Forensic Psychology 4th Edition Joanna Solutions Manual

CHAPTER 1
An Introduction to Forensic Psychology

LEARNING OBJECTIVES

- Identify some of the major milestones in the history of forensic psychology.
- Provide a narrow and broad definition of forensic psychology.
- Describe the differences between clinical and experimental forensic psychology.
- List the three ways in which psychology and the law can interact.
- List the criteria used in Canada to decide when expert testimony is admissible.

OUTLINE

An Introduction to Forensic Psychology

- Forensic psychologists are interested in understanding people's thoughts, feelings, and actions in a legal context (see formal definition below). Generally, forensic psychology can be defined as a field of psychology that deals with all aspects of human behaviour as they relate to the law or legal system.
- Portrayals of forensic psychology in the media often are inaccurate (see In the Media box concerning reality TV).

A Brief History of Forensic Psychology

- The history of forensic psychology dates back to the late 1800s.
- Early research in the area centered on eyewitness testimony and suggestibility. Some of the first experiments were conducted by Cattell at Columbia University, who demonstrated that people often were inaccurate at recalling everyday events. Similarly, Binet published studies demonstrating that children are highly susceptible to suggestive questioning techniques (i.e., misleading questions). Stern also began conducting studies using a "reality experiment" paradigm, and found that eyewitness recall often was incorrect, and that emotional arousal has a negative impact on memory.
- Around the same time, psychologists around the world began providing expert testimony surrounding issues such as the effect of pretrial publicity on witnesses (i.e., Schrenck-Notzing and retroactive memory falsification) and the susceptibility of children to suggestion (i.e., Varendonck), often making reference to experimental research.
- Some suggest forensic psychology arrived in North America with Munsterberg's *On the Witness Stand* (1908). In his book, Munsterberg detailed ways that psychology could assist the legal system, following criticisms that psychology was a fad for "cheating justice". However, several scholars engaged in a counter-attack (i.e., Wigmore's "trial" of Munsterberg and his claims), and psychologists did not provide expert testimony in North America until 1921.

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- In the mid- to late-1900s, many theories of crime were being proposed. Generally there are three categories of theories (see Box 1.1):
  - Biological theories emphasize the role that biology plays in explaining crime (i.e., constitutional theory, chromosomal theory, dyscontrol theory).
  - Sociological theories suggest that cultural variables are important in explaining crime (i.e., strain theory, differential association theory, labelling theory).
  - Psychological theories emphasize a range of individual difference variables in explaining crime (i.e., biosocial theory of crime, social learning theory, general theory of crime).
- Classic U.S. court cases included *People v Hawthorne* (1940), *Brown v. Board of Education* (1954) and *Jenkins v. United States* (1962).
- The field of forensic psychology is believed to have began in Canada around the mid-1900s. Canadian psychologists have made many important contributions to the field since then (see Figure 1.1), and in particular within the area of corrections (see Box 1.2).
- Forensic psychology now is an established discipline, recognized by the American Psychological Association, complete with multiple high-quality textbooks on forensic psychology, academic journals, professional associations to promote research and practice (i.e., APLS, the Criminal Justice section of CPA), and a growing number of graduate training programs in Canada.

Forensic Psychology Today

- Much debate exists over how forensic psychology should be defined in modern times. Currently, there is no generally accepted definition of the field, and debate continues surrounding narrow or broad definitions.
- A narrow definition is precise and tends to focus on practical application, yet it excludes aspects of the profession (i.e., only those engaged in clinical practice would be permitted to call themselves forensic psychologists). In contrast, a broad definition attempts to include all aspects of the discipline, focusing on practical application as well as the research needed to inform applied practice.

The Roles of a Forensic Psychologist

- Forensic psychologists play many different roles, although all interested in issues that concern the interaction of psychology and the law.
- Clinical forensic psychologists focus on mental health issues as they apply to the legal system. They may engage in both research and practice (i.e., risk assessments, police personnel selection, offender treatment) in a variety settings (i.e., prisons, hospitals). Qualifications for a licence to practice clinical forensic psychology varies across Canada, however at least a Master's degree in psychology is required in each Province.
- Experimental forensic psychologists engage in research regarding human behaviour in relation to the legal system (i.e., effectiveness of risk assessment, factors that influence jury decision-making, developing better ways to conduct eyewitness lineups). Qualifications involve Ph.D.-level graduate training in psychology and research in the forensic area.

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- In contrast, a legal scholar may focus on analyses of mental health legislation and psychologically-based legal movements. Qualifications to be a legal scholar include a Ph.D. in psychology and typically an L.L.B. in law. Movements in Canada include the development of SFU's Psychology and Law program, as well as the Mental Health Law and Policy Institute (MHLPI).
- Several disciplines overlap with forensic psychology (i.e., forensic psychiatry) and others are often confused with it (i.e., forensic anthropology, forensic art, forensic entomology, forensic odontology, forensic pathology, forensic podiatry; see Box 1.3).

The Relationship between Psychology and Law

- Psychology and the law can interact in three ways: psychology and the law, psychology in the law, and psychology of the law (Haney, 1980).
  - Psychology *and* the law refers to the use of psychology to examine the operation of the legal system and assumptions made within that system. For example, a psychologist may conduct a laboratory study to determine whether a particular type of police line up results in accurate identifications (see Box 1.4 for other examples of research in this area based on common assumptions in the criminal justice system).
  - Psychology *in* the law is the use of psychological knowledge in the legal system as it currently operates. For example, a parole board may use a psychologist's report when deciding whether to release an offender, or a police officer may apply psychological knowledge within their investigations.
  - Psychology *of* the law refers to the application of psychology to study the law itself. For example, a psychologist might attempt to determine why some people obey the law while other people do not, or how court rulings should impact the field of forensic psychology (see Box 1.5).

Modern-Day Debates: Psychological Experts in Court

- The expert witness has two potential functions: (1) to help the court understand a particular issue and/or (2) to provide an opinion (Ogloff & Cronshaw, 2001). The fact that experts are allowed to testify about their opinions in court is what separates them from regular witnesses. An expert also is to be an educator and not an advocate for the prosecution or defence.
- Difficulties in providing expert testimony often arise, due in part to the inherent differences between psychology and law (Hess, 1999). These differences include the manner in which knowledge is obtained (cumulative research versus case precedent), the methodology used to investigate truth (nomothetic versus idiographic), epistemology (objective versus subjective truths), criteria (statistical versus single-case evidence), nature of law (descriptive versus prescriptive), principles of law (considering alternative explanations versus convincing others of one correct explanation), and latitude (restricted behaviour of experts versus lawyers).
- To be considered by a judge or jury, expert testimony must meet specific admissibility criteria.
  - One set of criteria in the United States is referred to as the "general acceptance test*"* (*Frye v. United States*, 1923). This test requires that testimony be based on scientific principles that are generally accepted within the scientific community.

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  - More recently, the *Daubert* criteria have been proposed (*Daubert v. Merrill Dow Pharmaceuticals Inc.*, 1993). According to *Daubert*, expert testimony must: (1) be given by a qualified expert, (2) be relevant, and (3) be reliable (i.e., valid). According to *Daubert* criteria, scientific evidence is considered valid if the following criteria are met: (1) the research has been peer reviewed, (2) the research is testable, (3) the research has a recognized rate of error, an (4) the research adheres to professional standards.
  - In Canada, the admissibility of expert testimony is based on criteria outlined in *R. v. Mohan* (1994). According to these guidelines, testimony is admissible if it: (1) is relevant, (2) is necessary, (3) does not violate any exclusionary rules, and (4) comes from a qualified expert.
- Although such criteria may make it easier for judges to decide what testimony to allow in court, it is still problematic in that it is subjective and is highly dependent on the discretion of the judge (see Box 1.6).

SUGGESTED LECTURE ACTIVITIES

NOTE: Instructors also can refer to Shapiro and Walker's (2013) chapter on *New Directions in Teaching Forensic Psychology* (reference below) for additional ideas and direction throughout the course.

A Brief History of Forensic Psychology

- Describe early research in forensic psychology (e.g., research conducted by Cattel [1895] or Stern [1901]). Ask students to discuss the strengths and weaknesses of the research design employed and get them to think about how they could conduct research of higher quality.
- Conduct a reality experiment in class with several student confederates and have the remaining students attempt to recall information about the event. Discuss the results.
- Divide students into three groups and assign each group to one of the major categories of crime discussed in this chapter (biological, sociological, and psychological). Have each group discuss the strengths of their theory to the rest of the class and debate potential weaknesses.

Forensic Psychology Today

- Ask students whether they prefer a narrow or broad definition of forensic psychology and get them to explain why.

The Roles of a Forensic Psychologist

- Conduct a quick search of psychology faculty members in forensic psychology across Canada. Choose approximately 5 examples to describe to the class, including who they are, what they do, and any other relevant details. Ask the class to categorize these professionals as to whether they would fit into the clinician, experimental, or legal scholar categories of forensic psychologist.

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The Relationship between Psychology and the Law

- Take the common assumptions presented in Box 1.4 and present to the class as a true/false quiz, as the class why they think each of these statements are true or false and then discuss what research conducted by forensic psychologists has found. NOTE: This is best done right at the beginning of the course when students are more likely to be naïve concerning forensic psychology.
- Define psychology and the law, psychology in the law, and psychology of the law to your students. Split them into three groups and have them generate activities that correspond to one of these three relationships.

Modern-Day Debates: Psychological Experts in Court

- Based on Hess's (1987, 1999) seven differences between psychology and law, ask students to discuss some obstacles that a psychologist may face in their role as an unbiased expert witness. Have students discuss how an expert may overcome these obstacles and what systematic changes could be made by the legal system to prevent these problems.
- Provide an example of eyewitness expert testimony (use one of the early court cases, such as Schrenck-Notzing's testimony discussed in the textbook). Divide students into three groups (one group represents the prosecutor, another the defence, and the third will be judges). Ask the prosecution group to argue that the testimony would meet the *Mohan* criteria, ask the students representing the defence to argue against the testimony, and ask the judges to make the final decision and discuss their reasoning.

PEER SCHOLAR EXERCISE(S)

The discussion and research questions at the end of the chapter (located below) can be used as peerScholar assignments (www.pearsoned.ca/peerscholar). Students are expected to write a 500 word response to the question (using *at least one empirical* reference incorporated into their response) and submit it online through peerScholar where an anonymous and randomly-assigned group of their peers will review and evaluate it. Peers will be required to read and provide constructive comments (and a grade out of 100 points, see Instructions and Tips) for three randomly assigned papers from questions different from the one they themselves completed. Peer grades will be averaged and make up a portion of the individual student's grade (e.g., 5%). All students also will be given a grade out of 100 points for their feedback on other papers according to the Instructions and Tips specified by the instructor (see below) and this could count for another portion of the overall student grade (e.g., 5%). Students will then receive feedback from their classmates on their paper and have a chance to revise their paper prior to submitting to the professor for a paper grade out of 100 points (worth say 5%) that is then combined with the other grades for a total of 15% or some value as determined by each individual instructor. This entire process will be anonymous. For more information about peerScholar, contact your Pearson sales representative.

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DISCUSSION QUESTIONS:

1) The majority of forensic psychologists have no formal training in law. Do you think this is appropriate given the extent to which many of these psychologists are involved in the judicial system?

2) Put yourself in the shoes of an expert witness. You are supposed to act as an educator to the judge and the jury, not as an advocate for the defence or the prosecution. To what extent do you think you could do this?

RESEARCH QUESTIONS:

1) You are away at university and your parents are interested to hear about the courses you're taking. You of course tell them about this course. Biased by all of the prime-time TV watching they do, your parents seem to have a glamourized view of what forensic psychology is. You want to set them straight. Conduct a search of articles, and using these articles, come up with a description of what forensic psychology is and isn't.

2) As you have seen throughout this chapter, laboratory research has played a central role in the history of forensic psychology. Given the applied nature of many questions that arise in forensic psychology, people have sometimes questioned the value of conducting such studies. Claims have been made that laboratory studies are too artificial to reveal anything of value for this field. Put yourself in the position of a researcher who would like to understand the work environment in policing. You are considering conducting some laboratory research to shed light on these issues, but you fear that your work will be rejected on the grounds that it is artificial. Using MySearchLab locate a paper written by Dobbins, Lane, and Steiner, which was published in the *Journal of Organizational Behavior* in 1988. Based on this paper, what arguments might you make for why laboratory research has value?

<u>INSTRUCTIONS AND TIPS</u> (to be provided to students as grading criteria)

All students must leave *at least 5 comments* per paper they read. Comments must be constructive (i.e., other things the student could consider, ways concepts could be clarified) rather than destructive (i.e., this is a stupid argument, the writing sucks). Remember that ALL students are also being evaluated on the QUALITY of feedback that they provide to their peers – so make it count!

Consider the following questions when providing a grade for your peers, and assign a grade of 20 points to each evaluation criteria, to provide a total overall paper grade out of 100 points.
a) Was the paper written clearly?
b) Did the author make clear arguments that are backed up with facts?
c) Did the author use additional resources (minimum one) to support their arguments and was this done effectively?
d) Did the author answer the discussion/research question appropriately?

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e) Overall impression (sentence structure, fluidity, grammar, spelling).

SUGGESTED READINGS

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Shapiro, D. L., & Walker, L. E. A. (2013). New directions in teaching forensic psychology. In M. B. Gregerson, H. T. Snyder, & J. C. Kaufman (Eds.), *Teaching creatively and teaching creativity* (pp. 101-115). New York, NY: Springer.

SUGGESTED ONLINE VIDEO RESOURCES

1) *Forensic Psychology: The Real World of CSI* (2009). Dr. Jeffery Kieliszewski from Human Resource Associates presents on his experience in the criminal justice system as a forensic psychologist (1:22:56).
LINK: http://www.youtube.com/watch?v=dOBSYw4KjYg

2) *What is a Forensic Psychologist?* (About.com Educational Video). Think forensic Psychology is exactly like an episode of CSI: Miami? This psychology video shows you what forensic psychologists really do and how to become one (3:17).
LINK: http://video.about.com/psychology/What-Is-a-Forensic-Psychologist-.htm

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NOTE: You also could use a misleading video about Forensic Psychology to identify how influential media perceptions have been in terms of what forensic psychology is perceived as relative to what it really IS. Example video that is highly inaccurate: *Forensic Psychology Salary* (2011). Their deascription: "Forensic psychologists are some of the most, and best, trained psychologists in their field of study. Not only does this profession require that you receive a bachelor degree, master degree, and a license, but you are also required to have internships and hours of supervision under your belt" (1:07).
LINK: http://www.youtube.com/watch?v=6_H6FyRkW3I

SUMMARY OF COURT CASES

R. v. Hubbert (1975)
Facts:

- Hubbert was charged and convicted of murder while under the supervision of a Lieutenant-Governor warrant.
- The fact that the defendant was under the care of the Penetanguishene Mental Health Centre at the time of the murder came out during the trial.
- The defendant pleaded not guilty and argued that he did not receive a fair trial because the jury was biased by his previous incarceration at the hospital for an unrelated incident.

Summary:

The defense lawyer believed that the jury would most likely be biased against Hubbert due to his status as a patient of Penetanguishene. Therefore, he requested that a psychiatrist give expert testimony regarding the likelihood that the jury would convict his client based upon his mental health status, and the nature of the murder, not upon evidence. The trial judge did not allow the psychiatrist's opinion. After Hubbert was convicted, the case was appealed to the Ontario Court of Appeal; the judge ruled that the psychiatrist would not have had the expertise to determine whether the knowledge of Hubbert's past incarceration at Penitaguishene would have biased the jury. He also ruled that whether the jury would be biased was irrelevant according to the instructions given to jurors by the judge, "to base their decision upon the evidence presented". The judge further iterated that the court could not concern themselves with individual personality characteristics of jurors, but rather the courts responsibility is to ensure that jurors are properly instructed how to fulfill their responsibilities. The defense appealed to the Supreme Court of Canada. The appeal was dismissed and Hubbert served a minimum sentence of 15 years.

R. v. Sophonow (1986)
Facts:

- At his second trial, Sophonow was wrongfully convicted of murdering Barbara Stoppel, a young waitress in Winnipeg, Manitoba. The verdict was appealed on the grounds of judicial errors and over reliance on eyewitness evidence.

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- Dr. Elizabeth Loftus testified during the inquiry and noted the fallacies associated with eyewitness evidence which were heavily relied upon by the prosecution throughout the trial.
- The conviction was overturned and, in 2000, a public apology was made to Sophonow for the undue hardship he endured over the course of the inquiry.

Summary:

This case questions reliance on eyewitness testimony within the court system. Although Sophonow had a credible alibi, it was ignored in favour of extremely flawed eyewitness accounts. For example, Sophonow was arrested on the basis of photo identifications by two witnesses, and a police sketch based on the witness descriptions, among other factors. At Sophonow's first trial, the jury was unable to make a decision and at the second he was convicted of first degree murder. An appeal was granted, and a third trial was ordered. At the third trial, the Crown presented evidence of C., a prisoner who had testified at the second trial that Sophonow had confessed to him. The Crown also had one witness comment on the build and hand size of Sophonow while remarking on the fit of a glove allegedly worn by the culprit. Sophonow was eventually acquitted on the basis that the judge failed to indicate to the jury members the frailties of identification evidence or that caution needs to be taken when convicting on eyewitness identification. The judge also erred in not allowing Sophonow's alibi as evidence, and in permitting the statement of C., whose pending criminal charges were subsequently stayed after his testimony was given. In addition, it was determined that the conviction was unwarranted as the eyewitness evidence was of such an equivocal nature that it was unsafe to rely upon.

R. v. Lavallee (1990)

Facts:

- Lavallee shot her abusive husband after being threatened by him "to kill him or he would kill her".
- There was considerable evidence that the accused was a victim of domestic violence.
- The defendant claimed self defence.
- A psychiatrist submitted testimony in support of the defendant based upon subjective interviews and police reports.

Summary:

After being found not guilty for killing her abusive husband the crown appealed to the Manitoba Court of Appeal arguing that Lavallee's psychiatrist gave testimony that was based upon personal interviews with the accused, the police and her mother. At issue was the fact that the jury was not adequately warned that the doctor's testimony was based upon subjective evidence. Additionally, the jury was not instructed to give the same amount of credence to the medical testimony than to the other evidence presented in court. The crown was successful and a new trial was ordered. The defense appealed to the Supreme Court of Canada, which in 1990 set aside the order from the Manitoba Court of Appeal and restored the acquittal. The Supreme Court decision also included principles to guide decisions about expert testimony in cases of battered women.

Wenden v. Trikha (1991)

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Facts:

- Trikha was involved in a motor vehicle accident in which Wenden was injured.
- The appellant was under the care of a psychiatrist at the time of the accident and was experiencing psychotic and depressive symptoms.
- Wenden attempted to hold the psychiatrist and the hospital responsible for the damages incurred.
- Damages were awarded to the plaintiff, however the doctor and hospital were not found liable.
- Trikha was found liable for negligence, but not criminally responsible due to his psychiatric condition.

Summary:

Wenden was struck by Trikha's vehicle and suffered substantial neurological and psychological injuries as a result. Trikha argued that he was driving his car radically and couldn't conceive the consequences of his behaviour due to his psychotic disorder. At issue in this case was the duty of care the psychiatrist and hospital have to reasonably perceive that Trikha would be a danger to others. The Alberta Court of Queen's Bench ruled that the doctor and hospital were not responsible because they had provided an appropriate level of care according to the behaviour Trikha was exhibiting at the time of being treated. The court also denied Wenden damages for her in-vitro child because the fetus had not suffered medically as a result of the accident, and the care Wenden was unable to provide to her baby after it was born, following the accident, was too remote to be connected to the accident. The plaintiff and the respondent (Trikha) appealed their decisions to the Alberta Court of Appeal. Both cases were dismissed. The plaintiff then appealed to the Supreme Court of Canada. The case was dismissed with costs awarded to Wenden.

R. v. Swain (1991)

Facts:

- Swain was found not criminally responsible due to mental illness on the charges of assault and aggravated assault on his wife and child.
- Before the trial began, the defendant received treatment for his psychotic delusions and substantially improved.
- The defence appealed the not criminally responsible verdict to the Ontario Court of Appeal on the following grounds: 1) the Crown erred in law by raising the issue of insanity during the trial, without the consent of the accused, and 2) he (the defence lawyer) was not permitted to attend, or to make submissions before the Advisory Review Board (a hearing to assess and advise the Lieutenant Governor regarding the sanity and the level of risk the appellant represented to society).
- The Ontario Court of Appeal dismissed the appeal; the defence appealed to the Supreme Court of Canada. However, before the Supreme Court heard the case, the Lieutenant Governor released Swain and granted him an absolute discharge.

Summary:

This case challenges Canada's Constitution and the Charter rights of persons pleading the insanity defence. During his psychotic episode, Swain believed that his family was being attacked by demons and he had to protect them by performing certain acts, which included the use of violence. The defence lawyer argued that the mandatory

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detention in a mental health facility violated his client's Charter rights and places the onus on the defendant to prove he is no longer a threat to society. The Supreme Court agreed. As a result of this case, the Supreme Court struck down the provision for automatic, indefinite detention of an NCR accused on the basis that it violated the defendant's s. 7 liberty rights. However, since Swain was already released, a judicial stay of proceedings was entered. In regards to the admissibility of the crown presenting evidence that the accused was insane, the Supreme Court argued that it raises issues of fairness and could potentially bias a jury due to the stigma attached to mental illness. It held that questioning the sanity of the defendant could sway the jury to convict a person based upon a perception that the crime fits with commonly held biases regarding the type of person who is most likely to have committed that crime (a person who is insane), not whether the evidence substantiates a conviction. Furthermore, the Supreme Court agreed that allowing the Crown to present evidence supporting the defendant's insanity violates their rights to actively participate in their defence because once a label of mentally ill is attached to the defendant, their credibility is questioned and they are considered unable to make rational decisions.

R. v. Levogiannis (1993)

Facts:

- Levogiannis was charged with sexual interference after sexually assaulting a young boy.
- After a psychologist testified that the victim was experiencing substantial fear of the assailant and, in his opinion, the child would be unable to give a frank and honest account of the assault in court, the judge ordered a screen be used during the trial. The child gave his testimony while his view of the appellant was blocked.
- The appellant argued that the presence of the screen violated his charter rights.

Summary:

Levogiannis appealed his conviction for sexual interference to the Ontario Court of Appeal. The defendant argued that the presence of the screen violated his section 7 and 11 rights under the Canadian Charter of Rights and Responsibilities, which grants persons the right to be presumed innocent until proven guilty and the right to a fair trial. Levogiannis stated that the presence of the screen biased the judge by causing him to appear to be guilty. Furthermore, he believed that the screen interfered with the court's ability to fully cross examine the victim. However, the Appeal judge ruled that because the screen only blocked the child's view, and everyone else in the court including the defendant could face the complainant, the use of the screen did not violate the accused charter right to a fair trial. Concerning the right to be presumed innocent, the Ontario Court of Appeal judge ruled that the screen did not influence the judge's opinion. The case was appealed to the Supreme Court of Canada. Levogiannis' conviction was upheld and his appeal was dismissed.

R. v. Mohan (1994)

Facts:

- Mohan, a paediatrician, was charged with sexual assault of four teenage patients.

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- As part of Mohan's case, the defence wanted to provide expert testimony from a psychiatrist on how Mohan did not fit the 'type' of person who would commit such an offence.
- The judge ruled that the testimony was inadmissible.
- On appeal, the Supreme Court of Canada agreed, and established the admissibility standard for expert testimony.

Summary:

During trial, Mohan's defence attempted to provide expert testimony from a psychiatrist, Dr. Hill. Dr. Hill intended to testify that Mohan could not be the perpetrator of sexual assaults against several of his teenage patients, as the true perpetrator would belong to a group of unusual individuals, and Mohan did not fall within this group (i.e., he did not possess the characteristics that were indicative of this type of individual). At a voir dire, the trial judge ruled the evidence would not be admitted. On appeal, the Supreme Court of Canada upheld Mohan's conviction and established the Mohan criteria, outlining the admissibility standard for expert testimony within Canadian courts. The criteria include: the testimony must be necessary to provide additional relevant information to the judge and jury, the evidence presented must be relevant, the evidence must not violate any rules of exclusion, and the testimony must be provided by a qualified expert.

R. v. Williams (1998)

Facts:

- Williams, an aboriginal male, was charged with robbery and pleaded not guilty. Subsequently, he chose to be tried before a jury.
- The trial judge did not allow the defense to question jurors in order to determine if they held prejudicial views against aboriginal peoples.
- The accused argued that someone else had committed the robbery and that the presence of discrimination against aboriginal people biased the jury.

Summary:

This case serves as an indication of whether jurors can be questioned as to any preexisting racial biases towards the defendant that may adversely influence their impartiality as jurors. At William's first trial, the judge allowed questioning of potential jurors; however, the Crown successfully claimed a mistrial in part due to the high publicity of the jury selection process. During William's second trial, the judge dismissed the accused's request to challenge the jurors in an attempt to determine whether or not they held any biases towards the defendant as an Aboriginal. In addition, the judge failed to inform the jury that they must disregard any bias or prejudice they possessed toward Aboriginal peoples. On appeal at the Supreme Court of Canada, it was held that the jury pool should consist of those who can serve impartially, and that in instances where the defence can show that a possibility of partiality exists, they should be permitted to question the jury. It was concluded that numerous types of juror prejudice could have influenced William's conviction, thus the appeal was allowed and a new trial was ordered.

R. v. Gladue (1999)

Facts:

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- Gladue, an Aboriginal woman, was charged with the manslaughter of her common law husband.
- She pled guilty and was sentenced to three years imprisonment by the sentencing judge who gave no special consideration to the accused's aboriginal background.
- On appeal, the Court of Appeal for British Columbia dismissed the appeal as the sentence was seen as fitting, but the points in the official decision of the court broadened the application of s. 718.2(e) to Aboriginals that were non-reservation and non-status.

Summary:

Gladue had been celebrating on her 19th birthday and drinking heavily. She had suspected her common law husband of infidelity with her sister. Upon seeing them leaving her house, she got into an argument with the victim and accused him of infidelity with her sister. He made a number of inflammatory and provoking remarks. Shortly after the argument began, the victim fled the townhouse that they lived in. The accused chased after him and stabbed him in the chest. There was also evidence that she had stabbed him in the arm before he left their home. She pled guilty at the hearing and the judge took in mitigating circumstances (she showed remorse, had been provoked, was a mother with ties to the community) as well as aggravating circumstances (she had made remarks that showed she had planned to harm the victim before the argument, chased after the victim after victim tried to flee). At sentencing, the judge did not take into account s. 718.2(e) as the victim did not live on a reservation. On appeal, the higher court dismissed the appeal, but in their decision stated that s. 718.2(e) applies to reservation and non-reservation Aboriginals, status and non-status Aboriginals, as well as Métis and Inuit, therefore broadening the applicability of s. 718.2(e).

R. v. Oickle (2000)

Facts:

- Oickle was found guilty on 7 counts of arson after he confessed.
- The Nova Scotia court of Appeal disallowed his confession and he was acquitted.

Summary:

The crown argued that the appeal judge erred in law when he did not allow the confession to be entered as evidence. According to procedural fairness, only voluntary confessions can be submitted as evidence. That is, the confession has to have been obtained without any threat, coercive or implied, and without promise of special consideration or receiving benefits. During the polygraph test and the interrogation that Oickle underwent, the police officers used coercive methods to obtain a confession. For example, after the polygraph test was completed the officer told the defendant he had not passed and that family members and friends would respect him for confessing. Additionally, during questioning the police implied that he (the officer) was probably his best friend at the moment. The judge believed that each tactic by itself was not sufficient to be considered coercive, however when considering the entirety of the officer's behaviour there was sufficient reason to believe that the defendant could have believed that he had something to gain by confessing and therefore was manipulated into confessing. The crown appealed to the Supreme Court, which disagreed. Oickle's conviction was restored.

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R. v. L.T.H. (2008)

Facts:

- L.T.H. was a youth with a learning disorder arrested for dangerous driving causing bodily harm. He waived his rights and provided a statement without counsel that showed guilt.
- The trial judge ruled the accused's statement as inadmissible because it conflicted with the requirements set out under s. 146(2)(b) and s. 146(4) of the Youth Criminal Justice Act.
- The Nova Scotia Court of Appeal overturned the acquittal and ordered a new trial.
- The Supreme Court of Canada overturned the decision of the Court of Appeal and restored the acquittal.

Summary:

Upon L.T.H.'s arrest, the police informed the accused of his rights during which the accused interrupted the police stating he would not answer any questions. The police informed him that he needed simply to answer yes or no as to whether he understood his rights after which the accused waived his rights and gave a statement showing guilt without counsel present. At a voir dire to determine the admissibility of the statement, the accused's mother testified that L.T.H. had a learning disorder and required questions to be explained to him. The trial judge ruled the accused's statement as inadmissible as it violated s.146(2) of the Youth Criminal Justice Act. The Court of Appeal overturned the acquittal. The Supreme Court of Canada ruled unanimously with the trial judge, reinstating the acquittal. The statement of the youth was inadmissible because under s.146(2) it is the burden of the Crown to prove not whether the youth understood his/her rights, but that the language was "appropriate to the particular young person's age and understanding." This is considered to be an objective test rather than a subjective one.

R. v. McIntosh and McCarthy (1997)

Facts:

- McIntosh and McCarthy were charged and convicted of attempted murder, assault with a weapon, several accounts of possession of a deadly weapon, and robbery.
- During the incident three witnesses were present.
- Defense argued that the judge erred in law by not allowing expert opinions regarding the fallibility of eyewitness testimony.

Summary:

This case required the Ontario Court of Appeal to define the rules regarding expert testimony. According to the guidelines for allowing expert testimony, the opinions must be of relevance to the case, must add information that is directly related to the facts of the case, must clarify an issue that is beyond the experience of the general populace, and must be provided by a person qualified to make such opinions. Because the psychologist was going to give testimony that would have simply warned the jurors regarding the accuracy of eyewitness testimony in general, the Ontario Court of Appeal agreed with the trial judge. She further rationalized her decision by stating that the testimony the psychologist would have given was not beyond normal human experience, would not have clarified a specific fact in the case and it lacked scientific evidence to conclude that the three eyewitnesses present during the omission of the crime were not reliable witnesses. Therefore, the appeal was dismissed and the conviction upheld.

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