BRITISH COLUMBIA REVIEW BOARD

IN THE MATTER OF PART XX.1 (Mental Disorder) OF THE CRIMINAL CODE R.S.C. 1985 c. C-46, as amended S.C. 2005 c. 22

REASONS FOR DISPOSITION
IN THE MATTER OF

WESLEY ALBERT BENNETT

HELD AT: Forensic Psychiatric Hospital
Port Coquitlam, BC
09 January 2009

BEFORE: ACTING CHAIRPERSON: J. McIntyre
MEMBERS: Dr. L. Grasswick, psychiatrist
B. Walter (Dissenting)

APPEARANCES: ACCUSED/PATIENT: Wesley Albert Bennett
ACCUSED/PATIENT COUNSEL: Diane Nielsen
DIRECTOR AFPS: S. Letwin Dr. J. Bondar
ATTORNEY GENERAL: L. Hillaby

Summary

[1] In a hearing held on January 9, 2009, the British Columbia Review Board conducted a review of the disposition of Wesley Albert Bennett. After hearing the evidence and submissions of all parties, the majority of the panel of the Review Board determined that (1) Mr. Bennett remained a significant threat to the safety of the public; and (2) the least onerous and restrictive disposition consistent with the provisions of Section 672.54 of the *Criminal Code* is a custodial order. The order includes conditions prohibiting the use by the Accused of illicit substances, allowing the Director to monitor for such use and requiring the accused to submit to such monitoring, as well as conditions requiring the Director to allow the Accused at least one overnight visit leave per week to his wife's residence. These are the reasons for that disposition.

Background

[2] Mr. Bennett is under the jurisdiction of the Review Board after being found not guilty on account of insanity on May 26, 1986 of the charge of second degree murder. The index offence occurred October 24, 1985 when Mr. Bennett shot and killed the owner of the trailer court in which he and his mother were residing.

[3] Mr. Bennett will turn 60 this year. He is diagnosed with paranoid schizophrenia. His Axis II diagnosis includes narcissistic and antisocial personality traits.

[4] Mr. Bennett was first hospitalized for psychiatric reasons in 1976 and had many such hospitalizations prior to the index offence. He has a minimal criminal record. The first documented violence was in 1977 when Mr. Bennett struck his doctor. In 1984 he exhibited threatening and dangerous behaviour by setting fire to a field to rid it of grasshoppers, and tried to get a woman and her children to drink dirty water from a pail. These incidents did not result in criminal charges.

[5] Previous Review Boards have commented on Mr. Bennett's longstanding history of non-compliance with treatment, including medication [exhibit 95], as well as his lack of insight into his illness and his need for medication [exhibits 95, 101, 107].

[6] From about 1991 until 2002 the Accused was subject to a conditional discharge and living in his trailer in Clearwater with his mother. In 2002 his behaviour began to deteriorate.

He demonstrated inappropriate sexual and bizarre behaviour. He became increasingly thought disordered and demonstrated mood symptomatology and delusional ideation. He was detained in custody at the Forensic Psychiatric Hospital until April 2004 when he was again discharged subject to conditions and returned to live in Clearwater.

[7] Within six months after that conditional discharge he was returned to hospital after his mental health deteriorated. When he stabilized, he was once again discharged subject to conditions and resided at a supervised facility in Kamloops. That situation ended when he was evicted in March 2005. He returned to FPH. .

[8] The accused was then subject to custodial orders in May 2005, May 2006 and October 2006. He then began a series of visit leaves to Coast Cottages in the fall of 2006. He liked Coast Cottages because he was close to his wife, whom he married in 2006 and who then lived at Riverview Hospital. On April 17, 2007, the Review Board granted the Accused a conditional discharge, but he was returned to hospital in December 2007 after inappropriate behaviour including: altercations with other residents who he claimed owed either him or his wife money following he providing them with sexual favours in return for payment; an assault on a fellow resident; bullying other residents; and an incident where he telephoned a female staff member requesting that she deliver his mediation to him and then lay on the couch naked presumably waiting for her.

[9] Mr. Bennett's history with the Review Board is notable for a long period of success at living independently, during which he appeared to be well liked and supported by the community in which he lived, followed by a long period during which he has acted inappropriately and aggressively. Illicit drug and alcohol misuse, as well as inappropriate sexual conduct and a lack of cooperation with the treatment team have characterized his troublesome behaviour since 2002. Mr. Bennett's initial progress under Board supervision was so successful that Review Board panels in March 29, 1999 [exhibit 57] and January 12, 2000 [exhibit 64) had some degree of difficulty concluding that Mr. Bennett remained a significant threat to the public. Panels have not had that difficulty since 2002. His most recent disposition was a broad custodial order, issued January 18, 2008.

[10] Mr. Bennett married a former long-term patient at Riverview in September 2006. She has borderline personality disorder and is a polysubstance abuser. He had previously been married to another patient from Riverview Hospital, and prior to that he was married to the mother of his two children.

Evidence Presented and Position of Parties

[11] In preparation for this hearing, the Board was provided with written reports from Dr. Bondar dated December 5, 2008 (Exhibit #116) and Ms. Sheila Letwin, Case Manager, dated December 11, 2008 (Exhibit #117). Both Dr. Bondar and Ms. Letwin gave oral evidence, as did Mr. Bennett. The Director was seeking a custodial order in the same terms as before with an additional provision to allow for drug and alcohol testing. Counsel for the Attorney General supported this position.

[12] Mr. Bennett was seeking an absolute discharge, or alternatively, a conditional discharge if the Board did not see fit to grant an absolute discharge. Mr. Bennett sought to live with his wife, Claudette Kovacs. Ms. Kovacs attended the hearing to give evidence in support of his request, and Mr. Bennett also gave evidence.

Director's Evidence

[13] Dr. Bondar, who became Mr. Bennett's doctor in June of 2008, prepared a comprehensive report. The report details several incidents over the last year of Mr. Bennett attempting to deceive the treatment team, a positive screen for cocaine, an incident involving a threatening voicemail message left for his treatment team, inappropriate sexual behaviour at FPH with his wife and threats made against his doctor for restricting privileges because of that. He also details concerns that Mr. Bennett's paranoia appeared to be resurfacing but the indicia of the paranoia seemed to abate fairly quickly. Dr. Bondar noted that the Accused has not shown any thought form disorder or other signs of psychiatric decompensation over the past year.

[14] Dr. Bondar's report contains a current risk analysis covering all the appropriate elements of risk. Notably, it refers to Mr. Bennett's significant lack of insight regarding the impact of his violent behaviour and sexually inappropriate remarks on others, as well as his lack of insight regarding his ability to manage his wellbeing in the community. It also mentions Mr. Bennett's marked irritability and his resistance to the external structure placed around him to contain his personality traits.

[15] Dr. Bondar states that Mr. Bennett's relationship with his current wife has exacerbated Mr. Bennett's personality dysfunction and he has "become increasingly difficult to manage compared to other periods in the past".

[16] Dr. Bondar summarizes his report as follows:

> "Mr. Bennett is a 59-year-old married man who suffers from paranoid schizophrenia but also shows features of narcissistic and antisocial personality disorder. Mr. Bennett was returned to FPH from a Conditional Discharge because of assaultive behaviour to a co-patient. Since his return to hospital, he has consistently pushed boundaries, disrespected rules and regulations, lied to his treatment team, externalized all blame, and minimized the impact of his behaviour on others. After misleading the treatment team regarding his whereabouts, he was found to have tested positive for cocaine use. It has even been difficult to manage Mr. Bennett while in hospital, as his wife tried to sneak in tools and equipment that could have been used as a weapon against others. Mr. Bennett had previously expressed some material that left us concerned that psychotic symptoms were re-emerging. However, by the time we last assessed Mr. Bennett he appeared settled and there were no signs of psychosis. His Axis II issues remain an ongoing management issue." (Page 9)

[17] Ms. Letwin's report [exhibit 117] details the positive aspects of the past year: Mr. Bennett appeared to take the news of his mother's death in February of 2008 "as well as could be expected". Mr. Bennett is attending the healthy relationship group regularly and has been working part time through a casual labour service.

[18] Ms. Letwin's report also details the difficulty managing Mr. Bennett over the past year. Of particular note were: a positive screen for cocaine on October 25, 2008; an incident where he became irritable and angry and pounded on the table during a treatment team meeting; and the hostile voice mail referred to in Dr. Bondar's report. The treatment team has concerns about Mr. Bennett giving his wife money, which she allegedly used to purchase a large amount of illicit substance. Other concerns relate to a verbal altercation with another patient, non-compliance with staff direction and misleading the treatment team on various issues.

[19] Mr. Bennett's wife has been discharged from Riverview and is now living in the downtown eastside. Mr. Bennett has been sexually inappropriate with his wife during her visits to FPH and he has gone to visit her when he has not been authorized to do so.

[20] The treatment team attempted to place Mr. Bennett in a group home in Mission but his application was refused because his behaviour was thought by the management of the home to be too challenging for staff at the group home to manage. [Exhibit 117]

[21] Dr. Bondar stated that Mr. Bennett's positive symptoms of schizophrenia appear to be in remission. His primary clinical issues are now Axis II issues and there are concerns about his behaviour, his judgment and his anger. He felt it would "unsafe" to discharge Mr.

Bennett to his wife's residence as Mr. Bennett requires structure and he felt Mr. Bennett's wife is both a stressor and a destabilizer for him.

[22] On questioning by the Board about a possible explanation for the contrast between Mr. Bennett's relatively long period of stability from 1991 to 2001 and the difficulty he has had since, Dr. Bondar stated that he felt that the difference was with his associates because Mr. Bennett's associates affect his clinical presentation. If he was living with his mother during that time of stability and his mother was a positive and stabilizing influence for him, that would have made a significant difference to Mr. Bennett's clinical picture.

[23] The treatment team proposed to manage Mr. Bennett in the normal way, that is, to allow or restrict Mr. Bennett privileges based on his behaviour.

Evidence and submissions on behalf of the Accused

[24] Ms. Claudette Kovacs, Mr. Bennett's wife, gave evidence. She had been a patient at Riverview for 20 years but during that time had been out in the community for five years at a boarding house and five years in a mental health facility. She was discharged by a mental health review panel 10 months ago and lived at the Yukon Shelter for a couple of months and is now living at the Cobalt Hotel in the downtown eastside. She was moving out of there at the end of the month, but she might stay longer if Mr. Bennett came to live with her. She was currently without a stove and fridge because she sold the fridge and another tenant in her building stole the stove. She plans to replace them.

[25] Ms. Kovacs wants to live with Mr. Bennett. They never fight and they enjoy being together. According to her, Mr. Bennett has been cleared by her landlord to live with her at the Cobalt Hotel and while did not think that the Cobalt Hotel would be a good place for them permanently, it was a start. She thought they might buy a trailer in Chilliwack and live near her mother.

[26] Ms. Kovacs gave enthusiastic and candid evidence. She wanted Mr. Bennett off of his medication. She has gone off of her medication and she did so immediately after she was discharged from Riverview even though the mental health review panel said she should stay on her medication. She believes she does not need the medication. She could not explain why she felt suicidal some months ago. She is a regular crack cocaine user and uses it "every day" or "every three days". She hears her husband speak to her even when he is not there, and she "lost her baby this morning" because she was hungry. She clarified the baby died. Her baby's voice as well as Mr. Bennett's voice both told her she won

$1,000,000.00 on the lottery. She appeared fairly convinced by these voices that she had in fact won that money and was very happy about that prospect.

[27] Mr. Bennett also gave evidence. He wants to live with his wife. He has been on injectable Haldol since 1971 and acknowledged he needs it. The long-range plan for him and his wife would be for them to live in a trailer in Clearwater, BC, which is where he lived previously. He gets along well with his wife's mother, who told him not to give money to his wife to buy cocaine. He would not suggest to his wife that she not do cocaine, but he would not take it himself and he would not give his wife money for drugs.

[28] Counsel for the accused submitted that Mr. Bennett had a good record of complying with his injectable medication and understood his need for it. She pointed out that the index offence, while extremely serious, occurred 23 years ago, and there have been no incidents since then of physical violence leading to harm. There was no evidence of Mr. Bennett being in conflict in the community and his primary behavioural issues related to his resentment of supervision. Moving into another supervised situation would not be a good fit for his behavioural issues. Counsel pointed out that all but one of the recent drug screens taken over the past year have been negative and that Mr. Bennett has shown no major symptoms of psychosis for many years.

[29] Counsel for the Accused further submitted that whatever order the Board saw fit to grant, a drug testing clause is not necessary because Mr. Bennett declared his intention to use illicit drugs.

Discussion/ Analysis

[30] We appreciate the thoughtful and detailed risk analysis provided to the Board by Dr. Bondar. Mr. Bennett's history before the Review Board supports Dr. Bondar's contention that Mr. Bennett shows little judgement about the company he chooses to keep. Many of Mr. Bennett's failures relate to his association with drug using and opportunistic "friends".

[31] We also recognize the merit in the position put forward by Mr. Bennett's counsel, to the effect that most of Mr. Bennett's conflicts are related to or centered around his resentment toward the rules and structure he has had to endure for more than 20 years. His personality traits make it difficult for him to accept supervision.

[32] We were unanimous in rejecting Mr. Bennett's request for an absolute discharge because we are satisfied on the evidence that Mr. Bennett remains a significant threat to the

public. His index offence, while it occurred many years ago, was murder. That offence occurred apparently without warning or explanation and he was, by his own evidence, on psychotropic medication at the time. Although his Axis I illness is in apparent remission, there are still signs of his delusional ideas, which seem to be focused on his bowels. Mr. Bennett shows little insight into his condition and would not recognize symptoms of its reemergence. His Axis II symptoms are pervasive. He remains impulsive and can anger easily and has shown he can act out physically when angry, as indicated by the assault against a fellow resident in late 2007. He shows little insight into the dangers to his mental stability of his use of illicit drugs. His behaviour over the past few years gives us little assurance that he would not be a danger to the public if he were granted an absolute discharge.

[33] Having come to the conclusion that Mr. Bennett remains a significant threat, it is necessary to determine the least onerous and restrictive disposition in the circumstances before us. The majority of the panel was of the view that the safety of the public would not be sufficiently protected if the accused were released under a conditional discharge. While Mr. Bennett's mental condition does not require hospitalization, there are no viable discharge plans in place. Certainly the discharge plans detailed by the Accused are not feasible because of the uncertainty of the proposed living arrangements. Clearly Mr. Bennett's wife has very significant mental health challenges of her own. She will thus not be a support to Mr. Bennett and we accept that she will have a destabilizing influence on him.

[34] We doubt that as time goes by, Mr. Bennett's willingness or ability to comply with the rules placed on him at FPH will increase. He needs a structured environment but resents structure and continuously undermines the efforts of the treatment team to impose that structure. Owing to the length of time since the index offence and the failure of previous conditional discharges, Mr. Bennett runs the very real danger of staying permanently in custody if he remains resistant to cooperating with the treatment team.

[35] However, we also note that Mr. Bennett appears to be a conscientious worker and has had success obtaining work as a day labourer. His day leaves for work purposes are generally successful.

[36] We also considered that Mr. Bennett and his wife are very fond of one another and want to spend more time together. This was clear from their limited interaction while Ms.

Kovacs gave evidence. Indeed, Dr. Bondar's report refers to Dr. Saini stating that the Accused is "preoccupied with conjugal visits with his wife". Many of the conflicts with the treatment team arose out of misguided attempts by Mr. Bennett to see and stay with his wife, without having authorization from the treatment team to do so.

[37] We are required to impose upon the Accused the least onerous and restrictive disposition consistent with protection of the public. In the view of the majority, such a disposition is one of custody.

[38] The current custodial order allows Mr. Bennett overnight visit leaves, but the treatment team has not seen fit to grant him such visits because of their fears about his wife's destabilizing influence. In our view, there is little risk of Mr. Bennett being destabilized by some overnight visits to see his wife, and unduly restricting such visits is not warranted by Mr. Bennett's risk to the public. Therefore we made provision requiring the treatment team to allow Mr. Bennett at least one overnight visit per week to his wife's residence. In addition to such visits being consistent with the least restrictive and onerous disposition, we expect such visits would:

- allow the Accused to prove that he could avoid the use of illicit drugs despite his wife's drug use;
- provide the Accused with an opportunity to establish a "track record" of successful overnight unsupervised visit leaves in order to support a future request for a conditional discharge;
- minimize a major source of conflict between the Accused and his treatment team, which would in turn hopefully lead to a greater level of compliance and cooperation by the Accused with the other requirements of the treatment team and thus improved possibility for a conditional discharge;
- allow the Treatment Team to assess the effects of such visits on the mental condition of the Accused.

[39] If Mr. Bennett's wife finds herself without a permanent residence, if she resides in a place that does not allow Mr. Bennett to visit overnight, or if she is returned to Riverview Hospital, the condition requiring such leaves cannot be complied with and the treatment team may refuse visit leaves in any of those circumstances without triggering a review under 672.56 of the *Criminal Code*.

[40] We granted the treatment team's request for additional terms prohibiting the use of illicit substances and allowing for monitoring for such substances. Considering the destabilizing effect these substances have on Mr. Bennett's mental health and his increased

exposure to them through his wife’s constant use of crack cocaine, we found such provisions to be warranted.

Majority Reasons Prepared by J. McIntyre and concurred in by Dr. L. Grasswick.

DISSENTING REASONS:

[41] CHAIRPERSON: I have had the benefit of seeing the Reasons for Disposition of the majority of the panel. I respectfully dissent and would have ordered Mr. Bennett discharged subject to conditions.

[42] I fully acknowledge the seriousness of the index offence which occurred while the accused was suffering from symptoms of longstanding schizophrenia when he was 36 years of age. As to this man's history of, or penchant for violence, I consider that he also viciously assaulted a jail guard following his arrest. I am unable to conclude, absent far more detail, that for a rural person to fire a field to rid it of grasshoppers constitutes significantly dangerous public behaviour. For the same reason, I make no finding regarding the "dirty water" incident also described at paragraph 4 of the majority reasons.

[43] I must disagree with the majority's description of Mr. Bennett's "longstanding history of noncompliance" with medication (Majority Reasons: paragraph 5). In earlier times Mr. Bennett was indeed described in glowing terms as a model patient by his treatment team (see, for example, Exhibits 4 and 5). Although Mr. Bennett has shown periodic episodes of irritability and partial or mild breakthroughs of thought disorder (e.g. February 1994), even to the point of requiring his readmission (November 1995), these have just as possibly been due to medically supervised medication adjustments. I find in the historic record no clear or convincing evidence which would, on a balance of probabilities, persuade me that Mr. Bennett has an established pattern of noncompliance with treatment. Even Dr. Semrau (again admittedly some time ago) termed Mr. Bennett's own attitude as his most positive feature.

[44] I fully accept that Mr. Bennett lacks complete insight or understanding about his illness, what constitutes positive or concerning symptoms thereof, or even of the possibility of relapse. This has, however, not served as an obstacle to almost full, if at times grudging,

compliance. Moreover, his primary medication is administered in depot form and noncompliance would be immediately evident and presumably responded to.

[45] Clearly, after a period of relatively satisfactory, stable functioning, Mr. Bennett's presentation declined markedly since 2001/2002, including inappropriate sexual comments or attentions; decreased disclosiveness and rapport with his treatment team; some disorganized behaviour; subtle but noticeable deterioration in mental state; increase in alcohol use; onset of an interest in drugs, and memory difficulties: an overall decline in functioning and attitude. A series of consecutive custodial dispositions which followed were in large measure predicated on evidence of the emergence or onset of a progressive dementing illness which has since been discounted. At no time was it alleged that Mr. Bennett, despite his altered presentation, was behaving in a seriously violent or threatening manner in the community.

[46] I observe that Dr. Chale's report of May 27, 2005 (Exhibit 96) represents the first occasion that Mr. Bennett was assigned AXIS II personality traits. Mr. Bennett has been in the main detained (except for nine months at Coast Cottages) and in the Lower Mainland since March 2005. His behaviour remains challenging regarding rules and expectations. He has nevertheless remained stable and asymptomatic psychiatrically. On December 5, 2007 he punched a co-patient at Coast Cottages resulting in his eviction from that resource.

[47] In September 2006 he married Ms. Kovacs. During the past year the accused has continued to present as irritable and manipulative. He has shown the poor judgment to leave "threatening" messages for his treatment team members. He has had day leaves but no overnight visit leaves to his wife's room in downtown Vancouver. Her accommodation is not stable. In October the accused yielded a positive test for cocaine.

[48] Dr. Bondar has assessed no overall increase in psychotic symptoms despite episodes of transient paranoid thoughts. Mr. Bennett's day-to-day functioning does not reveal significant or progressive cognitive impairment. Dr. Bondar believes Mr. Bennett's personality features have become more overt or prominent aspects of his behaviour and management.

[49] Mr. Bennett has been referred for group living in Mission. The reasons of the majority indicate he was not accepted for management problems (paragraph 20). Ms. Letwin's evidence was that he was refused because the boarding home could not

accommodate Mr. Bennett's wife. Currently Mr. Bennett's oppositional behaviour, as attributed to his personality traits, are cited as his key safety issues.

[50] Mr. Bennett's wife is clearly considerably symptomatic. She is also an ongoing user of substances including psychostimulants. Yet the two obviously derive pleasure, humour and some measure of mutual support and comfort from the relationship. They wish to cohabit.

[51] I am required by statute to reach an independent conclusion regarding Mr. Bennett's significant threat. Mr. Bennett committed an ultimately serious offence 23 years ago. Following his arrest, he attacked a guard. Unfortunately, he recently assaulted a co-patient after years of violence-free progress or behaviour. He has limited insight into his AXIS I disorder and his judgment has recently come into question. Left to his devices, Mr. Bennett would likely fall away from treatment and his illness would exacerbate. If symptomatic, along with the stressors inherent in his marital relationship, he might prove a significant threat.

[52] Mr. Bennett suffers from schizophrenia, the symptoms of which are largely in remission. Though he lacks a sophisticated insight and has become resistant to structure, his history does not suggest significant compliance problems (despite Dr. Bondar's statement at Exhibit 116, page 9, paragraph (d)). Compliance can be monitored and noncompliance responded to immediately while Mr. Bennett is on injectible Haldol. His illness or clinical needs do not require or justify his ongoing detention in hospital.

[53] Mr. Bennett's troublesome oppositional, defiant behaviours, absent symptoms of schizophrenia, are the products of his personality traits. Mr. Bennett is 60 years old. He has lived a rural, self-sufficient existence all his life. Much of his behaviour is clearly engendered by what he experiences as unnecessary and unreasonably intrusive restrictions on his life. Mr. Bennett is receiving no therapy for these traits which are, in any event, unlikely at this stage to respond to treatment and do not require or justify hospitalization.

[54] Much of Mr. Bennett's behaviour indeed arises in reaction to his environment and its restrictions. With one recent exception, that behaviour has not exposed others to significant danger of serious harm.

[55] A longitudinal review of Mr. Bennett’s progress raises serious questions regarding the impact of his removal from his rural environment over time. He was at his best in his

home community. He has steadily declined in behaviour and attitude in successive urban and increasingly supervised placements.

[56] I am, by statute, required to impose the least onerous and least restrictive disposition which maximizes the accused's liberties without exposing the public to unacceptable risk. I find no clinical or risk abatement reason or strategy which justifies Mr. Bennett's ongoing detention in hospital. I would have conditionally discharged Mr. Bennett. I would have delayed the effective date of the disposition to provide time for Mr. Bennett to secure somewhat stable, adequate housing for himself and his wife, if that is their wish.

[57] Any other outcome serves to either resign Mr. Bennett to ongoing and indefinite detention or exacerbates an array of psychosocial stressors that will serve as obstacles to progress for the foreseeable future. In my opinion the disposition of the majority depends on its success almost entirely on the accused’s wife and her residential stability. It unduly imposes an almost impossible weight on the weakest link in Mr. Bennett’s universe. As such it is doomed to failure and therefore does not satisfy the requirements or obligations which s. 672.54 of the *Criminal Code* imposes upon this tribunal.

Dissenting Reasons prepared by B. Walter

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/Edits KW Jan 12/08