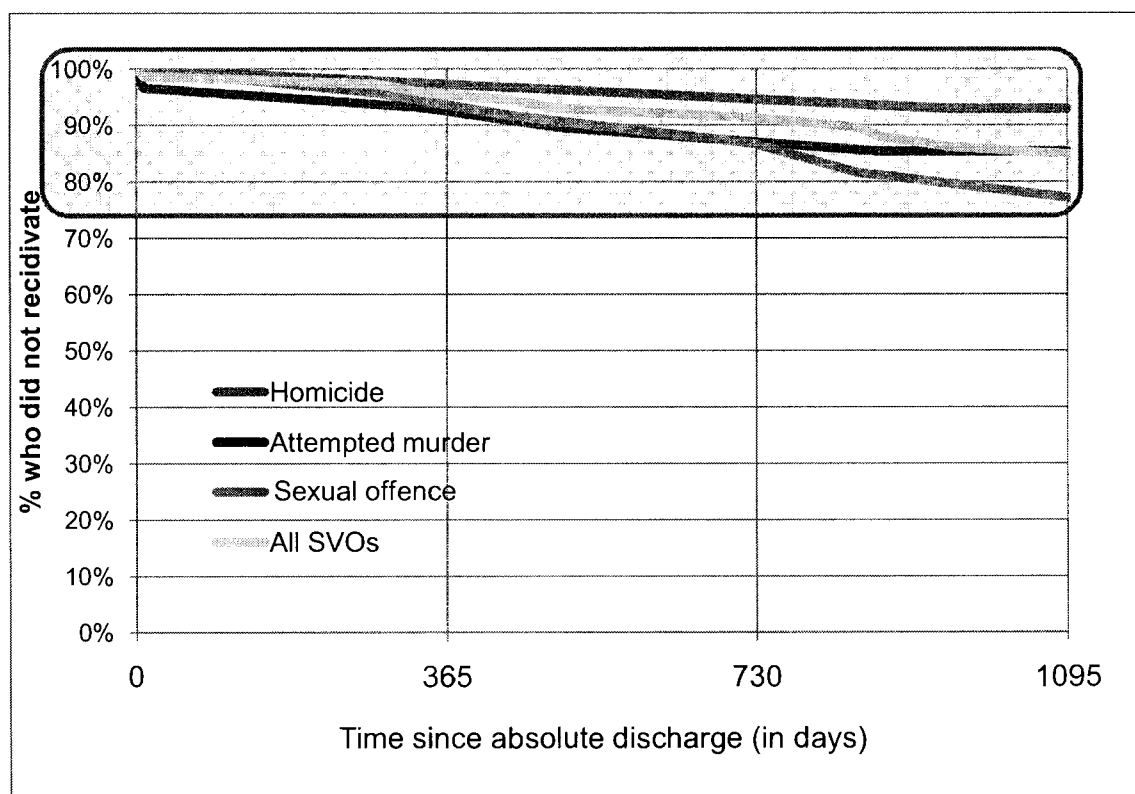
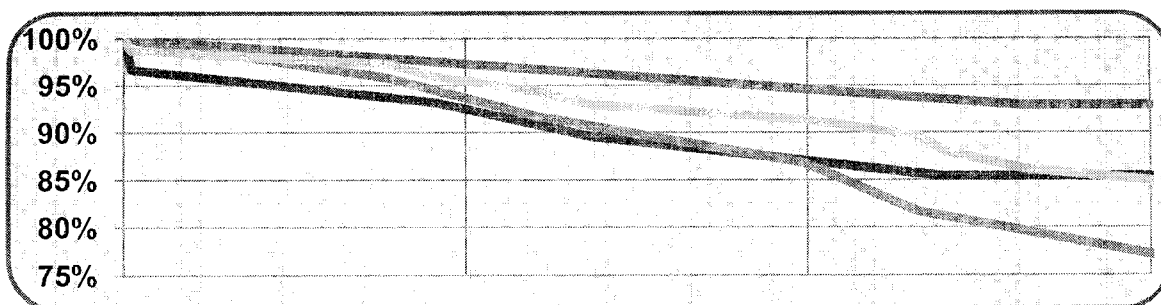


Figure 8b. Zoomed recidivism survival curve (any offence) following absolute discharge



Among the 49 individuals with at least a three year post-absolute discharge follow-up time, 6 (12.2%) were convicted or found NCRMD for a new offence (see Appendix 9).

Figure 9a. Total recidivism survival curve (any offence)

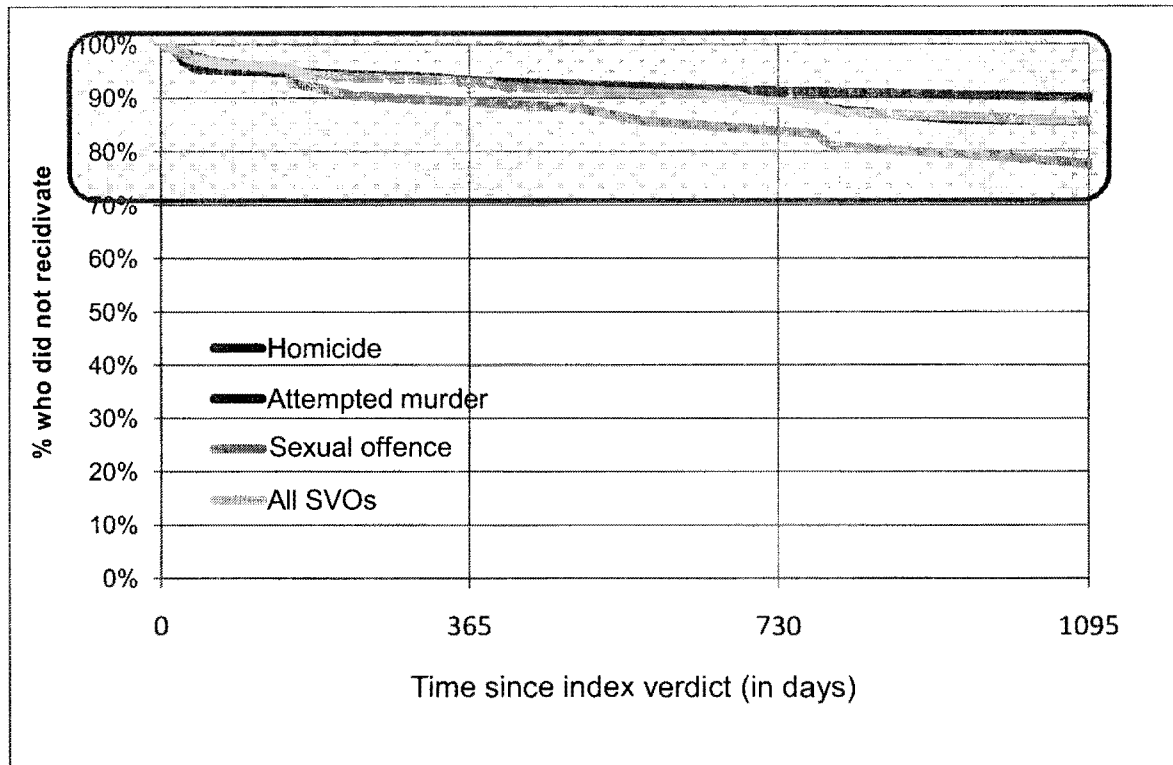
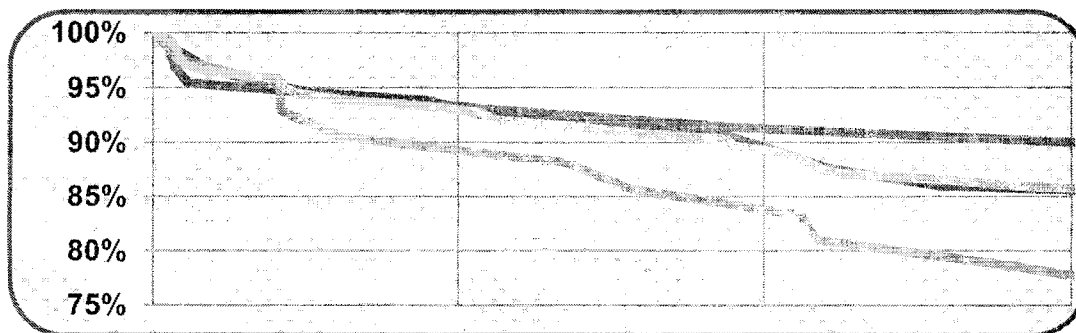


Figure 9b. Zoomed total recidivism survival curve (any offence)



Whether under Review Board or absolutely discharged, 13.4% of the total SVO sample recidivated, 9.8% with a violent offence and 4.9% with a non-violent offence in the three-years of follow-up. Results indicate that among individuals who were absolutely discharged, 12.2% recidivated (8.2% violently and 4.1% non-violently) for those with 3 years of follow-up. Those whose index offence for the NCRMD verdict was a sexual offence had the highest recidivism rate (18.8% after 3 years of release and 17.4% 3 years after verdict) of the three groups of SVO, both under Review Board purview and once unconditionally discharged. For details about recidivism and different types of offences see Appendix 10. Again, the absolute numbers overall are quite small, and should be interpreted with caution.

CONCLUSIONS

This research shows that severe violent offences defined as homicide, attempted murder and sexual offences represent less than one in ten offences perpetrated by the entire NCRMD population in the three most populated provinces in Canada. Individuals accused of homicide were comprised of a higher proportion of females than other groups, were more likely to have a single diagnosis rather than comorbid disorders and displayed the lowest rate of recidivism among the three categories of severe violent offences. Victims of individuals found NCRMD accused of homicide or attempted murder were more likely to be individuals in close proximity to individuals living with mental illness. Individuals accused of a sexual offence were almost exclusively male, tended to have a higher rate of previous offences and a higher rate of recidivism. They were also more likely to recidivate violently and have a violent criminal past. Their victims were more likely to be strangers than the two other groups. The rates of absolute discharge were also higher earlier than the two other groups.

Slightly less than half of NCRMD individuals accused of a SVO had been previously convicted or had a previous finding of NCRMD, most of whom for non-violent offences. There is significant variability in the rates of absolute discharge by type of SVO. Finally, rates of re-offending were quite low over a three year follow-up period (14%).

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Appendix 1: Level of convergence between the expert report diagnosis presented at the verdict and the diagnosis from the first and the second hearing reports.

Diagnosis	Reliability between diagnosis at verdict and at first hearing			Reliability between diagnosis at verdict and at second hearing		
	Kappa	p	Convergence %	Kappa	p	Convergence %
Psychosis	0.74	<0.001	89.5%	0.62	<0.001	85.3
Mood	0.75	<0.001	90.5%	0.66	<0.001	87.9
Organic	0.75	<0.001	98.1%	0.66	<0.001	97.4
Anxiety	0.67	<0.001	98.6%	0.44	<0.001	98.2
Substance abuse	0.58	<0.001	81.4%	0.45	<0.001	74.7
Personality	0.51	<0.001	81.3%	0.38	<0.001	75.4
Others	0.59	<0.001	90.5%	0.46	<0.001	86.7
None	0.25	<0.001	99.6%	-0.01	0.896	99.2

This table shows that, except for the « None » category, the diagnosis recorded in the report for the verdict is very similar with the diagnosis given in the following two Review Board hearings. This implies that in cases where there is no diagnosis at the verdict, the diagnosis provided in one of the two following hearings can be used with confidence.

Appendix 2: Classification of offences by severity

1. Violations Causing Death or attempting to commit a capital crime – includes murder 1, murder 2, manslaughter, infanticide, criminal negligence causing death, other related offences causing death, attempt murder, conspire to commit murder
2. Sexual Assault Level II, III aggravated sexual assault, sexual assault with a weapon
3. Sexual Assault Level I (if the number/sample size is too small it can be merged with category 7)
4. Other sexual assault (includes all others)
5. Assault Level II, III and also unlawfully causing bodily harm (with a weapon, aggravated) includes against a peace officer using bodily harm and other types of assaults
6. Robbery
7. Other crimes against person (e.g., kidnapping, confinement, hostage taking)
8. Assault Level I and assault against a peace officer (if the number/sample size is too small then it can be merged with category 2)
9. Uttering threats, criminal harassment
10. Firearms (related to persons)
11. Other – all other offences not violent or sexual (or can separate generally, drugs vs. administration of justice vs. thefts etc)

Appendix 3: Distribution of most severe offence at the index verdict for the SVO sample

Most severe offence at the index verdict	n=165 n (%)
Homicide	58 (35.2%)
First degree murder	15 (9.1%)
Second degree murder	37 (22.4%)
Manslaughter	5 (3%)
Infanticide	1 (0.6%)
Attempted murder	65 (39.4%)
Sexual offences	42 (25.5%)
Sexual assault with a weapon	2 (1.2%)
Sexual assault causing bodily harm	3 (1.8%)
Sexual assault	35 (31.2%)
Sexual interference	1 (0.6%)
Invitation to sexual touching	1 (0.6%)

Appendix 4: Distribution of past convictions and NCRMD verdicts by type of offence for each type of index SVOs

	At least one past conviction	At least one past NCRMD verdict
Homicide n= 58	n (%)	n (%)
Violations Causing Death or attempting to commit a capital crime	3 (5.2%)	0
Sexual Assault Level II, III aggravated sexual assault, sexual assault with a weapon	0	0
Sexual Assault Level I	0	1 (1.7%)
Other sexual assault (includes all others)	0	0
Assault Level II, III and also unlawfully causing bodily harm	5 (8.6%)	0
Robbery	2 (3.4%)	1 (1.7%)
Other crimes against person (e.g., kidnapping, confinement, hostage taking)	1 (1.7%)	0
Assault Level I and assault against a peace officer	7 (12.1%)	4 (6.9%)
Uttering threats, criminal harassment	2 (3.4%)	0
Firearms (related to persons)	0	0
Total Violent	14 (24.1%)	6 (10.3%)
Other – all other offences not violent nor sexual	15 (25.9%)	7 (12.1%)
Total	23 (39.7%)	11 (19%)

Distribution of past convictions and NCRMD verdicts by type of offence for each type of index SVOs (cont.)

	At least one previous conviction n= (%) ²	At least one previous NCRMD verdict n= (%)
Attempted murder n = 65		
Violations Causing Death or attempting to commit a capital crime	2 (3.1%)	1 (1.5%)
Sexual Assault Level II, III aggravated sexual assault, sexual assault with a weapon	0	0
Sexual Assault Level I	1 (1.5%)	0
Other sexual assault (includes all others)	0	0
Assault Level II, III and also unlawfully causing bodily harm	6 (9.2%)	5 (7.7%)
Robbery	2 (3.1%)	0
Other crimes against person (e.g., kidnapping, confinement, hostage taking)	1 (1.5%)	1 (1.5%)
Assault Level I and assault against a peace officer	5 (7.7%)	6 (9.2%)
Uttering threats, criminal harassment	1 (1.5%)	1 (1.5%)
Firearms (related to persons)	0	0
Total Violent	13 (20.0%)	11 (16.9%)
Other – all other non-violent/non-sexual	20 (30.8%)	10 (15.4%)
Total	23 (35.4%)	18 (27.7%)
Sexual offence n=42		
	n (%) ³	n (%) ³
Violations Causing Death or attempting to commit a capital crime	0	0
Sexual Assault Level II, III aggravated sexual assault, sexual assault with a weapon	0	0
Sexual Assault Level I	3 (7.1%)	1 (2.4%)
Other sexual assault (includes all others)	0	0
Assault Level II, III and also unlawfully causing bodily harm	7 (16.7%)	3 (7.1%)
Robbery	2 (4.8%)	1 (2.4%)
Other crimes against person (e.g., kidnapping, confinement, hostage taking)	2 (4.8%)	1 (2.4%)
Assault Level I and assault against a peace officer	7 (16.7%)	7 (16.7%)
Uttering threats, criminal harassment	2 (4.8%)	0
Firearms (related to persons)	1 (2.4%)	0
Total Violent	14 (33.3%)	11 (26.2%)
Other – all other offences not violent nor sexual	16 (38.1%)	10 (23.8%)
Total	21 (50%)	16 (38.1%)

¹ Percents calculated on n=58 (accused of homicide as index NCRMD)

² Percents calculated on n=65 (accused of attempted murder as index NCRMD)

³ Percents calculated on n=42 (accused of sexual offence as index NCRMD)

Appendix 5: Distribution of past charges by type of offence for past offenders only by type of index SVO

	1 past offence n	2 past offences n	3 past offences n	4 or more past offences n
Homicide				
Violations Causing Death or attempting to commit a capital crime	2	1	0	0
Sexual Assault Level II, III aggravated sexual assault, sexual assault with a weapon	0	0	0	0
Sexual Assault Level I	1	0	0	0
Other sexual assault (includes all others)	0	0	0	0
Assault Level II, III and also unlawfully causing bodily harm	3	1	1	0
Robbery	1	0	0	1
Other crimes against person (e.g., kidnapping, confinement, hostage taking)	1	0	0	0
Assault Level I and assault against a peace officer	5	3	1	0
Uttering threats, criminal harassment	1	1	0	1
Firearms (related to persons)	2	0	0	0
Total Violent	7	4	2	3
Other – all other offences not violent nor sexual	7	0	3	9
Total	9	5	1	11
Attempted murder				
Violations Causing Death or attempting to commit a capital crime	3	0	0	0
Sexual Assault Level II, III aggravated sexual assault, sexual assault with a weapon	0	0	0	0
Sexual Assault Level I	1	0	0	0
Other sexual assault (includes all others)	0	0	0	0
Assault Level II, III and also unlawfully causing bodily harm	6	3	0	1
Robbery	2	0	0	0
Other crimes against person (e.g., kidnapping, confinement, hostage taking)	2	0	0	0
Assault Level I and assault against a peace officer	5	3	1	2
Uttering threats, criminal harassment	4	2	0	1
Firearms (related to persons)	2	2	0	0
Total Violent	4	2	5	8
Other – all other offences not violent nor sexual	5	0	4	17
Total	4	1	4	20

Distribution of past charges by type of offence for past offenders only by type of index SVOs (cont.)

	1 past offence n	2 past offences n	3 past offences n	4 or more past offences n
Sexual offence				
Violations Causing Death or attempting to commit a capital crime	0	0	0	0
Sexual Assault Level II, III aggravated sexual assault, sexual assault with a weapon	0	0	0	0
Sexual Assault Level I	1	0	1	1
Other sexual assault (includes all others)	0	2	0	0
Assault Level II, III and also unlawfully causing bodily harm	3	2	2	1
Robbery	3	0	0	0
Other crimes against person (e.g., kidnapping, confinement, hostage taking)	2	1	0	0
Assault Level I and assault against a peace officer	6	0	1	4
Uttering threats, criminal harassment	2	1	1	2
Firearms (related to persons)	0	1	0	0
Total Violent	5	2	0	10
Other – all other offences not violent nor sexual	2	2	4	13
Total	1	3	2	15

Distribution of past charges by type of offence for past offenders only by type of index SVOs, complement.

	1 past offence	2 past offences	3 past offences	4 or more past offences
Homicide n=58	n (%)¹	n (%)¹	n (%)¹	n (%)¹
Total Violent	7 (12.1%)	4 (6.9%)	2 (3.4%)	3 (5.2%)
Other – all other offences not violent nor sexual	7 (12.1%)	0	3 (5.2%)	9 (15.5%)
Violent and/or Non-violent	9 (15.5%)	5 (8.6%)	1 (1.7%)	11 (19%)
Attempted murder n=65	n (%)²	n (%)²	n (%)²	n (%)²
Total Violent	4 (6.2%)	2 (3.1%)	5 (7.7%)	8 (12.3%)
Other – all other offences not violent nor sexual	5 (7.7%)	0	4 (6.2%)	17 (26.2%)
Violent and/or Non-violent	4 (6.2%)	1 (1.5%)	4 (6.2%)	20 (30.8%)
Sexual offence n=42	n (%)³	n (%)³	n (%)³	n (%)³
Total Violent	5 (11.9%)	2 (4.8%)	0	10 (23.8%)
Other – all other offences not violent nor sexual	2 (4.8%)	2 (4.8%)	4 (9.5%)	13 (31%)
Violent and/or Non-violent	1 (2.4%)	3 (7.1%)	2 (4.8%)	15 (35.7%)

¹ Percents calculated on n=58 (accused of homicide as index NCRMD)

² Percents calculated on n=65 (accused of attempted murder as index NCRMD)

³ Percents calculated on n=42 (accused of sexual offence as index NCRMD)

Appendix 6: Details about deferred cases by province

Court's decision regarding the NCRMD disposition by province

Court's decision at verdict	Québec n (%)	Ontario n (%)	British-Columbia n (%)	Total n (%)
n	70	73	22	165
Detention	53 (75.7%)	5 (6.8%)	0	58 (35.2%)
Conditional release	13 (18.6%)	0	2 (9.1%)	15 (9.1%)
Deferred to the Review Board	4 (5.7%)	68 (93.2%)	20 (90.9%)	92 (55.8%)
Detained at first Review Board hearing	55 (78.6%)	64 (87.7%)	17 (77.3%)	136 (82.4%)

Average duration between Index verdict and the first hearing by province (in days)

	Québec			Ontario			British-Columbia			Total		
	n	M	SD	n	M	SD	n	M	SD	n	M	SD
Decision deferred	4	55	35.2	68	49.47	36.4	20	34.1	11.8	92	46.4	33
Decision not deferred	66	60.5	55	5	75.2	20.6	2	75	15.6	73	61.9	52.7
Total	70	60.2	53.9	73	51.2	36	22	37.8	16.8	165	53.2	43.4

For deferred decisions: In BC there were no cases beyond 45 days, in Ontario 19 cases beyond 45 days (27.9%), and in Québec 2 cases beyond 45 days (50.0%)

For decisions made by the courts : In BC no cases beyond 90 days, in Ontario 1 case beyond 90 days (20%) and in Québec 3 cases beyond 90 days (4.5%).

Appendix 7: Legal status after index verdict and following hearings as a function of type of most severe offence, percent on available sample for each category/hearing

	Index Verdict		Hearing 1		Hearing 2		Hearing 3		Hearing 4	
Decision	n	%	N	%	n	%	n	%	n	%
Homicide										
Detention	52	89.7 %	51	87.9 %	46	83.6 %	36	70.6 %	31	64.6 %
Conditional discharge	6	10.3 %	5	8.6 %	4	7.3 %	13	25.5 %	14	29.2 %
Absolute discharge	0	-	2	3.4 %	5	9.1 %	2	3.9 %	3	6.2 %
Total	58	100 %	58	100 %	55	100 %	51	100 %	48	100 %
Attempted murder										
Detention	59	90.8 %	52	80.0 %	39	62.9 %	30	58.8 %	27	62.8 %
Conditional discharge	6	9.2 %	12	18.5 %	12	19.4 %	13	25.5 %	11	25.6 %
Absolute discharge	0	-	1	1.5 %	11	17.7 %	8	15.7 %	5	11.6 %
Total	65	100 %	65	100 %	62	100 %	51	100 %	43	100 %
Sexual offences										
Detention	25	59.5%	19	45.2%	20	52.6%	16	57.1%	14	63.6%
Conditional discharge	17	40.5%	19	45.2%	8	21.1%	6	21.4%	7	31.8%
Absolute discharge	0	-	4	9.5%	10	26.3%	6	21.4%	1	4.5%
Total	42	100.0%	42	100.0%	38	100.0%	28	100.0%	22	100.0%

Appendix 8: Rates of violent and non-violent recidivism (conviction or NCRMD verdict) in a 3 year period post-index verdict, by type of index SVO.

	Elapsed time since index verdict (under Review Board)		
	1 year	2 years	3 years
Homicide	n=56²	n=50²	n=47²
Violent ¹	2(3.6%)	3(6%)	2(4.3%)
Non-violent	1(1.8%)	1(2%)	1(2.1%)
Violent and/or Non-violent	3(5.4%)	4(8%)	3 (6.4%)
Attempted murder	n=62³	n=48³	n=40³
Violent	2 (3.2%)	2 (4.2%)	4 (10%)
Non-violent	1 (1.6%)	2 (4.2%)	3 (7.5%)
Violent and/or Non-violent	3 (4.8%)	3 (6.3%)	6 (15%)
Sexual offence	n=35⁴	n=27⁴	n=23⁴
Violent	3 (8.6%)	4 (14.8%)	4 (17.4%)
Non-violent	1 (2.9%)	1 (3.7%)	0
Violent and/or Non-violent	4 (11.4%)	5 (18.5%)	4 (17.4%)
All SVOs	n=153⁵	n=125⁵	n=110⁵
Violent	7(4.6%)	9(3.2%)	10 (9.1%)
Non-violent	3(2%)	4(9.6%)	4(3.6%)
Violent and/or Non-violent	10(6.5%)	12 (7.2%)	13(11.8%)

¹Violent and non-violent offences were defined according to classification in Appendix 2.

²Percent calculated on available sample of accused of homicide as index NCRMD for each period

³Percent calculated on available sample of accused of attempted murder as index NCRMD for each period

⁴Percent calculated on available sample of accused of sexual offence as index NCRMDfor each period

⁵Percent calculated on total available sample for each period

Appendix 9: Rates of violent and non-violent recidivism (conviction or NCRMD) three-years post absolute discharge by type of index SVO.

	Elapsed time since absolute discharge		
	1 year	2 years	3 years
Homicide	n=17¹	n=16¹	n=12¹
Violent	0	0	1 (8.3%)
Non-violent	0	0	0
Violent and/or Non-violent	0	0	1 (8.3%)
Attempted murder	n=28²	n=24²	n=21²
Violent	1 (3.6%)	1 (4.2%)	1 (4.8%)
Non-violent	0	0	1 (4.8%)
Violent and/or Non-violent	1 (3.6%)	1 (4.2%)	2 (9.5%)
Sexual offence	n=24³	n=21³	n=16³
Violent	0	2 (9.5%)	2 (12.5%)
Non-violent	1 (4.2%)	1 (4.8%)	1 (6.3%)
Violent and/or Non-violent	1 (4.2%)	3 (14.3%)	3 (18.8%)
All SVOs	n=69⁴	n=61⁴	n=49⁴
Violent	1 (1.4%)	3 (4.9%)	4 (8.2%)
Non-violent	1 (1.4%)	1 (1.6%)	2 (4.1%)
Violent and/or Non-violent	2 (2.9%)	4 (6.6%)	6 (12.2%)

¹ Percent calculated on available sample of accused of homicide as index NCRMD for each period

² Percent calculated on available sample of accused of attempted murder as index NCRMD for each period

³ Percent calculated on available sample of accused of sexual offence as index NCRMD for each period

⁴ Percent calculated on all available sample for each period

Appendix 10: Distribution of recidivism by type of offence and type of index SVO

	1 new offence	2 new offences	3 new offences	4 or more new offences
	n	n	n	n
Homicide				
Violations Causing Death or attempting to commit a capital crime	1	0	0	0
Sexual Assault Level II, III aggravated sexual assault, sexual assault with a weapon	0	0	0	0
Sexual Assault Level I	0	0	0	0
Other sexual assault (includes all others)	0	0	0	0
Assault Level II, III and also unlawfully causing bodily harm	0	1	0	0
Robbery	0	0	0	0
Other crimes against person (e.g., kidnapping, confinement, hostage taking)	0	0	0	0
Assault Level I and assault against a peace officer	1	0	0	1
Uttering threats, criminal harassment	2	1	0	0
Firearms (related to persons)	0	0	0	0
Total Violent	4	1	0	1
Other – all other offences not violent nor sexual	1	1	0	2
Total	4	2	0	2
Attempted murder				
Violations Causing Death or attempting to commit a capital crime	2	1	0	0
Sexual Assault Level II, III aggravated sexual assault, sexual assault with a weapon	0	0	0	0
Sexual Assault Level I	0	0	0	0
Other sexual assault (includes all others)	0	0	0	0
Assault Level II, III and also unlawfully causing bodily harm	3	0	0	1
Robbery	1	0	0	1
Other crimes against person (e.g., kidnapping, confinement, hostage taking)	1	0	0	0
Assault Level I and assault against a peace officer	3	1	0	1
Uttering threats, criminal harassment	3	1	0	1
Firearms (related to persons)	1	0	0	0
Total Violent	3	4	0	4
Other – all other offences not violent nor sexual	3	0	2	4
Total	2	5	2	6

Distribution of recidivism by type of offence and type of index SVO (cont.)

	1 new offence	2 new offences	3 new offences	4 or more new offences
	n	n	n	n
Sexual offence				
Violations Causing Death or attempting to commit a capital crime	0	0	0	0
Sexual Assault Level II, III aggravated sexual assault, sexual assault with a weapon	0	0	0	0
Sexual Assault Level I	4	0	0	0
Other sexual assault (includes all others)	0	0	0	0
Assault Level II, III and also unlawfully causing bodily harm	1	1	1	0
Robbery	0	0	0	0
Other crimes against person (e.g., kidnapping, confinement, hostage taking)	1	1	0	0
Assault Level I and assault against a peace officer	3	0	0	0
Uttering threats, criminal harassment	3	0	0	1
Firearms (related to persons)	0	0	0	0
Total Violent	6	1	1	2
Other – all other offences not violent nor sexual	2	1	0	1
Total	6	1	1	3



INQUIRY OF MINISTRY DEMANDE DE RENSEIGNEMENT AU GOUVERNEMENT

PREPARE IN ENGLISH AND FRENCH MARKING "ORIGINAL TEXT" OR "TRANSLATION"
PRÉPARER EN ANGLAIS ET EN FRANÇAIS EN INDIQUANT "TEXTE ORIGINAL" OU "TRADUCTION"

QUESTION NO./N° DE LA QUESTION Q-1169	BY / DE M. Cotler (Mont-Royal)	DATE 12 février 2013
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REPLY BY THE MINISTER OF JUSTICE AND
ATTORNEY GENERAL OF CANADA
RÉPONSE DU MINISTRE DE LA JUSTICE ET
PROCUREUR GÉNÉRAL DU CANADA

Signé par l'honorable Rob Nicholson

PRINT NAME OF SIGNATORY
INSCRIRE LE NOM DU SIGNATAIRE

SIGNATURE
MINISTER OR PARLIAMENTARY SECRETARY
MINISTRE OU SECRÉTAIRE PARLEMENTAIRE

QUESTION

En ce qui concerne le projet de loi C-54, Loi modifiant le Code criminel et la Loi sur la défense nationale (troubles mentaux) : a) pour la rédaction du projet de loi, sur quelles (i) études, (ii) cas de jurisprudence, (iii) sources doctrinales le gouvernement s'est-il appuyé; b) quelles statistiques le gouvernement recueille-t-il au sujet des personnes qui sont reconnues non criminellement responsables (NCR) pour cause de troubles mentaux; c) pour chacune des dix dernières années, selon la province, le territoire et le type d'infraction, (i) – **Voir ci-joint pour le texte complet de la question.**

REPLY / RÉPONSE

ORIGINAL TEXT
TEXTE ORIGINAL

☐

TRANSLATION
TRADUCTION

☒

a) Dans le cadre de l'élaboration du projet de loi C-54, le gouvernement s'est appuyé sur diverses sources, dont la jurisprudence pertinente, la doctrine, les statistiques disponibles ainsi que les consultations auprès des provinces et territoires.

Au cours de leur dernière réunion fédérale/provinciale/territoriale (octobre 2012), les ministres ont reconnu l'importance de la sécurité du public comme critère prépondérant dans les décisions rendues par les commissions d'examen en vertu du *Code criminel*. De plus, les ministres ont examiné des propositions visant à mieux adapter le processus aux besoins des victimes, notamment en ce qui concerne le délai approprié de révision des décisions dans les dossiers de sévices graves à la personne.

Le gouvernement s'est appuyé sur un processus de consultation qui a fait intervenir les procureurs ayant comparu devant les commissions d'examen. Ce processus a été mis au point grâce au Comité de coordination des hauts fonctionnaires (CCHF), un comité fédéral/provincial/territorial surveillé par les sous-ministres responsables de la justice et de la sécurité publique.

Études

Le gouvernement a aussi regardé le rapport de recherche de 2006 de Jeff Latimer et Austin Lawrence intitulé *Les systèmes de commissions d'examen au Canada : Survol des résultats de l'étude de la collecte de données sur les accusés atteints de troubles mentaux* (ministère de la Justice du Canada, 2006) et le rapport de novembre 2012 de Crocker et al., *Description et traitement des personnes accusées*

d' « infractions graves avec violence » déclarées non criminellement responsables pour cause de troubles mentaux (Annexe 1 ci-joint).

* Une version modifiée de façon significative de ce rapport a été fournie au ministère de la Justice le 18 mars, 2013; soit 38 jours après le dépôt du projet de loi C-54.

Jurisprudence

Le projet de loi C-54 a été élaboré de manière conforme à la jurisprudence qui prévaut en droit criminel. Il serait difficile de nommer toutes les décisions qui ont informé l'élaboration de cette législation, mais les décisions de principe sur le régime des troubles mentaux, comme *Winko c. Colombie-Britannique (Forensic Psychiatric Institute)* [1999] 2 R.C.S. 625, *R. c. Conway* [2010] 1 R.C.S. 765, *R. c. Demers* [2004] 2 R.C.S. 489 et *R. c. Swain* [1991] 1 R.C.S. 933, ont été étudiés. D'autres décisions portant sur le droit criminel en général et la Charte ont été considérées, notamment les décisions suivants parmi d'autres : *R. c. Rodgers*, [2006] 1 R.C.S. 554, *R. c. Johnson*, [2003] 2 R.C.S. 357, *Charkaoui c. Canada (Citoyenneté et Immigration)*, [2008] 2 R.C.S. 326, *R. c. Lyons*, [1987] 2 R.C.S. 309 et *R. c. Oakes*, [1986] 1 R.C.S. 103.

Sources doctrinales

L'élaboration du projet de loi C-54 a été étayée par des références à de nombreux textes qui font autorité, dont les plus notables sont : Joan Barrett et Riun Shandler, *Mental Disorder and Canadian Criminal Law*, (feuilles mobiles), (Toronto: Carswell, 2006), Edwin A. Tollefson et Bernard Starkman, *Mental Disorder in Criminal Proceedings*, (Carswell: 1993); Hy Bloom et Richard Schneider, *Mental Disorder and the Law: A Primer for Legal and Mental Health Professionals*, (Irwin Law, 2006); John E. Grey, Margaret A. Shone et Peter F. Liddle, *Canadian Mental Health Law and Policy*, 2^e éd., (Markham: Lexis Nexis, 2008).

c) Comme c'est le cas dans beaucoup d'autres domaines de la criminologie, des renseignements statistiques à jour et complets pour chaque province et territoire du Canada ne sont pas disponibles. Le Centre canadien de la statistique juridique (CCJS) de Statistique Canada recueille très peu de données sur les dossiers qui ont donné lieu à un verdict de non-responsabilité criminelle pour cause de troubles mentaux (NCR) et il ne recueille aucune donnée des commissions d'examen provinciales ou territoriales. Il n'existe pas de mécanisme de cueillette systématique de données des commissions d'examen de chaque territoire et province, car les commissions utilisent des systèmes différents de gestion des dossiers et elles ne recueillent pas les données selon une méthode uniforme. On trouve peu de données dans les sites Web de certaines commissions d'examen.

Le ministère de la Justice a tenté de combler cette lacune informationnelle en développant des initiatives de recherche ciblées. Le rapport de recherche Latimer et Lawrence publié en 2006 sous le titre *Les systèmes de commissions d'examen au Canada : Survol des résultats de l'étude de la collecte de données sur les accusés atteints de troubles mentaux*^a fournit des renseignements sur la nature des dossiers traités par le système des commissions d'examen dans sept provinces et territoires de 1992 à 2004.

Plus récemment, Crocker et al., l'Institut universitaire en santé mentale Douglas, mènent un projet de recherche similaire, le *Projet trajectoire nationale*^b, subventionné par la Commission de la santé mentale du Canada et le Fonds de recherche en santé du Québec. Cette recherche tant quantitative que qualitative étudie les dossiers de personnes trouvées NCR en Colombie-Britannique, en Ontario et au Québec et

^a http://www.justice.gc.ca/fra/pi/rs/rap-rep/2006/rr06_1/p1.html

^b <https://www.ntp-ptn.org/>

examine aussi les cas de récidive. Les données de ce projet ont été recueillies du 1^{er} mai 2000 au 30 avril 2005. Le ministère de la Justice a commandé une extraction du *Projet trajectoire nationale* qui a été soumis au Ministère en Novembre 2012. Les données portaient sur les personnes qui ont été trouvées non criminellement responsables pour meurtre, tentative de meurtre ou infraction sexuelle.

(ii) Cette information ne serait disponible qu'auprès des commissions d'examen.

(iii) Cette information ne serait disponible qu'auprès des commissions d'examen.

(iv) à (viii) Voir l'annexe 1 ci-jointe.

d) Il n'existe pas de taux annuel de récidive pour les délinquants sous responsabilité fédérale. Il est difficile de présenter un taux cumulatif de récidive, car de nombreuses variables influent sur la récidive. Le Service correctionnel du Canada a publié un sommaire de recherche dans lequel on a fait le suivi jusqu'en juin 1993 d'une cohorte de délinquants libérés entre le 1^{er} avril 1988 et le 31 mars 1989. Le sommaire indiquait que le taux d'ensemble de réadmissions était de 37,1 %. Ce taux variait de 25,1 % pour les personnes mises en liberté d'office, à 41,6 % pour celles en semi-liberté et 46,6 % pour celles ayant obtenu une libération conditionnelle totale (Nouwens, Motiuk et Boe 1993).

Selon une deuxième étude, publiée par le solliciteur général du Canada (Bonta, Rugge et Dauvergne 2003), le taux d'ensemble de nouvelles condamnations pour les délinquants sous la responsabilité fédérale durant la première année suivant la libération (avec et sans période de supervision communautaire) était de 44 %.

e) Comme les établissements de soins de santé mentale relèvent de la compétence provinciale, seules les provinces ont accès à ces renseignements. Le *Code criminel* précise clairement que pour qu'un hôpital puisse accepter des personnes reconnues NCR, l'établissement doit être désigné par le ministre de la Santé de la province. Le processus de désignation relève de la compétence des provinces.

f) et g) Les établissements de soins de santé mentale relèvent de la compétence provinciale, seules les provinces ont accès aux renseignements pour répondre aux questions sur la capacité d'accueil.

h) à l) Seules les provinces ont accès à ces renseignements.

m) Oui, le Ministère a vérifié le projet de loi C-54 pour s'assurer qu'il était conforme à la *Charte*.

n) De nombreux conseillers juridiques examinent la législation gouvernementale proposée en ce qui a trait aux risques relatifs à la *Charte* et aux autres risques juridiques tout au long de l'élaboration de la politique et de la législation. La position du gouvernement est que le projet de loi C-54 est défendable en ce qui a trait à la *Charte*. La teneur des conseils juridiques fournis au gouvernement est protégée par le secret professionnel de l'avocat.

o) Les risques juridiques pertinents sont portés à l'attention de hauts fonctionnaires et du ministre tout au long du processus d'élaboration de la politique et de la législation.

p) et q) Aucun rapport de ce type n'a été préparé ou présenté. L'article 4.1 précise les obligations spécifiques du ministre. Celui-ci doit vérifier si l'une des dispositions du projet de loi est incompatible avec

la *Charte*. L'approche utilisée au ministère de la Justice est que le ministre conclue qu'il y a une incompatibilité entre une mesure législative proposée et la *Charte* uniquement en l'absence d'argument digne de foi pour appuyer la mesure proposée, c'est-à-dire un argument raisonnable, *bona fide* et susceptible d'être entendu et reçu par les tribunaux. Le ministre exerce cette responsabilité d'après les conseils des fonctionnaires.

r) Comme pour toute proposition législative, il existe des risques de litige. Des mesures sont prises pour atténuer ces risques, notamment en s'assurant que les dossiers parlementaires et publics reflètent bien l'intention des réformes proposées de façon que les tribunaux et les commissions d'examen les appliquent de manière appropriée.

Q-1169² — 12 février 2013 — M. Cotler (Mont-Royal) — En ce qui concerne le projet de loi C-54, Loi modifiant le Code criminel et la Loi sur la défense nationale (troubles mentaux) : a) pour la rédaction du projet de loi, sur quelles (i) études, (ii) cas de jurisprudence, (iii) sources doctrinales le gouvernement s'est-il appuyé; b) quelles statistiques le gouvernement recueille-t-il au sujet des personnes qui sont reconnues non criminellement responsables (NCR) pour cause de troubles mentaux; c) pour chacune des dix dernières années, selon la province, le territoire et le type d'infraction, (i) combien de personnes ont été reconnues NCR, (ii) quelles personnes reconnues NCR ont été libérées sans conditions, (iii) quelles personnes reconnues NCR ont été libérées sous conditions, (iv) pendant combien de temps chaque personne reconnue NCR a-t-elle été sous traitement avant sa libération, (v) quelles personnes reconnues NCR et libérées ont été reconnues coupables d'une infraction subséquente, (vi) quelle était la nature de l'infraction subséquente, (vii) quelles personnes reconnues NCR et libérées ont été reconnues NCR d'une infraction subséquente, (viii) quelle était la nature de l'infraction subséquente; d) pour chacune des dix dernières années, quel a été le taux de récidive pour tous les délinquants sous responsabilité fédérale; e) selon la province et le territoire, (i) quels établissements de traitement acceptent les personnes reconnues NCR, (ii) parmi ces établissements, lesquels sont privés, (iii) combien de personnes peut accueillir chaque établissement, (iv) combien de personnes se trouvent actuellement dans chaque établissement; f) quelle analyse le gouvernement a-t-il réalisée pour déterminer si cette mesure législative exigera que ces établissements augmentent leur capacité d'accueil; g) quelles sont les conclusions de cette analyse; h) quelles mesures le gouvernement prend-il pour veiller à ce que ces établissements aient la capacité d'accueil voulue; i) à l'heure actuelle, quels fonds sont affectés (i) à la construction de nouveaux établissements pour héberger les personnes reconnues NCR, (ii) à l'agrandissement de ces établissements; j) quels programmes gouvernementaux existent pour financer les établissements privés; k) quels fonds ont été affectés à ce type de programmes pour chacune des dix dernières années; l) quelles mesures le gouvernement prend-il pour prévenir les contentieux fondés sur la Charte en ce qui concerne les personnes reconnues NCR qui pourraient ne pas être en mesure d'obtenir une place dans un établissement pertinent; m) le projet de loi C-54 a-t-il été examiné par le ministère de la Justice pour en assurer la conformité avec la Charte; n) quels responsables ont procédé à l'examen, (i) quand l'examen a-t-il été entrepris, (ii) quand l'examen a-t-il été achevé, (iii) quelles ont été les conclusions de l'examen; o) quand les conclusions ont-elles été présentées au ministre; p) un rapport de non-conformité a-t-il été produit; q) un rapport de non-conformité a-t-il été présenté au Parlement; r) a-t-on procédé à une évaluation des risques de contentieux relatifs à l'adoption de ce projet de loi et, si tel est le cas, quelles en sont les conclusions?

