

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR THE PROVINCE OF ONTARIO)**

B E T W E E N :

PAUL CONWAY

Appellant

- and -

**HER MAJESTY THE QUEEN and
PERSON IN CHARGE OF THE CENTRE FOR ADDICTION
AND MENTAL HEALTH**

Respondents

- and -

ONTARIO REVIEW BOARD

Intervener

**FACTUM OF THE INTERVENERS
CRIMINAL LAWYERS ASSOCIATION AND
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PART I: OVERVIEW OF THE FACTS

1. The David Asper Centre for Constitutional Rights (AC) is a part of the University of Toronto, Faculty of Law. Its mission includes the realization of constitutional rights for vulnerable individuals and groups. The Criminal Lawyers' Association of Ontario (CLA) is a non-profit organization comprised of over 1000 criminal defence lawyers practicing in the Province of Ontario with a particular interest in constitutional justice.
2. The CLA/AC accepts the facts as outlined in the Appellant's and Respondents' factums and takes no position where they disagree. CLA/AC relies in particular upon the following facts.
3. The Appellant was found not guilty by reason of insanity for sexual assault with a weapon in 1984. He has been detained for over 25 years and is 55 years of age. He is of mixed Black and Métis heritage.¹ He desires psychotherapy in relation to childhood sexual abuse he suffered.² His behaviour changed after a serious car accident and the Review Board suggested that possible brain injury be investigated.³ He has long resisted treatment by psychotropic drugs and was transferred to CAMH as a result of a treatment impasse. He was confined in the south pod of CAMH, segregated from the unit below, and exposed to very disruptive construction.⁴
4. It is helpful to place the facts of this case in a broader context. A Department of Justice study found that 48.4% of those charged with sexual offences were detained for more than 10 years under Part XX.1 of the Criminal Code and that 70.4% of Aboriginal people were detained for more than 10 years as compared to 21.7% of non-Aboriginal people.⁵

PART II: INTERVENERS' POSITION ON THE QUESTION IN ISSUE

5. Does a Review Board have jurisdiction under Section 24(1) of the *Charter* to find *Charter* violations and provide appropriate and just remedies for them?

¹ Appellant's Factum at para. 4.

² *Ibid.* at para. 16.

³ *Ibid.* at paras. 5, 10.

⁴ *Ibid.* at paras. 23, 26.

⁵ Department of Justice, Research and Statistics Division, *The Review Board Systems in Canada: Overview of Results from the Mentally Disordered Accused Data Collection Study* by Jeff Latimer & Austin Lawrence (Ottawa: Department of Justice Canada) at 33. The study notes that the number of Aboriginal people in the study was small.

- CLA/AC takes the position that the Review Board does have such jurisdiction because its remedial structure supports the idea that the Board has power to apply the *Charter*; the Board has jurisdiction over the subject matter, parties and remedies; the Board has the necessary expertise; and access to courts and other avenues to obtain *Charter* remedies is restricted for NCR detainees.

PART III: ARGUMENT

6. The CLA/AC will argue that Review Boards have the jurisdiction to apply the *Charter* and to order appropriate and just remedies for *Charter* breaches except to the extent that such remedies have been clearly precluded by statute.

The Remedial Structure of the Review Board System: Doing the Work of the *Charter*

7. The critical role of Review Boards in ensuring *Charter* compliance can only be properly understood in historical context. The new Part XX.1 was enacted in response to this Court's judgment in *R. v. Swain*⁶ that the automatic and indeterminate detention of those found not guilty by reason of insanity violated ss.7 and 9 of the *Charter*. The *Criminal Code* at the time only recognized the discretion of provinces to create review boards and the ability of Review Boards to make recommendations to the Lieutenant Governor in Council about appropriate dispositions.⁷ Review Boards had no decision-making powers and their procedures were not governed by statute.⁸ The creation of review boards has been described as “the principal reform accomplished by Part XX.1” and one that constituted a “quiet revolution.”⁹

Jurisdiction to Apply the *Charter*

8. The remedial nature of Part XX.I supports the idea that Review Boards have the power to apply the *Charter*. This Court has repeatedly affirmed the importance of *Charter* considerations with respect to all of the Review Board's decisions.¹⁰ The Respondents in turn recognize the centrality of the *Charter* to the Board's work. Ontario characterizes Part XX.I as a “mini-*Charter*

⁶ [1991] 1 S.C.R. 933 [*Swain*].

⁷ *Criminal Code* R.S.C. 1970 c.,C-34 s.547.

⁸ Janet Leiper, “Cracks in the Façade of Liberty: The Resort to *Habeas Corpus* to Enforce Part XX.1 of the *Criminal Code*” (2009) 55 *Crim. L.Q.* 134 at 139.

⁹ Peter Carver & Cherie Langlois-Klassen, “The Role and Powers of Forensic Psychiatric Review Boards in Canada: Recent Developments” (2006) 14 *Health L.J.* 1 at 1.

¹⁰ *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 S.C.R. 625; *Penetanguishene Mental Health Centre v. Ontario (Attorney General)*, [2004] 1 S.C.R. 498; *Pinet v. St. Thomas Psychiatric Hospital*, [2004] 1 S.C.R. 528 [*Pinet*]; *Mazzei v. British Columbia (Director of Adult Forensic Psychiatric Services)*, [2006] 1 S.C.R. 326 [*Mazzei*].

of Rights”¹¹. The Review Board states that it is “at every stage doing the *Charter*’s business.”¹²

9. Nevertheless, the Respondents paradoxically question whether review boards can actually decide *Charter* questions or issue *Charter* remedies. They raise the spectre that finding *Charter* violations and issuing remedies will turn Review Boards into inefficient fault finding institutions. Such arguments misconceive the nature of *Charter* adjudication and the importance of remedies in making rights meaningful.

10. The determination of a *Charter* violation is not a fault finding exercise. State action generally violates the *Charter* because of its effects on individuals and rights – not because the state or state officials act with unconstitutional or invidious purposes.¹³ This is particularly the case in institutional contexts where the focus will be on systemic violations and discrimination.¹⁴ As in the minority language school cases, the focus in this case is on the behaviour of complex institutions – not the many individuals who work within them.

11. The importance of effective remedies in ensuring that rights are meaningful has long been recognized as a fundamental tenet of our legal system. “To create a right without a remedy is antithetical to one of the purposes of the *Charter*, which surely is to allow Courts to fashion remedies when constitutional infringements occur.”¹⁵ Although the close connection between rights and remedies does not in itself determine that there is s.24(1) jurisdiction in any particular tribunal, it does establish a strong presumption that tribunals such as the Review Board with responsibility for ensuring compliance with the *Charter* should also have the ability to issue *Charter* remedies.¹⁶ Rights without remedies are simply not meaningful.

Section 24(1) Jurisdiction over Subject Matter, Parties and Remedies

12. The functional and structural approach to determining s.24(1) jurisdiction to grant remedies is well-established.¹⁷ The operative question is whether the tribunal has jurisdiction independent of the *Charter* over the subject matter, parties and remedies and whether this jurisdiction is consistent with the tribunal’s function and structure.

¹¹ Respondent Her Majesty The Queen’s Factum at para. 31.

¹² Ontario Review Board Factum at para. 38.

¹³ *Hunter et al. v. Southam, Inc.*, [1984] 2 S.C.R. 145 at 154.

¹⁴ *Doucet-Boudreau v. Nova Scotia (Ministry of Education)*, [2003] 3 S.C.R. 3 [*Doucet-Boudreau*]

¹⁵ *Nelles v. Ontario*, [1989] 2 S.C.R. 170 at para. 50.

¹⁶ *Ontario v. 974649 [Dunedin Construction]*, [2001] 3 S.C.R. 575 at para 82.

¹⁷ *Ibid.*.

13. It is a mistake to rely on principles contained in *Slaight Communications*¹⁸ to avoid the central question posed in this appeal: namely whether the Review Board has jurisdiction to award remedies under s.24(1) of the *Charter*. Under s.24(1) jurisprudence, a conclusion that a particular remedy is within the statutory jurisdiction of the Review Board is supportive of a finding of jurisdiction to award *Charter* remedies. It is not, as it is when s.52(1) remedies might be sought and might not be necessary, a justification for avoiding the constitutional issue. The Court has repeatedly stressed the different functions of ss.24(1) and 52(1).¹⁹ Indeed, the logical implication of Ontario's approach would be that the courts would never find tribunals to have s.24(1) jurisdiction. Either the tribunals would lack the necessary statutory powers and thus not have jurisdiction under the established jurisprudence, or they would have the necessary statutory jurisdiction, making it unnecessary for the court to find s.24(1) jurisdiction. The issue of s.24(1) jurisdiction is squarely raised on this appeal. There is a need to settle this question so that people like the Appellant know where to go for *Charter* remedies.

Subject Matter Jurisdiction

14. The Review Board has subject matter jurisdiction “where they have jurisdiction conferred by statute over the offences and persons and power to make the orders sought”²⁰. In this case, the “offence” relates to detention and treatment under Part XX.1 and the Review Boards have a wide range of powers with respect to the nature of detention and treatment. The Review Board has subject matter jurisdiction to deal with “disputes” that have “the essential character” of relating to a person's detention under Part XX.1.²¹ In this case, the Review Board has jurisdiction over the subject matter of the conditions of the Appellant's continued detention including disputes relating to conditions of confinement and opportunities for treatment. Subject matter should not be defined in such a way that would mean that pre-*Charter* enactments could never confer *Charter* jurisdiction²² or to collapse the distinct roles of ss.24(1) and 52(1).

15. Even if the subject matter jurisdiction is defined, as the Respondents urge, to also require the Review Board to have jurisdiction to apply the *Charter*, the Review Board's remedial role in ensuring *Charter* compliance supports a finding of such subject matter jurisdiction under the

¹⁸ *Slaight Communications, Inc. v. Davidson*, [1989] 1 S.C.R. 1038 [*Slaight Communications*]. See Respondent Her Majesty The Queen's Factum at paras. 17-24, 35-37.

¹⁹ *Schachter v. Canada*, [1992] 2 S.C.R. 679; *R. v. Ferguson*, [2008] 1 S.C.R. 96.

²⁰ *Mills v. The Queen* [1986] 1 S.C.R. 863 at 955.

²¹ *Weber v. Ontario Hydro* [1995] 2 S.C.R. 929 at paras 67, 75

²² *Dunedin Construction, supra*, note 16 at paras 38-39.

Court’s functional and structural approach to s.24(1) jurisdiction.²³

Jurisdiction over the Parties

16. The Review Board has jurisdiction over the parties to the dispute including the Attorney General and CAMH. “All parties agree that the Board has jurisdiction over Mr. Conway...”²⁴

Jurisdiction over the Remedies

17. The majority in the Court of Appeal and the Respondents stress that an absolute discharge should not be available as a remedy in this case. An equation should not be made between the inability of the Parole Board to exclude evidence as was held in *Mooring*²⁵ and the Review Board’s inability to issue an absolute discharge.

18. *Mooring* should be distinguished on the basis that the remedy rejected in that case—exclusion of evidence—could have deprived the parole board of information that was necessary to do its job, while the broad range of s.24(1) remedies would help the Review Boards do their job, one that Parliament has intended would include ensuring compliance with the *Charter*.

19. The CLA/AC accepts that an absolute discharge would be unavailable if release would result in substantial danger while taking no position on whether Mr. Conway does or does not fit that statutory criterion. The CLA/AC submits, however, that the question before this Court is broader and should include a range of issues relating to the treatment options available to Mr. Conway and his conditions of confinement. This broader approach to remedies is mandated by the requirements of the *Charter* in this context. The Board is constitutionally required constantly to assess what is the least intrusive disposition that is consistent with public safety²⁶ even if an absolute or conditional discharge is not appropriate.

20. As CAMH recognizes, the Board “has jurisdiction to order a panoply of conditions pertaining to the detention and treatment of the accused...”²⁷ The vulnerability of detainees and their difficulty in accessing alternative remedies means that it is vital that the Review Board be able to order a wide range of remedies that are necessary to ensure that conditions of confinement satisfy *Charter* standards. In Mr. Conway’s case, this may have included remedies

²³ Court of Appeal’s Reasons for Judgment, at para. 46 (*per* Armstrong J.A.); see also at para. 90 *per* Lang J.A. *Appellant’s Record*, Vol. I, p. 48, 69. See *infra* at paras 8 to 11 of this factum.

²⁴ *Ibid*, at para.39 *per* Armstrong J.A., p.45; Respondent CAMH’s Factum at para.42.

²⁵ *Mooring v. Canada (National Parole Board)*, [1996] 1 S.C.R. 75 [*Mooring*].

²⁶ *Pinet*, *supra* note 10.

²⁷ Respondent CAMH’s Factum at para.96.

in relation to the location of his confinement at CAMH while the disruptive construction was taking place. Although the Review Board cannot order treatment, it can order remedies to ensure appropriate opportunities are available for treatment particularly when required to break a treatment impasse that might see the person detained forever.

The Review Board's Function, Structure and Expertise

21. The Respondents raise a variety of functional concerns about how Review Boards will exercise *Charter* remedial jurisdiction. Concerns about the bifurcation of hearings into *Charter* and non-*Charter* matters discounts the ability of the functional and structural test to ensure that remedies flow from the Board's intended work. Remedies are a flexible process and remedies can be used to prevent *Charter* violations.²⁸ Thus the disposition decisions of the Board could seamlessly blend the discharge of the Board's statutory jurisdiction with the provision of appropriate and just *Charter* remedies. The value added of the *Charter* is that it would be clear to all concerned that the board was discharging its duties to ensure compliance with the *Charter*.

22. The Review Boards are chaired by a judge, retired judge or a person qualified for appointment as a judge. They also include at least two mental health professionals.²⁹ This composition provides the necessary expertise to devise appropriate and just remedies. The Chair of the Review Board will be expert about the limits of the Board's jurisdiction while the medical members of the board will have expertise about the nature of mental illness and the institutions in which applicants for remedies are detained. Should the Board err in interpreting its remedial powers, an appeal on questions of law is available to the Court of Appeal.³⁰

23. Attorneys General may be parties at review board hearings and Review Boards may appoint counsel wherever the interests of justice require.³¹ The definition of parties to Review Board proceedings is broad enough to include those such as the detaining hospital³² to ensure that the Review Board can fashion *Charter* remedies that are both effective and fair towards all relevant parties.³³ The rules of practice for the Ontario Review Board contemplate the giving of notice of

²⁸ *New Brunswick v. G (J)* [1999] 3 S.C.R. 46 at para.51 ; *U.S.A. v. Kwok* [2001] 1 S.C.R. 532 at para. 66

²⁹ *Criminal Code*, R.S.C. 1985, c. C-46, ss. 672.39 & 672.4.

³⁰ *Criminal Code* s.672.72

³¹ *Criminal Code*, R.S.C. 1985, c. C-46, ss. 672.5(3) & (8).

³² *Criminal Code*, R.S.C. 1985, c. C-46, ss. 672.1.

³³ *Doucet-Boudreau*, *supra* note 14; For an example of a case where an administrative tribunal has retained jurisdiction to ensure that an institution complies with the *Charter* see *Ontario v. McKinnon (Ministry of Correctional Facilities)*, [1998] O.H.R.B.I.D. No. 10, *aff'd* 2001 O.J. No. 1016 (Ont. S.C.J.).

Charter issues including requests for *Charter* remedies.³⁴

The Relation Between Statutory and *Charter* Remedies

24. This Court has stressed the breadth of the Review Board’s statutory powers short of ordering treatment. These powers “include the power to require hospital authorities and staff to question and reconsider past or current treatment plans or diagnoses, and explore alternatives which might be more effective and appropriate.”³⁵

25. Despite the 1992 reforms and the seemingly broad statutory powers of the Review Boards, there has been an increase in *habeas corpus* litigation as governments have had difficulties complying with Review Board orders. In a number of cases, *habeas corpus* proceedings have been brought because transfer and other orders by review boards were not promptly observed by hospital authorities.³⁶ These cases suggest that the existing powers of Review Boards need to be supplemented and strengthened by recognition of their s.24(1) jurisdiction.

26. A recognition that Review Boards have jurisdiction to order remedies under s.24(1) of the *Charter* would assist Review Boards in ordering effective and meaningful remedies in a way that was fair to all parties and that was fully informed about systemic problems including those caused by the increased caseloads faced by the Review Boards.

The Need for Efficiency in Review Board Proceedings

27. The Respondents raise concerns that Review Boards will not be as efficient if they have jurisdiction to grant s.24(1) remedies. The Ontario Review Board in particular suggests that the *Charter* is the prime reason why criminal trials take longer and suggests that recognizing *Charter* jurisdiction “would increase the ORB’s workload and thus frustrate Parliament’s intent”.³⁷ The CLA/AC rejects the idea that the *Charter* is the prime cause of trial delay and argues as a matter of principle, that concerns about administrative efficiency should not trump the supreme law of

³⁴ *Schedule A: [Ontario] Review Board Rules of Procedure*, C. Gaz Vol. 136, No. 5 (February 2, 2002), Rules 11-12, online: <http://www.orb.on.ca/english/legal/orb-rules.pdf>.

³⁵ *Mazzei*, *supra*, note 10 at para 31.

³⁶ *J.(D) v. Yukon (Review Board)* 2000 YTSC 513; *Beauchamp v. Penetanguishene Mental Health Centre* (1999) 138 C.C.C. (3d) 172 (Ont.C.A.) at paras 31 and 35 noting delay in transfer that is “clearly unacceptable” In *Pinet v. Penetanguishene Mental Health Centre* (2006) 206 C.C.C. (3d) 116 (Ont.S.C.J.) a declaration was issued but only after five separate judicial proceedings in 14 months with regards to failure to comply with Review Board’s orders at an annual hearing to transfer a long-term detainee under Part XX.I to a medium security institution. In *Orru v. Mental Health Centre* (2004) 126 C.R.R. (2d) 182 (Ont.S.C.J.) a similar transfer to medium security was ordered but only for one individual and after a failure to comply with a Review Board order.

³⁷ Ontario Review Board Factum at para. 51.

the *Charter* and in particular s.7 rights.³⁸

28. Practical criminal trial experience suggests that significant delay and cost occurs when adjudicators do not have the power to make binding rulings and in particular when proceedings are unnecessarily bifurcated into separate proceedings.³⁹ The Respondents' proposed approach would result in such bifurcation by forcing detainees to go to the superior courts, or courts of appeal, to obtain *Charter* remedies. A recognition that Review Boards have s.24(1) jurisdiction will avoid duplicative litigation and allow Review Boards to fashion systemic remedies.

29. It is possible that efficiencies could be achieved and the need for multiple review board hearings eased if it were recognized that Review Boards had the power to make binding orders under s.24(1) of the *Charter* with respect to treatment options and conditions of confinement. Such powers should hopefully alleviate the need for separate and satellite *habeas corpus* proceedings to ensure that the Review Board's decisions are respected by hospital authorities.

Access to Justice: The Need for Accessible *Charter* Remedies from Review Boards

30. Although Mr. Conway has sought remedies in other venues during his over 25 years in custody,⁴⁰ it would be dangerous to assume that other people subject to Part XX.I of the *Criminal Code* would be so resourceful. Since *Swain*, this Court has recognized that mentally ill people in the criminal justice system are a particularly disadvantaged and vulnerable group.⁴¹ The ability of those with severe mental illnesses to engage in self-help and search for alternative remedies outside of the mandated yearly hearings contemplated for Review Boards under the new Part XX.1 should be approached realistically. Just as this Court recognized that it would be illusory to expect accused before provincial courts to go to the superior courts for *Charter*

³⁸ *R v. D.B.* [2008] 2 S.C.R. 3 at para 89.

³⁹ Ontario Ministry of the Attorney General, *Report of the Review of Large and Complex Criminal Case Procedures* by Patrick J. LeSage & Michael Code (Toronto: Ontario Ministry of the Attorney General, 2008) ch. 4. For an example of bifurcation between provincial and superior courts in the mental health context see *R. v. Rosete* 2007 ONCA 590.

⁴⁰ Respondent CAMH's Factum at paras. 22 & 101-105.

⁴¹ "The mentally ill have historically been the subjects of abuse, neglect and discrimination in our society. The stigma of mental illness can be very damaging. The intervenor, C.D.R.C., describes the historical treatment of the mentally ill as follows: 'For centuries, persons with a mental disability have been systemically isolated, segregated from the mainstream of society, devalued, ridiculed, and excluded from participation in ordinary social and political processes.' The above description is, in my view, unfortunately accurate and appears to stem from an irrational fear of the mentally ill in our society" *Swain, supra* note 6 at 973-4; see also at 1035 *per* Wilson, J. See also *Winko, supra* note 10 at para. 37 (quoting Dr. Paul Mullen).

remedies,⁴² so too should it be recognized that those detained under Part XX.1 cannot be expected to do the same to achieve similar results. Fortunately such detainees have mandated yearly access to the Review Boards. Review Boards are the venue for accessible remedies.

31. Those who are detained under Part XX.I should be able to obtain full one stop justice from Review Boards. They should not be expected to pick and choose among alternative venues for remedies often at considerable expense and with the danger of protracted litigation and delay because of claims that they have selected the inappropriate forum.⁴³ This Court has recognized the need to exhaust appropriate administrative procedures as intended by the legislature before making resort to the ordinary courts.⁴⁴ As Lang J.A. recognized, “the reality is that few patients will possess the persistence exhibited by Mr. Conway to pursue *Charter* breaches in a separate forum. To bifurcate the proceedings as suggested could effectively render a *Charter* remedy illusory for all but a few tenacious NCR patients. It would also result in a multiplicity of proceedings with added expense and delay, both financial and emotional.”⁴⁵

32. Accessible *Charter* justice is fundamental to meaningful human rights for this significantly marginalized group in Canadian society. As McLachlin J. (as she then was) stated in her dissent in *Cooper*,⁴⁶ “Many more citizens have their rights determined by these tribunals than by the courts. If the *Charter* is to be meaningful to ordinary people, then it must find its expression in the decisions of these tribunals.” As the Court subsequently recognized, “Human rights remedies must be accessible in order to be effective.”⁴⁷

The Inadequacy of Alternative Remedies

33. Although *habeas corpus* litigation can be important in individual cases and access to the superior courts is constitutionally guaranteed, it is costly and time-consuming. It is also brought before judges who do not have the mental health expertise of the Review Boards. A recent important study has found that “Many NCR accused lacked either representation, or the capacity to bring these unusual applications. Others were fearful of taking an adversarial role against the

⁴² *Dunedin Construction*, *supra*, note 16 at para.82.

⁴³ R. Douglas Elliott, “Eeny, Meeny, Miny, Moe: Choice of Process in Charter Claims” (2006) 21 N.J.C.L. 167.

⁴⁴ *Okwuobi v. Lester B. Pearson School Board*, [2005] 1 S.C.R. 257.

⁴⁵ Court of Appeal’s Reasons for Judgment, *supra* note 23 at para. 100 (*per* Lang J.A.).

⁴⁶ *Bell v. Canada (Canadian Human Rights Commission)*; *Cooper v. Canada (Canadian Human Rights Commission)*, [1996] 3 S.C.R. 854, [1996] 3 S.C.R. 854 at para. 70.

⁴⁷ *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513 at para. 49.

administration of the facility within which they were being housed.”⁴⁸ In addition, reliance on *habeas corpus* litigation has resulted in inequities when officials have provided remedies to avoid such litigation while similarly situated individuals who had not commenced such litigation languished on waiting lists.⁴⁹ Although resort to *habeas corpus* can achieve justice for some individuals, much of this justice will consist of line jumping and fail to achieve systemic reforms. In particular, it may only provide a band aid for increasing case loads and not address systemic problems that may in part stem from a lack of adequate resources in the system.

34. Many of the alternative remedies that are referred to by the Respondents will be dealt with at an informal level without reference to the need to assess *Charter* violations and remedies. Many of the alternative remedies will also be unable to address the broader systemic aspects of *Charter* violations relating to the treatment and conditions of confinement for detainees.

35. CAMH suggests that other alternative remedies would include complaints to human rights commissions and professional colleges.⁵⁰ Such avenues would not only force detainees to engage in a multiplicity of proceedings, but they would not result in meaningful remedies that provide opportunities for treatment and address conditions of confinement. The multiple proceedings undertaken by Mr. Conway can be seen as a sign for the need for one stop shopping with respect to *Charter* remedies. Consistent with the function, structure and remedial role of the Review Boards in ensuring compliance with the *Charter*, such tribunals should have jurisdiction to apply the *Charter* and award appropriate and just remedies under s.24(1) of the *Charter*.

PART IV: SUBMISSIONS REGARDING COSTS

36. The CLA/AC make no request for costs.

PART V: ORDERS SOUGHT

37. The CLA/AC takes no position on the disposition of the appeal.

38. The CLA/AC respectfully seeks permission to present oral argument at the hearing of this appeal.

All of which is respectfully submitted by

⁴⁸ Leiper, *supra* note 8 at 154.

⁴⁹ *Ibid*, at 152-155; *Pinet v. Penetanguishene*, *supra* note 36 at para. 41.

⁵⁰ Respondent CAMH’s Factum at para. 103.

Kent Roach

Cheryl Milne

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Janet Leiper, "Cracks in the Façade of Liberty: The Resort to <i>Habeas Corpus</i> to Enforce Part XX.1 of the Criminal Code" (2009) 55 <i>Crim. L.Q.</i> 134 at 139	7, 33	CLA/AC Book of Authorities	16
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PART VII: STATUTORY PROVISIONS

CHARTER OF RIGHTS AND FREEDOMS

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

CRIMINAL CODE (R.S.C., 1970, c. C-34)

547. (1) The lieutenant governor of a province may appoint a board to review the case of every person in custody in a place in that province by virtue of an order made pursuant to section 545 or subsection 546(1) or (2).

(2) The board referred to in subsection (1) shall consist of not less than three and not more than five members of whom one member shall be designated chairman by the members of the board, if no chairman has been designated by the lieutenant governor.

(3) At least two members of the board shall be duly qualified psychiatrists entitled to engage in the practice of medicine under the laws of the province for which the board is appointed, and at least one member of the board shall be a member of the bar of the province.

(4) Three members of the board of review, at least one of whom is a psychiatrist described in subsection (3) and one of whom is a member of the bar of the province, constitute a quorum of the board.

(5) The board shall review the case of every person referred to in subsection (1)

(a) not later than six months after the making of the order referred to in that subsection relating to that person, and

CHARTRE CANADIENNE DES DROITS ET LIBERTÉS

24. (1) Toute personne, victime de violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.

CODE CRIMINEL (L.R., 1970, CH. C-34)

547. (1) Le lieutenant gouverneur d'une province peut nommer une commission pour examiner le cas de chaque personne qui est sous garde dans un lieu de ladite province en vertu d'une ordonnance rendue en conformité de l'article 545 ou du paragraphe 546(1) ou (2).

(2) La commission mentionnée au paragraphe (1) se compose de trois à cinq membres qui choisissent parmi eux un président lorsque le lieutenant gouverneur n'en a pas désigné.

(3) Au moins deux membres de la commission doivent être des psychiatres dûment qualifiés et autorisés à exercer la médecine en conformité des lois de la province pour laquelle la commission est nommée et un membre au moins de la commission doit appartenir au barreau de la province.

(4) Trois membres de la commission d'examen, dont au moins un psychiatre visé au paragraphe (3) et un membre du barreau de la province, constituent un quorum de la commission.

(5) La commission doit examiner le cas de chaque personne mentionnée au paragraphe (1),

a) au plus tard six mois après qu'a été rendue l'ordonnance visée dans ce paragraphe relativement à cette personne, et

(b) at least once in every twelve month period following the review required pursuant to paragraph (a) so long as the person remains in custody under the order, and forthwith after each review the board shall report to the lieutenant governor setting out fully the results of such review and stating

[. . .]

(d) where the person in custody was found not guilty on account of insanity, whether, in the opinion of the board, that person has recovered and, if so, whether in its opinion it is in the interest of the public and of that person for the lieutenant governor to order that he be discharged absolutely or subject to such conditions as the lieutenant governor may prescribe,

[. . .]

(f) any recommendations that it considers desirable in the interests of recovery of the person to whom such review relates and that are not contrary to the public interest.

(6) In addition to any review required to be made under subsection (5), the board shall review any case referred to in subsection (1) when requested to do so by the lieutenant governor and shall forthwith after such review report to the lieutenant governor in accordance with subsection (5).

(7) For the purposes of a review under this section, the chairman of a board has all the powers that are conferred by sections 4 and 5 of the *Inquiries Act* on commissioners appointed under Part I of that Act.

PART XX.1: MENTAL DISORDER INTERPRETATION

Definitions

672.1 (1) In this Part,

"accused"
« accusé »

b) au moins une fois tous les douze mois après l'examen exigé à l'alinéa a), aussi longtemps que cette personne reste sous garde en vertu de l'ordonnance, et la commission doit, immédiatement après chaque examen, faire un rapport au lieutenant gouverneur énonçant en détail les résultats de cet examen et indiquant,

[. . .]

d) lorsque la personne sous garde a été trouvée non coupable, pour cause d'aliénation mentale, si, de l'avis de la commission, cette personne est rétablie et, dans l'affirmative, si à son avis, il est dans l'intérêt du public et dans l'intérêt de cette personne que le lieutenant gouverneur ordonne qu'elle soit libérée absolument ou sous réserve des conditions que le lieutenant gouverneur peut prescrire,

[. . .]

f) les conclusions qu'elle estime souhaitables afin de réhabiliter la personne dont le cas a été examiné et compatibles avec l'intérêt public.

(6) En plus de tout examen qui doit être effectué en vertu du paragraphe (5), la commission doit examiner tout cas mentionné au paragraphe (1) lorsque le lieutenant gouverneur le lui demande et elle doit, immédiatement après un tel examen, faire rapport au lieutenant gouverneur en conformité du paragraphe (5).

(7) Aux fins de l'examen prévu par le présent article, le président de la commission peut exercer tous les pouvoirs, mentionnés aux articles 4 et 5 de la Loi sur les enquêtes, d'un commissaire nommé en vertu de la Partie I de cette loi.

PARTIE XX.1: TROUBLES MENTAUX DÉFINITIONS

Définitions

672.1 (1) Les définitions qui suivent s'appliquent à la présente partie.

« accusé »
"accused"

"accused" includes a defendant in summary conviction proceedings and an accused in respect of whom a verdict of not criminally responsible on account of mental disorder has been rendered;

"assessment"
« évaluation »

"assessment" means an assessment by a medical practitioner or any other person who has been designated by the Attorney General as being qualified to conduct an assessment of the mental condition of the accused under an assessment order made under section 672.11 or 672.121, and any incidental observation or examination of the accused;

"chairperson"
« président »

"chairperson" includes any alternate that the chairperson of a Review Board may designate to act on the chairperson's behalf;

"court"
« tribunal »

"court" includes a summary conviction court as defined in section 785, a judge, a justice and a judge of the court of appeal as defined in section 673;

"disposition"
« décision »

"disposition" means an order made by a court or Review Board under section 672.54 or an order made by a court under section 672.58;

"dual status offender"
« contrevenant à double statut »

"dual status offender" means an offender who is subject to a sentence of imprisonment in respect of one offence and a custodial disposition under paragraph 672.54(c) in respect of another offence;

« accusé » S'entend notamment d'un défendeur dans des poursuites par voie de procédure sommaire et d'un accusé à l'égard duquel un verdict de non-responsabilité criminelle pour cause de troubles mentaux a été rendu.

« évaluation »
"assessment"

« évaluation » Évaluation de l'état mental d'un accusé par un médecin ou toute autre personne désignée par le procureur général comme qualifiée pour faire l'évaluation de l'état mental de l'accusé en conformité avec une ordonnance d'évaluation rendue en vertu des articles 672.11 ou 672.121, y compris l'observation et l'examen qui s'y rapportent.

« président »
"chairperson"

« président » S'entend également du président-délégué que le président désigne pour le remplacer.

« tribunal »
"court"

« tribunal » S'entend notamment d'une cour des poursuites sommaires au sens de l'article 785, d'un juge, d'un juge de paix et d'un juge de la cour d'appel au sens de l'article 673.

« décision »
"disposition"

« décision » Décision rendue par un tribunal ou une commission d'examen en vertu de l'article 672.54 ou décision rendue par un tribunal en vertu de l'article 672.58.

« contrevenant à double statut »
"dual status offender"

« contrevenant à double statut » Contrevenant qui doit purger une peine d'emprisonnement à l'égard d'une infraction et fait l'objet d'une décision de détention rendue en vertu de l'alinéa 672.54(c) à l'égard d'une autre.

"hospital"
« hôpital »

"hospital" means a place in a province that is designated by the Minister of Health for the province for the custody, treatment or assessment of an accused in respect of whom an assessment order, a disposition or a placement decision is made;

"medical practitioner"
« médecin »

"medical practitioner" means a person who is entitled to practise medicine by the laws of a province;

"party"
« parties »

"party", in relation to proceedings of a court or Review Board to make or review a disposition, means

- (a) the accused,
- (b) the person in charge of the hospital where the accused is detained or is to attend pursuant to an assessment order or a disposition,
- (c) an Attorney General designated by the court or Review Board under subsection 672.5(3),
- (d) any interested person designated by the court or Review Board under subsection 672.5(4), or
- (e) where the disposition is to be made by a court, the prosecutor of the charge against the accused;

"placement decision"
« ordonnance de placement »

"placement decision" means a decision by a Review Board under subsection 672.68(2) as to the place of custody of a dual status offender;

« hôpital »
"hospital"

« hôpital » Lieu d'une province désigné par le ministre de la santé de la province en vue de la garde, du traitement ou de l'évaluation d'un accusé visé par une décision ou une ordonnance d'évaluation ou de placement.

« médecin »
"medical practitioner"

« médecin » Personne autorisée par le droit d'une province à exercer la médecine.

« parties »
"party"

« parties » Les parties au processus de détermination ou de révision de la décision qui doit être prise par un tribunal ou une commission d'examen, c'est-à-dire :

- a) l'accusé;
- b) le responsable de l'hôpital où l'accusé est détenu ou doit se présenter en conformité avec une ordonnance d'évaluation ou une décision;
- c) un procureur général désigné par le tribunal ou la commission d'examen en vertu du paragraphe 672.5(3);
- d) toute autre personne intéressée qui est désignée par le tribunal ou la commission d'examen, en vertu du paragraphe 672.5(4);
- e) le poursuivant responsable de l'accusation portée contre l'accusé lorsque la décision doit être rendue par un tribunal.

« ordonnance de placement »
"placement decision"

« ordonnance de placement » Ordonnance d'une commission d'examen rendue en vertu du paragraphe 672.68(2) portant sur le lieu de détention d'un contrevenant à double statut.

"prescribed"
« Version anglaise seulement »

"prescribed" means prescribed by regulations made by the Governor in Council under section 672.95;

"Review Board"
« commission d'examen »

"Review Board" means the Review Board established or designated for a province pursuant to subsection 672.38(1);

"verdict of not criminally responsible on account of mental disorder"
« verdict de non-responsabilité criminelle pour cause de troubles mentaux »

"verdict of not criminally responsible on account of mental disorder" means a verdict that the accused committed the act or made the omission that formed the basis of the offence with which the accused is charged but is not criminally responsible on account of mental disorder.

Reference

(2) For the purposes of subsections 672.5(3) and (5), paragraph 672.86(1)(b) and subsections 672.86(2) and (2.1), 672.88(2) and 672.89(2), in respect of a territory or proceedings commenced at the instance of the Government of Canada and conducted by or on behalf of that Government, a reference to the Attorney General of a province shall be read as a reference to the Attorney General of Canada. 1991, c. 43, s. 4; 2005, c. 22, s. 1.

Members of Review Board

672.39 A Review Board must have at least one member who is entitled under the laws of a province to practise psychiatry and, where only one member is so entitled, at least one other member must have training and experience in the field of mental health, and be entitled under the laws of a province to practise medicine or psychology.

1991, c. 43, s. 4.

Chairperson of a Review Board

672.4 (1) Subject to subsection (2), the

« commission d'examen »
"Review Board"

« commission d'examen » À l'égard d'une province, la commission d'examen constituée ou désignée en vertu du paragraphe 672.38(1).

« verdict de non-responsabilité criminelle pour cause de troubles mentaux »
"verdict of not criminally responsible on account of mental disorder"

« verdict de non-responsabilité criminelle pour cause de troubles mentaux » Verdict à l'effet que l'accusé a commis l'acte ou l'omission qui a donné lieu à l'accusation mais était atteint de troubles mentaux dégageant sa responsabilité criminelle.

Mention du procureur général d'une province

(2) Pour l'application des paragraphes 672.5(3) et (5), 672.86(1), (2) et (2.1), 672.88(2) et 672.89(2), la mention du procureur général d'une province vaut mention du procureur général du Canada ou de son substitut légitime, dans le cas où il s'agit d'un territoire ou de poursuites engagées à la demande du gouvernement du Canada et menées par ce dernier ou en son nom. 1991, ch. 43, art. 4; 2005, ch. 22, art. 1.

Membres

672.39 Doivent faire partie d'une commission d'examen au moins une personne autorisée par le droit d'une province à exercer la psychiatrie et, s'il n'y a qu'un seul psychiatre, au moins une personne dont la formation et l'expérience relèvent de la santé mentale et qui est autorisée par le droit d'une province à exercer la médecine ou la profession de psychologue.

1991, ch. 43, art. 4.

Président

672.4 (1) Sous réserve du paragraphe

chairperson of a Review Board shall be a judge of the Federal Court or of a superior, district or county court of a province, or a person who is qualified for appointment to, or has retired from, such a judicial office.

Transitional

(2) Where the chairperson of a Review Board that was established before the coming into force of subsection (1) is not a judge or other person referred to therein, the chairperson may continue to act until the expiration of his or her term of office if at least one other member of the Review Board is a judge or other person referred to in subsection (1) or is a member of the bar of the province.

1991, c. 43, s. 4.

Procedure at disposition hearing

672.5 (1) A hearing held by a court or Review Board to make or review a disposition in respect of an accused shall be held in accordance with this section.

Hearing to be informal

(2) The hearing may be conducted in as informal a manner as is appropriate in the circumstances.

Attorneys General may be parties

(3) On application, the court or Review Board shall designate as a party the Attorney General of the province where the disposition is to be made and, where an accused is transferred from another province, the Attorney General of the province from which the accused is transferred.

Interested person may be a party

(4) The court or Review Board may designate as a party any person who has a substantial interest in protecting the interests of the accused, if the court or Review Board is of the opinion that it is just to do so.

Notice of hearing

(5) Notice of the hearing shall be given

(2), le président de la commission d'examen d'une province est un juge — ou un juge à la retraite — de la cour fédérale, d'une cour supérieure d'une province ou d'une cour de district ou de comté ou une personne qui remplit les conditions de nomination à un tel poste.

Disposition transitoire

(2) Le président de la commission d'examen d'une province constituée avant l'entrée en vigueur du présent article qui ne satisfait pas aux exigences du paragraphe (1) peut continuer à exercer ses fonctions jusqu'à la fin de son mandat si au moins un membre de la commission d'examen est un membre du barreau de la province ou une personne visée au paragraphe (1).

1991, ch. 43, art. 4.

Procédure lors de l'audience

672.5 (1) Les règles qui suivent s'appliquent à l'audience que tient un tribunal ou une commission d'examen en vue de déterminer la décision qui devrait être prise à l'égard d'un accusé.

Audience informelle

(2) L'audience peut être aussi informelle que possible, compte tenu des circonstances.

Statut de partie des procureurs généraux

(3) Le tribunal ou la commission d'examen est tenu d'accorder le statut de partie au procureur général de la province où se tient l'audience et, dans le cas d'un transfèrement interprovincial, à celui de la province d'origine, s'ils en font la demande.

Statut de partie des intéressés

(4) S'il est d'avis que la justice l'exige, le tribunal ou la commission d'examen peut accorder le statut de partie à toute personne qui possède un intérêt substantiel dans les procédures afin de protéger les intérêts de l'accusé.

Avis d'audience

(5) Un avis de l'audience est donné à

to the parties, the Attorney General of the province where the disposition is to be made and, where the accused is transferred to another province, the Attorney General of the province from which the accused is transferred, within the time and in the manner prescribed, or within the time and in the manner fixed by the rules of the court or Review Board.

Notice

(5.1) At the victim's request, notice of the hearing and of the relevant provisions of the Act shall be given to the victim within the time and in the manner fixed by the rules of the court or Review Board.

Order excluding the public

(6) Where the court or Review Board considers it to be in the best interests of the accused and not contrary to the public interest, the court or Review Board may order the public or any members of the public to be excluded from the hearing or any part of the hearing.

Right to counsel

(7) The accused or any other party has the right to be represented by counsel.

Assigning counsel

(8) If an accused is not represented by counsel, the court or Review Board shall, either before or at the time of the hearing, assign counsel to act for any accused

(a) who has been found unfit to stand trial; or

(b) wherever the interests of justice so require.

Counsel fees and disbursements

(8.1) Where counsel is assigned pursuant to subsection (8) and legal aid is not granted to the accused pursuant to a provincial legal aid program, the fees and disbursements of counsel shall be paid by the Attorney General to the extent that the accused is unable to pay them.

Taxation of fees and disbursements

toutes les parties et au procureur général de la province où elle se tient ainsi que, en cas de transfèrement interprovincial, au procureur général de la province d'origine dans le délai et de la façon réglementaires ou prévus par les règles du tribunal ou de la commission.

Avis

(5.1) Un avis de l'audience et les dispositions de cette loi pertinentes aux victimes seront donnés à la victime, lorsque celle-ci en fait la demande, dans le délai et de la manière prévus par les règles du tribunal ou de la commission d'examen.

Huis clos

(6) L'audience peut, en totalité ou en partie, avoir lieu à huis clos si le tribunal ou la commission d'examen considère que cela est dans l'intérêt de l'accusé et n'est pas contraire à l'intérêt public.

Droit à un avocat

(7) L'accusé et toutes les parties ont le droit d'être représentés par avocat.

Avocat d'office

(8) Si l'intérêt de la justice l'exige ou lorsque l'accusé a été déclaré inapte à subir son procès, le tribunal ou la commission d'examen est tenu, dans le cas où l'accusé n'est pas représenté par avocat, de lui en désigner un, avant l'audience ou au moment de celle-ci.

Honoraires et dépenses

(8.1) Dans le cas où l'accusé ne bénéficie pas de l'aide juridique prévue par un régime provincial, le procureur général en cause paie les honoraires et les dépenses de l'avocat désigné au titre du paragraphe (8) dans la mesure où l'accusé ne peut les payer lui-même.

Taxation des honoraires et des dépenses

(8.2) Where counsel and the Attorney General cannot agree on the fees or disbursements of counsel, the Attorney General or the counsel may apply to the registrar of the court and the registrar may tax the disputed fees and disbursements.

Right of accused to be present

(9) Subject to subsection (10), the accused has the right to be present during the whole of the hearing.

Removal or absence of accused

(10) The court or the chairperson of the Review Board may

(a) permit the accused to be absent during the whole or any part of the hearing on such conditions as the court or chairperson considers proper; or

(b) cause the accused to be removed and barred from re-entry for the whole or any part of the hearing

(i) where the accused interrupts the hearing so that to continue in the presence of the accused would not be feasible,

(ii) on being satisfied that failure to do so would likely endanger the life or safety of another person or would seriously impair the treatment or recovery of the accused, or

(iii) in order to hear, in the absence of the accused, evidence, oral or written submissions, or the cross-examination of any witness concerning whether grounds exist for removing the accused pursuant to subparagraph (ii).

Rights of parties at hearing

(11) Any party may adduce evidence, make oral or written submissions, call witnesses and cross-examine any witness called by any other party and, on application, cross-examine any person who made an assessment report that was submitted to the court or Review Board in writing.

Request to compel attendance of witnesses

(12) A party may not compel the attendance of witnesses, but may request the court or the chairperson of the Review Board to do so.

(8.2) Dans le cas de l'application du paragraphe (8.1), le registraire peut, sur demande du procureur général ou de l'avocat, taxer les honoraires et les dépenses de l'avocat si le procureur général et ce dernier ne s'entendent pas sur leur montant.

Présence de l'accusé

(9) Sous réserve du paragraphe (10), l'accusé a le droit d'être présent durant toute l'audience.

Exclusion ou absence de l'accusé

(10) Le tribunal ou le président de la commission peut :

a) permettre à l'accusé d'être absent pendant la totalité ou une partie de l'audience aux conditions qu'il juge indiquées;

b) exclure l'accusé pendant la totalité ou une partie de l'audience dans les cas suivants :

(i) l'accusé se conduit mal en interrompant les procédures au point qu'il serait difficilement réalisable de les continuer en sa présence,

(ii) le tribunal ou le président est convaincu que sa présence pourrait mettre en danger la vie ou la sécurité d'un tiers ou avoir un effet préjudiciable sur le traitement ou la guérison de l'accusé,

(iii) pour entendre des éléments de preuve, faire des observations, oralement ou par écrit, ou contre-interroger des témoins, afin de pouvoir décider des questions visées au sous-alinéa (ii).

Droits des parties à l'audience

(11) Toute partie peut présenter des éléments de preuve, faire des observations, oralement ou par écrit, appeler des témoins et contre-interroger les témoins que les autres parties ont appelés et, si un rapport d'évaluation a été présenté par écrit au tribunal ou à la commission d'examen, peut après en avoir demandé l'autorisation en contre-interroger l'auteur.

Témoins

(12) Une partie ne peut ordonner la présence d'un témoin à l'audience mais peut demander au tribunal ou au président de la commission de le faire.

Video links

(13) Where the accused so agrees, the court or the chairperson of the Review Board may permit the accused to appear by closed-circuit television or any other means that allow the court or Review Board and the accused to engage in simultaneous visual and oral communication, for any part of the hearing.

Adjournment

(13.1) The Review Board may adjourn the hearing for a period not exceeding thirty days if necessary for the purpose of ensuring that relevant information is available to permit it to make or review a disposition or for any other sufficient reason.

Determination of mental condition of the accused

(13.2) On receiving an assessment report, the court or Review Board shall determine whether, since the last time the disposition in respect of the accused was made or reviewed there has been any change in the mental condition of the accused that may provide grounds for the discharge of the accused under paragraph 672.54(a) or (b) and, if there has been such a change, the court or Review Board shall notify every victim of the offence that they are entitled to file a statement in accordance with subsection (14).

Victim impact statement

(14) A victim of the offence may prepare and file with the court or Review Board a written statement describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

Copy of statement

(15) The court or Review Board shall ensure that a copy of any statement filed in accordance with subsection (14) is provided to the accused or counsel for the accused, and the prosecutor, as soon as practicable after a verdict of not criminally responsible on account of mental disorder is rendered in respect of the offence.

Presentation of victim statement

(15.1) The court or Review Board shall,

Télécomparution

(13) Le tribunal ou le président de la commission d'examen peut, si l'accusé y consent, autoriser l'accusé à être présent par télévision en circuit fermé ou par tout autre moyen permettant au tribunal ou à la commission et à l'accusé de se voir et de communiquer simultanément durant toute partie de l'audience.

Ajournement

(13.1) La commission d'examen peut ajourner l'audience pour une période maximale de trente jours afin de s'assurer qu'elle possède les renseignements nécessaires pour lui permettre de rendre une décision ou pour tout autre motif valable.

Détermination de l'état mental de l'accusé

(13.2) Le tribunal ou la commission d'examen qui reçoit un rapport d'évaluation détermine si, depuis la date de la décision rendue à l'égard de l'accusé ou de sa dernière révision, l'état mental de celui-ci a subi un changement pouvant justifier sa libération aux termes des alinéas 672.54a) ou b); le cas échéant, le tribunal ou la commission d'examen avise chacune des victimes de son droit de déposer une déclaration aux termes du paragraphe (14).

Déclaration de la victime

(14) La victime peut rédiger et déposer auprès du tribunal ou de la commission d'examen une déclaration écrite qui décrit les dommages ou les pertes qui lui ont été causés par la perpétration de l'infraction.

Copie de la déclaration

(15) Dans les meilleurs délais possible suivant le verdict de non-responsabilité criminelle pour cause de troubles mentaux, le tribunal ou la commission d'examen veille à ce qu'une copie de la déclaration déposée conformément au paragraphe (14) soit fournie au poursuivant et à l'accusé ou son avocat.

Présentation de la déclaration de la victime

(15.1) Si la victime en fait la demande, le

at the request of a victim, permit the victim to read a statement prepared and filed in accordance with subsection (14), or to present the statement in any other manner that the court or Review Board considers appropriate, unless the court or Review Board is of the opinion that the reading or presentation of the statement would interfere with the proper administration of justice.

Inquiry by court or Review Board

(15.2) The court or Review Board shall, as soon as practicable after a verdict of not criminally responsible on account of mental disorder is rendered in respect of an offence and before making a disposition under section 672.45 or 672.47, inquire of the prosecutor or a victim of the offence, or any person representing a victim of the offence, whether the victim has been advised of the opportunity to prepare a statement referred to in subsection (14).

Adjournment

(15.3) On application of the prosecutor or a victim or of its own motion, the court or Review Board may adjourn the hearing held under section 672.45 or 672.47 to permit the victim to prepare a statement referred to in subsection (14) if the court or Review Board is satisfied that the adjournment would not interfere with the proper administration of justice.

Definition of "victim"

(16) In subsections (14) and (15.1) to (15.3), "victim" has the same meaning as in subsection 722(4).

1991, c. 43, s. 4; 1997, c. 18, s. 84; 1999, c. 25, s. 11(Preamble); 2005, c. 22, ss. 16, 42(F).

Appeals

Grounds for appeal

672.72 (1) Any party may appeal against a disposition made by a court or a Review Board, or a placement decision made by a Review Board, to the court of appeal of the province where the disposition or placement decision was made on any ground of appeal that raises a question of law or fact alone or of mixed law and fact.

Limitation period for appeal

tribunal ou la commission d'examen lui permet de lire la déclaration rédigée et déposée conformément au paragraphe (14) ou d'en faire la présentation de toute autre façon qu'il juge indiquée, sauf s'il est d'avis que cette mesure nuirait à la bonne administration de la justice.

Obligation de s'enquérir

(15.2) Dans les meilleurs délais possible suivant le verdict de non-responsabilité criminelle pour cause de troubles mentaux et avant de rendre une décision en conformité avec les articles 672.45 ou 672.47, le tribunal ou la commission d'examen est tenu de s'enquérir auprès du poursuivant ou de la victime — ou de toute personne la représentant — si la victime a été informée de la possibilité de rédiger une déclaration au titre du paragraphe (14).

Ajournement

(15.3) Le tribunal ou la commission d'examen peut s'il est convaincu que cela ne nuira pas à la bonne administration de la justice, de sa propre initiative ou à la demande de la victime ou du poursuivant, ajourner l'audience visée aux articles 672.45 ou 672.47 pour permettre à la victime de rédiger sa déclaration.

Définition de « victime »

(16) Aux paragraphes (14) et (15.1) à (15.3), « victime » s'entend au sens du paragraphe 722(4).

1991, ch. 43, art. 4; 1997, ch. 18, art. 84; 1999, ch. 25, art. 11(préambule); 2005, ch. 22, art. 16 et 42(F).

Appels

Motifs d'appel

672.72 (1) Toute partie aux procédures peut interjeter appel à la cour d'appel de la province où elles sont rendues d'une décision d'un tribunal ou d'une commission d'examen, ou d'une ordonnance de placement rendue par cette dernière pour tout motif de droit, de fait ou mixte de droit et de fait.

Délai d'appel

(2) An appellant shall give notice of an appeal against a disposition or placement decision in the manner directed by the applicable rules of court within fifteen days after the day on which the appellant receives a copy of the placement decision or disposition and the reasons for it or within any further time that the court of appeal, or a judge of that court, may direct.

Appeal to be heard expeditiously

(3) The court of appeal shall hear an appeal against a disposition or placement decision in or out of the regular sessions of the court, as soon as practicable after the day on which the notice of appeal is given, within any period that may be fixed by the court of appeal, a judge of the court of appeal, or the rules of that court.

1991, c. 43, s. 4; 1997, c. 18, s. 88.

(2) L'appelant doit donner un avis d'appel, de la façon prévue par les règles de la cour d'appel, dans les quinze jours suivant la date à laquelle il a reçu une copie de la décision ou de l'ordonnance dont appel et des motifs ou dans le délai supérieur que la cour d'appel ou l'un de ses juges fixe.

Priorité de l'appel

(3) L'appel visé au paragraphe (1) est entendu dans les meilleurs délais possible suivant la remise de l'avis d'appel — pendant une session de la cour d'appel ou non — dans le délai que fixe la cour d'appel ou un juge de celle-ci ou que prévoient les règles de la cour.

1991, ch. 43, art. 4; 1997, ch. 18, art. 88.

ONTARIO REVIEW BOARD RULES OF PROCEDURE

11. Where the constitutional validity or constitutional applicability of a provision of the *Criminal Code* is being challenged by a party, that party shall provide notice of this intention to all parties, the Attorney General of Canada, the Attorney General of Ontario, and the Review Board no less than fifteen working days before an "annual" hearing and without delay before any "other" hearing. The notice shall state concisely the section which is said to be unconstitutional or *ultra vires*, a brief statement of the argument to be made, and the citation of any cases which are relied upon for support of the argument.
12. Where the constitutional rights and freedoms of an accused are alleged by any party to have been violated and a remedy is being sought, that party shall provide notice of its intention to make such argument to all parties and the Review Board no less than 15 working days before an "annual" hearing and without delay before any "other" hearing. The notice shall state concisely the nature of the alleged violation and remedy sought, a brief statement of the argument to be made, and the citation of any cases which are relied upon for support of the argument.