



March 15, 2013

Mr. Mike Wallace, MP
Chair, Standing Committee on Justice and Human Rights (JUST)
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6
Canada

Dear Chair and Members of the Standing Committee:

Re: Bill C-54 – An Act to amend the Criminal Code and the National Defence Act (mental disorder)

This submission is made on behalf of the Centre for Addiction and Mental Health (CAMH) in relation to the proposed amendments to the Not Criminally Responsible by Account of Mental Disorder (NCR) defence as outlined in Bill C-54 – An Act to amend the Criminal Code and the National Defence Act (mental disorder). We would encourage the committee to consider the concerns and recommendations addressed in this submission.

CAMH is Canada's largest mental health and addictions academic health sciences centre. We combine clinical care, research, and education to transform the lives of people affected by mental health and addictions issues. CAMH's forensic mental health program provides care and supports to individuals designated NCR or Unfit to Stand Trial. We care for over 30% of Ontario's NCR accused persons. Accordingly, we have a keen interest in any amendments to NCR legislation which will affect our patients and our ability to provide them with excellent mental health care.

We appreciate and support Bill C-54's commitment to public safety and victim safety and involvement. Public and victim safety are at the forefront of all decisions made by Review Boards and by forensic mental health programs in treatment planning - we are assured to see that they will continue to be priorities. We agree that victim involvement is important, and we look forward to working with government and our partners to explore opportunities to better support victims' needs.

While public and victim safety should continue to be key components in NCR decision making, we are concerned that Bill C-54 and the discourse around it sends the wrong message that people with mental illness are violent and should be feared. Canada has come a long way in reducing the stigma related to mental illness with the support of the current government and the Mental Health Commission of Canada. We believe it is important that the messaging around Bill C-54 emphasize that the vast majority of people with mental illness are not violent and that very few people who commit crimes are adjudicated NCR (0.001% in Ontario).

Moreover, the likelihood of an NCR individual reoffending is significantly less than someone discharged from a federal prison (7.5% vs. 41-44%).

There are three specific parts of Bill C-54 that CAMH has identified as most likely to compromise the treatment and rehabilitation needs of mentally ill offenders: altering the wording of section 672.54 of the Act; using an individual's index offense to determine a 'high risk' designation; and restricting community involvement for 'high risk' offenders.

Altering the wording of section 672.54 of the Act

CAMH is concerned that Bill C-54 alters the wording of section 672.54 to make public safety the *paramount* consideration when a court or Review Board makes a disposition order. While similar wording already exists in case law, changing the wording in the Act clearly signals a desire for a shift in emphasis - that there should be a tightening of decision making for *all* NCR accused. The original intent of NCR legislation was to balance public safety with the treatment and rehabilitation needs of mentally ill offenders. We believe that shifting this balance will prevent NCR individuals from receiving the best possible mental health care

The Bill also amends the current NCR legislation which requires Review Boards to make disposition orders that are 'least onerous and least restrictive' to make orders that are 'necessary and appropriate in the circumstances'. This is a significant change in the legislation that would impact all current and future mentally ill offenders who are designated NCR. Given the context of Bill C-54 and the precedence of public safety, it is our belief that 'necessary and appropriate' dispositions will be more restrictive and that more NCR individuals will be detained in forensic units for longer periods and in higher secure units than is actually necessary. Again, these types of restrictions will compromise the rehabilitation and community re-integration process for many NCR individuals. The widespread application of this amendment will lead to increased pressure on forensic mental health programs that are already operating over capacity.

Clause 10 of the Bill introduces a new statutory definition of 'significant threat'. Although the term is not presently defined in statute, the Supreme Court of Canada (SCC) has defined 'significant threat' as a '*real* risk of serious physical or psychological harm' to others. The Bill's wording, however, does not include the requirement that the risk be 'real'. In addition, it expressly states that the harm does not necessarily have to be 'violent' in order to come within the statutory definition. Collectively, these differences between the SCC's definition and the new statutory definition appear to lower the threshold of risk that is necessary in order to maintain a Review Board's jurisdiction over an accused person, thereby making it harder for a person to attain an absolute discharge. CAMH recommends that all wording from section 672.54 of the Act remain as it currently stands.

Using an individual's index offense to determine a 'high risk' designation

While many NCR individuals have committed very serious offenses, it is important to remember that these offenses were the result of untreated or improperly treated mental illness. Simply looking at the severity of the index offense is not an effective way of determining if someone is at a 'high risk' for reoffending. It is more important to review their history of criminal offenses, violence and mental illness along with assessing their insight into their illness, attitude about their offense, and whether or not they are actively involved in their treatment and rehabilitation plans. These factors are better indicators of whether or not an NCR individual is at a 'high risk' for reoffending. The severity of the index offence is not necessarily a good predictor of future risk.

Designating someone as 'high risk' when they are actually lower risk will see individuals detained in hospital for longer periods and in higher secure units than is actually necessary. It will compromise their rehabilitation and ability to successfully re-integrate into the community. This suggests the importation of a spirit of retribution into a jurisdiction where it does not belong. CAMH recommends that using an individual's index offense to determine a 'high risk' designation be removed from the legislation.

Additionally, the provision that allows for reduced frequency of annual review hearings from the current once every 12 months, up to a possible thirty-six months for some persons designated as 'high risk', seems incongruent with the clinical reality that these persons need more careful and regular oversight.

Restricting community involvement for 'high risk' offenders

Providing patients with opportunities for passes into the community is a necessary part of therapeutic rehabilitation and community re-integration. Review Boards and forensic mental health programs gradually and carefully introduce passes to individuals detained in forensic units, in a thoughtful and planned manner that takes into account the person's commitment to treatment, his or her rehabilitative progress, and his or her mental status at the time. The exercise of these passes enables clinicians to more accurately assess an individual's 'risk' and his or her readiness for greater community involvement. It also fosters the development of skills that will be necessary for an individual's successful community reintegration over the long term. CAMH recommends that Bill C-54 be amended to allow the gradual introduction of community passes to 'high risk' offenders who demonstrate a dedication to their recovery.

Unintended consequences

We would be remiss if we did not highlight another potential repercussion of these three proposed amendments. By emphasizing security and restrictions over treatment and rehabilitation in the variety of ways documented above, future offenders with mental illness may be advised to go into the criminal justice system instead of the mental health system. Defense counsel are liable to advise their clients against raising the NCR defense, lest they be subject to a very restrictive and long lasting 'high risk' designation, regardless of the likelihood of this being imposed on them. For all NCR accused, the new regime will be tighter and harder

to progress within. As noted in the National Trajectory Project, going down the prison route will mean an offender's time in detention will be more clearly defined and likely to be shorter in length. This would put a significant strain on the provincial and federal corrections system as they strive to meet the needs of an influx of mentally ill prisoners.

Our goal at CAMH is to provide treatment and rehabilitation to successfully re-integrate NCR individuals back into the community while being cognizant of public safety. We believe that altering the wording of section 672.54 of the Act; using an individual's index offense to determine a 'high risk' designation; and restricting community involvement for 'high risk' offenders (as well as making all of these stipulations retroactive) will compromise our ability to provide the best possible forensic mental health care to all persons currently subject to the jurisdiction of Part XX.1 of the Criminal Code. There will also be consequences for the forensic and corrections systems.

We would suggest a different set of policy changes to address legitimate concerns of the public and victims regarding the NCR regime. These would involve exploring more options for victim participation (e.g. restorative justice opportunities) and addressing minor offences through mental health diversion programs and connection to community mental health services at the Provincial and Territorial level, rather than through the NCR regime of Part XX.1 of the Criminal Code.

We thank the Committee for considering our submission.

Sincerely,

Alexander Simpson, MBChB, FRANZCP
Chief of Forensic Psychiatry, CAMH
Head, Division of Forensic Psychiatry, University of Toronto