

AN INVESTIGATION OF COMPETENCY TO PARTICIPATE IN
LEGAL PROCEEDINGS IN CANADA

by

Karen E. Whittemore

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Approval

NAME: Karen Eileen Whittemore
DEGREE: Master of Arts (Psychology)
TITLE OF THESIS: An Investigation of Competency to Participate in
Legal Proceedings in Canada

EXAMINING COMMITTEE:

Chair: Janet Strayer, Ph. D.
Professor

James R. P. Oglloff, J.D., Ph.D.
Senior Supervisor

Ronald Roesch, Ph.D.
Professor

Stephen D. Hart, Ph.D.
Associate Professor

Margaret Jackson, Ph.D.
External Examiner
School of Criminology
Simon Fraser University

Date Approved: Oct 30/95

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Author: _____

(signature)

Karen Eileen Whitemore

(name)

(date)

Abstract

Case law and Charter jurisprudence indicate that different legal questions arise at each juncture of criminal proceedings. These legal questions may tax unique cognitive abilities of the accused, and require separate consideration by legal decision makers. Evaluations of competency centre around an individual's ability to do a variety of different acts, thus, a determination of competency requires an assessment of the specific tasks that an individual may be asked to perform. As such, competency assessments should vary depending on the stage of criminal proceedings. In this study, fitness to stand trial, competency to plead guilty, and competency to understand Charter cautions were assessed to determine if the level of competency varies across these domains. To assess these issues, the Fitness Interview Test-Revised (FIT-R) and the Test of Charter Comprehension (ToCC) were administered to a group of individuals held on remand for fitness evaluations. Additionally, several questions from the FIT-R, addressing the ability to make a guilty plea, were assessed separately and constituted an individual measure of competency to plead guilty. As predicted, the results indicated that the fact that an individual is competent at one juncture in the criminal proceedings does not mean that the individual necessarily is competent at all other stages of the proceedings. These findings suggest a need for a stage specific approach to forensic competency assessments, requiring specialized instruments designed to assess the legal issues of competency at the various stages of legal proceedings.

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An Investigation of Competency to Participate in Legal Proceedings in Canada

Competency¹ determinations pervade many aspects of both civil and criminal law. Evaluations of competency centre around an individual's ability or capacity to perform a variety of different acts (Miller & Germain, 1986; Ogloff, Wallace, & Otto, 1991, Whittemore & Ogloff, 1994), thus, a determination of competency requires an assessment of the type of acts the individual may be asked to perform. As such, it has been argued that competency reports should focus on specific abilities of the individual as opposed to offering a global opinion on competency in general (Miller & Germain, 1986; Roesch, Ogloff, & Golding, 1993). In both civil and criminal Canadian law however, this objective has not been achieved.

In civil law it has been argued that the concepts of mental incompetency are vague and that a standard definition is lacking (Gordon & Verdun-Jones, 1992; Kline, 1987; Silberfeld, 1990). Competency has been viewed as a global construct in which a finding of incompetence relies on a "total loss of ability" (Silberfeld, 1991). Medical practitioners are called upon to conduct competency assessments; however, given the lack of clear, objective standards used to define incompetence, the procedures used to assess this issue remain inconsistent and questionable .

¹The term "competency" is used primarily in the United States while "fitness" is used in Canada. These two terms will be used interchangeably throughout the paper.

As a result of such dissatisfaction with the current evaluation procedures, many practitioners are calling for the notion of limited competency. This notion is based on the assumption that a determination of competency depends on the decision to be made (Silberfeld, 1991). It is argued that competency assessments should be aimed toward specific abilities determined by the questions that are at issue (Applebaum & Grisso, 1995; Silberfeld, 1990). As a result, clinicians evaluating an individual's ability to make treatment decisions will ask different questions than clinicians assessing an individual's ability to manage financial affairs.

In Criminal law, as in civil law, mental health professionals are called upon to conduct competency evaluations. Evaluators in the past have, however, appeared uninformed of the specific legal criteria required for such decisions (R. v. Gibbons, 1946; Bukatman, Foy, & Degrazia, 1971; Webster, Menzies, & Jackson, 1982). As a result, many evaluators have arrived at their own methods for assessing competency questions. These assessments often focused on an individual's global mental impairment, sometimes with little attempt to relate such impairment to the legal questions involved (Hess & Thomas, 1963; Grisso, 1986; McGarry, 1965; Melton, Petrila, Poythress, & Slobogin, 1987; Roesch, 1979; Roesch & Golding, 1980).

Mental illness cannot be equated, necessarily, with incompetence. Indeed, an individual who is mentally ill may be competent at some stages of criminal proceedings, and may be incompetent at other stages. Individuals are

expected to perform specific tasks at various junctures of criminal proceedings. As such, competency assessments require an evaluation of the specific abilities related to the tasks defendants may be required to perform at a particular stage of the proceedings. Thus, a finding of incompetence is dependent on the particular stage of proceedings that the accused is facing. For example, competency to confess requires different legal abilities than fitness to stand trial. Fitness to stand trial determinations require an assessment of the individual's ability to understand the nature or object of the proceedings, the possible consequences of the proceedings, and to communicate with counsel (Criminal Code, s. 2). Alternatively, determinations of competency to confess require an assessment of the accused's understanding of their section 10 Charter cautions, (e.g. the right to retain and instruct counsel). Thus, determinations of fitness to stand trial and competency to understand Charter cautions requires an evaluation of the accused's understanding of very different issues. It is therefore possible that an individual may be unable to understand some of these issues and not others.

Given the complexity of assessing an accused's competency, it is important that the assessment measure satisfies several requirements. First, the instrument should distinguish between the various competency issues, such as fitness to stand trial, competency to understand Charter cautions, and competency to plead guilty. Second, it should distinguish competency from other legal issues such as criminal responsibility. Third, the instrument should

differentiate competency from other mental health problems, such as psychosis. Finally, because competency, as outlined above, is a legal issue, it is important that the measure used to assess competency parallels and measures the abilities set out in the current law or legal standard. Given this final requirement, it is expected that instruments designed to measure competency may differ from one jurisdiction to the next, as the legal criteria vary across jurisdictions. For example, instruments that have been designed for assessing competency to stand trial in the United States are not necessarily applicable in Canada because the legal criteria for competency to stand trial differ between these two jurisdictions. Because competency is recognized as a distinct issue at various stages of legal proceedings, several instruments have been developed to help clinicians assess the various competency issues (see Grisso, 1986; Rogers & Mitchell, 1991 for a review).

In the United States, the legal system has, to some extent, recognized the specific nature of competency as it arises at various junctures in criminal proceedings. As such, competency has been discussed throughout seven stages of the system: competency to waive Miranda rights and confess, competency to plead guilty, competency to stand trial, competency to waive counsel, competency to refuse an insanity defence, competency to be sentenced, and competency to be executed (Ogloff et al., 1991). Recently however, the distinction between competency to plead and competency to stand trial has been threatened by the Supreme Court (Godinez v. Moran,

1993).

Alternatively, a look at Canadian legal standards suggest that many of the distinct competency questions are not clearly recognized. Section 672.23(1) of the Criminal Code of Canada states that:

Where the court has reasonable grounds, at any stage of the proceedings before a verdict is rendered, to believe that the accused is unfit to stand trial, the court may direct, of its own motion or on application of the accused or the prosecutor, that the issue of fitness of the accused be tried [emphasis added].

Thus, many competency issues are not treated as distinct but rather are included under the issue of fitness to stand trial.

Instruments for assessing competency at various stages of legal proceedings have been lacking in Canada. Until recently, the Fitness Interview Test (FIT; Roesch, Webster, & Eaves, 1984), which has now been revised (FIT-R; Roesch, Webster, & Eaves, 1994) was the only instrument available for assessing competency in Canada. Recently, however, the Test of Charter Comprehension (ToCC; Ogloff & Olley, 1992) has been developed in an attempt to assess an individual's competency to understand their Charter cautions. These two assessment instruments will be described in more detail in the methods section.

Although the standards by which an individual may be found incompetent at various stages of criminal proceedings have not been clearly specified in the

Criminal Code, case law does discuss the circumstances under which individuals have been found incompetent. The remainder of the introduction will attempt to delineate the legal standards for the various competency issues as they appear in Canadian case law.

Competency to Confess

Analogous to the United States, Canadian case law suggests that competency to confess and waive section 10² rights has long been recognized as a distinct issue (Ibrahim v. The King, 1914). Reference to judicial decisions suggests that two elements are vital in determining whether an individual is competent to confess: 1) an understanding of the rights he or she is being read (Clarkson v. the Queen, 1986; R. v. Evans, 1991; R. v. Stewart, 1972; R. v. Yensen, 1961), and 2) a specific understanding of the consequences of making a statement (Clarkson v. The Queen, 1986; Horvath v. The Queen, 1979; R. v. Evans, 1991; R. v. Drewicki, 1963; R. v. Washer, 1947). Mental illness may prevent someone from performing these functions, however, so too may intoxication (R. v. Deslauriers, 1980; R. v. Drewicki, 1963) or difficulties with the English language (R. v. Lim, 1990). Mental illness is neither necessary nor sufficient for a finding of competency to confess.

In R. v. Whittle (1994), the second element (understanding the

²Everyone has the right on arrest or detention: 1. to be informed promptly of the reasons therefor; 2. to retain and instruct counsel without delay and to be informed of that right; and 3. to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

consequences of making a statement) of the competency to confess criteria was challenged. The question placed before the Supreme Court of Canada was whether "there is any justification for requiring a higher standard of cognitive capacity in making the choices inherent in the confessions rule, the right to silence and the right to counsel than in respect to fitness to stand trial" (p. 40). In determining the degree of cognitive capacity that is required for the competency to confess test, the Supreme Court held that the operating mind test requires that the individual understands what he or she is saying when making a confession, and that the evidence he or she is providing may be used against the accused in court. It does not require that the choice made by the accused be in his or her own best interest. As such, the standard for competency to confess is the same as that for fitness to stand trial - one of "limited cognitive capacity" (p. 55). Thus, the Supreme Court in the Whittle case attempted to delineate the degree of cognitive capacity required for understanding the consequences.

In rendering his judgement, Lacourciere J. A. further indicated that competency in exercising the right to counsel does not require a higher standard than fitness to stand trial. That is,

If an accused is competent to choose a lawyer, instruct the lawyer, decide how to plead, decide to discharge the lawyer and conduct his or her own defence, decide to give or not to give evidence, how can we say that he or she is incompetent to decide whether to seek the assistance

of counsel during the investigation (R. v. Whittle, 1994, p. 53).

Lacourciere J. A. appears to be questioning whether competency to confess is a separate issue from that of fitness to stand trial. This question might be addressed by determining if there are in fact any individuals fit for trial who appear incompetent to confess according to the specific legal criteria required for each competency question.

Recently, the Test of Charter Comprehension (ToCC; Ogloff & Olley, 1992) has been developed in an effort to evaluate an individual's understanding of their Charter cautions. In a study conducted by Olley (1993), it was found that performance on the ToCC was significantly related to education and IQ. Furthermore, increased exposure to the law was not significantly related to higher performance on the ToCC. The ToCC measures one component of competency to confess, the understanding of Charter cautions, but it does not assess the second component, an individual's ability to understand the consequences of making a statement. The ToCC, however, represents the first attempt in Canada to evaluate whether an individual is competent to confess.

The law requires that an individual understand the Charter cautions he or she is read at the time of the arrest. An understanding of the cautions is vital because at this stage of the proceedings the accused does not have a lawyer present to assist him or her in deciding whether to make a confession. Furthermore, the consequences of making a confession typically result in a conviction. Given these implications, it is important to determine that the

individual making a statement is competent to do so.

Competency to Plead Guilty

Aside from competency to confess, other competency issues are combined together under the issue of fitness to stand trial according to the Criminal Code. For example, the Code does not treat competency to plead guilty as a separate issue; however, there appears to be some recent attempts by Canadian courts to outline specific standards required for determining whether an individual is competent to plead guilty. In R. v. Rubenstein (1987) the Ontario Court of Appeal judge ruled on the accused's application to have his plea withdrawn. In reaching his decision, the judge concluded that there was no evidence indicating "that the appellant did not fully understand the charge he faced or that his plea was equivocal" (p. 94). As such, the appeal was dismissed.

A review of the literature identifies several specific abilities necessary to be found competent to plead guilty. Several researchers have suggested that accused demonstrate an understanding of the elements of the charge they are facing (Melton et al., 1987; Rogers & Mitchell, 1991; Watson, 1991), and the consequences associated with the offence to which they are pleading guilty (Melton et al., 1987). Additionally, individuals making a guilty plea should have an understanding of the pleas, and their reasons for making a plea of guilty (Melton et al., 1987; Whitehead, 1983). Finally, defendants should understand the consequences of making such a plea (Melton et al., 1987).

While these issues may be evaluated in a fitness assessment, they would only constitute a small part of that assessment. As such, it is possible that the individual may demonstrate a lack of understanding of the charges or the pleas and still be found fit to stand trial. Indeed, according to the criteria laid down in the Criminal Code, the accused is not specifically required to understand the charges, the pleas, or the consequences of making a guilty plea, in order to be found fit to stand trial. While some mental health professionals may determine that an inability to understand these three issues may render someone unfit, there is no requirement that these criteria be applied in a fitness decision.

In the United States, some courts have ruled that competency to plead should not be subsumed under competency to stand trial because the former requires greater abilities than the latter (see Ogloff et al., 1991). Recently however, in a 1993 United States Supreme Court ruling, the Court held that the standard for competency to plead guilty is the same as the standard for competency to stand trial (Godinez v. Moran, 1993). The Court relied on the Dusky criteria which involves a finding that the accused "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and a "rational as well as factual understanding of the proceedings against him" (Dusky v. United States, 1960, p. 402).

The decision tends to raise more questions than it answers, and is subject to more than one interpretation (Applebaum, 1993). Furthermore, the

standard differs from the Canadian criteria. Indeed, the United States standard for competency to stand trial may be a higher standard than the one applied in Canada in that it requires a "rational" and "factual" understanding by the defendant. The standard that has been applied in Canada is one of "limited cognitive capacity" (R. v. Taylor, 1992, p. 567), which appears to be a lower standard than that which is identified in the United States. The elements outlined in the Godinez case are not contained in the Canadian criteria for fitness (as outlined below), and as such, the Godinez case may have little relevance for Canadian law.

A plea of guilty results in a conviction without trial. Given the consequences, it is important to ensure that the person making the plea is competent to do so, which suggests the need to address this issue more specifically.

Fitness to Stand Trial

In the past, the standard for determining fitness to stand trial has remained far from clear. In 1992, after years of criticism regarding the vague criteria laid out in the Criminal Code, a definition was established. Unfitness is now defined as follows:

"unfit to stand trial" means unable on account of mental disorder to conduct a defence at any stage of the proceedings before a verdict is rendered or to instruct counsel to do so, and, in particular, unable on account of mental disorder to: (a) understand the nature or object of the

proceedings, (b) understand the possible consequences of the proceedings, or (c) communicate with counsel (Criminal Code of Canada, section 2, 1992).

Following the introduction of this standard into the Code, case law has defined more specifically the elements required for determining the accused's ability to communicate with counsel. In R. v. Taylor (1992), the court held that the test to be applied in determining this issue is one of "limited cognitive capacity" (p. 567). In adopting this standard the court rejected the criterion that the accused have the ability to act in his or her own best interest. This latter criterion was rejected on the grounds that it was too strict a test.

It is clear from this definition that a finding of fitness to stand trial requires that the individual be suffering from a mental disorder. Mental illness, however, is necessary but not sufficient for a finding of unfitness. The definition of fitness has come a long way in providing clinicians with more distinct guidelines that may aid in the evaluation of fitness. In addition, the standards provided in case law go one step further in delineating the specific criteria required, at least in regard to the ability to communicate with counsel. In time, case law may provide more specific standards for the other two components of fitness.

The Fitness Interview Test (FIT; Roesch, Webster, & Eaves, 1984) was established as an instrument designed to measure fitness to stand trial in Canada. Although the FIT was established prior to the 1992 addition to the

Criminal Code, it appears to address the three legal elements required for a finding of fitness. Recently, however, the FIT has been revised to more closely parallel these changes (FIT-R; Roesch, Webster, & Eaves, 1994).

Given the specific abilities required at various junctures of criminal proceedings, we are left to question whether or not there is a need for competency to be addressed at each juncture of criminal proceedings? A look at the specific issues involved at each stage of the proceedings would suggest that there is such a need. To answer this question with some degree of certainty, an individual's level of competence at each stage needs to be assessed. If it is determined that an individual is found competent at one phase of the proceedings but is found incompetent at other phases, this would indicate a need for a stage specific approach to competency assessments, requiring specialized instruments designed to assess the legal issues of competency at the various stages of legal proceedings.

Rationale and Hypotheses

There has been no attempt to evaluate clinically and compare distinct competency issues in Canada. Previously, clinicians called upon to assess competency have focused on mental health issues, ignoring the legal components of such issues. As such, the specific legal tasks often have not been addressed (Hess & Thomas, 1963; McGarry, 1965; Roesch, 1979; Roesch & Golding, 1980). When legal issues are addressed, the primary focus has been on the legal issues related to fitness to stand trial. The functional

capacities required to be found "fit" or "competent" however, will differ depending on the stage of legal proceedings (Whittemore & Ogloff, 1994). As such, it seems that there is a need for a stage specific approach to competency assessments.

The proposed study attempts to assess three areas of competency: competency to confess, competency to plead guilty and fitness to stand trial, to determine if competency varies across these domains. Given the varying nature of the functional capacities required at each stage of the proceedings it is hypothesized that each individual may be competent at one stage of the proceedings but incompetent at other stages. More specifically, because fitness to stand trial and competency to plead guilty require an individual to perform similar abilities, it is hypothesized that competency to plead and fitness to stand trial are more likely to co-occur than either competency to confess and fitness to stand trial or, competency to confess and competency to plead guilty.

As stated previously, mental health professionals requested to conduct competency assessments typically are called upon to determine whether an individual is fit to stand trial. As such, the focus is on the legal issues required for a finding of fitness, and other competency questions, such as competency to confess and competency to plead guilty are not likely to be addressed. A question that arises is whether an instrument such as the FIT-R can be used to predict other competency issues. This issue will be addressed by analyzing the predictive efficiency of the FIT-R, to determine if the FIT-R can predict

competency to confess and competency to plead guilty. It is hypothesized that the FIT-R will be a better predictor of competency to plead than competency to confess.

Method

Participants

Participants in this study included 80 men remanded to the Forensic Psychiatric Institute (FPI) in British Columbia for fitness evaluations. The FPI is a 174-bed secure psychiatric hospital for the pretrial and presentence remand and detention of mentally disordered offenders. File data was not available for three individuals, and one participant requested that we not obtain any file information from him (although some of the demographic information was obtained in the interview session and this information was included in the analyses), so the following results are based on a sample of 76 or 77 individuals. The average age of participants was 34 years, ranging from 18 to 68 (See Table 1). The majority of participants were caucasian (n=48, 63.2%), and most were single (n=41, 53.2%). Most participants had completed either grade 11 or 12 (n=28, 36.4%) and were unemployed (n=51, 67.1%) upon remand. Table 1 also describes the characteristics of individuals who did not agree to participate in the study. The differences between these two groups will be discussed in the results section.

Criminal Characteristics. In order to assess criminal characteristics, the offence that each individual committed upon admission to the FPI was recorded

and reclassified into one of three categories: crimes against a person (e.g., murder, assault, and threatening); crimes against property (e.g., mischief, arson, and possession of stolen property); and drug, alcohol or miscellaneous offences comprised the third category (e.g., possession of narcotics, impaired driving, and failure to appear). As a result of this reclassification, each individual would be regrouped into at least one of these categories, depending on the number of charges that each possessed.

An analysis of the type of crime the individual had committed revealed that 51 participants (67.1%) had committed a crime against a person, 34 participants (44.7%) had committed a crime against property, and 24 participants (31.6%) had committed a drug or alcohol related offence or a miscellaneous offence (see Table 2). Most participants had a previous criminal history (n=58, 76.3%), and almost half of the individuals had spent some time in prison (n=34, 44.7%).

Mental Health Characteristics. To assess mental health characteristics the diagnoses that each individual received from the psychiatrist were reclassified into five categories: psychotic disorders (e.g., schizophrenia), non-psychotic major mental illnesses (e.g., major depression), non-psychotic minor mental illnesses (e.g., personality disorders), alcohol use disorders (alcohol abuse or dependence), and substance use disorders (e.g., cocaine abuse or dependence). Given this coding scheme each individual could fall into more than one category.

An investigation of the diagnosis that the participants received by the psychiatrist indicated that 32 individuals (42.7%) had been diagnosed with a psychotic disorder, 9 (12%) had been diagnosed with a non-psychotic major mental illness, 21 (28%) had been diagnosed with a non-psychotic minor mental illness, 20 (26.7%) had been diagnosed with an alcohol use disorder, and 31 (41.3%) had been diagnosed with a substance use disorder (See Table 3). Most of the participants had previous contact with mental health services (n=65, 85.5%), and most had at least one previous hospitalization (n=53, 69.7%). Additionally, many participants were certified under the British Columbia Mental Health Act during their stay at the FPI (n=32, 42.1%).

When reviewing the psychiatrists' reports regarding the fitness assessment several outcomes were noted. The psychiatrists' ratings originally were coded into one of 5 categories: unfit, fit, not mentioned, fit but fragile³, and unable to assess. These categories were then reclassified into a fit and unfit group. A review of the file data indicated that psychiatrists were often unable to assess individuals who were severely mentally disturbed. As such, those individuals who the psychiatrists were unable to assess were grouped together with the unfit group. Those whose fitness was not mentioned and those found to be fit but fragile were grouped with the fit individuals. The

³"Fit but fragile" or "marginally fit" are informal terms used by mental health professionals to refer to an individual who is currently fit but may become unfit as time passes.

results of this classification scheme indicated that only three individuals (3.9%) who participated in the study were believed to be unfit by the psychiatrist, while 73 (96.1%) were believed to be fit to stand trial.

Procedure

All individuals remanded to FPI for fitness assessments between October 11, 1994 and September 30, 1995 were approached and invited to take part in the study. Those individuals who consented to the study (Appendix A) were then administered two subtests of the WAIS-R (vocabulary and block design), followed by the ToCC (Appendix B), FIT-R, and the Structure Clinical Interview for DSM-III-R--Patient Edition (SCID-P; Spitzer, Williams, Gibbon, & First, 1990). Each individual was also assessed to determine if he met the criteria for Antisocial Personality Disorder (APD) according to the revised third edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-III-R; APA, 1987). The competency to plead measure (CoP; Appendix C) was also completed for each individual. The ToCC, FIT-R, CoP, and SCID-P results were used for this study, and will be described in more detail below.

Following the administration of the instruments, individuals were debriefed and questions were answered. They were paid five dollars for completing the interview. The procedure lasted approximately three hours.

Three examiners conducted the interviews. These individuals were forensic psychology graduate students trained in both administration and

scoring of each measure. Each measure was scored by the examiner who conducted the interview, with the exception of the CoP which was completed by the author.

File information was collected on all individuals who were remanded for fitness assessments between October 11, 1994 and September 30, 1995. The information collected from the files for each individual is outlined in Appendix D. These data provided a comparison of the individuals who agreed to participate in the study with those who did not agree to participate.

Materials

The Test of Charter Comprehension (ToCC).

The ToCC (Ogloff & Olley, 1992; Appendix B) is made up of three subtests. The first subtest is made up of five statements taken directly from the Charter cautions. The participant is shown a card with each statement written on it, and the statement is read aloud to the participant. The individual is then asked to report what the statement means in his or her own words. For each statement, the individual is given a score of 0, indicating a lack of understanding; 1 indicating partial understanding; or 2 indicating complete understanding. On this subtest an individual may receive a maximum score of 10.

In the second subtest, the individual is shown each of the same five statements he or she was shown in part one of the test, and two additional

statements for each of the five original phrases. The individual is then asked whether the second statement means the same or something different from the first statement. The individual is given a score of 0 or 1 for each response, for a maximum of 10 points for this subtest.

The third subtest consists of 10 words contained in the Charter cautions. The word is shown to the individual on a card, and the word is read aloud and used in a sentence. The individual is then asked to define the word. For each statement, the individual is given a score of 0, indicating a lack of understanding; 1 indicating partial understanding; or 2 indicating complete understanding, for a maximum score of 20 points.

The ToCC scores are then summed for a maximum score of 40. The ToCC was designed as a tool for obtaining a general understanding of an individual's level of competency. It was not designed to differentiate those individuals who are, or who are not, competent to understand Charter cautions. For the purposes of this study, though, this type of categorization was necessary.

The ToCC breaks up the Charter cautions into five individual statements. Specific knowledge of each Charter caution is required in order to fully understand the cautions, or to be found competent to understand the Charter cautions. That is, a lack of understanding of at least one statement (caution) could make an individual incompetent. If an individual demonstrated a high

level of knowledge on all the cautions except for one (e.g., did not understand that upon arrest you have the right to call a lawyer) then that individual could receive a high score on the ToCC but be found incompetent to understand their Charter cautions. On the basis of this information, a scoring procedure was developed.

In part 1 of the ToCC the Charter cautions are broken up into five individual statements, each statement representing one caution. An understanding of each statement would indicate that the individual is competent to understand his or her Charter cautions. In R. v. Whittle (1994) the court ruled that the standard for competence to understand Charter cautions is one of "limited cognitive capacity" (p. 55). Given this standard, it was decided that if an individual scored a 1 (indicating partial understanding) or 2 (indicating complete understanding) on each item in part 1 of the ToCC that individual would be competent. If an individual received a score of 0 on any item in part 1 then further enquiry was conducted.

Olley (1993) indicated that items on the ToCC could be regrouped into five major components (Appendix E). Each item in part 1 represents one major component, and the related items in parts 2 and 3 were regrouped into one of these components (Olley, 1993). These five subscores were used for scoring the ToCC in the present study. If an individual scored a 0 on any item in part 1 then their scores on the related items in parts 2 and 3 were assessed. If an

individual scored a 0 on all of the related items then that individual would be found incompetent. Alternatively, if an individual obtained a score of 1 on each related component in part 2 (as this is the highest score an individual can achieve for this section) and a 2 on each related component in part 3 then that individual would be found competent to understand Charter cautions. Finally, if an individual received a mixture of 0's and 1's on the related items in part 2, and/or a mixture of 0's, 1's and 2's on related items in part 3 then the rater would have to make a judgement on whether the participant was competent or incompetent. At this point, the basic task of the rater was to determine where they lost points in part 1, and to then determine if they demonstrated sufficient understanding on related items in parts 2 and 3.

As stated previously, reference to judicial decisions suggests that two elements are important in determining whether an individual is competent to confess. The ToCC assesses the first element, an individual's understanding of the rights he or she is being read, but does not assess the second element, the individual's ability to appreciate the consequences of making a statement. In R. v. Whittle (1994) the Supreme Court ruled that in addition to understanding the Charter rights an individual must be able to comprehend that the evidence they provide to police may be used against them in court. No greater ability is required. In order to obtain a more complete measure of competency to confess, a question contained in the FIT-R assessing the consequences of

making a statement, was assessed in conjunction with the results of the ToCC. If an individual was unable to understand the consequences of making a statement (that is, they received a score of 0 indicating a lack of understanding), they would be found incompetent to confess regardless of their score on the ToCC. Preliminary analysis revealed that there were no individuals who were competent to understand the Charter cautions but incompetent to understand the consequences of making a statement, so the ToCC score alone was used to assess competency to confess.

The Fitness Interview Test - Revised (FIT-R).

The FIT-R (Roesch et al., 1994) is composed of three sections. The first section is designed to evaluate an individual's understanding of the nature and object of the proceedings. As such, it assesses the individual's understanding of the following components: the arrest process, the nature and severity of the current charges, the role of key players in the court, the key issues in legal processes, possible pleas and their consequences, and court procedure.

The second section is designed to evaluate an individual's ability to communicate with counsel. This section assesses the individual's capacity to: communicate facts to the lawyer, relate to the lawyer, plan a legal strategy, engage in their own defence, challenge prosecution witnesses, testify relevantly, and manage courtroom behaviour.

The third section assesses the individual's ability to understand the

possible consequences of the proceedings. The questions in this section evaluate the individual's appreciation of the range and nature of possible penalties, their awareness of possible legal defences, and their perception of the most likely outcome.

Once each of the three legal sections is evaluated, the interviewer conducts an overall assessment of fitness to stand trial. The first task is for the interviewer to determine whether the individual has a mental disorder as defined in case law. For the purposes of this study, this determination was made with the results of the SCID-P. Second, the interviewer determines if the individual was impaired on any one of the three legal sections of the FIT-R. If the individual was currently suffering from a mental disorder as defined by the SCID-P, and was unable to understand the nature or object of the proceedings, the possible consequences of the proceedings, or communicate with counsel, then the individual was found unfit to stand trial. According to section 2 of the Criminal Code, in order for an individual to be found unfit, the mental disorder must cause impairment of the legal abilities. Because the FIT-R is designed to be a screening instrument, however, these two issues (mental disorder, and impairment on the legal standards) are assessed separately. If an individual was diagnosed as suffering from a mental disorder and was impaired on at least one of the three legal standards then that individual would be found unfit. It would then be up to the psychiatrist to determine whether the mental disorder

accounted for the impairment on the legal standard.

The Structured Clinical Interview for DSM-III-R (SCID-P).

The SCID-P was used to determine whether the individual had previously suffered from, or was currently suffering from a major mental illness. More specifically, participants were assessed to determine if they suffered from a mood disorder, psychotic disorder, and/or a psychoactive substance use disorder.

The Competency to Plead measure (CoP).

Several items from the FIT-R, addressing an individual's ability to make a guilty plea, were assessed separately and constituted a separate measure of competency to plead guilty (CoP; see Appendix C). The questions were chosen based on reviews by Melton et al. (1987), Rogers and Mitchell (1991), Watson (1991) and Whitehead (1983). The CoP is made up of three sections. The first section assesses an individual's understanding of the charges. The second section evaluates an individual's understanding of the pleas and their reasons for pleading guilty. The third section assesses an individual's understanding of the consequences of pleading guilty. Similar to the procedure used with the FIT-R, if the individual is currently suffering from a major mental disorder and is unable to understand any one of these issues then that individual would be found unfit to plead.

Interrater Reliability of the ToCC

As stated previously, the ToCC was designed to obtain a general understanding of an individual's level of competency to understand Charter. cautions, it was not designed to differentiate those individuals who are competent from those who are incompetent. Because this type of classification was necessary for this study, and may be necessary in practice, a new scoring procedure was developed. To assess the reliability of this scoring system, a second rater, who was trained in the administration and scoring of the ToCC, re-scored the ToCC for each individual according to the new scoring procedures. The kappa value obtained was .85. This value demonstrates excellent interrater reliability.

Results

Participants were first compared with non-participants to determine the differences that existed between these two groups. Second, three 2 X 2 chi square analyses were employed to determine if competencies vary at different junctures in criminal proceedings. The first analysis was designed to determine if competency to confess to Charter cautions was independent of fitness to stand trial; the second analysis assessed whether competency to plead guilty was independent of fitness to stand trial; the third analysis assessed whether competency to confess to Charter cautions was independent of competency to plead guilty. To look more specifically at individual variations in competencies, a profile analysis was then presented. Finally, chi square analyses were used to determine the predictive efficiency of the FIT-R. The analyses performed using the competency to plead guilty measure were based on a sample of 76 individuals, as information was not obtained for four individuals on the CoP. All other analyses used a sample of 80 individuals.

Comparison of Participants and Non-participants

To determine the representativeness of the sample, participants were compared to non-participants who were remanded during the same time period (see Table 1). The participants did not differ significantly from the non-participants on any of the demographic characteristics including age, ethnic group, marital status, employment status and level of education.

In regards to the legal characteristics of the sample, again no significant differences were found (see Table 2). Participants and non participants were equally likely to have committed a crime against a person, a property offence or a drug, alcohol, or miscellaneous offence. Additionally, participants did not differ from non-participants on the presence of previous criminal history or previous time spent in prison.

A comparison of participants and non-participants on mental health characteristics revealed four differences. First, participants were more likely to be diagnosed with a substance use disorder ($n=31$, 41.3%) than non participants ($n=43$, 26.9%), $\chi^2 (1, N = 235) = 4.95, p < .05$ (see Table 3). Second, participants were less likely to be diagnosed with a psychotic disorder by the psychiatrist ($n=32$, 42.7%) than those who did not participate ($n=95$, 59.4%), $\chi^2 (1, N = 235) = 5.74, p < .05$. Third, participants were less likely to be certified under the Mental Health Act ($n=32$, 42.1%) than non-participants ($n=91$, 56.9%), $\chi^2 (1, N = 236) = 4.50, p < .05$. Fourth, participants were less likely to be found unfit by the psychiatrists ($n=3$, 3.9%) than non-participants ($n=23$, 14.5%), $\chi^2 (1, N = 235) = 5.78, p < .05$. These differences may be explained by the fact that it was difficult for the interviewers to obtain informed consent from individuals who were severely mentally disordered. In fact, a number of individuals who did not appear to understand the nature of the study, were not permitted to take part. It is possible that these individuals, of whom

the interviewers could not obtain informed consent, were diagnosed with a psychotic disorder, found unfit by the psychiatrist, and/or were certified under the Mental Health Act.

Participants and non-participants did not differ with respect to receiving a diagnosis of a non-psychotic major mental illness, non-psychotic minor mental illness, or alcohol use disorder. Additionally, participants and non-participants were equally likely to have had previous contact with a mental health facility, and previous hospitalizations.

Table 1

Demographic Characteristics of Participants and Non-participants

Characteristic	Participants		Non-participants	
	n	%	n	%
Age	<u>M</u> = 34.25		<u>M</u> = 35.90	
Ethnic Group:				
White	48	63.2%	83	52.5%
Native	4	5.3%	16	10.1%
Asian	3	3.9%	5	3.2%
Other	21	27.6%	54	34.2%
Marital Status:				
Single	41	53.2%	100	63.3%
Married	9	11.7%	18	11.4%
Divorced	15	19.5%	13	18.2%
Separated	6	7.8%	14	8.9%
Common-law	6	7.8%	8	5.1%
Unknown	0	0%	5	3.2%
Employment Status:				
Unemployed	51	67.1%	109	69.4%
Employed F/T	9	11.8%	13	8.3%
Employed P/T	6	7.9%	8	5.1%
Self Employed	6	7.9%	10	6.4%
Seasonally	1	1.3%	1	0.6%
Retired	2	2.6%	4	2.5%
Student	1	1.3%	1	0.6%
Unknown	0	0%	11	7.0%
Education:				
None	1	1.3%	1	0.6%
Elementary	8	10.4%	9	5.7%
Jr. Sec (gr 8-10)	25	32.5%	48	30.4%
Sr. Sec (gr 11-12)	28	36.4%	56	35.4%
Some Post Sec.	5	6.5%	5	3.2%
Compl. Post Sec.	2	2.6%	8	5.1%
Some University	5	6.5%	13	8.2%
Compl. University	3	3.9%	7	4.4%
Technical Trade	0	0%	2	1.3%
Unknown	0	0%	9	5.7%

Table 2

Legal Characteristics of Participants

Characteristic	Participants		Non-participants	
	n	%	n	%
Crimes Against Persons	51	67.1%	122	76.3%
Crimes Against Property	34	44.7%	55	34.4%
Drug/Alcohol/Misc. Offence	24	31.6%	47	29.4%
Previous Criminal History	58	76.3%	115	71.9%
Previously Spent Time in Prison	34	44.7%	72	45.0%

The percentage for type of crime will not total 100% because an individual may have committed more than one type of crime.

Table 3

Mental Health Characteristics of Participants

Characteristic	Participants		Non-participants	
	n	%	n	%
Psychotic Disorder*	32	42.7%	95	59.4%
Non-psychotic Major Disorder	9	12.0%	17	10.6%
Non-psychotic Minor Disorder	21	28.0%	46	28.8%
Alcohol Use Disorder	20	26.7%	36	22.5%
Substance Use Disorder*	31	41.3%	43	26.9%
Previous M.H. Contact	65	85.5%	134	83.8%
Previous Hospitalization	53	69.7%	104	65.0%
Certification at FPI*	32	42.1%	91	56.9%
Found Unfit by Psychiatrist*	3	3.9%	23	14.5%

The percentage for type of disorder will not total 100% because each individual may have been diagnosed with more than one type of disorder.

* $p < .05$

Hypothesis 1: Comparing Criminal Competencies

To test the hypothesis that individuals may be competent at one stage of the proceedings but incompetent at other stages, analyses were conducted using Cohen's Kappa. Kappa measures the level of agreement between two tests. A low Kappa value indicates low level of agreement between the two tests.

Competency to Confess and Fitness to Stand Trial. In R. v. Whittle, (1994) the Supreme Court of Canada appeared to question whether competency to confess was distinct from fitness to stand trial. The Kappa value obtained from the comparison of competency to confess and fitness to stand trial was low (Kappa = .43). This suggests that individuals who were fit to stand trial were not necessarily competent to understand Charter cautions. Of those individuals found fit to stand trial (n=64), 52 (81.3%) were competent to understand their Charter cautions, while 12 (18.8%) were incompetent to understand Charter cautions. Of those found unfit to stand trial (n=16), five (31.3%) were competent to understand Charter cautions, and 11 (68.8%) were incompetent to understand Charter cautions (see Figure 1).

Competency to Plead Guilty and Fitness to Stand Trial. In the United States, some courts have ruled that the standard for determining competency to plead guilty is the same as the standard for determining competency to stand trial (Godinez v. Moran, 1993). Although Canadian courts have outlined some

specific standards for determining competency to plead, the absence of criteria in the Criminal Code suggest that fitness and competency to plead are not treated as distinct issues.

Results of the analysis indicated that individuals who were fit to stand trial were not necessarily fit to plead, (Kappa = .70). Of those individuals found fit to stand trial (n=61), 52 (85.2%) were found fit to plead while 9 (14.8%) were found unfit to plead. Alternatively, of those individuals found unfit to stand trial (n=15), all were found unfit to plead (n=15, 100%). These results suggest that individuals who were fit to stand trial were significantly more likely to be fit to plead (n=52, 85.2%) than unfit to plead (n=9, 14.8%).

Competency to Confess and Competency to Plead Guilty. There are no Canadian cases that challenge the distinction between these two competencies, but to complete the analyses, the independence of these two competency questions was assessed. An analysis of the relationship between competency to plead and competency to confess indicated that individuals found competent to plead were not necessarily competent to confess (Kappa = .19). The results suggest that these are distinct competency issues, as competence at one stage did not automatically indicate competency at the other stage. Indeed, of those individuals found competent to plead (n=52, 68.4%) 40 (n=76.9%) were also competent to understand Charter cautions, but 12 (23.1%) were incompetent to understand Charter cautions. Additionally, of those individuals found

incompetent to plead (n=24, 31.6%), 14 (58.3%) were competent to understand Charter cautions while 10 (41.7%) were found incompetent to understand Charter cautions (see Figure 3).

Overall, the results supported the hypothesis that competency at one juncture of the criminal proceedings does not imply that the individual is competent at all other stages of proceedings. Indeed, competency to confess, competency to plead guilty and fitness to stand trial require the individual to perform different tasks and appear to require unique cognitive abilities.

Figure 1
Competence to Comprehend Charter Cautions

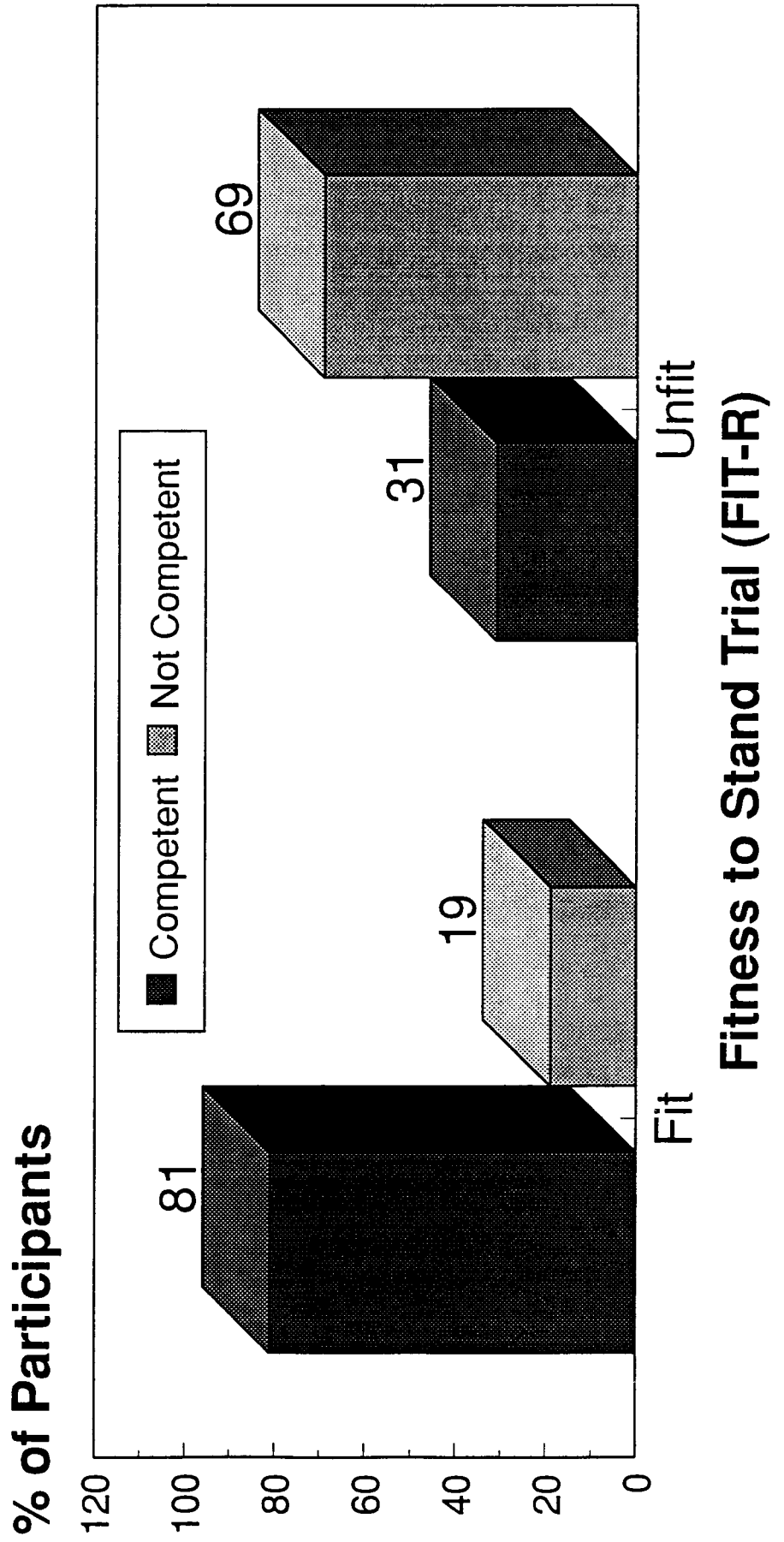


Figure 2
Competence to Plead Guilty

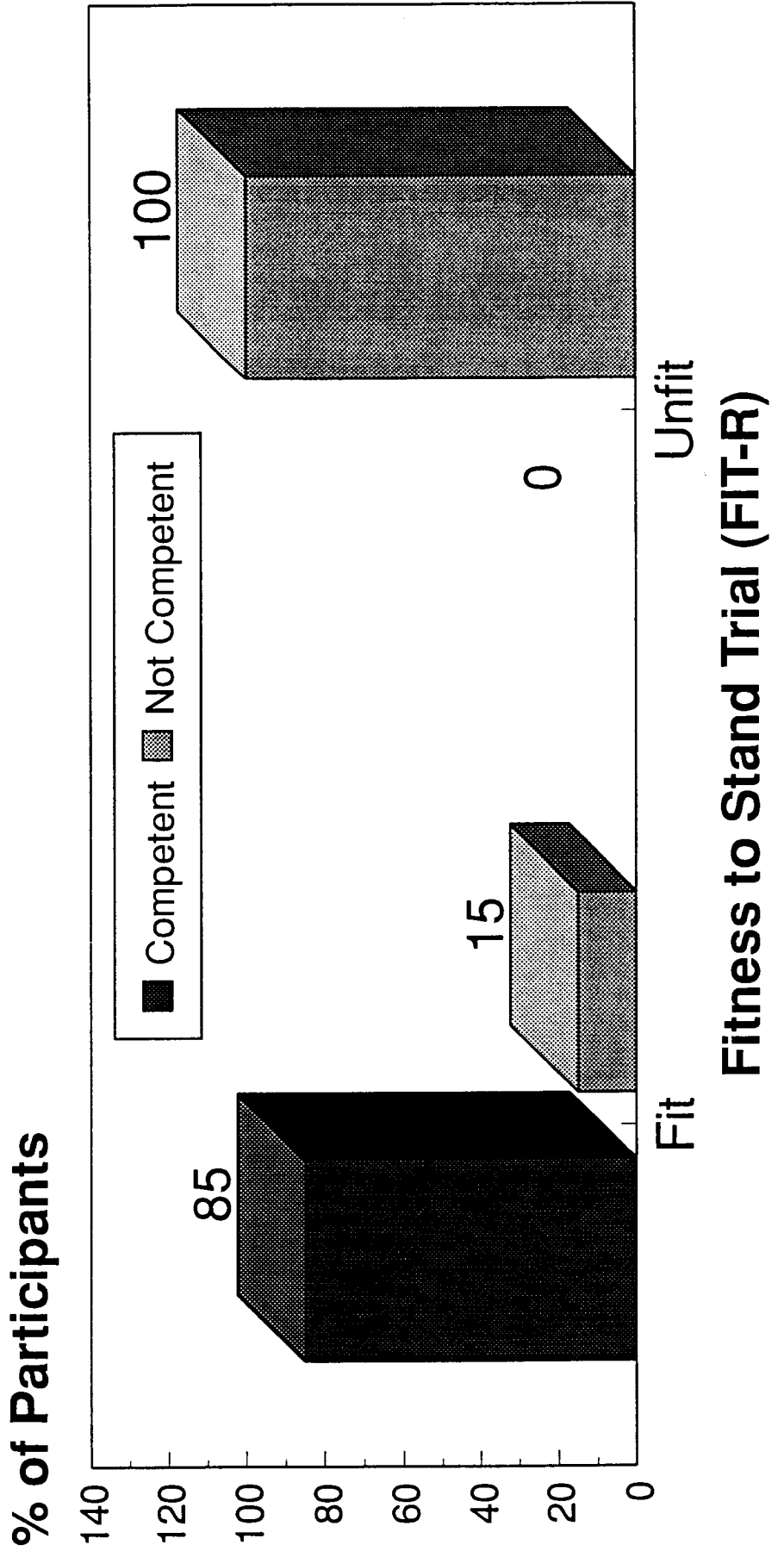
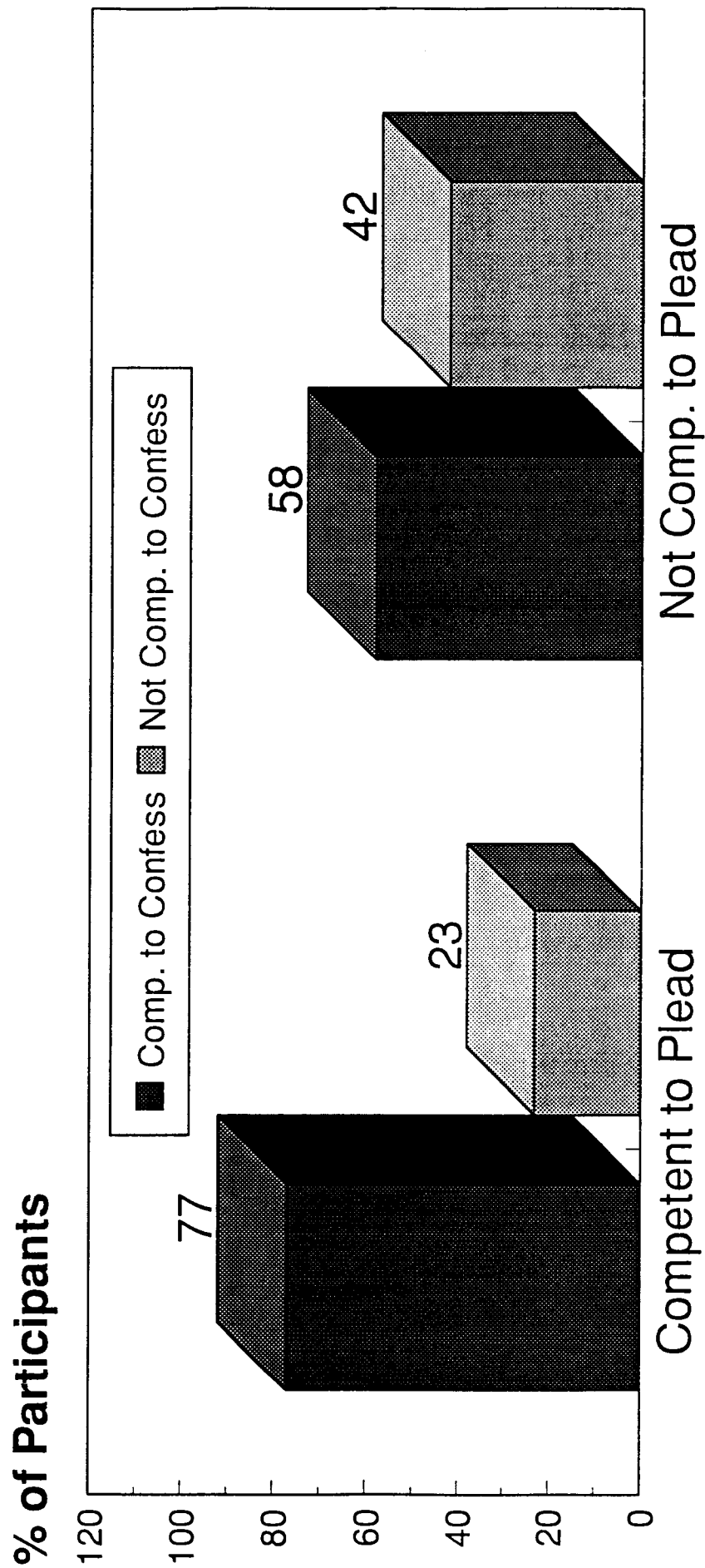


Figure 3
Competence to Plead by Competence to Comprehend
Cautions



Hypothesis 2: Profile Analysis

As mentioned above, the abilities the individual is required to perform at each stage of criminal proceedings do differ, however, a determination of fitness to stand trial and competency to plead guilty require an individual to demonstrate some similar abilities. As such, it was hypothesized that competency to plead guilty and fitness to stand trial are more likely to co-occur than either competency to confess and fitness to stand trial, or competency to confess and competency to plead guilty.

To address this hypothesis and to determine, more specifically, individual variation in competencies across the different junctures of criminal proceedings, a profile analysis was conducted (see Table 4). The results suggested that if an individual was fit at one stage of legal proceedings they were more likely, than would be expected by chance, to be fit at the other two stages of proceedings. For example, 40 individuals were found to be fit/competent at all three stages of criminal proceedings, compared to approximately 36 people expected by chance. These findings indicated that if an individual was competent to understand Charter cautions, they were more likely to be fit to stand trial and competent to plead guilty than would be expected by chance. Likewise, if an individual was unfit at one stage of the proceedings, they were more likely to be unfit at the other two stages of proceedings than would be expected by chance. For example, 10 individuals were found to be unfit at all

three stages of proceeding, compared to the expected number of approximately five.

The other trend that appeared in the data suggested that more individuals ($n=5$) than would be expected by chance ($n=1.3$) were found unfit to stand trial and incompetent to plead guilty, but competent to understand Charter cautions. It appeared that unfitness to stand trial and incompetence to plead guilty were likely to co-occur more frequently than would be expected by chance. Unfitness to stand trial however, was not likely to co-occur with incompetence to understand Charter cautions, as there were no individuals found unfit at these two stages of proceedings while being competent to plead. This can be compared with approximately six people that would be expected by chance to fall into this group. Additionally, incompetence to plead and incompetence to understand Charter cautions were unlikely to co-occur. Once again, there were no individuals found incompetent at these two stages of proceedings while also being fit to stand trial. This again can be compared with about six people that would be expected by chance to fall into this group.

Table 4

Profile Analysis

Profile			Observed (O)	Expected (E)	O-E
ToCC FIT-R CoP					
F	F	F	40	36.3	+3.7
F	F	U	9	12.7	-3.7
F	U	F	0	3.7	-3.7
F	U	U	5	1.3	+3.7
U	F	F	12	6.5	+5.5
U	F	U	0	5.5	-5.5
U	U	F	0	5.5	-5.5
U	U	U	10	4.5	+5.5

The F's indicate fitness at a particular stage of proceedings, and the U's indicate unfitness at a particular stage of proceedings.

Hypothesis 3: Predictive Efficiency of the FIT-R

Fitness to stand trial appears to be the legal issue most frequently addressed by the courts, while competency to confess and competency to plead guilty are not typically raised. Indeed, in R. v. Whittle (1994), the court indicated that if an individual is fit to stand trial, one can not say that the individual is incompetent to understand Charter cautions. To determine if fitness is predictive of other competency issues, the predictive efficiency of the FIT-R was assessed. The predictive power of the FIT-R is outlined in Table 5.

The results indicated that fitness (as measured by the FIT-R) was significantly associated with competency to plead guilty (as measured by the CoP). Indeed, the FIT-R was able to detect incompetence to plead in all (100%) individuals who were found unfit to stand trial. This was a great improvement over predicting this issue by chance (31.6%). The FIT-R was less effective in predicting competence to plead in individuals who were fit to stand trial, but was better than chance. The probability that an individual was competent to plead given that he was found fit to stand trial was 85.2%, compared to the chance prediction (68.4%). These findings suggest that the FIT-R demonstrates some utility in predicting competence or incompetence to plead guilty. It is important however, to assess the outcome if the FIT-R alone is used to predict competency to plead guilty. If an individual was found fit to stand trial then the probability that he or she was competent to plead was

approximately 85% (n=52). When an individual was fit to stand trial the assessor would be wrong about 15% of the time (n=9) using the FIT-R results alone to predict competency to plead guilty. Alternatively, if the individual was found unfit to stand trial, the probability that he or she would be incompetent to plead was 100%. In this case, the FIT-R was effective in predicting incompetence to plead.

The FIT-R was also quite effective in predicting incompetence to understand Charter cautions. The probability that an individual would be found incompetent to understand their Charter cautions if he or she was found unfit to stand trial was 68.8%, compared to the chance prediction of 28.8%.

Alternatively, if an individual was found fit to stand trial, the probability that the individual would be competent to understand their Charter cautions was 81.3% compared to the chance prediction of 71.3%. These results suggest that the FIT-R (if an individual is found unfit to stand trial) may be helpful in predicting incompetence to understand Charter cautions, but the FIT-R provides little additional information in predicting competence to understand the cautions.

Additionally, the use of the FIT-R alone in predicting incompetence to understand Charter cautions is not an effective procedure. If an individual was unfit to stand trial (using the FIT-R), the probability that the individual would be incompetent to understand their Charter cautions was 68.8% (n=11). That is, using the FIT-R score (when they are unfit) to predict incompetence to

understand Charter cautions, the assessor would be wrong 31.3% (n=5) of the time. Alternatively, if an individual was fit to stand trial, the probability that he or she would be competent to understand the Charter cautions was 81.3% (n=52). By using the FIT-R score to predict competence to understand Charter cautions, the evaluator would be making an error 18.8% of the time (n=12), thereby inaccurately calling someone competent to understand Charter cautions when, in fact, the individual would be incompetent to understand the cautions. These findings indicate that the use of the FIT-R may be somewhat helpful in predicting incompetence to understand Charter cautions, but because of the number of errors that are made, fitness results alone should not be used to predict this issue.

Table 5

Predictive Efficiency of the FIT-R With Respect to Other Competency Questions

Predictor	Criterion	Predictive Efficiency		
		p	PPP	NPP
FIT-R	CoP	.000	1.00	.85
FIT-R	ToCC	.000	.69	.81

The predictive power was calculated for the accuracy of predicting unfitness. PPP (positive predictive power) = true positives / (true positives + false positives) X 100%.

NPP (negative predictive power) = true negatives / (false negatives + true negatives) X 100% (Hart, Webster, & Menzies, 1993).

Discussion

Overall the findings of this thesis strongly support the speculation of many commentators who have written that an individual may be competent at one stage of criminal proceedings but incompetent at other stages (Ogloff et al., 1991; Grisso, 1986; Roesch & Golding, 1980; Whittemore & Ogloff, 1994). Also, these results refute the contention by the Supreme Court of the United States that "the competency standard for pleading guilty and waiving the right to counsel is the same as the test of competency to stand trial" (Godinez v. Moran, 1993, p. 2688). A discussion of the results regarding each of the hypotheses will be discussed below.

Hypothesis 1: Comparing Criminal Competencies

An individual's level of competency to participate in legal proceedings may be affected by the degree of mental impairment from which the individual is suffering. The results of this study suggest that an individual's degree of competency may also vary depending on the specific abilities the individual is asked to perform. The ToCC, the FIT-R, and the CoP were used to assess competency at various stages of legal proceedings. To the degree that these instruments are measuring the construct that they are designed to measure, the findings indicate that individuals who are competent at one stage are not necessarily competent at other stages. These results indicate the need for a specific approach to competency assessments at each juncture of criminal proceedings.

There appears to be a need for specific criteria to be established in the Criminal Code delineating the standards required for a finding of competency at each stage of proceedings. Much like the criteria for determining fitness, criteria should be established for determining competency to confess and competency to plead. This would assist the mental health professionals in evaluating these competencies for the courts. Establishing legal criteria required for competency at these two stages is the first step, however regardless of the legal standard, mental health professionals may develop their own unique ways of assessing the criteria. As such, standardized instruments must be established to assess the legal issues of competency at the various stages of legal proceedings. An alternative suggestion would be to develop one instrument that incorporates the various elements of competency. In any case, the current practice of assessing fitness to stand trial, does not go far enough in addressing an individual's level of competence for various aspects of criminal proceedings. The findings suggest the importance of assessing the issue of competency to plead, and competency to confess, in addition to the typical fitness to stand trial evaluations.

Competency to Confess and Fitness to Stand Trial. The first competency that may arise in criminal proceedings is the issue of competency to confess. At the time of arrest, individuals are read their Section 10 rights, and may be required to make a decision of whether or not to waive these rights and make a statement. Because the consequences of waiving these rights is

likely to result in a conviction, it is important that the individual who makes a statement is competent to do so. Results of this study suggest that competency to confess is distinct from fitness to stand trial and as such, contrary to the court's decision in R. v. Whittle (1994), it is not sufficient to say that because an individual is able to instruct a lawyer or meet other requirements of the fitness standard that the individual is also competent to waive section 10 rights. Because competency to confess requires different legal abilities than fitness to stand trial, it is possible for an individual to be fit to stand trial but incompetent to confess, or unfit to stand trial but competent to confess.

Because competency to confess appears to be distinct from fitness to stand trial, and given the consequences of making a confession, an assessment of this competency issue is required. Competency to waive Section 10 rights requires that the individual understands these rights and appreciates the consequences of making a statement (R. v. Evans, 1991). The ToCC measures one component of competency to confess, namely an individual's understanding of the Charter cautions and may be useful in assessing this issue. It does not seem practical to administer the ToCC to every individual being arrested, however, if it is questionable whether the individual understands the cautions, the ToCC could then be used to assess the issue in a standard, objective manner. Additionally, a screening version of the ToCC may be developed to be used by police officers at the time of the arrest.

The screening form could identify those individuals whose competency is questionable, and appropriate measures could then be taken to determine that these individuals gain an understanding of their rights.

Results of this study and previous research (Olley, 1993) suggests that there are a number of individuals who demonstrate difficulty understanding the Charter cautions. A practical recommendation, and one suggested by Olley (1993), would be to re-word the cautions into more simplified language. For example, "counsel" is one word that many individuals appeared to have difficulty understanding. Individuals might achieve a greater understanding of the cautions if this word was replaced with the word "lawyer." Additionally words such as "retain" and "obliged" could be replaced with more easily understood words. Some simple changes such as re-wording the cautions may go a long way toward making them more understandable.

Competency to Plead Guilty and Fitness to Stand Trial. The results of the study revealed that if an individual is unfit to stand trial, that person is also unfit to plead guilty. In referring to unfitness then, these two issues do not appear to be distinct. Results, however, further indicated that if an individual is fit to stand trial, that person is more likely to be competent to plead guilty than incompetent to plead guilty. That is, individuals who are fit to stand trial may be incompetent to plead guilty.

Results suggest that if an individual is unfit to stand trial, that person is also incompetent to plead. Caution should be used in interpreting these results,

however, because it seems possible that in some situations an individual may be unfit to stand trial but competent to plead. Regardless of whether they are competent or incompetent to plead, however, a finding of unfitness results in the individual being held at a mental institution according to the provisions of the Criminal Code (Davis, 1994). In the case of individuals found unfit to stand trial, it is essential that the issue of competency to plead be assessed at some point during the accused's detention in a forensic institution, before a plea is entered.

Alternatively, if an individual is fit to stand trial, results indicate that the person may be incompetent to plead. If competency to plead is not assessed then that person could go to trial and enter a plea when they are incompetent to do so. In reviewing the files for this study, the importance of this issue became clear. There were three cases where the psychiatrist was unable to assess fitness to stand trial, and a letter was sent to the court requesting that an extension be granted. In each case, no extension was granted and the individual was returned to court. In each case the accused plead guilty to the charge(s). The results of this study suggest that individuals who are unfit to stand trial are also incompetent to plead. There is no reason to believe that these individuals were fit to stand trial. In fact, a review of the file data suggests that those individuals, who the psychiatrists were unable to assess, were severely disordered (one whom the psychiatrist diagnosed as having schizophrenia; one diagnosed with paranoid schizophrenia; and one diagnosed

with psychotic disorder not otherwise specified) and likely unfit to stand trial (for this reason they were coded as unfit for the purpose of analysis) and therefore incompetent to plead guilty. This is a disturbing finding and emphasizes the need for a specific assessment of this issue. This information provides additional insight into the importance of assessing competency to plead guilty.

The CoP was developed as an attempt to assess competency to plead. The questions making up this measure were chosen based on Canadian case law as well as a review of the literature in the area. To assist in defining the requirements for determining whether an individual is competent to plead it may be beneficial to consult with defence lawyers, judges, psychologists, and psychiatrists to determine if the questions identified in the CoP capture the elements required in the issue of competency to plead.

In addition to constructing a measure that assesses the abilities required for determining whether an individual is competent to plead, new procedures for dealing with individuals who make a guilty plea could be developed. For example, special provisions for those youth who plead guilty are outlined in section 19 of the Young Offenders Act. The section stipulates that "where a young person pleads guilty but the youth court is not satisfied that the facts support the charge, the court shall proceed with the trial and shall, after considering the matter, find the young person guilty or not guilty or make an order dismissing the charge, as the case may be" (S.19, Young Offenders Act). This provision appears to be based on the assumption that a young person

may not have the cognitive capacity to fully appreciate making a guilty plea (Bala, 1992). Mentally disordered offenders may also lack the cognitive capability of understanding a guilty plea and as such, similar provisions could be considered for dealing with these individuals under the Criminal Code.

Hypothesis 2: Profile Analysis

Results indicated that unfitness to stand trial and incompetence to plead guilty are likely to co-occur more frequently than would be expected by chance. The reason for this is likely because competency to plead and fitness to stand trial tap many similar abilities. To understand the distinction between the two competencies it may be useful to attempt to clarify how these competencies differ. Indeed, such information would assist in the evaluation of these issues. A look at those individuals who were fit to stand trial but incompetent to plead guilty provides some insight into the distinction between these two abilities. An analysis of these cases suggests that it may be the second component of the competency to plead criteria (i.e., an understanding of the pleas and reasons for pleading guilty) that differentiate it from the fitness to stand trial criteria.

The first component of competency to plead is an understanding of the charges. It seems that this may be subsumed under the first component of fitness to stand trial. That is, an understanding of the nature and object of the proceedings likely requires that an individual understand the charges he or she is facing, and the seriousness of these charges. An understanding of the charges is included under this component of fitness to stand trial in the FIT-R,

and a review of the file data at the FPI suggest that it is an issue that many psychiatrists assess when determining fitness.

The third component of competency to plead requires an understanding of the consequences of pleading guilty. This issue may be assessed in determining fitness to stand trial when assessing whether an individual understands the possible consequences of the proceedings. Indeed, it seems important to determine if the individual understands what would happen if he or she were found guilty of the charges. It does not appear that this aspect of competency to plead sets it apart from fitness.

The second component of competency to plead, and more specifically, the latter half of this component, appears to be the essential element in distinguishing fitness to stand trial from competency to plead. This section requires an understanding of the pleas available to the defendant, and the reasons for pleading guilty. While an understanding of the pleas available may be used to determine whether the individual understands the nature and object of the proceedings, it may not be an essential component of the fitness assessment. Additionally, competency to plead guilty requires an understanding of the reasons for making a guilty plea, which may require the individual to demonstrate some motivation to protect himself or herself. This specific requirement may not influence an individual's fitness to stand trial. An example from the present study might help to illustrate the distinction.

One participant who was in his early twenties had turned himself into the

police and was subsequently charged with several counts of arson. He was diagnosed with current major depression (severe, without psychotic features) on the SCID-P. This individual demonstrated an understanding of the nature and object of the proceedings (e.g., he understood the arrest process, his charges and the severity of these charges, and the role of key players in the court). He demonstrated an ability to communicate with counsel (e.g., he had the ability to communicate the facts surrounding his case to his lawyer). Finally, he appeared to understand the possible consequences of the proceedings (e.g., he understood that he could go to jail for life). As such, he was considered to be fit to stand trial by the researcher.

An evaluation of whether he was competent to plead guilty revealed that he understood the charges and the severity of these charges. Additionally, he understood the pleas available but he did not appear to have the ability to explain the reasons for making the plea. He indicated that he was planning to plead guilty but when questioned more specifically about making the plea he indicated that he thought he had no chance of being found not guilty, and he did not want or need a lawyer, ("lawyers confuse me"). Additionally, he did not know what a plea bargain was. He had told the police everything, and had no motivation to protect himself with the assistance of a lawyer. In this case, it is likely that the participant's severe depression was affecting his ability to make a rational decision. Given the seriousness of the charges it is essential that the individual who makes a guilty plea is competent to do so.

If this is the primary distinction between fitness to stand trial and competency to plead guilty then one might simply want to incorporate this issue into the fitness assessment. The FIT-R is a comprehensive instrument that assesses many of the issues required for determining competency to plead such as understanding the consequences of the pleas available. While questions relating to both issues could be developed into a single test, such as the FIT-R, it is essential that both issues be assessed separately. If the FIT-R is not used by mental health professionals then it is recommended that the issues of competency to plead be assessed separate from that of fitness to stand trial to ensure that the abilities required for determining this issue are addressed.

Hypothesis 3: Predictive Efficiency of the FIT-R

The findings suggest that the FIT-R is a good predictor of competency to plead; however, the results suggest that the FIT-R alone can not be used to assess competency to plead. If an individual was found unfit then one could predict that this individual was also incompetent to plead (100% of the time in this study). As such, an initial assessment of competency to plead may not be required. Once an individual is found fit, however, results of this study indicated that the probability that the individual would be competent to plead was approximately 85%. If mental health professionals relied on the results of the fitness assessment to predict competency to plead, when an individual was fit to stand trial, they would be wrong 15% of the time. Such results suggest

that once fitness is restored, it is important that competency to plead then be assessed. The importance of this is accentuated by the profound negative consequences that a prediction error would have on the accused. Indeed, if the individual was found competent to plead when in fact he or she was incompetent to plead, and a plea of guilty is entered, the accused would be sentenced and his or her right to a trial would be usurped.

Although the FIT-R was also a relatively good predictor of competency to understand Charter Cautions, if the results of the FIT-R are exclusively relied upon, an unacceptable number of errors will be made. These findings suggest that the FIT-R alone should not be used to determine whether that individual is competent to confess. Furthermore, the usefulness of attempting to predict competency to confess based on fitness is inappropriate simply because the issue of competency to confess would arise at the arrest stage, before an individual is assessed for fitness to stand trial.

While scores on the FIT-R seem to be relatively good predictors of competency at various stages of proceedings, other measures may also be useful in predicting competencies. Researchers have found that a diagnosis of schizophrenia and a diagnosis of a psychotic disorder are the most important clinical variables for the prediction of unfitness to stand trial (Hart & Hare, 1992; Zapf, 1995). It seems possible that these clinical variables are also important in the prediction of incompetency at other stages of proceedings. It must be emphasized, however, that not all individuals who are psychotic are unfit, and

not everyone who is unfit is psychotic (McGarry, 1965; Roesch & Golding, 1980; Whittemore & Ogloff, 1994). Thus, it is vital that this information is not exclusively relied upon in evaluations of competency. Indeed, competency must be assessed at each juncture of criminal proceedings, to assess the specific abilities that defendants are asked to perform at a particular stage.

Limitations and Future Directions

Unfortunately these research findings are plagued by some limitations. The total number of participants in this study was relatively small. Furthermore, the number of individuals who were found unfit to stand trial ($n=16$), was quite small. As such, the present results should be interpreted with some degree of caution. Future research is required, using a larger number of participants, in particular, a larger number of individuals found incompetent at various stages of criminal proceedings.

Additionally, the results were based on the assumption that the instruments used to assess competency to understand Charter cautions, fitness to stand trial, and competency to plead guilty are both reliable and valid. Olley (1993) reported intraclass correlation reliability coefficients of .89 for raters on ToCC total scores. Additionally, the ToCC demonstrates good face validity as part 1 parallels the actual statements contained in the Charter cautions. Parts 2 and 3 contain the same information as part 1 but are presented in different forms (Olley, 1993). Significant correlations were also found between ToCC total scores and all three parts of the ToCC, indicating good construct validity

(Olley, 1993). While these analyses provide encouraging results, more research assessing the reliability and validity of the ToCC is required.

The FIT-R is a recently developed instrument and as a result little is known about its reliability and validity. Zapf (1995) has recently demonstrated the predictive efficiency of the FIT-R. A comparison of the FIT-R with institution-based decisions of fitness revealed that 100% of individuals found fit by the FIT-R were also found fit by psychiatrists. Alternatively, of those individuals found unfit by the FIT-R, 80% were found to be fit by psychiatrists and 20% were determined unfit by psychiatrists. Because the FIT-R was designed as a screening measure, it is expected to overestimate the degree of unfitness. Overall these results indicate that the FIT-R reliably screens out those individuals who are clearly fit to stand trial (Zapf, 1995).

The previous version of the FIT-R (the FIT) demonstrated excellent inter rater reliability and was able to distinguish between fit, unfit and questionably fit defendants (McDonald, Nussbaum, & Bagby, 1991). The earlier version, however, was criticized on the grounds that there was little variability among the items indicating that the different items did not contribute to the different components of fitness (McDonald et al., 1991). Additionally, factor analysis of the FIT produced a two-factor solution which accounted for 74.3% of the variance (Bagby, Nicholson, Rogers, & Nussbaum, 1992). The FIT was therefore criticized for not assessing the three aspects of fitness as defined in the Criminal Code. The FIT-R was constructed to assess each of the criteria

set out in the Criminal Code, and took these criticisms into consideration. It is essential that future research is conducted to assess both the reliability and validity of the FIT-R.

A further step in validation of this instrument would be to compare the FIT-R decisions to court decisions. This is likely to vary little from the results of Zapf (1995) as courts rarely disagree with the decisions of mental health professionals called upon to assess the issue of fitness (Hart & Hare, 1992; Roesch & Golding, 1987). This research, however, would help to substantiate the validity of the FIT-R.

The CoP was developed for use in this study. As such the reliability and validity of this instrument are yet to be determined. The CoP does, however, demonstrate good face validity as the three components address the three legal issues that have been identified in case law and literature reviews. Further research is required to determine its reliability and construct validity.

It appears that while Canadian courts do differentiate the factors involved in competency issues as they arise at various stages of proceedings, they have not made use of these standards in later court decisions. As such, it appears that the current legal precedent supports the contention that competency does not vary as a function of the legal abilities that individuals are asked to perform (R. v. Whittle, 1994). As a result it is vital that the legal and judiciary system be informed about the distinction among these various competency issues. Publication of results in legal journals is one method of increasing awareness of

this issue with those individuals involved in the legal system. A second method would be to conduct formal workshops for lawyers and judges. Regardless of the means by which it is achieved, it is vital that those individuals involved in implementing changes to the legal system are made aware of the specific nature of competency at various stages of criminal proceedings. Increased awareness and understanding could provide the impetus for changes in the way that competencies are currently viewed in Canadian criminal courts.

References

American Psychiatric Association (1987). Diagnostic and statistical manual of mental disorders, third edition, revised. Washington, DC: Author.

Applebaum, P. S. (1993). Godinez v. Moran: The U.S. Supreme Court considers competence to stand trial. Hospital and Community Psychiatry, *44*, 929-930.

Applebaum, P. S., & Grisso, T. (1995). The MacArthur treatment competence study. I: Mental illness and competence to consent to treatment. Law and Human Behavior, *19*, 105-126.

Bagby, R. M., Nicholson, R. A., Rogers, R., & Nussbaum, D. (1992). Domains of competency to stand trial: A factor analytic study. Law and Human Behavior, *16*, 491-507.

Bala, N. (1992). The Young Offenders Act: Theory and practice. In R. R. Corrado, N. Bala, R. Linden, & M. Le Blanc (Eds.), Juvenile justice in Canada: A theoretical and analytical assessment (pp. 21-73). Toronto: Butterworths.

Bukatman, B. A., Foy, J. L., & Degrazia, E. (1971). What is competency to stand trial? American Journal of Psychiatry, *127*, 1225-1229.

Canadian Charter of Rights and Freedoms. (1982). Constitution Act, Part 1, being Schedule B of the Canada Act, 1982 (U.K.).

Clarkson v. The Queen (1986) 1 S.C.R. 383, (1986), 25 C.C.C. (3d) 207.

Criminal Code of Canada, R.S.C., C. C-46 (1992).

Davis, S. (1994). Fitness to stand trial in Canada in light of the recent Criminal Code amendments. International Journal of Law and Psychiatry, 17, 319-329.

Dusky v. United States 362 US 402 (1960).

Godinez v. Moran 113 S.Ct. 2680 (1993).

Gordon, F., & Verdun-Jones, S. (1992). Adult guardianship law in Canada.

Grisso, T. (1986). Evaluating competencies: Forensic assessments and instruments. New York: Plenum Press.

Hart, S. D., & Hare, R. D. (1992). Predicting fitness to stand trial: The relative power of demographic, criminal, and clinical variables. Forensic Reports, 5, 53-65.

Hart, S. D., Webster, C. D., & Menzies, R. J. (1993). A note on portraying the accuracy of violence predictions. Law and Human Behavior, 17, 695-700.

Hess, J. H., & Thomas, H. E. (1963). Incompetency to stand trial: Procedures, results, and problems. American Journal of Psychiatry, 119, 713-720.

Horvath v. The Queen (1979), 44 C.C.C. (2d) 385, 93 D.L.R. (3d) 1, (1979), 2 S.C.R. 376.

Ibrahim v. The King (1914), A.C. 599.

Kline, S. A. (1987). The clinical issues of determining competency.

Health Law in Canada, 8, 4-6.

McDonald, A., Nussbaum, D., & Bagby, R. M. (1991). Reliability, validity, and utility of the Fitness Interview Test. Canadian Journal of Psychiatry, 36, 1-5.

McGarry, A. L. (1965). Competency for trial and due process via the stated hospital. American Journal of Psychiatry, 122, 623-631.

Melton, G. B., Petrila, J., Poythress, N. G., & Slobogin, C. (1987). Psychological evaluations for the courts: A handbook for mental health professionals and lawyers. New York: Guilford Press.

Miller, R. D., & Germain, E. J. (1986). The specificity of evaluations of competency to proceed. Journal of Psychiatry and Law, 14, 333-347.

Ogloff, J. R. P., & Olley, M. C. (1992). Test of Charter Comprehension. Unpublished Manuscript. Burnaby BC: Simon Fraser University.

Ogloff, J. R. P., Wallace, D. H., & Otto, R. K. (1991). Competencies in the criminal process. In D.K. Kagehiro. & W. F. Laufer (Eds.), Handbook of psychology and law (pp. 343-360). New York: Springer-Verlag.

Olley, M. C. (1993). Competency to understand Charter cautions: A preliminary investigation. Unpublished master's thesis, Simon Fraser University, Burnaby, British Columbia, Canada.

R. v. Deslauriers (1980), 14 C.R. (3d) 389, 2 W.W.R. 477, 50 C.C.C. (2d) 572 (B.C.S.C.).

R. v. Drewicki (1963), 41 C.R. 265.

R. v. Evans (1991), 31 S.C.J. 3.

R. v. Gibbons (1946), 86, C.C.C. 20.

R. v. Lim (1990), 1 C.R.R. (2d) 148.

R. v. Rubenstein (1987), 41 C.C.C. (3d) 91.

R. v. Stewart (1972), 56 Cr. App. R. 272 (C.C.C.).

R. v. Taylor (1992), 77 C.C.C. (3d) 551.

R. v. Washer (1947), 92 C.C.C. 218, [1948] O.W.N. 393.

R. v. Whittle (1994), 2 S.C.R. 914.

R. v. Yensen (1961), 130 C.C.C. 353.

Roesch, R. (1979). Determining competency to stand trial: An examination of evaluation procedures in an institutional setting. Journal of Consulting and Clinical Psychology, 47, 542-550.

Roesch, R., & Golding, S. L. (1980). Competency to stand trial. Urbana, Ill: University of Illinois Press.

Roesch, R., & Golding, S. L. (1987). Defining and assessing competency to stand trial. In I. B. Weiner & A. K. Hess (Eds.), Handbook of forensic psychology (pp. 378-394). New York: Wiley.

Roesch, R., Ogloff, J. R. P., & Golding, S. L. (1993). Competency to stand trial: Legal and clinical issues. Applied and Preventive Psychology, 2, 43-51.

Roesch, R., Webster, C. D., & Eaves, D. (1984). The Fitness Interview Test: A method for examining fitness to stand trial. Toronto, Ontario and

Burnaby, BC.: Centre of Criminology, University of Toronto and the Criminology Research Centre, Simon Fraser University.

Roesch, R., Webster, C. D., & Eaves, D. (1994). The Fitness Interview Test - Revised. Unpublished manuscript, Simon Fraser University.

Rogers, R., & Mitchell, C. N. (1991). Mental health experts and the criminal courts: A handbook for lawyers and clinicians. Toronto, Ontario: Carswell.

Silberfeld, M. (1990). The mentally incompetent patient: A perspective from the competency clinic. Health Law in Canada, 11, 33-37.

Silberfeld, M. (1991). The value of clinical judgment in competency assessments. Health Law in Canada, 11, 68-72.

Spitzer, R. L., Williams, J. B. W., Gibbon, M., & First, M. B. (1990). Structured Clinical Interview for DSM-III-R -- Patient Edition (SCID-P, Version 1.0). Washington, DC: American Psychiatric Press.

Watson, J. (1991). Guilty pleas. Criminal Law Quarterly, 33, 163-203.

Webster, C. D., Menzies, R. J., & Jackson, M. A. (1982). Clinical assessment before trial. Toronto, Ontario: Butterworths.

Whitehead, T. (1983). Mental illness and the law: Revised edition. England: Basil Blackwell Publishers Ltd.

Whittemore, K. E., & Ogloff, J. R. P. (1994). Fitness and competency issues in Canadian criminal courts: Elucidating the standards for mental health professionals. Canadian Journal of Psychiatry, 39, 198-210.

Young Offenders Act, R.S.C. 1985, c. Y-1.

Zapf, P. A. (1995). Assessing fitness to stand trial: Characteristics of fitness remands and a comparison of institution-based evaluations and the FIT-

R. Unpublished master's thesis, Simon Fraser University, Burnaby, British Columbia, Canada.

Appendix A

Consent Form

A Study of Participation in the Legal System

INVITATION TO PARTICIPATE: You are invited to participate in a study to learn more about people's abilities to participate in the legal system.

EXPLANATION OF PROCEDURES: If you decide to participate in this study, you will be given a psychological interview that may last up to one hour, a brief measure to look at your verbal and performance abilities, and two measures that ask you about participating in the legal system. We will also obtain information from your files here at FPI, including criminal and mental health history, and the court recommendations regarding your assessment.

POTENTIAL RISKS AND DISCOMFORTS: There are no risks associated with participating. This research project is separate from the day-to-day operations of the Forensic Psychiatric Institute. The information we obtain about you will not be made available to FPI staff or anywhere else in the criminal justice system.

POTENTIAL BENEFITS: There are no direct benefits to you from this research other than knowledge that you may help us learn more about people's abilities to participate in the legal system. Your decision to participate in the study -- or not to participate in the study -- will have no effect on your stay at the Forensic Psychiatric Institute. You will be paid \$5.00 at the completion of the interview.

CONFIDENTIALITY OF DATA: Any information that is obtained during the study will remain confidential. You will not be writing your name or any other identifying information on the research material. The only way that we would have to reveal information about you is if we learn from you that you will harm yourself or somebody else. One of the tests you will be asked to complete is also sometimes part of the testing done by staff of the Forensic Psychiatric Institute. When requested, we will provide test scores to staff so that you won't have to take a test twice.

WITHDRAWAL FROM THE STUDY: Participation is voluntary. Your decision whether or not to participate will not affect your current or future relationship with the Forensic Psychiatric Institute or with any other branch of the criminal justice or mental health systems.

OFFER TO ANSWER QUESTIONS: If you have any questions, please feel free to ask the interviewers. If you have any questions later you may call the investigators listed on the next page. Thank you for your time and interest.

"I have volunteered to participate in this project, which is under the direction of Dr. Ronald Roesch and Dr. J. Ogloff, professors in the Psychology Department at Simon Fraser University. I have been informed of the basic procedures of the study by the researchers, and by reading the first page of this informed consent form. I take part in this study with the understanding that I may withdraw my participation in the experiment at any time, and that I may register any complaint with the primary researcher or with the Chair of the Psychology Department, Dr. Christopher D. Webster."

SIGNATURE OF
PARTICIPANT _____ DATE _____

SIGNATURE OF
WITNESS _____ DATE _____

INVESTIGATORS:

Ronald Roesch, Ph.D.	291-3370
James R. P. Ogloff, J.D., Ph.D.	291-3093
Department of Psychology	291-3354
Simon Fraser University	
Burnaby, B.C., V5A 1S6	

Appendix B

Understanding Charter Cautions Part A

Test of Charter Comprehension Part I

Administration

I will be showing you some cards with some sentences on them. When I show you one, I will read the sentence to you. Then I want you to tell me what it says in your own words. Do you understand what I want you to do?

The sentences are as follows:

1. You are not obliged to say anything unless you wish to do so.
2. Anything you do say may be given in evidence.
3. You have the right to retain and instruct counsel without delay.
4. A Legal Aid Duty Lawyer can explain the Legal Aid plan to you without charge.
5. A Legal Aid Duty Lawyer is available to provide legal advice to you without charge.

Part II

Administration

I am going to show you some sentence and after I read a sentence to you, I will show you two more statements. Each statement means either the same thing or not the same thing as the first sentence. I want you to tell me whether each statement is the same or different from the sentence on the card.

The sentences are as follows:

1. You are not obliged to say anything unless you wish to do so.
 - a. You should not say anything until the police ask you questions.
 - b. You do not have to say anything about what you did.
2. Anything you do say may be given in evidence.
 - a. If you won't talk to the police, then that will be used against you in court.
 - b. As long as you are polite to the police, whatever you say will not be used against you in court.
3. You have the right to retain and instruct Counsel without delay.
 - a. You may contact somebody to give you advice when you are arrested.
 - b. You can get advice from a lawyer about answering the police officer's questions.
4. A Legal Aid Duty Lawyer can explain the Legal Aid plan to you without charge.
 - a. If you do not know about the Legal Aid plan, the police will explain it to you.
 - b. Even if you do not have any money, you can talk to a lawyer about receiving free legal services.
5. A Legal Aid Duty Lawyer is available to provide legal advice to you without charge.
 - a. Even if you do not have the money for a lawyer, one will be made available to you.
 - b. A lawyer will provide you with free legal advice at the beginning, but you will have to pay for legal advice if your case goes to trial.

Part III

Administration

I am going to give you some cards which have words on them. As I give you a card, I will read the word and then I will use it in a sentence. Then I would like you to tell me in your own words what the word means.

The words and corresponding sentences are as follows:

1. Counsel The judge asked **Counsel** a question.
2. retain She will **retain** an accountant to help her with her taxes.
3. instruct The judge will **instruct** the jury.
4. obliged The boy was **obliged** to say thank you when he received a gift.
5. evidence The **evidence** against the accused was overwhelming.
6. right You have the **right** to vote.
7. arresting The police officer was **arresting** the suspect.
8. legal advice She got **legal advice** to make a will.
9. duty It is a citizen's **duty** to vote.
10. lawyer The **lawyer** left the building.

Understanding Consequences of Making A Statement
Part B

Question from the FIT-R assessing an appreciation of the consequences of making a statement.

1. Did you say anything to the police?
What did you tell them?
What do you think the police might do with that information?

Appendix C

Subject: _____ Rater of FIT-R: _____ Date: _____

Competency to Plead Guilty**A. Understanding of the Charges**

This item calls for an understanding of the charges. The defendant should know the charges he/she is facing and should demonstrate an understanding of the seriousness of the charges.

1. What are you charged with?
What did the police arrest you for?
2. How serious is that charge?
Is it a major or minor offence?
3. Do you think that people might be afraid of you because of what you are charged with?
4. If you are found guilty as charged, what are the possible sentences the judge could give you?

-If a jail sentence is received, how long might it be?
-Where would you have to serve such a sentence?
5. How do you think you can be defended against these charges?
6. How can you explain your way out of these charges?

**?
CAN'T TELL**

**0
DEFINITE/SERIOUS
IMPAIRMENT**

**1
POSSIBLE/MILD
IMPAIRMENT**

**2
No
IMPAIRMENT**

B. Understanding of the Pleas and reasons for pleading guilty

This item calls for an understanding of the pleas available to the defendant. Additionally, the defendant should have the ability to explain the reasons for making the plea, and demonstrate some motivation to protect him/herself.

1. Will you plead guilty or not guilty at your trial?
Why?
2. If your lawyer can get the Crown counsel [prosecutor] to accept a plea bargain [you plead guilty to a less serious charge in return for the Crown dropping a more serious charge], would you agree to it? Why/why not?
3. What questions would you ask your lawyer before you decide whether or not to plead guilty?
4. Should you talk with a lawyer before pleading guilty?
5. What questions should you ask you lawyer if you are thinking about pleading guilty?
6. What do you think your chances are to be found not guilty?

**?
CAN'T TELL**

**0
DEFINITE/SERIOUS
IMPAIRMENT**

**1
POSSIBLE/MILD
IMPAIRMENT**

**2
No
IMPAIRMENT**

C. Understanding of the rights being waved - understand the consequences of pleading guilty

This item calls for an understanding of the consequences of the pleas.

[You've said you intend to/Assume you are going to] plead not guilty:

1.
 - a) What does it mean when a person pleads not guilty?
 - b) What happens in court to someone who pleads not guilty?
 - c) What things might a lawyer do when someone wants to plead not guilty?

[You've said you intend to/Assume you are going to] plead guilty:

2.
 - a) What does it mean when a person pleads guilty?
 - b) What happens in court to someone who pleads guilty?
Consequences?
 - c) What things might a lawyer do when someone wants to plead guilty?
 - d) What rights do you waive (give up) when you plead guilty?
3. What will the judge do if you plead guilty?

**?
CAN'T TELL**

**0
DEFINITE/SERIOUS
IMPAIRMENT**

**1
POSSIBLE/MILD
IMPAIRMENT**

**2
No
IMPAIRMENT**

Current charges reported in files

1. What is the accused charged with?

2. Does the individual have an understanding of the charges?

N Y P

-is the accused aware of the charges?

-Are the charges listed by the accused, the same, or similar to those listed in police report?

MEDICAL INFORMATIONPAST

PREVIOUS CONTACT WITH MH SERVICES:	Y	N	NM
PREVIOUS HOSPITALIZATIONS:	Y	N	NM
PREVIOUSLY ON PSYCHIATRIC MEDICATIONS:	Y	N	NM

PRESENT (COPY HEALTH INFORMATION FORM FROM FILE)

PSYCHIATRIST: _____

PRESENT DIAGNOSIS: _____

ON PSYCHIATRIC MEDS AT ADMISSION: Y N NM

ON PSYCHIATRIC MEDS WHILE DETAINED: Y N NM

PSYCHIATRIC MEDS REC. AT DISCHARGE: Y N NM

CERTIFIED: Y N

INCIDENT REPORTS ON FILE: Y N

if YES, what type: _____

SUICIDE RISK AT FPI: Y N NM

THREATS MADE AT FPI Y N NM

FIT TO STAND TRIAL: Y N (FIT BUT FRAGILE)

IF UNFIT, IS HE ABLE TO:	1)	Y	N	NM
	2)	Y	N	NM
	3)	Y	N	NM

LIST SPECIFICS OF FITNESS EVALUATION FROM REPORT:

PREVIOUSLY FOUND UNFIT: Y N NM

PREVIOUSLY FOUND NGRI: Y N NM

PREVIOUSLY FOUND NCRMD: Y N NM

PSYCH. TESTS ADMINISTERED: Y N NM
 If YES, list:

COMPETENT TO PLEAD: Y N NM

PROPOSED PLEA OF ACCUSED: G NG NCRMD NM

ADDITIONAL INFO (FITNESS, COMP. TO PLEAD, &/OR CHARTER
 CAUTIONS)

COURT'S DETERMINATION AS TO FITNESS: FIT UNFIT

FPI Demographic Information

Date of Birth _____/_____/_____

Sex M F

Date of Admission _____/_____/_____

Readmission Y N NK

Preferred language:

1	Arabic	10	German	19	Latvian	28	Sign lang.
2	Chinese	11	Greek	20	Lithuanian	29	Slovan
3	Croatian	12	Hebrew	21	Native	30	Spanish
4	Czech	13	Hindi	22	Philipino	31	Swedish
5	Danish	14	Hindustani	23	Polish	32	Ukranian
6	Dutch	15	Hungarian	24	Portugues	33	Vietnam
7	English	16	Italian	25	Punjabi	34	Yugoslav
8	Finnish	17	Japanese	26	Russian	35	Unknown
9	French	18	Korean	27	Serbian		

Education:

1	None	5	Post Sec - Some	9	Tech. Trade
2	Elementary	6	Post Sec - Complete	10	Vocational
3	Jr Sec (Gr 8-10)	7	Univ - Some	98	Unknown
4	Sr Sec (Gr 11-12)	8	Univ - Complete	99	Other

Marital Status:

1	Single	4	Divorced	98	Unknown
2	Married	5	Separated		
3	Widowed	6	Common-Law		

Religion:

1	Indian/Inuit	4	Orthodox	7	Other Catholic
2	Judaism	5	Protestant	8	Other Religion
3	Catholic	6	Other World	9	None

Birthplace:

1	Nfld	8	SASK	15	Britian
2	PEI	9	Alta	16	Europe
3	NS	10	B.C.	17	Asia
4	NB	11	NWT/Yukon	18	Africa
5	Quebec	12	Other NA.	19	Australia/New Zealand
6	Ontario	13	Ctrl Am.	20	Unknown
7	Manitoba	14	South Am.	21	Other

Citizenship:

1	Native Status	4	Landed Immigrant
2	Native Non-Status	98	Unknown
3	Canadian	99	Other

Employment Status:

1	Self employed	5	Seasonally	9	Student
2	Unemployed	6	Military	98	Unknown
3	Employed P/T	7	Retired	99	Other
4	Employed F/T	8	Homemaker		

Ethnic Group:

1	Native Indian	7	Japanese	13	South European
2	French Canadian	8	East Indian	14	Arabic
3	N.A. Caucasian	9	Asian	15	Latin American
4	N.A. Black	10	East European	16	South American
5	African	11	West European	98	Unknown
6	Chinese	12	North European	99	Other

Financial Support:

1	No Income	6	Employed F/T	11	Disability Pension
2	Welfare	7	Employed P/T	12	WCB Benefits
3	Family Support	8	CPP Pension	13	Handicap Pension
4	Savings/Inherit	9	OAP Pension	98	Unknown
5	UIC Insurance	10	Company Pension	99	Other

Source of Income: (While in Hospital)

1	No Income	6	Employed F/T	11	Disability Pension
2	Welfare	7	Employed P/T	12	WCB Benefits
3	Family Support	8	CPP Pension	13	Handicap Pension
4	Savings/Inherit	9	OAP Pension	98	Unknown
5	UIC Insurance	10	Company Pension	99	Other

Housing Type:

1	Private Home/Apt	7	Home Spec Care	13	Hostel
2	Private Room	8	Home Nurs Care	15	Corr. Inst.
3	Priv. Board Home	9	Co-op Home/Apt	16	Parole Facil
4	Domiciliary Hostel	10	Group Home	17	No Fixed Ad
5	Approved Home	11	Nursing Home	18	Riverview
6	Spec Care-Res	12	Home for Aged	98	Unknown
				99	Other

Length of Stay:

1	Less than 1 Week	3	> 6 Mo < 1 Yr	98	Unknown
2	> 1 Wk < 6 months	4	> 1 Yr		

Living With:

1	Alone	3	Parents	5	Other Relatives
2	Spouse/Common-Law	4	Friends	98	Unknown

Appendix E

Subscore 1

- Part 1, Item 1 You are not obliged to say anything unless you wish to do so.
- Part 2, Item 1a You should not say anything until the police ask you questions.
- Part 2, Item 1b You do not have to say anything about what you did
Part 3, Item 4 obliged

Subscore 2

- Part 1, Item 2 Anything you do say may be given in evidence.
- Part 2, Item 2a If you won't talk to the police, then that will be used against you in court.
- Part 2, Item 2b As long as you are polite to the police, whatever you say will not be used against you in court.
- Part 3, Item 5 evidence

Subscore 3

- Part 1, Item 3 You have the right to retain and instruct counsel without delay.
- Part 2, Item 3a You may contact anybody to give you advice when you are arrested.
- Part 2, Item 3b You can get advice from a lawyer about answering the police officers questions.
- Part 3, Item 1 Counsel
Part 3, Item 2 retain
Part 3, Item 3 instruct
Part 3, Item 6 right

Subscore 4

- Part 1, Item 4 A Legal Aid Duty Lawyer can explain the Legal Aid plan to you without charge.
- Part 2, Item 4a If you do not know about the Legal Aid plan, the police will explain it to you.
- Part 2, Item 4b Even if you do not have any money, you can talk to a lawyer about receiving free legal services.
- Part 3, Item 8 legal advice
Part 3, Item 10 lawyer

Subscore 5

Part 1, Item 5 A Legal Aid Duty Lawyer is available to provide legal advice to you without charge.

Part 2, Item 5a Even if you do not have the money for a lawyer, one will be made available to you.

Part 2, Item 5b A lawyer will provide you with free legal advice at the beginning, but you will have to pay for legal advice if your case goes to trial.

Part 3, Item 8 legal advice

Part 3, Item 10 lawyer

Subscore 6

Part 3, Item 7 arresting

Part 3, Item 9 duty