

LANDMARK CASES IN FORENSIC PSYCHIATRY IN CANADA

This case list was developed and is maintained by the National Group of Forensic Psychiatry PGY-6 Program Directors, with additional thanks to Michele Warner

Any cases in light gray are not in the basic list.

Legend:

CC = Criminal Code

CEA = Canada Evidence Act

Charter = Canadian Charter of Rights and Freedoms

Fitness to Stand Trial

| Subcategory | Case | Key Provisions | Holding |
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| Test for Fitness | 1. <i>R v Taylor</i> , 1992 Ontario Court of Appeal https://www.canlii.org/en/on/onca/doc/1992/1992canlii7412/1992canlii7412.html | s.2 CC | <i>Limited cognitive capacity</i> is the proper test for Fitness; Affirmed by the Supreme Court of Canada in <i>R v. Whittle</i> , 1994 |
| | 2. <i>R v Morrissey</i> , 2007 Ontario Court of Appeal https://www.canlii.org/en/on/onca/doc/2007/2007onca770/2007onca770.html | s.2 CC s. 16 CEA | Amnesia ≠ unfit to stand trial (“testimonial capacity is not a condition precedent to fitness to stand trial”) |
| Permanently Unfit | 3. <i>R v Demers</i> , 2004 SCC https://www.canlii.org/en/ca/scc/doc/2004/2004scc46/2004scc46.html | s.672.54 CC s.672.81 CC | Being permanently unfit, not a significant threat and having no ability to seek least onerous and restrictive disposition is a charter violation regarding presumption of innocence as a principle of fundamental justice; Significant threat to public safety test, same as for NCR in permanently unfit accused seeking stay of proceedings; led to bill C-10 (2005) |

Not Criminally Responsible by Reason of Mental Disorder (NCRMD)

| Subcategory | Case | Key Provisions | Holding |
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| Evolution of NCRMD | 4. <i>M’Naghten’s Case</i> , 1843 British House of Lords | N/A | M’Naghten Rules for Insanity (disease of the mind causing inability to know nature and quality or wrongfulness of the acts) |
| | 5. <i>R v Simpson</i> , 1977 Ontario Court of Appeal https://www.canlii.org/en/on/onca/doc/1977/1977canlii1142/1977canlii1142.html | s.16 CC | Psychopathy ≠ Insanity |
| | 6. <i>R v Barnier</i> , 1980 SCC https://www.canlii.org/en/ca/scc/doc/1980/1980canlii184/1980canlii184.html | s.16 CC | “Knowing” is a positive connotation requiring base awareness vs. “appreciating” which is a second stage in a mental process requiring the analysis of knowledge or experience in one manner or another |
| | 7. <i>R v Abbey</i> , 1982 SCC https://www.canlii.org/en/ca/scc/doc/1982/1982canlii25/1982canlii25.html | s.16 CC s. 7 CEA | Irresistible impulse is not a sec 16 defense, but may be used to advance evidence of mental disorder |
| | 8. <i>R v Chaulk</i> , 1990 SCC https://www.canlii.org/en/ca/scc/doc/1990/1990canlii34/1990canlii34.html | s.16 CC s. 11 <i>Charter</i> | 1) Requiring the accused to prove insanity on a balance of probabilities is a reasonable limit on the presumption of innocence under s. 1 of the Charter; 2) wrongfulness defined as “moral” not “legal” (<i>Schwartz v. The Queen</i> , [1977] 1 S.C.R. 673 is overruled); 3) subsection 3 of sec. 16 struck down (NGRI criteria requiring presence of justifiable defense if delusions were real) |

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| | 9. <i>R v Swain</i> , 1991 SCC https://www.canlii.org/en/ca/scc/doc/1991/1991canlii104/1991canlii104.html | s.16 CC | 1) Crown may raise evidence of insanity after guilty verdict reached in interest of not convicting an insane person and protect the public from dangerous persons requiring hospitalization; 2) Indeterminate detention with assumption of dangerousness violates Charter |
| Nature and quality | 10. <i>R v Kjeldsen</i> , 1981 SCC https://www.canlii.org/en/ca/scc/doc/1981/1981canlii218/1981canlii218.html | s.16 CC | A person appreciates the nature and quality of an act if he knows what he is doing and is aware of the physical consequences which will result from his acts |
| Wrongfulness | 11. <i>R v Oommen</i> , 1994 SCC https://www.canlii.org/en/ca/scc/doc/1994/1994canlii101/1994canlii101.html | s.16 CC | Inability to apply rational understanding of wrongfulness |
| Disease of Mind/Mental Disorder | 12. <i>R v Cooper</i> , 1980 SCC https://www.canlii.org/en/ca/scc/doc/1979/1979canlii63/1979canlii63.html | s.16 CC | ...“disease of the mind’ embraces any illness, disorder or abnormal condition which impairs the human mind and its functioning, excluding however, self-induced states caused by alcohol or drugs, as well as transitory mental states such as hysteria or concussion.” |
| | 13. <i>R v Bouchard-Lebrun</i> , 2011 SCC https://www.canlii.org/en/ca/scc/doc/2011/2011scc58/2011scc58.html | s. 16 CC s.33.1 CC | Substance-induced psychosis ≠ mental disorder |

Criminal Code Review Board

| Case | Key Provisions | Holding |
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| 14. <i>Winko v British Columbia (Forensic Psychiatric Institute)</i> , 1999 SCC https://www.canlii.org/en/ca/scc/doc/1999/1999canlii694/1999canlii694.html | s.672.54 CC | 1) No reverse onus on NCR accused to prove lack of dangerousness 2) “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 trivial or |

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| | | <p>annoying. The conduct giving rise to the harm must be criminal in nature.”</p> <p>3) If not a “significant threat to the safety of the public”, must order absolute discharge 4) NCR verdict is not <i>de facto</i> evidence on continuing risk of violence</p> |
| <p>15. <i>R v Owen</i>, 2003 SCC https://www.canlii.org/en/ca/scc/doc/2003/2003scc33/2003scc33.html</p> | <p>s.672.73 CC s.672.78 CC</p> | <p>The appropriate standard of review of safety risks and mental disorder is “reasonableness simpliciter”; Review Board reasonable in ordering continued detention of accused at psychiatric hospital for accused having ongoing substance abuse problems and continuing to show some propensity towards violence (NCR – “mental disorder”; For Review Board – “mental condition”, which is broader)</p> |
| <p>16. <i>Pinet v St. Thomas Psychiatric Hospital</i>, 2004 SCC https://www.canlii.org/en/ca/scc/doc/2004/2004scc21/2004scc21.html</p> | <p>s. 672.78 CC</p> | <p>Criminal Code test providing that disposition made by review board must be “the least onerous and least restrictive to the accused” applies to particular conditions forming part of disposition</p> |
| <p>17. <i>Mazzei v British Columbia (Director of Adult Forensic Psychiatric Services)</i>, 2006 SCC https://www.canlii.org/en/ca/scc/doc/2006/2006scc7/2006scc7.html?searchUrlHash=AAAAAQQTWF6emVpIHgQkMsIFNDQwAAAAAB</p> | <p>s.672.54 CC</p> | <p>A Review Board has the power to impose orders and conditions of the Director, hospital authorities and treatment teams; the appropriate standard for review of a Review Board’s jurisdiction to impose conditions is “correctness”</p> |
| <p>18. <i>Penetanguishene Mental Health Centre v Magee</i>, 2006 ONCA https://www.canlii.org/en/on/onca/doc/2006/2006canlii16077/2006canlii16077.html</p> | <p>s.672.54 CC</p> | <p>Consideration of “the least onerous and least restrictive” disposition to the accused must also include a consideration of the other statutory considerations in the legislation (i.e. security of the public)</p> |

Other Criminal Law and Procedure Cases

| Subcategory | Case | Key Provisions | Holding |
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| Automatism Defense | 19. <i>R v Parks</i> , 1992 SCC https://www.canlii.org/en/ca/scc/doc/1992/1992canlii78/1992canlii78.html | s.16 CC | 1) Somnambulism may constitute a mental disorder, but not in this case; 2) burden of proof – accused lay only foundation for automatism defense, crown still has to prove voluntariness beyond a reasonable doubt; 3) Two policy considerations added: how easily the condition is feigned and opening of the floodgates |
| | 20. <i>R v Stone</i> , 1999 SCC https://www.canlii.org/en/ca/scc/doc/1999/1999canlii688/1999canlii688.html | s.16 CC | 1) Procedure for evaluating mental disorder and non-mental disorder automatism: “A more holistic approach must be taken by judges, which should be informed by: a) internal cause theory, b) continuing danger theory, and c) policy concerns; 2) Burden of proof shifted to defense to prove involuntariness on a balance of probabilities |
| Defense of Battered Woman Syndrome | 21. <i>R v Lavallee</i> , 1990 SCC https://www.canlii.org/en/ca/scc/doc/1990/1990canlii95/1990canlii95.html | s.34 CC s. 7 CEA | Legal criteria for battered wife syndrome |
| Diminished Capacity and Voluntary Intoxication | 22. <i>Beard Rule</i> | N/A | Intoxication can only be used to negate specific intent |
| | 23. <i>R v MacAskill</i> , 1931 SCC https://www.canlii.org/en/ca/scc/doc/1931/1931canlii58/1931canlii58.html | N/A | The <i>Beard rule</i> adopted in Canada |
| | 24. <i>R v Daviault</i> , 1994 SCC https://www.canlii.org/en/ca/scc/doc/1994/1994canlii61/1994canlii61.html | s.7 Charter | Extreme voluntary intoxication can negate general intent (for example to sexual assault) |
| | 25. <i>R v Daley</i> , 2007 SCC https://www.canlii.org/en/ca/scc/doc/2007/2007scc53/2007scc53.html | s.33.1 CC | 1) Section 33.1 CCC affirmed; 2) three levels of intoxication in relation to a possible <i>mens rea</i> defense |

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| <p>Expert Witness Testimony</p> | <p>26. <i>National Justice Compania Naviera v Prudential Assurance Co ('The Ikarian Reefer')</i>, 1993 Queen's Bench http://www.uniset.ca/other/cs2/19951LLR455.html</p> | <p>N/A</p> | <p>Guidelines for expert witness duties including:</p> <ul style="list-style-type: none"> • providing unbiased, objective opinion in relation to matters within his expertise • expert uninfluenced as to form or content by the exigencies of litigation • state the facts or assumptions upon which their opinion is based without omitting to consider facts that could detract from their opinion • state clearly when issues fall outside their area of expertise • state when an opinion is only provisional if insufficient data available • if the expert changes their opinion, this must be communicated to the other parties without delay • data used to form an expert opinion must be shared with other parties |
| | <p>27. <i>Daubert v. Merrell Dow [1993] United States Supreme Court</i> https://www.law.cornell.edu/supct/html/92-102.ZS.html</p> | <p>N/A</p> | <p>Supreme Court stated Federal Rules of Evidence should be applied as US expert testimony admissibility standards:</p> <ul style="list-style-type: none"> • Whether theory/technique can be (and has been) <i>tested</i> • Whether it has been subjected to <i>peer review</i> and publication • Potential <i>error rate</i> or <i>existence of standards</i> • Fry rule / "<i>general acceptance</i>" within the field |
| | <p>28. <i>R v Mohan</i>, 1995 SCC https://www.canlii.org/en/ca/scc/doc/1994/1994canlii80/1994canlii80.html</p> | <p>s.7 CEA</p> | <p>Admissibility of expert evidence in Canada:</p> <ol style="list-style-type: none"> 1. Relevance: <ol style="list-style-type: none"> a. Balancing probative value and reliability of |

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| | | | <p>opinion</p> <ol style="list-style-type: none"> 2. Necessary: <ol style="list-style-type: none"> a. Ordinary people would be unable to make correct judgment w/o out that special knowledge 3. Absence of exculpatory/exclusionary rule <ol style="list-style-type: none"> a. Example, balancing the weight of hearsay evidence in forensic opinion 4. Properly qualified expert |
| | <p>29. <i>R v J.L.J.</i>, 2000 SCC https://www.canlii.org/en/ca/scc/doc/2000/2000scc51/2000scc51.html</p> | N/A | <p>Per <i>Mohan</i>, novel science is subject to “special scrutiny” - Penile plethysmograph recognized as a therapeutic tool, not as a forensic tool able to discriminate profiles of distinct groups to which if the accused belonged, would lead to inference of guilt; Combines all of <i>Mohan</i> + <i>Daubert</i> criteria</p> |
| Voluntary Statements | <p>30. <i>R v Whittle</i>, 1994 SCC https://www.canlii.org/en/ca/scc/doc/1994/1994canlii55/1994canlii55.html</p> | s. 7; s.10 <i>Charter</i> | <p>“Operating mind test” for making voluntary statements, ie “what he or she is saying and what is said” and “the ability to understand a caution that the evidence can be used against the accused”; in exercising the right to waive counsel, limited cognitive capacity test applies</p> |
| | <p>31. <i>R v Oickle</i>, 2000 SCC https://www.canlii.org/en/ca/scc/doc/2000/2000scc38/2000scc38.html</p> | N/A | <p>Voluntary confession rule – relevant factors to be assessed by the judge: threats or promises (<i>quid pro quo</i>), oppressive police tactics or trickery and the operating mind requirement</p> |
| | <p>32. <i>R. v. Jones</i> [1994] 2 S.R.C. 229 https://www.canlii.org/en/ca/scc/doc/1994/1994canlii85/1994canlii85.html</p> | s. 7, 10(b) <i>Charter</i> s. 537(1)(b), 755 CC | <p>An accused’s right against self-incrimination not infringed if information gathered during pre-trial psychiatric examination (when a confidentiality warning was given) is used in post-verdict dangerous</p> |

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| | | | offender hearing |
| Production of Records | 33. Bill C-46 http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2329533&Language=E&Mode=1&File=16 | s.278 CC | |
| | 34. <i>R v Mills</i> , 1999 SCC https://www.canlii.org/en/ca/scc/doc/1999/1999canlii637/1999canlii637.html | s.278-278.7 CC s. 7 <i>Charter</i> | 1) Criminal code amendments in Bill C-46 are constitutional; 2) Balancing the rights of accused to make full answer and defense versus maintaining privacy of complainants private records in sexual assault proceedings |
| Sentencing a Dangerous Offender | 35. <i>R v Langevin</i> , 1984 Ontario Court of Appeal https://www.canlii.org/en/on/onca/doc/1984/1984canlii1914/1984canlii1914.html | s. 753 CC | “Pattern of repetitive behaviour” may be found even if only two incidents, but similar. “Existing likelihood” all that is necessary to show risk of future conduct |
| | 36. <i>R v Lyons</i> , 1987 SCC https://www.canlii.org/en/ca/scc/doc/1987/1987canlii25/1987canlii25.html | s.753 CC s. 7, 9. 12 <i>Charter</i> | 1) Only a “likelihood” of future violent conduct is require to be found, not a certainty that it will; 2) No presumption that psychiatrists can accurately predict future violence, but that expert evidence is helpful because it is “probably relatively superior” to lay people or other clinicians |
| | 37. <i>R v Johnson</i> , 2003 SCC https://www.canlii.org/en/ca/scc/doc/2003/2003scc46/2003scc46.html | s. 753 CC s. 11 <i>Charter</i> | Sentencing judge retains discretion to impose indeterminate sentence – not obligated even if criteria met for “dangerous offender” |
| Sentencing of an Aboriginal Offender | 38. <i>R v Gladue</i> , 1999 SCC https://www.canlii.org/en/ca/scc/doc/1999/1999canlii679/1999canlii679.html | s.718.2(e) CC | Section 718.2 of the CCC lays out elements that courts must take into consideration when sentencing an aboriginal accused; This case adds that the aboriginal accused’s background, the concept of community “which includes whether |

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| | | | on or off reserve, in a large city or a rural area”, and victim factors must also be considered. |
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Civil Psychiatry

| Subcategory | Case | Key Provisions | Holding |
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| Treatment Capacity | 39. <i>Starson v Swayze</i> , 2003 SCC https://www.canlii.org/en/ca/scc/doc/2003/2003scc32/2003scc32.html | <i>HCCA and MHA of Ontario</i> | <i>Supreme Court of Canada interpretation of Ontario mental health legislation</i> |
| Malpractice and Informed Consent | 40. <i>Reibl v Hughes</i> , 1980 SCC https://www.canlii.org/en/ca/scc/doc/1980/1980canlii23/1980canlii23.html | N/A | Malpractice – informed consent requires that risks of opting into a procedure or treatment, as well as refusing one, must be discussed with the patient, including a consideration of “any special considerations affecting the particular patient” |
| | 41. <i>Morrow v Royal Victoria Hospital</i> , 1989 Quebec Court of Appeal https://www.canlii.org/fr/qc/qcca/doc/1989/1989canlii1297/1989canlii1297.html | N/A | Malpractice - Schizophrenic patient treated with electroshock therapy in 1960 by doctor who was receiving funding from C.I.A. for brain-washing experiments - Electroshock therapy considered appropriate and not an experimental treatment for schizophrenia in 1960 |
| Duty to Warn and Protect | 42. <i>Tarasoff</i> , 1974 and 1976 California Supreme Court | N/A | First duty to warn (1974) and protect (1976) elucidated |
| | 43. <i>Smith v Jones</i> , 1999 SCC https://www.canlii.org/en/ca/scc/doc/1999/1999canlii674/1999canlii674.html | N/A | Duty to warn and protect applied in Canada (case of forensic expert bound by the solicitor-client privilege). Three factors should be taken into consideration in |

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| | | | <p>determining whether public safety outweighs solicitor-client privilege:</p> <ol style="list-style-type: none"> 1. Is there a clear risk to an identifiable person or group of persons? 2. Is there a risk of serious bodily harm or death? 3. Is the danger imminent? |
| Causation in Tort Law | <p>44. <i>Athey v Leonati</i>, 1996 SCC https://www.canlii.org/en/ca/scc/doc/1996/1996canlii183/1996canlii183.html</p> | N/A | The “but for” rule; discussion of crumbling skull and thin skull analyses |
| | <p>45. <i>Resurfice Corp v Hanke</i>, 2007 SCC https://www.canlii.org/en/ca/scc/doc/2007/2007scc7/2007scc7.html</p> | N/A | Tort, causality - The “material contribution” test only applies in exceptional cases where factors outside of the plaintiff’s control make it impossible for the plaintiff to prove that the defendant’s negligence caused the plaintiff’s injury using the “but for” test (the basic test) |