



BRITISH COLUMBIA REVIEW BOARD

**IN THE MATTER OF PART XX.1 (Mental Disorder) OF THE CRIMINAL CODE
R.S.C. 1985 c. C-46, as amended S.C. 2005 c. 22**

**REASONS FOR DISPOSITION
IN THE MATTER OF**

C.F.S.

BAN ON PUBLICATION

**HELD AT: Forensic Psychiatric Hospital
Port Coquitlam, BC
13 February 2007**

**BEFORE: CHAIRPERSON: B. Walter
MEMBERS: Dr. R. Holland, psychiatrist
 F. Jeffries**

**APPEARANCES: ACCUSED/PATIENT: C.F.S.
ACCUSED/PATIENT COUNSEL: D. Nielsen
HOSPITAL/CLINIC: H. Snyders Dr. E. Wang (by telephone)
ATTORNEY GENERAL: L. Hillaby**

***Pursuant to s.672.501(1) of the Criminal Code, the British Columbia Review Board hereby prohibits the publication, broadcasting or other transmission of any information that could identify a victim or a witness under 18 years of age in this matter. Failure to comply with this order is an offence.**

***Publication of information identifying the young person or any minor victim or witness is prohibited pursuant to s.110 of the Youth Criminal Justice Act and s38 of the Young Offenders Act.**

[1] CHAIRPERSON: On February 13th, 2007 the British Columbia Review Board convened an annual hearing to review the disposition of C.F.S. who, for legal purposes, is considered a Young Person within the meaning of the former *Young Offenders Act (Canada)*. Although the hearing was completed on February 13th, the Review Board reserved its decision. Our disposition was subsequently issued on the date of hearing. The following are our reserved reasons for disposition.

[2] Between July and October of 1997, C.F.S. was charged with three counts of sexual assault contrary to Section 271 of the Criminal Code, as well as two counts of sexual touching of a minor under 14 years of age contrary to Section 151 of the Criminal Code. For the record, the offences involve both male and female children, two of whom were as young as four or six years of age, and another was a peer of C.F.S. In addition to these found offences there is evidence in this file, including at Exhibits 1 and 2, of historic concerns with respect to C.F.S.' inappropriate behaviour with children as young as four years of age. That history of concerns came to light in the course of investigating the index offences. The allegations unearthed in that investigation suggest at least a three-year history of abuse of young children (see Exhibit 7). His historic inappropriate touching of other children had in the past led to school suspensions.

[3] C.F.S. is a young man of First Nations heritage whose background suggests some history of residential, familial and school instability. C.F.S. suffers from a mental disability as well as language or communications problems due to a cleft palate. Psychological testing indicates that he functions at an IQ level ranging from the mid 40s to the mid 50s. A psychological assessment (Exhibit 14) dated December 10th, 1997 finds that the accused is profoundly mentally challenged; will likely be unable to function independently and will require some form of supervised group care or living indefinitely. For current purposes, we find it important and relevant to reflect comments contained in that same assessment which indicate that C.F.S. should not be viewed as a traditional "sex offender" but that his actions may indeed be those of a "hormonally-driven, mentally challenged youth":

"Given the circumstances of this youth, the offences which he has committed are in my view not those of a traditional "sex offender" per se, but rather the actions of a hormonally driven, mentally challenged youth who doesn't know any better and/or who has not been taught that these actions are inappropriate and socially unacceptable. It would be a mistake, in my opinion, to treat him solely as a sex offender, although any treatment facility that he attends would require a component

to address those issues. For mentally challenged persons, control over their sex drives is a common logistical problem, even well into their adult years.”

Further on, the assessment indicates that:

“His responses to MMPI-A questions (assisted by his mother), indicate a profoundly disturbed youth with a multitude of problems and a predisposition for moodiness, aggressivity and impulsivity. There are strong indications of poor anger control, dramatic academic shortcomings, and a high risk of "acting out" aggressively. He is a poor candidate for traditional insight-oriented therapy, and any success with him will likely be of a "behavioural" mode.”

The assessor indicates as well that notwithstanding this accused's tendency to act out inappropriately his behaviours are lacking in any predatory aspect and are more likely to be impulsive than the result of premeditated behaviour.

[4] This historic formulation and the lack of any more recent in-depth assessment of this accused's sexual functioning was of concern and interest to this panel of the Review Board and persuaded us to order an updated assessment of the accused's sexual functioning for the accused's next hearing. We also observed that in further psychiatric assessments provided for the Court as a foundation for this young person's NCRMD verdict, the accused, although considered to be functioning at a moderate mentally retarded level and although he tended to minimize it, was quite prepared to acknowledge his touching behaviour and was able to identify its victims as well as to recall its circumstances. In a further assessment at Exhibit 24 Dr. Postnikoff did attribute a diagnosis of pedophilia which further persuaded us to require an updated sexual assessment to determine whether this accused's sexual interests continue to focus on underage children.

[5] At Exhibit 25, filed in April of 1999 and prior to the accused's verdict and first appearance before the British Columbia Review Board, there is a suggestion that the accused's family, his primary source of support, supervision and care, intended to move to Whitehorse, Yukon Territory. On September 8th, 1999, the Provincial Court imposed a verdict of NCRMD and made a disposition releasing the accused on a number of conditions. Under such circumstances, the Review Board is of course required to convene a hearing within a span of 90 days. When the Review Board convened in Terrace on November 30th, 1999 the accused's family had already relocated to Whitehorse where supervision and programming were being provided by Youth Probation Services of the Yukon Territory. During the previous month the accused had also been referred to an

adult sex offenders program as well as vocational and educational programs in order to assess the accused's treatment needs and to develop program options for him.

[6] The accused's first hearing before the Review Board was conducted via simultaneous audio and video communication. The accused was conditionally discharged under circumstances which allowed him to reside with and under the supervision of his parents, including a requirement that he have no unsupervised access to young children. In rendering its disposition the Review Board also ordered the accused's transfer to the Yukon Territory and his appearance before the Yukon Review Board at an appropriate time pursuant to Section 672.86(3) of the Criminal Code.

[7] In the Yukon, in the months that followed his appearance before the B.C. Review Board, the accused was provided with supported independent living supervision, vocational and recreational programming, and was physically resident with his uncle in the proximity of and with the close supervision of his parents. Sex offender counselling was initiated early in January of 2000. In February of that year the accused first appeared before the Yukon Review Board and was again conditionally discharged.

[8] Even in those early times under the jurisdiction of the Yukon Review Board there were periodic concerns about the level and consistency, or lapses, in the supervision being provided by his family as well as the fact that the accused was missing appointments with service providers. In February of 2001 C.F.S.' caregiver died unexpectedly and around that same period of time there was reported an incident of inappropriate contact or touching involving a preschool-aged girl but charges were not pursued. In March of 2001 the accused was reportedly unsupervised in the company of younger children.

[9] The accused returned to live with his family. Prior to his next appearance before the Yukon Review Board a further psychological assessment was performed. That assessment is found at Exhibit 39 and is dated April 19th, 2001. In summary, it concludes that the accused remains at risk to re-offend children saying:

“There can be no doubt that “C” remains a high risk to engage in sexually offensive behaviour. He represents a risk to children of both sexes. He should not be alone with children or interact with them in situations in which impulsive sexual molestation can be undertaken. I consider it to be relatively unlikely (but not entirely implausible) that he would engage in sexual misconduct that entails premeditation or overt aggression. Moreover, he is cognizant of the fact that he should not molest children and as such, he is far less likely to offend in a setting in which such behaviour might be noted by others.”

[10] In addition to suggesting that consideration be given to the administration of anti-androgen medication to reduce the accused's sexual interest, the assessment also raises concerns about the ability of the family to adequately supervise C.F.S., saying:

“Indeed, it is unrealistic to believe that the adult family members would be able to provide intensive supervision of "C" on an indefinite, around-the-clock basis. Accordingly, if "C" is to remain in the family residence it would be useful to continue to have in place an individual such as an adult activity worker who can assist somewhat with the responsibilities of monitoring and activity whilst serving as a positive role model for "C." In addition, the family should continue to be provided with regularly scheduled respite that is of sufficient frequency, regularity and duration that the family does not become unduly burdened, tired and therefore lax in terms of supervision.”

[11] Despite those recommendations, in November of 2005 the accused was the subject of a report alleging assault with a weapon which resulted in charges. However, the accused was diverted from the criminal justice stream and was required to perform 25 hours of community service. In the period 2002 to 2003, plans were implemented to move the accused into a culturally-compatible or appropriate residential resource. Yet later in 2002 there were continuing concerns about lapses in the level of supervision provided to the accused, including on one occasion that the accused was found in the presence of young children (see Exhibit 46). There were also allegations that in November or December of 2002 the accused was found in possession of knives and pornography. In March of 2003 he was discovered in an intoxicated state. By the spring of 2003 there was indication that the family once again planned to return to reside in British Columbia.

[12] The psychologist, Dr. Williams, who is the author of the assessment at Exhibit 39, provided an update at Exhibit 59 which continued to endorse the accused's potential to pose a risk to children if unsupervised. In June of 2004 it was reported that the accused's family had relocated to British Columbia without prior consultation or approval of Yukon authorities. In that same month an arrest warrant for the accused was issued no doubt as a result of the family's sudden relocation. Finally, on December 15th, 2004 the Yukon Review Board held a hearing which had the effect of transferring the accused's case to the British Columbia Review Board ordering him to attend and submit to the board's jurisdiction in addition to attending for treatment and services on the Ministry of Children and Family and the Forensic Psychiatric Services Commission. The board's order of that date also continued to prohibit the accused's contact with children under 16 and further

required that he reside with his sister, Virginia, and be supervised by a responsible individual at all times.

[13] At the accused's first hearing before the British Columbia Review Board on January 14th, 2005 the accused's sister, Geraldine Trimble, who was subsequently designated as a party to the proceedings, indicated that back in B.C. the accused had begun to attend First Nations specific sex offender treatment and that he was working part-time in construction and volunteering in supervised adult circumstances. He had also applied to volunteer at the local SPCA. C.F.S.' sister undertook that the accused would not be in public without direct adult supervision and support and would especially not be left alone unsupervised with young children.

[14] Given the absence of any current psychiatric and risk assessment evidence, the B.C. Review Board on January 14, 2005 imposed a short disposition subject to conditions, on the understanding that the accused would reside with his sister in Vancouver. At that hearing it was also suggested that the accused's family would within a reasonably short period of time, or by February of 2005, once again relocate to the Chilliwack-Agassiz area. It was intended that the accused would then reside with his parents and a sister in that community. It therefore became important in terms of the Review Board's inquiries to have an understanding of the services and supports available in that location. In the period of time that followed the accused was also referred to a psychologist known as Dr. Johnson who specialized in the treatment and counselling of cognitively impaired sexual offenders.

[15] When the accused again appeared before the board he was considered at ongoing moderate to high risk but was again conditionally discharged under the supervision of a cooperative, supportive family. In the year that followed questions were raised with respect to the possibility of involving Community Living Services of BC in C.F.S.' activation and treatment. C.F.S. last appeared on March 2nd, 2006 at which time the board found that the level of supervision that the accused was being provided was inadequate to firmly eliminate the potential of risk to others. Therefore C.F.S. was retained under the board's jurisdiction. Again the board commented in the course of its reasons on the importance of involving Community Living Services of British Columbia in the accused's care and supervision. It is of course that disposition that we now convene to once again review.

[16] For this hearing we have newly-filed disposition information from case manager Snyders at Exhibit 82 and from C.F.S.' newly-assigned supervising forensic psychiatrist, Dr. Wang, at Exhibit 83. There is also a handwritten submission at Exhibit 84 from the accused's uncle and aunt at Kincolith, British Columbia. Mr. Snyders indicates that as of September the accused has been accepted into a Community Living BC workshop in Chilliwack. He attends there for seven hours on two days per week. He receives adult supervision and assistance with transportation to and from the program. His participation there has been reported as positive and without behavioural problems or concerns.

[17] The accused continued to see Dr. Johnson for sex offender counselling until that individual retired from practice in October 2006. Although Dr. Johnson recommends continuing with C.F.S.' treatment, unfortunately no replacement resource has been found. It is part of our disposition order resulting from this hearing that assertive efforts be made to reinstate sex offender treatment for this accused.

[18] Generally speaking, the accused has done well under the supervision of his family. Yet when the family attended funeral services in Kincolith in August of 2006, for a period of three weeks, the outpatient clinic received a report of a complaint of potentially inappropriate sexual behaviour from an RCMP constable in that community. Although such a report is under the circumstances concerning, law enforcement authorities apparently did not see fit to engage in a thorough investigation of the allegations and no charges ensued. However, they felt that it was sufficiently important to report the allegations to the treatment team. We are of course not in a position to make a finding given the dearth of evidence and the hearsay nature thereof of the allegations. We simply reflect again that such reports are of concern given this accused's interests and history. Both C.F.S. and his family deny the allegations. Nevertheless, it would appear that providing young C.F.S., who is now 25 years of age, with consistent supervision continues to be a challenge and a source of potential conflict.

[19] Generally speaking, C.F.S.' social life beyond the CLBC program tends to focus on his family. Although it would appear that Mr. Snyders does not spend lengthy periods of time with the accused, he believes that C.F.S. could probably not function independently. The family has been responsible in undertaking to discuss with C.F.S. concerns about his behaviour, appropriate boundaries, his sexuality and its potential consequences. It is also noted that the accused's travel from his home in Harrison to the Chilliwack program is a source of financial stress to the family as CLBC has not agreed to underwrite that

expense. According to Mr. Snyders, the family is receiving no tangible support from its First Nation community or from the Squamish Nations resources. It is also noted that the aforementioned trip to Kincolith occurred without any prior discussion with the supervising forensic outpatient treatment team.

[20] Dr. Wang took over the accused's care and treatment in March of 2006. He too repeats the positive reports resulting from the accused's attendance at the Chilliwack Community Living Services program. In conversation with Dr. Wang, the accused denies any inappropriate sexual interest or arousal involving minors. The accused is currently not receiving any medication. It is Dr. Wang's opinion that this accused remains sexually interested, including in younger females, which is not surprising considering he is now 25 but somewhat mentally delayed, and that the key to managing any risk that C.F.S. poses is to maintain his supervision and structured activation. Given the Kincolith allegation, Dr. Wang continues to consider this young man as a moderate risk to re-offend. He also believes that CLBC or MCFD should be more actively involved in providing services and programs for this accused.

[21] In recommending a further disposition of discharge subject to conditions, Dr. Wang believes that the accused's more complete reintegration and risk reduction:

“...would benefit from a formal, stepwise approach with a behavioural component toward further integration. He would also benefit from further structure and support in the form of individual psychology appointments as he was undertaking with Dr. Johnson, although C.F.S. would have difficulty retaining and generalizing information from these appointments.” (Exhibit 83)

Although we cannot but agree that this accused requires behavioural and structural interventions, we note that such interventions continue to fall to the family and to his brief sojourn two days a week at the CLBC program. Dr. Wang also indicates that the treatment team is actively exploring the type of psychological counselling previously provided by Dr. Johnson. Nevertheless, we have no insight into the type of formal, “stepwise approach” and behavioural programming that Dr. Wang believes C.F.S. needs to effect his further integration and, as Dr. Wang is the expert witness in this case, the Review Board has seen fit to require the development of a more detailed and descriptive report with respect to the required elements for such an approach to C.F.S.' reintegration.

[22] In addition to hearing from his treatment providers we also heard from the accused's mother in the absence of the attendance of Geraldine Trimble. D. S. cares for the accused on a daily basis and he is provided with occasional visits to his sister's home

in Vancouver. His sister, Geraldine, sometimes takes him to programs in connection with her work with the Squamish Nation. In terms of the unapproved trip to Kincolith, Mrs. S. indicates that Dr. Johnson gave permission for this trip in order that the family could attend funerals in their home community. She also indicated that the larger community is well aware of the accused's offending history. She undertook that she tries to ensure that her son is consistently supervised and sought to assure us in that regard by disclosing her own history as a victim of inappropriate sexual interference. She candidly says that she confronts sexual issues with her son as they arise. The family will also be gaining further support because their daughter, Virginia, and her husband are moving to the Chilliwack community as well. She denies that her son has used any alcohol or drugs and says that such substances are not found in their home. She described the nature and extent of the supervision provided by the family. She indicated that C.F.S. knows how to get to his Chilliwack programs by bus. She also feels that his family is able to supervise him as he has matured, and is able to be more disclosive and open. His family is more aware and vigilant than in times past.

[23] We were also told that the accused is provided with weekend visits to the home of his sister, Virginia, in Vancouver approximately twice per month. He has demonstrated no concerning or inappropriate behaviour during such visits. From C.F.S.' own evidence it was clear that, although he experiences some shame with respect to the index offences, he is not able to express empathy for its effect on his victims.

[24] The Review Board took time to consider the evidence and its disposition. While we agree with Mr. Hillaby that given the extraordinary and supportive efforts of his family an absolute discharge is a legitimate and not unrealistic consideration, there are as yet insufficiently developed plans, programs and services to effect the accused's firm reintegration into the community. At this point the accused continues to need consistent supervision. Failing such supervision and structure, his impulsivity, social immaturity and lack of judgment might still cause him to behave in a manner which subjects others to an unacceptable level of risk. At the same time we are hopeful that in the next reporting period this insightful and capable family can be provided with the resources it requires to support their son on an ongoing basis without ongoing forensic psychiatric intervention.

[25] On the basis of C.F.S.' own subtle, ongoing, low-level interests; disclosures to Dr. Johnson which support a certain amount of concern with respect to the possibility of inappropriate behaviour; his impaired social judgment due to his cognitive limitations; and

in the absence of expert evidence of his underlying biological or psychological sexual drives, we must err on the side of caution and retain our jurisdiction over the accused. The current vagueness or lack of concrete planning for future service provision to meet C.F.S.' needs also supports the status quo. Accordingly, we have determined to review this case further within a six-month period during which time we would ask that the Director of FPSC undertake assertive efforts to involve CLBC in service provision for this youth, in addition to providing this disposition and its reasons to appropriate officials with CLBC. As well, we have determined that the accused's next hearing ought to have evidence in the form of a comprehensive assessment of the accused's sexual functioning, as well as an update with respect to any services or treatment arrangements that are being marshaled with respect to such issues. We also require further details of what Dr. Wang has termed a 'formal and stepwise reintegration plan', as well as a detailed plan with respect to the provision of the services necessary in order to achieve that reintegration. Finally, we are ordering an updated and comprehensive forensic risk assessment with respect to this accused's potential threat to others in light of a more detailed treatment regime. We look forward to that information when we reconvene on or before September 1st, 2007.

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