

LS 101 — Chapter 9: Mental Disorder and the Law

1 The Health Care Consent Act

- No treatment without consent unless they are incapable of giving consent (like if you're knocked out it's fine to assume).
- If someone is capable of giving consent in their behalf then that is the alternative for one to take.
- There are some elements required for consent to treatment:
 - Consent must relate to treatment.
 - Consent must be informed.
 - Consent must be given voluntarily.
 - Cannot be obtained by misrepresentation/fraud.
- The Consent and Capacity Board will conduct hearings under the *Health Care and Consent Act*, the *Mental Health Act*, and the *Substitute Decision Act*
- This board will deal with issues with consent to treatment, involuntary status of a patient in a hospital, substitute consent people not respecting the wishes of the patient, etc.
- Their decisions can be appealed, like many other tribunals.

2 Mental Health Act

- The *Mental Health Act of Ontario* from 1990 deals with rights of patients who are under the observation, care, and treatment in a psychiatry facility.
- Deals with the following sections:
 - Where admission may be refused
 - Admission of informal or voluntary patients
 - Informal or voluntary patients
 - Application for psychiatric assessment
 - Authority of application
 - Justice of the peace's order for psychiatric examination
 - Action by police officers
 - Change from informal or voluntary patient to involuntary patient
 - Duty of attending physician
 - Authority of certificate
 - Change of status, where period of detention has expired
 - Judge's order for examination
 - Judge's order for admission
 - Communications to and from patients
 - Where communication may be withheld

3 Criminal Code of Canada — The Defence of Mental Disorder

- The defence of mental disorder aims at the *mens rea* component of an offence by arguing that the person did not have the capabilities to form the intent when the act was committed due to mental disorders at the time.
- Within Section 16 of the *Criminal Code of Canada*, the defence of mental disorder can be found.
- It states that:
 - People are not criminally responsible for an act committed, or an omission, while suffering from a mental disorder that makes them incapable of understanding what they were doing or whether it was right or wrong.
 - People are presumed to not suffer from a mental disorder by default, unless proven.
 - The burden of proof of the accused suffering from the mental disorder is on the party that raises the issue.
- Generally, if this defence is raised, testimony is given by psychiatrists or psychologists. They must convince the court that the mental disorder was serious enough to render the accused into committing the act without intent.
- Countering the defence of mental disorder will involve the Crown/defence attorney calling their own psychiatrists to testify.
- For a person to detain an accused in a psychiatric facility, they must pose a serious threat of harming someone and the threat must be of criminal nature.
- NCR persons are not meant to serve punishments.
- NCR (not criminally responsible) is short for NCRMD (not criminally responsible because of mental disorder).

4 Fitness to Stand Trial

- This section of the criminal code is used when an accused is judged to be unable to understand court proceedings and assist in their defence.
- People are assumed to be fit to stand trial unless the court is convinced otherwise.
- A verdict of being unfit to stand trial does not stop the accused from being tried subsequently if they become fit to stand trial.
- Prim facie case to be made every two years — the court shall hold an inquiry at no later than 2 years, and every 2 years after until the accused is acquitted or tried, to decide whether sufficient evidence can be found that shows the accused can be put on trial.