IN THE MATTER OF PART XX.1 (MENTAL DISORDER) OF THE CRIMINAL CODE R.S.C. 1985 c. C-46, as amended 1991, c. 43

BRITISH COLUMBIA REVIEW BOARD

IN THE MATTER OF JOSEPH HENRY BEATTY

REASONS FOR DISPOSITION

On July 5, 1999, the British Columbia Review Board ("the Review Board") held a disposition hearing in respect of Joseph Henry Beatty ("the accused"). The hearing was held in the presence of L. McInnes (counsel for the accused), D. Duncan (counsel for the Attorney General of British Columbia) and R. Domingues (a representative of the Director, Adult Forensic Psychiatric Services ("the Director")). Because of time constraints, the Review Board, composed of E.A. Tollefson, Q.C. (Alternate Chairperson), Dr. R. Holland (Psychiatrist) and J. Budden McMurdo (Social Worker), reserved its decision. Following consideration of the evidence and submissions the Review Board unanimously agreed that appropriate disposition was one of detention in custody in the Forensic Psychiatric Institute ("FPI") at Port Coquitlam, and it made an order accordingly. These are the reasons for for that disposition.

Background

Criminal History

The July 5 hearing of the Review Board was in response to a decision of May 28, 1999, in which the Honourable Judge MacKenzie of the Provincial Court of British Columbia, found the accused not criminally responsible on account of mental disorder with respect to three charges contained in two informations both dated September 24, 1998. Information 21185 charged the accused with one count of Assault on Francis Bailey, contrary to section 266 of the Criminal Code; and Information 21186 charged the accused with one count of assault on Craig Allan Clarke, and one count of knowingly uttering a threat to cause Craig Allan Clarke death or bodily harm, contrary to sections 266 and 264.1(1)(a) respectively of the Criminal Code. The Court ordered that he be detained in custody pending the holding of a disposition hearing by the Review Board. The disposition materials indicate that the assault

on Mr. Bailey (a psychiatric nurse) occurred June 19, 1998, in the Cowichan District Hospital where Mr. Beatty had been taken for a psychiatric evaluation under the Mental Health Act (exhibit 14). The assault on and threat to Mr. Clarke occurred September 23, 1998 at Mr. Beatty's home where Mr. Clarke was a tenant, and it apparently involved the use of a crowbar by Mr. Beatty.

With regard to the assault on the nurse, Mr. Beatty told Dr. Wanis that the nurse had told him to "move it" and had given him a push. He responded by "hitting the nurse in the nuts and kicking him under the chin". He then jumped on him and grabbed him by the throat (exhibit 17, letter from Dr. Wanis to the Presiding Judge). According to the Report to Crown Counsel, while being escorted Mr. Beatty suddenly and without provocation "tackled Bailey to the floor and straddled his chest". He then put both his hands around Bailey's neck and "put his full weight into choking Bailey". In the incident, Bailey suffered bruising to his arm and swelling in his throat that made it hard to swallow for a few days, and was so traumatized that he did not return to work for some time (exhibit 14).

With regard the second victim, Mr. Beatty told Dr. Wanis that he felt he was being used by Mr. Clarke. Mr. Beatty had told Clarke to go and get groceries. He grabbed him by the neck, pushed him against a door and, striking the floor with a crowbar, told Clarke that this was what would happen if he did not get the groceries (exhibit 17, letter from Dr. Wanis to the Presiding Judge). According to the Report to Crown Counsel (exhibit 16), Clarke reported that he was tossed out of bed, and then Mr. Beatty punched him in the jaw, grabbed him by the throat and threatened him with a crowbar. Clarke sustained no injuries other than a sore jaw.

It should be noted that at the time the Court made its May 28 verdict and order, the accused was already in custody at FPI under the terms of the March 3, 1999 disposition order made by the Review Board. The disposition order was made pursuant to a verdict by the Provincial Court, January 19, 1999 that the accused was not criminally responsible on account of mental disorder with respect to charges of a sexual assault on Donna James, an assault on Constable Pamar and resisting Constable Pamar in the execution of his duties

as a peace officer, contrary to sections 271, 270(2) and 129(a) respectively of the Criminal Code. These charges arose out of an incident in which Mr. Beatty went next door to ask for a glass of milk, and having received it he told his neighbour, Donna James, that he wanted a kiss. He then grabbed her and struggled with her. When the police were called with respect to the assault, he in turn assaulted the police officer and resisted arrest. At the time he was apparently not complying with medication prescribed for him (exhibit 5).

Apart from the above two findings of not criminally responsible on account of mental disorder, Mr. Beatty has no Criminal Record; although he has apparently had a history of violent episodes and confrontational encounters with the police starting in 1997 under the Mental Health Act (exhibits 14 and 16).

Social and Psychiatric History

The following information is taken from the Social History report in the disposition materials (exhibit 3). Mr. Beatty was born in 1923. He was raised on a farm in Alberta only completing Grade 4 or 5 in school. He served for four years with the Canadian Army and subsequently worked mainly as a carpenter, a trade that he pursued until he retired. He was married and there were five children; however, early in 1998, after fifty-three years of marriage, his wife left him. While he reported that it had been a good marriage, family sources attribute her departure to Mr. Beatty having threatened to kill her. Information from his family indicates that he was verbally and physically abusive and controlling, and that he was sexually inappropriate with one of his daughters and one or more of his grandchildren. The five children of the marriage, have maintained little contact with him.

Mr. Beatty is described as a hard working person by his family physician, but in the latter half of 1997 he became manic and was twice admitted to hospital in Duncan. Just prior to his remand to FPI, he trashed his house and purchased two brand new vehicles within a week (both of which have been since repossessed by the banks). When he arrived at FPI, November 3, 1999, his mood was labile but predominantly agitated, his thoughts

disorganized and circumstantial. He had grandiose and religious delusions and was preoccupied with sexual themes (e.g., that his wife and daughters had been raped by his brother). Dr. W. Wanis concluded that the most likely diagnosis was Bipolar Affective Disorder, and placed him on antipsychotic and mood stabilizing medications (exhibit 4).

In mid-January, 1999, Mr. Beatty was administered the Personality Assessment Inventory (PAI-2) by Dr. Jordan Hanley, Psychologist (exhibit 8). The PAI-2 is a test "which is an objective measure of psychological, emotional, personality, and interpersonal functioning". Dr. Hanley's conclusion was that "The profile of results reveals no evidence of clinical psychopathology, although Mr. Beatty is currently experiencing stress and turmoil in his life." On the issue of whether Mr. Beatty was sexually deviant, Dr. Hanley concluded that "Based on the information provided by Mr. Beatty, he does not warrant a diagnosis of pedophilia at this time, and he essentially denies any experience with or interest in paraphiliac behaviour, ruling out sexual deviance generally." However, Dr. Hanley did comment that "it would be useful to have access to collateral information from apparent victims in order to gauge the degree to which such reports are reasonable and believable, and to address such issues as presence, frequency, and severity of sexually inappropriate behaviour over time."

Mr. Beatty's condition gradually settled in FPI, his speech became less pressured and his mood more cooperative; however, as his manic symptoms subsided they were replaced by symptoms of depression (exhibits 4 and 10). In a report prepared for this hearing, Dr. Wanis wrote that "It is evident that Mr. Beatty has settled in hospital. He has benefited from the structure offered to him in the hospital, hence, without the structured environment he is likely to decompensate . . . It is my opinion that if Mr. Beatty is released prematurely without a structured environment he will remain a high risk to reoffend, especially if he is non-compliant to his medications" (exhibit 21).

Evidence given at the hearing

In reply to questions, Mr. Domingues said that Mr. Beatty was now residing in Dogwood Unit [a relatively open ward], and was doing well and not causing any management

problems. He had not yet had any unescorted access to the community because he did not know the area: as he was seeking a placement in or near Victoria, the Treatment Team did not think that there was much point in giving him instructions regarding the local region. The Team was also concerned about his compliance with medication as he needs a lot of supervision in that regard. As to whether Mr. Beatty was still preoccupied with sexual thoughts, Mr. Domingues said that he had made some inappropriate comments, but generally was responding well. Allegations of Mr. Beatty stalking a woman in Alberta were not considered to be a problem as the woman was so far away.

Responding to Ms. McInnes, Mr. Domingues agreed that it came as a shock to Mr. Beatty when his wife suddenly left the matrimonial home, but he pointed out that Mr. Beatty had precipitated it. When asked whether the reason that Mr. Beatty was still at FPI was that it was hard to find a placement for him, Mr Domingues replied that Mr. Beatty still had delusions present; however, when Ms. McInnes suggested that the Treatment Team was more worried about him being a danger to himself rather than the community, Mr. Domingues replied "Yes".

Mr. Beatty gave evidence. When asked by his counsel whether he found the medications to be helpful, he replied "Absolutely", and he would continue taking them for he knows they do him good. He said that before he had the pills he used to cry all the time. Side effects were not bad, although he was not able to walk as much as he used to for they slowed him down physically. He said that he was at ease with himself: he forgives his wife, and if released would not have any contact with her or his former neighbours -- in any case the house was now sold.

In reply to other questions, Mr. Beatty said that he wanted to get out of FPI because he was subject to too many restrictions on his liberty -- he had no day passes and could not even wear clothes that he liked. He could not go back to Duncan, so he would like to go to Victoria to a Boarding Home, or preferably an independent living situation (he could buy a house). While he did not have any family there, he could make friends and felt that he would have the support of the Canadian Legion and his Church. Alcohol was not a temptation for him: he had abused it in the past, but not in recent years, and as for street

drugs, he had not used them and and was strongly opposed to them. When asked by Dr. Holland why he had assaulted the psychiatric nurse, he replied that the nurse was trying to push him around. When asked why he had gone off his medication after getting out of hospital in Duncan, he said that the directions on the prescription had been unclear, and when he had consulted a pharmacist he had been told that they were not the right pills for him, and the best thing that he could do with them was to flush them down the toilet. On the question of whether he had made inappropriate comments to females at FPI, he said that he realizes that the comments were improper, but it was not clear to him what is now considered to be inappropriate.

Submissions

On behalf of the Director, Mr. Domingues sought an order in the same terms as the existing order which permitted unescorted or unsupervised access to the community at the Director's discretion, and also visit leaves for up to 60 days for the purpose of assisting the accused in his reintegration into society. Ms. Duncan, on behalf of the Attorney General of British Columbia, supported the Director's position, saying that Mr. Beatty still needed the kind of structure in his life that the hospital provided, and that a placement in a Boarding Home with similar structure was not available at the present.

Ms. McInnes said that it is not appropriate to keep a person in custody just because there is no community placement for him. Mr. Beatty has acted responsibly on all occasions in FPI, and he has made dramatic progress. He recognizes that he needs the medication and is committed to continue taking it. The Hospital is recommending continued custody not because of the threat Mr. Beatty poses to the community but because of the concern for his personal health and safety. However, he lived peacefully for years in the community, but at the time of the index offence he was was under great stress due to wife's departure after a 53 year marriage. He has support to help him re-establish himself in the community. The recent decision of the Supreme Court of Canada in *Winko* makes it clear that the only basis for depriving a person of his liberty in these circumstances is where the Review Board finds that he poses a significant threat to the safety of the public, and there is no evidence of that in this case. Therefore, he should be granted an absolute discharge. If, on the other

hand, the Review Board finds that he is a significant threat to the safety of the public, then Mr. Beatty wants a conditional discharge and a placement into an appropriate setting in Victoria.

Considerations and Conclusions

Section 672.54 of the Criminal Code sets out the factors that must be taken into account by, and the dispositional options available to a court or Review Board:

> 672.54 Where a court or Review Board makes a disposition pursuant to subsection 672.45(2) or section 672.47, it shall, taking into consideration the need to protect the public from dangerous persons, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused, make one of the following dispositions that is the least onerous and least restrictive to the accused:
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> (a) where a verdict of not criminally responsible on account of mental disorder has been rendered in respect of the accused and, in the opinion of the court or Review Board, the accused is not a significant threat to the safety of the public, by order, direct that the accused be discharged absolutely;
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> (b) by order, direct that the accused be discharged subject to such conditions as the court or Review Board considers appropriate; or
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> (c) by order, direct that the accused be detained in custody in a hospital, subject to such conditions as the court or Review Board considers appropriate.

In *Winko v. The Director, Forensic Psychiatric Institute and the Attorney General of British Columbia*, decided by the Supreme Court of Canada June 17, 1999, the Court held (at paragraph 47) that:

> . . . the only constitutional basis for the criminal law restricting liberty of an NCR accused is the protection of the public from significant threats to its safety. . . It follows that if the court or Review Board fails to positively conclude, on the evidence, that the NCR offender poses a significant threat to the safety of the public, it must grant an absolute discharge.

At paragraph 57 the Court examined what constitutes a "significant threat" in the context of section 672.54. It concluded that:

> The threat must also be 'significant', both in the sense that there must be a real

> risk of physical or psychological harm occurring to individuals in the community and in the sense that this potential harm must be serious. A miniscule risk of a grave harm will not suffice. Similarly, a high risk of trivial harm will not meet the threshold.

Stated in the positive, it would seem to follow that in order to constitute a significant threat to the safety of the public a low (but more than "miniscule") risk of occurrence may suffice where the harm envisaged is very grave (e.g., homicide); on the other hand, a high risk of occurrence will be required where the harm envisaged is minor (but more than "trivial").

The Supreme Court noted at paragraph 58 that it may be extremely difficult even for experts to predict whether a person will offend in the future, and at paragraph 59 said:

> It may be surmised that is is precisely because of this difficulty and context-specificity that Parliament has seen fit to replace the categorical common law approach to the mentally ill accused with a flexible scheme that is capable of taking into account the specific circumstances of the individual NCR accused. Moreover, although it has allowed courts to make an initial determination, Parliament has created a system of specialized Review Boards charged with sensitively evaluating all the relevant factors on an ongoing basis and making, as best it can, an assessment of whether the NCR accused poses a significant threat to the safety of the public. This assessment is not a guarantee, but it is unrealistic to expect absolute certainty from a regime charged with evaluating the impact of individual, human factors on future events. As La Forest J. wrote in *R. v. Lyons*, [1987] 2 S.C.R. 309, at p. 364, in the context of the dangerous offender provisions of the *Code*:
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> > . . . the life of the law has not been logic; it has been experience. The criminal law must operate in a world governed by practical considerations rather than abstract logic and, as a matter of practicality, the most that can be established in a future context is a likelihood of certain events occurring.
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> Relying on the *Winko* decision, Ms. McInnes submitted that her client must be given an absolute discharge because there was no evidence that he posed a significant threat to the safety of the public. The Review Board is unable to accept this submission. While it

is true that in answering questions addressed to him by Ms. McInnes, Mr. Domingues did say that the Treatment Team's recommendation to keep Mr. Beatty in custody was based more on a concern about Mr. Beatty's welfare than about the safety of the public, this was by no means the only evidence that the Review Board had to consider in deciding upon the appropriate disposition. The index offences with respect to both victims involved significant assaultive behaviour, and the threat was one of using potentially deadly force. The Review Board considers that the index offences are closer to the "grave" than the "trivial" end of the spectrum of harm set out by the Supreme Court in paragraph 57 of the *Winko* decision (quoted in part above). Nor are these the only examples of Mr. Beatty's potential for violent behaviour, for the Board may also take into account the facts in his first NCRMD verdict, that was pronounced by the Provincial Court January 19, 1999. Therefore, it is the Board's opinion that there is no doubt that Mr. Beatty is capable of causing serious physical or psychological harm to others.

The evidence indicates that the above noted acts of aggression occurred when Mr. Beatty was in a psychotic state due to lack of proper medication. Mr. Beatty says that this time he would continue taking his medication because he knows it is good for him, but it is clear that in the past he has not felt constrained to comply with a prescribed medical regimen, or to consult his physician when he did not understand the directions on the prescription. According to his attending psychiatrist, Dr. W. Wanis, he still needs a structured environment to supervise his medications. Dr. Wanis expressed the opinion that "if Mr. Beatty is released prematurely without a structured environment, he will remain a high risk to reoffend, especially if he is non-compliant to his medications." (exhibit 21). Weighing the evidence, the Review Board had no difficulty reaching the unanimous opinion that there is an unacceptably high risk that without the kinds of restraints and supervision provided under the authority of Part XX.1 of the Criminal Code, Mr. Beatty would be a significant threat to the safety of the public, and therefore an absolute discharge is not the appropriate disposition to make at this time.

This decision left the Review Board with two options -- a conditional discharge into the

community or an order that Mr. Beatty remain in custody in a hospital subject to appropriate conditions. As indicated above, both the representative of the Director and the counsel for the Attorney General agreed that the existing custodial disposition was appropriate at this time, noting that it grants the Director the authority to permit unescorted and unsupervised access to the community, and visit leaves for the purpose of finding a suitable residential placement for him. In his evidence, Mr. Domingues had indicated that no placement was available at the present time, but Mr. Beatty's name had been placed on the waiting list for a bed in the Seven Oaks facility in Victoria. Ms. McInnes argued that if her client were not given an absolute discharge, then the Review Board should order a conditional discharge in an appropriate placement in Victoria. She said that it would be wrong to detain him in custody just because the Hospital had not found any appropriate residential placement.

While section 672.54 requires the Review Board to choose the disposition "that is the least onerous and least restrictive to the accused", and the evidence indicates that Mr. Beatty could be managed in a Boarding Home or other facility that provided the necessary structure and supervision, the section also requires the Board, in making a disposition, to take into consideration "the need to protect the public from dangerous persons, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused". The Review Board is satisfied on the basis of the evidence before it that in order to provide adequate protection for public safety and to provide necessary support in his reintegration into society, Mr. Beatty still requires a high degree of supervision and care, which is not available at this time in any supervised placement in the region where Mr. Beatty wants to go (Victoria). Under these circumstances, the Review Board must order his continued detention in the Hospital: *Brockville Psychiatric Hospital v. McGillis* (Ontario Court of Appeal, October 4, 1996).

The Review Board therefore concludes that the appropriate disposition at this time is a custody disposition in the same terms as the existing order of March 3, 1999. As pointed out by Mr. Domingues, this order provides the Director with the discretionary

authority to grant Mr. Beatty "unescorted or unsupervised access to the community depending on his mental condition, having regard to the risk the accused then poses to himself or others" and also to grant him visit leaves which may include overnight stays for a period not exceeding sixty (60) days for any one leave, for the purpose of assisting in his reintegration into society." Given the age of the accused (75), it is hoped that the Hospital will redouble its efforts to obtain a suitable, supervised visiting leave placement for him as soon as possible.

In order to facilitate a comprehensive consideration of both dispositions the "by-date" of this order will be the same as that of the March 3 disposition, and the next hearing will consider both sets of Index Offences.

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