Case Name:

Mazzei (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 Disposition Hearing of
Vernon Roy Mazzei A.K.A. Vernon Roy Lacerte

[2007] B.C.R.B.D. No. 5

British Columbia Review Board
B. Walter (Chairperson), G. Laws and
C. Sweeney (Members)

Heard: October 11, 2006.
Decision: January 24, 2007.
(107 paras.)

Appearances:

Accused/patient: Vernon Roy Mazzei.

Accused/patient counsel: D. Nielsen.

Hospital/clinic: D. Lovett, Q.C., A. Westmacott.

Attorney General: L. Hillaby.

[Editor's Note: Reasons for decision were delivered by B. Walter and concurred in by G. Laws and C. Sweeney.]

CHAIRPERSON:--

INTRODUCTION

¶ 1 On October 11, 2006, the British Columbia Review Board (BCRB) commenced an early hearing to review its disposition in the matter of Vernon Roy Mazzei (aka LACERTE), age 44.

¶ 2 This hearing amounts to Mr. Mazzei's twenty-seventh appearance since he has been under the BCRB's jurisdiction as of his November 1986 verdict of Not Guilty by Reason of Insanity (NGRI). That verdict was rendered under the legislative regime which preceded the current Mental Disorder provisions in **PART XX.1** of the ***Criminal Code***: **S.C. 1991 c. C-43**. Mr. Mazzei's last hearing (his twenty-sixth) was held as recently as April 11, 2006. The result of that hearing was yet another disposition of custody: **Ex. 131**.

¶ 3 Following an earlier disposition of May 9, 2005, Mr. Mazzei undertook an appeal with respect to a specific condition therein which authorized the Director of Adult Forensic Psychiatric Services (AFPS) (the Director), to test Mr. Mazzei for the consumption of prohibited substances "on demand": **Ex. 124**. The issue and attendant arguments, against random testing or seizure of bodily substances, were responded to by the BCRB at paragraphs 32 to 70 of the BCRB's Reasons for Disposition found at exhibit 131. The BCRB concluded that it had the authority to allow the Director to conduct urinalysis testing for the use of prohibited substances, essentially on an on demand basis.

¶ 4 On June 23, 2006, the BC Court of Appeal found that the BCRB's impugned condition with respect to urinalysis was reasonable and struck an appropriate balance "between the state's interest in assessing and managing risk to the public and Mr. Mazzei's significantly diminished privacy interests", and did not violate Mr. Mazzei's section 8 ***Charter*** rights. The appeal against the orders of May 9, 2005 **(ex.124)**, and May 5, 2006 (**ex.131**), was dismissed: ***Mazzei v. Director AFPS and AGBC,* 2006 BCCA 321.** The BC Court of Appeal's judgment was delivered before, and hence did not consider, the Supreme Court of Canada's decision in ***R.v. Shoker,* [2006] S.C.C. 44** (published October 13, 2006), the case that gave rise to Mr. Mazzei's most recent appeal. The issue of fluid testing was not argued at Mr. Mazzei's hearing of October 11, 2006.

¶ 5 Two additional important and potentially contentious issues were raised at Mr. Mazzei's April 11, 2006, hearing. The first of these involved the necessity for, and the authority of, the BCRB to order an independent risk assessment of Mr. Mazzei. The second issue concerned Mr. Mazzei's request that a custodial disposition imposed by the BCRB should include a condition specifying the hospital ward or unit on which Mr. Mazzei would be detained and that moving him to a more restrictive (secure) unit for more than seven days would thereupon constitute a significant restriction of his liberties (**s. 672.56**), and give rise to a mandatory hearing under section 672.81(2) of the ***Code***.

¶ 6 The April 11, 2006, Panel concluded that the BCRB has the authority to impose such specific or precise conditions: **Supplementary Reasons, ex. 131, paras. 56-60, 63-65**. The Panel, however, chose not to determine on the issue in Mr. Mazzei's case. Instead, it ordered a further early hearing to enable the parties to bring forward evidence that would help the BCRB to fully understand and duly consider "the practical consequences" of such a condition(s) in terms of its impact on "Board and party resources": **Supplementary Reasons, ex. 131, par. 68**.

¶ 7 For a variety of reasons, the ensuing early hearing was not able to be convened before October

11, 2006.

THE HEARING OF OCTOBER 11, 2006

¶ 8 The October 11, 2006, hearing was convened to, once again, review Mr. Mazzei's disposition within the ambit of section 672.81(1) of the ***Code***. As with any such hearing, the BCRB's task was to receive evidence and render a decision consistent with section 672.54 of the ***Code***.

¶ 9 In keeping with the April 11, 2006, Panel's request for information (**ex. 131**), the Director filed an affidavit of AFPS Clinical Services Manager, Mr. Poquiz, describing in considerable detail, the overall organization, living units, their security level designations, and programs and privilege levels, at the Forensic Psychiatric Hospital (FPH). This affidavit which has been marked as exhibit 136 herein, included considerable supporting or ancillary policy, program and statistical information and documents comprising eight subsidiary exhibits.

¶ 10 As well, given the focus of our inquiry, counsel for the Director proposed the unusual but helpful suggestion, that the presiding BCRB Panel, in the company of all counsel, undertake a tour of FPH in the nature of a viewing, as a prelude to, and to serve as a basis for, examining Mr. Poquiz on the information contained in his affidavit.

¶ 11 Finally, counsel for the Director also filed clinical disposition information from members of the accused's treatment team.

¶ 12 The parties and the BCRB agreed to the suggested approach for this hearing.

¶ 13 At the commencement of the hearing, and at his counsel's request, Mr. Mazzei was given permission to be absent during the hearing: **S. 672.5(10)**.

POSITIONS OF THE PARTIES

Director Adult Forensic Psychiatric Services

¶ 14 Counsel for the Director sought a further disposition of detention on the conditions contained in the previous order of May 5, 2006: **Ex. 131**.

¶ 15 The Director further submitted that the BCRB should not include in its order any condition specifying the accused's security or privilege levels, nor to impose any restriction on the Director's (implicit) discretion to, from time to time, restrict or alter (increase) these. In its written submissions the Director added an alternative position which under the circumstances we need not belabour: **Director A. F.P.S. Submission, P. 56, (Director's Submission)**.

The Attorney General of BC

¶ 16 Counsel for the Attorney General sought a further order of detention with a broad delegation of discretion to the Director to manage Mr. Mazzei's security needs and interests.

The Accused

¶ 17 Counsel for the accused requested:

(i) that Mr. Mazzei be conditionally discharged (**s. 672.54(b)**) with a two month delay in the effective date of the disposition: **S. 672.63**; or

(ii) that Mr. Mazzei be detained (**s. 672.54(c)**) under conditions,

(a) mandating daily unescorted community access, and providing that any withholding of such access for more than seven days constitutes a significant restriction on the accused's liberties and requires notice from the Director in accordance with section 672.56 of the ***Code***.; and

(b) specifying that the accused reside on an "open" level unit, and providing that any transfer to a "closed" or "secure" level unit for more than seven days requires notice in accordance with section 672.56 of the ***Code***.

THE BCRB'S APPROACH TO THE EVIDENCE AND DECISION MAKING IN THIS PROCEEDING

¶ 18 The empanelled members of the BCRB found the guided tour of FPH wards, security designations, and programs, a useful exercise.

¶ 19 Once reconvened in hearing format, counsel for Mr. Mazzei and counsel for the Attorney General cross-examined Mr. Poquiz on his affidavit: **Ex. 136**.

¶ 20 The Director's counsel then produced Dr. Brink and Mr. Golding, key members of the accused's treatment team.

¶ 21 At the conclusion of the Director's evidence, the BCRB, with the agreement of all parties, imposed a schedule for the development and filing of written submissions including the parties' closing positions and supporting legal arguments.

¶ 22 Provision was also made for an initial exchange of written questions or interrogatories and the Director's responses thereto, on the operation of FPH's Program and Privileges Committee.

¶ 23 All submissions and replies have been exchanged, filed and duly considered by the BCRB.

THE DISPOSITION PHASE

¶ 24 It is by now trite to repeat the dictum that at each hearing the BCRB must receive, gather and consider evidence against the backdrop of section 672.54 of the ***Code*** and, irrespective of the positions urged upon it by the parties, independently render a disposition which fairly accords with the evidence and the law.

¶ 25 Despite the nuances and legal complexities of the issues raised in this proceeding, our first and central task remains that of fashioning an appropriate disposition. Accordingly, in its deliberations the Panel determined to first consider the clinical and risk management evidence relevant to choosing the least onerous and least restrictive appropriate disposition.

¶ 26 Having completed that task we then, to the extent necessary, analyse the evidence and the arguments intended to influence the conditions which form the fabric of the disposition: ***Penetanguishene Mental Health Centre v. Ontario*** **(AG), [2004] S.C.C. 20, (*Tulikorpi)*.**

Evidence Relating to Disposition

¶ 27 As observed earlier in these reasons, this is Mr. Mazzei's twenty-seventh hearing since the implementation of the current Mentally Disordered Offenders (MDO) scheme under **PART XX.1 of the *Criminal Code* in 1992**. Mr. Mazzei also had as many as nineteen hearings under the predecessor regime since his NGRI verdict in 1986. The disposition information relating to Mr. Mazzei's personal history, his involvement with the criminal justice system, the serious index offence, his psychiatric and substance abuse history, his progress and behaviour under a AFPS treatment and supervision and BCRB jurisdiction, now consists of some 136 documentary exhibits.

¶ 28 That history has been documented, reconsidered, and commented upon repeatedly in the course of the BCRB's successive Reasons for Disposition. While all of the evidence remains relevant and must be reconsidered as part of every review of an accused's disposition, we choose in the course of these reasons to adopt the BCRB's previous key findings rather than, once again, reciting twenty years of accumulated evidence. The reader is referred in particular to the findings summarized in Reasons for Disposition, dated July 19, 2002: **Ex. 109**.

¶ 29 The following is a summary of evidence and findings relating to Mr. Mazzei's clinical and procedural progress since July 2002:

Progress July 2002 - July 2003

* After his July 19, 2002 hearing, the accused remained on A-2 unit; he refused to attend programs until August 2002 and declined to attend a TPC on July 23, 2002.
* October 1/02: accused moved to Elm unit.
* Nov 5/02: accused went AWOL from community drug and alcohol treatment appointment; accused was returned Nov 6/02 by police and admitted to A-2 unit; he tested positive for valium, cocaine and marijuana.
* Dec/02: accused moved to Dogwood unit; accused requested change of psychiatrist; urine screens negative.
* Feb 19 to 23/03: accused on unauthorized absence (U/A) and admitted using marijuana and cocaine on return.
* Mar/03: accused was not accepted/admitted to Round Lake Treatment Centre.
* Apr 16 - 19/03: accused U/A, returned by RCMP and admitted to A-3 unit and secluded; admitted using marijuana, cocaine and alcohol.
* Jun 13/02: accused transferred to Dogwood unit.
* Jul 11/03: BCRB disposition of custody reviewable in six months; accused was absent from hearing due to U/A as of Jul 5/03; whereabouts unknown; he returned Jul 12/03.

Progress July 2003 - January 2004

* Aug 14 - 25/03: accused AWOL; used cocaine and heroin (intravenous), and marijuana.
* Oct/03 - Dec/03: accused's treatment was assigned to Dr. Brink; Dr. Brink considered accused non-psychotic but amotivated in terms of sobriety, despite apparent abstinence from September to December in hospital; he continued to deny he suffers from schizophrenia or that he requires medication; accused presented as verbally oppositional; he resided on Dogwood unit.
* Accused was approved for visit leave (VL) to Salt Spring Island from Dec 27 to Dec 30;
* Dec 23 - 29: accused U/A and used cocaine.
* Jan 6/04: BCRB disposition of custody reviewable within six months to allow for VL's; accused's brother not considered suitable placement resource; accused left hearing room.

Progress January 2004 to June 2004

* AFPS attempted to assess feasibility of visit leaves to Salt Spring with accused's brother.
* Accused completed CARE Program and attended drug and alcohol programs in community.
* Mar 6 - 7/04: accused U/A and on return had used cocaine, amphetamines and marijuana; accused unco-operative.
* Apr 17/04: verbal exchange escalated to physical altercation with a peer.

* Accused refused request for urine samples on seven occasions.
* Apr 30/04: accused assaulted co-patient and was placed on A-2 unit.
* Accused requested change of psychiatrist.
* Jun 1/04: BCRB disposition of custody.

Progress June 2004 - May 2005

* Jul 3 - 14/04: accused on unauthorized absence; returned by RCMP having used alcohol, heroin and cocaine (IV); accused not psychotic on re-admission; olanzapine discontinued under medical supervision.
* Jul 29/04: accused granted escorted access to community.
* Jul - Aug/04: accused had numerous verbal confrontations.
* Sep 5 - 16/04: accused had physical altercation with peers; finally secluded for two days.
* By end of September/October accused demonstrated a variety of symptoms and was considered relapsed to psychosis, including paranoia and delusional beliefs; medication was reinitiated: **Ex. 122**
* Dec 4 - 6/04: accused U/A and returned having consumed cocaine and marijuana.
* Dec 22 - 24/04: accused U/A from an escorted outing.
* Accused's brother no longer able to offer supervision or accommodation on Salt Spring Island.
* Accused resided on Elm unit and attended community programs under escort.
* May 9/05: BCRB disposition of custody.

Progress May 2005 - May 2006

* Jul 30 - Aug 5/05: accused U/A; returned by RCMP and admitted to A-3 unit; admitted using cocaine and marijuana.
* Aug 6/04: accused secluded for aggressive behaviour and threats to staff.
* Aug 7/04: urine screen positive for cocaine.
* Sep/05: accused declined to participate in personality assessment.
* Urine screens negative for several months.
* Nov 30/05: accused placed at "open" Hawthorne unit.
* Accused established contact with family member in northern BC and Maple Ridge.
* Dec 6 - 9/05: accused did not return from day leave; admitted using marijuana and cocaine on return.
* Urine screens in hospital remained negative for illicit substances.
* Accused had periodic altercations but showed no evidence of psychosis; accused continued to deny his Axis I illness or need for medication.

* Apr 11/06: BCRB disposition of custody effective May 5/06 "reviewable by July 31/06", to allow operational evidence to be developed and presented: **Ex. 131**. Mr. Mazzei's disposition was not reviewed within the intended time frame of July 31, 2006. A hearing was initially scheduled for July 26, 2006, a time when Mr. Mazzei was on unauthorized absence from hospital. Counsel for the Director requested postponement in order to fully develop written submissions and to arrange a tour of FPH for panel members and participants in connection with its submissions.

Clinical and Risk Assessment Evidence in Relation To the "Bare Choice" [See Note 1 below] **of Disposition**

Note 1: See *Penetanguishene Mental Health Centre v. Ontario (AG)* [2004] S.C.C. 20 ("*Tulikorpi*") at par. 2.

¶ 30 The Director submitted, as disposition information, a series of reports produced by the accused's treatment team represented by Case Management Co-ordinator (CMC) Golding and psychiatrist Dr. J. Brink: **Ex. 132, 133, 134, 135**. These individuals also provided oral evidence at this hearing.

CMC Golding's Evidence

¶ 31 CMC Golding's evidence updated the BCRB regarding Mr. Mazzei's behaviour and progress since the April 11 hearing:

* Apr 12/06: the accused was transferred from A-3 unit to Hawthorne House, an "open" unit and approved for **level 4 privileges** [See Note 2 below] to attend community programs; accused was apparently co-operative and abstinent in hospital.
* May 6 - 26/06: accused U/A from hospital for three weeks; was re-admitted to A-2 in a dishevelled state and secluded for observation; admitted using cocaine hourly and marijuana while AWOL.
* May 12/06: accused's brother in Mission offered potential accommodation and supervision but later retracted offer due to personal problems.
* May 26 - 30/06: accused refused to attend treatment planning conferences (TPC).
* Jun 30/06: accused was placed at Hawthorne unit from "secure" A-3 ward.
* Jul 5/06: accused started day leaves to attend work program installing glass.
* Accused's random urine screens in hospital negative.

* Jul 20 - 28/06: accused U/A until Jul 29 when he appeared at Willingdon House and escorted to FPH; admitted using marijuana and cocaine.
* Aug 15/06: accused was again placed at Hawthorne (open) unit from A-3; accused's behaviours challenging, dismissive; accused declined return to employment due to arm and back pain complaints (but refused to see GP).
* Accused not interested in placement at Coast Cottages and declined further addictions programming.

Note 2: Level 4 privileges consist of specified unescorted and structured community program day leaves. For example, patients could be attending volunteer work in the community, a work program, a drug and alcohol program or Pennington (Penn) Hall (which is a social club on the grounds of Riverview Hospital). Level 4 privileges must be authorized by the patient's disposition order: **Director's submission, p. 16; see also Ex. 136**.

Dr. Brink's Evidence:

* Despite his two absences during which he consumed illicit drugs the accused has not relapsed to acute psychosis.
* The accused's care and treatment is to be assigned to another psychiatrist.
* The accused remains quick to blame others for his circumstances; remains reactive, abusive and demanding.
* The accused's oral medications are administered under supervision; he does not consume them while U/A and would likely discontinue entirely on a voluntary basis as he continues to deny his mental illness.
* The accused continues to decline to participate in psychological and personality testing in aid of risk assessment; he continues to exhibit Axis II personality features.
* Dr. Brink considers the accused's pattern of drug abuse as potentially life-threatening; he is unwilling to explore dynamics of his U/A behaviour; no significant change is expected.
* The accused has not been seriously violent in hospital in some time but remains quick to anger, hostile, confrontational, impulsive and opportunistic.
* No residential options have been obtained or identified.
* The accused has the cognitive capacity to accept responsibility for and to choose different behavioural strategies.

¶ 32 (Dr. Brink's evidence and testimony in response to Mr. Mazzei's request that the BCRB specify or mandate his community access and security level living unit if detained is dealt with below at **Para. 86)**

¶ 33 The Crown introduced no additional evidence at this hearing.

¶ 34 As mentioned earlier, Mr. Mazzei was, at his request, excused from the hearing. He did not rejoin the proceeding and he provided no evidence at this hearing.

Disposition

¶ 35 In support of his 1986 NGRI verdict, and repeatedly and consistently since then, Mr. Mazzei has been assigned multi-factorial diagnoses including chronic schizophrenia (active at the time of index offence); anti-social personality disorder; multiple drug abuse disorders (including solvents, alcohol, marijuana, heroin and latterly cocaine); likely significant lifelong brain damage due to chronic historic solvent abuse: **Ex. 6, Ex. 119**

¶ 36 Since the inception of the current MDO scheme, the accumulated evidence suggests the early establishment of a pattern of repeated unauthorized absences (U/A's), whether from hospital or community residential resources, inevitably motivated by, or resulting in, the use of a variety of illicit substances: **Ex. 9, Ex. 10**. As of July 2002, Mr. Mazzei had engaged in no less than eighteen to twenty unauthorized absences, the vast majority involving relapse to abuse of substances: **Ex. 109**.

¶ 37 His attraction to and his choices of drugs, despite attempts to engage him in treatment programs, including programs compatible with his avowed cultural beliefs, as early as 1997: (**ex. 63)**, remain undiminished; indeed they have, from time to time, escalated and broadened.

¶ 38 Equally longstanding and consistent, has been Mr. Mazzei's fluctuating behavioural repertoire including sullenness, anger, hostility, belligerence, verbal abuse, non-co-operation, and periodic threatening or aggressive presentation. Mr. Mazzei has been the subject of criminal charges since his index offence. He has also demonstrated threatening and assaultive behaviours in hospital which have not attracted charges. We do not consider his avoidance of legal entanglements on his recent unauthorized absences as evidence that his potential to pose a threat has become speculative or insignificant.

¶ 39 Mr. Mazzei has traditionally disavowed or denied his schizophrenic illness. The evidence clearly establishes that he was acutely psychotic at the time of his seriously violent index offence: **Ex. 86**. His psychosis has been considered responsive to medication. Although Mr. Mazzei generally, despite his use of destabilizing substances and non-compliance, has not presented with frank psychotic symptoms when readmitted following his many elopements, longer term elimination or reduction of his psychotropic medications have, in the past, brought about a return of such symptoms. ***(see for example MAZZEI submission, Paras. 9, 35)***

¶ 40 Given his belief system and as he has amply demonstrated by his actions while on unauthorized absences, Mr. Mazzei would, in all probability, not consume his prescribed medication by choice. He would then most certainly relapse to psychosis within a matter of months if not sooner. Mr. Mazzei has demonstrated that he can be dangerous when he is ill.

¶ 41 Despite being assigned different treatment and case management personnel, Mr. Mazzei's overall behaviours have shown themselves to be remarkably resilient and entrenched. His current treatment provider is at a loss to suggest what else might be considered to engage Mr. Mazzei or to disrupt his established patterns. Mr. Mazzei's personality disorder and his cognitive limitations are unlikely to ameliorate.

¶ 42 Mr. Mazzei has repeatedly demonstrated, perhaps due to what has unfortunately become an institutional dependency, that he is simply unable to care for or maintain himself, absent authoritative supervision and structure.

¶ 43 The evidence, viewed in its entirety therefore persuades us that Mr. Mazzei remains a significant threat. He is not entitled to be absolutely discharged from this scheme. Mr. Mazzei did not provide evidence in rebuttal.

¶ 44 Mr. Mazzei has declined to consider placement at Coast Cottages as an interim step toward eventual independence. The BCRB was not provided with any evidence, at the time of this hearing, that Mr. Mazzei has any offer of accommodation in the community. We have been provided with no additional information to the contrary in the intervening period since October 11, 2006.

¶ 45 Mr. Mazzei asks that he be conditionally discharged two months hence. In the meantime, he would set about securing private accommodation. Mr. Mazzei chose not to share his plans, to the extent he has any, with the BCRB. Given Mr. Mazzei's lack of engagement or participation in this hearing, we find it difficult to assess the seriousness or reality of his proposal. Under a disposition delayed for two months, Mr. Mazzei would, in any event, be implementing his housing search under the community access and visit leave provisions afforded him by his current custodial disposition. Except for his unauthorized absences and drug seeking behaviour he could, in fact, already be exercising visit leaves to rented accommodation. Instead, Mr. Mazzei remains aloof and disengaged from his caregivers and from this Tribunal. We have been provided with no evidence to suggest that the disposition requested would result in a more positive outcome; nor indeed that, in the short term at least, it represents a less onerous or less restrictive alternative to the status quo.

¶ 46 Our choice of disposition therefore remains one of custody with conditions which present no obstacle to Mr. Mazzei to pursue his plan. We encourage him to do so forthwith and once he has established himself, to approach the BCRB for an early hearing to request an alteration of his legal status.

¶ 47 Our consideration of the legal submissions in relation to the appropriate conditions under which Mr. Mazzei ought to be detained, and our decision in respect thereof follows.

EVIDENCE AND SUBMISSIONS RELATING TO DISPOSITION CONDITIONS

¶ 48 We now turn to the accused's request for the detailed, specific, and indeed, mandatory disposition conditions which were the focus of the written submissions filed in this proceeding.

¶ 49 To recap, Mr. Mazzei seeks conditions which mandate unescorted day leaves to the community for a variety of purposes and which specify his placement at FPH on a unit whose security level is designated as "open" (**Ex. 136; FPH Policy HAS-201H**). Withholding Mr. Mazzei's community access or placing him on a "secure" or "closed" unit, each for more than seven days, would constitute a significant restriction on his liberties requiring notification (**s. 672.56**) and mandatory review (**s. 672.81 (2)**).

¶ 50 Having concluded that our ongoing jurisdiction over Mr. Mazzei remains justified in the form of a custodial disposition, this Tribunal, is now required to reconsider the totality of the evidence for a third time in order to fashion the "least onerous and least restrictive" but "appropriate" conditions under which he will be detained: **S. 672.54; *Winko v. BC (FPI)* [1992] 2 S.C.R. 625, paras. 148(9) and 165; *Tulikorpi,* (supra) paras. 24, 44, and 45**.

The Jurisdiction of the BCRB To Specify Liberties, Privileges and Placement in Hospital

¶ 51 This Tribunal's historic approach to crafting the conditions which comprise its dispositions has generally been to implicitly, (and infrequently, explicitly), permit considerable discretion and flexibility as to both clinical and security matters, in terms of their day to day implementation. A definitive identification or analysis of the factors which gave rise to this practice, which differs somewhat from other jurisdictions, may not be objectively possible. Some explanatory factors may include a desire on the part of the tribunal to avoid micro-managing individual cases based on an understanding of the waxing and waning nature of mental illness; a historic tension between the authoritative oversight of the Tribunal, as distinct from AFPS's role of treatment provision; an understandable overlapping or lack of clear distinction between public safety and liberty interests, versus matters which are the proper concerns of clinical judgement, diagnosis and treatment; differences in the manner in which **PART XX.1** or Review Board orders are implemented in various provincial jurisdictions, as well as differences in the organization of the respective provincial forensic service delivery systems and their resources.

¶ 52 Only a handful of dispositions in the BCRB's history have been highly prescriptive in terms of the liberties and privileges afforded an accused, or have imposed explicit restrictions on the clinical discretion of the Director: **E.g., *Gielzecki (Nov 2004); Watts (Oct 30, 2006; Dec 12, 2006); Heathcliff, Nov 22, 2006.***

¶ 53 The issue under discussion was very much a live one in the context of recent appeals of BCRB decisions, such as ***Mazzei v. Dir AFPS* 2006 BCCA 321**; ***Gielzecki* (BCRB, Feb 15, 2005, appeal abandoned)**. Recent jurisprudence appears to have definitively established, and the parties now accept, that despite its historic practice, the BCRB's mandate encompasses the authority to direct, in far more specific terms, matters which clearly relate to an accused person's liberty interests. This would include such matters as community access, privileges and liberties, and the security level of his/her hospital

placement: **See *Penetanguishene v. Ontario* (AG) ("*Tulikorpi*") [2004] S.C.C. 20; *Orru v. Penetanguishene* (OSCJ) Dec 22, 2004; *Pinet v. Penetanguishene et al* [2006] O.J. No. 678; *Mazzei v. Director AFPS and AGBC* [2006] S.C.C. 7; *Manitoba (AG) v. Wiebe* 2006 MBCA 87 (*Wiebe*)**.

¶ 54 In summarizing the Director's position in the current proceeding, counsel concedes:

> The Hospital accepts that the BCRB has the jurisdiction to specify either or both a patient's security or privilege level within the Hospital in that patient's disposition order. This jurisdiction flows primarily from section 672.54 of the Criminal Code. ...: ***(Director's Submission P. 2.***

¶ 55 In the course of its argument, the Director's submission cites ***Tulikorpi*** (supra) at par. 32, as identifying the "types of conditions affecting liberty interests that would appropriately be included in a disposition order". It then goes on to acknowledge:

> On authority of *Tulikorpi*, it is therefore clear that Review Board dispositions should include conditions identifying the types of liberties that may potentially be afforded (or not afforded) an NCR or unfit accused. This is consistent with this Board's practice of including, where appropriate, disposition conditions providing for escorted or unescorted community access, overnight visit leaves and similar liberty-related privileges. Traditionally, and consistent with section 672.56 of the *Criminal Code*, the management of these conditions has been left to the discretion of the Director. **By extension, and given the breadth of the Board's section 672.54 authority, the Hospital accepts that it is open to the Review Board to go further and specify a particular security level within the Hospital (such as an open unit) or be more specific about a patient's privileges (e.g. specify the patient must have certain privileges)**: ***Director's Submission, P. 38,*** *(emphasis added).*

¶ 56 Thus, it now appears to be common ground among the parties that the BCRB does, indeed, have the jurisdiction to impose specific conditions with respect to such matters as the security level of an accused person's placement and his/her liberties and privileges.

Context Dependent Analysis and Application

¶ 57 A potentially challenging implication of this acknowledgement is whether the BCRB must fully exercise its specific authorities relating to the accused's liberty interests in every case and, of course, whether it should do so in this particular case. The Director questions whether the types of conditions under discussion are necessary or appropriate and whether they are indeed consistent with the section 672.54 criteria including the "direction" that any liberties granted do not compromise safety or clinical concerns": ***Director's Submission P. 38., citing Tulikorpi* (supra), paras. 69, 70.**

¶ 58 The Director then goes on to articulate its position that it is never appropriate for the BCRB to

issue such prescriptive conditions in this jurisdiction:

> The Hospital's position is that the Review Board's present practice of defining the outer limits of an NCR accused's liberties in disposition conditions, while delegating the Director responsibility for the day to day management of the NCR accused (including the incremental granting (or withdrawing) of increments of the patient's liberty based on the patient's clinical status and other section 672.54 criteria), is the most appropriate in this jurisdiction. Such a practice allows an NCR accused's disposition order to be crafted in way that is least onerous and restrictive to the patient's liberty interests at any given point in time in a manner that is always consistent with each element identified in section 672.54: ***Director's Submission P. 39***

¶ 59 In support of this argument, the Director cites such factors as the need to ensure that patients who have had physical or other interpersonal conflicts are not placed in the same unit; to avoid the possibility of contact between a patient and a staff member, where such contact is legally restricted; to avoid depriving a treatment team from exercising its "clinical discretion" to determine whether or not an individual is safe on a particular unit; to avoid bypassing other patients awaiting placement on a particular unit; to protect the Director's ability to manage bed availability and utilization, and respond to population fluctuations.

¶ 60 Dr. Brink, in his evidence, also articulated the issue by referring to the construct of the "deserving" or "motivated" patient: **Transcript of Oct 11, 2006, hearing, P. 56 (Transcript).**

¶ 61 Such orders, the Director says, are micromanagement; are problematic for legal and practical reasons and may, in fact, render day to day "fine tuning" impossible. This statement encompasses, in our view, the caution raised by Mr. Mazzei's April 11, 2006, Panel, that the decision to impose the specific conditions sought by Mr. Mazzei ought to take into consideration the "practical consequences" thereof, as well as its potential impact on resources: **Ex. 131, par. 68; *Director's Submission P. 46*.**

¶ 62 On behalf of Mr. Mazzei, it is argued that the BCRB's duty to impose the least onerous and least restrictive dispositions requires it to specify no less than the accused's "core level of security" in hospital: ***Wiebe* (supra), par. 82; *Tulikorpi* (supra).**

¶ 63 Mr. Mazzei argues further that resource management concerns, or plainly, bed availability considerations, should not override the accused's statutory right to the least onerous and least restrictive appropriate placement.

¶ 64 According to Mr. Mazzei then, placement on a ward or unit which is at a more restrictive security level than those specified by the BCRB in its order, for more than seven days, should trigger a mandatory review (**s. 672.81(2)**). There is no specific evidence, it is asserted, that such an order would render the Director's task an unmanageable one. At a more general level, we note that the expert evidence in ***Tulikorpi*** (supra) did not support any broad conclusion that the application of the "least

onerous and least restrictive requirement" has operated so as to "hamstring treatment", at least in Ontario: ***Tulikorpi* (supra) paras. 59-61, 70.** There is no specific evidence or expectation that it would do so in this case.

¶ 65 Although given our ultimate determination of this case, we do not need to address them in detail, counsels' diligence and efforts in marshalling the arguments deserve respectful consideration and at least some response. As well, given the thrust and direction of the developing jurisprudence on the matter, we expect this issue will arise ever more frequently in the course of future BCRB proceedings.

¶ 66 At a general level it perhaps behooves us to reiterate the principle that under the current **PART XX.1** scheme, the provision of medical treatment, or opportunities for same, is ancillary to the primary goals of public safety and of maximizing the liberty interests of the accused. Moreover, although the BCRB is in the position of supervising the provision of appropriate and effective treatment, it cannot prescribe or impose such treatment: ***Mazzei,* (S.C.C.) (supra), paras. 32, 39.**

¶ 67 Those statements clearly distinguish the role of the Tribunal from that of the Director. By definition, the conditions which form part and parcel of a BCRB disposition are presumed to relate to liberty interests and not primarily to matters of treatment. While ***Tulikorpi*** (supra) clearly countenances "fine tuning" and the objective of not compromising treatment concerns **(par. 69)**, the Supreme Court of Canada in ***Mazzei*** clearly determined that such concerns are secondary to public safety and the accused's liberty interests: **par. 32**.

¶ 68 Having said that, we wish to make it clear that as matters of policy and practice this Tribunal has never intended nor sought to superimpose itself on the role of the medical experts to diagnose, prescribe, and provide medical treatment to, an accused person. This is not to say that we would not inquire into the factors which inform diagnostic and treatment conclusions and opinions or into the effectiveness of the treatment provided in reducing an accused's risk, but we have absolutely no interest in stepping into the shoes of the Director.

¶ 69 The considerable amount of evidence filed on behalf of the Director in the context of Mr. Poquiz's affidavit contains part of the answer to the Director's challenge. That evidence acknowledges that the security level in which an accused is placed is a risk-based rather than a purely clinical or treatment decision: **Ex. 136**; ***Mazzei Submission, par. 47; Director's Submission, P. 6.*** Placement choice is primarily determined by security requirements and (appropriately) not determinative of the quality or nature of the psychiatric treatment an accused needs or can receive.

¶ 70 Although BC has, for current purposes, a single designated forensic facility, an accused's placement according to the defined security levels within that facility has considerable impact on his or her liberties. Clearly some units are significantly more onerous and more restrictive than others.

¶ 71 As to the Director's arguments with respect to "clinical discretion" or inter-patient conflict, these are offered as general illustrations. There is no specific evidentiary link to Mr. Mazzei. They are

therefore not dispositive of the issue in the current proceeding.

¶ 72 This Tribunal does not propose to arbitrarily, or in advance, truncate or limit the ability of any accused person to adduce evidence or argue that his/her disposition should impose highly prescriptive or specific conditions which describe the minimum limits of his/her liberties, privileges and security levels.

¶ 73 Whenever the issue is raised, the Director is, of course, at liberty to introduce evidence supporting its opinion that such a specific extension or description of liberties would in a particular case, be inappropriate, unsafe or would unreasonably compromise treatment goals.

¶ 74 When, having duly considered the evidence, the BCRB determines that prescriptive conditions are necessary and appropriate, it must obviously consider articulating these in the context of a specific delegation of authority as contemplated in section 672.56, so as to ensure that treatment goals are not thwarted; ***Tulikorpi* (supra), par. 69; Wiebe (supra), par. 77** . Again, any party is, at any time, at liberty to advance evidence that a particular condition will unduly compromise or conflict with a particular accused's treatment objectives. The BCRB will then strive to strike the appropriate and reasonable balance. We are, of course, always subject to appellate oversight.

¶ 75 With respect to those arguments or concerns relating to FPS or even BCRB resources or budgetary constraints, we would observe that such concerns are universal in any publicly funded service delivery regime. The level of public and political discourse on the issue suggests that such pressures are especially acute in the health care system. Neither the BCRB nor the Director ultimately determines or controls the allocation of scarce public resources.

¶ 76 On the other hand, the BCRB and by delegation, the Director, are engaged in the implementation of a statutorily mandated regime. Several Ontario courts have established that where the Review Board determines that it is necessary and appropriate to impose or prescribe an accused's level of security, failure to carry out the order amounts to a violation of the individual's ***Charter*** rights. Ultimately, provincial hospital authorities are expected to provide the resources required to implement the statutory scheme so as to, in turn, enable the Review Board's orders to be implemented: ***Orru,* (OSCJ) Dec 22, 2004, par. 23; *Pinet* [2006] O.J. No. 678, paras. 63-66, 68,70; see also *R. v. Rosette,* OCJ, Apr 20, 2006, per Schneider J.**

¶ 77 The question might be reframed by asking to what extent matters of resource availability can justify (as the term is used in section 1 of the ***Charter***), limiting an accused's liberty rights as guaranteed by sections 7 and 9 of the ***Charter***. In ***Newfoundland (Treasury Board) v. Newfoundland and Labrador Assn. of Public and Private Employees,* [2003] 3 S.C.R. 381**, Binnie J. concluded that courts will look with scepticism at attempts to justify infringements of ***Charter*** rights on the basis of budgetary constraints, although acknowledging the need for some balancing amongst competing priorities (**at par. 72**).

¶ 78 It is unlikely that holding an accused in a higher level of security than ordered or deemed

appropriate by the BCRB, for an unreasonable period of time, can be justified on the basis of resource availability issues.

¶ 79 Similarly, unreasonable impairment of liberty rights based on concerns that specific conditions, accompanied by delegation of authority to restrict their exercise under section 672.56, may cause a proliferation of BCRB hearings will be approached with considerable caution. In ***R. v. Morin*** **[1992] 1 S. C.R. 771,** Sopinka J., speaking to the right to trial within a reasonable time as per section 11(b) of the ***Charter***, said:

> The Court cannot simply accede to the government's allocation of resources and tailor the period of permissible delay accordingly. **The weight to be given to resource limitations must be assessed in light of the fact that the government has a constitutional obligation to commit sufficient resources to prevent unreasonable delay** which distinguishes this obligation from many others that compete for funds with the administration of justice. There is a point in time at which the Court will no longer tolerate delay based on the plea of inadequate resources.

¶ 80 As Wilson J. commented over twenty years ago in *Singh*: Minister of Employment and Immigration, [1985] 1 S.C.R 177:

> "... Certainly the guarantees of the *Charter* would be illusory if they could be ignored because it was administratively convenient to do so. No doubt considerable time and money can be saved by adopting administrative procedures which ignore the principles of fundamental justice, but such an argument, in my view, misses the point of the exercise under S. 1 ... The principles of natural justice and procedural fairness which have long been espoused by our courts and the constitutional entrenchment of the principles of fundamental justice in S. 7, implicitly recognize that a balance of administrative convenience does not override the need to adhere to these principles.": **par. 72.**

¶ 81 The BCRB, therefore, will generally approach cases from the perspective that administrative or resource concerns cannot subrogate an accused's right to the least onerous appropriate disposition. We are, however, prepared to hear evidence and argument on the matter of reasonable institutional limits and the extent to which they should be considered in reasonably limiting liberty interests.

¶ 82 In summary, while we do not expect to alter our fundamental and established approach, the BCRB will ultimately consider each case on its merits in keeping with its duty to tailor and impose orders it considers "appropriate", on the basis of an "individualized assessment" of the evidence compatible with a particular accused's situation and progress: ***Winko; Tulikorpi*** **(supra), paras. 54-55.** Where it is supported by evidence and argument, the Tribunal will not hesitate to craft conditions and delegations of authority which it considers "appropriate", though parties may find them prescriptive. It is anticipated that in the vast majority of cases a broad, flexible approach to conditions and delegations will

prove adequate, appropriate and remain the norm.

Should the BCRB in Mr. Mazzei's Case Exercise Its Discretion to Impose Detailed and Specfic Placement Conditions and Delegations

¶ 83 Again, Mr. Mazzei has been the subject of at least twenty-seven hearings of the BCRB since just 1992. During that period of time, Mr. Mazzei has engaged in at least twenty-seven unauthorized absences during which he has inevitably engaged in extensive, multi-substance abuse. At least eight of his unauthorized absences have exceeded seven days.

¶ 84 In urging the BCRB to impose prescriptive, detailed, and specific placement and community access provisions, counsel acknowledges that Mr. Mazzei's advancing attraction to an ever-expanding array of substances, (which Dr. Brink characterizes as life threatening), has become the key barrier to his rehabilitation and community reintegration.

¶ 85 Mr. Mazzei's legal submission, as has already been observed, submits that generally the BCRB has the power and authority to impose specific conditions as a matter of law: ***Mazzei Submission*, paras. 51-70.** It is, however, less than clear why the BCRB's authority to do so should be exercised in Mr. Mazzei's case; more to the point, how imposing highly prescriptive constraints on the Director's discretion would ultimately benefit or assist Mr. Mazzei. In his evidence on the point, Dr. Brink said:

> "At some point Mr. Mazzei has to accept responsibility for his decisions and continued failure or inability to do so does not ... automatically mean that or translate into greater miraculous plans on behalf of the treatment team. I think we have exhausted what can be reasonable approaches ..."
> "... I think what you're proposing with respect counsel, is something what (sic) we've ... simply what we've been doing over the last year and more ... I think it is for you to perhaps bring evidence to the Board ... as to why things would ... are likely to be different this time around ...": ***Transcript Pp. 57-58***.

¶ 86 Beyond the somewhat implicit lament that Mr. Mazzei has been unfairly treated or held back in terms of his progress since at least 2001, there is little in the way of specific evidence or persuasive argument in his submission, that a change of approach at the level of his legal order would resolve the situation in which the accused (has placed or) now finds himself.

¶ 87 Mr. Mazzei asserts that the restrictions imposed at the time of his many re-admissions have prevented him from addressing his goal of attending "culturally appropriate" substance abuse treatment programming. The evidence indicates that Mr. Mazzei was connected with a "culturally appropriate" program - Hey Way Noque - as early as 1997: **Ex. 63**. He has also, from time to time since, worked with a First Nations counsellor in New Westminster. His engagement with, or access to, these resources has had no appreciable effect on his attractions or addictions. It is from our perspective, questionable what Mr. Mazzei understands of, or hopes to accomplish from, First Nations-specific programming; indeed,

whether he has any informed or meaningful connection to First Nations culture at all: **see generally, R. v. Sim, Ontario Court of Appeal #C43385 (Oct. 20, 2005)**

¶ 88 As to his repeated failure to gain entry to a residential treatment program, we remind Mr. Mazzei that it has been his own behaviour, his non-attendance to programs, his frequent unauthorized absences and relapses, and particularly, his inability to achieve that program's entry expectations, that have served to exclude him therefrom, not restrictions imposed upon his community access or his placement at FPH.

¶ 89 As to the assertion that the treatment "impasse" (a term adopted by the Supreme Court of Canada in ***Mazzei*** (supra)), or the "lockstep, institutionalized approach" to treatment and planning identified in the BCRB's April, 2002, decision (**Ex. 109**) remains in effect, we heartily disagree. As of October, 2003, Dr. Brink became the accused's supervising treating psychiatrist. From the outset, Dr. Brink was prepared to extend Mr. Mazzei considerable flexibility in terms of treatment, program opportunities and risk assessment, including opportunities for vocational advancement; attendance at, and with, First Nation substance counsellors, and the re-evaluation, through the medically supervised withdrawal of medication, of Mr. Mazzei's Axis I diagnosis. Typically, following an initial honeymoon period of co-operation, participation and intermittent sobriety in hospital, Mr. Mazzei has, once again, withdrawn to hostility and has disengaged.

¶ 90 Mr. Mazzei has been adjudged not criminally responsible for his previous offences due to the operant effects of his mental disorder(s). Mr. Mazzei, specific evidence and experience to the contrary, continues to deny he is mentally ill. Indeed, he has been able to demonstrate extended periods of remission during which he might be taken as organized in terms of his thinking and, therefore, responsible for his behaviour. Nevertheless, nothing about Mr. Mazzei's conduct has been encouraging. His unauthorized absences, behaviour and drug consumption, to a life-threatening intensity, while at large, flourish unabated. We conclude there has indeed, been a re-evaluation of past treatment approaches and exploration of alternatives to seek to circumvent the "impasse" referred to in 2002: **Ex. 109**.

¶ 91 There is no evidence to suggest that the imposition of caution-inspired restrictions, when Mr. Mazzei returns to hospital in a deteriorated, angry and hostile condition, especially after prolonged absences, is imprudent or arbitrary. Even on the open Hawthorne unit, Mr. Mazzei can present as intimidating to co-patients and dismissive of staff: **Ex. 134**. It is, of course, entirely appropriate that as he re-stabilizes and settles, his access to less restrictive placements and opportunities keep pace.

¶ 92 Currently, Mr. Mazzei is choosing not to moderate his conduct, to co-operate or to meaningfully participate in, utilize, or take advantage of, alternative treatment or program opportunities. Dr. Brink is at a loss to recommend new strategies which offer any hope of engaging the accused beyond accepting his chosen path. He has seemingly sabotaged efforts to enhance the chances of discharge. Another new treatment team is to be introduced.

¶ 93 As well, Mr. Mazzei has, of late, declined to meaningfully participate in, offer information, or attend or remain at his own BCRB hearings. He appears manifestly uninterested in providing us with information which may prove relevant to our dispositional task. His disengagement from his treatment team such as, for example, his failure to participate in psychological or personality testing, deprives the BCRB from receiving relevant indirect information. He was absent without leave for his scheduled July, 2006, early hearing. He chose not to attend or offer evidence at his October 11, 2006, proceeding. He has, it appears, disengaged from his legal regime as he has from his treatment milieu. Why then would we impose a regime which is so narrow that it will, without doubt, occasion even more frequent hearings?

¶ 94 While we do not embrance Dr. Brink's concept of the "deserving patient" (as it implies there are undeserving patients) (**Transcript, p. 56**) we are unable to see how imposing narrow and prescriptive conditions offers any hope of engaging Mr. Mazzei or of effecting his re-integration beyond contributing to his burgeoning sense of victimhood, entitlement and lack of personal responsibility.

¶ 95 We believe therefore, that Mr. Mazzei's case is one which must be approached from the perspective of the flexibility contemplated in ***Tulikorpi: supra, par. 69.***

¶ 96 We remind ourselves, again, that we are, after all, engaged in an exercise of individualized assessment and in rendering a disposition which is compatible with the accused's situation and consistent with the evidence; ***Winko: supra, paras. 42, 47,*** *cited at* ***Tulikorpi*** (**supra), paras. 54-55**.

¶ 97 ***Tulikorpi*** reminds us further that our task of imposing "appropriate" conditions is governed by our obligation to impose the least restrictive and onerous condition in the context of our individualized assessment of the NCR accused and the circumstances before us:

> In my view, Parliament intended "appropriate" to be understood and applied in the framework of making the "least onerous and least restrictive" order consistent with public safety, the mental condition and other needs of the NCR accused, and the objective of his or her eventual reintegration into society: ***Tulikorpi*** **(supra) par. 56.**

¶ 98 To speak to the Director's submission, we also take the view that, absent more precise statutory definition and having regard for the admonition to apply the law in a pragmatic fashion to the facts of a particular case (***Wiebe,*** **par. 88**), it is open to (indeed, incumbent on) the BCRB to determine what constitutes a "significant restriction" on a particular accused's liberties on the basis of a context dependent analysis. It is open to the BCRB to reach differing conclusions based on the situation of the particular accused before us. In other words a "significant restriction" for one NCR accused may not be so for another.

¶ 99 In this case Mr. Mazzei's pattern of behaviour, and in particular his unauthorized absences, have put the BCRB in a position where specifying a particular, or even a "core", level of security is simply practically "incompatible" with his particular, individual situation. His conduct renders the already

vague concept of an "outer envelope", beyond our current approach, a meaningless one: ***Wiebe (supra) paras. 81-90***.

¶ 100 The effect of the order sought by Mr. Mazzei (to mandate that he be housed on an open unit), would amount to reserving a bed for him. In Mr. Mazzei's situation it would be unreasonable and inconsistent with public safety and his mental condition to "reserve" his bed on a particular unit when he inevitably absents himself for increasing periods of time and then returns from such absences, suffering the health and behavioural ill effects of substance abuse. In light of his behaviour we are simply unable to identify or specify Mr. Mazzei's 'core' level of security.

¶ 101 In these circumstances it is not a "significant restriction" of Mr. Mazzei's liberties to place him in more secure ward upon his return from an unauthorized absence such that a mandatory hearing is triggered. We would also add that we have no basis for concluding that more frequent hearings, which would be triggered by such movement under the order sought by Mr. Mazzei, would in any way contribute to or haste his reintegration or rehabilitation.

¶ 102 Although we decline to impose the conditions sought, this does not signal any diminution or derogation of Mr. Mazzei's right to the diligent identification and pursuit of reasonable and prudent reintegration opportunities. From the platform of his current disposition then, the Director should continue to encourage, enable and, indeed, instrumentally assist Mr. Mazzei to secure suitable accommodation and the necessary counselling, clinical and financial linkages and supports, such that when we next convene Mr. Mazzei may have been tried in the community on a visit leave basis.

¶ 103 Mr. Mazzei's diligent participation in such a plan will provide the best evidence to place the BCRB in a position to finally alter his legal status and to hasten his independence and self-determination.

DISPOSITION AND CONDITIONS

¶ 104 Mr. Mazzei will therefore, be the subject of a custodial disposition on the following conditions:

1. THAT he be subject to the general direction and supervision of the Director, Adult Forensic Psychiatric Services ("the Director");

2. THAT, at the Director's discretion, he may have unescorted or unsupervised access to the community depending on his mental condition, having regard to the risk the accused then poses to himself or others;

3. THAT as required by the Director, he attend at any time and place for purposes of assessment, counselling, assisting him with regard to any treatment, promoting his reintegration into society, or monitoring his compliance with this order;

4. THAT, at the Director's discretion, he may have overnight stays in the community for a period not exceeding twenty-eight (28) days for the purpose of assisting in his reintegration into society including attending a residential treatment program;

5. THAT he not acquire, possess or use any firearm, explosive or offensive weapon;

6. THAT he not consume alcohol or use hallucinogens;

7. THAT he not use any drugs except as approved by a medical practitioner;

8. THAT at his discretion, the Director may monitor the accused's compliance with this order by testing for the use of hallucinogens or unprescribed drugs through the use of urinalysis screening only on a random, periodic basis and otherwise where the Director has reason to believe that the accused may be using hallucinogens or unprescribed drugs, and the accused shall submit to such testing on the demand of the Director;

9. THAT he keep the peace and be of good behaviour; and

10. THAT he present himself before the Review Board when required.

¶ 105 Our order will be reviewable on or by October 10, 2007, unless an earlier hearing is justified or applied for.

CONCLUSION

¶ 106 The extraordinary efforts of all counsel, in this proceeding, to address important issues have been extremely helpful. They enable us to articulate some key conclusions or principles relative to the recent and emerging jurisprudence affecting BCRB hearings:

1. The BCRB has the jurisdiction to impose specific conditions relating, inter alia, to such matters as security levels and privileges.
2. Parties who request that the BCRB impose highly specific disposition conditions relating to the liberty interests of an accused person should (preferably on notice) introduce specific evidence and argument regarding the need or justification for same.
3. Parties who oppose such conditions should provide evidence why such conditions are contra-indicated or would negatively effect or impair treatment or other legitimate rehabilitative objectives.

4. The decision to impose highly specific disposition conditions must take into account the evidence and the criteria of section 672.54 as well as any appropriate or necessary discretion or delegations of authority under section 672.56.

¶ 107 Under the circumstances, and on the basis of our analysis and conclusions with respect to the appropriate disposition in this case, we have not found it necessary to consider the submissions which relate solely to the questions and answers dealing with the workings of the Program and Privileges Committee. The BCRB's views of that entity, vis-a-vis BCRB orders, have previously been articulated in our reasons in the matter of ***Gielzecki,* BCRB, Feb 15/05, at paras. 116-129**. We further refer the reader to ***May v. Ferndale Institution,* [2005] S.C.C. 82 at par. 77**.

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