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**François Lareau  
25 July 2011**

## **APPENDIX "CODE-8"**

### **BRIEF TO THE HOUSE OF COMMONS STANDING COMMITTEE ON JUSTICE AND THE SOLICITOR GENERAL**

**RE: Proposed Revisions for Automatism as Contained in the Draft,  
"Toward a New General Part for the Criminal Code of Canada"**

**Submitted by:  
The Canadian Psychiatric Association  
Ottawa  
November 5, 1992**

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**The Canadian Psychiatric Association's Response to the Provisions on Automatism as Contained in the Draft, "Toward a New General Part for the Criminal Code of Canada"**

Prepared by Drs. Maralyn MacKay and Nizar Ladha, September 1992

The Canadian Psychiatric Association (CPA), on behalf of its 2400 members, welcomes the opportunity to contribute to the discussion on the draft document "Toward a New General Part for the Criminal Code of Canada". The CPA is pleased to offer comment on the revision of those parts of the Criminal Code which govern the arrangements our society provides for persons both mentally ill and in conflict with the law, specifically those which pertain to the concept of automatism.

CPA wishes to address the concept of automatism as outlined in "Toward a New General Part for the Criminal Code of Canada", and we offer a list of our concerns and the recommendations which arise out of these concerns.

The recommendations below incorporate the following assumptions:

- 1) With respect to automatism the law historically has been influenced by the Cartesian mind/body dichotomy.

In this model functional illness roughly correlates with diseases of the mind; organic illnesses with diseases of the brain (body).

Organic mental disorders are defined as those disorders which are causally related to demonstrable pathology.

Functional mental disorders are defined as those disorders in which there is no demonstrable pathology.

- 2) With modern technology this distinction is disappearing. The ability to produce scans which reflect cellular function and which allow visualization of anatomical features of the living brain of small and smaller dimensions makes it possible to identify abnormalities in brain structure and function in illness previously identified as functional. For example, CT scans of brain show increased ventricular size in schizophrenia. PET scans identify patterns of glucose utilization which differ in schizophrenia, depression and the normal brain. Sophisticated biochemical markers offer the promise to identify illnesses previously considered "functional" as "organic".

As this continues the brain/mind distinction and the functional/organic distinction become less useful and incorrect.

- 3) The recent amendments use the term "mental disorder". This is meant to replace what was defined in law as disease of the mind. Mental disorder includes broad categories in current psychiatric classification systems, one of which is organic mental disorder.

Mind, when defined in the metaphysical sense or on the basis of where it resides or what it looks like, appears to be an abstract concept. However, when the mind is defined functionally, that is from the perspective of what it does, then it becomes clear that the mind is a physical, practical and demonstrable entity. The mind thinks, it has feelings, it has memory, it has judgements, it creates gestures and directs behaviour and it has awareness of the function of the human person and the person's surroundings. Therefore, when the mind is conceptualized in terms of what it does, it becomes at once a practical, demonstrable, biological system of the human person. This system is intimately tied with other systems of the human body such as the endocrine system, the cardiovascular system, the respiratory system and indeed all systems in the body.

Hypoglycaemia, hypo or hyperthyroidism, which are disturbances of the endocrine system can cause disturbances of the function of the brain which can lead to mental disorders and abnormal behaviours which may be against the law. Such mental disorders are termed organic mental disorders in the modern psychiatric classification of disorders. The fact that the original dysfunction such as hypoglycaemia was outside the brain only points to the cause of the mental disorders; it nevertheless is an organic mental disorder caused by a disturbance in the body of enough severity to affect the function of the mind. There are conditions of hypoglycaemia of mild form that are not sufficient to cause disturbance of mental functions.

Temporal lobe epilepsy sometimes known as partial complex seizures, is another example. During an epileptic seizure, called the ictal state, or during a period immediately following the seizure, called the post ictal state, a person may behave in an abnormal and illegal way. This behaviour is not independent of the person's mind. It is as a result of organic disorder of the mind affected by electrical disturbances in the brain which can be demonstrated on EEG (Electroencephalograph). The body therefore, is functioning with a disordered brain and mind in command, and not independently of the brain and mind.

In dementia, such as Alzheimer's disease, memory and judgement are affected, as they are in somebody suffering from stroke, as they may be in somebody who has pneumonia. The infection of pneumonia can lead to an organic mental disorder in a susceptible person.

Sleepwalking and somnambulism is also a disorder demonstrable by EEG. All the illnesses cited above are physical illnesses which cause organic mental disorders and are likely to recur or be permanent. All require careful psychiatric and medical monitoring.

- 4) Automatism assumes the dichotomy of mind and body. When it is said that the accused functions as an automaton, it is meant that the body acts independently and separately from the mind. Such an assumption is erroneous. The behaviour and the function of the body is always governed by the mind, whether normal or disordered.

The concept of automatism, based on a factor 'external' to the mind affecting the mind, can not be supported.

- 5) The difficulties with the concept of automatism include:
- A) We currently understand disturbances in behaviour/emotion/cognition to reflect altered brain function - whether the cause is a blow to the head, carbon monoxide poisoning, brain tumour, stroke, schizophrenia, etc. All are mental disorders.
  - B) Some behaviour disturbances included in automatism, for example somnambulism, have been demystified by medical science. The sleep laboratory EEG is abnormal in somnambulists, hence the behaviour becomes a result of altered brain physiology and not a mystical experience.
  - C) Some causes of disturbance in behaviour/emotion/cognition which by case law have been included in automatism have potential for recurrence.
  - D) The distinction between sane and insane automatism has come to be only meaningful in a legal sense. Behaviours classified in law as sane and insane automatism are the result of identifiable mental disorders.

- E) The use of the term 'dissociative state' in law differs significantly from current psychiatric nomenclature.

Dissociative states in current psychiatric nomenclature include:

- 1) highway hypnosis;
- 2) multiple personality disorder;
- 3) psychogenic fugue;
- 4) somnambulism.

In these states the body does not function independently of the brain but operates as a result of a mental disorder. The dissociative states caused by an external factor such as hypoglycaemia are mental disorders. Such disorders may be discreet and short lived but may have a potential for recurrence.

### RECOMMENDATIONS

- 1) The illnesses that are thought to cause automatism are mental disorders. They should fall under the present legal definition of mental disorder and be dealt with under the new law governing mentally disordered offenders. This law allows the flexibility of disposition of the accused as appropriate.
- 2) The concept of automatism has no place in law; it should be abolished.