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INFORMATION RELEASE

For Immediate Release

The Consequences of Bill C-54, the “Not Criminally Responsible Reform Act”

Ottawa, ON, April 18, 2013—On February 8 the federal government introduced Bill C-54, known as the Not Criminally Responsible Reform Act. The stated purpose of the Bill is to increase public safety and focus on the needs of victims. The Canadian Psychiatric Association, in consultation with members of the Canadian Academy of Psychiatry and the Law, has examined the proposed amendments and concludes that the not criminally responsible (NCR) provisions of the criminal code are functioning well and do not need major reform.

Supporting Victims

The CPA supports the victim notification components of the Bill as these are in line with a criminal justice system that is more responsive to the requests of victims. The CPA cautions that the notification requirements, and the accompanying need to track and communicate with victims, are likely to increase the demand on justice resources. The requirements are also likely to cause procedural slowdowns and tie up NCR mental health beds and services as transitions out of hospital and into the community are delayed. CPA encourages the government to go further in addressing victim needs by adopting additional victim supports and restorative justice approaches. Alternative supports are important as many victims do not wish to remain engaged in the offender’s release process, experiencing it as a revictimization.

The High-risk Accused Category

The CPA recommends against creating a “high-risk accused” category. The Association is not aware of any evidence that demonstrates that the current NCR policies put the public at undue risk. Rather, the available evidence suggests that the recidivism rate of NCR accused is five to six times lower than persons found criminally responsible and managed by the regular corrections system. The implementation of a high-risk category is unlikely to achieve its goal of increased public safety but will be a substantial drain on resources, pulling scarce forensic resources away from treating patients and into the courts.

The high-risk category also introduces a quality of punishment or retribution into the NCR system by reinforcing detention and taking away the valuable therapeutic tools such as escorted community passes. This decoupling of therapeutic progress from increased freedoms may disrupt the therapeutic nature of the psychiatrist-patient relationship and cause patients to become frustrated and less engaged in their therapy, paradoxically, increasing public risk.

If the government wishes to proceed with creating a high-risk category, CPA proposes three changes to the legislation.

- Remove brutality of the offence as a criterion for a high-risk designation. This is not evidence-based. Whereas past behaviour helps inform risk, brutality does not.
- Permit escorted community passes for therapeutic purposes for those in the high-risk category.
- Remove the 36-month review period option.

Vulnerability to Charter Challenges

The CPA cautions that some of the wording changes proposed by Bill C-54 are vulnerable to Charter challenges and expensive litigation. For example, the current law requires courts and Review Boards to make dispositions that, while taking into consideration the need to protect the public, are the “least onerous and least restrictive” to the accused. This phrase is replaced with “necessary and appropriate in the circumstances” which runs counter to the Supreme Court’s endorsement of the wording “least onerous and least restrictive” and will take some time to define.

Unintended Consequences on Stigma and Public Safety

The new legislation risks two major unintended consequences: increased stigma and decreased public safety.

The rhetoric surrounding this legislation heightens the stigma of mental illness especially in relation to violent acts by people with serious mental illness. There is no evidence of a rising risk to public safety and Bill C-54 seeks to label people high-risk who may not be. At a time when there are major national campaigns to open conversations about mental health and the Mental Health Commission of Canada strives to reduce stigma, this is unfortunate.

The combined effect of the “high-risk” category and the changes in wording to the criminal code will make the NCR defence for someone with a mental illness much less attractive, paradoxically leading to decreased public safety. Individuals will be much more likely to plead guilty and keep quiet about their mental health needs. This means more people with serious mental illness will enter into prison and persons who go to prison instead of hospital will now reoffend at a five to six times higher rate than if they had been made NCR. While it is difficult to predict the effect of policy changes, the evidence supports this as a highly likely outcome.

An Alternative Approach to Increase Public Safety

CPA suggests that instead of creating a high-risk category, public safety could be improved by removing summary offences from the NCR regime. This would allow the NCR services to be more focused and specialized to treat truly higher-risk persons. Currently, a significant subpopulation of persons on minor charges such as public order offences, failure to comply and theft under \$5000—known as summary offences— can be made NCR. They should be diverted and provincial general mental health care and civil commitment laws enacted to meet their needs.

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The Canadian Psychiatric Association is the national voice for Canada’s 4,100 psychiatrists and more than 600 psychiatric residents. Founded in 1951, the CPA is dedicated to promoting an environment that fosters excellence in the provision of clinical care, education and research.

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