IN THE MATTER OF PART XX.1 (Mental Disorder) OF THE CRIMINAL CODE R.S.C. 1985 c. C-46, as amended 1991, c. 43

AND

THE BRITISH COLUMBIA REVIEW BOARD

IN THE MATTER OF THE DISPOSITION HEARING OF

LAURINA MARIE AUNE

HELD AT: **Forensic Psychiatric Hospital**
Port Coquitlam, BC
August 21, 2003

BEFORE:	**CHAIRPERSON:**	**B. Walter**
	MEMBERS:	**Dr. G. Laws, psychiatrist**
		N. Avison

APPEARANCES:
ACCUSED/PATIENT: Laurina Marie Aune
ACCUSED/PATIENT COUNSEL: A. Bryant
HOSPITAL/CLINIC: B. Fisher Dr. L. Meldrum
ATTORNEY GENERAL: L. Hillaby

CHAIRPERSON: On August 21, 2003 the British Columbia Review Board convened a first hearing pursuant to s. 672.47(1) of the Criminal Code to make a disposition in the matter of Laurina Marie Aune who is now age 26.

Ms. Aune comes under the jurisdiction of this Board as a result of a charge of second degree murder contrary to s. 235 of the *Criminal Code*. In an indictment found at Exhibit 1 it is alleged that on or about November 1, 2002 Ms. Aune killed her then two-year-old daughter. The circumstances of the offence were disclosed in the course of a psychiatric interview on December 16, 2002, which occurred during an investigation into the young child's whereabouts, as she had not been seen for some six weeks or more. Following her disclosure in the context of that psychiatric interview, she later, on the same date, disclosed the details of her actions and her activities immediately following the index offence in a taped police interview, part of which may be found at Exhibit 6 in these proceedings. A search of the accused's apartment followed on December 17, 2002, whereupon the young child's remains were discovered and the accused was arrested.

On July 17th, 2003, following her assessment at the Forensic Psychiatric Hospital, the accused was found NCRMD by the Supreme Court of British Columbia seated at Nanaimo. Her further disposition was deferred to the British Columbia Review Board. The accused has been committed to FPH since the date of that verdict by virtue of a warrant of committal made on the same date.

Application to Exclude Public

In the course of three days of trial and expert evidence culminating in the NCRMD verdict, Mr. Justice Taylor, ordered the sealing and withholding of various exhibits tendered in support of the accused's verdict. These include Exhibit 1, an admission of facts which was released with certain passages deleted and with attachments thereto withheld; a package of forensic photographs detailing the murder investigation; Exhibit 3, a video recording of the accused prior to her arrest; Exhibit 4, an audio interview of the accused upon arrest. Justice Taylor considered those exhibits sufficiently prejudicial and unnecessary such as to persuade him to withhold their broader distribution and publication.

On convening this, Ms. Aune's first hearing before the Board, her assigned counsel, Mr. A. Bryant brought an application pursuant to s. 672.5(6) of the Criminal Code to exclude members of the public from the hearing or, in the alternative, to exclude members of the public, including the media, from certain parts or aspects of the proceeding. In an application filed on the 13th of August, Mr. Bryant based his request for an order banning the publication of certain selected portions of the evidence on sections 7 and 24(1) of the *Charter of Rights and Freedoms*, however he did not see fit to pursue or make submissions on that aspect of his application at the hearing.

On the matter of the application to exclude pursuant to s. 672.5(6), it became clear during the course of his submissions that Mr. Bryant, in lieu of a <u>total</u> exclusion of members of the public, wished to have such exclusion apply only to a representative of the *Vancouver Sun* who was in attendance, in respect of what he considered prejudicial aspects of the

psychiatric evidence he believed might be tendered at the disposition hearing.

In considering the application the Review Board invited submissions from counsel for the other parties. Ms. Fisher, on behalf of the Director of AFPS, took no opening position. Mr. Hillaby, representing the Attorney General of British Columbia, submitted that because the information in question was likely already publicly known, the hearing should proceed in an open, unrestricted manner.

In order to provide a full opportunity for all perspectives to be heard, aired and considered, the Board also invited Ms. Pemberton, a reporter for the *Vancouver Sun*, to make submissions or to comment on the request for a closed hearing. She was provided with a brief break in the proceedings to enable her to contact her employer's legal advisers. Following that hiatus she returned indicating that while her legal advice was to persuade the Board to conduct its proceeding in an open and public manner, she had no objection to the Board hearing the application for exclusion itself in- camera. Thereafter she left the hearing room and the evidence in support of the application to exclude was heard.

Mr. Bryant called Dr. Meldrum, with the objective of putting on the record psychiatric evidence supporting the theory that an open hearing and the possible publication of the evidence to be adduced at the disposition hearing could conceivably impair his client's mental state, her treatment and certainly her community reintegration. He was also concerned that publication of some of the more disturbing details could expose the accused to risk of harm from staff or co-patients at this

hospital, as well as retaliation from staff in a community psychiatric setting she may come to reside in at a future time.

Dr. Meldrum gave evidence that, while theoretically the stress of publication of aspects of the evidence could conceivably cause her patient stress in some of the areas mentioned by Mr. Bryant, her experience with her patient and her patient's reactions in hospital to date, including her reactions to previous publications following her trial, left her unable to predict with any degree of certainty the probability that additional publication would cause her client to relapse to psychosis or substantially derail her treatment progress.

Dr. Meldrum also gave evidence that, a *Vancouver Sun* article, published on July 18, 2003, including certain details of the index offence, did not appear to overtly distress or decompensate her patient, nor was Ms. Aune demonstrating excessive distress at the prospect of media coverage at this disposition hearing beyond some mild annoyance and a sense of intrusion on her privacy.

In terms of responding to possible pejorative media coverage, Dr. Meldrum outlined a plan in place on the occasion of the accused's trial under which hospital staff were prepared to monitor patients' access to media, and assess the impact of same. She indicated that, notwithstanding some cursory coverage of the accused's trial, no concerns came to fruition and no special measures were found to be necessary to suppress coverage or to protect the accused.

In considering the evidentiary submissions on the application the Board came to the conclusion that it would not exercise its power to

exclude members of the public from the disposition review hearing, without prejudice to Mr. Bryant's opportunity to renew his request at various strategic points in the hearing.

Our reasons for denying the application are as follows. Our reading of the *Criminal Code*, and in particular s. 672.5(6), s. 672.51(7) and s. 672.51(11) persuade us that the legislation intends and presumes hearings of the Review Boards to be open to the public; otherwise, the power to exclude and the power to withhold disposition information would be redundant. The rationale for the presumption of openness is, of course, found in the long held value that openness to public scrutiny is fundamental to accountability and impartiality in the administration of justice. Nonetheless, it has been considered and determined by the B.C. Court of Appeal in the case of ***Blackman*** (B.C.C.A., Jan. 24, 1995, CA017480) and, more recently, by the Ontario Court of Appeal in **Oshawa This Week** (2002 (0J) No. 554), that the power to exclude under s. 672.5(6) though valid, must be exercised with great caution; implemented on a case-by-case inquiry, and ultimately based upon evidence which satisfies both branches or criteria articulated in the subsection.

The first branch of that test has to do with the best interests of the accused. That test has been interpreted to include evidence that the accused's treatment or mental state would be seriously compromised or interfered with by the attendance of the public and subsequent publication of the proceedings. Cases such as ***Blackman*** **(supra)** and the British Columbia Review Board's decision in ***Fisher*** indicate that such a determination must be based on cogent, clear and compelling evidence

that public attendance and publication would (inter alia) trigger a decompensation in the patient or would expose the patient to risk from others.

The second branch of the test under s. 672.5(6) holds that the decision to exclude must not be contrary to the public's interest in open proceedings. The case law makes it clear that the best interest of the accused is not the determining factor, nor is it necessarily identical to the public interest. In all cases the Board must weigh the accused's interests in a closed hearing against the value of openness and accountability. In ***Oshawa This Week (supra)***, the Ontario Court of Appeal said that the Ontario Review Board should, in each case, assess whether the exclusion or ban on publication is necessary to protect the legitimate interests of the mentally disordered offender and whether the salutary effects (for the accused) of a ban outweigh the deleterious effects on freedom of expression.

In applying these tests, we consider the following evidence with respect to Ms. Aune's case. According to the assessment evidence, we have been provided, she appears at this early stage in her treatment quite affectively insulated from the facts surrounding the index offence. We also note that publication of critical information has already occurred in the form of the aforementioned article published in the *Vancouver Sun* on July 18th, 2003. It chronicled the circumstances and the process whereby the court arrived at the NCRMD verdict. We have no evidence that publication caused Ms. Aune any decompensation or significant setback in terms of her treatment. Indeed, Dr. Meldrum indicated that the accused

did not decompensate or suffer any inordinate distress as a result of the publication of that article, nor did its publication appear to expose her to any inordinate or unmanageable personal risk within this institution.

Given the publication of that article, it is clear as well that the circumstances of the index offence and subsequent events are widely known, along with the finding that Ms. Aune was suffering from a disordered state of mind which served to exempt her from criminal responsibility.

Although Justice Taylor found that on July 17, 2003 the accused was in a somewhat fragile state, Dr. Meldrum indicates that she is no more fragile on the date of the current hearing. She is, therefore, unprepared to predict her patient's imminent decompensation as a result of an open hearing.

On the basis of that evidence, we feel that the first branch of the test under 672.5(6) has not been met. In other words, we have not been provided with compelling evidence that an open hearing, including the potential publication of aspects and outcomes of this proceeding, would predictably harm this patient's treatment progress in a substantial way.

To the extent that the first branch of the test has not been satisfied, we do not need to discuss the public interest aspect; the second branch of the test. The hearing was therefore declared open to the public and to the media.

THE DISPOSITION HEARING

At the outset of the disposition hearing exhibits were marked and all parties were invited to state their positions as to disposition. The

parties, including the accused, agreed that the appropriate disposition to be made should be one of custody for a 12-month period.

In arriving at the appropriate and least restrictive disposition in this matter in accordance with s. 672.54 of the *Criminal Code*, the Review Board considered the following written and oral evidence.

We understand that in more recent times the accused has alleged that she was a victim of past childhood abuse around the age of eight. She has also acknowledged some history of depression. The assessment information also indicates the accused has self-reported her use of marijuana since adolescence and an increased use of that substance, proximate to the index offence.

Collateral information gathered following the offence and documented in the assessment information provided to the court, raises the possibility of the presence of psychotic phenomena in Ms. Aune since her early teens. She is also described as somewhat socially isolated; financially and otherwise stressed; disorganized as a single parent, and having general coping difficulties. During the period following the birth of her child, the victim of the index offence, the accused received some mental health services due to, among other things, symptoms of depression. She has never received consistent psychiatric treatment or follow up. In January of 2002 she saw a psychologist but was not considered psychotic. In February 2002 she was prescribed Paxil by a general practitioner. In May 2002 she presented with paranoid delusional ideas. During the summer of 2002 she seemed to stabilize and improve in her effectiveness as a parent to her young child.

Following her arrest she was, on December 19, 2002, admitted to FPH for assessment as to her fitness to stand trial and as to her mental state at the time of the index offence. The following quote is taken from Exhibit 9, a report Dr. Meldrum provided to the Court:

> Ms. Aune described herself to Dr. Randhawa as a worrier and stated she had been abused in the past by two different perpetrators and claimed that she had never disclosed this abuse to anyone in the past. She acknowledged that she had seen shadows in the dark which had begun when she was approximately age 13. She felt that these shadows were spirit visitations and that she has perceived spirits inside her and outside her. She felt that she received messages from these spirits and that she had been experiencing this at a greater intensity following the birth of her daughter. She appeared bewildered throughout the interview with Dr. Randhawa and her affect appeared blunted and downcast. She appeared distracted and appeared to be responding to auditory hallucinations. At times she was tangential in her thinking and of concern was her ongoing suicidal ideation. Dr. Randhawa's differential diagnosis included a psychosis (NOS) with the differential being bipolar mood disorder, schizoaffective disorder with the need to rule out an organic etiology to the psychosis. Dr. Randhawa felt that Ms. Aune met the criteria for certification and completed the first certificate under the *Mental Health Act.*

Once Dr. Meldrum saw Ms. Aune she endorsed a similar diagnostic formulation and initiated the accused on medication. Unfortunately, although Ms. Aune improved progressively, she developed some significant side effects and her medication was changed from Risperidone to Olanzapine.

Under close treatment and observation she was considered fit to stand trial by February. She was also subjected to neuro-psychological testing while at FPH. That testing revealed that Ms. Aune is of average or above-average intelligence and presents as generally normal in terms of her executive functioning. She is free from any acquired brain injuries or

neurological disease. The assessment also raised the possibility of a schizoid personality disorder. In the result Dr. Meldrum ultimately assigned a diagnosis of schizophrenia or schizoaffective disorder, although preferring schizophrenia in her clinical judgment: Exhibit 10.

In that same report Dr. Meldrum also provides a detailed description of the index offence as disclosed by the accused. While we have no wish to belabour the somewhat grim and disturbing details surrounding the death of a young child, the following passage might be useful for future proceedings of this tribunal:

> Ms. Aune stated that because of her belief that people were coming up through the trap door to rape her she had a knife in a basket by the door. She stated she took this knife and walked Kyla towards the bathroom. She describes being "drawn there." She stated that in the bathroom she took off hers and Kyla's clothes because she wanted to be "physically closer" to Kyla and she didn't want their clothes to get messy. She stated that she had turned Kyla's back to her because "I wanted her to feel secure." She stated that she held Kyla between her legs and then hesitated a bit because she did not want to "cause her physical pain." She stated that she was concerned that she might not be effective in cutting Kyla's throat and that this would cause Kyla undue pain. She stated that her motivation at the time was to kill Kyla to end her pain: Exhibit 10.

Further on, Dr. Meldrum also endorses Ms. Aune's belief that in cutting her daughter's throat she felt she was operating upon instructions. Ms. Aune endorsed such directives or commands in the course of her questioning by the Board at the disposition hearing.

The Review Board also takes into account in the course of its deliberations an assessment report by Dr. Lohrasbe dated April 12, 2003 and found at Exhibit 11. In that report Dr. Lohrasbe describes an intensive interview which occurred at the Forensic Psychiatric Hospital, during which he found the accused emotionally detached, indifferent and

limited in terms of her insight into the illness. Significantly, he found that even in April of 2003 the accused's understanding of her actions remained impaired.

In arranging this first hearing of the Review Board, we have been provided with additional disposition information in the form of victim impact statements found at Exhibit 19; a social history at Exhibit 20; an updated psychiatric report from Dr. Meldrum at Exhibit 21, and a report from Case Manager Dominguez at Exhibit 22.

The social history, at Exhibit 20, adds little to the picture already assembled in the written assessments, reciting once again some aspects of the accused's developmental history and an apparent adolescent onset of some mild interest in the occult. It also underscores the accused's regular use of marijuana to the extent of two to four joints per day.

In her new report at Exhibit 21 submitted to this tribunal, Dr. Meldrum also once again summarizes and reiterates the accused's social and developmental history.

The accused currently resides on the Dogwood Unit at FPH, which serves as a multi-level somewhat secure unit for female patients at FPH and where Ms. Aune was, at least until August 5, 2003, overall cooperative, non-impulsive and non-aggressive. According to Dr. Meldrum the accused remains limited in terms of her insight in the sense that she continues to have difficulty describing her mental illness or its symptoms and she does not appear to fully understand its treatment needs. Though passively compliant, she also appears somewhat

ambivalent about her medication. There are no plans to dramatically alter her treatment regime at this time.

Dr. Meldrum augmented her report verbally, indicating that Ms. Aune's past familial and social relationships cannot be relied upon as active, tangible supports in aid of her community reintegration, at least into the foreseeable future.

She also reviewed the accused's mental health history, including brief attendances at Nanaimo Mental Health Services for anxiety, a GP for depression and a psychologist for a variety of somewhat vague complaints and coping difficulties. As stated above she has never received consistent or ongoing diagnosis or treatment for a psychotic illness. Dr. Meldrum also considers, in terms of her substance history, that future use of even marijuana is likely to negatively affect her current level of mental stability.

Dr. Meldrum was asked to review Ms. Aune's course in hospital since her admission in December of 2002. She reminded us that the accused was severely and acutely psychotic on admission to the point where she was actively delusional, hallucinating and presenting with both suicidal ideation, as well as homicidal thoughts toward staff and others. She was considered an acute risk to herself and was closely monitored for some time. Once her symptoms resolved under treatment she presented as mostly pleasant, cooperative, though somewhat superficial and non-disclosive. She remains non-disclosive and disengaged in terms of her internal mental processes. She appears to have difficulty describing or verbalizing her mental and emotional state, although she does appear

able to discuss the details of the index offence without apparent affect or undue distress. At this point Dr. Meldrum believes Ms. Aune's schizophrenic disorder is marked by profound negative symptoms.

Given her presentation, the treatment team sees it as a priority to develop a working, trusting, therapeutic relationship with Ms. Aune. Dr. Meldrum believes that this will take some time to accomplish. She has no imminent plans to change Ms. Aune's medications and has initiated a referral and assessment by drug and alcohol counselling services in the hospital. Ms. Aune may also be provided with symptom management programming.

As to risk assessment, Dr. Meldrum cites the accused’s ongoing lack of engagement and insight; the absence of any objective evidence of current active, overt psychotic symptoms; concerns about the possibility of reintegrating Ms. Aune to the Nanaimo community given the grisly nature of the index offence; the absence of any discharge plan or aspirations at this point in time, as well as the absence of any significant identifiable, social supports.

In arguing for a disposition of custody, Dr. Meldrum also requests that we prohibit any unescorted community access until such time as the accused becomes more disclosive and more engaged in her own treatment.

Following Dr. Meldrum's evidence and her examination by all parties and members of the Review Board, Mr. Bryant presented his client to answer questions from the parties. In answer to questions from Mr. Hillaby, Ms. Aune acknowledged that she believes she may have a mental

illness. She acknowledged that she had experienced episodic psychotic phenomena and memory problems since age 13. She confirmed she felt commanded or directed in her actions at the time of the index offence. She has not had strange experiences since approximately the time of her admission or at least since before her NCRMD hearing. Her presentation while unfailingly polite was at the same time eerily calm.

As indicated at the outset of these reasons, all parties were at consensus with respect to the appropriate disposition to be made.

In support of finding Ms. Aune a significant threat such as warrants our jurisdiction over her, we further consider the recency of acute symptoms; the intensity of her violent and homicidal thoughts present at admission; her untreated history of substance abuse, resumption of which would certainly raise the risk of relapse and therefore the risk of harm to others. We also consider an incident which occurred during the past weekend during which Ms. Aune, labouring under misperceptions, demonstrated what appears to have been impulsive behaviour resulting in a significant assault on a co-patient. That event is currently the subject of police investigation.

We note that Ms. Aune has demonstrated no evidence of a grief reaction to the loss of her daughter and Dr. Meldrum believes this is probably due to the profundity of the negative symptoms attributable to her illness.

In summary, we had no hesitation concluding that, considering the horrific nature of the index offence; the acuteness of the accused's illness at the time; the early stages of her but partial recovery; her lack of insight;

her lack of community supports, and her recent relapse to aggressive behaviour, she satisfies the criteria outlined in ***Winko***, which define the concept of significant threat to public safety.

Having satisfied that threshold determination and given the manifest absence of anything amounting to a discharge plan or appropriate and necessary community supports, our least restrictive and least onerous alternative was to detain Ms. Aune in custody at FPH under circumstances and conditions outlined in the presence of all parties and counsel.

[[[[[[[[[

/la edit ck