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

M.D.K.
A Young Person

HELD AT: **BC Review Board Offices**
Vancouver, BC
22 September 2008

BEFORE:	**CHAIRPERSON:**	**B. Walter**
	MEMBERS:	**Dr. H. Parfitt, psychiatrist**
		L. Chow

APPEARANCES:	**ACCUSED/PATIENT: M.D.K.**
	ACCUSED/PATIENT COUNSEL: D. Nielsen
	DIRECTOR AFPS: J. Bibby Dr. T. Tomita
	ATTORNEY GENERAL: L. Hillaby

***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.**

****Pursuant to s.672.5(4) of the Criminal Code, Kate Bechmann, mother of the accused, is designated a party to these proceedings.**

[1] CHAIRPERSON: On September 22nd, 2008 the British Columbia Review Board convened a hearing in Vancouver to review the disposition of M.D.K. who is now 25 years of age.

[2] For the record, M.D.K. was, when he was charged with the index offences in October of 1999, a young person under the then *Young Offenders Act of Canada* and that is a legal status which continues to be assigned to him. This is M.D.K.'s 11th hearing before the Review Board following his index offences and verdict.

[3] The index offences which consisted of kidnapping, assault with weapon, and unlawful confinement. The circumstances of those offences, wherein the accused forcibly entered the home of a victim and at knifepoint made him drive the accused to the airport and then to Calgary before being arrested in Abbotsford, have previously been documented, as has the accused's verdict of NCRMD given March 21, 2000.

[4] Dr. Riar provided an assessment for the Court at Exhibit 6 which summarizes this accused's somewhat unique clinical circumstances in comparison to other accused persons under our jurisdiction. In summary, M.D.K., who was 17 years old at the time, does not have a conventional AXIS I psychiatric diagnosis; rather, his difficulties had their origins in brain damage resulting from at least two head injuries, one at the early age of five-and-a-half.

[5] Those injuries led to behavioural difficulties and intellectual and/or cognitive impairments. His behaviours were challenging, his mood and functioning fragile and unstable. In the years preceding the index offence and verdict the accused's behaviour had been consistently escalating to the point where his very placement and maintenance were jeopardized.

[6] His deficits were characterized by immaturity, impulsivity, defiance, poor judgment, impaired executive functioning, and involvement in antisocial activities. He was also demonstrably very suggestible and readily overwhelmed by stress given the absence of mature coping mechanisms. Early conclusions were that the accused would require some form of custodial setting with 24-hour supervision or, alternatively, a highly supervised and structured community placement.

[7] The accused remained at MATC for a period in excess of one year without the development of a successful community placement adequate to deal with M.D.K.. Even in those early days though he was considered as basically a good-natured, cooperative young man who could be generally appropriate, sociable, and who struggled with typical adolescent issues of identity, dating and future vocation.

[8] Under the care of MATC staff, he demonstrated some observable gains in patience and self-mastery, including the ability to decide not to engage in inappropriate behaviour. In that same setting he was never assaultive nor did he damage property, despite occasional frustrations and episodes indicative of anger. His main risk factor was not considered actual dangerous or assaultive behaviour but due to his lack of judgment, suggestibility and impulsivity.

[9] In 2002 the accused's care was transferred to the Adult Forensic Psychiatric Service. In February of 2003 the accused was arrested in a club having impersonated a peace officer and further charged with carrying a concealed weapon. Dr. Tomita assumed treatment responsibilities for M.D.K. and recommended a stay in custody under highly supervised circumstances in order to monitor the accused's concerning behaviours.

[10] By April the accused was again discharged. In July of 2003 he was provided with a supported brain injury residence known as King Edward House where he has remained until this past year.

[11] In clinical terms, his intake assessment to that residence confirmed severe cognitive and executive impairment and poor impulse control and judgment. Nevertheless, the accused was able to gain employment and was generally able to function quite well with the considerable supports and supervisory resources provided.

[12] In September of 2004, after having moved to his own apartment and quit his job, the accused demonstrated considerable instability and compliance difficulties. He also admitted to alcohol and crystal meth use. His deteriorating circumstances led to his return to FPH for stabilization purposes; however, he was discharged back to the structure of King Edward House in less than a month.

[13] In summary, the Review Board has seen fit to extend its jurisdiction over M.D.K. these past number of years on evidence indicating that he continued to require considerable structure, supervision and activation in order to maintain his stability in the

community. In recent years, M.D.K. has shown he has no difficulty obtaining employment and he has also been quite active in volunteer charitable activities.

[14] In 2006 he disclosed his somewhat regular use of alcohol, at times to the point of intoxication. Since that time, no doubt with the assistance of his anticonvulsive medications, the accused has presented as increasingly less impulsive, more mature and able to focus, with diminishing reliance on his supports. He has not, despite his penchant for drinking beer, demonstrated any aggression or inappropriate behaviour.

[15] Since his last hearing in October of 2007 the accused has had a change in his primary case manager. Mr. Bibby, who assumed those responsibilities in the summer of 2008, provided a report for M.D.K.'s current hearing. Mr. Bibby, no doubt based on notes left behind by the departing case manager, Mr. Ross, cited the accused's transition to more independent accommodation in the Hudson Apartments, last April. Although there was some concern with respect to how M.D.K. might cope with the transition to Hudson Apartments from the more supervised environment of King Edward House, Mr. Bibby reports that he appears to be thriving. He showed no instability during the process of transition, and Mr. Bibby reminds us that at the Hudson Apartments the accused continues to have at least access to staff on a 24-hour basis.

[16] In terms of presentation, Mr. Bibby, who has known the accused for some years, indicates that he is cooperative, pleasant, at ease, and more engaged and disclosive with his treatment team. Staff at the Hudson Apartments have expressed zero concerns with respect to the accused, his functioning or demeanour in that environment.

[17] Mr. Bibby indicated that the accused admitted to what, in retrospect, appears to have been a run of cocaine use during the Christmas/New Years holiday period. That indulgence left him depressed to the point where he reached out for help and had himself admitted to St. Paul's Hospital. From St. Paul's he was directed to FPH where he remained for a short period of time before being discharged back to King Edward House in January.

[18] Since moving to the Hudson Apartments the accused has been living with a girlfriend. Although Mr. Bibby has not met this lady, the accused's mother gave evidence that she seems like a nice and prosocial person and M.D.K. evidently gets much support from her.

[19] In July of 2008 the accused had knee surgery. He is currently still in a recuperative phase and receiving physiotherapy.

[20] In terms of the future, Mr. Bibby indicates that M.D.K. wants to acquire some first aid skills. His mother will continue to administer his trusteed funds. Should he be absolutely discharged from this *Criminal Code* regime he will continue to have the constant support of his mother, hopefully his girlfriend, and staff at Hudson House.

[21] Mr. Bibby also indicated that FPS would remain involved with M.D.K. until such time as he can be assisted in identifying and being linked to a private physician who would then be responsible for prescribing his medications. At this point FPS is simply providing an administrative or legal oversight function and again would be prepared to also seek and transition the accused to some form of social work resource.

[22] Dr. Tomita, who, as I have indicated, has treated the accused since 2002, spoke very positively of M.D.K.'s progress. Although M.D.K. has cancelled two recent appointments, this has raised no major concerns for Dr. Tomita. Indeed, Dr. Tomita echoes that FPS at this point in time does not play much of a clinical role beyond being the delegate of the Review Board's legal supervision of M.D.K..

[23] Dr. Tomita, in his evidence, indicates the accused continues to receive his anticonvulsant and antidepressant meds; that there have been no significant problems due to alcohol consumption nor any drug consumption since the January 2008 admission. Dr. Tomita agrees that, having seen this accused for at least six years, he has observed an improvement in overall functioning; that he is less impulsive despite his enhanced independence, and that he has remained stable even through a recent residential transition.

[24] Although, in retrospect, Dr. Tomita believes that his patient has in the past six years matured, become more responsible, more insightful and open and considerably functionally improved, Dr. Tomita acknowledges that the accused continues to require supportive services. If overwhelmed by social stressors, he could indeed relapse to inappropriate behaviour. Dr. Tomita also gave evidence that in his expert opinion the accused has developed coping mechanisms which better equip him to withstand such stressors and that over time his impulsivity has abated.

[25] Moreover, the accused's future plans appear now realistic. He is engaged in a stable, informed social network of supports and all in all does not appear to pose a foreseeable significant threat.

[26] Ms. Bechmann, the accused's mother who has been a designated party to these proceedings throughout, now supports the accused's absolute discharge. She is obviously proud of her son's progress. She believes that the resources he will continue to need to remain stable and functional are in place. He has responded well to the increased independence which he has been provided with.

[27] She also confirms that the accused will have life-long financial support as a result of his brain injury. He is successfully managing his own day-to-days funds and will eventually administer his own trust.

[28] M.D.K. spoke spontaneously and clearly, describing the environment, the staffing, and the supports at his new residence, including the weekly administration of his medications. He was candid and insightful about his recent hospitalization and about his regained stability. He spoke positively about his relationship with his new girlfriend, which he hopes will be an ongoing one, and one which he obviously finds highly supportive. He continues in his volunteer charitable activities. He plans to take a forklift course as well as first aid classes in October. He would eventually like to work as a first aid or homecare provider. He sees no stressors on the horizon.

[29] He indicated that he is better positioned to recognize stress or its effects on him and to access assistance as needed. He spoke positively and insightfully of the value of the supports he has received in the past and their role in directing his life in a more positive direction. He denies any drug use since the episode of last winter but does say that he and his girlfriend drink some beer at home or at the local Legion.

[30] He believes he deserves an absolute discharge. He thanked the Review Board and the various resources that have supported him these past nine years.

[31] In emphasizing the evidence with respect to risk, we rely on Dr. Tomita's expertise in indicating that the accused has made considerable progress in achieving emotional and psychological stability and in managing his life in an appropriate manner. He has transitioned to more independent living successfully. His personality traits which were evident in the past have ameliorated. At this point in time the role of Forensic Services has receded to a legal or monitoring function.

[32] Mr. Bibby also reminds us that the accused is better engaged and able to access supports when he needs them. The parties persuaded us that on the evidence this accused no longer poses a significant threat of a degree which justifies our jurisdiction over him and M.D.K. was therefore absolutely discharged with our good wishes.

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Edits kw Oct 20/08