

**Not Criminally Responsible on Account of Autism Spectrum Disorder: A Case Analysis of
The Toronto Van Attack.**

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Table of Contents

INTRODUCTION: THE 2018 TORONTO VAN ATTACK CASE :1-3

CHAPTER I : LITERATURE REVIEW : 4 - 29

Overview : 4

Mental Disorder: Section 16 of the Criminal Code of Canada [CCC] : 5 - 13

Two-Branch Test for Criminal Liability : *Actus Reus* and *Mens Rea* : 8 - 10

Terminology : Knowing, Appreciating, and Capacity : 10 - 11

Section 7 of the Charter of Rights : 12 - 13

Legal Framework: Section 16 of the Criminal Code of Canada [CCC] : 13 - 16

Burden of Proof : 13 - 14

The Review Board and Potential Dispositions : 14 - 16

Autism Spectrum Disorder : 16 - 26

History of Autism Spectrum Disorder Within Medicine and Psychiatry : 17 - 19

Diagnostic Framework Within the DSM-V : 19 – 20

‘Theory of Mind’ Deficit : 20 - 21

Empathy : 21 - 24

Psychiatric Co-Morbidity : 24 - 26

Incels : 26 - 29

Radicalization and Autism Spectrum Disorder : 28 - 29

Summary : 29

CHAPTER II: METHODOLOGY : 30 - 48

Qualitative Thematic Analysis : 30 - 31

Theoretical and Epistemological Assumptions : 31 - 32

Implication for Research Design : 32 - 33

Research Question : 34

Research Design : 34 -35

Data Collection : 35 - 40

Advocacy Statements : 35 - 37

Media Articles : 37 - 38

Judicial Documents : 38 - 40

Categorization : 40 - 41

Analysis of Material : 41 - 45

First Round of Analysis – Coding : 42 - 43

Second Round of Analysis -Identifying Themes : 43 - 44

Third Round of Analysis- Refinement : 44

Fourth Round of Analysis – Comparing the Three Types of Documents : 45

The Outcome of the Inductive Coding Process : 45 - 46

Ethical Considerations : 46 -47

Limitations of the Research : 47 - 48
CHAPTER III: ADVOCACY GROUPS AND ASD : 49 – 59
Autism Defined Within Advocacy Group Documents : 49 - 51
Toronto Van Attack : 51 - 52
Online Environments as an Alternative Contextual Factor : 52 - 54
Rejecting The Association Between Autism and Violent Crime : 54 - 55
Public Perceptions Regarding Autism : 55 - 57
Lived Experiences of Autistic Individuals : 57 - 58
Societal Transformation : 58 - 59
CHAPTER IV : JUDICIAL DOCUMENTS AND ASD : 60 - 93
Autism Defined Within the Case Law : 60 - 62
Functional, Cognitive and Behavioural Abilities : 62 - 64
Vulnerability : 64 - 65
Toronto Van Attack - <i>R.v. Minassian</i> (2021): 65 - 67
Psychiatric Testimony and the Ruling in <i>R.v. Minassian</i> (2021) : 68 - 73
Online Environments as an Alternative Contextual Factor: 73 -76
Autism Spectrum Disorder and Concurrent Disorders : 77 - 84
Autism as a Mitigating Factor : 84 - 87
Autism Discounted as a Mitigating Factor in the Offence : 87 - 90
Autism as a Link to Crime : 90 - 91
Risks, Stigma, and Recommended Responses : 91 - 93
CHAPTER V : MEDIA AND ASD : 94 - 106
Autism Defined Within the Media : 94 - 96
Toronto Van Attack : 96 - 101
ASD, Incel and Online Platforms : 102 - 103
Discussions of Autism and Crime : 103 - 104
Risks, Stigma and Recommended Responses : 104 - 106
CHAPTER VI : POINTS OF CONVERGENCE AND DIVERGENCE : 107 -119
The Advocacy Domain : 107 - 109
The Judicial Domain: 109 - 112
The Media Domain : 112 - 118
The Interplay Between The Three Domains : 118 -119
CHAPTER VII: CONCLUSION : 120 - 122
Future Research : 122
REFERENCES : 123 - 132
APPENDIX : 133

Dedication

This thesis is dedicated to the individuals on the autism spectrum whom I have had the privilege of knowing and working alongside. Their resilience, individuality, and experiences were a continual source of reflection and inspiration throughout this research.

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Abstract

This thesis analyzed advocacy, judicial and media discourses surrounding the 2018 Toronto van attack with particular attention to the mobilization of autism spectrum disorder (ASD) within discussions of criminal responsibility. The study examined how these three domains describe ASD in relation to crime and violence. The underlying objective was to understand the attitudes, perceptions, and institutional priorities that influence each domain's discourse.

A neo-positivist methodological framework ensured that the documents could be systematically and empirically analyzed. The thematic coding revealed that the domains describe autism in relation to their institutional priorities while the findings obtained during the cross-domain comparison revealed the points of convergence and divergence in discourses across the three domains.

INTRODUCTION: THE 2018 TORONTO VAN ATTACK CASE

On April 23, 2018, Alek Minassian, a 25-year-old man with no prior criminal conviction, deliberately drove a rented van along Yonge Street, Toronto's business district, targeting pedestrians in an attack that killed 11 individuals, 9 of whom were women and injuring 15 others (TVA Nouvelles, 2018). Minassian was arrested shortly after the attack and "attempted to commit suicide by cop" (SBC)¹, by pointing an unidentifiable object at the arresting officer. However, the officer saw that the object was not a pistol, and successfully de-escalated the situation in order to avoid the use of lethal force (CBC News, 2018). The distance between the onset of the attack and the arrest was approximately 2.2 kilometers, qualifying the incident as the deadliest vehicle-ramming attack in Canadian history (Boyko, 2023).

Shortly after the arrest, media articles reported that Minassian was neurodivergent. As the story emerged, the following facts became apparent. Minassian attended a special educational program at Thornlea Secondary School due to his Asperger syndrome, which is now comprised within the autism spectrum disorder classification. Upon graduating high school, Minassian pursued higher education at Seneca College in North York, enrolling in computer programming from 2011 to 2018 (Bell, 2018; Monsebraaten, 2018).

During College, Minassian became involved with the incel movement. His later statements cited his personal frustration with romantic rejection and sexual inexperience as motivators in his

¹ Suicide by cop (SBC) occurs when an individual deliberately behaves in a threatening manner in an attempt to invoke a lethal response by law enforcement. Suicide by cop is twofold. In the first classification, the individual pursued by law enforcement has committed a crime. Rather than surrendering and subsequently, being incarcerated, the individual, who may or may not be suicidal, decides that death is a favourable outcome thus, the individual provokes law enforcement agents in order to invoke a lethal response. Alternatively, the second category of SBC involves an individual already contemplating suicide, individuals within this category might commit a crime with the sole intent of provoking a lethal use of force by law enforcement agents (Police Executive Research Forum, retrieved 2025; Public Safety Canada, 2025).

attack (Broyd et al., 2023). Minassian claimed to have been inspired by other acts of violence related to the ‘incel’ ideology, referencing Elliot Rodger’s 2014 Isla Vista killings². Statements, such as the Rodger’s manifesto, are not uncommon amongst mass murderers; in fact such declarations articulate grievances and subsequently, the rationale for acts of violence (White, 2017). The incel movement radicalizes individuals by legitimizing grievances and promoting vengeance against women (Hoffman et al., 2020). Certainly, Minassian positioned himself as part of the movement and framed his attack as a form of retribution and empowerment (Hoffman et al., 2020).

Minassian was briefly enrolled in the Canadian Armed Forces in 2017, although he requested a voluntary release after 16 days of recruit training³ (Frisk, 2018). During his brief enrollment in the Canadian Forces, Minassian experienced some difficulties adapting to military life, such as struggling to take direction (Brockbank, 2018). However, despite these difficulties, a Senior Canadian Force official stated that there was no potential indicator pointing to his involvement in the 2018 event (Brockbank, 2018).

The trial began in November 2020 and centered around Minassian’s mental state, as his defence sought to argue that autism rendered him not criminally responsible on all 10 counts of first-degree murder and 16 counts of attempted murder (Boyko, 2023; TVA Nouvelles, 2020). The

² Isla Vista predominantly serves thousands of students attending the University of California Santa Barbara (UCSB) and Santa Barbara city College. On May 23, 2014, in a separate attack, Elliot Rodger ambushed and brutally stabbed to death his two male roommates as well as their friend (White, 2017). Hours following the initial murders, Elliot emailed an autobiographical manifesto of one hundred thirty-seven pages entitled *My Twisted World* to his parents, a few acquaintances, and several of his healthcare professionals while also publishing on the internet a self-made video entitled *Retribution* (Rodger, 2014). Elliot drove around the Isla Vista neighbourhood, firing 50 rounds through his car window, injuring fourteen individuals (seven of which by gunfire and seven with a motor vehicle) and killing six individuals (three as a result of stabbing and three by gunfire). Elliot exchanged gunfire with law enforcement before committing suicide in his vehicle (White, 2017). The manifesto, articulating Elliot’s anger towards women and societal rejection, is a staple amongst the ‘incel’ community, wherein his concluding thoughts stipulate that the Day of Retribution is his attempt to destroy everything he never acquired (Rodger, 2014).

³ The program is 13 weeks of basic training (Brockbank, 2018).

judge ultimately rejected the not criminally responsible defence, convicting Minassian on all counts of first- degree murder and attempted murder in March 2021 (Boyko, 2023). Minassian was sentenced to life in prison without the possibility of parole for 25 years.

I am interested in better understanding the ways in which ASD is mobilized in the context of the criminal justice system. *R.v. Minassian* was mobilized as a case study since it was the first instance in Canadian legal history where the not criminally responsible defence was advanced on the basis of autism spectrum disorder. I collected documents from three distinct domains which were advocacy, judicial and media publications to see how various groups understood the relationship between ASD and criminality. I use the word *domain(s)* to differentiate between the different functions of these publications. More specifically, the word is intended to distinguish between the responsibility, authority, and knowledge of the publishers. From this perspective, the advocacy domain functions as an intermediary between individuals with ASD and the government and the public. The function of the judicial domain is to apply the law in order to maintain order. The media disseminates information from advocacy and judicial domains to the public regarding events which influences public attitudes and perceptions. As such, the empirical evidence used in this research provides insight into how documents published in these diverse domains understand the relationship between ASD and violence.

The bulk of the research centered around the content of each domain which was individually analyzed in order to understand the interplay between autism and violence. Then, the descriptive content of each domain was compared with the descriptive content of the other domains in order to analyze points of convergence and divergence. This comparison ensured that the various perspectives surrounding autism spectrum disorder and violence could be systematically analyzed.

CHAPTER I: LITERATURE REVIEW

Overview

Under Canadian law, criminal responsibility refers to the legal principal under which an individual can be held accountable for a criminal offense, requiring the examination of both the *mens rea* (guilty mind) and *actus reus* (or guilty act) in accordance with the specific crime with which the accused is charged (Government of Canada, 2020). A guilty verdict can be returned if and only if both elements are established beyond a reasonable doubt.

However, under section 16 of the Criminal Code of Canada (“CCC”) (1985), the not criminally responsible (NCR) defence can exempt individuals with mental disorders from criminal responsibility if certain conditions are met. If the NCR defence is sustained, the individual may be detained under a different system, rather than serving time in a carceral institution.

As noted in the introduction, the Toronto van attack was the first case in which the defence sought to use the NCR defence on account of an accused person with Autism Spectrum Disorder (ASD), which was ultimately rejected by the court. While s. 16 of the Criminal Code provides a legal framework for the not criminally responsible defence, it does not explicitly address neurodiversity (ASD). Therefore, the case provides a useful opportunity to begin to explore how various groups perceive the relationship between ASD and criminality.

The literature review is divided into four sections. The first section delves into the legal definition of mental disorder, also known as disease of the mind. The second section provides an overview of the NCR defence, whilst the third section delves into the neurodevelopmental disorder referred to as ASD and its interplay with s.16 of the CCC. The last section provides an overview of the incel movement, as Minassian himself claimed to be a part of the movement and attributed his actions to the movement.

Mental Disorder: Section 16 of the Canadian Criminal Code

The defence historically referred to as “insanity” was first incorporated into Canadian criminal legislation in 1892 due to principles articulated in the *M’Naghten* case. The accused was charged with the murder of Edward Drummond, the private secretary of the Prime Minister, Robert Peel (Mackay, 2022; Memon, 2006; Welsh, 2024). M’Naghten, experiencing auditory hallucinations and delusions of persecution⁴, approached Peel but mistakenly shot and killed Drummond instead (Mackay, 2022; Memon, 2006).

During the trial, the court concluded that M’Naghten suffered a “disease of the mind” impairing his ability to understand the nature and quality of his actions or discerning its wrongfulness, therefore negating the required *mens rea* for criminal responsibility (Memon, 2006; Welsh, 2024).⁵ M’Naghten’s statement was introduced as evidence of his abnormal state of mind, leading up to the offence;

They [referencing the Conservative Party in the United Kingdom] follow and persecute me wherever I go, and have entirely destroyed my peace of mind [...] I cannot get no rest for them night or day. I cannot sleep at night in consequence of the course they pursue towards me. I believe they have driven me into a consumption [...] They have accused me of crimes of which I am not guilty; they do everything in their power to harass and persecute me; in fact, they wish to murder me [...] (Memon, 2006).

Thus, since at trial *M’Naghten* stated that he was “guilty of firing, but denied intent to murder”, the question was “whether under that delusion of mind he did an act which he would not

⁴ Such hallucinations and delusions lead *M’Naghten* to believe that the Prime Minister was persecuting him, hence he acted upon such beliefs.

⁵ *M’Naghten* was consequently found “not guilty by reason of insanity”, however the court’s inquiry ruled that he posed a significant risk to the public and was subsequently detained in a hospital. During that time period, individuals convicted were effectively condemned to extended periods of confinement, characterized by deplorable conditions (Memon, 2006, p. 237; Welsh, 2024, p. 104).

have done under any other circumstance, save under the impulse of the delusion which he could not control, and out of which delusion alone the act arose” (Memon, 2006). The determinate wording of the insanity defence later became known as the M’Naghten Rules which state that,

[...] every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfactions; and that, to establish a defence on the ground of insanity, it must be clearly proved, that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong (Ferguson, 2011; Memon, 2006).

The first codification in Canada was a direct replica of the *M’Naghten* Rules in s.16 of the CCC (Ferguson, 2023). However, in 1992, Canada removed the term “insanity” and replaced it with “mental disorder” (Ferguson, 2011). Furthermore, the phrases “in a state of natural imbecility” and “disease of the mind” were also replaced by the term “mental disorder” (Pilon, 2002).

The first analytical step under s. 16 is the determination of whether the accused was suffering from a mental disorder at the time of the offence. Section 2 of the *Criminal Code* defines mental disorder as a “disease of the mind” (R.S.C. 1985, c.C-46). The definition of mental health is interpreted through legal standards and judicial precedents rather than a medical framework (Ferguson, 2023; *R.v. Cooper*, 1980; Welch, 2024). The definitional framework and requirements originate from *R.v. Cooper* (1980), wherein the accused, charged with first-degree murder, was diagnosed with schizophrenia, characterized by psychotic symptoms.

The Court in *Cooper* defined disease of the mind as any disorder that impairs the human mind and its functioning. Despite the broad legal categorization, two types of mental states were

excluded from the definition of mental health, which consist of self-induced states and transitory states⁶ (Ferguson, 2023; Welch, 2024). As stated by Ferguson (2011), “it is a fundamental principle of criminal liability that no conduct can be criminal unless it was done voluntarily, that is, through a willed physical act or omission”, thus non-insane automatism and drunkenness are classified as external conditions which do not meet the threshold of a s.16 defence but nonetheless may negate the required mens rea (in the case of specific intent offences) or actus reus (in the case of automatism) of an offence. Additionally, the mere clinical diagnosis is insufficient, rather the disorder must meet certain legal criteria, including internality, continuity, and severity, subsequently entailing that the mental disorder significantly impaired one’s reasoning at the time of the offence (Bloom and Schneider, 2017). In *R.v. Cooper* (1980), the Supreme Court of Canada ultimately clarified that the classification of a condition as a disease of the mind is a question of law, albeit one commonly informed by expert psychiatric testimony (Ferguson, 2023). As such, the inquiry centers on whether the mental disorder rendered the accused incapable of either appreciating the nature and quality of the act, or knowing that the act is wrong (Welch, 2024). The presence of a diagnosed disorder such as schizophrenia, dissociative disorder, and delusion disorder, which are most commonly used to plead insanity, is not determinative (Bloom and Schneider, 2017; Criminal Code of Canada, 2024). Rather, each case is subjected to a thorough analysis determining whether the requisite components of criminal liability are present (Criminal Code of Canada, 2024; *R. v. Cooper*; *R. v. Swain*).

The analysis starts with the presumption that:

⁶ Self- induced states which are caused by alcohol or drugs. Whilst transitory, signifying temporariness, are states such as hysteria or concussion. (Welch, 2024)

16.(2). Every person is presumed not to suffer from a mental disorder so as to be exempt from criminal responsibility by virtue of subsection (1), until the contrary is proved on the balance of probabilities.

The Two-Branch Test

Appreciating the nature and quality of the act.

The first branch of the s.16 test examines whether, at the time of the offence, the accused was incapable of appreciating the nature and quality of the act (Criminal Code of Canada, 1985; Government of Canada, 2020). As initially articulated by the Supreme Court of Canada in the case of *R.v. Cooper* (1980), the term “appreciate” involves the ability to understand the physical element of the act and its consequences, as opposed to a mere awareness that one is engaging in a bodily movement, therefore encompassing a broader cognitive and experiential dimension. However, subsequent jurisprudence significantly narrowed this interpretation. In *R.v. Kjeldsen* (1981), the Supreme Court opted for a more restrictive interpretation of the first branch wherein the accused only ought to understand the physical nature of the act and its immediate physical consequence. Moral comprehension and insight into broader implication of the conduct are excluded from the inquiry. For context, *Kjeldsen*, a psychopath incapable of feeling remorse, was initially tried for raping a woman. He was found NCR on account of mental disorder and as such detained in a psychiatric facility. Upon release, on a day pass, *Kjeldsen* killed a cab driver. The accused was convicted of first-degree murder of the cab driver as the court concluded that the mental disorder did not prevent him from appreciating the nature of the act. On appeal to the Supreme Court of Canada, the conviction was upheld. As a result, the *Kjeldsen* (1981) case narrowed the required threshold for the first branch of the test.

Knowing the act was wrong

The alternative branch of the test examines whether, at the time of the offence, the accused was incapable of knowing that the act was wrong (Criminal Code of Canada, 1985; Government of Canada, 2020). In *R.v. Windle* (1952), the term “wrong” meant contrary to the law, rather than morally. In this case, Windle was charged with murder. Despite being diagnosed with a mental illness, the accused retained awareness that the act was legally wrong, thus the court rejected the insanity plea. This case is significant as it equated wrongfulness with illegality, and this reasoning was relied upon in subsequent cases. However, in *R.v. Chaulk* (1990), the Supreme Court reversed *Schwartz*⁷ (1976), which echoed *Windle*’s verdict, and stated that “wrong” applies if the accused is incapable “of understanding that the act is wrong according to the ordinary moral standards of reasonable members of society” (Ferguson, 2023). In *Chaulk*, the accused suffering from a severe psychotic disorder involving delusions, was charged with first-degree murder. At trial, the accused was found NCR on the basis that his mental disorder impaired his ability to know that the act was wrong. Therefore, if an individual has yet to develop basic capacity, responsibility cannot be measured against the standards of criminal law (Memon, 2006). Furthermore, as contended in *R.v. Oommen* (1994), “the crux of the inquiry is whether the accused lacks the capacity to rationally [evaluate and] decide whether the act is right or wrong and hence to make a *rational* choice about whether to do it or not” (Ferguson, 2023; Welsh, 2024). In *Oommen*, the accused was charged with second-degree murder, however he suffered from a psychotic disorder with delusional beliefs, which distorted his moral reasoning. Thus, the court concluded that *Oommen*’s disorder impaired

⁷ In *R.v. Schwartz* (1976), the accused was charged with a violent criminal offence. He exhibited mental abnormalities, but the evidence presented did not meet the legal threshold for a disease of the mind. The insanity defence was subsequently rejected, and the accused was convicted. It ought to be noted that the legal assessment relied on *Windle*, wherein wrongfulness was equated with illegality rather than moral standards of wrongfulness.

his capacity to rationally appreciate moral wrongfulness. Therefore, the narrower application of *Oommen* entails that the inquiry ought to be grounded in a standard societal understanding of wrongfulness rather than individual interpretation (Welsh, 2024). This is reflected in how courts narrow or broaden applications based on previous cases.

Terminology

Differentiating Between Knowing and Appreciating

The terms “know” and “appreciate” are legally significant as they reflect a deliberate narrowing of the not criminally responsible defence. The contested meaning of the word “know” arose due to its ambiguous standing as both legally wrong and morally wrong (Ferguson, 2011). Within the Canadian context, to “know” refers to simple factual or intellectual awareness, such as recognizing that one particular physical act will lead to a specific outcome (Ferguson, 2023). This language fostered interpretive uncertainty, as knowledge could be understood as mere factual awareness rather than a meaningful cognitive or moral capacity. Therefore, the gradual shift ensured that knowing references a moral wrongfulness, not simply whether the act is defined as lawfully prohibited (Mackay, 2022). By contrast, “appreciating” the nature and quality of an act requires more than mere physical consciousness or factual awareness. Canadian courts have interpreted appreciation as requiring a meaningful understanding, not simply a superficial awareness (Ferguson, 2023). An individual profoundly disconnected from reality due to a mental disorder may therefore lack the capacity to appreciate the act even though the act itself is voluntary, hence when courts assess whether an accused appreciated the “nature” of the act, the inquiry is limited to whether the accused understood that they were engaging in the physical conduct that the law prohibits, not whether the accused understood its legal classification or wrongfulness (Roach, 2015). This distinction demonstrates why appreciation is framed as a capacity rather than a factual

inquiry. The question is not whether the accused did in fact understand the act. Rather it aims to determine whether the accused was capable of understanding it at the time of the offence. Thus, the term “appreciate” under s.16 applies to cases involving a fundamental breakdown in cognitive functioning, rather than momentary inattention, poor judgment, or emotional disturbance (Roach, 2015).

The deliberate use of the terms “appreciate” and “know” in separate branches of s.16 reflects a carefully curated statutory framework. The linguistic distinction ensures that failures of perception or understanding are not conflated with failures of moral reasoning, subsequently preserving the bifurcated structure of the NCR test. The specific terminology demonstrates that the language is not incidental, rather it is intentionally calibrated to separate cognitive incapacity from moral incapacity, thereby narrowly delineating the scope of criminal non-responsibility.

Capacity

The term “incapable” is of fundamental importance to the structure of s.16, as it sets the threshold for exempting an individual from criminal responsibility (Mayes, 2003). Incapacity preserves the distinction between individuals who retain the ability to understand and reason, even if imperfectly (and hence have mens rea), and those whose mental disorder renders understanding impossible at the time of the offence, therefore since the individual lacks the capacity to form the required mens rea, the state cannot criminally punish said individual (Mayes, 2003). Akin to the prior assessments, capacity operates within a legal framework, rather than a medical one (Mayes, 2003).

Section 7 of the Charter of Rights

Section 7 of the *Canadian Charter of Rights and Freedoms* (1982) ensures that no person shall be deprived of life, liberty, or security, except in accordance with the principle of fundamental justice. Within the criminal law context, the *Charter* is invoked whenever the state imposes detention or otherwise restricts an individual's liberty. The intersection between s. 7 of the *Charter* and s.16 of the *Criminal Code* is therefore compulsory, as findings of criminal responsibility, or the absence thereof, determines the legal justification for detention. Thus, where criminal responsibility is absent, continued detention ought to be constitutionally justified on grounds other than punishment. At its core, both sections reflect a fundamental principle of Canadian criminal law which is that the state may not deprive an individual of liberty without moral blameworthiness (*Canadian Charter of Rights and Freedoms*, 1982, s7). The constitutional significance of this framework lies in the distinction between criminal punishment and preventative detention. Under an NCR verdict, punishment is rendered unjust, as any subsequent deprivation of liberty ought to be justified. Similarly, the nature of the detention cannot be disproportionate (Pilon, 2002). The rationale behind section 7 requires that individuals are not deprived of liberty arbitrarily or indefinitely.

This was exemplified in *R.v. Swain* (1991), where the accused, suffering from severe psychotic episodes, was charged with attempted murder. The NCR verdict resulted in an automatic and indeterminate detention without individualized assessment of risk. Subsequently, the accused was detained in a hospital until due process rights could be utilized, requesting that the Review Board formulate a new disposition. *Swain* (1991) challenged this regime under section 7 of the *Charter*, arguing that mandatory detention ensuing from an NCR verdict constituted an unjustified deprivation of liberty. Crucially, this reframed the constitutional significance of s.16 rather than

redefined the substantive elements of an NCR defence. The Supreme Court held that the automatic detention of individuals found not criminally responsible violated principles of fundamental justice. The court emphasized that NCR accused are not morally blameworthy in the same way that convicted offenders are and must not be treated as such.

Legal Framework: Section 16 of the Criminal Code of Canada

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

In sum, the NCR defence set out in s.16 of the CCC applies to, or is available to individuals who, due to a mental disorder, were incapable of either appreciating the nature and quality of their actions or incapable of understanding the inherent wrongfulness of their actions (Pilon, 2002). This legal provision reflects a foundational principal in criminal law, as culpability requires not only the commission of a prohibited act, termed *actus reus*, but also a guilty mind, which is referred to as *mens rea* (Welsh, 2024). Therefore, if an individual's mental state precludes them from forming the requisite criminal intent, said individual is exempt from legal responsibility, recognizing that punishment without moral blameworthiness would be unjust (Ferguson, 2011).

Burden of Proof

16.(3). The burden of proof that an accused was suffering from a mental disorder so as to be exempt from criminal responsibility is on the party that raises the issue.

While the NCR defence is most commonly invoked by the accused's legal counsel, pre-Charter Canadian law allowed for it to be raised by either party, including the Crown (Bloom and Schneider, 2017). Under Section 672.34 of the Criminal Code (1985), the court must determine whether the accused was suffering from a mental disorder at the time of the offence that rendered

the accused incapable of appreciating the nature and quality of the acts or knowing the underlying wrongfulness. The caveat raised in *R.v. Swain* (1991) states that “the Supreme Court found that the common law practice of allowing the Crown to raise the insanity defence violated the accused’s right under section 7 of the *Charter* ⁸.” Therefore, the Crown may only raise the NCR defence once a prima facie case establishing the actus reus has been made, and not prior to that stage as doing so would infringe on the accused’s s.7 *Charter* rights (Roach, 2015). In simpler terms, in practice if credible evidence arises, the Crown has a legal obligation to consider raising the mental disorder defence even if, in doing so, it goes against a conviction (Bloom and Schneider, 2017; Roach, 2015). Courts generally defer to the defence in initiating an NCR plea, particularly due to the potential deprivation of liberty.

The Review Board and Potential Dispositions

The verdict of not criminally responsible does not constitute an acquittal, rather the accused is diverted to a court or Review Board⁹ wherein its members formulate a disposition, in accordance with the risk assessment, in order to protect the public whilst also attempting to treat the mental disorder. Thus, the Review Board (RB) implements one of the following three possible dispositions; absolute discharge; conditional discharge; or hospital detention (The Review Board Systems in Canada, 2022).¹⁰ Each option is grounded in an evidence-based evaluation of the

⁸ Section 7 of the Charter, under 3ii: Procedural fundamental justice: “it is a principle that an accused has the right to control his or her own defence (*Swain* pages 971-72). This right encompasses control over key litigation decisions, including whether to proceed with representation; what mode of trial to elect; whether to plead guilty or not guilty; whether to lead any defence; whether to testify; and what witnesses to call” (1982).

⁹ The Review Board was enacted in 1992.

This system was implemented after *R.v. Swain* (1991) as a direct legislative response to the Supreme Court’s finding that automatic detention of NCR violation section 7 of the Charter. Thus, Parliament enacted Bill C-30, which came into force in 1992. This legislation created the Review Board system and fundamentally restructured the NCR regime.

¹⁰ Review Boards “have expertise in both criminal law and mental health issues: a judge must chair them; one member must be a psychiatrist; and, where only one member must have training in mental health and be entitled to practice medicine or psychology. The trial judge has the ability to hold a disposition hearing and, if a disposition is

accused's risk to society, mental health prognosis, and capacity for rehabilitation (Bloom and Schneider, 2017). An absolute discharge is warranted if the accused poses no significant risk to the public, therefore the individual is released without any conditions or legal obligations (Grantham, 2014). This disposition reflects the principle that, in the absence of both criminal responsibility and ongoing risk, continued state control would constitute an unjustified deprivation of liberty (Bloom and Schneider, 2017). Absolute discharges is therefore the default position unless the statutory threshold of significant threat is met. A conditional discharge is granted if the accused requires some degree of supervision due to the perceived risk to public safety, however the risk can be adequately addressed within the community (Grantham, 2014). Conditions may include requirements relating to treatment compliance, residence, reporting to mental health professionals, or restrictions on certain activities (Bloom and Schneider, 2017). This disposition balances public safety with the need to ensure that the accused's liberty is not infringed upon. A conditional discharge reflects the preventative, rather than punitive rationale. Lastly, detention in a hospital, which is the most restrictive disposition, occurs when the accused is deemed to pose a substantial risk to the public, as the risk cannot be effectively managed any other way (Grantham, 2014). Detention following an NCR verdict is not a form of punishment, rather it is a preventative measure justified by the perceived risk to society. As such, detention ought to be periodically reviewed and remain proportionate to the level of risk posed by the accused (Bloom and Schneider, 2017). This disposition is the most restrictive on the accused's liberty (Criminal Code, 2024; Review Board, 2022). Accordingly, as set out by the Department of Justice Canada (2022):

made other than an absolute discharge, the Review Board must review the order within 90 days. Otherwise, a Review Board must hold a disposition hearing within 45 days, or at the maximum 90 days if a court orders an extension" (Grantham, 2014).

Under section 672.54, the court or Review Board must order the disposition that is the least onerous and least restrictive to the accused [...] if the accused does not pose a significant threat to the safety of the public, the court or Review Board must order an absolute discharge [...] The Supreme Court of Canada further clarified in *R.v. Winko*¹¹ that Section 672.54 does not create a presumption of dangerousness. In other words, while the protection of society is paramount, there must be clear evidence of a significant risk to the public before a court or Review Board can maintain control over an accused through the imposition of a conditional discharge or detention order.

This framework ensures that the disposition is proportionate to the risk presented, and that decisions are subjected to regular review which emphasizes both individual rights and public protection. These boards have the authority to alter dispositions over time in order to reflect changes in the individual's mental condition and risk profile. During the disposition, the Review Board ought to determine whether "the evidence disclose that the NCR accused is a significant threat to the safety of the public" (Winko, 1991). Consequently, if the symptoms associated with the disorder are effectively treated, stabilized, or no longer causally linked to dangerousness, continued institutionalization becomes legally difficult to justify.

Autism Spectrum Disorder

The distinction between neurodevelopmental disorders and mental disorders is both clinically and legally significant, particularly in the context of criminal responsibility. While these categories might overlap, such disorders are conceptually and diagnostically distinct. One of the most salient differences lies in cognitive and moral reasoning. While individuals with mental

¹¹ In *R.v. Winko*, the appellant, diagnosed with chronic residual schizophrenia, had a long history of mental illness and hospitalization due to auditory hallucinations. In 1983, Winko was arrested for attacking two pedestrians with a knife. Charged with aggravated assault, assault with a weapon and disruption of the public peace, he was tried and found Not Criminally Responsible. The Review Board considered the appellant's status and granted him a conditional discharge.

disorder may experience transient states, individuals with neurodevelopmental disorders such as ASD are more inclined to exhibit consistent and stable cognitive patterns that differ from the neurotypical norm (American Psychiatric Association, 2013). The complexity of ASD symptoms, particularly in areas of social cognition, communication, and behavioural regulation, becomes pertinent in relation to criminal responsibility, capacity, and culpability.

History of Autism Spectrum Disorder Within Medicine and Psychiatry

Early psychiatric understanding of autism did not conceptualize it as an independent neurodevelopmental condition, but rather associated autistic behaviours with forms of childhood psychosis and schizophrenia-related disorders (Evans, 2013). Within this early psychiatric framework, autistic traits were not viewed as a distinct diagnostic category, but instead as symptomatic expressions of psychotic disturbances. As a result, autism remained closely tied to psychiatric discourses surrounding psychosis, irrationality, and impaired contact with reality during its early conceptual history.

Eugene Bleuler, Hans Asperger, and Leo Kanner contributed significantly to the understanding of autism during this time period (Ellenberger, 1970). For example, the earliest conceptual foundation of autism was formulated by Dr. Eugen Bleuler, who drew parallels between autism and schizophrenia. Bleuler used the term autism to describe the withdrawal and detachment from reality commonly observed among individuals with schizophrenia (Bleuler, 1911). As such, Bleuler contends that “the autistic thinking is a source of delusions, of the crude offenses against logic and propriety, and all the other pathological symptoms”, thus the diagnosis associated with the aforementioned definition of autism was ‘childhood schizophrenia’ (Bleuler, 1911).

A major shift emerged through the work of Leo Kanner, who began distinguishing autism from childhood schizophrenia and other psychotic disorders. Kanner introduced the concept of ‘early infantile autism’ due to the persistent social withdrawal, repetitive behaviours, and communication difficulties; as such the term ‘autism’ was used to convey that children did not appear to engage with their external environment (Kanner, 1943). Unlike Bleuler’s conceptualization, Kanner argued that the characteristics did not reflect psychotic deterioration or a disruption in reality. Instead, Kanner described autism as a developmental condition (Kanner, 1971).

Hans Asperger’s work further contributed to the evolution of autism by challenging the narrow pathological interpretations of autism by demonstrating that characteristics associated with autism could manifest along a continuum rather than as a singular and uniformly severe condition (Hippler and Klicpera, 2003 ; Volkmar et al., 2000). In 1944, Asperger published a definition of ‘autistic psychopathy’ wherein patterns of behaviour and abilities included a lack of empathy, absorption in specific interests, amongst others.

The turning point occurred in the 1960s with Bernard Rimland’s work. Decades of research conducted by Bleuler, Kanner, and Asperger examined autism in relation to parental failures, however Rimland challenged these psychoanalytic theories. Rimland honed in on the biological and genetic underpinnings, rather than the environmental causation of the condition (Rimland, 1964). Rimland founded the Autism Society of America (ASA) which is a parent advocacy organization and subsequently established the Autism Research Institute (ARI), a non-profit organization dedicated to research.

As the medical understanding of autism evolved, ASD also gradually emerged as a broader cultural and socio-political phenomenon extending beyond its status as a clinical diagnosis. The

emergence of advocacy groups challenged the deficit-based descriptions of autism by framing neurological variation as part of human diversity rather than solely an impairment. This repositioned autism not only as a medical condition, but also as a disability requiring additional inclusion, accessibility, accommodation, and representation.

Diagnostic Framework Within The DSM-V

Autism spectrum disorder was officially recognized as an independent neurodevelopmental condition and included within the ICD-10 diagnostic criterion in 1993, and in the DSM-IV in 1994 (Browning and Caulfield, 2011; Leekam et al., 2011). Prior to 1994, autism was not recognized as its own distinct condition, and figured alongside psychotic disorders within the *Diagnostic and Statistical Manual of Mental Disorders*. The term “spectrum” reflects the variability in symptoms, severity, functional abilities, and other forms of impairments (American Psychiatric Association, 2013; Ofner, 2018). The exact causes of autism remain unknown. However, current research suggests that it arises from a complex interplay between biological and environmental factors (Public Health Agency, 2024).

Autism is diagnosed on the basis of two primary domains of impairment. The first component of the diagnostic framework hones in on the persistent deficits in social communication and interactions, whilst the second domain centers around restricted, repetitive patterns of behaviour, interest, or activities (American Psychiatric Association, 2013; Barry-Walsh and Mullen, 2004; ICD-11, 2024; White et al., 2017). The former domain includes persistent differences in reciprocal social engagement, such as reduced sharing of interests with others, initiating or sustaining conversation, and understanding of non-verbal communicative behaviours, including eye contact, facial expressions, gestures, and body language (American Psychiatric Association, 2013; ICD-11, 2024; Leekam et al., 2011). Difficulties might particularly emerge in

contexts requiring a nuanced interpretation of social norms or expectations (American Psychiatric Association, 2013; ICD-11, 2024). The latter diagnostic domain includes repetitive motor movements such as hand flapping, rocking, arranging objects in a particular manner, and repetitive speech patterns (American Psychiatric Association, 2013; ICD-11, 2024; Leekam et al., 2011). Inflexibility of behaviour which translates into extreme difficulty coping with change reflects an underlying desire for predictability (Leekam et al., 2011). Sensory hypersensitivity, or conversely hyposensitivity to sensory stimuli can be reflected in an aversion to light, noise, texture, or touch, and are additional behaviours which may be exhibited by individuals with ASD (American Psychiatric Association, 2013; ICD-11, 2024; Leekam et al., 2011). Although autism spectrum disorder is diagnostically classified, the condition presents with significant variation in the type, intensity, and functional impact of traits across cognitive, communicative, and behavioural domains. As a result, the characteristics outlined within the diagnostic framework represent a broad overview rather than a definitive profile applicable to all autistic individuals.

‘Theory of Mind’ Deficit

As stated by Browning and Caulfield (2011), “the psychological dysfunction underlying the triad of impairments has been identified as a deficit of Theory of Mind”. This entails that understanding or inferring the thoughts, emotions or intentions of others is difficult, thereby defining individuals on the spectrum as “egocentric” since the condition hinders their ability to understand perceptions differing from theirs (Barry-Welsh and Mullen, 2004; Browning and Caulfield, 2011; White et al., 2017). A deficient ‘Theory of Mind’ can impede a neurodivergent individual’s ability to understand social cues, control impulses and demonstrate empathy.

Baron-Cohen’s (1988) study is one of the earliest clinical case discussions examining violent behaviour in an individual diagnosed with Asperger’ Syndrome. The study explored how

certain behavioural incidents were interpreted through the lens of autism-related cognitive and social differences. Baron-Cohen (1988) situates individual behaviour within a broader framework of impaired social understanding, difficulty interpreting intentions, and rigid cognitive patterns. The study suggests that difficulties inferring other people's mental states may affect how individuals with Asperger's perceive intent, or social meaning. Furthermore, Baron-Cohen (2009) posits that individuals on the autism spectrum present, to some degree, mind-blindness due to developmental delays, therefore this entails that typical brain functions are underactive in individuals with autism during mind-reading tasks.

Barry-Welsh and Muller's (2004) study advances this discussion by providing a broader forensic overview by relying on multiple clinical and legal cases to examine how autistic traits may become relevant in criminal justice contexts. The article identifies several autism-related characteristics that may be forensically salient, including difficulties with social communication, literal interpretation of language, hyper fixations, rigidity, as well as atypical emotional expression. Barry-Walsh and Mullen (2004) argue that these traits can, in some cases, lead to misunderstandings of social boundaries particularly in offences involving interpersonal interactions such as harassment or sexual offences. The prominence of sexual offences occurs due to delayed or atypical social and sexual development, thus the neurodivergent individual's inability to coherently interpret the victim's negative response, whether verbal or non-verbal, to sexual advances (Freckelton and List, 2009).

Empathy

Empathy is commonly divided into two interrelated components (Fletcher-Watson and Bird, 2019). Affective empathy refers to one's capacity to emotionally resonate with another person's feelings, whilst cognitive empathy refers to an individual's ability to identify, interpret,

and understand another person's mental or emotional state (Allely, 2022; Baron-Cohen and Wheelwright, 2004; Blair, 2005; Grant et al., 2017). Several studies concluded that emotional processing impairments occurs as a result of complex emotional expressions (Baron-Cohen, Spitz & Cross, 1993; Bormann-Kischkel et al., 1995; Capps, Yirmiya, & Sigman, 1992 as cited in Blair, 2005). As such an empathetic response stems from both emotional and cognitive empathy (Baron-Cohen and Wheelwright, 2004; Grant et al., 2018).

Baron-Cohen 's (2009) work on the empathizing-systemizing theory analyzes the imbalance between both tendencies. According to this theory, empathizing refers to the ability to identify, understand and respond to the emotions and mental states of others, while systematizing refers to the "drive to analyze or construct systems" (p.71). Therefore, it's the discrepancy between both empathizing and systemizing where individuals on the autism spectrum present "delays and deficits in empathy, while [... presenting] superior skill in systemizing" (p.71). However, it ought to be noted that Baron-Cohen does not suggest that autistic individuals are incapable of empathy, but rather experience differences.

Deficits in empathy are also associated with psychopathy. Therefore, autism spectrum disorder (ASD), a neurodevelopmental disorder and psychopathy, and a personality disorder, are occasionally conflated due to certain overlapping behavioral characteristics, such as deficiencies in empathy and moral reasoning (Freckelton and List, 2009; White et al., 2017). However, autism and psychopathy are not mutually exclusive, as a very minute portion of individuals present with both conditions concurrently (White et al., 2017). Bjørkly (2009) and White et al., (2017) depict the possible substantial difference between ASD and psychopathy in this way. Individuals with

autism may exhibit hyperactivity to stimuli¹², naïve interpersonal communication, reactive response to violence, and responsive to negative reinforcement contingency¹³. Comparatively, psychopathy presents through hyporeactivity to stimuli, manipulative interpersonal communication, proactive response to violence, and responsiveness to positive reinforcement contingencies¹⁴ (Bjorkly 2009; White et al., 2017). As noted by Bjorkly (2009), traits of the disorders are reflected in relation to violence; whereas autistic individuals will confess, individuals with psychopathy will deny. Furthermore, cognitive empathy dysfunction in autism is attributed to a reduced activation in the three critical brain regions which are “medial prefrontal cortex, temporal-parietal junction, and the temporal poles” (Castelli et al., 2002 and Happé et al., 1996 as cited in Blair, 2005). Conversely, studies concluded that individuals with psychopathy present indications of an empathic dysfunction reflected by a “reduced amygdaloid volume” (Blair et al., 1996; Richell et al., 2003; Widom, 1978 as cited in Blair, 2005). The amygdala processes emotional responses, thus individuals with psychopathy exhibit impairments in the processing of fear, and sadness (Blair, 2005). In essence, neurodivergent individuals may not recognize that the cause of an individual’s pain arises due their actions, however they nevertheless have concern about the individual’s emotions (Baron-Cohen and Wheelwright, 2004). Comparatively individuals with psychopathy are capable of judging and predicting how another person might feel, however they demonstrate little concern about another person’s emotions (Baron-Cohen and Wheelwright, 2004; Grant et al., 2018).

It ought to be noted, that despite an autistic individual’s inability to construe behaviour in terms of mental states, it is a common misconception that individuals on the autism spectrum lack

¹² Stimuli such as smell, touch, taste naïve (Bjorkly 2009).

¹³ Strengthening a behaviour by removing, avoiding an unpleasant stimulus (Bjorkly 2009).

¹⁴ Strengthening of a behaviour due to the acquisition of desirable stimulus (Bjorkly 2009).

empathy (Allely, 2022; Fletcher- Watson and Bird, 2019; Happé et al., 1996). Results obtained in a study conducted by Dziobek et al. (2008), indicate that a lack of behavioural reaction might be perceived by neurotypical individuals as a lack of empathy, when in reality, behaviours, or lack thereof, exhibited by neurodivergent individuals may simply not abide to or align with societal conceptualization of empathy (Baron-Cohen and Wheelwright, 2004; Dziobek et al., 2008).

Reduced empathy, or deficit in affective or cognitive empathy does not entail a propensity towards criminal behaviour, nor does it operate as a causal mechanism that renders offending inevitable. The ability to distinguish right from wrong, to understand the social meaning of prohibited conduct and to appreciate its consequences does not depend on empathic engagement with other's suffering (Roach, 2015). Accordingly, reduced empathy may explain interpersonal difficulties or atypical social responses. However, it does not undermine the foundational capacities required for criminal responsibility (Grant et al., 2018).

Therefore, the legal system does not inquire into whether an accused felt concerned for others. Rather the inquiry aims to determine whether the individual possessed the capacity to understand and control their actions in accordance with the law.

Psychiatric Co-Morbidity

Numerous studies suggest that psychiatric co-morbidity is common in individuals with ASD (Allely, 2022). The average number of clinical psychiatric diagnoses is three (Joshi et al., 2013). Depression, anxiety, and ADHD are the most commonly found co-occurring disorders in individuals with ASD (Antshel et al., 2016; Ghaziuddin et al., 2002; Hammon & Hoffman, 2014; Matson & William, 2014). Anxiety and depression are often intertwined, thus anxiety arises due to impairments in socio-emotional communication or impairment in verbal abilities, while social

withdrawal increases depression (Antshel et al., 2016; Matson & Williams, 2014). Depressive symptoms in autistic individuals manifest through behavioural withdrawal, irritability, and increased rigidity rather than overt verbalization of emotions (Ghaziuddin et al., 2002). Similarly, Skokauskas & Frodl (2015) noted that the clinical and neurobiological overlap between ASD and bipolar disorder is reflected through emotional dysregulation, impulsivity, sleep disturbances, and altered processing. Historically, the diagnostic framework treated Attention- Deficit / Hyperactivity Disorder (ADHD)¹⁵ and ASD as mutually exclusive disorders, however further research examined the overlap and common neurobiological differences (Matson & Shoemaker, 2009). ADHD is associated with “social impairments, lower cognitive functioning, delays in adaptive functioning and overall internalising and externalizing symptoms” (Allely, 2022).

Despite the prevalence of the abovementioned disorders, a growing number of studies expand upon co-occurring disorders. Obsessive-compulsive disorder (OCD) presents similar restrictive and repetitive behaviours as ASD (Cath et al., 2008). Therefore, compulsions are explained by the neurobiological overlap between the two disorders, particularly in regions associated with executive functioning, behavioural inhibition, and repetitive behaviours, although, compulsions might differ in underlying motivation or cognitive interpretation (Carlisi et al., 2017). Studies have also identified a high co-morbidity between ASD and intellectual disabilities (Matson & Shoemaker, 2009). While a substantial proportion of individuals on the autism spectrum meet the diagnostic criteria for intellectual disability, a significant subset demonstrate average or above-average intellectual functioning, particularly among individuals diagnosed as high-functioning or

¹⁵ There are three types of ADHD presentations: “(1) combined presentation, which is characterised by both inattention and hyperactivity-impulsivity; (2) inattentive presentation, which is characterised primarily by inattentive symptoms; and (3) hyperactive / impulsive presentation, which is characterised primarily by hyperactive and impulsive symptoms” (APA, 2013; Allely, 2022)

without cognitive impairment (Matson & Shoemaker, 2009). Consequently, the co-occurrence of ASD and intellectual disability may result in greater functional impairment, increased support, and heightened vulnerability to other psychiatric disorders (Matson & Shoemaker, 2009).

Furthermore, there is a complex interplay between schizophrenia and other psychotic disorders in relation to ASD (Kincaid et al., 2017; King & Lord, 2011; Kurita, 1999). An ASD diagnosis increases by threefold the risk of psychosis experiences (Kincaid et al., 2017). Psychotic symptoms such as delusions, hallucinations, and disorganized thinking may distort perception and decision-making in individuals with autism, especially when layered onto existing social-cognitive differences (Kurita, 1999; Wachtel & Shorter, 2013). Comparatively, overlapping developmental pathways, particularly in social cognition and neurodevelopmental disruption occurs in schizophrenia and ASD (King & Lord, 2011). As noted by Wachtel & Shorter (2013) individuals with ASD are, in comparison to the general population, no more likely to engage in violence behaviour. However, statistically the prevalence of violent behaviour increases among individuals with ASD and psychosis (Långström et al., 2009).

Incels

The term *incel*¹⁶, an abbreviation for involuntary celibate, refers to an online subculture composed primarily of men who define themselves as unable to form romantic or sexual relationships. The “incels form just one part of a larger online conglomeration of antifeminist men called the manosphere which emphasizes men’s rights and male supremacy” (Zimmerman et al.,

¹⁶ The ‘incel’ community is comprised of other smaller communities such as *Autistcels* (2021), individuals who identify as autistic and incel. The community contends that autism is a barrier to normative socialization thus, by extension, a barrier to attaining romantic and sexual relationships (Autistcel, 2021). Similarly, members believe that the disorder should be outright eliminated since women are either disinterested or reluctant to engage in sexual relations (Gheorghe and Clement, 2024).

2018 as cited in O'Donnell & Shor, 2020). Incels contend that with the rise of feminism, and conversely the implementation of women's rights, men lost their "rightful entitlement to dominate women" to a smaller, more desirable portion of men (Glance, 2021; O'Donnell & Shor, 2020). A central feature of the incel movement is the construction of a collective identity, based on shared grievances. This sense of exclusion is not presented as the result of individual circumstances, but rather as a consequence of broader societal structural forces.

The incel philosophy centers around the hierarchical model of social and sexual value. The apex of the hierarchy is comprised of a very small and privilege group of highly attractive, idealized men, termed 'Chads', who dominate the sexual marketplace alongside the most attractive women, termed 'Stacys' (Glance et al., 2021; Hoffman et al., 2020). The middle tier consists of men and women of average attractiveness, termed 'normies' experiencing moderate success in forming relationships (Broyd et al., 2023; Glance et al., 2021; Hoffman et al., 2020). Comprised within the lower tier of the hierarchy are the 'incels'. Exclusion from romantic and sexual relationships is attributed to factors such as physical unattractiveness, social awkwardness, or other deficits which further perpetuate a sense of alienation and resentment (Broyd et al., 2023). The "black pill" ideology represents the belief that social outcomes, particularly in relation to dating and sexuality, are determined almost entirely by immutable characteristics, therefore according to this perspective, any personal effort or self-improvement is unlikely to alter one's position in the hierarchy (Glance et al., 2021; Hoffman et al., 2020). Since the "black pill" ideology presents as inevitable, it encourages fatalistic thinking, wherein extreme views may become encouraged or more acceptable over time or encouraged (Glance et al., 2021). However, Glance et al (2020) denote that while violent rhetoric can appear in incel forums, it is often embedded within broader expressions of frustration and perceived injustice. In this sense, references to violence represent a

symbolic language of the community rather than a direct indicator of behavioural intent. This is supported by Hoffman et al (2020), who posit that this ideological framing does not automatically produce violence; however it can foster a context in which violent actions are interpreted or justified due to perceived societal injustices.

Online forums play a crucial role in sustaining this collective worldview as platforms transcend geographical boundaries (Ging, 2017). Most incel communities exist on anonymous platforms, allowing users to communicate without revealing their identity. The repetitive circulation of similar narratives contributes to the normalization of misogynistic and hateful rhetoric (Broyd et al., 2023). Confirmation bias occurs as a result of these echo chambers which negate any exposure to diverse perspectives. Misogynistic and hateful rhetoric is a component. However, online platforms also ubiquitously support violence (Ging, 2017). The Isla Vista killings, and more specifically Elliot Roger's manifesto, exemplify how violence is sanctified within the incel subculture (Broyd, et al, 2023).

Radicalization and Autism Spectrum Disorder

The literature does not support a causal link between autism and radicalization, nor any other mental disorder for that matter. Rather, empirical, and clinical studies suggest that incel radicalization occurs due to a multifactorial process in which psychological vulnerability, social communication difficulties and exposure to online ideological discourses, interact in complex ways (Broyd et al., 2023; Glace et al., 2021; Hoffman et al., 2020).

Studies conducted on the prevalence of mental disorder and inceldom, rely of surveys distributed within forums (Broyd et al., 2023). Survey results indicate that vulnerability presents through poor impulse control, combined with specific cognitive styles such as literal thinking and

interpretation (Murphy, 2020). While these traits are not pathological in themselves, certain individuals are more susceptible to ideological frameworks that present the world in absolute or simplified terms. Online extremist communities frequently rely on rigid categorizations of social groups, and deterministic beliefs about hierarchy (Hoffman et al., 2020). Therefore, incel individuals tend to prefer a predictable and rule-based systems of understanding.

Summary

The legal framework established under s.16 of the Canadian Criminal Code represent judicial safeguards, ensuring that individuals with mental disorders who lack the capacity to understand the nature or wrongfulness of their actions are not held criminally responsible in the traditional sense (Criminal Code of Canada, 1985). This defence is rooted in the inability of people who fall within s.16 to comply with the longstanding legal principles of culpability, morality, and intent. However, someone found NCRMD can be detained. The Review Board is subsequently tasked with balancing public safety and individual rights (Government of Canada, 2022).

However, NCR defence in the context of neurodevelopmental disorders, such as autism spectrum disorder (ASD) raises questions around the intersection of law, and psychiatric disorders. The complex nature of ASD, particularly the variability between individuals in cognitive, social, and moral reasoning, hinders unilateral treatment under s.16. Although, neurodevelopmental disorders may significantly impact how one interprets social cues, or process moral reasoning, it generally does not preclude an individual's ability to distinguish between right from wrong (Allely, 2022).

CHAPTER II: METHODOLOGY

In this project, I used a qualitative thematic analysis to examine advocacy, judicial and media discourses relating to criminal cases, and autism spectrum disorder. I start this chapter by outlining the neo-positivist theoretical framework guiding the epistemological stance of my research. The second portion of this chapter explains the methodology behind the research. More specifically, I explain how the research question was operationalized, the collection of data across the three domains, the categorization of data, the analysis, which was divided into four rounds, the outcome of the inductive process, ethical considerations, and lastly the research limitations.

Qualitative Thematic Analysis

In this research the word *discourse* is used in a positivist sense to denote observable textual material. Rather than treating discourse as a constructivist process through which reality is created, discourse, in this research, is approached as a source of empirical data that can be systematically examined. Braun & Clark (2006) define a qualitative thematic analysis as a method for identifying and analyzing recurring patterns within textual data through the systematic coding and comparison across documents.

In the present study, I used a thematic analysis to identify recurring forms of descriptions in advocacy statements, legal judgments, and media reporting. I observed patterns through the process of data familiarisation, coding, and accordingly, theme development (Attride-Stirling, 2001, p. 387; Braun & Clark, 2026). This enabled me to examine how autism was defined when raised in the context of criminal cases and, importantly, “highlight similarities *and* differences across the data set” (Braun & Clark, 2006, p. 97.) I defined these similarities and differences as points of convergence and divergence (Braun & Clark, 2006, p.97). In doing so, I identified these themes based on both the manifest content of the data, for instance when autism was mentioned

within the data, and the latent level wherein the data implicitly referred to an element of my research question (Joffe & Yardley, 2004, p.57).

Theoretical and Epistemological Assumptions

My purpose in conducting this study was to obtain a structured snapshot of how people talk about autism when it was raised in the context of criminal cases. As such, I was interested in identifying observable patterns through categorization and framing and drawing some conclusions about how people perceive autism spectrum disorder in the context of the criminal law. Accordingly, a positivist approach was beneficial as it assumes that attitudes and perceptions exist in the real world and can be observed and measured. Therefore, this approach assumed that the data captured discourses surrounding autism spectrum disorder and crime at a particular moment in time providing evidence about the kinds of ways that people perceive the relationship between ASD and criminality. Wittgenstein (1921) describes this approach as a “picture [that] presents the facts in logical space, the existence and non-existence of atomic fact. The picture is a model of reality” (p.39).

Positivism as a methodological approach is not without its critics. For example, Habermas (1978) argues that “objectivism deludes the science with the image of a self-subsistent world of facts structured in a lawlike manner; it thus conceals the a priori constitution of these facts” (p70). Neopositivist are sensitive to this critique. Schlick (1974) states that validation of knowledge depends on observable states (p.73), therefore knowledge itself is inferred from the research (p.6). Schlick (1974) uses Kant’s conceptualization of the *a priori* as a foundation to understanding knowledge. As such, *a priori* knowledge determines how experiences are described rather than as considered truths existing prior to observation, accordingly, the *a priori* principles function only to structure the way observations are formulated and compared (p. 74). Furthermore, Carnap

(1937) states that knowledge depends on the formal structure of statements rather than on metaphysical assumptions about reality. As such, accounts distinguish between statements that describe facts and statements that depend on rules of language which clarifies how concepts are used within a structured framework (Carnap, 1937, p. 57).

However, since there is very little research exploring people's perceptions and understandings of autism in the context of violent crime, an exploratory case study which takes a positivist snapshot of the "way things are", was helpful as it provides an idea of the range of attitudes and perspectives in the population, which can help steer future research. A neo-positivist ontological stance entails that the world, and therefore reality, is composed of facts which are observable and measurable. Epistemologically, knowledge about this reality derives from empirical data rather than subjective interpretation. As such, the aim was not to produce a definitive account of autism in relation to criminal responsibility, rather it was to provide a systematic description of the attitudes and perceptions that people have across three different institutional contexts at a specific moment.

Implication for Research Design

From this perspective, the transcripts of advocacy materials, court judgments, and media articles were a source of empirical data that provided a snapshot of people's underlying attitudes and perceptions, rather than being instances where meaning was co-constructed. This lends itself well to a comparative analysis, to see which perceptions were constant across domains and how perceptions may differ in a particular context.

I used Foucault's (1972) analysis of power and knowledge as an analytical tool for examining how institutions produce observable statements about a social phenomenon.

Accordingly, the validity of knowledge stems from the power attributed to the organization (Foucault, 1972). Rather than treating discourse as creating reality, I filtered Foucault's notion of power and knowledge into the neo-positivist lens in order to observe how the media confers power to advocacy and judicial documents by mobilizing and citing them.

Furthermore, Foucault's (1972) notion of knowledge and power is also directly reflected in advocacy and judicial documents. Recurring descriptors within advocacy statements were treated as observable features which could be systematically analyzed, more specifically, power attributed to advocacy organization stems from their knowledge of autism spectrum disorder which is validated by its members (Braun & Clark, 2006; Foucault, 1972). The notion of power and knowledge applied to court documents as institutional rules, classifications, and expert statements were treated as validated sources of knowledge (Foucault, 1972). Court rulings were treated as observable data points depicting how legal proceedings define, interpret, and categorize mental condition within the existing framework (Braun & Clark, 2006; Foucault, 1972). Accordingly, these recurring descriptors were treated as observable features which can be systematically analyzed (Braun & Clark, 2006).

Media discourses select and reorganize information stemming from advocacy and judicial discourses. As such, the neo-positivist approach treats the articles as composite representations that filter, condense, and articulate information. By examining patterns of attribution, emphasis, and repetition, I was able to observe how advocacy and judicial accounts of a criminal case involving autism spectrum disorder were reflected in media reports.

Taken together, this epistemological framework treats advocacy, judicial and media discourses as comparable forms of empirical data whilst still acknowledging their different functions.

Research Question

In order to get a sense of how people perceive autism within a criminal context, *R.v. Minassian* served as a focal point because it gave significant visibility to the intersection between criminal law and mental health. The case generated widespread media attention, due to the gravity of the incident and due to the accused's diagnosis of autism spectrum disorder (ASD) which was mobilized as a s.16 defence.

Research Design

In order to conduct the research, I selected three sources of data. The first, advocacy statements discussing ASD and criminality, gave me an opportunity to see how people either living with or advocating for individuals with ASD perceived the relationship between ASD and criminality. Advocacy statements were selected to provide an alternative perspective, bridging the gap between evidence and real-world issues. Incorporating advocacy perspectives ensured that my scientific endeavour remained socially relevant. I decided to sample statements published before and after the Minassian trial as it allowed me to see whether discourses shifted around autism spectrum disorder following an increase in public focus during the proceedings. Second, I included court cases in order to obtain a more comprehensive idea of the interplay between autism spectrum disorder within the context of criminal proceedings. Rather than solely relying on the Minassian case, which gathered a lot of media coverage, I also included other court cases which did not receive the same level media attention, if any, in order to observe how the courts applied ASD. The court cases selected predated the Minassian case providing me with enough data to determine whether pre and post-court cases applied ASD differently. Thirdly, I selected media reports as the information drew from both advocacy and judicial discourses, and as such, I wanted to examine

what information was disseminated to the public, more specifically the kinds of perceptions and attitudes available to the public through the media.

I was then able to compare and contrast the three types of documents. The comparative design mapped out points of convergence and divergence in attitudes and perceptions of autism spectrum disorder across the abovementioned domains.

Data Collection

The data for this study consisted of advocacy group statements, judicial rulings, and media reporting. All documents were retrieved from publicly accessible sources or academic databases available through institutional access. A total of 58 court rulings, 4 advocacy statements, and 18 media articles were selected for the analysis. Selection criteria was based on relevance to the research question, temporal proximity to the *R.v. Minassian* case, and the presence of explicit references to autism, criminal responsibility, or related legal terminology. Furthermore, the comparative analysis relied on the data compiled and subsequently contrasted in order to provide a more comprehensive depiction of how autism spectrum disorder was portrayed throughout the abovementioned domains.

The inquiry which honed in on various discourses surrounding ASD required access to existing documents that were published for public purposes. The materials were not viewed as isolated texts, rather as artefacts situated within broader institutional and societal contexts.

Advocacy Statements

The initial retrieval of documents stemmed from statements published by advocacy groups. Four advocacy statement were selected for this research: one statement published by Canadian Autism Spectrum Disorder Alliance (CASDA) containing 575 words, and three separate Autism

Ontario statements published in 2020, 2021, and 2023, containing 395 words, 431 words, and 246 words respectively.

The documents were drawn from public statements issued by the organization with a direct mandate related to autism or neurodiversity. The search targeted documents released in response to, or in the immediate aftermath of the Minassian trial and verdict. These documents were sourced through publicly available websites and online repositories. Searches were conducted using key terms such as: “autism”, “autism as a legal defence”, “verdict and lasting effects”, and “Minassian”. Limiting the search terms ensured that the statements retrieved aligned with a component of the research, which examined the interplay between autism spectrum disorder and the defence brought forth in the *R.v. Minassian* case.

Furthermore, a comparative analysis could be conducted due to the information disseminated within the publications regarding the neurological condition. Therefore, the final sample consisted of four publications released by recognized advocacy groups. Canadian Autism Spectrum Disorder Alliance (CASDA) officially became the Autism Alliance of Canada as of April 2022 in order to reflect a more holistic approach, however since the document used in this research predates the rebranding, I used the CASDA acronym when analyzing the data. CASDA operates on a national scale aiming to address gaps in funding and policy. Conversely, Autism Ontario is a provincial organization focused on local services, resources, and support. Canadian advocacy organization are consolidated under CASDA. These documents were selected based on their public visibility, direct reference to the Minassian case or the implications of framing autism within legal discourses.

Although, various autism advocacy organization exist such as, the Autistic Self Advocacy Network (ASAN) ; Autism Speaks: Autism support, resources & advocacy ; or Autism Canada |

Resources | Support | Education, these organizations did not publish statements pertaining to Minassian. Furthermore, since the statements published by the aforementioned organizations did not provide an overview of ASD before the Minassian case, I decided to exclude them from the data as they did not further contribute to my research.

Furthermore, while Ontario Autism Coalition's (OAC) statement did pertain to ASD and Minassian's defence, this statement was ultimately excluded from the data as it reiterated the same information contained within statements published by Autism Ontario.

Media Articles

Media articles were collected through two search methods which were open-source search and institutional access through the Factiva database. The open-source searches, meaning articles published available to the general population, were limited to the period between April and May 2018 and the search term used was "Toronto van attack" which yielded approximately 1,850 results. Comparatively, within the Factiva database, the search term used were "Minassian and Autism" producing over 23,000 results. Since Factiva is only available through an educational institution, the use of articles stemming from a google search provided additional data pertaining to the information disseminated to the public regarding ASD, and criminal responsibility in the context of the Minassian case.

The dataset was narrowed by selecting saturated articles during the period of April 2018 to May 2020. Saturation in the context of media articles refers to the exposition of excessive or overwhelming content encapsulated in the moderately brief summary, wherein the articles only required a few minutes to read but iterated most of the information available at a given point in time. Representation is reflected through the selected timeframe as it captured the initial reporting,

public reaction, and early interpretive framing of autism spectrum disorder, the trial as well as the verdict. Selection criteria included direct reference to autism spectrum disorder, Minassian's arrest or trial, and the coverage of legal or advocacy responses.

Thus, the final sample size consisted of 17 articles, 11 of which stemmed from Google while the remaining 6 articles were extracted from the Factiva database. The word count per article ranged from 315 to 2,312 words. The sample size appears meager in comparison to the initial results yielded, however the vast majority of news articles reiterated the same information, simply formulated differently therefore, the articles selected were all-encompassing as the content was saturated, which provided more context and provided a broad overview of the information disseminated to the general public in relation to the 2018 Toronto van attack.

Judicial Documents

Lastly, I retrieved judgements in criminal cases which involved the interplay between autism spectrum disorder and criminal liability. Judicial documents were sourced from two legal databases which were CanLii and Westlaw. These two databases are available through educational institutions. The objective was to identify Canadian court decisions that referenced autism spectrum disorder in the context of criminal responsibility and sentencing.

CanLii court cases were retrieved during May 2025, therefore the data only comprised court cases published prior to the aforementioned time period. Search terms used were "NCR & Autism Spectrum Disorder" yielding 32 results. I changed the search terms from NCR to the full designation i.e. not criminally responsible, which yielded a larger number of cases. The sentencing filter was applied in relation to the search terms "Not Criminally Responsible and ASD" which generated 97 results. I applied the sentencing filter in order to obtain cases where the interplay

between ASD and the offence were thoroughly discussed and not only mentioned. Importantly, ASD also stands for approved screening devices therefore, some of the cases within the database were not relevant to the research and subsequently excluded.

Westlaw court cases were also retrieved during the month of May 2025 and also beginning of June 2025, therefore the data only comprised court cases which were available during that time period, as such any additional court cases uploaded onto the databases following early June 2025 or subsequent months were not included within my dataset. Search terms were “Autism Spectrum Disorder and Not Criminally Responsible”, and “Not Criminally Responsible & Autism” ensuring that the various designation of ASD were comprised within the dataset. A total of 124 results were obtained with these search terms and 27 documents were selected for my data.

In total 58 rulings were included from both the CanLii and Westlaw databases. The page count ranged from 6 to 136. Cases were selected on the basis that they explicitly referenced autism spectrum disorder as a diagnostic condition which factored into the assessment of criminal responsibility, or as a mitigating or explanatory factor in sentencing.

In addition, Minassian’s police interrogation transcript, which contained 190 pages was included within the data as it was explicitly referenced within the trial and therefore formed part of the factual background used by the court. The content of the interrogation was examined by the court in relation to the circumstances of the offence. Although, the transcript was not a judicial decision in and of itself, its use contextualizes the offence, and the defence’s argument pertaining to Minassian’s state of mind at the time of the offence. As such, I used the transcript as background material informing judicial discourses. The interrogation does not negate the 58 selected court documents, rather the interrogation transcript served as contextual data clarifying how the facts were presented, interpreted, and ultimately integrated into the judicial assessment of criminal

responsibility in Minassian's case. The information contained within the interrogation transcript was only used in the specific portion of the analysis which pertained Minassian's case.

Minassian remained the central case study, however additional judicial decisions were mobilized in order to situate the case within the broader Canadian legal discourse surrounding autism spectrum disorder. Limiting the analysis exclusively to *R.v. Minassian* (2021) would have risked presenting ASD as an emerging or unprecedented issue within the Canadian criminal law, when in reality autism had already appeared in judicial reasonings prior to the 2018 Toronto van attack. As such, the inclusion of additional cases established the historical and doctrinal context within which *Minassian* emerged.

Additionally, the broader corpus of judicial reasoning ensured a more accurate examination of how ASD is described within the legal domain. A single case study, particularly one as exceptional and publicly visible as Minassian's, risks overemphasizing the unique factual circumstances of that case rather than identifying broader legal discourses. Thus, the additional cases helped to situate *Minassian* amongst the existing discourses surrounding ASD and criminal responsibility.

Categorization

The documents were retrieved in their full form and stored digitally. The collected documents were systematically categorized into three analytical groups which were advocacy statements, caselaw, and media sources. Documents were subsequently numerically identified in order to facilitate precise referencing during the analysis. Thus, advocacy statements were labeled as ADV and numbered from 1 to 4, media articles were labeled MED and numbered 1 to 18, and lastly, court rulings were labeled CASE and numbered from 1 to 58. The regrouping of documents

into a singular folder significantly reduced the risk of overlooking relevant material during the analysis. Ensuring that documents were not dispersed ensured that evidence or supporting arguments were not unintentionally disregarded which would weaken the coherence and comprehensiveness of the findings. A structured folder mitigated the abovementioned risk by ensuring that all sources were visibly accounted for and easily available, allowing a systematic verification of each document. Moreover, within an excel sheet, all documents were identified with relevant metadata such as the source, publication date, search term, the document name, and database of origin enabling efficient identification and facilitating the retrieval process.

Analysis of Material

The analysis process for this research followed an inductive thematic¹⁷ methodology wherein the identification of themes was based on the content within the data itself (Boyatzis, 1998; Braun & Clark, 2006). Therefore, allowing the material, which was composed of advocacy statements, judicial rulings, and media coverage, to guide the coding process. While the 2018 Toronto van attack case delineated the scope of the research, the analysis remained exploratory in nature as the underlying themes and patterns emerged directly from the data. Although grounded in a specific legal moment, the coding process derived from the descriptive and conceptual features within the documents rather than fixed frameworks. Accordingly, Schwandt (2015), indicates that “coding is a procedure that disaggregates the data, breaks it down into manageable segments, and identifies or names those segments. Although it is impossible to identify and name without at least an implicit conceptual structure, coding is often classified as relatively descriptive or analytical-

¹⁷ More specifically, Schwandt (2015) posits that coding derives from at least three different manners, which can be combined. This research aligns with a grounded, posteriori, inductive, context-sensitive scheme. Accordingly, Schwandt (2015) indicates that “this scheme may also begin with a simple typology but here analysts (a) work with the actual language of respondents to generate the codes or categories and (b) work back and forth between the data-segments and the codes or categories to refine the meaning of categories as they proceed through the data.

explanatory depending on the degree of interpretation involved”. The analysis was conducted in multiple stages, beginning with the organization and initial review of collected documents, and culminating the data into coded themes. The structure ensured that the material could be compared both within and across institutional domains.

First Round of Analysis - Coding

During the initial stage of the analysis, I identified documents which were relevant to the research question through a process of exploratory engagement with the documents (Boyatzis, 1998, p.5). Information, which stemmed from the three domains, were extrapolated from institutional databases or online repositories. As previously mentioned, the basis of my research was grounded in the *R.v. Minassian* case, consequently the focal point was to select documents which would depict the interplay between autism spectrum disorder and criminal responsibility.

The purpose of this initial review was twofold, as it served to establish familiarity with the structure and tone of each source, and to assess the relevance of the data to the research. Data sources which did not contain substantive or sufficient relevant information to predicate an inquiry were excluded from further analysis. The remaining documents were subjected to an open-coding process which involved the systematic highlighting of any language, terminology, or descriptors which could potentially be relevant to the research. Coding in this round was completed directly within the body of the document using highlighting tools and margin notes, ensuring that the original structure of the documents remained intact while enabling the identification of emerging patterns within the source material. The initial codes included, but were not limited to, definitions of autism or mental disorder, descriptions of the event, reference to intent or capacity, the nature of the offence, psychiatric or expert testimonies etc. The process was rudimentary, the “codes are applied to the textual data to dissect it into segments” (Attride- Stirling, 2001), in order to “capture

the essence” of the observation (Boyatzis, 1998, p. 11). As such, codes derived inductively through the repeated reading of the documents, and observed recurring patterns (Attride- Stirling, 2001; Boyatzis, 1998).

Second Round Analysis – Identifying Themes

The second round of coding focused on the determination and organization of themes informed by the recurring concepts or descriptors across the data corpus (Attride- Stirling, 2001, p.391; Boyatzis, 1998, p. 11). Therefore, emergent themes were categorized into separate word documents. These thematic coding folders served both as repositories of content and as analytic units, wherein excerpts previously highlighted in the source documents were extracted and organized by subject matter. Compartmentalization of the material ensured the development of detailed thematic insights while also preserving the integrity of the data.

The dominant themes within the data were condensed into ten categories which were: definitions of autism ; autistic people are ; adjectives / naming of autism ; general descriptors of the Minassian case ; psychiatric testimonies – *R.v. Minassian*; internet ; ASD as a mitigating factor / concurrent disorders ; link between autism and violent crime ; risks ; stigma ; and recommended responses. and the information comprised within each word document pertains to the overarching theme (*see appendix*). The coding process was cumulative and comparative, thus building from data specific observations to broader institutional patterns. The overarching themes identified through the earlier coding process were assigned as the title of each document encapsulating the dominant concept around which the content was organized, which subsequently facilitated identification and retrieval of information. Within each document, subheadings were created to correspond to the three distinct domains under analysis, which were judicial rulings, advocacy statements and media representation.

This internal structure ensured that while each thematic category gathered data across all sources, the origin of each excerpt remained. This organizational approach allowed for internal coherence within each theme while preserving the discursive boundaries between institutional domains.

Third Round of Analysis – Refinement

Transitioning from organizing the data into thematic categories, the third round of coding aimed to uncover what information the various domains were conveying, therefore the data was further synthesized and refined. Information was clustered into similar subgroups according to internal similarities which ensured conceptual consistency, thus opting for a “variety of analytic strategies that involve sorting, organizing, and reducing the data into something more manageable” (Schwandt, 2015). In effect, the process was analogous to separating information with underlying similar descriptive purposes, wherein similar descriptors were synthesized and refined in order to reflect the overarching internal logic of the document.

This process enabled a clearer mapping of the ways autism spectrum disorder was described and framed across the domains, revealing the underlying structural and rhetorical tendencies. This process was conducted for each of the three domains independently which enabled a more in-depth representation, thus discerning between patterns, and conversely paradoxical discourses. During this third round, I read over the selected data as a whole in order to see how the themes fit into the documents when read in their entirety, in order to verify that the thematic coding made sense (Attride – Stirling, 2001, p. 392).

Fourth Round of Analysis – Comparing the Three Types of Documents

The fourth stage of coding pertained to the comparative examination of thematic descriptors generated across each institutional domain in order to identify points of convergence and divergence (Attride-Stirling, 2001, p. 393). This cross-domain comparison enabled an assessment of how autism spectrum disorder was framed in relation to the institutional context. The comparative review was undertaken for each thematic category in order to identify similarities, and contradictions. Thus, the systematic comparison of descriptors found in judicial rulings in juxtaposition to those extracted from advocacy statements depicted how autism spectrum disorder was legally and socially represented.

Therefore, the analysis honed in on the discourses perpetuated by advocacy organizations, judicial documents, and media report.

The Outcome of the Inductive Coding Process

The outcome of the inductive coding process reflected the manner through which autism was described across the three domains. The thematic documents form the empirical foundation upon which the comparative analysis was formulated, wherein recurrences, variations, and divergence of themes across advocacy, legal, and media documents were contrasted. The analytic process was cumulative and methodologically traceable as each stage of coding built directly upon the previous while preserving consistent access to the original data (Braun & Clark, 2006). Rather than separating or fragmenting analytical steps into isolated files, the data structure was layered within single working document. The documents served as evolving analytic transcripts, where excerpts extrapolated directly from the source developed into thematic descriptors, thus ensuring that the data could be systematically compiled. This structure ensured that the initial evidentiary

base remained intact and accessible throughout the subsequent stages of the analysis as it evolved incrementally, hence additional analytical insights were situated below the original excerpts. Consequently, each document operated as a self-contained analytical achieve, encapsulating the extent of the inquiry. By building upon and returning to the raw data, at any stage of the process, it ensured that the analysis remained grounded in the empirical foundation and that thematic insights could be corroborated by direct reference to the original textual material. Furthermore, this process ensured that the emergent claims could be substantiated by directly extrapolating information from the raw data.

Ethical Considerations

This study was based entirely on the analysis of publicly available documents. The data corpus consisted of advocacy statements, judicial rulings, and media publications, all of which were accessible through open internet searches, databases, and journalistic repositories. As such, the research did not require ethical approval from the Research Ethics Board (REB). None of the materials analyzed contained sensitive personal information that would reasonably raise concerns about confidentiality, or anonymity. Judicial rulings, while occasionally detailing individual circumstances, were published as public records and were subject to established norms regarding redaction and publication in accordance with Canadian legal standards. Similarly, media articles and advocacy statements were disseminated with the intention of public consumption.

Although the research does not raise traditional ethical concerns, such as participant consent or data protection, representational ethics informed the research's approach given the topic's sensitivity particularly due to the association between autism spectrum disorder and violent crime were portrayed in the context of the 2018 Toronto van attack case. Several court decisions within the dataset contained highly sensitive and explicit descriptions, particularly in cases

involving sexual offences. These included graphic references to images retrieved and utilized as evidence, or verbatim excerpts of online communications. In recognition of potentially distressing and the gratuitous nature of such content, such information was excluded from the analysis, especially if it was not directly relevant to the research question. The guiding principle was to foreground only elements of the rulings which represented autism spectrum disorder within the legal discourses. Additionally, the language utilized to reference individuals on the autism spectrum varies significantly, thus the terminology was preserved for the purpose of documenting discursive trends across the domains.

In sum, while this research falls outside the scope of human subjects and related ethics protocols, it is nonetheless grounded in a commitment to methodological transparency and ethical conscientiousness, particularly due to the population studied.

Limitations of the Research

The limitations of the research findings relate to the scope and composition of the data corpus as the research mainly honed in on the 2018 Toronto van attack as a case study.

R.v. Minassian directed the temporal framing of the selected materials and the thematic focus of the documents, thus narrowing the scope of the inquiry. As a result, the findings produced through this research ought to be understood as contextually situated rather than broadly generalizable. The analytical insights illustrated the institutional descriptions of autism spectrum disorder in relation to the with the Minassian case. Furthermore, judicial rulings were extracted from online databases with narrow search terms.

Advocacy statements were contextually situated in relation to the 2018 Toronto van attack case. The data only comprised statements including a direct reference to the attack and autism

spectrum disorder. As such, statements about autism spectrum disorder published prior to the attack, were not included within the data corpus.

Media publications were selected in accordance with a specific timeframe and specific search terms, therefore the findings remain contextually situated. Furthermore, media articles selected had to contribute to the broader narrative, therefore media articles reiterating, more or less, the same information were excluded from the data.

Additionally, since the documents included within the study were written and published in English, the findings may not capture the full range of discursive nuances present within the Canadian bilingual landscape.

CHAPTER III: ADVOCACY GROUPS AND ASD

Autism Defined Within Advocacy Groups Documents

Advocacy groups opted for a holistic framework that resisted medical reductionism and centered around the experiences and rights of individuals on the autism spectrum. Rather than portraying ASD as a static condition defined by pathology, advocacy discourses framed autism as a complex neurodevelopmental condition instead of a disorder. The documents also emphasized a sense of emergence, referring to the process by which evolving scientific research provides a diagnostic framework, and further noting that autism was not categorical. This framework repeatedly honed in on aspects of citizenship, rights, humanity, inclusion, underscoring that “autistic Canadians”, “autistic individuals”, and “autistic people” are not solely defined by a diagnosis (Autism Ontario, 2023; CASDA, 2020).

The data positioned autism as a “neurodevelopmental disability”, or a “neurodevelopmental condition”, as such the terms foregrounded developmental rather than moral, behavioural, or psychiatric characteristics (Autism Ontario, 2020; CASDA, 2020). For example, Autism Ontario (2023), referred to autism as a “neurodevelopmental condition primarily characterized by social impairments and differences in the ability to understand the emotions and perspectives of others”, and CASDA (2020) defined autism as a “neurodevelopmental disorder characterized by social impairments and difficulty inferring the thoughts, feelings, and emotions of others”. Thus, this recurring formulation situated autism as a developmental variant marked by differences with consistent reference to social-cognitive domains. Therefore, the discursive rhetoric consolidated the difficulties, differences, and social impairments in the context of an individual also managing a disability. This subsequently, distanced the person with autism from pathology and violence.

Much of this occurred when the discourse clarified what autism was not. For instance, advocacy groups asserted that “autism is not synonymous with violence or lack of moral compass”, “nor are autism and mental illness synonymous” (Autism Ontario, 2020; Autism Ontario, 2023). In addition to stating that individuals on the autism spectrum were not inherently more deviant or dangerous than the broader population, the advocacy discourse asserted that autistic individuals “are more likely to be victims of crime than perpetrators” (CASDA, 2020). The reverse framing of autistic individuals as violent positioned them as marginalized, chronically invalidated, unjustly treated, and subjected to systemic barriers.

At the outset, describing autistic individuals as inherently vulnerable, and subsequently belonging to a certain group, countered the claim that autistic individuals were fundamentally akin to members of the general population, therefore advocacy groups contrived a narrative which attempted to minimize structural marginalization by enumerating the variability in difficulties and challenges associated with the disorder. However, the discourse held by advocacy groups juxtaposed the aforementioned insistence on uniformity, stating that autistic individuals were like other members of society. The commonality between autistic individuals and the general population was reasserted by the statements warning against examining the actions “exclusively through that lens [the disorder] without considering the broader picture of other influencing factors on the whole person [...] is demeaning to everyone” as it undermined the notion of individuality, agency, and dignity that inhere in all individuals (Autism Ontario, 2020).

This was underscored by statements that cautioned against the overgeneralization or oversimplification of autistic traits based on exceptional cases, particularly those involving violence due to the lasting implications wherein barriers prevent individuals with autism from meaningfully participating in society (CASDA, 2020). Another lasting implication was in

reference to the legal precedent derived from the “misuse of autism as a legal defence” wherein the act was exclusively examined through the disorder rather than the broader lens (Autism Ontario, 2023). This legal strategy foregrounded generalizable traits over subjective lived experiences, thereby translating the person into a case study of neurological dysfunctions, this in turn hinders how neurodivergent individuals were represented within the criminal justice system and in society.

In sum, advocacy groups critiqued the justice system’s tendency to use disabilities, such as autism spectrum disorder, as a “scapegoat for violent crime” or a means to evade criminal responsibility, arguing that such deployments distorted the condition and misrepresented the broader lens (CASDA, 2020).

Toronto van attack

In relation to the *R.v. Minassian* (2021) case, a central discursive pattern invoked in advocacy responses was the emphasis on social acceptance and mental health as core contextual factors. CASDA’s (2020) statement titled “social acceptance and mental health at play in Minassian case”, situated the events within a wider social and psychological context rather than within the diagnostic features of autism. The content of the statement delved into Minassian’s cognitive limitations, as argued by the defence, noting that Minassian “only understood wrongfulness at an intellectual level and lack the capacity to rationally decide whether it was right or wrong” in order to describe how the defence framed the accused’s mental state. The statement also highlighted how “generalizations about this particular case” can act as a potential catalyst for inaccurate public perceptions of autism spectrum disorder (CASDA, 2020).

Minassian's defence positioned autism as a legal defence under s. 16 of the CCC, however advocacy groups explicitly rejected this defence by reiterating that "autism was not the cause behind the tragic events of that day", rather attributing the attack to a "cultivated misogyny and sense of entitlement" wherein the "hatred of women and social environments where misogynistic ideology is allowed to flourish were factors which led to the attacker's socially constructed identity as an incel" (Autism Ontario, 2020; Autism Ontario, 2021). Accordingly, this perspective differentiated between Minassian's adherence to the 'incel' ideology and his ASD diagnostic. References to "misogynistic ideology", "sense of entitlement", "hatred of women", and "toxic" environments provided an alternative explanatory basis, reframing the perspective through which the attack was examined (Autism Ontario, 2020; Autism Ontario, 2021). Furthermore, Autism Ontario (2020), directly opposed the defence's psychiatric argument, stating that it "strongly objects to the defence teams of Alek Minassian's characterization of an 'autistic way of thinking' similar to psychosis" indicating that advocacy groups were actively resisting attempts to situate autism within a psychotic or pathological behavioural framework.

The discursive separation of autism spectrum disorder from psychosis, mental illness, and violent crime demonstrated that the defence's conceptualization did not align with advocacy perspectives. As such, advocacy statements sought to reframe the attack through a broader social, ideological, and environmental lens rather than within either a narrow diagnostic or legal categorization.

Online Environments as an Alternative Contextual Factor

Online environments were described within advocacy statements as significant contextual factors influencing the Minassian case. Advocacy groups also raised broader concerns relating to an autistic individual's vulnerability within the digital spaces. The discourse held centered around

barriers in social communication, the availability of misogynistic and supremacist ideologies, and the structural embedding of harmful perspectives within the social fabric. As such, a discursive feature of the data pertained to the restricted social outlets for autistic individuals “due to barriers in social communication, social outlets can be restricted for some Autistics” (CASDA, 2020). This formulation positioned communication, not as an internal deficit, but rather as a structural factor limiting access to typical social environments. CASDA (2020) linked these constraints to the increasing exposure to harmful digital spaces, noting that when individuals on the spectrum “are exposed to anonymous online forums, individuals can fall prey to toxic exposure to hateful views”. This suggested that communication-related difficulties, which were features of the condition, may become a pathway through which harmful ideologies were internalized. This positioned individuals with autism as not inherently violent, but as particularly vulnerable to online communities due to marginalization.

This discursive feature intertwined with another which honed in on the “proliferation of misogynistic and supremacist ideas readily available for consumption and woven into our social fabric”. Indicating that these ideologies were widespread and normalized within the general and the digital environment (Autism Ontario, 2020). Terms such as “readily available”, “consumption”, and “woven” indicated that these ideas existed not at the margins, but rather within mainstream online spaces (Autism Ontario, 2020). Thus, in relation to Minassian’s case, “social environments where misogynistic ideology is allowed to flourish were factors which led to the attacker’s socially constructed identity as an incel” demonstrating that these online spaces were viewed as environments of permissibility wherein harmful narratives could be easily obtained or contrived without regulations for all individuals (Autism Ontario, 2021). Accordingly,

susceptibility to online misogynistic platforms should not be solely attributed to individuals with autism.

Furthermore, the descriptors used to define such online spaces reiterated how exposure to “toxic”, “hateful”, “misogynistic”, “supremacist” perspectives were harmful to everyone (Autism Ontario, 2020; Autism Ontario, 2021; CASDA, 2020). Advocacy groups redirected the blame of violence towards the anonymous nature of online platforms, as a structural condition, enabling the proliferation of hateful and supremacist ideologies. This contributed to the broader advocacy narrative in which digital environments were framed as structurally conducive to the dissemination of hateful ideologies. Consequently, by honing in on the abovementioned, advocacy groups explicitly disassociated autism from causality in relation to the 2018 Toronto van attack by reiterating that “autism was not the cause behind the tragic events of that day”, thus indicating that contextual risks of online environments did not equate to diagnostic causation (Autism Ontario, 2021). In doing so, advocacy discourses conveyed alternative factors as causal explanation, instead of autism spectrum disorder.

Rejecting The Association Between Autism and Violent Crime

Within advocacy statements, the relationship between autism and violent crime was reframed through a discourse of non-association grounded in reference to empirical studies and reinforced through explicit rejection of causal association between the neurodevelopmental condition and crime. Statements claimed that research did not substantiate a connection between autism and criminal behaviour in general and violent crime, in particular, and instead situated instances of maladaptive behaviours within broader contextual, environmental, and comorbid factors. For instance, CASDA (2020), stated that “studies have demonstrated that there is no significant link between autism and violent crime. Studies have reported elevated rates of

criminality only among those with concurrent disorders such as conduct disorder and substance misuse”. By mobilizing studies which demonstrated that there was “no significant link”, advocacy statements supported the assertion that autism was not predictive of violent behaviour by appealing to the truth value of scientific research. These findings were mobilized to counter public assumptions that might conflate autism with criminality.

Thus, advocacy groups explicitly rejected “the notion that autism leads to criminal behaviour” stating that correlating both was a fallacy that inappropriately add credence to a “myth that autism causes criminal behaviour” (Autism Ontario, 2020; Autism Ontario, 2023). Terms such as “fallacy” and “myth”, in contrast to terms such as scientific studies or research stated above, signaled that discourses correlating autism and criminality were unsupported and further perpetuated misconceptions. In sum, advocacy statements rejected the association between autism and crime. Explicit descriptors such as “concurrent disorders and substance misuse” were stated as contributing factors, undermining links to autism spectrum disorder itself (CASDA, 2020).

Public Perceptions Regarding Autism

The aforementioned was contextualized by an underlying concern about public perceptions of autism, particularly in the aftermath of the 2018 high-profile criminal case. Advocacy groups pointed to three prominent risks. The first risk pertained to the “false association between autism and violent crime”, the second delved into the setbacks in “the progress that has been made to reduce this stigma and other misperceptions about autism”. Lastly given the statistic published by Public Health Agency of Canada (2018) which estimated that 1 in 66 people would be on the autism spectrum, “there is a great danger in associating autism with violent behaviour (CASDA, 2020), due to the increasing prevalence of ASD diagnosis within society. Each demonstrated a consistent concern that public narrative about the case could attribute violence or criminality to

individuals with autism. In this context, assertions that the claim was not grounded in evidence, aligned with earlier statements wherein the link between autism and crime was described as a fallacy or myth. However, the first risk honed in on the social consequences of such association rather than on the factual inaccuracy. The second risk pertained to the reversal in progress made to dismantle public misperceptions and stigma surrounding autism, indicating that it was an ongoing process and one which could be undermined when autism was used, whether accurately or inaccurately, as part of a criminal defence strategy. The third risk indicated that the increasing prevalence of ASD diagnoses, also increased the risk of assumption regarding violent behaviour and neurodevelopmental disorders.

Concerns about public perceptions were also not limited to the particular timeframe of the Minassian case. Due to the 2018 Toronto van attack, advocacy groups were “concerned about the potential ramifications of this defence being used in future cases, and the difficulties this will cause for autistic people and their families” (Autism Ontario, 2021). The potential ramifications extended beyond the immediate trial and the narrow question of judicial interpretation, to a shift in both judicial interpretation and public perceptions in the future.

With respect to the former, advocacy discourses underlined that the defence argument was viewed not in isolation, but positioned it rather as a legal development capable of influencing broader judicial rulings in relation to autism. Hence, Minassian’s defence thereby signaled potential recurrence, wherein autism could be invoked to reduce criminal responsibility, rather than operating as a singular case (Autism Ontario, 2023). In essence, the risk lied not in one instance of autism being cited in one criminal defence argument, instead it lied in the potential reproduction of this type of argument, which hindered and weakened the claim formulated by advocacy groups that “there is no significant link between autism and crime” (CASDA, 2020).

With respect to the latter, advocacy groups anticipated difficulties which could arise in various context. For instance, a question posed was “will employers see our children as risks and prefer not to employ them?” (Autism Ontario, 2023). Indicating that the legal claims made during Minassian’s criminal trial could have “lasting implications” (Autism Ontario, 2023), that may be generalized into various other contexts, such as employment thereby affecting autistic individual’s opportunities and social inclusion.

Lived Experiences of Autistic Individuals

As stated above, advocacy discourse aimed to humanize individuals with autism by honing in on lived experiences. A prominent part of this was highlighted in the lived experiences of autistic individuals. For example, CASDA (2020) iterated that “autistic people are more vulnerable (at risk) for mental health issues – due, in part, to lack of access to services as well as negative lived-experiences while navigating the social world”, therefore attributing vulnerability not solely to autism, but rather to structural and experiential conditions as a product of environmental barriers and social exclusion. Further stating that autistic individuals “struggle with the stigma of not being fully accepted by and included in society” (CASDA’ 2020), which positioned autistic individuals as marginalized rather than individuals who posed a risk to others.

Advocacy statements accordingly, depicted how stigma was a pervasive and multi-layered social risk experienced by autistic individuals. The underlying discourse framed stigma as emerging from misrepresentation, oversimplification, and structural exclusion. Statement such as “autistic people are at greater risk for bullying, intimidation, and victimization” also indicated that stigma was experienced not only through interpersonal negative interactions, but rather also through broader systemic patterns of marginalization (CASDA, 2020). Autism Ontario (2023) stated that “regrettably, we often witness the oversimplification of autistic individuals, which

resulted in unwarranted stereotyping”, the combination of the terms “oversimplification” and “stereotyping” situated these practices as mutually reinforcing processes that reduced individuals to narrow categories, ignoring broader contexts, whilst the term “unwarranted” indicated that such stereotypical portrayals were not grounded in evidence or meaningful understanding. Furthermore, since “broader underlying factors are ignored”, stereotyping emerged due to the absence of contextual information about environmental conditions, social determinants, or individuality. As such, stigma was a product of interpretive omission wherein incomplete narratives were disseminated (Autism Ontario, 2020). The misattribution, wherein alternative factors were omitted, resulted in autism being used as a default explanatory category for behaviour, aligning with the notion that actions were perceived through the lens of the diagnostic, and neglecting the broader context. Autism Ontario’s (2023) positioning reiterated that “the stigmatization of people with disabilities or mental health conditions is not the answer”, indicating a direct and categorical rejection of narratives contributing to the negative perceptions of disability or mental health. Advocacy groups situated stigma as both socially harmful and misaligned with the needs or realities of the autistic community.

Societal Transformation

Advocacy discourse also outlined the actions, and societal transformations required, in light of the Minassian case, to ameliorate public attitudes towards autism. Advocating primarily for “greater access to mental health services and acknowledge the request that Autistic Canadians have made in calling for greater access to mental health supports” conferred that such support was not only beneficial, rather crucial for preventing misinterpretations or misattributions of behaviour while also “prioritizing equity and accessibility (CASDA, 2020). This was supported by additional calls for action “to prevent tragedies like this one [2018 Toronto van attack] from occurring,

proactive anti-misogynistic and anti-ableist work which promotes societal transformation must be woven into our community, education and social programs, as well as mental health supports” (Autism Ontario, 2021). Merging education with mental health supports indicated that these interventions operated in tandem, forming a comprehensive response strategy. Moreover, the discourse framed the recommended responses as systemic rather than individualistic, hence changes ought to occur on a multitude of institutional and societal structures.

Another recommendation formulated by Autism Ontario (2020), was that “as a society, we need to move away from the social construction of autistic people and people with mental health issues as scapegoats for violent behaviour. Instead, we must focus on the proliferation of misogynistic and other supremacist ideas readily available for consumption and woven into our social fabric”. This statement indicated that part of the recommended response involved the alteration of societal interpretive practices and redirecting societal understanding of online environments which were not isolated subcultures, but rather indicators of the broader cultural context. As Autism Ontario (2020) concluded that “conflating what took place on April 23, 2018, with anything else obstructs our view of what needs to change”.

These recommendations ought to be understood within the context of the domains underlying objectives which were to reduce stigma and prevent the harmful association of disorders, violence, and dangerousness. Thus, the discourses held by advocacy groups were strategically formulated in order to counter media sensationalism and broader public fears surrounding autism and criminality. This did not undermine the legitimacy of advocacy statements, rather, it indicated that advocacy discourses were not detached from advocates’ broader socio-political aims.

CHAPTER IV: JUDICIAL DOCUMENTS AND ASD

Autism Defined Within The Case Law

In Canadian case law, autism spectrum disorder was defined through a medicalized discourse. The data illustrated the range of terminology and definitional framings that Canadian courts mobilized when describing autism spectrum disorder. The dominant terminologies referred to the condition as “Pervasive Developmental Disorder” (*R.v. Betchuk*, 2021), “Asperger’s” (*R.v. Fraser*, 2014), which were currently encapsulated within the broader autism spectrum disorder umbrella. Such terms were interchangeably referenced within the case law, however *R.v. Minassian* (2021), and *R.v. Hartman* (2018) explicitly traced the evolution of autism spectrum disorder to earlier classifications such as PDD, subsequently reflecting the revision of disorder classifications within the DSM-5. Furthermore, autism was defined as a neurodevelopmental disorder affecting “brain development in utero” (*R.v. Edwards*, 2014) in which “the brain does not develop normally” (*R.v. Millie*, 2022), thus the disorder “presents in early childhood and continues for life” (*R.v. Minassian*, 2021).

The term spectrum referred to a broad continuum in which there was a “vast difference in severity of the disorder and its impact on the individual” (*R.v. Minassian*, 2021). This variability indicated that individuals “experience symptomology at different levels” *R.v. J.E.D.* (2019) and also referenced the diverse “functional abilities” (*R.v. Minassian*, 2021). This framing positioned ASD as inherently variable rather than fixed or predetermined set of traits, as “not all characteristics are present in every ASD-affected person” (*R.v. J.E.D.*, 2019). The variance noted in the case law functions descriptively, framing autism as a condition that cannot be generically applied to explain behaviour as traits differ substantially from one individual to another. In some cases, autism was defined as a “major mental illness” (*R.v. E.R.-B.*, 2023), or “[an]other problem”

(*R.v. Ewing*, 2022), wherein terminology identified “such individuals” (*R.v. Hartman*, 2018), as “sufferers” (*R.v. Kagan*, 2009).

R.v. Minassian (2021) foregrounded autism in relation to the legal category of mental disorder under s.16 of the CCC, simultaneously affirming that ASD “meets the criteria to be considered a mental disorder” for legal purposes however, further stating that “autism is not a disease of the mind in the ordinary sense used by psychiatrists or psychologists” depicting the subtle yet significant dichotomy between legal and clinical discourses.

As stipulated within the DSM-5, there were “three levels of severity for ASD” wherein the most severe level was defined by “severe deficits in verbal and nonverbal social communication skills cause severe impairments in functioning, very limited initiation of social interactions, and minimal response to overtures from others” requiring substantial support (*R.v. Minassian*, 2021). The definitional discourse descriptors emerged from courtroom reliance on psychiatric testimony, wherein autism spectrum disorder was defined by fixed, deficit-oriented language such as, unevenly developed cognitive abilities, impairments in decision-making and judgment, difficulties with inferences, impaired Theory of Mind, amongst various others.

Medical professionals such as psychiatrists, psychologists, or court-appointed experts formulated epistemic claims, based on assessments, regarding the impact of the disorder on the accused. In *R.v. Minassian* (2021), “psychiatrists, and other medical professionals, recognized ASD as a mental disorder”, thereby grounding its legal classification in medical expertise. Similarly, in *R.v. Hartman* (2018) and *R.v. Betchuk* (2021), psychiatrists provided an assessment diagnosing the accused with ASD. Experts in *R.v. Krywonizka* (2021), contended that “ASD is poorly understood and underdiagnosed, leading to frequent contact with the criminal justice system and frequent incarceration for behaviours and interests that are associated with the disorder when

those interests do not conform to social norms”, subsequently linking clinical misunderstanding to broader patterns of criminalization. ASD was medically defined as a permanent condition, therefore experts often provided causal or explanatory justifications for behaviours, identifying traits such as “interests [...] do not conform to social norms” (*R.v. Krywonizka*, 2021).

Functional, Cognitive and Behavioural Abilities

Descriptors emerging from the case law, described autistic individuals through a cluster of difficulties, deficits, challenges, and impairments anchored in specific functional, social, and cognitive domains. A dominant discourse within the case law pertained to the difficulties in understanding, comprehending, and interpreting interactions. For instance, autistic individuals “struggle to understand the emotions or perspective of somebody other than themselves, or to put themselves in somebody else’s shoes. As a result, they frequently lack empathy for the suffering of others” (*R.v. Minassian*, 2021). Similarly, in *R.v. Hassen* (2021) and *R.v. Rosin* (2023), descriptors respectively noted that “those suffering from autism spectrum disorder sometimes have difficulty understanding social cues and unspoken messages” occurring as a result of “significant deficits in social communication and interaction, impaired ability to understand other people’s motivation, impaired ability to understand how others perceive them [...]”.

The rational connected such difficulties to concrete outcomes, such as difficulty “develop[ing] appropriate intimate relationships” due to the “inability to comprehend social situations” (*R.v. J.E.D.*, 2017). Such difficulties also occurred within the context of peer relations and social interactions due to the required adaptation of behaviour in interpersonal settings. As exemplified in *R.v. Fong* (2024), the accused was depicted as “invading the personal space of other people [...] and touch other people inappropriately at will.” Similarly, *R.v. A.H.* (2017), stated that the ASD “diagnosis has an impact of his social interaction with others. He presents as detached

and does not show much emotion”. The descriptions consistently situated autism as producing observable social disruptions, often framed as incongruences with normative expectations around behaviour and communication.

Furthermore, discourses surrounding deficits and impairment were prominent within the legal context. “Interpersonal deficits” (*Davies* (Re), 2025), defined an individual’s “ability to more broadly analyze, abstract, to draw inference and to enable [...] reasonable conclusions from visually presented information” (*Walker* (Re), 2025). Alternatively, referencing emotional and behavioural control wherein “ASD makes it more difficult to deal with anger management. These deficits cause people with ASD to give in to transient impulses and urges” (*R.v. Millie*, 2022). Whilst impairments were depicted as uneven, individualized, and affecting communication, deficits were defined by difficulties with emotional regulation, reasoning, and social understanding. As exemplified in *R.v. Minassian* (2021), individuals “will not have the same degree of impairment within all fields, such that a person may have marked limitations in one area, no impairment at all in another, and moderate impairments in others”, therefore iterating how autism spectrum disorder was not systemic. Moreover, as noted in *R.v. McPherson* (2019) despite “appear[ing] very intelligent, his ability to communicate clearly with others is impaired”, therefore the excerpts depicted impairments not as isolated deficits, but rather as multidimensional limitations.

The case law commonly associated autism with a wide range of behavioural traits, emphasizing both the breadth and variability of the disorder. Hence, courts described autistic individuals as having a variety of symptoms, behaviours, and functional abilities (*R.v. Hartman*, 2018) wherein the individual might “function according to his own particular logic (para-logic)” (*R.v. McPherson*, 2019). For instance, *R.v. M.J.* (2016), described individuals on the spectrum as

“often highly dependent on routines and struggle with anxiety when place into new situations”, whilst comparatively, *R.v. Fraser* (2014), iterated that “individuals with Asperger’s disorder can often experience massive amounts of frustration that can manifest as behavioural outburst”. The variance in functional or behavioural abilities was ascribed to either rigidity or fixations. The former defined rigidity or “thought rigidity” (Campbell (Re), 2025) as a trait “commonly seen in individuals with Autism Spectrum Disorder – that obsessive rumination, the insistence on sameness, the rigidity [...]” (*R.v. Betchuk*, 2021), entailing that the individual’s “capacity to adapt to change” was hindered (*R. v. McPherson*, 2019). The latter defined the variance and limited areas of interest conceptualized within fixations. *R.v. Kleiman* (2024) noted that “the appellant’s mental disorder manifest itself through a fixation with former romantic partners and resulting compulsive behaviour”, whilst comparatively more severe fixations and limited interest were exemplified within *R.v. E.R.-B.* (2023) and *R.v. Nepon* (2020), wherein the accused were respectively charged with “Possessing Child Pornography” however, Nepon had additionally charged with distributing content. Therefore, the case law used concepts, such as fixations, to explain how behaviours diverged from typical social expectations.

Vulnerability

Despite the prominent deficit-based discourse, courts briefly articulated how autistic individuals were vulnerable, stating for instance that “given his ASD, that the effect of imprisonment will have a disproportionate effect on him compared to the effect it would have on other offenders who do not suffer or who do not suffer from ASD” (*R.v. Sadden*, 2018). Similarly, *R.v. B.T* (2021) provided a more comprehensive explanation depicting the interplay between “the diagnosis of ASD and the impact that has on his social / interpersonal skills, decision making and judgment [...] and vulnerability] within the prison system”. Formulation of vulnerability were also

medicalized as “both doctors expressed a concern that he would be vulnerable to influences or to being taken advantage of by other inmates within the institutional setting” as he “would be liable to manipulation” (*R.v. J.E.D.*, 2017) or would be “bullied by other inmates [since individuals on the spectrum] are easy targets” (*R.v. Collier*, 2021).

Other cases situated vulnerability within broader societal and environmental contexts, as for instance in *Oliveira* (Re), 2025, the individual “was bullied throughout elementary school due to behaviours related to his ASD”. Similarly, *R.v. Vaux* (2021) was “bullied and tormented by his peers. They called him names, subjected him to pranks, teased, taunted, and physically tormented him.”. *R.v. Millie* (2022) sums up how individuals with ASD “are often very suggestible. Their lack of an internal social compass contributed to their isolation, loneliness, depression, and anxiety that is common on the mild end of the autism spectrum.”

Collectively the aforementioned illustrated how judicial discourses primarily depicted autistic individuals through a deficit-based criteria wherein particular diagnostics, functional, behavioural terms were often mobilized within judicial discourses. In sum, rather than reflecting the lived experiences, autism was instrumentalized as an evidentiary basis to support or reject the claim of criminal responsibility.

Toronto van attack - *R.v. Minassian* (2021)

The case was comprised of a combination of interrogation-derived information, psychiatric assessments, and courtroom transcript of the trial. The Crown and Defence relied on information contained within the interrogation as evidentiary material. The interrogation emphasized the premediated and deliberate nature of the attack due to “extensive inculpatory statements [para. 12]”, thereby framing Minassian’s conduct as purposeful rather than impulsive and citing

Minassian's admission that he knew his actions were "morally wrong and extremely devastating and irreversible". Therefore,

"The central issue was not the acts he had committed, but his state of mind at the time [...] Therefore, the only aspect of the s.16 defence that might possibly fit [Minassian's] circumstances is whether, because of his Autism Spectrum Disorder, he was incapable of knowing that his actions were morally wrong [para. 14 & 18]".

However, it ought to be noted that discourses within the interrogation (Thomas & Minassian, 2018) and court ruling (*R.v. Minassian*, 2021) mainly honed in on the fact that deciphering between truth and lies was almost impossible as Minassian's statements contained inconsistencies, contradictions, and deliberate fabrication of information. For instance, when questioned, Minassian initially stated that he had no difficulties with girls and was "even attracted to them", however he further stated that he resented girls (Thomas & Minassian, 2018).

Another recurring descriptor concerned Minassian's avoidance to certain questions during the interrogation. When questioned about "medication for psychological issues", diagnosed "psychological issues", whether he "identified as someone with special needs", employment, online communications, whether he's "ever had a relationship with a female", Minassian repeatedly stated "I don't wish to answer that" (Thomas & Minassian, 2018). His reluctance to divulge information was selective, as information regarding his motivation and planning were explicitly detailed, explaining that since the intersection of Yonge and Finch¹⁸ was a "busy area", he would be able to strike many pedestrians with the rented van (Thomas & Minassian, 2018). Minassian also detailed his premeditated suicide by cop (SBC), explaining that he "pointed [his]

¹⁸ Also known as the business district in downtown Toronto

wallet at the cop – with the intent for it to be confused as a gun so that [he] could be fatally shot” (Thomas & Minassian, 2018). Therefore, the only element at play during the trial was the assessment of *mens rea*.

Minassian’s symptomology emerged early on and included “difficulty interacting with other children [...] doing anything independently, and failed to meet the expectations for the class and social norms” and the “develop[ment of] fixations” which persisted into adulthood. During the interrogation, after much coaxing, Minassian divulged that he had “unfortunately” never “had an intimate relationship with [...] a woman” (Thomas & Minassian, 2018), thereby reflecting the difficulty interacting with others. Additionally, Minassian’s fixation were described through his “interest in school shooters and other mass murders” which led him to “spend a lot of time on internet sites dealing with this issue”. It was reported that while in high school, Minassian would “fantasize about going into school with a handgun and shooting people he did not like and random people, while attempting to avoid killing people that he liked”, as such Minassian’s fixation with firearms persisted, leading to a very brief enrolment in the Canadian army (*R.v. Minassian*, 2021).

Within the caselaw, the offence was defined as a “horrific crime”, a “devastating tragedy”, underscoring the collective harm inflicted during the attack (*R.v. Minassian*, 2021). The violence was further depicted as “inflicting carnage upon innocent people” referencing the “horror” of the attack and “terrible impact” on victims and the broader community. Despite Minassian’s acknowledgement that his action “was morally wrong, and extremely devastating, and irreversible” (*R.v. Minassian*, 2021), the interrogation excerpts revealed that the “rebellious act” served to shake “the foundations of the world” (*R.v. Minassian*, 2021). Collectively, these descriptors depicted the attack as deliberate, destructive, and socially destabilizing.

Psychiatric Testimonies and Ruling in *R.v. Minassian* (2021)

The psychiatric evidence presented in *R.v. Minassian* formed a substantial component of the court transcript, illustrating the degree to which expert interpretation of autism spectrum disorder diverged when juxtaposed to criminal responsibility, motive, and reasoning. The testimonies collectively depicted Minassian's state of mind and capacity for moral reasoning which was the central element of the inquiry. The ruling relied heavily on the psychiatric testimonies in order to determine whether ASD could legally ground a s.16 defence.

Prior to delving into the statements formulated by experts retained by both the Crown and defence, additional statements were comprised within the case law. Firstly, Dr. Chauhan assessment centered around "the aspects of autism that affected [Minassian] (para. 160)", noting that he "preferred to receive negative attention rather than no attention at all [para 161]". During the assessment, Dr. Chauhan honed in on Minassian's early fixations "about school shootings and other mass murders [para 162]", further stating that Minassian's "fixation on Elliot Rodger as being 'odd' [...] the manifesto oozes with anger, but she saw no anger emanating from [Minassian] [para. 163]". Dr. Chauhan stated that Minassian's affiliation with Elliot Rodger's was "unusual in that he saw only the similarities between them and none of the differences [para 162]". Therefore, Dr. Chauhan posited that "in the period of time prior to the attack, [Minassian] had become 'hyper-fixated' on writings about mass killings and indoctrinated within the viewpoint of Elliot Rodger, without ever seeing information from other people who might have different views [para.165]". When questioned about the event "Dr. Chauhan testified that [Minassian] showed no emotion when talking about the attack. He had no remorse. He told her he thought the attack was 'worth it' [para. 164]".

Although, unbeknownst to Dr. Chauhan, Minassian “had told her colleague, Dr. Bradford, that he ‘made up’ his attraction to the incel movement and obsession with Elliot Rodger [para.166]”. This aforementioned reflected the contradictory nature of Minassian’s statements. Secondly, Dr. Wright’s assessment honed in on “the impact of ASD on [Minassian’s] functioning [para. 178]”. Dr. Wright questioned Minassian on “how his thoughts had transitioned from killing peers he disliked to wanting to target women. [Minassian] responded that in 2018 he had become more lonely and was convinced he would never have a relationship with a woman [para. 180]”. However, Dr. Wright “noted that [Minassian], unlike other mass killers, appeared to be lacking any type of anger or rage. He was not a narcissist, blaming others for his problems. Instead, he saw himself as having failed at many things because of his own shortcomings [para 181]”. Therefore, in the statements formulated by Dr. Chauhan and Dr. Wright, Minassian’s reasoning aligned more closely with alternative factors rather than with cognitive impairments arising strictly from autism spectrum disorder.

The defence council relied, in part, on Dr. Bradford’s testimony to advocate for a Not Criminally Responsible on Account of Autism Spectrum Disorder defence. Dr. Bradford opined that Minassian’s actions emanated from a “hyperfocus” on the incel ideology “in order to increase the notoriety of the attack [para. 157]”. Importantly, Dr. Bradford “pointed out that, unlike psychopathy¹⁹, the empathy deficits experienced by people with ASD are actually caused by the disorder: they lack the capacity to have empathy [para. 37]”. This distinction was critical to Bradford’s suggestion that ASD might have influenced Minassian’s ability to appreciate the quality of his action, as he opined “that there could be a credible basis” where the accused was unable to

¹⁹ As stated by Dr. Bradford “Psychopaths have the capacity to understand the emotions of others, but typically either ignore those emotions, or manipulate them for their own advantage” (*R.v. Minassian*, 2021, para 37).

appreciate the wrongfulness of the act due to deficits in his capacity for moral reasoning, combined with a hyperfocus on internet sites [para. 208]. Therefore, the emphasis was anchored in cognitive functions rather than delusions or psychosis. Despite the preliminary position, Dr. Bradford's final analysis "still remained of the view that [Minassian] knew what he did was morally wrong" concluding that the cognitive deficits did not meet the required threshold for a s.16 defence [para. 208].

The defence mainly relied on Dr. Westphal's testimony, which distinctly diverged from other expert testimonies, in order to ground a s.16 defence. Dr. Westphal argued Minassian's "lack of emotions" was a central component reflecting an impairment in cognitive functions. More specifically, in Dr. Westphal report, the evidence presented stated that Minassian "had a rigid, concrete way of thinking and a 'theory of mind' deficit or 'mindblindness' that interfered with his capacity to understand that others have internal states that differed from his own [para. 210]". Dr. Westphal further stated that "although he was not psychotic, 'his autistic way of thinking was severely disordered in a way similar to psychosis" therefore, Minassian only "understood the wrongfulness of his actions from an intellectual standpoint, he did not understand the wrongness of his action for a moral standpoint [para 213]" and could not understand the "consequences of his actions [as] he was not capable of making a rational choice [para 215]". Furthermore, Dr. Westphal discredited Minassian's "professed identification with the incel [para. 188]" ideology, stating the affiliation was to "generate more [media] attention [para. 186]", rather than stemming from hatred or anger towards women. Therefore, Dr. Westphal "concluded that the incel motivation was just a 'veneer' and not the real motivation behind the attack [para. 187]". Subsequently, reframing the attack through the lens of the disorder, rather than broader factors. In summary Dr. Westphal's concluded that "without ASD [Minassian] would not have perpetrated this offence [para 213]".

The Crown relied on Dr. Woodside's testimony in order to reject the NCR defence on account of ASD. From the outset, Dr. Woodside stated that Minassian "clearly appreciated the nature and quality of his actions [para. 223]" and could discern "right from wrong [para. 223]". However, Dr. Woodside raised a central evaluative question in order to determine "whether [Minassian] could rationally engage in moral reasoning without being capable of feeling empathy [para. 223]". This distinction was essential, as it suggested that while Minassian had deficits with empathy associated with ASD, these deficits did not deprive him of the capacity for moral reasoning. As such, Dr. Woodside opined that Minassian was "capable of reasoning through moral issues; it just takes him longer to do it [para. 225]", thus given adequate time, he could reach correct moral conclusions. Therefore, Dr. Woodside concluded that the issue was not an inability to reason morally, rather it was the fact that Minassian chose not to engage with said moral considerations when planning and carrying out the attack. Minassian "engaged in an adaptive behaviour, whereby he put aside thinking about these acts being wrong and about the impact they would have because it was something he really wanted to do [para 226]."

Furthermore, Dr. Woodside contended that Minassian's "many years of fascination with mass murder [had] the effect of dehumanizing the victims [para 224]" rendering them abstract symbols rather than individuals. Explicitly rejecting the claim that Minassian suffered from delusions, Dr. Woodside stated that "there was no evidence that he was in a dissociative state [para. 224]" at any time which demonstrated consistent awareness of how others would perceive his actions. Moreover, Minassian's affiliation with the incel ideology was instrumental rather than ideological as "he saw the incel ideology as a way of forcing [him]self into the mindset [para 226]" necessary to carry out the attack. Specifically reflecting a deliberate self-manipulation, rather than a delusional belief or moral confusion. In addition to assessing Minassian's cognitive processes,

Dr. Woodside assessed Minassian's emotions and self-perceptions, which were marked by "overwhelm[ing] feelings of loneliness and failure [227]" which he sought to mitigate by dying "as a famed killer than to 'rot in obscurity [para 171]". Ultimately, Dr. Woodside rejected the defence's argument that Minassian's ASD rendered him incapable of moral reasoning. Instead, contending alternative motives such as desire to attain notoriety, fascination with mass murderers, and feelings of failure. Therefore, concluding that there was no psychiatric evidence to support the proposition that ASD deprived Minassian of the ability to make a rational choice. Minassian's years of exposure to violent online content might have distorted his reasoning, however Dr. Woodside argued that he nonetheless retained the capacity for moral judgement.

Judge Molly's ruling synthesized these competing interpretations, drawing attention to both their descriptive overlaps and their substantive disagreements. Dr. Westphal was the "only expert witness supporting a s.16 defence", however noting his limited familiarity with the Canadian NCR jurisprudence, this consequently hindered his analysis. Evidence presented "referred only to information that supported his conclusions, ignoring anything to the contrary [para 235]" and "almost everything hinged on [Minassian's] lack of empathy [para 239]". However, a "lack of empathy for victims is not sufficient to ground a s.16 defence under Canadian law [para 240]". The judge nonetheless agreed with Dr. Westphal's "point that without ASD [Minassian] would not have committed these offences [para 248]". Hence autism spectrum disorder was considered a contributing factor in Minassian's overall cognitive and emotional development, while simultaneously determining that ASD did not reach the legal threshold required for a s.16 defence.

In relation to Dr. Wright, the judge accepted the descriptive claim that "there is more that ASD at play here, and more than one explanation for the lack of empathy and emotional connection

displayed by [Minassian] [para. 249]”, therefore opting to situate Minassian conduct within a broader behavioural lens. Subsequently, reinforcing the notion that ASD did not singularly determine Minassian’s actions. Regarding Dr. Bradford opinion, the judge argued that while a theoretical defence could arise from Minassian’s “cognitive empathy (the ability to perspective-take, or put himself into the shoes of another person) combined with his hyper-focus on internet sites dealing with mass murder and Elliot Rodger [para 242]” these factors were “not sufficient to deprive him of an operating rational mind [para. 243]”, instead they “may have served to desensitize him to the horror of murder, and to believe there would be some people who would applaud such a crime, thus giving him some encouragement [para. 243]”, however this does not negate his ability to understand moral wrongfulness. Ultimately, the judge presided with Dr. Woodside’s opinion that Minassian “made a ‘calculated decision’ to carry out this attack [para. 254], therefore, Minassian’s deficits did not preclude him from understanding the wrongfulness of the act. As such, Minassian “does not meet the requirements of s.16 [para 254]” defence under the Criminal Code of Canada.

Online Environments as an Alternative Contextual Factor

Online environments were repeatedly invoked as an alternative factor through which ideas, identities, and justifications were contrived. Rather than emerging as a peripheral factor, online environments were consistently described as sites of prolonged interaction with certain ideologies. The data subsequently depicted online environments as a setting in which Minassian encountered and interacted with discourses surrounding mass violence and grievances.

The influence of online environments was a prominent discourse within *R.v. Minassian* (2021), noting that the accused was “motivated by the incel movement as he had been rejected by women and admitted that he frequented incel chatrooms on the internet [para. 12]”. “Like-minded”

[para.142] individuals congregate on online platforms in order to discuss grievances and frustrations, which are perpetuated and reinforced by other members of the incel community. Minassian described himself as “a ‘bit upset’ that women would choose to date obnoxious males instead of a gentleman like himself” [para.142]. As such, continuous exposure to similar ideological perspective led to Minassian’s radicalization which occurred “after Elliot Rodger committed an act of mass murder on May 23, 2014 [...]. He also admired another incel murderer, Chris Harper-Mercer [... Minassian] said what Rodger had done was to start a ‘beta uprising’ against the ‘Chads and Stacys’ [... and] said that since June 2014 he had been thinking it was time he stood up to the Chads and Stacys by taking action rather than festering in his own sadness” [para. 142].

Several excerpts from the data emphasized the anonymity of online platforms. At several moments during the interrogation, Minassian explained that on 4Chan “there is no user name because [the messages are] always anonymous”, therefore, “it makes it very easy and you can ah hide behind a computer screen” [Thomas & Minassian, 2018, page. 92]. Hence, the “day before the attack he posted an anonymous message on 4chan stating that the beta uprising was starting and encouraging others to follow suit. He said lots of posts were received encouraging this move” [para. 145]. Minassian also stated that he was “using a code language to avoid ah detection by the authorities. I was – I stated that there will be a beta uprising tomorrow, I encourage others to ah follow suit” [page 130] and that he was “fairly confident that others would be inspired to ah repeat the same action as me in ba-basically overthrow society” [Thomas & Minassian, 2018, page 132]. The anonymous nature of such online communities contrasted with the public online platform in which Minassian posted on Facebook:

“Private (Recruit) [Minassian] Infantry 00010, wishing to speak to Sgt 4chan please. C23249161. The Incel Rebellion has already begun! We will overthrow all the Chads and Stacys! All hail the Supreme Gentleman Elliot Rodger!” [para. 8].

This positioning reflected the dichotomy between anonymity and infamy repeatedly present within the data. Minassian’s desire to “leave his mark” was presented not as incidental, rather as a meaningful outcome anticipated prior to the offence. The platform’s design ensured rapid communication and due to the “high volume, the high frequency of posts on 4Chan the older threads get push out very ah quickly however it is possible that they ah get achieved on some other website” [Thomas & Minassian, 2018, page 184]. Therefore, the court could not verify Minassian’s “claim to have had discussions with both of those killers [Elliot Rodger and Chris Harper-Mercier] prior to their deaths” [para. 143].

Discussions within said online platforms centered around shared “frustrations at uhm society and being unable to get laid and we were plotting a certain ah timed strikes” [Thomas & Minassian, 2018, page 170], however Minassian further mentioned that the incel community “don’t necessarily wish to ah kill the normies but we do wish to subjugate them ah in order to make them understand that the uhm- that our type is ah the more superior one” [Thomas & Minassian, 2018, page 109]. Minassian further clarified that subjugating normies entails “either [to] imprison them or out them in a lower position in society” [Thomas & Minassian, 2018, page 110]. However, according to the incel ideology, subjugation could only be attained through acts of violence, thus depicting the inherent contradiction. Furthermore, online platforms emerged as a space where violence was competitively and quantitatively framed, for instance, some internet sites were “devoted to mass killers and their ratings for how many people they had killed” [para 162]. Therefore, situating online platforms as a repository of narrative encapsulating mass violence,

enabling the perpetuation of said violence and misogynistic discourses due to the collapse of geographic boundaries which consequently fostered shared ideological identities.

Comparatively, in other court documents, the impact of online platforms was negligible as for instance in *R.v. E.R-B.* (2023) due to “isolation, difficulty with personal relationships, struggles in school, and limited friendships resulted in the accused feeling more comfortable ‘online rather than the real world’”. Similarly, in *R.v. O.S.* (2023), “friendships subsided once he stopped attending school. Instead, his friends became those whom he met online. Most of these friends were people he became acquainted with through multiplayer video games and online websites.”. However, the accessibility of content became problematic when “ASD affected people [...] become preoccupied with internet pornography given the anonymous nature of internet use in combination with their sexual development” (*R.v. J.E.D.*, 2017), as such “it is not uncommon for individuals with Mild ASD to ‘get into trouble online in sexual areas’ as they often converse with children who have common interests and the conversations at times become inappropriate” (*R.v. Rosin*, 2023).

The data described the incel online platform as an environment enabling anonymous ideological exchanges. Within the shared space, individuals often consumed or reiterated grievance-based narratives. The incel community ideology centered around shared misogynistic perceptions, hatred, and retribution. Online environments were not depicted as inherently causal, rather as a space where existing frustrations, fixations, and grievances are articulated, shared, and reinforced.

Autism Spectrum Disorder and Concurrent Disorders

Autism Spectrum Disorder was rarely presented as a singular or standalone diagnosis within the caselaw. Instead, judicial descriptions consistently situated autism within the broader constellation of co-occurring psychiatric and psychological disorders. This context became essential for understanding the distinctiveness of *R.v. Minassian* (2021).

In some cases, comorbidity occurred as a result of autism spectrum disorder merging with another psychiatric or psychological disorder, wherein both disorders existed simultaneously and influenced one another. As such, neurodevelopmental disorders were referenced as a disorders affecting brain development, executive functioning, and cognition. ASD was frequently referred in combination with attention deficit hyperactivity disorder (ADHD) as compounding difficulties with attention, impulsivity, and executive functioning, rather than replacing or subsuming autistic traits. Due to a 486.4 order²⁰, information pertaining to the nature of the offence, in this research is stated as a sexual offence, void of explicit details. As stated in *R.v. J.E.D.* (2017), the accused “suffers from ADHD, which is another neurodevelopmental disorder that results in added inability to focus, in addition to the other symptoms of ASD”. The accused was “developmentally delayed [para.20]” due to ASD and subsequently found “guilty to two counts of sexual interference [para. 1]”. Similarly, in *R.v. B.T.* (2021) it was noted that the accused “presents with ADHD and ASD, which are likely to impact his thinking, impulsivity and judgment [para 60]”. The accused was charged with a sexual offence, however Dr. Ferguson noted that he may struggle to “understand the consequences of his actions [para.60]”. Therefore, when autism spectrum disorder co-occurs

²⁰ A 486.4 Order prevents “any information that could identify the complainant or a witness” from publication. (Government of Canada, 2026).

with attention-deficit/ hyperactivity disorder, developmental delays could contribute to challenges in modulating responses.

Neurodevelopmental impairments also extend beyond attention disorders. For instance, in *R.v. Veltman* (2024), the accused found “guilty of four counts of first degree murder, and one count of attempted murder [para. 3]”, “struggled with OCD and the symptoms of ASD [para. 51]”. Accordingly, ASD led the accused to consume extremist content available online, whilst the OCD led him to “read and watch the same content over and over again [para. 45]” (*R.v. Veltman*, 2024). During the offence, the compulsion led Veltman to maintain his “foot on the gas” and drive into the victims (*R.v. Veltman*, 2024). While comparatively in *R.v. Cantwell* (2016), in addition to the Asperger Syndrome diagnosis “characterized by significant difficulties in social interaction, along with restricted and repetitive patterns of behaviour and interest [...the accused was also diagnosed with] Attention Deficit Hyperactivity Disorder (ADHD), Tourette’s disorder, and Borderline Intellectual Functioning”. The accused “was convicted of assault causing bodily harm [para. 1]” due to his inability to recognize negative influences (*R.v. Cantwell*, 2016). Therefore, since autism spectrum disorder interacted with other disorders, core traits of ASD such as cognitive, communicative, or executive functioning were diminished.

Another concurrent disorder within the caselaw involved psychotic conditions, wherein ASD appeared alongside diagnoses such as schizophrenia, schizoaffective, delusional disorders, or psychosis. For instance, in *Babadi* (Re) 2025, a combined diagnosis of “schizophrenia and delusional disorder” was conferred in addition to the ASD diagnosis. The accused, due to insufficient evidence to ground a s.16 defence, was charged with “uttering threats to cause bodily harm to two victims [... and] harassment of three victims”, furthermore, at the time of the proceedings, the accused was “also facing a child pornography charge” (*Babadi* (Re) 2025).

Conversely, *Kossta* (Re) 2019, in addition to the ASD diagnosis, the “current diagnosis [included] schizoaffective disorder”. The accused was “declared not criminally responsible on account of mental disorder (NCR) [...] in relation to a charge of dangerous operation of a motor vehicle. While experiencing a manic episode [...]” (*Kossta* (Re) 2019). Schizophrenia and schizoaffective disorders were severe mental illnesses, thus in combination with autism were inherently more disruptive. Furthermore, psychotic disorders, exemplified in *R.v. Genereux* (2000), wherein “Dr. Orchard’s diagnosis was that the appellant suffered from a pervasive developmental disorder with atypical psychosis”, provided insight into the first-degree murder conviction. Correspondingly in *R.v. Edwards* (2014) “Doctor Swayze emphasized that the pervasive developmental disorder interacted with the command hallucination of the accused’s psychosis” which led to an attempted murder charge. The aforementioned cases depicted the diverging interplay between a psychotic disorder characterized by a disruption in reality, autism disorder, and the offence.

Mood disorder and anxiety and trauma-related disorders also appear as concurrent diagnoses in a smaller subset of cases. In *R.v. Rosin* (2023), and *R.v. Nepon*, both individuals were diagnosed with a “Major Depressive Disorder” in combination with the ASD diagnosis which respectively led to the “telecommunication with a person under 16 for the purpose of facilitating a sexual offence” or, the possession of “child pornography”. Whilst the anxiety and trauma-related disorder as reflected in *R.v. McSweeney* (2013) diagnosis of “Asperger’s syndrome [...] and] suffer[ing] from complex PTSD” resulted in various convictions over time, such as indecent calls, “three counts of intimidation of a justice participant, one count of attempt to obstruct justice and two additional counts of criminal harassment”. Convictions incurred due to a dissociative “state of mind” which was a characteristic of PTSD (*R.v. McSweeney*, 2013). Another co-occurring diagnosis was a paraphilic disorder, which as indicated in *R.v. Betchuk* (2021), is a “lifelong”

condition which interacted with “mild intellectual disability”, therefore due to “significant social skills deficits [individuals with ASD have] problems with same-age intimate and non-intimate relationships; and they may be more likely to emotionally identify with children and, thus, socialize with younger individuals”. This reasoning was also similarly echoed in *R.v. Razon* (2021) and *R.v. Tcheong* (2023). The aforementioned cases depicted how despite similar diagnosis, cognitive and functional effects differed. Interestingly, despite the discrepancy in manifestations, or circumstances, the offences mainly fell within the same legal category.

Alternatively in other cases, autism spectrum disorder was comprised within a constellation of disorders which interacted with one another, therefore ASD was one element within a mixed and overlapping diagnostic profile. Since individuals were afflicted differently, each case exemplified how constellations of comorbid disorders converge. In *B.J.A.C. v. British Columbia* (2021), co-occurring psychiatric and psychological disorders imbricated over three different categories which “The Board described the diagnoses of BJC as having included autism spectrum disorder, substance abuse disorder, and an otherwise unspecified psychotic disorder. (References to Asperger’s disorder have been dropped along the way)”. Therefore, neurodevelopmental, psychotic and substance use disorders summed up BJC’s diagnostic profile, providing insight into the offence. BJC was “found not criminally responsible by reason of mental disorder on charges of assault and assault with weapon”. Similarly, in *R.v. Urquhart* (2025), the diagnoses “included ‘severe personality pathology’ with borderline and antisocial traits, schizoaffective disorder, substance use disorder, autism spectrum disorder and learning disabilities [... and] a ‘working diagnosis of ADHD (Attention Deficit Hyperactivity Disorder) was added”. Hence, personality pathology, psychotic, substance use, and neurodevelopmental disorders, which summed up the accused’s diagnostic profile, also provided an explanation for the offence wherein the accused was

“found not criminally responsible on account of mental disorder (NCR) on charges of assault and assault [of] peace officer[s] (x3)”.

In *Levesque* (Re) 2025, the “current diagnoses are: Schizoaffective Disorder; Unspecified Intellectual Disability; Autism Spectrum Disorder; and Paraphilic Disorder (Exhibitionism)”, thus the diagnostic profile was categorized into psychotic, neurodevelopmental, intellectual, and learning impairments, and paraphilic disorders. The aforementioned disorders provided insight into the offence and how the accused was “found not criminally responsible on account of mental disorder (“NCR”) on charges of threatening to cause death or bodily harm and threatening to burn, destroy, or damage property” (*Levesque* (Re) 2025). Alike, *Davies* (Re) 2025, who was “found not criminally responsible (NCR) [...] for the criminal code offences of assault with a weapon and aggravated assault” was “diagnosed in the past with Pervasive Developmental Disorder (now Autism Spectrum Disorder), as well as ADHD, borderline personality disorder, cannabis / ETOH/ stimulant use disorder, and more recently, schizophrenia. Although [...] the most appropriate diagnosis at this time would be ASD with severe borderline personality disorder, along with substance use disorders” (*Davies* (Re), 2025). In this particular case, there was mention of a psychotic disorder, however in the final diagnostic profile, the disorder was omitted, thus comprising only neurodevelopmental, personality pathology, and substance use disorders.

In *Mishra* (Re) 2024, the accused was “found NCR for the offence of criminal harassment” due to the various diagnoses of “schizophrenia, autism spectrum disorder (‘ASD’), and cannabis use disorder in sustained remission” illustrating the comorbidity of psychotic, neurodevelopmental and substance use disorders forming the diagnostic profile. Comparatively, in *R.v. Edwards* (2014), “Dr. Swayze, at trial, agreed that the low dosage of medication, Mr. Edwards’ acute stress level, the pervasive developmental disorder, and his psychosis that day were a ‘perfect psychiatric storm’

for what occurred”. Furthermore, “Doctor Swayze emphasized that the pervasive developmental disorder interacted with the command hallucination of the accused’s psychosis”, therefore, the interplay between various comorbid disorders such as anxiety, neurodevelopmental, and psychotic disorders summed up the individual’s diagnostic profile. The diagnoses also provided insight into the offence, as the accused was charged with “two separate counts of attempted murder”. The aforementioned cases reflected how various mental disorders could be substantiated under a s.16 defence.

Whilst, in other cases, despite the constellation of mental health disorders, the accused were found guilty. As exemplified in *R.v. Fong* (2024), “Vincent had not just one mental health challenge but many. Professionals labelled them as autism spectrum disorder, obsessive-compulsive disorder, mild intellectual disability, and more recently also chronic post-traumatic stress disorder”, indicating that neurodevelopmental, intellectual, and learning impairments and trauma-related disorders were comprised within the diagnostic profile. Despite not meeting the threshold for an s. 16 defence for a first-degree murder conviction, the court acknowledged that the “unique and complex constellation of mental deficits [...] played significantly in his commission of the offence, [subsequently] plac[ing] his moral culpability at the lowest end of that range”. Alternatively, in *R.v. Hipkin* (2019), the diagnosis revealed “high-functioning autism spectrum disorder, borderline personality disorder and crystal-methamphetamine-induced psychosis”, comprising the co-occurring disorders within the neurodevelopmental, personality pathology, and psychotic disorder categories. The accused was charged with “intentionally or recklessly caus[ing] damage by fire explosion to an apartment building”. Thus, the aforementioned cases depicted how despite a constellation of mental disorders, the accused, according to the court, retained sufficient moral responsibility.

Due to a 486.4 order²¹ restricting publication, information pertaining to the index offence will be summarized as a sexual offence. As exemplified in *R.v. M.J.* (2016), test results “showed the presence of a schizoid personality disorder, some passive-aggressive personality traits, an anxiety disorder and major depression [...] Asperger’s syndrome, which is an autism spectrum disorder”. Thus, accused’s diagnostic profile combined elements of personality pathology, neurodevelopmental, anxiety and mood disorders. In *R.v. S.K.* (2017), the accused was “investigated and treated for a number of mental health issues including manic depressive disorder, anxiety, Tourette’s, and autism”. Therefore, the co-occurring disorders were categorizable into mood, anxiety, neurodevelopmental disorders. In *R.v. Finestone* (2017), the accused “suffers from Asperger’s Syndrome (now identified as autism spectrum disorder), ODD, ADHD, and a mood disorder”. Thus, the diagnostic profile accounted for neurodevelopmental, impulse control, and mood disorders. Lastly, in *R.v. J.G.* (2025), the accused was diagnosed with ODD, ADHD, disruptive mood dysregulation disorder, anxiety disorder, and there was a possibility of autism spectrum disorder [which was confirmed later in the report]”. Hence the accused’s disorder profile comprised various categories of co-occurring disorders which were impulse control, mood, anxiety, and neurodevelopmental disorders. Interestingly, despite ascribing to the same diagnostic classification, the disorders manifested differently. More notably, although the offence was classified as a sexual offence, the court determined that each accused nevertheless retained some form of criminal responsibility, despite the constellation of disorders.

The caselaw documented autism spectrum disorder as one component among multiple interacting disorders revealing how disorders compound differently producing individualized

²¹ A 486.4 Order prevents “any information that could identify the complainant or a witness” from publication. (Government of Canada, 2026).

diagnostic profiles reflecting the wide range of functional impacts. Individuals diagnosed with autism spectrum disorder were frequently situated within complex and varied constellation of co-occurring conditions, including neurodevelopmental, psychotic, mood, personality, substance-related, paraphilic disorder. Consequently, ASD was not always the most prominent or determinative diagnosis within the individual's overall clinical portrait, instead ASD appeared as one component among multiple disorders.

In contrast to these cases, *Minassian* mobilized ASD as the central explanatory framework through which criminal responsibility was examined. As such, the aforementioned cases serve to contextualize *Minassian* by demonstrating how judicial discourses surrounding autism and concurrent disorders are described in judicial documents.

Autism as a Mitigating Factor

Some court documents dedicated a section enumerating the various mitigating factors which contributed to the commission of the offence. In *R.v. Kelleter* (2020), the individual “suffers from a neuropsychological disorder that is reflected in his diagnosis of autism”. Similarly, in *C.D.S.* (2024), the individual was “diagnosed with autism and ADHD which the Court takes judicial notice can lead to impulsive behavior (indeed it caused him significant issues in school). In *R.v. Cantwell* (2016), “the accused has faced and continues to face a number of significant personal challenges, including an unstable childhood, attention deficit hyperactivity disorder, Asperger Syndrome, and low intelligence. Dr. Mordell points out that the accused's behaviour should be understood in the context of these factors”. As exemplified in *R.v. Fraser* (2014), the mitigating factors section did not always provide an extended explanation, as in this case, the statement only indicated that “the offender has an underlying mental health issue”, specifics regarding the issue itself and the reasoning were depicted throughout the court document. By

explicitly dedicating a portion of the document enumerating the various mitigating factors of the offence, the document conferred specific attention directed towards the impact of the individual's mental disorders on cognitive and behavioural functions.

Alternatively, in other cases, statements indicating that autism was a mitigating factor in the offence were embedded within the decision or expert testimonies. Within the broader diagnostic context, courts frequently considered ASD as a mitigating factor, however it was not considered an absolute defence or an exemption from criminal responsibility. Judicial discourses provided a contextual explanation rather than causal. As such, ASD served to attenuate or explain how the disorder contributed to the offence. For example, in *R.v. Fong* (2024), the court stated that “these mental deficits played a role not just in Vincent’s commission of the offence itself, but in his degree of moral culpability for its commission. Vincent has not just one mental health deficit, but a complex inter-connecting combination of multiple such deficits that, in aggregate, greatly reduced his degree of moral culpability”. Thus, in this case, the court explicitly stated that autism-related cognitive deficits diminished moral culpability.

Furthermore, in *R.v. J.E.D.* (2017), the court noted, in accordance with Dr. Rothman’s conclusion, that the offending was “related to a lack of understanding his situation clearly due to ASD, as opposed to criminal thinking”, therefore situating the behaviour within a framework of impaired social cognition rather than deliberate criminal intent. Similarly, in *R.v. Krywonizka* (2021), “the medical information provided that the moral blameworthiness of the offender is reduced by his ASD diagnosis and helps to understand the role ASD has played in the offender’s firearms collecting and improper storage”. Therefore, the courts recognized the impact of the neurodevelopmental disorder on cognitive functioning which were not inherently linked to an innate desire of engage in criminalized behaviours.

R.v. Razon (2021) exemplified how “the diagnoses of pedophilia and ASD together explain why Mr. Razon offended in these manners. His conduct is not excused for this reason, as he still appreciated that his actions were wrong; but on a scale, he bears less responsibility than someone who commits the same offences without suffering from the same diagnoses”. While in *R.v. B.T.* (2021), “Dr. Ferguson further noted that B.T presents with ADHD and ASD, which are likely to impact his thinking, impulsivity, and judgment. He opined that B.T. may struggle with empathy and understanding the consequences of his actions, failing to appreciate how sexual violence impact victims and others” hence the courts determined that the circumstances were “exceptional”, subsequently significantly reducing his level of moral culpability. These cases demonstrated how co-morbid disorders intertwined with one another leading individuals to engage in behaviours that were legally forbidden.

Alternatively, in *E.R.D.R.* (2016), “Dr. Stevenson testified that autism spectrum disorder was a contributing cause to [E.R.D.R] offending behaviour” demonstrating the interplay between autism related deficits and offending behaviours. Akin, in *R.v. Vaux* (2021), the accused’s “moral culpability is significantly attenuated as a result of his cognitive limitations resulting from his ASD and other personal circumstances”. Comparatively, and in a more simplistic formulation, the court in *R.v. M.J.* (2016), stated that “the medical evidence suggested that the mental health disorder was not a direct cause of the offences but may have contributed to their commission”. However, by embedding the disorder, as a mitigating factor in the offence, within the broader content of the document, it suggested that the court, despite taking into account expert testimonies and assessments, might not attribute as much importance to the disorder in comparison to the abovementioned cases wherein an entire section of the case law was dedicated to mitigating factors.

Interestingly, in *R.v. Tcheong* (2023), despite the presence of a or multiple mitigating factors, the court determined that the accused was still capable of appreciated the wrongfulness of his actions. As stated in the court document, the accused’s “mild intellectual disability, his autism and his tendency to hoard were likely significant contributing causes to his accessing and keeping child pornography and [the judge] considers that they are mitigating to some degree. [However, the judge also considers] that his mild intellectual disability and autism likely contributed to his failure to fully appreciate the wrongfulness of his action. That is not to say that he had no appreciation for the wrongfulness of his actions because [the judge believes that] he knew it was wrongful”. This excerpt demonstrated the interplay between autism and the offending behaviour, which was considered a mitigating factor, however insufficient to diminish moral responsibility.

Autism Discounted as a Mitigating Factor in the Offence

In contrast, the following cases demonstrated how judicial rulings either rejected a causal link between ASD and the offence or emphasized that the disorder did not diminish moral responsibility, depriving the individual from knowing and understanding the wrongfulness of the act. As exemplified in *R.v. Finestone* (2017), “the fact of the disorder itself [referencing autism], however, is not necessarily mitigating”, illustrating how criminal responsibility was not solely based on the presence of a diagnosis.

Courts often relied on experts to determine whether the disorder precluded or hindered the accused cognitive or behavioural functions at the time of the offence. As exemplified in *R.v. Kleiman* (2024), “in his final report, the psychiatrist’s [opinion that the accused] strongly-held beliefs are intense and seemingly fixed, they are not of such intensity so as to deprive of the capacity to appreciate the nature of actions or to know the wrongfulness of actions”. Similarly, in *R.v. Ewing* (2022) “Dr. Gojer’s opinion that the defendant’s lack of social skills and isolation could

have a component of Autism Spectrum Disorder [... is] nothing more than speculation and untested hypothesis”, reflecting how a lack of formal diagnosis cannot substantiate an adequate defence. In *R.v. J.M.F.* (2020), “Dr. Fisher does not specifically rule out ASD, the court will never know if J.M.F.’s judgment was impaired by ASD and to what extent”, however “Dr. Fisher also opined that a person on the autism spectrum is not necessarily less morally blameworthy”. These cases demonstrated how, within the case law, autism was not uniformly applied. As such, since autism is a continuum, there was no succinct classification reflecting the exact degree of impairment.

Whilst interestingly, in *R.v. Rosin* (2023), the judge concluded that there was no “relationship between the diagnosis and the criminal conduct to a degree that it diminishes Mr. Rosin’s moral culpability”, thus indicating that, although circumstantial, autism was considered by some experts as a neurodevelopmental disorder hindering cognitive and social functions, rather than automatically diminishing moral culpability. In *R.v. Kagan* (2009), “Dr. Glancy expressed the opinion that Mr. Kagan’s mental condition would not prevent him from knowing what he did was wrong”.

Moreover, in *R.v. E. R.-B.* (2023), the caselaw stated that “the ASD diagnosis did not ‘cause’ the accused to access pornography”, thus reiterating the notion that the disorder in and of itself was not the sole factor. Furthermore, as exemplified in *R.v. Veltman* (2024), “even if the offender has, in the past, struggled with OCD and the symptoms of ASD, the jury, by its verdict, found that these disorders did not interfere with his ability to plan and carry out the murders [...whereas] it is true that the offender repeatedly accessed extremist websites. He repeatedly read and watched content on the internet that promoted hate and incited violence. However, it does not follow that the offender was driven by mental illness to do so”. Therefore, despite the impairments

associated with the neurodevelopmental disorder, the impact was not sufficient to deprive the accused from understanding the wrongfulness of the behaviour.

The court stated in *R.v. Nepon* (2020), that there was “no evidence of a causal connection between Mr. Nepon’s diagnosis of ASD and his offending, therefore his moral culpability was not reduced by his diagnosis of mental illness”. As such, despite being a legal question, courts often relied upon expert assessments and testimonies to determine whether the individual retained some form of criminal responsibility in relation to the offence. Additionally, the rationale provided within the cases depicted how the disorder impacted the individual, however it also alluded to the fact that the disorder in and of itself was not the sole factor which led to the commission of the offence.

Interestingly, the defence’s position in *R.v. Edwards* (2014) aligned, to a certain extent, with the *R.v. Minassian* (2021) case. In *R.v. Edwards* (2014), the position of the defence was that Mr. Edwards attempted murder that night but that he should be exempt from criminal responsibility because, at the time of the attempt, “he was suffering from a mental disorder that rendered him incapable of appreciating the nature and quality of the act or of knowing it was legally or morally wrong”. The rationale provided by “Doctor Swayze emphasized that the pervasive developmental disorder interacted with the command hallucination of the accused’s psychosis and precluded him from thinking clearly and making rational decisions; such that he was incapable of acting rationally and acted as he did”. However, the defence failed to present sufficient evidence grounding the argument and, as such the court stated that “there is insufficient evidence to establish that Mr. Edwards’ will was overborne by his serious mental illness such that he could not understand the moral wrongness of his act”.

In sum, within the context of the court, ASD is examined in order to determine whether the disorder is, or conversely is not a mitigating factor in the offence in order to determine an appropriate sentence. This, therefore, demonstrates that the mere presence of a diagnosis is not sufficient to conclude non-responsibility, and subsequently situates *Minassian* within the judicial discourses surrounding ASD.

Autism as a Link to Crime

The case law demonstrated that autism spectrum disorder was not applied in a consistent manner within judicial reasoning. Rather than operating as a fixed or predictable mitigating factor, autism was variously interpreted, accentuated, limited, or rejected depending on the factual context of the case. As depicted above, most cases described autism as a factor reducing moral responsibility due to impaired social and cognitive functions. Whist conversely other cases contended that autism did not diminish responsibility. Therefore, whether autism was considered or not a mitigating factor in the offence, the courts attempted to determine whether there was a “nexus between the diagnosis and the offence” (*R.v. E. R.-B.*, 2023).

Some cases contended that there was a nexus between both factors. As exemplified in *R.v. E.R.-B.* (2023), “the interplay between the ASD diagnosis the inappropriate and early exposure to sexualized materials and the offending behaviour [...] it is the combination of factors which establish a nexus with the offending behaviour”. Similarly, in *R.v. Krywonizka* (2021), the “nexus between the diagnosis and his offending behaviour, and that the diagnosis helps to frame what was an almost compulsive desire to collect firearms-related items”. Similarly, in *R.v. B.T.* (2021), the court was “unable to conclude there is any causal relationship between his offending against A. and his mental disabilities” Whist alternatively, as concluded in *R. v. Finestone* (2017), the defence “has established a causal link between Mr. Finestone’s ongoing mental health issues and this

offence”. The interplay between the disorder and the offence inadvertently reinforced the notion that mental health issues and violence were synonymous. Interestingly, this nexus was discredited within advocacy discourse, whilst echoed within some media discourses.

Within the caselaw, autism was commonly associated with sexual offences. For instance, in *R.v. J.E.D.* (2017), Dr. Rothman rationalized the offence by “suggest[ing] that since preoccupation with a special interest is a symptom for ASD affected people, they are vulnerable to become preoccupied with internet pornography given the anonymous nature of internet use in combination with their sexual development”. While as indicated in *R.v. Rosin* (2023), “it is not uncommon for individuals with Mild ASD to ‘get into trouble online in sexual areas’ as they often converse with children who have common interests and the conversations at times become inappropriate.” Therefore, some crimes brought forth with the case law depicted the interplay between autism spectrum disorder and a paraphilic disorders, which were explicated through uneven cognitive developments.

As stated in *R.v. Minassian* (2021), the judge sought to clarify that despite the arguments brought forth by the defence “it says nothing about whether the particular impact of that disability on that particular person in the particular circumstances of the crimes alleged constitutes a defence to the charges, nor does it say anything at all about any connection between ASD and criminality”.

Risks, Stigma and Recommended Responses

Across the case law, autism spectrum disorder was also described through the lens of risk and vulnerability, particularly in relation to custodial environments, susceptibility to influence, and difficulties navigating social and institutional settings. Courts frequently characterized individuals

with ASD as exposed to heightened risk, not because of inherent dangerousness, rather due to cognitive, social, and communicative deficits affecting interactions with others.

Several decisions articulated individual vulnerabilities within the custodial setting due to ASD. In *R.v. J.E.D.* (2017), the court noted that the accused's "theory of mind deficits" meant that he "had an inability to understanding what another person is thinking or feeling based upon the context around him", therefore doctors "expressed a concern that he would be vulnerable to influences or to being taken advantage of by other inmates within the institutional setting". Similarly, as contended in *R.v. Collier* (2021), "social skills deficits that Dr. Glancy explained can cause difficulties in jail for those with ASD". While in the context of *R.v. B.T.* (2021), the diagnosis of "ASD and the impact that has on his social / interpersonal skills, decision making and judgment, he is likely to be a vulnerable individual within the prison system". As such, during the verdict, the offender's situation was taken into account, as exemplified in *R.v. C.D.S* (2024), wherein "given C.D.S.'s past experience with physical, emotional, and sexual abuse and his medical diagnoses of autism and ADHD, prison would be a particularly harsh and punitive sentence carrying with it the potential of significant deleterious effects on this youthful offender, extremely disproportionate to the circumstances of this case".

Risk was also articulated in relation to susceptibility to suggestion, influence, and radicalisation. As exemplified *R.v. O.S.* (2023), "the report found that the rigid and categorical thinking typical of ASD, makes [O.S.] vulnerable to extremist ideology and rhetoric". The case further stated that "autism and depression, rendered him more vulnerable to being lured into the extremist ideology and nihilistic thinking of the incel community" and further stating that the accused was "brainwashed by the incel community and demonstrated little insight into his role in obsessively seeking out this material for month". Therefore, when examined in relation to the

offence, the court deemed that O.S. “is susceptible to suggestion and influence if they align with his worldview, as he appears to be quite poor at evaluating the quality of the information he consumes on the internet or the credibility of the sources”. Therefore, risk within the case law was articulated beyond the carceral system, as broader societal factors contributed to the perpetuation of the offence.

Additionally, it ought to be noted that the language used within certain court cases, which referred broadly to “such individuals” or “those with ASD”, further stigmatized individuals on the autism spectrum (*R.v. Hartman*, 2018; *R.v. J.E.D.*, 2017). The terminology utilized diminished individuals on the autism spectrum to the diagnostic, rather than representing the diagnostic as a component of the individual as a whole. As indicated in *R.v. J.E.D.* (2017), individuals with ASD experienced discrimination due to “pre-existing disadvantages that is perpetuated by the fact that a custodial setting is non-responsive to their needs”.

The recommended responses within the case law were situated within the context of treatment. As extrapolated from *R.v. Betchuk* (2021), “Dr. Woods agreed that treatment for individuals diagnosed with ASD must be tailored to their particular needs. He agreed that confronting offenders with ASD on problematic behaviours or cognitive distortions may not be the best method of treatment, as they tend to be less likely to understand.” Recommended responses were also formulated in conjunction with the perceived risks of imprisonment, as stated in *R.v. Sadden* (2018), “given his ASD, that the effect of imprisonment will have a disproportionate effect on him compared to the effect it would have on other offenders who do not suffer or who do not suffer from ASD”, therefore during the sentencing portion of the trial, the court often took into account whether an individuals with ASD were liable to more harm in comparison to an individuals without ASD.

CHAPTER V: MEDIA AND ASD

Autism Defined Within the Media

Media descriptions of autism spectrum disorder were discussed in the context of the 2018 Toronto van attack case. Autism was defined as a “neurological condition that affects how the brain functions” (Casey, 2020a). The initial introduction to autism as a neurological condition aligned with advocacy definitions emphasizing neurological differences rather than pathology. However, by grounding autism as a condition that “affects how the brain functions”, the media deviated towards a clinical explanation which was consistent with judicial discourses.

Therefore, the data demonstrated that media articles tend to align along two dominant discursive trajectories. More specifically, some media articles reflected advocacy discourses, depicting autism as a condition impeding communication, social connections, or alternatively exhibiting repetitive patterns of behaviours and limited interests (Casey, 2020a). Autism was also characterized by constant challenges “such as difficulty socializing or coping with change in their environment” (Richmond Hill Liberal, 2018). Due to the increasing frequency of ASD, wherein “1 in 66 children and youth in Canada” were diagnosed, some media articles reiterated that “there is no scientific evidence of a link between autism and the perpetration of bullying, harassment, or extreme violent acts” which paralleled the statements published by advocacy groups.

In contrast, other media articles aligned more closely with judicial and medicalized discourses commonly found in the caselaw. As such, media articles relied on expert psychiatric commentary and used terminology that reflected legal assessments of cognition, perception, and mental functioning. For instance, Dr. Westphal, the expert retained by the defence, referenced autism alongside psychosis, stating that the conditions were “defined ultimately by a disruption in

how you see and how you understand the world” (Goodfield, 2020). According to Dr. Westphal “ASD causes just as much differences as being in the throes of a psychotic or delusional state in an extreme form” (Goodfield, 2020). Hence, a published headline stating “psychiatrist to testify autism ‘severely distorted’ mass killer Minassian’s thinking” framed the condition as significantly impairing judgment and cognition, which implicitly asserted that autism explained Minassian’s violent act (Mandel, 2020a). Additionally, the medicalized discourses which contended that “in its severe manifestations, and particularly where there are comorbidities, ASD might cause a person to lack the capacity to appreciate the nature of an action or to know that it is wrong” aligned with the judicial analyses of criminal responsibility and mental capacity, wherein autism was linked to criminal behaviour and violence (Thompson, 2021).

However, there were counterexamples within the media data set. With respect to the 2018 Toronto van attack, some media discourses iterated that “the vast majority of persons with autism are non-violent” (Mandel, 2020b). “In fact, studies indicate that people on the autism spectrum are far more likely to be the victims of these behaviours than perpetrators” which aligns with advocacy discourses regarding fairness and humanity (Richmond Hill Liberal, 2018). However, such holistic discourses were overpowered by sensationalistic descriptors of violence. For instance, the 2018 event was described as a “senseless attack”, “a horrific tragedy” (BBC, 2018), as one of the “deadliest” and “deliberate” act of violence (Hayes, 2021; Kassam and Cecco, 2018), “a carnage of broken bodies” (Mandel, 2019), amongst many others. Since violence was also framed in relation to autism, within the media discourse, the descriptors link violence to cognitive and mental states. For instance, a media report referred to Minassian’s “autistic way of thinking [as] similar to psychosis” which “severely distorted” the accused cognitive functions (Casey, 2020a).

Furthermore, the medicalization of discourses pertaining to the condition in which autism was described as a condition which forms “irrational thoughts” (Casey, 2020c), or comparatively as a condition which could be defined by its “extreme form” (Goodfield, 2020), inferred the notion that the individual’s diagnosis led to the attack. Furthermore, rather than neutrally describing advocacy perspectives, the media framed the responses as affective and reactive, stating that “this use of autism as an argument to evade criminal responsibility enraged autism advocacy groups” (Chan, 2024), and that “Autism activist expressed outrage at the unsubstantiated defence” (Gollom, 2021). This discourses contributed to the sensationalization of autism and violence by honing in on the overall tone of crisis and controversy.

Toronto Van Attack

“Minassian’s autism ‘left him vulnerable’ to ramblings of mass killer” (Casey, 2020c)

Media coverage of the 2018 Toronto van attack consistently emphasized the deliberate and calculated nature of the offence, thus framing the event as premeditated rather than spontaneous. Such claims were grounded in police statements which stated that the accused “intentionally drove a rental van into pedestrians on a busy pavement” (BBC, 2018), whilst others media discourses grounded such claims in Minassian’s admission of “planning and carrying out the attack” (Casey, 2020d). In addition, some media reports mobilized statements from witnesses in order to depict the violence of the attack stating that “people started flying in the air” as the van “crashed through crowds, fire hydrants and a bus shelter” (Kassam and Cecco, 2018). Another witness stated that “it was like he was playing a video game, trying to kill as many people as possible” adding that “he was looking people directly in the eye” (Kassam and Cecco, 2018). During the initial reporting, a journalist inquired as to “whether the suspect’s motive may have been related to issues with women”, in response, Graham Gibson of the Toronto police indicated “that this would be part of

their investigation. While the victims were predominantly females, ranging in age from mid – 20s to 80s, there was no indication that the suspect had deliberately targeted women in the attack” (Kassam and Cecco, 2018).

As the investigation unfolded, information contradicted the abovementioned statement as “Minassian admitted to police and psychiatrists that he wished he’d hit more women” (Hayes, 2021). The media also noted that Minassian “was not previously known to the authorities” therefore, as stated by the public safety minister, “there would appear to be no national security connections.” (BBC, 2018), therefore the media intended to uncover whether he was “working in concert with anyone, or if this was just a lone act on his own doing” (Kassam and Cecco, 2018). The initial reporting of the attack was vague, reflecting the limited and fragmented information. Few substantive details could be depicted within the media, as the only information available confirmed that an act of violence had been perpetuated and the matter was under police investigation.

Once Minassian’s trial begun, media coverage honed in on the defence’s assertion of autism spectrum disorder within s. 16, thus the mediatic discourses disseminated information pertaining to Minassian’s state of mind at the time of the offence. Articles referenced expert testimony describing Minassian as having an “autistic way of thinking that was severely distorted” (Casey, 2020b). Media coverage reiterated information contained within psychiatric reports which indicated that Minassian’s “thought process was very concrete and inflexible” (Casey, 2020b), therefore situating the impact of autism on Minassian’s “state of mind at the time of the attack [as] the only issue at play in trial” (Casey, 2020c). According to an American forensic psychiatrist, “Minassian has an ‘extreme form’ of autism that is similar to psychosis, and that type of ‘severely distorted’ view of the world is enough to be a mitigating factor in culpability” (Goodfield, 2020).

Therefore, “in his court case, Minassian’s lawyer argued that his autism spectrum disorder diagnosis prevented him from making rational decisions and realizing his actions were morally wrong” (Chan, 2024), this assertion directly linked autism with notions of non-responsibility for violent crimes. Furthermore, discourses within the media reiterated the claim that Minassian’s “dissociative quality” when recounting the attack, is akin to “someone playing a video game” (Goodfield, 2020). Consequently, defence “lawyers argued killer [Minassian] was incapable of knowing his actions were morally wrong” (Gollom, 2021), more specifically “Bytensky will argue Minassian ‘only understood wrongfulness at the intellectual level’ and lacked the capacity to rationally decide whether it was right or wrong” (Mandel, 2020b).

However, this framing was juxtaposed with judicial clarification that Minassian, at the time of the offence, was “not psychotic, and as such, does not suffer from any sort of hallucination”, therefore “it would be a legal first if an autism spectrum disorder alone rendered Minassian incapable of knowing his actions were morally wrong” (Goodfield, 2020). The juxtaposition of the defence’s argument was further reinforced as “Crown attorney Joe Callaghan pointed out that Minassian told Westphal numerous times he understood killing people was morally wrong” (Casey, 2020d), and “Minassian also told Westphal he’d consider carrying out the attack again if he were let out of jail to better his kill count” (Casey, 2020d). Within the media, despite depicting the positioning of both the Crown and defence council, procedural and evidentiary constraints were omitted, thus the simplistic selection of information was void of the complexity of the law. For instance, in the context of the 2018 Toronto van attack case, a media report contended that “mental disorder is a legal term with a specific legal meaning that may not be the same as what a layperson would consider to be a mental disorder in everyday language” (Thompson, 2021), however this statement implicitly asserted that autism, by law, was considered a mental disorder.

A significant portion of media coverage referenced the incel movement as a contextual factor in the attack. The media depicted the incel movement as an ideological ecosystem within which Minassian located meaning, identity, and validation, emphasizing that Minassian “drew inspiration from men who used violence as retribution for being unable to get laid” and was consequently, “radicalized online by incels” (Cecco, 2019). However, prior to the events, many media articles reiterated that Minassian “became fixated on mass murders in high school as a way to deal with girls’ rejection and being bullied” and how Minassian became “fascinated”, “fixated” (Hayes, 2021) and “obsessed with the forefather of the ‘incel’ movement” (Casey, 2020c). Elliot Rodger emerged as a central feature in Minassian’s account stating that if he copied or directly invoked Rodger’s narrative, “then everyone already knows about this... then people would get extremely hyped about it and talk about it for a lot longer” (Goodfield, 2020). A dominant discourse within the media pertains to “cryptic message on Facebook” (Kassam and Cecco, 2018), wherein Minassian posted:

“Private (Recruit) [Minassian] Infantry 00010, wishing to speak to Sgt 4chan please. C23249161. The Incel Rebellion has already begun! We will overthrow all the Chads and Stacys! All hail the Supreme Gentleman Elliot Rodger!” [BBC, 2018; Kassam and Cecco, 2018; Mandel, 2019; *R.v. Minassian*, 2021, para. 8]

in order “to praise a woman-hating mass shooter” (BBC, 2018). This portrayed Minassian as both ideologically aware and strategically conscious of the symbolic power attached to the incel movement, which subtly merged autism with the incel movement and linked the aforementioned with both mental illness and violence. For example, during the psychiatric assessments with Dr. Chauhan, Minassian indicated that “the attack was worth it” (Casey, 2020c). Therefore, the attack

was defined by Minassian as an act of “retribution against society” (Casey, 2020b), which was based on the indoctrination of the incel movement.

The media also depicted Minassian in a contradictory manner, stating that “Alek Minassian Toronto van attack suspect [as a] praised ‘incel’ killer” (BBC, 2018), “motivated by a desire for fame and attention” (Hayes, 2021) and becoming “infamous” (The Canadian Press, 2020). Hence, the media contended that “it’s actually a calculation on [Minassian’s] part on what does he need to do to gain the most notoriety, and part of that is to do pretty much the worst thing: kill people and kill as many people as possible” (The Canadian Press, 2020). Despite appearing to be “proud of himself”, Minassian stated having “just one regret” as “not all went according to plan. Not only did he want to continue his attack, but he was hoping to be killed by police and become another glorified martyr to his murderous incel -involuntary celibate- ideology” (Mandel, 2019). Conversely, a media outlet depicted Minassian as a “hurt, rejected man” fostering a misplaced sense of entitlement (Srikant, 2018). Whilst another media outlet rejected the claim that Minassian “ever experienced the female rejection he later blamed for launching his massacre” (Mandel, 2020b).

Whilst psychiatric testimonies were disseminated within the media, investigative advancement were also covered. Some outlets stated that “police found Google searches on March 21 for ‘Elliot Rodger’ on an internal hard drive found at Minassian’s Richmond hill home”, further noting that “no other evidence relating to the incel community or incel beliefs was recovered from any other electronic device seized [...] at the time of his arrest” (Mandel, 2020a). It was further presented that “Toronto Police had still been unable to unlock his Mac-Book Pro laptop or his Asus cellphone, to which he’d added layers of encryption” (Mandel, 2020a). Interestingly, the media stated that the incel movement on its own did not provide sufficient explanation for the offence,

rather the media asserted that Minassian's underlying mental health issues affected his judgment, and moral reasoning, and as such the psychological vulnerabilities bolstered his exposure and interactions with misogynistic ideologies. Thus, despite media reports contending that autism was not a mental illness, rather a condition, it mobilized autism as inherently related to mental illness and violence. As exemplified, Minassian was dichotomously depicted, as according to Minassian's father "he was shy and making friends was always a struggle [...] as was showing empathy or an emotional response when others were hurt. But he never displayed any kind of violence" (Mandel, 2020b). Conversely, Minassian's previous classmates depicted him as an individual that would "act out", "that would throw fits [...] and it was hard for people to control him" (Richmond Hill Liberal, 2018). Further noting that "several individuals who went to school with him say that he had mental health issues" (Richmond Hill Liberal, 2018).

In sum, within this framing, media discourses intersected the incel movement in relation to autism spectrum disorder, particularly by reiterating the defence's claim that Minassian's "autism left him vulnerable to [the] ramblings of mass killer" (Casey, 2020c). However, the media also reflected how "the defence's arguments played into inaccurate stereotypes that autistic people are somehow dangerous, while downplaying other aspects of Minassian's life", subsequently adding that this perspective "completely ignores the deep-rooted misogyny that was very prevalent in what [Minassian] did and why he did it" (Thompson, 2021). As such, despite the court presenting the incel movement as a "secondary issue" (Hayes, 2021), the media brought it to the forefront. Ultimately, the media reported on the "failed defence in Toronto's van attack trial" (Gollom, 2021), which sought to argue autism as a valid exemption to criminal responsibility, whilst also disseminating information pertaining to the role of misogynistic ideologies in the offence.

“Toronto van attack suspect says he was ‘radicalized’ online by incels” (Cecco, 2019).

Media reports explicitly associated Minassian’s autism to his adherence to the incel belief in numerous ways. For example, “Minassian told [Dr.] Chauhan that by late 2017, he was ‘obsessed’ with Rodger and read his ‘manifesto’ repeatedly. He talked about parallels: both had autism, struggled with relationships with females and experienced loneliness [...], but he didn’t seem to be able to see the differences, just able to see the similarities. (Casey, 2020c). Therefore, as reported within the media, according to Dr. Chauhan, “Minassian’s rigid through process and his ability to hyperfocus on those similarities left him fixated on Rodger [...] Minassian’s underlying autism caused him to be vulnerable to hyperfixation and the writings of Elliot Rodger” (Casey, 2020c). Minassian himself was reported as recounting to law enforcement that “he was radicalized at around the time of Rodger’s attack – and began to fantasize about starting his own rebellion” (Cecco, 2019).

Once more, autism served to explain how “Minassian was heavily influenced by horrific material he consumed online, including a focus on a website that ranked mass murderers by kill count akin to a leaderboard in video games or sports, Westphal said” (Casey, 2020d), subsequently inferring that without the disorder, Minassian would not have been radicalized. Additionally, “Minassian connected with other angry men online who were similarly frustrated – from his 4Chan chats on RB, R9K (space robots) and Pol (politically incorrect) boards as well as Forever Alone on Subreddit, the topic of conversation was their inability to lose one’s virginity, especially for young males” (Mandel, 2019). “In the lexicon of the incel subculture, Minassian denigrated the ‘dizzy dumb girls’ who ignored him as ‘Stacys’, while the ‘goofy jocks’ who unfairly score with women are labelled ‘Chads’. (Mandel, 2019). Minassian’s radicalization occurred when he “felt it

was time to take action and not just sit on the sidelines and just fester in my own sadness” (Mandel, 2019), yet this statement dismantled the claim that Minassian’s radicalization occurred as a result of his autistic way of thinking. However, Minassian reported that “fellow incels were all talk” (Mandel, 2019), further stating that he considers them “too cowardly to act on their anger” (Cecco, 2019; Mandel, 2019). Violence was justified within the incel community as, Minassian stated that “angry incels as myself who are unable to get laid, therefore we want to overthrow the Chads which would force the Stacys to be forced to reproduce with the incels” (Mandel, 2019). During the planning stage, Minassian intended to inspire future masses to join in his uprising” by “inflict[ing] severe damage” (Mandel, 2019).

Discussions of Autism and Crime

“Psychiatrist testifies on link between ‘extreme form’ of autism and culpability at Toronto van attack trial” (Goodfield, 2020)

Media discourses surrounding the link between autism and violence bifurcated. Some media articles reinforced the narrative wherein autism caused violence. Thus, reporting that “Minassian’s state of mind at the time of the attack is the only issue at play” (Casey, 2020c). Similarly publishing that “Minassian’s lawyer argued that his autism spectrum disorder diagnosis prevented him from making rational decisions and realizing his actions were morally wrong” which echoed judicial discourses surrounding culpability and responsibility (Chan, 2024). However, the discrepancy in discourses was noticeable within the same media report as it further stated that “this use of autism as an argument to evade criminal responsibility enraged autism advocacy groups and ultimately failed in court” (Chan, 2024), thus by mobilizing advocacy perspectives, the media attempted to signal which position was deemed socially and morally acceptable. Accordingly, when advocacy groups were portrayed as taking a stance, audiences may

be implicitly encouraged to adopt the same viewpoint. Interestingly, the media ascribed strong descriptors, such as “enraged”, to amplify advocacy statements, yet such terminology was absent from said advocacy publications. Explicitly, the media also contended that “an autism diagnosis does not explain this inconceivable act of violence” as “there is no scientific evidence linking ASD with [...] violent crimes” (Richmond Hill Liberal, 2018). In relation to the 2018 Toronto van attack trial, the ruling judge noted “that the decision does not say anything at all about any connection between ASD and criminality, and each case must be decided based on the specific circumstances” (Thompson, 2021). However, the observation was also implicitly embedded within the media as, despite explicitly stating that there was no link between autism and violence, the narrative contrived implied that Minassian’s autism, which rendered him vulnerable to radicalization, led to violence.

Risks, Stigma and Recommended Responses

Despite the implicit contention in the media which depicted autism as both a neurodevelopmental condition and a cause of violence, the media also sought to minimize stigma. “In recent years, incidents of violence by ‘involuntary celibates’ (incels) have raised questions about the risk and worldview of those who espouse incel beliefs” (Chan, 2024). “However, mental health and neurodivergence should not be characterized as drivers of incel violence [as] such interpretations can stigmatize neurodivergence and also minimize incel’s accountability for acts of violence” (Chan, 2024). A media article also alluded to a report “drawing causality between autism and terrorism [as] a focus on this findings could contribute to a stigmatizing claim that incels have a higher rate and likelihood of being diagnosed with autism spectrum disorder” (Chan, 2024). The article further noted that despite the original reports rich data, “its findings may be misused to reinforce harmful narratives against people with autism. This may lead to stigmatizing and false

claims that autistic people are predisposed to violence, radicalization or hateful ideologies due to their diagnosis” (Chan, 2024). In relation to the 2018 Toronto van attack case, “concern[s] about the potential ramifications of this defence” arose as it can create “an additional barrier to inclusion”, “opportunities and acceptance” (Gollom, 2021). Therefore, “casting autism as a mental disorder that leads to violence” portrays autistic individuals “as more likely to commit crimes when they are generally more likely to be victims than perpetrators of crime (Chan, 2024). “Speculation and misinformation about autism has hurtful and lasting consequences (Richmond Hill Liberal, 2018).

Hence, the media reiterated advocacy discourses which indicated that “the repetition of damaging stereotypes is evidence that more needs to be done to address the myths and stigma about ASD, and at the same time create a culture of inclusion and understanding of the challenges they face, as well as, awareness of the many strengths and positive attributes that individuals with ASD possess” (Richmond Hill Liberal, 2018). The media enumerated various recommendations which were based on prevention, such as “mental health resources for individuals in incel spaces [in order] to prevent violence” (Chan, 2024) and “prevent future deaths” (Hayes, 2021). Exemplifying how even when attempting to destigmatize mental illness, the media promoted a position which linked mental illness with violence. As urged in the Richmond Hill Liberal (2018) article, when reporting on the 2018 event, articles should be used for education, “including the criteria for diagnosis, challenges faces, and opportunities for the future. As the same time, we urge media looking to rationalize what has happened to not suggest or imply any linkage between autism and violence in any way. An autism diagnosis does not explain this inconceivable act of violence”. The media also contended that prevention occurs early on as “parents and teachers should have a high degree of suspicion and raise concerns about children without a sense of respect

for boundaries, frequent demanding tantrums and social interaction difficulties so that they may be helped early and as best as they could be” (Srikant, 2018).

CHAPTER IV: POINTS OF CONVERGENCE AND DIVERGENCE WITHIN THE DISCOURSES

This discussion section synthesizes the findings presented in the previous chapter in order to examine how autism spectrum disorder was articulated across the three domains namely, judicial, advocacy and media discourses. Thus, rather than reiterating the descriptive findings, this section situates the findings within the broader literature by honing in on the points of convergence and divergence.

The Advocacy Domain

Advocacy statements stabilized the definitional discourse surrounding autism. Rather than defining autism through flexible descriptors, advocacy discourse delineated autism in clear terms, and within broader concerns about identity, inclusion, stigma, and public misrepresentation, in order to explicitly separate the condition from a propensity to violence. For instance, advocacy groups stated that autism was “characterised by challenges in social communication and restrictive and repetitive behavior however, it is not characterised (or diagnosed) by the lack of understanding right or wrong or difficulties with morality, or violent behavior” (Autism Ontario, 2023; Allely, 2022; Allen et al., 2008; CASDA, 2020; Ofner, 2018; Whitley et al., 2017). Therefore, by defining autism as “neurodevelopmental *condition*”, a form of cognitive difference rather than dysfunction, advocacy discourse positioned autistic individuals as socially normative subjects whose behaviours cannot be meaningfully explained through criminal deficit-based pathology (Autism Ontario, 2023; White et al., 2017).

Attempts to humanize and destigmatize autism in the data set were significantly complicated with the emergence of the 2018 Toronto van attack case. Public association of mass-

casualty events with an autistic perpetrator disrupted advocacy's otherwise stable narrative, subsequently making it more difficult to sustain clear boundaries between autism and violence in public discourse (White et al., 2017; Whitley et al., 2017). While advocacy groups continued to assert that "autism was not the cause", nor should autism be associated with "acts of violence", the discourse following the 2018 events shifted from proactive de-stigmatization towards reactive clarification (Autism Ontario, 2021; Autism Ontario, 2023). In this sense, Minassian's case did not alter the substance of advocacy claims, rather it altered the conditions under which said claims were articulated.

R.v. Minassian (2021) further depicted how advocacy statements categorically defined autism rather than adapting the definitional framing in response to the case. As such, the statements published aimed to reinforce existing boundaries by preventing discursive slippage towards stigmatizing interpretations, as a directed response to concerns that the case triggered a set back in "the progress that has been made to reduce [... the] misperceptions about autism" (American Psychiatric Association, 2013; CASDA, 2020; Ofner, 2018). Thus, advocacy discourse operated outside the domain of legal reasoning, even when responding to legal outcomes or court proceedings.

Importantly, rather than attempting to insert autism into s. 16 or to, similarly, argue that autism should constitute a basis for non-responsibility, advocacy statements cautioned against the "misuse of autism as a legal defence" as it may lead to inaccurate "generalizations" (Autism Ontario, 2023; CASDA, 2020; White et al., 2017). In advocacy discourses, "associating autism with acts of violence" was problematic, as the term "spectrum" alluded to the variability of the condition, thus the "oversimplification" founded on a singular case "dehumanizes" autistic individuals (American Psychiatric Association, 2013; Autism Ontario, 2023; CASDA, 2020;

Ofner, 2018). This claim was further substantiated by studies mobilized which reiterated that “there is no significant link between autism and violent crime” and as such, “the notion that autism leads to criminal behaviour is a fallacy” (Autism Ontario, 2023; Browning and Caulfield, 2011; CASDA, 2020; White et al., 2017).

Autism, as defined by advocacy groups, was consistently defined through clear, identity-based, and de-stigmatizing language which diverges from the deficit-based framework utilized within judicial discourse. Therefore, the following section illustrates how advocacy discourse surrounding autism is translated into the judicial framework.

The Judicial Domain

While both advocacy and judicial discourses converged and rejected autism as an inherent determinative explanation for criminal behaviour, the rationale for each in and of itself differed. The law rejected autism as exculpatory unless it produced legally defined incapacity, whereas advocacy discourse rejected the notion that autism was explanatory factor altogether.

As noted above, advocacy groups stated that “autism is not synonymous with violence or lack of moral compass, and it should not be equated with mental health issues” and further “reaffirm[ing] that autism was not the cause behind” the 2018 Toronto van attack (Autism Ontario, 2023; Autism Ontario, 2021; Pilon, 2002; Welch, 2024; White et al., 2017). In contrast, judicial discourse, focused on the legal basis upon which questions of criminal responsibility were assessed in cases involving mental disorder (Bloom and Schneider, 2017; s.16, Canadian Criminal Code, 1985). As the dataset indicated, within this framework, autism, or any neurodevelopmental disorders more broadly, do not appear as an autonomous legal category; rather judicial reasoning assessed the relevancy of the condition only insofar as it could be articulated through the statutory

criteria set out in s.16 (Ferguson, 2011; Welch, 2024). Thus, the court aimed to examine whether the functional effects associated with autism meet the legal threshold therefore, the discourse within the case law situated autism as evidentiary rather than determinative (Bloom and Schneider, 2017; Welch, 2024).

The divergence in discourse between the advocacy statements and the judicial statements in the data set occurred early on in judicial discourses, as the holistic language utilized by advocacy groups was funneled into a medical-legal language, thus characteristics associated with autism, whether cognitive or behavioural, were translated into legal terminology of “incapacity”, “appreciation of wrongfulness”, or “impaired rationality” (Bloom and Schneider, 2017; Canadian Criminal Code, 1985; Ferguson, 2023; Mayes, 2003; Welch, 2024; White et al., 2017). Since the law operated through fixed and determinative categories that prioritized consistency and predictability, there is little scope for terminological variance (Bloom and Schneider, 2017; Canadian Criminal Code, 1985; Ferguson, 2023; Mayes, 2003; Welch, 2024; White et al., 2017). Judicial discourse thus operates at the intersection of medical description and legal interpretation.

The data set illustrated how s.16 demarcated a narrow exception to criminal liability as courts did not expand the statutory framework to accommodate evolving diagnostic categories. However, the broad definition of “mental disorder” ensured that emerging disorders were not excluded solely based on psychiatric labels (Allely, 2022; Canadian Criminal Code, 1985; Ferguson, 2023). In this sense, advocacy and judicial discourses converged as both accepted an unchanging descriptive and statutory framework despite evolving and emerging medical framing or diagnostic criteria. This was seen most clearly in the fact that advocacy discourse surrounding autism did not alter due to a singular case and judicial frameworks were not modified in order to account for emerging diagnostics (Autism Ontario, 2020; CASDA, 2020; Pilon, 2002; Welch,

2024; White et al., 2017). Rather, the court decisions examined applied existing legal standards to new forms of psychiatric evidence producing a pattern wherein judicial reasoning and statutory law were prioritized over diagnostic recognition (Ferguson, 2023; Welch, 2024). Thus, as exemplified in *R.v. Minassian* (2021), Dr. Bradford opined that “there could be a credible basis for a defence” where the accused was unable to appreciate the wrongfulness of conduct due to ASD deficits, which demonstrated how an emerging disorder was subjected to the existing framework.

However, the abovementioned also exemplified how the presence of a diagnostic criterion in and of itself did not automatically negate criminal responsibility. Thus, judicial rulings consistently reaffirmed that the threshold conditions for non-responsibility due to mental disorder must substantially impair the accused’s capacity in a manner that is directly relevant to the statutory test (Allely, 2022; Canadian Criminal Code, 1985; Welch, 2024). Autism, when raised, was therefore subsumed with the legal logic rather than assessed as a distinct or exceptional condition (Welch, 2024).

Furthermore, as exemplified in *R.v. Minassian* (2021), the discursive strategy legitimized autism within judicial discourse only to the extent that it “qualifies as a ‘mental disorder’ within the meaning of s.16 of the *Criminal Code*” [para.19]. However, in the final ruling, despite agreeing with Dr. Westphal that “without ASD [Minassian] would not have committed these offences” [para.248], the judge ultimately agreed and concluded with Dr. Woodside that that the act was a “calculated decision” [para. 254], and further agreed with Dr. Wright that “there may be more than ASD at play” [para. 249] (Canadian Criminal Code, 1985; Welch, 2024). As such, judicial decisions consistently distinguish between explanation and exculpation. While autism may be acknowledged as relevant evidence that helped the court understand the accused’s behaviour, the judicial discourse reiterated that the presence of a mental condition does not automatically negate

responsibility, particularly where evidence suggests that the accused retained an understanding of the wrongfulness of their actions or an inability to appreciate the nature and consequences. In this way, broader advocacy concerns about stigma and human dignity, and that fact that autism was not empirically associated with violence, receded.

This marginalization of advocacy discourses within judicial reasoning reflected the institutional priorities of criminal law (Janse Van Rensburg, 2022). Section 16 does not name specific mental health conditions, nor does it evolve in response to emerging societal understandings of neurodevelopmental disorder (Janse Van Rensburg, 2022). Instead, contemporary diagnostics are pushed into unamended statutory frameworks.

Although courts do not explicitly equate autism with mental disorder, or violence, the legal framing of autism within s.16 provides a discursive framework that focuses on the possibility of such a link and as seen below, it is this element which is amplified within the media (Browning and Caulfield, 2011).

The Media Domain

The media discourse examined drew its narrative from competing frameworks in which autism was already positioned as part of medical and legal logics. However, when legally specific formulations were translated into media narratives, the nuance of their legal function was absent. As a result, judicial references to autism as a clinically relevant condition were reinterpreted as a causal explanation for violence behaviour, subsequently reinforcing the implicit association between autism and violence.

As the literature indicates, since media discourses operated through processes of selection, framing, and recontextualization, the emergence of simplified, and at times, stigmatizing

representations, became pronounced (Berry and Whitley, 2016; Sill et al., 2013; Strother, 2017; Whitley and Berry, 2013). For instance, Chan's statement that "in his court case, Minassian's lawyers argued that his autism spectrum disorder diagnosis prevented him from making rational decisions and realizing his actions were morally wrong" (Chan, 2024) which mobilized the legal discourses and the medical conceptualization of autism.

Interestingly, media discourses analyzed did not generate an independent conceptualization of autism *per se*. Rather, media discourses relied on pre-existing discourses, borrowing language, authority, and explanatory frameworks from both judicial proceedings and advocacy publications. The divergences accordingly embedded in media discourses became a prominent element within the data set.

For instance, the data depicted how certain media discourses converged and mobilized advocacy discourse as a source of contextual and definitional authority (Allen et al., 2017; Berry. And Whitley, 2016). Rather than functioning as standalone clarifications intended to destigmatize autism, advocacy statements were reframed through the surrounding narrative of violent crime – as the legal case is the focal point anchoring the story thus diverging from the intentions of advocacy groups, and contributing the perpetuation of stigma (Berry and Whitley, 2016; Janse Van Rensburg, 2022; Whitely and Berry, 2013; Whitley et al., 2017). In this context, advocacy discourse functioned as a supplementary layer that were often juxtaposed to graphic descriptions of violence, police accounts, or victim testimony. For example, a media statement that "the van crashed through crowds, fire hydrants and a bus shelter [...]", and "people started flying in the air" was subsequently followed by a statement from a fellow classmate "who said he recently took a programming class with Minassian, described him as someone who kept to himself [...] he was socially awkward but well spoken" (Kassam & Cecco, 2018). Despite not explicitly mentioning

autism, the article implicitly alluded to the neurodevelopmental condition which inadvertently invoked unspoken or implicit fears related to a purported link between mental health and violence. Furthermore, advocacy statements mobilized within the media were often collapsed into broader medicalized and psychiatric discussions surrounding mental disorders. For instance, Goodfield (2020) reiterated Dr. Westphal's statement "that (ASD) causes just as much differences as being in the throes of a psychotic or delusional state in an extreme form".

The media articles analyzed also mobilized judicial discourses as an authoritative framework. The media coverage converged with legal discourse, as media articles foregrounded elements of determination of responsibility, capacity, and mental disorder emerging from s.16 of the Criminal Code of Canada in relation to the offence (Berryessa, 2014; Welch, 2024). Articles on the Minassian case portrayed it as a highly sensationalistic act of violence, and coopted legal terminology (for example the Not Criminally Defence), psychiatric evidence, and the assessment of mental functioning at the time of the offence. Media articles used each of these to lead to the explicit conclusion that "Alek Minassian had an 'autistic way of thinking' that was severely distorted", linking the disorder to violence as was exemplified in the following article headline which stated that "psychiatrist testifies on link between 'extreme form' of autism and culpability at Toronto van attack trial" (Casey, 2020a; Goldfield, 2020; Karaminis et al., 2023).

While judicial discourse was constrained by legal standards and evidentiary requirements, media reporting tended to simplify legal determinations for accessibility, signifying a divergence from discourses found within judicial rulings (Sill et al., 2013). Since media accounts were produced for the general population, the information disseminated, and linguistic proficiency was abbreviated (Sill et al., 2013). Nuanced judicial distinctions, such as explanations and justifications, were often condensed into brief summaries. As a result, the legal reference to autism

as a clinically relevant condition was portrayed within the media as indicating a causal relationship between autism and violent behaviour. Therefore, judicial determinations grounded in narrowly defined criteria were presented as broader explanatory accounts of behaviour wherein symptomatic components of the condition are used to explain the crime (Berryessa, 2014). The media then amplified this conclusion by using the authoritativeness of judicial discourse to legitimize its framing. By citing court decisions, psychiatric assessments, or expert opinion, media discourses portrayed an appearance of objectivity and authority. However, in so doing, they further contributed to the stigmatization of individuals on the autism spectrum by asserting a non-empirical claim that autism is causally related to violence.

A defining feature of the media discourse in the data set was the absence of a coherent synthesis between advocacy and judicial discourses which gave rise to a discursive tension. Rather than synthesizing judicial and advocacy perspectives into a coherent explanatory framework, media discourses often juxtaposed them, subsequently allowing divergent depictions of autism to coexist within the same article or across other media reports (Berryessa et al., 2015). Combining both narratives produced a contested representation of autism that oscillated between differences, vulnerability, impairment, and culpability (Berryessa et al., 2015). Such contradictions emerged from the unmediated coexistence of judicial and advocacy discourses; therefore, the media reflected the plurality of institutional narratives without stabilizing them into unified or coherent accounts (Karaminis et al., 2023; Strother, 2017).

Sensationalization was also a critical element shaping the media discourse in the data set and supported within the literature (Allen et al., 2008; Berry and Whitley, 2016; White et al., 2017; Whitely and Berry, 2013). Media outlets frequently employed emotionally charged language such as “tragedy” (BBC, 2018), “horrific” (BBC, 2018; Kassam & Cecco, 2018), dramatic headlines

such as “Toronto van attack suspect says he was ‘radicalized’ online by incels” (Cecco, 2019), or “Minassian’s autism ‘left him vulnerable’ to ramblings of mass killer” (Casey, 2020b), and vivid descriptions of events to capture public attention such as “a carnage of broken bodies” (Mandel, 2019). In cases involving autism, sensationalist reporting amplified, often through unsubstantiated terms, certain characteristics of the condition in order to contextualize the act, particularly in the context of mass violence or an ideologically motivated attack, which contributed to public misperception regarding the link between autism and violence (Allen et al., 2008; Berry and Whitley, 2016; Browning and Caulfield, 2011; White et al., 2017).

Interestingly, the media data set mainly honed in on the secondary issue at the trial, which foregrounded the event within the incel ideology. Importantly, this diverged from both advocacy and judicial discourses. Rather than reporting on advocacy definitions or the judicial analysis of criminal responsibility, media discourses repeatedly centered on Minassian’s alleged ideological involvement with the incel movement. For example, articles frequently stated that Minassian was “obsessed with forefather of ‘incel’ movement” (Casey, 2020b), “fascinated by mass murder since high school” and “motivated by a toxic ideology” (Hayes, 2021). A media article also stated that “the suspect explains in horrifying detail the roots of his misogynistic incel philosophy and his plan to inflict severe damage” (Mandel, 2019). This framing reflected broader journalistic tendencies describing acts of mass violence through prominent ideological categories. This was particularly salient when media stories reported that the attack was perpetuated as an act of “retribution against society” (Berry and Whitley, 2016; Casey, 2020b), and that Minassian “drew inspiration from men who used violence as retribution for being unable to get laid” (Cecco, 2019). In this way, media discourses highlighted the legal determination which was grounded in the

neurodevelopmental condition and systemic factors facilitating radicalization in order to describe and explain the 2018 Toronto van attack.

The instability of advocacy and judicial discourses reported in the media was underscored by the fact that media discourses themselves diverge from one another (Whitley et al., 2017). Different media reports, written by different individuals, emphasized different elements of judicial proceedings or advocacy responses, resulting in a range of representations that varied in emphasis and framing (Browning and Caulfield, 2011; Janse Van Rensburg, 2022; Strother, 2017). Some articles relied on legal outcomes and expert assessments, while others placed greater emphasis on advocacy statements of definitional explanations of autism. The selective uptake of information and variation contributed to a broader media landscape in which no single representation of autism predominated (Karaminis et al., 2023; Strother, 2017). For example, autism was represented as either correlational or causal depending on the dominant perspective utilized by the media article (Berry and Whitley, 2016).

Accordingly, media reporting did not generate new interpretations of autism, but disseminated existing, yet conflicting discourses (Browning and Caulfield, 2011). In this context, the discursive discourses within the media hindered the formation of a coherent public understanding as competing representations were disseminated. The fragmented, contextualized and internally inconsistent representations of autism in relation to violence produced an interpretive gap that makes it difficult for the public to decipher and filter information (Berry and Whitley, 2016; Strother, 2017). The readers were presented with selective excerpts which were embedded within broader narratives structured around violence, risk, and diversity. Crucially, the information disseminated to the public was contingent upon the particular media source consulted. Thus, as coverage evolved, new discursive elements, which were salient or controversial were

introduced, and readers encountering articles at different points in time may therefore receive partial or uneven accounts, skewing or influencing public understanding (Brewer et al., 2017; Browning and Caulfield, 2011; Sill et al., 2013; Strother, 2017; Whitley et al., 2017). Additionally, “there’s a perception on the part of some viewers that it’s true, that there’s some basis in truth, otherwise it wouldn’t have been uttered” (Gollom, 2021), therefore insinuating that the information disseminated within the media was taken at face value and deemed factual by readers. In essence, the intermediary role of the media confuses the issue of what autism is and if it is related to violence, and then places the interpretive burden on the audience to push back against recurring themes of stigmatization and fear.

The Interplay Between The Three Domains

The three domains examined in this study formed a sequential, yet non-integrated discursive chain through which autism was depicted and ultimately disseminated to the public. This results in a layered discursive configuration in which each domain reshaped autism according to its own logic. Advocacy statements attempted to stabilize the meaning, judicial reasonings medicalized the disorder, and the media redistributed competing portrayals in ways that amplified tensions rather than resolve them. Together, these domains do not produce a single coherent narrative about autism, but a sequence of transformation through which its meaning becomes progressively recontextualized across institutional settings.

Although the discursive relationship between advocacy, judicial, and media domains was sequentially presented, the recontextualization of autism across these spheres is not strictly linear. Media discourses did not simply reiterate and disseminate information published by advocacy groups, and judicial rulings; rather the media actively selected, amplified, and gathered attention to specific cases. Thereby reshaping the conditions under which both advocacy and legal

discourses operated. Advocacy groups were often compelled to respond to emerging media narratives, particularly when coverage conflated autism with violence, or mental illness. In this sense, media reports did not merely disseminate existing discourses, it generated new discursive contestations. Conversely, media narratives influenced the interpretation of judicial outcomes beyond the legal domain. Therefore, judicial rulings were legitimized or subjected to scrutiny within the media.

Recontextualization therefore operates through reciprocal rather than unidirectional movement. Autism's public meaning was continuously renegotiated through iterative cycles of amplification, response, and reinterpretation rather than through a fixed progression from one domain to another.

CHAPTER VII: CONCLUSION

The research examined advocacy, judicial and media discourses surrounding the 2018 Toronto van attack case in order to analyze how different institutions describe and circulate particular conceptualizations of autism and crime. The research also depicted the points of convergence and divergence in advocacy, judicial and media discourses surrounding autism spectrum disorder and violent crime.

Although each discourse was distinct, advocacy, judicial and media discourses converged due to shared understanding and perceptions. Differing institutional objectives were reflected in the points of convergence and divergence within the discourses. Advocacy discourses, which opted for a holistic approach, reiterated the notion that autism spectrum disorder was a neurodevelopmental condition, thereby humanizing the individual rather than merely reducing the individual to the diagnosis. As such, advocacy groups cautioned against the formulation of broad generalization based on a singular case as it further stigmatized and marginalized individuals on the autism spectrum. Judicial discourses pathologized and medicalized disorders such as ASD in order to legally determine whether the disorder hindered the individual's ability to appreciate or know that the act was wrong, subsequently diminishing the individual's level of criminal responsibility. Therefore, within the legal context, individuals were reduced to their disorders, and the offence was examined in relation to the disorder since the judicial system operates within a fixed framework.

The analysis of media reports, which draws on both advocacy and judicial discourses was important as it provided insight into the attitudes and perceptions which may be held by the public. As a result, the analysis of media articles reflected the selective uptake of discourses held by advocacy and judicial domains. Therefore, public attitudes and perceptions were reflected through

the selective uptake of information into accessible forms wherein specific elements are emphasized and reframed. Furthermore, importance was attributed to information when said information was reiterated across various reports.

In sum, discourses surrounding autism spectrum disorder intersect across the three domains when characteristics, or traits associated with the condition are depicted. For instance, autism which was characterized by challenges in social communication and restrictive and repetitive behaviour were mobilized within advocacy discourses as a representation of the disability that exhibits a high degree variability. Comparatively, the challenges in social communication and restrictive and repetitive behaviour, within judicial discourses, were examined only in relation to the offence. Within judicial documents, the interplay between ASD and the offences varied significantly from one case to another, despite medicalizing the disorder as the focus was on the accused's ability to form the required thought process. However, court rulings often rely on previous cases to determine the appropriate sentence, therefore despite each case being analyzed individually, they are contrasted to a broader corpus of similar rulings. More specifically, in relation to the exploratory case study used in this research, the court had to determine whether Minassian's ASD sufficiently precluded his ability to form the required *actus reus* or *mens rea*. Judicial discourses pathologize the condition in order to determine the extent to which the disorder hindered the individuals functioning. The media, subsequently mobilizes both discourses, and formulates a recontextualized discourse. However, the media provides a contested discourse in and of itself, as journalists mobilize information differently. As such, the media does not provide the public with a unilateral conception of an event.

Future Research

Future research could build directly from the comparative findings of this thesis by moving beyond document analysis to examine how actors within the domains themselves understand, negotiate, and respond to competing discourses surrounding ASD and criminal responsibility.

While this study identified clear divergences between advocacy, judicial, and media discourses, it could not determine the extent to which these domains are consciously reacting to one another. Thus, future research could incorporate semi-structured interviews with advocacy organizations, legal professionals such as judges, attorneys, defence counsels, and journalists in order to examine whether these actors are aware of competing discourses, and whether they intentionally attempt to counter, reshape, or reinforce them.

For instance, future research could examine how advocacy organizations respond to media descriptions of individuals with ASD that they might perceive as stigmatizing or sensationalized, and whether their public statements are strategically describes in order to counter dominant discourses surrounding ASD and violence. Similarly, future research could analyze whether legal actors are consciously navigating broader public and media discourses while remaining constrained by the legal framework of s.16.

Such research would allow for a deeper examination of how discourses are strategically negotiated across institutional contexts, further extending the findings of this thesis regarding the relationship between power and authority.

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Appendix

List of Themes

- Definitions of Autism
- Autistic People Are....
- Adjectives / Naming of Autism
- General Descriptors of Minassian Case
- Psychiatric Testimonies – *R.v. Minassian*
- Internet
- ASD as a Mitigating Factor / Concurrent Disorders
- Link between Autism and Violent Crime
- Risk
- Stigma
- Recommended Responses