

The Honourable Robert Nicholson
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8



October 15, 2012

Dear Minister Nicholson:

Re: Review of the “Not Criminally Responsible on Account of Mental Disorder” Defence

We are writing to you on behalf of the clients and partner organizations of the Provincial Human Services and Justice Coordinating Committee (HSJCC) in Ontario. The Provincial HSJCC is mandated by the *Provincial Strategy to Coordinate Human Services and Criminal Justice Systems in Ontario (1997)* and established to coordinate resources and services, and plan more effectively for people who are in conflict with the law. Priority consideration is for people with a serious mental illness, developmental disability, acquired brain injury, drug and alcohol addiction, and/or fetal alcohol spectrum disorder. Our role is to facilitate the exchange of information and promising practices, identify provincial level challenges, and work collaboratively with the Government to resolve challenges within the human services and justice sectors.

The Provincial HSJCC commends the Federal Justice Minister and the Government of Canada for your commitment to improving the safety and security of all Canadians. Although we understand that the intention of the proposed review of the “Not Criminally Responsible (NCR) on Account of Mental Disorder” Defence under the *Criminal Code of Canada* is to promote greater protection to the members of our society, we strongly recommend that extensive stakeholder consultations inform this review process. We urge the Federal Justice Minister and the Government of Canada to hold consultations with individuals with lived experience of mental health disabilities, consumers/survivors, community health and addictions representatives, legal experts that specialize in the area of civil liberties, police officers, medical professionals, as well as organizations like the HSJCCs that are inter-disciplinary, inter-sectoral collaboratives that support individuals with mental health disabilities who come into contact with the criminal justice system. In particular, we would encourage consultation with the Mental Health Commission of Canada's Trajectory Project which is currently in the process of its own review of the NCR ruling.

It is imperative that the needs of people with mental health disabilities be taken into consideration during this review of the NCR provisions. Persons with mental health and human service needs face multiple barriers to accessing the social determinants of health, such as housing, employment and education, and they are often vulnerable to criminalization. Incarceration is a double-edged sword for individuals with mental health disabilities. On the one hand, research indicates that the correctional environment can aggravate pre-existing mental health conditions, and impede recovery and successful transition back into the community. Within the justice system, these individuals are often victimized and face stigma and discrimination due to their illnesses. Yet, the justice system sometimes provides the first point of contact for accessing mental health and human services that can have a positive impact on the lives of those with mental health disabilities.

The Criminal Code currently protects Canadians from being punished for actions of which they are incapable of appreciating the wrongness, nature or quality due to a mental disorder, or a "disease of the mind" as it is defined therein. Justice within this context is understood as ensuring protection of the public from significant risk while simultaneously ensuring that opportunities for treatment are provided by the forensic system for accused persons

found NCR. In Ontario, the Ontario Review Board (ORB) assesses each individual who comes under its jurisdiction through Part XX.1, the “Mental Disorder” provisions of the *Criminal Code* with the express mandate of weighing the rights of the individual with the need for public safety in each case. If found NCR, the Review Board ensures that opportunities for individualized psychiatric care with a focus on rehabilitation are made available. Guided by the 1999 Winko decision, the Review Board will not discharge any individual if they pose a significant threat to the safety of the public. For the majority of people who enter the forensic mental health system this often means detention in a forensic hospital with access to the community governed by the terms of the Review Board Disposition. This detention often extends longer than would have been mandated if they had been convicted of a crime. Further, until an absolute discharge is granted, the individual remains subject to the authority of the Review Board.

The Provincial HSJCC strongly urges extensive consultation with stakeholders before any significant changes are made to the NCR provisions of the *Criminal Code*, particularly as only a small percentage of individuals found NCR are accused of serious violent crimes. The Provincial HSJCC welcomes the opportunity to meet with the Federal Justice Minister to further discuss this issue and to assist the Department of Justice in any way necessary.

About the Human Services and Justice Coordinating Committees in Ontario

The Human Services and Justice Coordinating Committee (HSJCC) network is comprised of 14 Regional HSJCCs, 37 Local HSJCCs and one Provincial HSJCC. Each HSJCC is a voluntary collaboration between health and social service organizations, community mental health and addictions organizations and partners from the justice sector including crown attorneys, judges, police services and correctional service providers. The Regional and Local HSJCCs coordinate communication and service integration planning among health, social services and criminal justice organizations within specific regions. Structurally, the Local HSJCCs provide input to the fourteen Regional HSJCCs which in turn provide input to the Provincial HSJCC. As well, the entire network of 52 committees supports knowledge transfer across the province.

The Provincial HSJCC consists of regional chairs representing their Regions and ex-officio members from important stakeholder groups such as Corrections Services Canada, the Ontario Provincial Police and the Ontario Association of Chiefs of Police. There are also ex-officio representatives from the Ontario Provincial Ministries of the Attorney General, Children and Youth Services, Community and Social Services, Community Safety and Correctional Services, and Health and Long-Term Care.

For more information about the HSJCCs, please visit: <http://www.hsjcc.on.ca/>

Thank you for your attention to this matter. We look forward to your response. For further discussion, please feel free to contact us directly at the information below.

Sincerely,



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Cc: The Honourable Vic Toews, Federal Minister of Public Safety
The Honourable John Gerretsen, Attorney General of Ontario