

## Case Study: Winko v. BC 1999 CanLII 694 SCC

### Case Study: Winko v. BC

As the case is 95 pages in length, it is not included in this binder. Direct your students to the CANLII website ([www.canlii.org](http://www.canlii.org)) to search for Winko v. British Columbia (Forensic Psychiatric Institute). Divide your class in to several groups of 3 to 4 students each. Distribute the instruction and question sheet, included in this binder, to your students as a group homework assignment.

This 1999 case highlights the issue of Criminal Responsibility and has been cited in over 100 cases since. The enclosed assignment was developed with the Law 12 curriculum in mind.

Due to the length of the document, ask your students to focus on the following pages: 2 – 9 and 18 – 19 (paragraphs 10 and 12). Section 672.54 of the *Criminal Code* is highlighted in the document, but the *Code* is not required to answer the questions. An answer sheet for the questions is included in this binder for your reference.

CANLII Search information:

Winko v. British Columbia (Forensic Psychiatric Institute), 1999 CanLII 694  
(S.C.C.) — 1999-06-17  
Canada — Supreme Court of Canada

After the students complete the homework assignment, have a class discussion about Criminal Responsibility and those deemed Not Criminally Responsible (NCR) due to Mental Illness.

## Winko v. BC

### Student Handout

Go to [www.canlii.org](http://www.canlii.org)

In the “statue name/ case name/ citation/ docket number” search box, enter the following search parameters:

Winko v. British Columbia (Forensic Psychiatric Institute), 1999

Click “Search”. Then click on the title of the document to download it.

Please read the Supreme Court of Canada ruling on pages 2 – 9 of the document, as well as paragraphs 10 and 12 of the BC Court of Appeal ruling on pages 18 – 19. Section 672.54 of the *Criminal Code* may also be helpful to you, although it is not necessary to have the *Code* on hand to do this assignment. All of the answers can be found in the *Winko v. British Columbia (Forensic Psychiatric Institute)* document.

On a separate sheet of paper, answer the following questions:

1. When is a person deemed to be Not Criminally Responsible (NCR)?
2. According to the introductory of Section 672.54 of the *Criminal Code*, what is the Court or Review Board required to consider in cases involving persons with Mental Illness?
3. When would a NCR accused receive an absolute discharge?
4. What is considered a “significant threat to the safety of the public”?
5. If the Court or Review Board finds the accused *is* a significant threat to the safety of the public, what are its two alternatives?
6. What replaces a sentence for a NCR accused? What section of the *Charter of Rights and Freedoms* allows for this restriction on liberty?
7. The Review Board ruled 2 to 1 that Mr. Winko should receive a conditional discharge, not an absolute discharge. Why?
8. Why did Dr. Marcus, one of the Review Board panel members, vote in favour of an absolute discharge?

Be prepared to discuss your answers in class.

## Winko v. BC

### Case Study Answers

**Q1: When is a person deemed to be Not Criminally Responsible (NCR)?**

A: No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong. (page 19)

**Q2: According to the introductory of Section 672.54 of the *Criminal Code*, what is the Court or Review Board required to consider in cases involving persons with Mental Illness?**

A: The introductory part of s. 672.54 requires the court or Review Board to consider the need to protect the public from dangerous persons, together with the mental condition of the accused, his or her reintegration into society, and his or her other needs. (page 3, 4)

**Q3: When would a NCR accused receive an absolute discharge?**

A: Under s. 672.54(a), the court or Review Board must direct that the accused be discharged absolutely if it is of the opinion that “the accused is not a significant threat to the safety of the public”. (page 3)

Also: If the court or Review Board fails to conclude positively that the NCR accused is dangerous, it must grant an absolute discharge. (page 8)

**Q4: What is considered a “significant threat to the safety of the public”?**

A: A “significant threat to the safety of the public” means a real risk of physical or psychological harm to members of the public that is serious in the sense of going beyond the merely trivial or annoying. The conduct giving rise to the harm must be criminal in nature. (page 4)

**Q5: If the Court or Review Board finds the accused is a significant threat to the safety of the public, what are its two alternatives?**

A: If the court or Review Board concludes that the NCR accused is a significant threat to the safety of the public, it has two alternatives. It may order that the NCR accused be discharged subject to the conditions the court or Review Board considers necessary, or it may direct that the NCR accused be detained in custody in a hospital, again subject to appropriate conditions. (page 5)

**Q6: What replaces a sentence for a NCR accused? What section of the *Charter of Rights and Freedoms* allows for this restriction on liberty?**

A: The sentence is replaced by the least onerous and restrictive disposition to the NCR accused which is appropriate to protect the public against NCR accused who are dangerous persons.

Section 7 of the *Charter* allows for such a measured restriction on liberty in the interest of the public. (page 9)

**Q7: The Review Board ruled 2 to 1 that Mr. Winko should receive a conditional discharge, not an absolute discharge. Why?**

A: The majority expressed the opinion that Mr. Winko could become a significant risk to public safety in “certain circumstances”, and suggested that a conditional discharge was consistent with the British Columbia Court of Appeal’s decision in *Orlowski v. British Columbia*. (page 18)

**Q8: Why did Dr. Marcus, one of the Review Board panel members, vote in favour of an absolute discharge?**

A: Dr. Marcus, noting the absence of any evidence that Mr. Winko had been a danger to anyone since the index offence, concluded that there was “no indication . . . that he would relapse and continue to be or again commit an act which one could call a significant threat”. (page 19)