

Case Name:

T H.H. (Re)

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

AND IN THE MATTER OF the Fitness and
Disposition Hearing of
H.H., A Young Person

[2007] B.C.R.B.D. No. 21

British Columbia Review Board
B. Walter (Chairperson), H. Parfitt and
N. Avison (Members)

Decision: January 23, 2007.
(17 paras.)

Appearances:

Accused/patient: H.H.

Accused/patient counsel: D. Nielsen.

Hospital/clinic: C. Raderecht, Dr. S. Mathias, K. LaReverend.

Attorney General: L. Hillaby.

¶ 1 CHAIRPERSON:-- On January 23rd, 2007 the British Columbia Review Board convened a second hearing in the matter of H.H., a young person within the meaning of the *Youth Criminal Justice Act of Canada*. H.H. is 18 years of age. She turns 19 on February 8th, 2007. H.H. was charged on November 30th with one count of assault. The victim of that assault was the accused's mother. On December 4th she was further charged with an assault which took place on a hospital ward in Vernon, British Columbia. Those two counts comprise the index offences in this matter.

¶ 2 At her first hearing which occurred on July 11th, 2006, it was learned on the basis of historic and collateral information, that H.H. has a history of severe psychotic illness since 2003, including recurrent

episodes and intermittent non-compliance with treatment. She also has a history of admissions to a variety of psychiatric facilities. She has been residentially unstable and has eloped from various placements and even inflicted harm on herself in so doing. Her non-compliance is usually followed by acute decompensation to serious psychosis. In 2005 she was assigned a diagnosis of treatment-resistant schizophrenia which Dr. Mathias has now refined to one of schizoaffective disorder. She has no documented history of substance abuse. Once ordered to Maples Adolescent Treatment Centre (MATC) it was found that she was untreated, unmedicated, actively psychotic and enormously disorganized. While at this facility she has also presented with seriously aggressive behaviour. Her illness was so acute and she was so disorganized and non-responsive that Dr. Janke, at Exhibit 3, found her very difficult to assess and considered her unfit to stand trial.

¶ 3 In a previous report at Exhibit 7 Dr. Quan explained that the accused's mental state fluctuates very rapidly from lucidity to overt psychosis. Her fitness fluctuates just as extremely and varies according to her state of mind. He considered her fragile but inconsistently fit to stand trial. At her first hearing on July 11th the accused was found unfit and a disposition of custody was imposed. The record of that proceeding reflects that the accused was disruptive to the point where she had to be removed from the hearing pursuant to Section 672.5(10) of the Criminal Code. She presented as much improved at this hearing.

¶ 4 The Director of MATC requested an early hearing on December 1, 2006, pursuant to Section 672.81(2), indicating that the mandate of this facility expires once a youth turns 19 years of age. We apprised the parties at the outset of today's hearing that the Board's interpretation of Ministerial Order 213 (2003), which designates this facility for Criminal Code purposes, has not been interpreted in a manner which requires the mandatory transfer of a youth on achieving a threshold age. That proposition was reiterated in the recent matter of *Heathcliff*, an order of this board.

¶ 5 In terms of clinical evidence adduced for the current hearing, we have new reports. At Exhibit 10, Ms. Raderecht provided a report dated January 4th, 2007, and Dr. Mathias provided a report at Exhibit 11 dated January 14th, 2007. At the last hearing the Review Board saw fit to designate Ms. Marjorie H., the accused's mother, as a party to these proceedings pursuant to Section 672.5(4). That designation remains effective. Ms. H., appearing on her own behalf, also submitted a bundle of papers and letters comprising some 17 pages in support of her daughter. That material was received at Exhibit 12 but was in terms of our outcome today and under the circumstances not specifically considered.

¶ 6 Ms. Raderecht, at Exhibit 10, writes that the accused has maintained her disorganized and psychotic presentation since the last hearing. She continues to require a high level of supervision to function. She provides an excellent chronology of incidents which indicates that between July 11th, 2006 and December 21st, 2006 the accused has demonstrated, almost daily, and certainly weekly behavioural issues; including by my count no less than 12 or 13 episodes of assaultive behaviour and several incidents of threatening behaviour, including on December 12th threatening a staff person with a razor; and on December 18th striking a staff person in the face. There have also been threats and at least one assault towards peers. On the basis of that behavioural presentation Ms. Raderecht believed, as of the writing of her report, that the accused continued to be unfit to stand trial.

¶ 7 In updating the accused's progress since her July hearing Dr. Mathias tells us that any progress has been slow and of a fluctuating nature. The accused continues to readily express persecutory delusions and indeed visual hallucinations. At times as well her behaviour continues to present as disorganized, bizarre, and even sexually disinhibited. Her fluctuations present on at least a daily basis and he too cites the numerous assaultive and threatening incidents which he indicates are more prevalent when she is more organized and less psychotic or preoccupied with her internal phenomena.

¶ 8 The accused has been tried on a variety of medications with questionable lasting benefit. He augments that information orally indicating that he has tried the accused on two long-acting depot formulations. Unfortunately the first of these required such high doses that the accused was afflicted with serious and debilitating side effects on the first trial. The second trial of Risperidone proved of limited effectiveness and so Dr. Mathias decided to revert to the administration of oral Loxapine. She has now been on oral Loxapine for about three weeks. She has complied consistently and as of recent days demonstrated a considerable improvement. Dr. Mathias is quite properly concerned that in the long term the administration of the Loxapine may give rise to serious side effects which would once again require a change of prescriptions.

¶ 9 Bringing matters to the point of focusing on the issue of fitness to stand trial, which it was determined we would deal with as a separate part of this hearing, Dr. Mathias indicated that the accused is able to respond appropriately when lucid. However, when psychotic she is unable to provide anything in the way of meaningful responses. Although he can initially glean some superficial answers, the accused soon disengages or becomes dismissive and distracted. As of the time of the writing of his report she remained inconsistent, fluctuating, and fixated on discharge and return home. He was also concerned that when her psychotic symptoms are at their most florid they interfere with her cognition, although he does not consider her to have an organic cognitive impairment or to be of low IQ per se.

¶ 10 Despite her past inability to deal with fitness issues, in the last week or so, and certainly since last Friday, January 19th, the accused has shown dramatic improvement in terms of her ability to concentrate, attend, and to be organized in her speech. Since that time she also presents as insightful regarding her symptoms, her medications and her treatment overall and was able to discuss her own plans for dealing with her legal circumstances. Dr. Mathias believes that she has since that time not only been able to respond to the instrumental aspects of the court process, but now believes that she would be able to instruct counsel in her own defence and to follow and pay attention to the proceedings. One would hope that these could be tailored and structured in a way that affords her breaks when her attention wanders or she becomes tangential.

¶ 11 H.H. has also been better able to discuss her actual illness. Nevertheless, she continues to show considerable fluctuation in mental state. Dr. Mathias believes that she is marginally fit to stand trial albeit she remains quite fragile and likely to decompensate under non-supervised circumstances. She certainly does continue to present with overt symptoms including visual and hallucinatory material. Her recent improvement is certainly in stark contrast with Dr. Mathias' report where at page 10 he

summarizes, "While at her very best her replies about the court process are marginally fit, they are inconsistent over time and incomplete at the best of times. She appears unable to effectively advise her counsel and remains in my opinion unfit to stand trial. She also remains certified under the *Mental Health Act of British Columbia*."

¶ 12 On the basis of Dr. Mathias' considerably revised impressions, the board proceeded to hear from H.H. herself. She was in a somewhat halting presentation, able to identify her charges including both events. She replied in answer to questions from her counsel that she has been in court before, that she has a lawyer to represent her on the assault charges and wishes to have that same lawyer represent her at a trial with respect to those charges. She was able to identify the available pleas as well as the consequences of findings of guilt or not guilty. She spontaneously offered some of her understandings of the trial process, although she was unable to provide a clear answer or understanding of the role of the Crown prosecutor. On re-examining Dr. Mathias he indicates that she has previously given more responsive answers with respect to that issue and he was somewhat surprised by her inability to identify that participant.

¶ 13 H.H. went on to tell us what an oath is, as well as the consequences of not telling the truth. She denies that she has a mental illness. She does not wish a verdict of NCRMD. She sees no benefit from her medications and in fact has concerns about their effectiveness and complained that they hurt her legs. Under questions from Mr. Hillaby, H.H. was able to tell us that she wishes to proceed to court. She was again able to identify the roles of witnesses and the judge and to allude to the concept of sentencing. At that point in the questioning H.H. became quite tangential and brought in issues with respect to prostitution and graduation from some undisclosed educational facility or program. She became quite distracted and fragile. Following her answers she was excused from the remainder of the fitness proceeding pursuant to Section 672.5(10) Criminal Code, on the understanding that she would be rejoining the hearing for the dispositional aspect.

¶ 14 Dr. Mathias was recalled. In his opinion in the course of this proceeding, including given the size of the audience as well as the length of the proceeding, his patient appeared slightly decompensated. At the best of times she is capable of demonstrating tangential thinking or behaviour. He characterized her presentation today as not atypical but he did expect further improvement in terms of focus, concentration and fitness to stand trial in the two weeks or so before the accused will in any event reappear in court.

¶ 15 We considered the submissions of all parties. Applying the test outlined by the Ontario Court of Appeal in the case of *Taylor*, we concluded that the accused first of all does not suffer from any cognitive limitations or impairments which would prevent her from being considered fit to stand trial. Furthermore, at least at the time of this hearing, her psychotic illness was under sufficient control that she was able, in answer to questions, to demonstrate at least a rudimentary and perhaps slightly better than rudimentary understanding of the court process, its consequences and an ability to instruct counsel. Given the rather straightforward nature of the charges, and employing a summary and somewhat tolerant procedure, we believe that this accused could meaningfully participate in a hearing in relation to these charges. We therefore were unanimously of the view that she now be considered fit to stand trial and

ought to be returned to court as quickly as possible to deal with these matters.

¶ 16 Having made that finding, the evidence is unequivocal and borne out by her behaviour in the course of this morning's hearing, that if the accused were released to uncertain circumstances without ongoing close supervision and medical monitoring, she would very quickly become unfit to stand trial. Therefore, rather than subject her to future protracted proceedings, we determined, pursuant to the authority given in Section 672.49(1) of the Criminal Code, to detain her under her current disposition, all terms and conditions of which remain in full force and effect until such time as she can be returned to court.

¶ 17 Editorially speaking, my colleagues wish me to put on the record that in our view this accused is, despite her age, quite fragile and vulnerable to adult exploitation. We would urge the parties to a trial, including the honourable trial, (should it see fit to order an assessment of her mental state at the time of the index offences), to consider ordering any future assessment take place in this youth facility and that any contemplation of this accused's transfer to Adult Forensic Psychiatric Services, or the Forensic Psychiatric Hospital, not be implemented before a further hearing of this tribunal so that we can more fully explore that issue.

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