

Case Name:

**T Watts (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  
Jason Kenneth Watts

[2006] B.C.R.B.D. No. 262

**British Columbia Review Board**  
**B. Walter (Chairperson), W. Warrian and**  
**M. Cacchioni (Members)**

Decision: October 30, 2006.  
(23 paras.)

**Appearances:**

Accused/patient: Jason Kenneth Watts

Accused/patient counsel: K. Love

Hospital/clinic: R. Dominguez, Dr. D. McKibbin

Attorney General: L. Hillaby

---

¶ 1 THE CHAIRPERSON:-- On October 30th, 2006 the British Columbia Review Board convened an annual hearing to review the disposition of Jason Kenneth Watts who is now age 25. Following the receipt of evidence and hearing submissions of the parties the Review Board reserved both its disposition and reasons. Following further deliberation our reasons now follow.

¶ 2 On November 16th, 2001, Jason Watts was charged with two counts of assault contrary to Section 266 of the Criminal Code. The assaults consisted of attacks on security staff at the psychiatric ward of Royal Jubilee Hospital in Victoria (RJH). This is Mr. Watts' seventh hearing before the Review Board since coming under this tribunal's jurisdiction. His personal, developmental, psychiatric and criminal history has been extensively documented. However, under the prevailing circumstances, and

given the disposition resulting from the current hearing, that historic material was once again thoroughly reviewed and considered in the course of our decision-making.

¶ 3 There is a social history on file as an exhibit, but review of the various assessments and Reasons for Disposition also confirms that the accused had a somewhat unstable and perhaps even chaotic childhood, having been removed from parental care and raised in a number of foster and institutional settings between ages 9 and 16 years. There is in the collateral historic material, information, the source of which is not identified, that as a child or adolescent the accused engaged in verbal threats toward his parents. In adolescence he began to develop something of a criminal record, including convictions for dangerous driving, auto theft, weapons possession, possession of stolen property, obstruction, mischief, elopement and failure to comply.

¶ 4 Exhibit 25 in the disposition materials contains a list of charges as well as descriptions of same, alleging that in the month of July 2000 Mr. Watts committed an aggravated assault, several break and enters, and resisted arrest. These charges were levelled at Cornwall, Ontario in March of 2001. As to the aggravated assault, the appended synopsis indicates that the accused had been involved in a confrontation with the victim earlier in the day. At approximately 11:30 in the evening a fight broke out between the two during which the accused forced the victim to the ground, causing his head to strike the pavement and resulting in a two-inch cut to the back of the victim's head which bled profusely. As the victim lay on the ground, the accused kicked him in the chest and torso causing a laceration of the victim's liver which resulted in extensive internal bleeding, and eventually in the hospitalization of the victim in a critical and life-threatening condition. The resist arrest occurred in the course of the accused's apprehension on the charge described above. Mr. Watts apparently also has an outstanding charge of break and enter in Alberta in 2000 or 2001.

¶ 5 As a youth, in a variety of penal or alternate care situations, the accused established a supportive relationship with a teacher or counsellor at age 17 in the Kingston, Ontario area. That individual apparently remains a source of ongoing support to the accused and provided an offer of such support at the current hearing, at Exhibit number 35. The historic evidence also indicates that the accused engaged in a somewhat serious suicide attempt in 1998. In August 2001 the accused and his then-girlfriend apparently left Ontario and set out for Calgary. The accused soon became increasingly psychotic with symptoms of paranoia, auditory hallucinations and delusions. The accused subsequently found himself in Victoria where, before the index offence and while staying at a shelter in Victoria, he became disruptive and required involuntary admission to psychiatric hospital. At the Eric Martin Pavilion his behaviour escalated. He became extremely violent. Exhibit 2 is a letter by a psychiatrist to a Crown prosecutor shortly after the index offence, the assault on security officers. The author is the Director of Psychiatric Intensive Care at the Royal Jubilee Hospital. He describes the accused as unable to control his behaviour, impulsive, quick to anger and to become assaultive with minimal provocation. That physician goes on to indicate that the accused had previously injured three security staff, kicked nursing staff and his ICU psychiatrist. Staff at the pavilion had had to call for police intervention and assistance on no less than seven occasions to subdue the accused and to assist in the administration of his medications. The accused on four occasions required restraint through the use of taser darts.

¶ 6 In December of 2001, after his arrest the accused was in December of 2001 admitted to FPH for containment and assessment purposes in an aggressive and acutely psychotic state. At this point collateral explorations indicated some evidence of historic alcohol and marihuana abuse. On the basis of Dr. McKibbin's assessment, on January 2nd, 2002, the Court imposed a verdict of NCRMD with respect to the index offence of two counts of assault and committed the accused to FPH. Following his initial acutely psychotic and depressed presentation the accused settled somewhat after the verdict, although he continued to demonstrate fluctuating affect and his insight was labelled as tenuous. Early in his stay at FPH Mr. Watts was assaulted by co-patients on two occasions but was fortunately able to avoid retaliation. On February 10th, 2002 the accused kicked a co-patient.

¶ 7 His first and initial appearance before the Review Board occurred on February 15th, 2002 and resulted in a disposition of custody reviewable within seven months. His assigned diagnosis has consistently been one of schizoaffective disorder, a historical diagnosis of conduct disorder, attention deficit hyperactivity disorder, and alcohol and drug abuse disorders. On AXIS II Mr. Watts has been diagnosed with anti-social personality traits.

¶ 8 From his earliest time under Review Board jurisdiction the accused was endorsing wishes to return to Ontario where he has more in the way of supports than he does in British Columbia. Following his first hearing the accused continued to become involved in episodic confrontations including physical aggression toward co-patients and used marihuana. At one stage when the accused was secluded following an aggressive episode he was severely destructive. As early as February of 2002 he was initiated on psychotherapy with some demonstrable behavioural improvement. In his initial six-month period at FPH he was not considered actively psychotic. In that same period of time the accused withdrew his wish to be returned to Ontario.

¶ 9 Unfortunately, prior to his second scheduled appearance before the Review Board, the accused eloped from FPH on July 6th, 2002. Curiously, he remained in telephone contact with members of his treatment team. His progress was followed by means of his periodic phone calls. In August of 2002 he reported having been arrested in Calgary, but he was thereupon released. In very short order he was again arrested in Winnipeg and again unfortunately discharged. In November of 2002 he reported that he had begun to cohabit with a girlfriend in Ontario. He was scheduled to appear in court to confront his charges in Cornwall on December 5th of 2002. Before that appearance the accused apparently moved to Calgary in the company of this then-pregnant girlfriend. Within a very short period of time she returned to Ontario. By December 6th, 2002 the accused had sought treatment in Calgary. He was eventually admitted to hospital in that city having been charged with trespass and mischief. On May 21st, 2003, after having been absent for some ten months, he appeared in court in Cranbrook, British Columbia. He was ordered to return and admitted to FPH on that same date demonstrating psychotic symptoms.

¶ 10 At FPH he was for a time agitated, hostile and unsettled. He acknowledged having used alcohol, marihuana and cocaine while on unauthorized absence. On May 26th, shortly after his admission, he assaulted a peer. In his report to the Review Board Dr. McKibbin described Mr. Watts as "persistently psychotic.": Ex. 14. On June 30th, 2003 the Review Board once again imposed a disposition of custody. On July 14th of that year the accused viciously head butted an FPH staff member and was charged with

assault. On October 5th, 2003 the accused again absented himself overnight and was returned by RCMP having used marihuana. In November the accused was convicted on the recent assault charge and sentenced to seven days' incarceration. In the months that followed the accused remained difficult, unstable, confrontive, and engaged in further altercations including a January 31st, 2004 assault. He consistently used marihuana. On April 2nd, 2004 his use of that substance was observed to have contributed to positive symptoms of his illness. Over the course of those months and prior to his next hearing on May 25th, 2004, the accused amply demonstrated his capacity for volatility and violence when ill.

¶ 11 At his hearing of May 25, 2004 a further disposition of custody was imposed. In the course of its reasons, the Review Board challenged the accused to remain abstinent and to moderate his behaviour. Nevertheless, in the six months that followed the accused remained affectively unstable. He tested positive for marihuana on eight occasions and on at least one occasion used cocaine. Although he had been wait-listed for discharge to Coast Cottages by that point, the accused was not considered clinically ready for discharge.

¶ 12 At his fifth hearing on November 8th, 2004 the Review Board again detained the accused on the understanding and finding that an escalation in the accused's substance abuse would beyond doubt exacerbate his psychotic symptoms and raise his risk to others to an unacceptable, unmanageable level.

¶ 13 In the period between November 2004 and November 2005 the accused was somewhat more settled, but his behavioural challenges continued. In March of 2005 he tested positive for marihuana on at least three occasions. Nevertheless, in April he was transferred to the open unit of Hawthorne House. His use of marihuana continued. On July 9th, 2005 he once again eloped to Calgary. He was returned more than two weeks later after being arrested in that city. On readmission his behaviour deteriorated to include inappropriate sexual activity with a female co-patient and assaultive behaviour on a co-patient as well as on staff.

¶ 14 On October 3rd of 2005 the accused once again renewed his request to be transferred to Ontario. The Review Board, in imposing a further disposition of custody on November 7th, 2005, the accused's most recent appearance, once again affixed a recommendation to its disposition that pursuant to Section 672.86(1) of the Criminal Code the accused be transferred to the Province of Ontario.

¶ 15 In approaching the accused's current hearing Dr. McKibbin has filed an updated assessment as of September 27th, 2006 which was marked as Exhibit 32. He reminds us that at the accused's last hearing he was on the secure ward of Ashworth 4 where he initially remained abstinent. He declined drug and alcohol counselling. In December he surrendered his first positive test since July of 2005 with no accompanying deterioration in mental state. Since December the accused has continued to use marihuana. On December 20th he demonstrated his impulsivity and impaired judgement by staging a fight with a peer which quickly escalated. His motivation for engaging in that altercation was ostensibly to hasten his transfer to Ontario. That strategy backfired. The accused was secluded whereupon he set fire to his mattress in the seclusion room. His behaviour resulted in his remaining in seclusion from

December 20th until December 28th, over the Christmas period. After a brief release he was on December 29th once again secluded until January 8th. In March he demonstrated further assaultive behaviour and another confrontation in May. On May 26th the accused was allegedly involved in a further assault which remains under investigation and may yet result in criminal charges. In June the accused endorsed auditory symptoms of his illness.

¶ 16 Dr. McKibbin indicates that in his view the accused's ongoing stressors, including his incarceration, his personality features and the delays encountered in effecting his transfer to Ontario, have in combination engendered sufficient stress that the accused has at times relapsed to psychosis. Mr. Watts' behaviour has happily improved somewhat in the few weeks preceding the current hearing, but overall he has had a turbulent year marked by fragility in his mental state. On a more positive note the accused has in the past demonstrated that he has sufficient insight into his illness that even while on unauthorized absences he tends to seek out treatment as necessary. Unfortunately, no further discharge attempts in British Columbia have ensued or been pursued due to the accused's lack of local social or financial supports. Nevertheless, the accused is considered to have the skills to live independently and to earn money. As well, since perhaps before his first appearance in 2002 the accused has improved in terms of acceptance of his illness and his understanding of the needed consistent, compliant treatment for that illness. Unfortunately, despite his apparent treatment compliance, the accused has as recently as this past summer demonstrated that he is nonetheless vulnerable breakthrough of paranoid symptoms. Happily, these have resolved since at least August. That he remains somewhat impulsive has been demonstrated over the past year by his frequent altercations including an episode of fire-setting. Dr. McKibbin is of the view that if the accused were precipitously discharged without FPS supervision or support, his environmental stressors, his current legal concerns regarding custody or access to his son, his financial straits and his lack of social supports would engender a constellation of pressures which could be expected to destabilize and render him a significant threat. Clearly, his personality construct is such that under increased stress his behaviours, even without relapse to overt psychosis, could be expected to exacerbate. However, Dr. McKibbin does acknowledge that if the accused could be transferred to Ontario and perhaps be allowed to see his son, whom he has never personally met, this could substantially ease the accused's current stress levels. Apparently, depending on the consent of the Ontario Attorney General, the accused could be transferred from FPH to a forensic unit in Kingston, Ontario.

¶ 17 The accused's case manager also submitted a report in which he chronicled the accused's behavioural difficulties and which again supports findings that the accused remains volatile and has difficulty in sustaining his positive progress or gains. Although it might appear that there has been less overall marijuana use than in previous years, the accused again tested positive as recently as October 18th. In support of the Director's recommendation for a further disposition of custody Dr. McKibbin summarizes as follows:

"Because of increased psychosocial stressors such as frustration about delays in his transfer to Ontario, and a child custody suit filed by his ex-girlfriend, the maladaptive coping strategies representing Mr. Watts' antisocial and borderline personality style have been even more apparent over the last year than previously. His behavioural and affective instability have led to arson, uttering threats, and physical assaultiveness. Even on higher dosages of his mood stabilizing and antipsychotic medication, he has also experienced re-emergent psychotic symptoms as a consequence of external stressors. Considering these factors, Mr. Watts' risk of violence toward others has demonstrably increased. On a positive note, his use of cannabis has overall decreased, though this may partially have been secondary to diminished access. Even by his own admission, marijuana has impaired his judgement and impulse control, and thereby increased his risk."

¶ 18 Turning to the evidence of Mr. Watts he, as always, was able to communicate in an articulate and effective manner. He acknowledged that he has a bipolar schizoaffective disorder accompanied by personality traits. He believes that he has had two serious psychotic episodes in the past. He was able to list his medications and indicated that he finds them of benefit. He plans to continue to take his medications into the future. He minimized his recent use of marijuana. He said he sought a puff from what he thought was a cigarette and did not realize it contained marijuana which then resulted in a positive test. He was somewhat complaintive of his lengthy seclusion from late December to early January as well as of strip search incidents in the secure washroom, which prompted him to resort to legal advice. He has only had SCOs, his last being three weeks ago with a co-patient. He feels that his community access is currently unduly and unfairly restricted. His plan is to move to Kingston, Ontario and to initially reside with his friend, Jean Murray, who filed a letter of support for this hearing. He then intends to surrender to police authorities and to confront his outstanding charges in Cornwall. He continues to assert that his Cornwall charges were in self-defence. He believes he has supports in Kingston including in the form of a church and a therapist. He indicated that in order to effect his repatriation, his friend, Jean Murray, would assist him financially and pay for his airfare. He is obviously frustrated by the lack of progress in effecting his interprovincial transfer. He clearly wishes to meet his three-and-a-half year old son in Kingston with whom he currently has no contact as a result of his wife's recent court application. He disavows having suffered from any psychotic symptoms in the past year. He agrees that his medications have been effective. Clearly, this man is entirely focused on his return to Eastern Canada.

¶ 19 Without deigning to repeat once again the key or defining aspects of Mr. Watts' progress while under our jurisdiction, the historic evidence and incidents identified in the course of these reasons, including the accused's assaultive behaviour in even recent months, dispel any finding other than that the accused can continue to pose a non-speculative, non-theoretical, significant threat to others, of a level that requires the ongoing and legally mandated supervision imposed by this tribunal: Winko. Despite his good insight, the accused has shown that he can readily lose control of his behaviour.

¶ 20 We have no less onerous or less restrictive disposition to offer than to continue the accused's detention, reviewable further within six months, to allow for close monitoring of the progress of the

proposed interprovincial transfer arrangements. Having said that, it is of course by now trite law that the liberty interests of the accused are not exhausted by the mere choice of a disposition. The statutory admonition to impose the least onerous and least restrictive disposition extends to the conditions which are integral to and part of the Board's order: *Penetanguishene M.H.C. v. Ontario (A.G.) (Tulikorpi)*, 2004 S.C.C. 20. In giving effect to that admonition, we concluded that this accused can be managed, and may indeed be less reactive if his detention unfolds under somewhat less restrictive circumstances. Moreover, we saw no clinical reason not to consider a less restrictive regime, despite the fact that, legally speaking clinical considerations are secondary or ancillary to an accused's liberty interests: *Mazzei*, 2006 S.C.C. 7, par. 46; see also *R. v. Swain* [1991] 1 S.C.R. 933 at par. 93.

¶ 21 We concluded that those interests could be furthered in two ways. First we order that the accused be provided with at least escorted community access no less than weekly during the term of our order; provided of course that if the Director, on the basis of the accused's clinical presentation or safety concerns needs to withhold such community access, he/she is delegated the discretion to do so in accordance with the provisions and notice expectations contained in Section 672.56 of the Criminal Code. If the accused's escorted access is withheld for any period longer than seven days the Review Board expects to be notified with a view to convening a mandatory hearing: s. 672.81(2.1) C.C.

¶ 22 Furthermore, and notwithstanding that the accused can from time to time be somewhat volatile, we do not accept that his current risk level or his clinical needs justify his ongoing placement on the secure wards of the hospital. Accordingly, for the duration of our disposition we have imposed a condition that requires the accused to be placed on a unit that is designated either at "closed" or "open" level of security as those concepts are defined in FPH policy: see *Wiebe*, 2006 M.B.C.A. 87, paras 81, 82. Once again, if the accused's behaviour or symptoms exacerbate to the point that treatment on a "secure" ward becomes a necessity, the Director is required to file the notice required under Section 672.56 of the Criminal Code.

¶ 23 It is our hope that the accused will be able to demonstrate a degree of self-mastery in terms of his behaviour with the extension of a somewhat greater degree of liberty than he is currently enjoying.

QL Update: 20061212  
cp/e/qlpha