Indexed as:

J.A.D. (Re)

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
AND IN THE MATTER OF the Disposition Hearing of J.A.D. (a young person)

[2000] B.C.R.B.D. No. 10

British Columbia Review Board
B. Walter, Chairperson, S. Lohrasbe, A. Marcus, J. Budden and F. Falzon, Members

January 18, 2000.
(101 paras.)

Appearances:

J.A.D. (a young person), accused/patient.
D. Nielsen, counsel for the accused/patient.
Dr. J. Quan, B. MacGregor, Director YFPS.
Lyle Hillaby, H. Hughes, for the Attorney General.
K. LeReverand, counsel for the Director - YFPS.

CHAIRPERSON:--

1.0 INTRODUCTION

¶ 1 On January 18, 2000, a five person panel of this Board convened to determine whether the accused ("J.A.D."), could and should be transferred from custody at the Maples Adolescent Treatment Centre ("the Maples") to custody at the Forensic Psychiatric Institute ("FPI"). Our Order was issued with reasons to follow. These are those reasons.

¶ 2 It was common ground between the parties, and we agree, that upon a proper application of s. 672.54 of the Criminal Code, as interpreted in Winko v. British Columbia, a custodial disposition continues to be appropriate for the accused. However, the parties diverged sharply on the question whether it is either lawful or desirable for the place of custody to change from the Maples to FPI.

¶ 3 The issue before us today was presaged at our October 15, 1999 hearing. At that hearing the

Director YFPS recommended that the accused's care should be transferred to the Forensic Psychiatric Institute upon his reaching 18 years of age in early February, 2000. The accused, who had expressed fears about such a move as early as 1996, opposed that recommendation: Ex. 15, p. 4. In order to ensure a proper airing of the legal and policy arguments he intended to raise through counsel, the Board issued a short custody order, and convened a one day hearing on January 18, 2000 to allow for written and oral submissions to be made before a five person Panel of the Board.

¶ 4 Part 2.0 of these reasons provides an overview of the accused's disposition history since the commission of the index offences. Part 3.0 of these reasons addresses the accused's legal objections to transfer.

2.0 PROCEDURAL HISTORY

¶ 5 On June 4, 1996, the accused, then a 14 year old youth, received a verdict of not criminally responsible by reason of mental disorder on 10 criminal counts: 7 counts of arson, and one count each of possession of a weapon, mischief, and possession of stolen property. The disturbing facts giving rise to the charges are recited in an Agreed Statement of Facts found at Exhibit 9, as elaborated upon in the reports to the Court. As noted in Mr. MacGregor's July, 1996 report: "Fortunately there were no injuries to any person but the dwelling house had occupants who could have been seriously injured or killed": Ex 11. Following the verdict of NCRMD, the accused was remanded to the Inpatient Assessment Unit at the Maples.

¶ 6 Expert evidence from Dr. P. Constance, provided to the Youth Court at the time of rendering its verdict, described a youth in the throes of an unascertained mental disorder who "warrants careful and fastidious psychiatric evaluation". Dr. Constance described his illness as follows:

> J.A.D. has a major psychiatric disorder at this time. He has a psychotic disorder involving mainly a disorder of his thinking processes. This would fall within the schizophrenia-like spectrum of disorders. He likely has had hallucinations in the past, i. e. hearing voices and seeing demons and currently is delusional in that he believes that the demons speak to him and protect him and give him courage, etc. He does have some features of a disorder of his mood and therefore he may suffer from a combination of a mood disorder and a thought disorder, i.e. Schizoaffective disorder.
> J.A.D. has a family history of mental disorder and from a fairly young age has had somewhat unusual and eccentric behaviour as well as thinking.
> J.A.D. has a psychotic disorder involving hallucinations and delusions. This was active at the time of his offences. J.A.D. cannot explain adequately why he engaged in his recent spate of fire setting. There was clearly no financial motive. He was acting under the influence of his demons: Ex. 7

¶ 7 While at the Maples, Dr. Quan was J.A.D.'s supervising psychiatrist. Dr. Quan, who gave evidence before us and who impressed us as an eminently fair, compassionate and objective witness,

assessed his mental state at the time of the index offences:

> Prior to the index offences, J.A.D. was not formally diagnosed with any mental disorder, but did have significant symptoms. He has been described as isolative and friendless since early childhood, fearful and distrustful of others [Ex. 16, p. 3: By October, 1995, he lost his step-father, an in-tact family and then both grandparents, all while experiencing chronic social alienation at school and in the community].....In March 1996 following a hospitalization, [he] reacted to his mother cleaning up his bedroom in a catastrophic manner [Ex. 16, p. 2" she had decorated it in a childish fashion]. He refused to return to his room and moved into the barn. Three weeks later in April 1996 [J.A.D.] began his arson....
>
> ...J.A.D. has had progressively worsening problems of fearfulness and mistrust of others, escalating to delusional thinking and arson, motivated by delusions and hallucinations. (He acted on the orders of demons he saw and conversed with and felt under the influence of). This progressive development of paranoia, accompanied by hallucinations and delusions, but maintenance of clear consciousness and the absence of a normal thought disorder (no derailment, loosening of associations, tangentiality or word salad) meet the diagnostic criteria for Paranoid Schizophrenia....
>
> It is noted that there is no evidence of alcohol or drug use, or brain trauma of disease complicating the context of the index offence. J.A.D's mental status has deteriorated slowly throughout his childhood especially worsening in the 8-12 months prior to the index offence. By the time he had executed his arsons, he was profoundly delusional and hallucinating, and had no insight into the reality and social impact of his actions. He believes he acted under the influence of demons who tormented and intimidated him, and continues to assert that he had to obey them or suffer more torment and harassment from them.
>
> Another example of his loss of reality testing is his account of torturing a rabbit, under orders from the demons "to see blood". He hung the rabbit, cut off its limbs and stuffed these into his mouth. He then eviscerated the rabbit and examined its entrails, observing the beating heart. He finally burned the rabbit. Another time, J.A.D. used syringes (stolen from the hospital during his hospitalization) to drain blood from horses. He subsequently sprayed the blood into a stream and into trees to "see blood" under the urgings of demons. He recounts these bizarre deeds in a matter-of-fact manner and when asked about his feeling towards these acts, he shrugs or expresses a bland acceptance of them as being logical and appropriate behaviour....

He has also expressed anger at the Pentecostal Church in Armstrong, for "putting spirits into him" and he has asserted his intention to burn that church down when he returns to the community: Ex. 12

¶ 8 The accused's first Review Board hearing, on July 12, 1996, resulted in a disposition of custody for six months.

¶ 9 In December, 1996, Mr. MacGregor, social worker, summarized the accused's management during the July - December, 1996 period this way: "In spite of all the foregoing, most of the time [he] manages to be a fairly compliant youth who is not a major management problem on the unit. It is clear, however, that [he remains impulsive, prone to acting out in a serious manner and he continues to carry a grudge and be vindictive.": Ex 15. That report provide a list of serious safety concerns - including AWOLS, fire-setting and threats of fire-setting, destruction of property, threatening staff with a butter knife, hitting a staff member in the head with a plate (resulting in an assault charge) and sniffing solvents, the latter being something he disclosed as also occurring prior to the index offences but which reports were viewed with some skepticism by the Treatment Team: Ex. 15, p. 7; Ex. 16, p. 4. Dr. Quan's December, 1996 report articulates the basis for a revised operating diagnosis of Borderline Personality Disorder with Schizotypal traits: Ex 16.

¶ 10 The Review Board held its second hearing on December 13, 1996. In issuing a second custody disposition of six months, the Board noted his volatile behaviour and his use of inhalants, and expressed concerns about his mother's involvement as a complicating factor in his treatment.

¶ 11 Following this hearing, and prior to his June 5, 1997 Review Board hearing, J.A.D made disclosures regarding historic sexual abuse. During that period he made one unauthorized absence attempt (described at Exhibits 19 and 21), but was also given the opportunity for home visits, which appeared be successful.

¶ 12 By May, 1997, now age 15, the Treatment Team described him as having shown gradual and continual improvement, much better impulse control, freedom from psychosis and readiness for a conditional discharge order. The diagnostic difficulty presented by this case is well illustrated by the fact that as of May, 1997, the Axis I diagnosis is listed as "No current diagnosis (Paranoid Schizophreniform Psychosis in Remission) while Axis II identifies "Borderline and Schizotypal Personality Traits". Anti-psychotic medication had been discontinued. On June 5, 1997, the Board issued a one year conditional discharge order, as reflecting the disposition suggested by all the parties.

¶ 13 The Board convened again in May, 1998. The accused was now 16 years old. In advance of that hearing, the Board had the benefit of reports from his community treatment team for the past year, including Dr. Friesen, who observed a deterioration in the accused's mental state in the fall of 1997, resulting in the prescription of anti-psychotic medication by November, 1997. The accused refused to take the medication, and it was later suspected that his deterioration might have been related to marijuana use at about that time. He was thereafter followed closely by the Treatment Team who noted

an improvement in his functioning 1998. In his May 6, 1998 report, Dr. Friesen concluded:

> I see him at serious risk to decompensate if he returns to using drugs. Given the course over the last 8 months, there is some risk to decompensate under stress as well. [J.A. D.], however, is protected by a much healthier relationship with his family, and clearly not had any major type of infractions both with his curfew and expectations of the Court over the last year while living in the community with his family. He has reintegrated back into the school system, and seems to have made a healthy adjustment there. All this has been done with only minimal follow-up, and no active pharmacological treatment.: Ex. 23, p. 6

¶ 14 On May 27, 1998 the Review Board issued a conditional discharge order. In issuing this disposition as being least intrusive on the liberty of the accused, the Board nonetheless referred to five areas in the testimony of the accused which gave the Board real concern that both he and his mother were "normalizing" his recent symptoms and isolative behavior:

> First, he admitted that he had abused marijuana prior to his decompensation and brief hospitalization in November, 1997, which came as a surprise to the outpatient treatment team. Secondly, on three occasions he stated his reliance on his mother to take action should she observe changes in his mental state, which contrasts significantly with his mother's "I leave it up to [J.A.D.]" attitude noted earlier in these reasons. Thirdly, he stated that he preferred to rely on the "coping exercises" learned from Ms. Schimpl rather than take the antipsychotic medication as advised by Dr. Friesen. "I'm pretty phobic about antipsychotic medication", he added. Fourthly, he stated that he did not see the need to continue to seek help from mental health professionals: "I don't see the need. My actions speak for themselves. There is no need for constant checkups - my family can keep an eye on me". Finally, his interpretation of the index offences showed an unacceptable level of insight. He told the Review Board he had been "in control" of his thinking at the time of the offences, and although he admitted to having delusions at that time, he could not offer any explanation as to why they occurred, but thought that they may have been caused by "church-generated hysteria".: Ex. 26, .p. 3

¶ 15 The Board closed its May, 1998 reasons by encouraging close supervision, including the use of drug screens.

¶ 16 The reports for the next 12 months showed improved mental and social functioning overall, but with two very troubling exceptions which came to light shortly after his 17th birthday. The first is described as follows by Dr. Friesen:

> I am writing to inform the Board that [J.A.D.] has been charged with Break and Enter and Theft on February 16, 1998 was involved in a shoplifting incident one week later, where no charges were forthcoming.

> [He] is prepared to plead guilty to the first charge, and on our assessment on March 3, 1999, it was clear that he was not psychotic and the incident appeared to be the result of his association with his co-accused. Our concern is that the theft was of two high powered rifles, along with ammunition. It is clear from our assessment that they had no specific plans to use the rifles in any threatening manner, but rather as a source of sport and adventure.: Ex. 27, p. 1

¶ 17 The accused did in fact plead guilty to these charges. The background to these charges is set out in an report to Crown Counsel: Ex. 33. They were disposed of under the Young Offenders Act, and resulted in an 18 month probation order.

¶ 18 The second exception is described in Nurse Bosma's April 27, 1999 report:

> On March 31, 1999 the writer received a telephone call from [a social worker] from Vernon. [The social worker] stated co-accused's foster mother had found very explicit drawings i.e., pictures of demons with very large penis ejaculating on police officers' cars, dynamite on "pigs", burning people with an ax held over their heads, in a scrap book in the co-accused's bedroom. [The co-accused] stated that [J.A.D.] had drawn the majority of these pictures. During a meeting with Dr. Friesen, [J.A.D.] and the writer, these pictures were brought to [J.A.D.'s] attention. [He] did not deny that he had drawn some of them. He identified the pictures he had drawn and the pictures his co-accused had drawn stating "we did some of them together". [He] described these drawings as "art" an "expression of emotion and that's all they are".: Ex 28, p. 2

¶ 19 The accused's mother, who knew about the drawings before they were brought to the attention of the Treatment Team, recalled how he had drawn pictures of hideous monsters and demons prior to the index offences, with the difference that he was much more open about his drawings previously. When Dr. Friesen questioned him about the drawings, he "very reluctantly acknowledged extremely violent thoughts which he attributes to early childhood trauma and 'genetics'. He refused to divulge what these violent thoughts were, although he states that much of his isolation and withdrawal has been an attempt to deal with them in his own personalized manner": Ex. 29, p. 3.

¶ 20 On May 11, 1999, the Review Board granted the accused a further one year conditional discharge order. In those reasons the Board relied on the accused's representation that if "clearly" advised to take a small dose of antipsychotic medication he would comply. It noted his assurance that he would never act on his violent thoughts. It commented on the "glimmer" of hope for therapeutic rapport. In concurring reasons, Dr. Marcus said:

> ...I have agreed with my colleagues about you having a conditional discharge, but there are some serious concerns that I have that I'd like to express. The first is that you have a good use of language, and that I that you can hide behind language and you can hide with a pseudo understanding of what's going on because you have learned the psychiatric chat. You've learned the mental health lingo and you give it back to the team and therefore they get to be more comfortable with you as you give back their chat. I think one of the reasons I'm concerned about you being in the community is the fact that, while in the community you can keep your secret life totally intact, you don't have to share it, and I'm concerned about the danger contained within that secret life that you don't share. I'd like to see in the next few months that you are willing to open the door a bit more because it's in that door where you are dangerous and where that danger might spill out to others in the community.: Ex. 31, p. 8

¶ 21 Regrettably, and despite the Review Board order and Court imposed probation order, these words were prophetic. Just over two months later - on July 30, 1999, when he was 17 years, 6 months old - the accused committed two additional acts of break and enter, described as follows at Exhibit 36:

> More recently, he has been apprehended on two further break and enter charges, again involving the stealing and possession of weapons. When the RCMP search his home, they also found, in his bedroom, a number of items used in constructing bombs.

¶ 22 No co-accused is referred to in respect of these charges. As a result of these charges, an application was granted by the Court authorizing his return to Burnaby in custody for a psychiatric assessment. He was placed in custody at the Inpatient Assessment Unit at the Maples.

¶ 23 Further testimony to the complexity of this accused's condition is disclosed by the existence of two psychiatric reports prepared for the Court within four days of one another. The first, dated August 26, 1999 (Ex. 41), confirms that the accused is a person who presents a high risk to the community, but states that, at least during his stay in IAU, he did not present in any overtly psychotic state, although he certainly was "guarded" about his inner thoughts and feelings. However, as noted by Dr. Gingell only four days later:

> Our difficulty has arisen from changes in [J.A.D.'s] mental state during this remand. Initially, [he] presented as being more personality disordered with antisocial, psychopathic and schizotypal features. However, about 11 days ago ... [he] became acutely psychotic for a period of a week and was unfit to continue with this disposition. By Tuesday the 24th he was certified as mentally ill and Dr. Constance said he continued to be acutely psychotic on Thursday the 26th. He agreed to take anti-psychotic medication on Thursday. And Dr. Constance informs me that since Friday the 27th he seems to have settled down and is presenting himself as being more in control and less delusional.: Ex. 43, p. 2

¶ 24 Dr. Constance's August 30, 1999 report acknowledged this change and also noted significant disclosures by the accused about his inner life. That report describes the following:

> anger and fixation on being abused by staff, talking about government conspiracies, his food being drugged and drugs in the ventilation system; he stated that he would "hurt the BYCC by any means possible if the perceived abuse did not stop";
> his theft of guns were the result of an obsessional ideation. He stole them for "self-empowerment"; when asked whether he would use them or what might prompt him to use them he stated "when people were trying to screw me around"; he also stated he had no intention to hurt anyone and used them for target practice in the bush;
> when asked how he would fight the government or the system, he stated: "by terrorizing by whatever possible"; when asked how he would get people to stop supporting the system he stated: "by arsons... by phoning in bomb threats, by poisoning the food in grocery stores, by acts that really get peoples' attention", such as "explosions";
> he admitted to making and testing home-made explosives (over 200 times); he felt that "if he had to", he would use them against police stations or gas stations: Ex. 42

¶ 25 Dr. Gingell on August 30, 1999 notes further disclosures made August 20th:

> the continued existence of demonic, command visual hallucinations, which are extremely real and appear external of the accused;
> the use of explosive devices is part of his mission to destroy the system, which mission gives him purpose in life;
> he had not been honest with the psychiatrist about his thoughts and "all I have to do is convince the Review Board and one I'm out in society I'm back to my mission"; "for the longest time I wanted to bring a gun into the Review Board and shoot them all down";
> after commenting how no one took him seriously, he stated:
> "prob no one took Timothy McVie seriously before he blew
> up the government building." [J.A.D.] continued to be
> quite angry and agitated. He said "all the staff laugh
> at me, it's absolutely maddening .... What do I have to
> do? Kill a thousand people to be taken seriously?"
> the accused commented on the duality between his usual public presentation and how he truly thinks and feels: he stated he "plays the game, going through the Maples" to show the right "behavior and words" to those who made decisions about him so that he can "continue my mission".: Ex. 43

Dr. Constance notes:

> ... an exact diagnosis is not that crucial at this time. Clearly, [J.A.D.] requires a lengthy period of institutional care. He requires ongoing, long term antipsychotic medication. If [he] is non-compliant with oral medication, consideration may be given to giving him depo medication. [He] remains a significant risk to others and possibly to himself as, in times of stress, he decompensates and becomes floridly paranoid with marked destructive thoughts. If he remains in the community unsupervised, it will only be a matter of time before institutions or actual persons become a target of [his] beliefs.: Ex. 42

¶ 26 At page 11 of his report, Dr. Gingell concludes:

> J.A.D. presents with a psychotic disorder - paranoid schizophrenia - that has been present in a [sic] underlying or remission form since the age of thirteen or fourteen. He also presents with other elements of mental disorders including a reactive affective disorder -depression - that makes him dysphoric, irritable and suicidal. Independent to these but in conjunction with these problems, J.A.D. presents with a severe mixed personality disorder with a number of traits. His personality disorder has elements of borderline Schizotypal antisocial and psychopathic characteristics.
> All in all, this tenders J.A.D. as being an extremely disturbed young man who is angry, hostile, suspicious and extremely resistant to being helped. He is clearly a danger to others and has made specific and vague threats to staff in general, the Review Board in general, and to anyone who is seen to be agents of the government or "system". He is extremely fixed in his views. Given his history of arson, his interest in chemicals, the allegations that chemicals were found in his room that could be used to make explosive devices, his interest and identification with Timothy McVie and his interest in possessing firearms despite any Court sanctions, make him extremely dangerous. He refuses psychiatric e.g. (medication) treatment in the community and he is unable to conform his behaviour to the rules and dictates of society. He has no wish to be part of society and sees it as his behaviour to the rules and dictates of society. He has no wish to be part of society and sees it as his only mission if life to destroy aspects of society with any means possible. He is untreatable in the community and a specific extreme danger to others.
> I also believe he becomes more of a danger to himself and is at high risk of suicide when he is treated with medication and his delusional purpose for his life recedes. It is noted in a social history that his father committed suicide in his twenties. He should be carefully assessed and monitored for the suicidal
> thoughts and actions.....

> J.A.D. needs to be in a highly structured and very secure setting. He is a danger to himself given that he reported that he tried to commit suicide when he was on anti-psychotics in the past. He is also an extreme danger to others given his vague and specific threats. His florid psychotic state and frank delusional beliefs all focus on his specific mission to destroy others. If he refuses to take medication there is a very real risk that he will become clearly psychotic again with the consequence of being very dangerous.
> ...These beliefs have continued unchanged since he was fourteen and he continues to be dangerous and act out in the community despite Court and Review Board sanctions. I suspect he will need secure and close monitoring for a very long time...: Ex. 43

¶ 27 Exhibit 44 is Dr. Janke's September 14, 1999 assessment provided for the Court in respect of J. A.D's more recent index offences:

> ...J.A.D.. represents a serious risk to the community. It is my opinion that not only is he capable of committing extremely dangerous acts, he is likely to do so if he remains in the community. At the present time, it is my opinion that J.A.D.. should remain in a secure setting and release to the community should be only considered after his symptomatology has clearly been controlled with appropriate treatment. I would caution those involved in his care that his intelligence and his ability to understand the legal process make it quite possible for him to be misleading to those charged with his care such that he may appear to be suitable for release when in fact this is not the case.: Ex. 44

¶ 28 On September 23rd, 1999, at the age of 17 years, 8 months, the Provincial Court issued NCRMD verdicts in respect of the new index offences.

¶ 29 On October 15, 1999, at his sixth hearing before this Board, the Board learned that J.A.D. had been recommitted to the Crossroads program at MATC (Maples) on September 27, 1999, where his behaviour was volatile including both homicidal and suicidal ideations. Dr. Quan told the Board that the accused was "unequivocally" dangerous to both himself and others. He was intending to initiate J.A.D. on a trial of Ritalin with the accused's cooperation. The Board saw fit to comment on information that J. A.D's mother, a party to the proceeding, was not viewed as an ally in her son's treatment: Ex. 53.

¶ 30 As noted in Part I.0 of these reasons, the accused's pending 18th birthday resulted in the Director's strong recommendation in favour of his transfer to the Adult Forensic Psychiatric Service (AFPS) at that time: Exs. 49, 50. J.A.D's counsel informed the Board that she wished to raise legal or constitutional arguments against such a transfer. Therefore a short order, reviewable by February 4, 2000, was imposed and arrangements were made to provide convene a further full hearing as well as to obtain and provide all parties with written arguments on the legal issues.

3.0 JURISDICTION TO TRANSFER AN 18 YEAR OLD NCRMD ACCUSED TO THE FORENSIC PSYCHIATRIC INSTITUTE

¶ 31 The arguments arising under this heading will be described in the next part of these reasons. To properly understand those arguments, however, it will first be important to review the legislative framework.

A. Legislative framework respecting custody dispositions

(i) Criminal Code

¶ 32 Section 672.54(c) of the Criminal Code provides that where the board issues a custody disposition in respect of an accused person, that order shall "direct that the accused be detained in custody in a hospital." "Hospital" is defined in s. 672.1 of the Criminal Code as follows:

> "hospital" means a place in a province that is designated by the Minister of Health for the province for the custody, treatment or assessment of an accused in respect of whom an assessment order, a disposition or placement decision is made.

(ii) Young Offenders Act

¶ 33 Section 13.2(1) of the Young Offenders Act ("YOA") provides as follows:

> 13.2 (1) Except to the extent that they are inconsistent with or excluded by this Act, section 16 and Part XX.1 of the Criminal Code, except sections 672.65 and 672.66, apply, with such modifications as the circumstances require, in respect of proceedings under this Act in relation to offences alleged to have been committed by young persons.

¶ 34 Section 13.2(11) of the YOA states:

> 13.2(11) A reference in Part XX.1 of the Criminal Code to a hospital in a province shall be construed as a reference to a hospital designated by the Minister of Health of the province for the custody, treatment or assessment of young persons.

¶ 35 "Young person" is defined in s. 2(1) of the YOA:

> 2(1) "young person" means a person who is or, in the absence of evidence to the contrary, appears to be twelve years of age or more, but under the age of 18 years of age and, where the context requires, includes any person who is charged under this Act with having committed an offence while he was a young person or is found guilty of an offence under this Act.

¶ 36 From these Criminal Code and YOA provisions, a number of preliminary observations readily arise.

¶ 37 First, Parliament has conferred upon provincial Ministers of Health the responsibility for designating hospitals for the lawful custody and treatment of NCR accused persons, including NCR young persons. Manifestly, the task of designating a hospital is a broad administrative discretion, one which is necessarily informed by the historical development, resources and other realities within the provincial health care system from time to time.

¶ 38 Second, sections 13.2(11) of the YOA and s. 672.1 of the Criminal Code must be read together. Nothing in these provisions prevents the Minister from, in his discretion, designating the same hospital as being suitable for the custody and treatment of young persons and adults. Section 13.2(11) does not insist on exclusivity. It is aimed at, and only at, ensuring that the Minister designates hospitals for the custody of young persons. Consistent with the broad discretion conferred by these provisions, the details surrounding the appropriate division of space, labour and programs within or between hospitals is clearly left to individual provinces to determine according to medical and planning expertise and available resources.

¶ 39 Third, neither the Criminal Code nor the YOA prescribes a particular method for the Minister of Health to "designate" a hospital. In British Columbia, however, such designation has traditionally been announced by way of "Ministerial Order".

(iii) Ministerial Order M427

¶ 40 Ministerial Order M427 was made the 16th day of August, 1995. It reads as follows:

> I, Paul Ramsay, Minister of Health and Minister Responsible for Seniors, order that the designation made by Minister's order number M12, dated February 17, 1992, be rescinded, and order that:
>
> (1) The following be designated as hospitals for the custody, treatment or assessment of young persons under the Young Offenders Act, R.S.C. 1985, c. Y-1, as amended:

Inpatient Assessment Unit, Youth Forensic Psychiatric Service, Burnaby
Maples Adolescent Treatment Centre, Burnaby
Burnaby Outpatient Clinic, Forensic Psychiatric Services
Vancouver Outpatient Clinic, Forensic Psychiatric Services
Victoria Outpatient Clinic, Forensic Psychiatric Services
Kamloops Outpatient Clinic, Forensic Psychiatric Services
Kelowna Outpatient Clinic, Forensic Psychiatric Services
Prince George Outpatient Clinic, Forensic Psychiatric Services
Nanaimo Outpatient Clinic, Forensic Psychiatric Services
Surrey / Fraser Valley Outpatient Clinic, Forensic Psychiatric Services

(2) The following be designated as hospitals for the custody, treatment or assessment of accused persons in respect of whom an assessment order, a disposition or a placement decision is made under the Criminal Code, R.S.C. 1985, c. c-46, as amended, and of those individuals described in subsection (1) at any time after they have reached the age of 18 years:

Forensic Psychiatric Institute, Port Coquitlam
Regional Psychiatric Centre, Abbotsford
Burnaby Outpatient Clinic, Forensic Psychiatric Services
Vancouver Outpatient Clinic, Forensic Psychiatric Services
Victoria Outpatient Clinic, Forensic Psychiatric Services
Kamloops Outpatient Clinic, Forensic Psychiatric Services
Kelowna Outpatient Clinic, Forensic Psychiatric Services
Prince George Outpatient Clinic, Forensic Psychiatric Services
Nanaimo Outpatient Clinic, Forensic Psychiatric Services
Surrey / Fraser Valley Outpatient Clinic, Forensic

Psychiatric Services

¶ 41 As will be seen, the Minister has, in his discretion, designated all the Outpatient Clinics as being suitable for the custody, treatment or assessment all accused persons, including young persons.

¶ 42 The obvious differences between sections (1) and (2) are that the Burnaby Inpatient Assessment Unit and the Maples designated for the custody and treatment of "young persons under the Young Offenders Act", while FPI and Abbotsford are expressly made applicable to Criminal Code accused and to the individuals described in subsection (1) "at any time after they have reached the age of 18 years".

B. Notice of Constitutional Question

¶ 43 On December 15, 1999, the accused filed Notice of Constitutional Question seeking the following relief:

> That the words "and those individuals described in (1) above shall have reached the age of 18 years" contained in Ministerial Order M427 ...are invalid on the grounds:
>
> 1) It is ultra vires the Criminal Code and the Young Offenders Act.
> 2) It is contrary to section 15 of the Charter as being discrimination based on age or mental disability.

¶ 44 We observe that the relevant words contained in order M427 are different from the words quoted in the Notice of Constitutional Question.

C. Consistency with parent legislation

(i) Argument and analysis

¶ 45 In subsequent written and oral argument, the position of the accused on this point was expressed as follows:

> The Ministerial Order automatically allows the transfer of a young person suffering from a mental disorder to an adult facility solely on the criteria of attaining eighteen years of age. It is submitted that the Review Board ought to follow the paramount federal legislation and apply the Charter in interpreting whether the Order makes a transfer mandatory on reaching this age. An automatic transfer is inconsistent with s. 24.5(1) and 24.2(4) of the YOA as well as s. 13.2(1) which indicates that the Review Board must take into consideration the age and special needs of a young person.

> ...the words in issue ... are ultra vires the relevant legislation and ought to be struck from the Ministerial Order, if they are to be interpreted as allowing an automatic transfer to an adult facility. The hospital designated for a young person must be one that provides for the custody, treatment or assessment or young persons, pursuant to s. 13.2(11) of the YOA. Further, a young person must be held separate and apart from any adult held in custody. The Forensic Psychiatric Institute does not meet this criteria.

¶ 46 The accused argues that the Ministerial Order automatically requires the transfer of an 18 year old accused to an "adult" facility, and that this automatic transfer is inconsistent with the accused's lifelong status as a "young person" under the YOA for the purpose of the index offences. The accused argues further, regardless of his actual age, this continuing status as a "young person" entitles him to various ongoing protections conferred by the YOA while he remains under Review Board jurisdiction, including consideration of his age and special needs in any disposition [s. 13.2(6)], placement at all times in a hospital designated for young persons [s. 13.2(11)], protection from being integrated in any adult facility like FPI without a formal transfer order [ss. 24.2(4); 24.5] and, even after transfer, ongoing legal responsibility by the Youth Director rather than the Adult Director: s. 2(1), "provincial director".

¶ 47 The Attorney General states that the Order is entirely permissive, and authorizes the Board to order the 18 year old applicant to either a "section 1" hospital or a "section 2" hospital in its discretion. This submission, which includes reference to the YOA, implies that the accused continues to be a "young person" even after the age of 18. The Director YFPS, on the other hand, submits that the accused is no longer a "young person" after turning 18. The Director does not, however, take issue with the Attorney General's submission regarding the proper interpretation of the Ministerial Order.

¶ 48 In our opinion, a proper construction of the Ministerial Order can only be concluded after considering the YOA and Criminal Code provisions from which it derives. It is trite law that ambiguous subordinate legal instruments must be construed in a fashion consistent with parent legislation: Friends of the Oldman River Society v. Canada (1992), 88 D.L.R. (4th) 1 (S.C.C.) at pp. 22-23.

¶ 49 We therefore begin with the question whether, after turning 18 years of age, the NCRMD accused is a "young person" for the purposes of the YOA and section 1 of the Ministerial Order. The answer to this question will not only inform the interpretation of the Ministerial Order, but will determine whether the accused remains entitled to the YOA protections relied upon by the accused.

¶ 50 For convenient reference, the definition of "young person" is repeated below:

> 2(1) "young person" means a person who is or, in the absence of evidence to the contrary, appears to be twelve years of age or more, but under the age of 18 years of age and, where the context requires, includes any person who is charged under this Act with having committed an offence while he was a young person or is found guilty of an offence under this Act. [emphasis added]

¶ 51 The accused submits that the YOA establishes the principle: "once a youth, always a youth". In our opinion, the definition of "young person" does not support such a broad statement. Manifestly, the definition describes two types of young persons:

> (a) persons between 12 and 18 years of age; and
> (b) where the context requires, persons charged with having committed offences while they were young persons or who are found guilty of an offence under this Act.

¶ 52 When J.A.D. turned 18, (a) did not apply. Further, since NCRMD accused are not "found guilty", the latter part of (b) has no application.

¶ 53 Accordingly, the real issues here arise from the italicized words in the definition above: namely, whether J.A.D. is to be regarded as (i) a person "charged under this Act with having committed an offence while he was a young person, and (ii) whether this context requires that he be treated like a young person.

¶ 54 The legislative terminology which refers to the NCR "accused" might at first blush suggest an affirmative answer to the opening part of the inquiry since, in general, the very definition of an "accused" person is someone who is at that point in time charged with an offence. However, as recognized in Winko v. British Columbia (1999), 175 D.L.R. (4th) 193 (S.C.C.), the term "accused" in the NCRMD context is a term of art reflecting the issuance of a verdict which in fact brings closure to the charges, and thereafter diverts the accused into a "special stream" whose purpose is not punishment but is instead directed at the twin goals of protecting the public and treating mentally ill offenders fairly and appropriately: para. 21. As noted by the Court:

> Part XX.1 of the Criminal Code rests on a characterization of the person who commits an offence while mentally ill as "not criminally responsible", or NCR: s. 16. Under the new regime, once a judge or jury enters a verdict of "not criminally responsible on account of mental disorder", the person found NCR becomes subject to the provisions of Part XX.1: [para. 23]....
> A verdict of NCR under Part XX.1 of the Criminal Code, as noted, is not a verdict of guilt. Rather, it is an acknowledgement that people who commit criminal acts under the influence of mental illnesses should not be held criminally responsible for their acts or omissions in the same way that sane responsible people are. No person should be convicted of a crime if he or she was
> legally insane at the time of the offence....[para. 31]
> Nor is the verdict that a person is NCR a verdict of acquittal. Although people may be relieved of criminal responsibility when they commit offences while suffering from mental disorders, it does not follow that they are allowed to be released
> absolutely. Parliament may also use its criminal law powers to prevent further criminal conduct and protect society....[para. 32]

> This raises a terminological point. Under the old provisions of the Criminal Code based on the common law rule, the accused relieved of criminal responsibility by reason of insanity was referred to as an NCR "acquittee". This was because, as explained, the person was viewed as acquitted for want of mens rea or criminal intent.... Under Part XX.1, by contrast, the NCR offender is not acquitted. He or she is simply found not criminally responsible. People who fall within the scope of Part XX.1 are more appropriately referred to as NCR accused, the terminology in fact employed by the Code....[para. 34]

¶ 55 The definition of "young person" does not ask whether the accused was charged at some time in the past; it clearly asks whether he is charged at a particular point in time, despite being over 18. As recognized by the Supreme Court of Canada in R. v. Z. (D.A.) (1992), 76 C.C.C. (3d) 97 (S.C.C.), at p. 110, this part of the definition, from which most of the YOA safeguards are related, is concerned with the "alleged offender" who is over 18 years of age. Here, J.A.D. is no longer charged. He has had verdicts entered. The charges have been disposed of. He has been relieved from all criminal responsibility. Because he is not now charged with having committed an offence, he cannot obtain the benefit of the extended definition of "young person" within the meaning of the YOA.

¶ 56 We observe that even if J.A.D. were regarded as a person "charged with an offence" for the purposes of the definition of young person, the definition is still not triggered except where the context requires. In our opinion, and for the purposes of the provisions relied upon by the accused, the context does not require that an NCR accused over the age of 18 be regarded in law as a young offender.

¶ 57 The leading authority regarding how to construe this part of the definition of "young person" is the Supreme Court of Canada decision in R. v. Z. (D.A.), supra. That case concerned an accused, charged with an offence, who committed the offence at age 17 but who made inculpatory statements to police when he was 18. While there was no question that he was a "young person" for the purposes of conviction and penalty, the issue before the Court was whether he was a "young person" for all purposes, including the special protections governing how statements are taken from young persons. It was common ground that while the statements would be admissible in the case of an adult, they would have been inadmissible as against a young person owing to the police's failure to comply with the specific YOA prescriptions (s. 56) for obtaining statements from young person.

¶ 58 In concluding that the context did not require that the police obtain the statements in accordance with s. 56 of the YOA, the Court held:

> ...Parliament has made it clear that the term "young person" should be extended to include someone over the age of 18 only "where the context requires" that that person be deemed to be in the same position as a youth between the ages of 12 and 18. (p. 109)
> The argument that Parliament intended the term "young person" to include an accused over the age of 18 wherever that term appears in the Act ignores the reality that in various provisions of the Act "young person" can only be understood to mean a person between the ages of 12 and 18. One need go no further than the definition of "young person" itself to demonstrate this point....(p. 110)
> In defining "young person" in this manner, Parliament has expressly left it with the courts to consider whether the context in which the term "young person" is used requires that it be interpreted to include an accused over the age of 18. In this regard, contrary to the views of Fish J.A. in the Court of Appeal, Parliament has indeed launched the courts on an "odyssey" through the various sections of the Act to determine their applicability to an alleged offender who is over 18 years of age. The ordinary meaning of the words "where the context requires" cannot be ignored and must be given due effect as words of limitation in this case. (pp. 110-111).

¶ 59 The Court therefore asked itself whether "the context required" that an 18 year old be questioned according to the procedural protections given to youth under that age. The Court answered that question in the negative. In so doing, it made a number of instructive findings. First, the Court confirmed that the YOA establishes a "code of unique procedural and evidentiary requirements as well as substantive provisions providing for special dispositions different from the sentencing provisions in the Criminal Code", based on the age of the accused when alleged offence was committed: p. 112. However, many of the special procedures applicable to youth going through a justice system simply do not apply to adults, as noted by the Court at p. 113:

> It would be illogical to extend the application of these rules and procedures to an adult accused. One need only think of the requirement in the Act that a young person be detained separate from any adult. If would be absurd to hold that this requirement applies to a 35-year-old accused who absconded while a youth. It is clear that the concerns underlying some of the special procedures and rules within the Act no longer arise once an accused reaches adulthood.

¶ 60 On the facts of that case, the Court held that the context did not require the special protections accorded by s. 56 of the YOA to be extended to 18 year olds. As held by the Court at p. 116-17:

> No further protection beyond that already afforded by the Charter and the common law is necessary to ensure that any statement made by an adult accused is truly voluntary. It is evident from the absence of similar provisions in the Criminal Code that Parliament has not deemed it necessary to afford an adult accused the right to consult with an adult relative prior to being questioned by police nor the right to have that relative present during questioning. ... Persons over the age of 18 are deemed to possess a sufficient level of maturity and knowledge so as to no longer evoke these concerns.

¶ 61 Consistent with the Court's approach in R. v. D.(Z.A.), we must focus on the provisions which the accused says should continue to apply to the accused as if he were under 18 and decide whether "the context requires" that they continue to apply.

¶ 62 The first such requirement is the requirement in s. 13.2(6) of the YOA, which directs that before making or reviewing a disposition, the Board shall consider the accused's age and special needs as well as any representations or submissions by the person's parents. In our opinion, this provision only confirms what this Board does as a matter of course under s. 672.54 in any event. The latter section specifically instructs us to take into account, inter alia, the accused's mental condition, reintegration into society, and "other needs". As Winko confirms, we are by definition engaged in an individualized assessment process. It is in the very nature of every disposition made by this Board to consider the age and special needs of the accused. Nor, in view of our broad inquisitorial mandate, would this Board ever be likely to exclude relevant representations or submissions from the parents of any accused person. We therefore conclude that, just as s. 56 of the YOA was not required to protect the interests of 18 year olds concerning statements given the protections of the common law and the Charter, s. 13.2(6) of the YOA is not necessary to protect the interests of 18 year olds concerning their needs and parental involvement, given our broad mandate the language and intent of Part XX.1 of the Criminal Code.

¶ 63 The accused also asserts that he is a young person for the purposes of other YOA provisions - namely, (a) the requirement that a young person's custody only be in a hospital designated for young persons [s. 13.2(11)], (b) the protection from being integrated in any adult facility like FPI without a formal transfer order [ss. 24.2(4); 24.5] and, (c) even after transfer out of a "youth facility", the ongoing legal responsibility by the Youth Director rather than the Adult Director for his care and custody: s. 2(1): "provincial director".

¶ 64 In our opinion, and for a number of reasons, "the context" does not require that these statutory provisions apply to NCRMD accused once they turn 18 years of age.

¶ 65 First of all, even if the accused were an NCR accused under 18 years of age, ss. 24.2(4) and 24.5 have no application to him in any event. Those sections apply to young offenders who are in custody pursuant to convictions. They are not relevant to NCR young persons.

¶ 66 Section 24.5 is the section allowing convicted young offenders to be transferred to adult correctional facilities. The power to order transfer rests only with the youth court. It extends only to

young persons "committed to custody under paragraphs 20(1)(k) or (k.1)", which in turn apply where a young person "has been found guilty of an offence": s. 20. All that is completely irrelevant to the context here.

¶ 67 The accused relies on section 24.2(4) which outlines the principle that "a young person who is committed to custody shall be held separate and apart from any adult who is detained or held in custody". This section does not apply to NCR accused either. In our opinion, s. 24.2(4) is clearly limited to young offenders found guilty of offences and "committed to custody" in a disposition made under s. 20, which s. 20(7) makes clear is in the nature of "punishment". To extend the language to NCR accused would not only contravene the principle that legislation must be understood in its context, but would also infringe the canon of construction which avoids absurdity. In our opinion, it would be a bizarre result indeed if this section applied to NCRMD young persons but s. 24.5 did not, as it would mean that unlike convicts, NCRMD young persons could never reside in exclusively adult facilities such as FPI, regardless of age.

¶ 68 As ss. 24.2(4) and s. 24.5 of the YOA do not apply even to NCR accused between the ages of 12-17, it is obvious that "the context does not require" their extension to NCR accused 18 and over.

¶ 69 This leaves consideration of s. 13.2(11) of the Act - the requirement that young persons may be directed to custody at hospitals designated by the Minister for young persons. Even if ss. 24.2(4) and 24.5 do not apply, does the "context require" that this subsection apply to NCRMD accused 18 years and older, such that they may not be placed in a facility except one designated by the Minister for young persons? In our opinion, the answer is "no".

¶ 70 We have great difficulty with the suggestion that "the context requires" that a person aged 18 and older must be housed in a facility designated by the Minister under s. 13.2(11) of the YOA, merely because they were a young person when the index offence was committed. If an accused had committed index offences on his 18th birthday, there would be no question that he could only be lawfully placed in a facility designated under the Criminal Code, such as FPI, a facility designed to meet the custodial and treatment needs of all persons placed there under the Criminal Code. That being the case, we find nothing in the context to "require" that, for as long as he remains an NCR accused, J.A.D. may only be placed in a facility designated as a hospital under the Young Offenders Act.

¶ 71 We would observe, moreover, that while young people may only be placed in hospitals designated under s. 13.2(11), nothing in the legislation requires those hospitals to be designated exclusively for that purpose. The Minister may, but is not required, by s. 13.2(11) to designate hospitals exclusively for the care and custody of children. The Minister may, if he so chooses, designate as a hospital for young persons even if it also contains adults, leaving decisions about appropriate segregation and placement within that hospital to professional and clinical judgment. The Minister may also, as we find below, designate hospitals principally for the care of young persons, while allowing a young person who becomes an "adult" to stay for a further period where circumstances warrant, prior to transfer to an adult facility. The discretion is very broad, and needs to be broad to accommodate

different realities arising in different provinces.

(ii) Conclusion on the question of "young person"

¶ 72 For the reasons we have given, we conclude that upon reaching the age of 18 years, the NCR accused is no longer a "young person" for the purposes of the Young Offenders Act provisions relied on by the accused, namely ss. 13.2(6), s. 13.2(11), s. 24.4(6) and s. 24.5.

¶ 73 As a result of that conclusion, the accused's ultra vires argument falls away, since none of the YOA provisions alleged to be inconsistent with Order M427 are even applicable here. Ministerial Order M427 is not ultra vires either the YOA.

(iii) Proper interpretation of the Ministerial Order

¶ 74 This leaves the question how Order M427, on its own terms, is to be construed in the case of an NCRMD young person who reaches 18 years of age and has been residing at the Maples or the Inpatient Adolescent Treatment Centre.

¶ 75 In our opinion, the following propositions reflect the construction which accords best with the plain language and objects of the both the Order and the parent legislation:

¶ 76 A. An NCR accused who commits the index offence anytime after their 18th birthday, and is committed to custody, is lawfully placed only in a "section 2" hospital.

¶ 77 B. An NCR accused who commits the index offence anytime before their 18th birthday, and is committed to custody, is lawfully placed only in a "section 1" hospital up until their 18th birthday.

¶ 78 C. An NCR accused who is lawfully placed in a "section 1" hospital but turns 18 may lawfully reside in a "section 2" hospital anytime after he turns 18.

¶ 79 D. The decision whether to transfer an NCRMD accused who turns 18 from one facility to another is not intended to be "automatic", if by this one means transfer without critical judgment. If the Minister intended transfer without critical judgment upon a person reaching 18, the words "anytime after they have reached the age of 18 years" would not have been included. Consistent with the overarching intent of the legislation, the decision to transfer will be an individualized one, informed by the needs and circumstances of the accused and those around him, the public interest and the resources and capacities of respective hospitals to continue or undertake custody.

¶ 80 E. The specific statement that a "section 2" hospital is a lawful place of custody "anytime after [a person referred to in subsection (1)] reaches the age of 18" necessarily implies that he may lawfully remain in a "section 1" hospital until he moves to a section 2 hospital, despite the fact that his legal status as a "young person" has been altered. As noted above, neither the Criminal Code nor the YOA

demands utter exclusivity as between adults and young persons. As such, it was entirely open to the Minister to designate a facility such as the Maples as a hospital dedicated overwhelmingly to young persons but which is also framed in a fashion which recognizes the practical reality that there will exist a group of transitional cases involving such persons turning 18 who are hospitalized there and who have not yet had a decision made to transfer them to a section 2 hospital.

¶ 81 In view of the above analysis and on reflection, we add this comment. In the event that an accused, as in this case, objects to a proposed transfer after they turn 18 years of age, a hearing before this Board would be appropriate. In that context, we believe that while the Youth Director would be a necessary party to the proceeding, as "the person in charge of the hospital where the accused is detained" [Criminal Code, s. 672.1; YOA, s. 13.2(1)], it would be appropriate in most cases for the Adult Director also to appear, if for no other reason than to ensure that the Review Board and the parties may ask appropriate questions of the receiving hospital and in recognition of the fact that accused is not a "young person" for the purposes of hospitalization.

C. Section 15 of the Charter

¶ 82 As reflected in the Notice of Constitutional Question, the accused argues that Order M427 also violates s. 15 of the Canadian Charter of Rights and Freedoms ("the Charter") by discriminating based on age or mental disorder. The accused says that the violation arises "by requiring the Adult Forensic Psychiatric Service to supervise a young person once they reach 18 years of age".

¶ 83 Significant energy was devoted by counsel to the question whether this Board has jurisdiction to consider the type of Charter argument advanced in this case. While we are inclined to the view that this Board does have such jurisdiction, we find, in the end, that we do not need to reach a final conclusion respecting this issue in this case.

¶ 84 The essence of the accused's Charter argument is that Order M427 violates these constitutional standards if the opening words of clause 2 "are to be interpreted as allowing an automatic transfer to an adult facility": Argument of accused, TAB 56, p. 4. This being the premise of the argument, we find that the Charter issue simply does not arise. As noted above, the Ministerial Order does not, on a proper construction, authorize the "automatic transfer" to an adult hospital, if by that phrase it is meant transfer merely upon the person turning 18 and without the exercise of critical judgment as to whether such transfer would otherwise satisfy the requirements of s. 672.54 of the Criminal Code. The very reason that the Supreme Court of Canada sustained the legislation under s. 15 in Winko was precisely because of the opportunity for individualized judgment to be exercised in making Criminal Code dispositions concerning persons found NCRMD. That reality, we find, is expressly recognized in s. 2 of the Ministerial Order. As explained in the next part of these reasons, that reality has informed our decision to authorize the accused's transfer in the particular circumstances of this case.

4.0 EVIDENCE AT THE HEARING

¶ 85 The Board heard from Bill MacGregor, psychiatric social worker who had earlier submitted written disposition information marked Exhibit 59. Overall Mr. MacGregor's evidence was that J.A.D. had enjoyed some slow increases in his privileges since October 15; that J.A.D. had not shown much motivation in relation to his recently initiated school program other than seeing it as an opportunity to get beyond his unit; and that J.A.D's peer interactions continued to be somewhat minimal and of mixed success. J.A.D. can be verbally demanding and aggressive toward staff. At times he resorts to 'rages' (J. A.D's word), or temper tantrums which consist of verbal outbursts, and which can escalate to throwing items and provoking peers. Such "rages" have required J.A.D. to be placed in seclusion on at least 5 occasions. Mr. MacGregor told us that J.A.D's insight into his circumstances, his treatment needs and his behaviour and its consequences, remains limited. He continues to endorse thoughts or ideas involving weapons, war, killing, and expresses these themes in his art works. He has also at times expressed suicidal thoughts and ideas. His Christmas visit from family, despite initially occasioning some despondency, sadness and instability, overall went well.

¶ 86 Mr. MacGregor told the Board of J.A.D's fear of transfer to FPI, due to the generally older and physically larger patient population. Nevertheless transfer is recommended due to J.A.D's overall defiant, disruptive and inciting behaviour and his continuing perceived threat to public safety.

¶ 87 While FPI is seen as generally more secure, its perimeter security might actually afford the accused a greater measure of access to vocational programs and mobility than unit confinement at MATC.

¶ 88 Dr. Quan told the Board orally and in his report [Ex. 60] that after his last hearing J.A.D. requested a trial of antipsychotic medication. He was started on Olanzapine on October 18, but this medication was discontinued after apparently contributing to a worsening in J.A.D's behaviour. He was started on a low dose of Fluanxol on October 28 but his mood and behaviour remain unstable with recurrent episodes of hostility.

¶ 89 Despite the apparent absence of his former delusional ideas involving devils or spirits, J.A.D's mental status remains highly variable:

> He can appear agreeable and rational, denying or minimizing his history. He can be depressed and suicidal and remorseful at other times. He has been frankly delusional and paranoid with auditory and visual hallucinations. He frequently appears ruthless, conscienceless and sadistically manipulative. On occasion he has been vulnerable and decompensated into grief and remorse (i.e. when his family visited). These various states of attitude, feeling and behaviour seem to come and go, sometimes in rapid succession and often without visible precipitars.: Ex 60

¶ 90 Dr. Quan recommends J.A.D's transfer to FPI because:

* He has been consistently resistant, non-compliant and disruptive in his current environment.
* He has at times presented a disturbing influence on younger residents of MATC including a suicidal girl and a handicapped boy.
* He has exhausted the limits or the capacity of MATC, which is geared to younger youth, to benefit him.
* He appears unable to govern his behaviour to avoid consequences such as loss of privileges, but is enraged when restrictions are imposed.

¶ 91 Dr. Quan is comfortable that JAD will be able to deal with the generally older patient population at FPI; he is of sufficient intelligence that he would not be unduly at risk of victimization or exploitation. Indeed he could benefit from the educational and vocational program opportunities available at FPI.

¶ 92 Moreover, Dr. Quan does not believe that transfer to FPI will exacerbate the risk of self harm. He feels that overall the FPI environment will assist JAD in achieving adulthood, independence, mental stability and some self mastery.

¶ 93 Apparently the potential of transfer to FPI has had some effect. However, since Christmas Dr. Quan reports frequent, abrupt, rapid and extreme shifts in attitude and demeanour ranging from co-operative to oppositional including expressions and gestures of self harm (January 6 & 7); thoughts of making bombs (January 7); destruction of furniture, verbal abuse (January 8); aggression toward staff (January 12).

¶ 94 J.A.D. acknowledges that he is consistently entertained and excited by violent events (e.g. Columbine shootings). Dr. Quan believes that the key to his patient's problems lie in his personality issues and considers him, due to his persistent violent fantasies, his impulsivity and his lack of insight, as a serious threat or danger to members of the public.

¶ 95 J.A.D. told the Board that he would find it extremely hurtful to disrupt what he considers strong and trusting attachments to most of the staff at CrossRoads, by the "backward step" of transfer to FPI. He also sees a transfer as delaying his eventual discharge and fears being "beat up" by mentally ill patients at FPI. He told the Board he has the capacity to "improve his behaviour and prove he is not a risk", and that despite his anger or tantrums he retains enough self control to avoid having hurting anyone.

¶ 96 Under questioning he told the panel that he felt his life had been a failure. He also admitted his excitement at stories of violence and his sense of empowerment during his own violent acts. He acknowledged violent fantasies, depression and occult thoughts and interests since age 12, brought on by the abandonment of his stepfather. He considers himself an "anarchist" who dislikes hierarchical or intrusive authority systems. He hopes to be able to return home and stay out of trouble within 6 - 12 months.

5.0 DISPOSITION

¶ 97 As indicated in the introduction (Part 1.0) to these reasons for disposition, the Review Board has, as it is required to do, applied s. 672.54 of the Criminal Code as illuminated by Winko v. British Columbia, (supra).

¶ 98 On the basis of the historic evidence, referred to in Part 2.0, the new disposition information and oral evidence presented at the hearing (Part 4.0), and to a lesser extent the consensus amongst all parties, the Review Board had no difficulty concluding that J.A.D. remains a significant threat to public safety such as justifies our ongoing jurisdiction: Winko, par. 33. In our view, given his current level of functioning J.A.D. presents a real, non-speculative, risk or potential of serious harm.

¶ 99 Moreover, it is our view that the evidence justifies a disposition of detention pursuant to s. 672.54(c): Winko, par. 16, 62.

¶ 100 Finally, although we were not unmoved by J.A.D.'s concerns respecting a potential move to FPI, the evidence of the Director YFPS as to J.A.D.'s behaviour, his mental condition, and the capacity of MATC to further benefit or address J.A.D.'s needs, was substantially uncontroverted. We therefore are of the unanimous opinion that transfer of J.A.D.'s care, treatment and supervision to the Director AFPS is, on his reaching his 18th birthdate, appropriate.

¶ 101 Our decision in this respect accords with the directive of Winko and is founded upon a sensitive and individualized evaluation, assessment and consideration of the relevant evidence. It is not based on the notion that such a transfer is mandated or automatic by virtue of Ministerial Order M427.

QL Update: 20000525
qp/ci/d/qlmmm