

Symposium | Forensic Psychiatry : [Symposium 26] Balancing Legal Obligations and Medical Ethics: Implementing Rights-Based Mental Health Care under the CRPD

📅 Fri. Sep 26, 2025 9:00 AM - 10:30 AM JST | Fri. Sep 26, 2025 12:00 AM - 1:30 AM UTC 🏛️ Session Room 4 (Large Hall B)

[Symposium 26] Balancing Legal Obligations and Medical Ethics: Implementing Rights-Based Mental Health Care under the CRPD

Moderator: Samuel F. Law (University of Toronto), Shinsuke Kondo (University of Tokyo)

[SY-26-04] Forensic Implications of the Convention on the Rights of Persons with Disabilities - a Canadian Perspective

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Keywords : Forensic Psychiatry、Canada、Not Criminally Responsible

The United Nations Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006, serves as a framework for protecting and promoting the rights of people with disabilities, including those with mental illness. The CRPD asserts that all individuals, regardless of ability, have the right to personal autonomy and decision-making. CRPD potentially conflicts with the underlying principles of “not criminally responsible” (NCR) defence in Canada. When Canada ratified the CRPD in 2010, it included a reservation regarding Article 12, that permits supportive decision-making frameworks for mental health. Proponents of the reservation argue that it acknowledges the complexities involved in mental health care and ensures that individuals receive support without undermining their rights. A rigid interpretation of CRPD may neglect the real-world challenges faced by those with severe mental illnesses, where decision-making capacity can fluctuate. However, Canada’s reservation may legitimize a paternalistic approach, effectively denying certain rights to individuals with mental illness. The reservation could lead to violations of rights under the guise of support, rather than fostering true empowerment and autonomy. Further health care delivery in Canada is under provincial jurisdiction, leading to fragmentation of CRPD implementation. The NCR defence is administered under the Canadian federal criminal code. Critics of NCR argue that such practices infringe upon individual rights and perpetuate stigma against people with mental illness. They contend that NCR is an extension of involuntary treatment and undermines the CRPD’s goals of autonomy and self-determination. This defence can reinforce stereotypes that mental illness is inherently dangerous or irrational. Yet, the NCR defence can be protective when criminal actions are mediated by mental illness. This presentation provides an overview of the debate regarding this topic. It will also discuss current gaps in the literature and best practices concerning the CRPD.