

**C-176.**

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First Session, Twenty-Seventh Parliament, 14-15 Elizabeth II, 1966.

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**THE HOUSE OF COMMONS OF CANADA.**

**BILL C-176.**

An Act to amend the Criminal Code  
(Insanity at time of trial).

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First reading, May 5, 1966.

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MR. MUNRO.

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An Act to amend the Criminal Code  
(Insanity at time of trial).

1953-54,  
cc. 51, 52;  
1955, cc. 2, 45;  
1956, c. 48;  
ss. 19, 20;  
1957-58, c. 28;  
1958, c. 18;  
1959, cc. 40,  
41;  
1960, c. 37  
and c. 45,  
s. 21;  
1960-61, cc.  
21, 42, 43, 44;  
1962-63, c. 4;  
1963, c. 8;  
1964-65, c. 22,  
s. 10 and cc.  
35, 53.

Insanity at  
time of  
trial.

Postponement  
of question  
of accused's  
fitness.

Identification  
and alibi.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. Section 524 of the *Criminal Code* is repealed and the following substituted therefor: 5

“524. (1) Where on the trial of a person the issue arises (at the instance of the defence or otherwise) whether the accused is on account of insanity capable of conducting his defence and is thereby unfit to stand trial the following subsections shall apply. 10

(2) The court, judge or magistrate, if having regard to the nature of the supposed insanity, is of the opinion that it is expedient to do so and in the interests of the accused, may postpone the question of the accused's fitness to stand trial until any time up to the opening of the defence, and, if before the question of the accused's fitness to stand trial falls to be determined the jury, judge or magistrate returns a verdict of acquittal on the count or counts on which the accused is being tried, that question shall not be determined. 15 20

(3) Provided that the court, judge or magistrate may at the request of counsel for the accused and in his discretion if he deems it to be in the interests of the accused call any witness on the issue of the identification of the accused as the party responsible for the crime and on the issue of whether the accused could have been present at the scene of the crime at the time of the commission thereof without the defence being deemed to have been opened within the meaning of subsection (2). 25 30

#### EXPLANATORY NOTES.

The provisions of section 524 of the *Criminal Code* which apply when the accused at time of trial is, on account of insanity, incapable of conducting his defence and thus unfit to stand trial in effect incorporate the provisions of English Common Law.

It has been suggested that it should be possible in practice for counsel to postpone any hearing of the issue of fitness where he is reasonably convinced that his client would be found not guilty of the offence charged.

The unsatisfactory state of the law was considered by the Criminal Law Revision Committee in England, which committee recommended that the postponement of the issue of fitness be allowed up to the opening of the defence case. As a result the *Criminal Procedure (Insanity) Act, 1964* was enacted by the Parliament of Westminster.

This statute, in the discretion of the trial judge, permits the issue of fitness to be tried at any time up to the opening of the defence; it provides also that if before the question of the accused's fitness to stand trial falls to be determined the jury returns a verdict of acquittal the question of fitness to stand trial shall not be determined.

Some deficiencies, however, have been noted in that the said statute makes no reference to the calling of witnesses on the issues of identity and alibi.

The purpose of this Bill is to amend section 524 of the *Criminal Code* so as to parallel the provisions of the English statute of 1964, extending however, the effect of such provisions so as to permit the calling of witnesses by the trial judge on the issues of identity and alibi.

Another purpose of this Bill is to amend section 592 of the *Criminal Code* so as to provide for appeals in cases of insanity at time of trial.

Time of  
determi-  
nation.

(4) Subject to the foregoing, the question of the accused's fitness to stand trial shall be determined as soon as it arises.

Insanity at  
time of trial.

Discretion of  
the court.

(5) Subject to the foregoing, a court, judge or magistrate may at any time prior to the termination of the hearing where it appears that there is sufficient reason to doubt that the accused is, on account of insanity, capable of conducting his defence, direct that an issue be tried whether the accused is then, or has been from the beginning of the hearing, on account of insanity, unfit to stand trial.

Custody for  
observation.

(6) A court, judge or magistrate may, at any time before verdict or sentence, when of the opinion, supported by the evidence of at least one duly qualified medical practitioner, that there is reason to believe that

(a) an accused is mentally ill, or

(b) the balance of the mind of an accused is disturbed, where the accused is a female person charged with an offence arising out of the death of her newborn child,

remand the accused, by order in writing, to such custody as the court, judge or magistrate directs for observation for a period not exceeding thirty days.

Trial of  
issue.

(7) For the purposes of subsection (1) the following provisions apply; namely

(a) where the accused is to be tried by a court composed of a judge and jury,

(i) if the issue is directed before the accused is given in charge to a jury for trial on the indictment, it shall be tried by 12 jurors or in the province of Alberta by 6 jurors; and

(ii) If the issue is directed after the accused has been given in charge to a jury for trial on the indictment, the jury shall be sworn to try that issue in addition to the issue on which they are already sworn; and

(b) where the accused is to be tried by a judge or magistrate, he shall try the issue and render a verdict.

If sane, trial  
shall  
proceed.

(8) Where the verdict is that the accused is not unfit on account of insanity to stand his trial, the arraignment or the trial shall proceed as if no such issue had been directed.

If insane,  
order for  
custody.

(9) Where the verdict is that the accused is unfit on account of insanity to stand his trial, the court, judge or magistrate shall order that the accused be kept in custody until the pleasure of the Lieutenant-Governor of the Province is known and any plea that has been pleaded shall be set aside and the jury shall be discharged.

Subsequent trial.

(10) No proceeding pursuant to this section shall prevent the accused from being tried subsequently on the indictment, provided that a verdict of acquittal has not been recorded."

2. Section 592 of the said Act is amended by adding immediately after subsection (6) thereof the following subsection:

Appeal, question of fitness to stand trial on account of insanity.

"(7) (a) Where the question of fitness to stand trial on account of insanity was determined later than on arraignment, an appeal against a finding that the accused was unfit to stand trial on account of insanity may be allowed if the Court of Appeal is of opinion that the case is one in which the accused should have been acquitted before the question of fitness to stand trial was considered;

Verdict of acquittal.

(b) if the Court is of that opinion, the Court shall in addition to quashing the finding direct that a verdict of acquittal be entered;

Orders of the court.

(c) subject to paragraph (b) above where an appeal is allowed against a finding that an accused was unfit to stand trial on account of insanity, the appellant (if the appellant is the accused) may be tried accordingly for the offence with which he was charged and the Court may make such orders as appear to the Court to be necessary or expedient pending any such trial for his custody, admission to bail or continued detention at the pleasure of the Lieutenant-Governor of the Province;

Order that the accused be kept in custody.

(d) where the Court of Appeal is of opinion that the proper verdict would have been a special verdict, or a finding that the accused was unfit to stand trial on account of insanity, or on an appeal against conviction or against a special verdict that the case is not one where there should have been a verdict of acquittal but there should have been a finding that the accused was unfit to stand trial on account of insanity, the Court of Appeal shall make an order that the accused be kept in custody until the pleasure of the Lieutenant-Governor of the Province shall be known and the conviction shall be quashed."