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THE POSSIBILITY OF MISUSE OF THE NCRMD RULE AND ABSOLUTE DISCHARGE IN THE CANADIAN CRIMINAL JUSTICE SYSTEM

Summary. *The theoretical aspects of using NCRMD Rule with real-life cases in Canadian Criminal Justice System.*

Key words: *NCRMD, criminal justice, absolute discharge, mental illnesses.*

Implementation of the NCRMD (not criminally responsible because of mental disabilities) rule in the Canadian criminal justice system is a significant change for the all-criminal system. The majority of the public thinks that the number of people with absolute discharge on account of mental irresponsibility for their actions is growing, and the problem of the possibility of misuse is becoming even more important, especially bearing in mind that a person is discharged in cases of inability of the psychiatric commission to prove his/her danger to society. However, despite the fact that the number of NCRMD persons is growing, it is not a way for offenders to escape punishment. The aim of this research paper is to justify why the NCRMD rule is important for the criminal justice system and whether it gives offenders possibility to skip sentencing.

First of all, it is important to determine the portrait of the typical NCRMD person in different provinces. Despite the fact that all Canadian provinces operate under the same Criminal Code, there is a difference in the use of the NCRMD verdict, wherein Quebec has a higher rate of people found NCRMD than British Columbia or Ontario [1]. Most of these verdicts, as was observed by Crocker in “The National Trajectory Project of Individuals Found Not Criminally Responsible on Account of Mental Disorder in Canada. Part 2: The People Behind the Label”, were on cases involving offenses against people, and one third of them were assaults. Aboriginal people who live in Ontario are 3.15 times more likely to be NCRMD-accused than in Quebec and 5.20 times than in British Columbia. The majority (85.1%) of them were males [1].

The introduction of the NCRMD had a great impact on the Canadian Criminal Justice System, as it states the person cannot be responsible for the crime which they committed, if they are suffering from mental illness at the time of committing the crime [2]. Before implementing this rule, everyone went under sentencing in correctional institutions, where they could not receive qualified help, therefore violating the most important purpose of the correction system, namely correcting offenders. However, there may be a probability of misuse of this rule by lawyers. For instance, after some iconic cases, such as Regina v. Swain (1991) and Winko v. BC (1999), David Dunford and Andrew Haag observed in “Alberta Not Criminally Responsible” that the rates of incoming NCRMD people have increased and the rates of absolute discharge have increased as well: “The Winko decision required that the review board must determine that NCRMD persons represent a real risk of physical or psychological harm to the community. Moreover, the Winko decision determined in paragraph 62 that the review board must absolutely discharge the NCRMD person if they “cannot decide whether the NCR accused poses a significant threat to the safety of the public”” [3]. Before this case, people whose level of danger was uncertain had to stay under review of Provincial Boards. Sarah Desmarais states in “A Canadian Example of Insanity Defense Reform: Accused Found Not Criminally Responsible Before and After the Winko Decision” that the number of people whose lawyers asked for a mental review and were absolutely discharged has increased after Winko case [4].

After some trial cases, which have high interest rate from the general public, such as case of Matthew de Groot, who was a serial killer in Calgary who stabbed five persons and was found Not Criminally Responsible, the question about whether government should eliminate this criminal law rule or not, has been raised. And many people have an opinion that “privilege is being above the law” [5]. The main concerns of the majority about NCRMD are the fact that it gives a so-called “Carte Blanche” for skipping detention for those who might otherwise spend years in prisons because of the serious crimes they committed. However, statistically most people with NCRMD spend more time under detention in mental hospitals than regular offenders do in prisons. Sandrine Martin et al. observed in “Not a “Get Out of Jail Free Card”: Comparing the Legal Supervision of Persons Found Not Criminally Responsible on account of Mental Disorder and Convicted Offenders” that on average, NCRMD accused persons received detention dispositions more frequently and had longer periods of detention and supervision than convicted offenders, even taking in mind age, gender, number of offenses, and seriousness of them [6]. However, all NCRMD people are under Review Board commissions and that commissions have to review sentencing for these people at least on a yearly basis [7].

In order to understand whether it is possible to use NCRMD as a defense, knowledge about forensic psychology risk assessment determination process is required. Nowadays, forensic psychiatrists use a different instrument to determine persons danger to society and provide Review Boards and Parole Boards about an accused person’s danger to society [7]. Currently, only a small number of studies have examined the translation of research findings in the clinical assessment of risk for violent behavior. Some clinicians hesitate to use risk assessment tools that they consider too unrelenting. However, such tools are the best way to ensure systematization,

transparency, reliability, and validity [7]. At the same time, Review Boards are responsible, using the information provided by clinicians, for determining the disposition of NCRMD offenders, with the main aim of protecting the public community and respecting the rights of accused individuals as well [8]. However, it is still a major problem when an offender can get absolute discharge if it is impossible to prove his/her danger to the society. This is one of the most important things, which should be changed in the Criminal Code in order to strengthen this rule usage in Canada.

While the role of the NCRMD rule in Canadian Criminal Justice System is by now common knowledge, many groups of people across all Canada try to discuss its fairness and ability to be used as a part of defense tactic. The evidence is clear: to create a truth-based system for NCRMD people, it is important to educate people on how the process operates. With appropriate knowledge, the public will not have wrong beliefs about the fate of NCRMD offenders. Nowadays, we have a system, which represents “black box”, wherein an acquitted person comes and then we cannot trace their fate anymore. In this research paper, the author has described the main aspects of Not Criminally Responsible on Account of Mental Disabilities rule in the Canadian Criminal Justice System, researched its importance for society in general and for accused people in particular. Misuse of the NCRMD rule as a defense, as the majority of the public thinks happens, is not logical, as most of the insane individuals serve longer terms in the special detention units, and absolute discharge for them is not a common case. Although this rule may have some weak elements, cancelation of this rule will have a great negative impact on the Canadian Criminal Justice System. Moreover, lawmakers and clinicians should consider reducing of negative sides and possibilities for misusing this rule, such as absolute discharge in the case, when psychiatrists cannot prove an offender’s danger to society [1; 2].

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