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

IN THE MATTER OF THE FITNESS TO STAND TRIAL
AND
DISPOSITION HEARING OF

EDITH NOREEN EVERS

HELD AT: Forensic Psychiatric Hospital
Port Coquitlam, BC
02 February 2009

BEFORE:	**CHAIRPERSON:**	**B. Walter**
	MEMBERS:	**Dr. P. Constance, psychiatrist**
		J. McIntyre

APPEARANCES:	**ACCUSED/PATIENT: Edith Noreen Evers**
	ACCUSED/PATIENT COUNSEL: D. Nielsen
	DIRECTOR AFPS: K. Slack Dr. L. Meldrum

[1] CHAIRPERSON: On February 2nd, 2009 the British Columbia Review Board convened what is in effect a second hearing in the matter of Edith Noreen Evers, the accused, who is 52 years of age.

[2] On June 22nd, 2007, almost two years ago now, Ms. Evers was charged by indictment under the *Controlled Drugs and Substances Act (Canada)* with production of a controlled substance, to wit: cannabis, under Section 7.1 of the *CDSA,* and possession of a controlled substance for the purpose of trafficking under Section 5.5(2) of the *CDSA*. These indictments arose when police, responding to a domestic disturbance call at the accused's rural property, discovered a marihuana grow-operation.

[3] The accused had resided at her Black Creek, B.C. property some ten years prior to the index offence. As of December of 2007, she apparently separated from her husband with whom she resided there. He retains an ownership interest in the subject property. The separation, as well as other circumstances, resulted in the accused experiencing considerable financial stress. Although she has no formal significant psychiatric history, Ms. Evers apparently used marijuana recreationally as a young adult, then stopped using it, and resumed its use five or six years ago for pain management purposes. She then proceeded to grow and sell that substance for similarly situated individuals on compassionate grounds. It is that activity that resulted in her current charges.

[4] As a result of her stressors and her preexisting mental illness, she began to develop grandiose, erroneous, bizarre and paranoid beliefs and legal theories. In January of 2008 she was first diagnosed with a delusional disorder as well as a chronic marijuana dependency. She was decertified because she was not considered an immediate harm to herself or others, in spite of the fact that she denied her mental illness and did not intend to comply with medications on an outpatient basis.

[5] In response to her charges, the court ordered an assessment of her fitness to stand trial. Dr. Breitman rendered such an assessment on August 8th, 2008. That assessment is filed as Exhibit 8 in the current proceedings. The accused confirmed to Dr. Breitman her belief that cannabis or its cultivation or distribution is not illegal. She also endorsed complex conspiracy theories and her distrust of lawyers and legal proceedings.

[6] Dr. Breitman confirmed her belief that Ms. Evers suffers from a paranoid delusional disorder. Given the range of her beliefs, theories and in effect delusions, Dr.

Breitman felt that Ms. Evers would be unable to participate effectively in her own defence, although she has at all times maintained at least a rudimentary, (perhaps better than rudimentary) understanding of the basics of the judicial process. Dr. Breitman felt that she would be unable to communicate rationally or meaningfully with counsel despite the fact that she did not consider Ms. Evers certifiable.

[7] Ms. Evers appeared before the Court in Courtenay on September 19th, 2008. On that occasion Mr. Justice A.F. Wilson of the Supreme Court of British Columbia found her unfit to stand trial. The justice's extensive reasons and his opinion of her fitness to stand trial are found at Exhibit 17. In particular, at paragraph 34, the court said:

> "I am satisfied that Ms. Evers does suffer from a mental disorder. I accept Dr. Breitman's diagnosis of a delusional disorder characterized by fixed false beliefs. I also note Dr. Breitman's comment in the course of her evidence that most of her delusions do appear to be focused around the current court case."

[8] On the basis of the expert evidence the court went on to analyze the accused's presentation and concluded that she was indeed unfit to stand trial.

[9] In rendering her assessment Dr. Breitman also sought to persuade the court to issue a treatment order requiring her hospitalization pending return to court. The court did not see fit to make such an order. Once back in the community the accused was further charged on September 11th, 2008 with obstruction, whereupon she was again released on an undertaking.

[10] In imposing its verdict, the Supreme Court did not see fit to direct that the accused, while in the community, report to or be supervised or treated by Forensic Psychiatric Services, therefore the Review Board issued its own assessment order on September 24th, 2008. That order was personally served on Ms. Evers at her Black Creek residence. Ms. Evers did not appear in response to that order notwithstanding that it clearly indicates that an accused who fails to comply with such an order may be subject to arrest without warrant: Exhibit 13.

[11] Dr. Breitman responded to the Board's assessment order. The accused failed to attend for her scheduled appointment on October 7th Dr. Breitman was therefore unable to provide any additional psychiatric evidence and in her view the presumptive lack of fitness imposed by the September verdict remained undisturbed: Exhibit 14.

[12] The Review Board convened, as it must under Section 672.47 of the *Criminal Code*, on October 30th, 2008 at Nanaimo. Again attempts were made to personally serve Ms. Evers for her first hearing. Those extensive attempts are set forth in an Affidavit of Service filed as Exhibit 15 in these proceedings. The Review Board, as it must in fitness to stand trial cases, assigned counsel to represent Ms. Evers: s. 672.5(8)(a) c.c.

[13] When the Board convened on October 30th at Nanaimo the accused did not attend. The evidence further suggested that the accused would be unlikely to comply with legal or treatment requirements on an outpatient basis. Therefore, on the basis of her previous failures to respond, and in the presence of her assigned counsel and believing there would be no reason to expect her demeanour or presentation to change if we adjourned the hearing, the Review Board imposed a further finding of unfit to stand trial and, on the basis of her noncompliance, ordered the accused detained under a disposition of custody. She was thereafter committed to the Forensic Psychiatric Hospital by warrant: Exhibit 16.

[14] Since coming to hospital it has been confirmed that the accused also confronts civil proceedings in March of 2009 relating to the partition and sale of her Black Creek property.

[15] While in hospital, Dr. Meldrum was assigned treatment and assessment responsibilities for Ms. Evers. In her report filed as Exhibit 19 for the current proceeding she reviews helpfully Ms. Evers' recent procedural and legal history. She indicates that the accused was admitted pursuant to the Board's disposition and warrant November 1st, 2008. Initially, the accused was oppositional and agitated. She was not and has not been overtly physically aggressive or assaultive. In her evidence at today's hearing Dr. Meldrum believes that the accused was likely certifiable at the time of her admission.

[16] Dr. Meldrum initiated treatment over the accused's protestations. She was difficult to monitor in terms of her compliance. Therefore, Dr. Meldrum switched her to injectible risperidone consta on a two-weekly basis to ensure compliance. Under that regime there appears to have been some amelioration in the intensity of the accused's beliefs and in terms of her lability and her irritable and oppositional behaviour. She has settled to the point where she can be humorous, pleasant and less conflictual. She continues to deny she suffers from a mental illness.

[17] It is Dr. Meldrum's belief that the accused has to some degree responded to treatment with medication, although she continues to cleave to false beliefs about her legal situation. Dr. Meldrum is also persuaded that the accused's preexisting mental illness or her predisposition to such an illness, was exacerbated or rendered more acute as a result of her psychosocial and familial stressors such as the breakup of her marriage; her conflict with her husband; acrimony over the ownership of the familial farm property; the onset of significant financial stressors including actions by creditors to recover money, and foreclosure proceedings. Although the medication appears to have had a positive effect in reducing the intensity of the accused's presentation, Dr. Meldrum reminds us that the social and financial pressures or stressors, including additional pending legal proceedings involving the partition and sale of the property, remain outstanding as do several criminal counts. If the accused ceases to comply with medication, as she promises candidly to do outside the hospital, she could once again succumb to overt psychosis in the face of those ongoing stressors.

[18] The accused makes it clear in her oral evidence that she considers the imposition of unconsented-to treatment as a violation of her rights. She clearly has no intention of taking medication on an outpatient basis.

[19] Under the prevailing circumstances the Review Board saw fit to separate or bifurcate its proceeding into two stages. We proceeded first to hear evidence with respect to the sole and defining issue of Ms. Evers' fitness to stand trial. On that issue Dr. Meldrum reminds us again that the accused has and continues to clearly understand the basic aspects of a judicial proceeding or a trial, including its procedural aspects; the roles of the participants including the judge, the defence and prosecutorial lawyers; as well as the consequences or potential outcomes of such a process. She remains very focused on her myriad legal issues and she continues to be preoccupied with or to adhere to some of the beliefs about the current state of the law, in particular that relating to the cultivation and possession of marijuana outlined in the Supreme Court's reasons in September.

[20] She has had difficulty relating to a criminal lawyer. It appears that counsel have not been willing to accept or follow her instructions or strategies with respect to her criminal defence. She continues to believe that this prosecution is wrong and that in fact Parliament and other courts have struck down laws relating to marijuana cultivation or possession such as those she confronts.

[21] She has softened her negative beliefs about lawyers to some extent. She is seeking, and indeed has retained, legal representation to assist her in her civil property matters. She clearly distrusted the lawyer who was assigned to represent her at her first Review Board hearing; however, she has formed an amiable and apparently trusting relationship with her current Review Board counsel, Ms. Nielsen.

[22] Dr. Meldrum continues to endorse a diagnosis of delusional disorder or schizophrenia and, although she remains somewhat grandiose and her stressors persist, Dr. Meldrum does not believe that Ms. Evers is currently certifiable. Dr. Meldrum took no specific position on whether or not the accused is currently fit to stand trial but did believe that her current stability would be lost if she were discharged and allowed to cease taking her medications. Under such circumstances she would become more florid.

[23] Ms. Evers was able to sit through Dr. Meldrum's evidence with a minimum of interruption. It is clear she continues to hold to her theories about the legitimacy of the charges she confronts. She was able to speak calmly and to instruct counsel throughout the proceeding. We observed that, on at least three occasions, she became somewhat labile or tearful and, when permitted to do so, had a tendency to become tangential in her responses.

[24] Nevertheless, she was able to remember and cite the charges against her, including the relevant sections of the *CDSA*. She told us she currently does not have a defence lawyer for these charges. Ms. Nielsen is prepared to assist her to find counsel and is confident that an appropriate counsel can be retained. She indicated she would accept Ms. Nielsen's recommendation for another lawyer. She was not prepared to be represented by the Review Board's previously assigned counsel from Nanaimo.

[25] She was able, with a degree of sophistication and specificity, to outline for us her understanding of the roles of the prosecutor, the judge, (or judge and a jury), as well as the consequences or sentences which might result from her trial. She indicated if a charge is not proved it is dismissed. She understood that an oath imposes a duty to tell the truth and that failure to tell the truth in court could result in perjury charges.

[26] She indicated she would attend court as required. She sought to explain her nonattendance at the October Review Board hearing in Nanaimo. Clearly, she believes that she has Charter defences to the charges she confronts. If successful in pressing her Charter remedies, she believes that she may indeed be entitled to compensation for the

marijuana seeds and growing equipment which were seized from her. She clearly believes that it is and was legal for her to cultivate marijuana. She indicates that she has in the past declared her marijuana plants or their value in the context of income tax returns or declarations.

[27] She attributes her difficulties to the family, social and financial stressors which have arisen in her life in the last few years and which she acknowledges persist. She is quite prepared to address the partition proceedings which we understand are scheduled for March 2nd, 2009. She denies that the medication or her treatment at hospital has had any beneficial effect and indeed, in protesting against the administration of those medications, disclosed a somewhat sophisticated understanding of the *Mental Health Act* and consent and capacity proceedings. She is clearly convinced of the rightness of her cause, despite her sometimes tangential presentation.

[28] Following submissions on the matter the Review Board withdrew to consider the issue of fitness. It is our finding or opinion that on the evidence as presented Ms. Evers is fit to stand trial. We have considered the Supreme Court's reasons in initially finding her unfit and we certainly take the view that on any analysis of the *Taylor* test she has a far better than rudimentary understanding of the procedural aspects of a trial.

[29] Whether or not her beliefs about the prevailing jurisprudence or legislation are entirely accurate, she may indeed have some grounds for raising a Charter defence to their legitimacy given jurisprudence in other provinces. Certainly her beliefs about the state of the law, even if inaccurate, are not so psychotically irrational as to in our view render her unfit. Indeed her beliefs may not only be rational, they may be prescient: on the day following her hearing the news media announced that the BC Supreme Court has declared current restrictions on medical marijuana unconstitutional. She does not by any standard approximate the presentation of the accused in the *Xu* matter (O.C.J.) which was extensively cited as an analogy by the court in finding her unfit to stand trial. The major obstacle is for her to retain a lawyer who is prepared to take the time to communicate with Ms. Evers to engender her trust and who is prepared to at least advance, to a degree, her theories in the interest of her own defence.

[30] We saw nothing in her presentation on this date that appeared so overtly psychotic, bizarre, grandiose or paranoid that she should be considered unfit to stand trial. On her return to court we would simply and respectfully recommend that the proceedings

extend to her a degree of courtesy yet firm-handedness so that the trial of the issue remains on track.

[31] Once we announced our decision with respect to fitness to stand trial, the Board proceeded to take evidence on the matter of disposition. In addition to considering the evidence that I had already cited with respect to the accused's background and current circumstances, Dr. Meldrum reminded us that the challenge to maintain Ms. Evers' newfound fitness. She believes that the medications have assisted the accused to achieve fitness to stand trial and that the accused has indicated she would not consume that medication voluntarily on an outpatient basis.

[32] Under those circumstances Dr. Meldrum believes that Ms. Evers could be expected to deteriorate to psychosis to a level where she could once again present as highly disorganized, thought-disordered and psychotic. There is then a risk that she would again be found unfit and her recent history would repeat itself. Ms. Evers continues to deny her illness and has no history of outpatient compliance which would inspire any contrary conclusion.

[33] To the extent that Dr. Meldrum also believes that her psychosocial stressors were implicated in her symptoms, and to the extent that those stressors remain no less acute, if the accused is unmedicated their impact on her mental state would also be a negative one. Although she did not take a clear position on the matter, one assumes that Dr. Meldrum believes that, if discharged and untreated, Ms. Evers' fitness to stand trial might be at risk or in jeopardy.

[34] On the other hand, we learned from Ms. Slack that notwithstanding the strained relationship between Ms. Evers and her husband there is some indication that her husband might vacate the marital home so that the accused could resume her residence there. Financially she is in receipt of disability benefits.

[35] Ms. Evers clearly has a strong wish to be released from an environment she experiences as tantamount to imprisonment. She described her four-bedroom home in Black Creek, indicating she had been renting out rooms there until her admission to hospital. If discharged, her husband would vacate and allow her to live there pending the resolution of partition and sale proceedings relating to the property. She also has a son, or sons, in the Courtenay vicinity with whom she could reside for a time. In addition to the partition and sale proceedings, Ms. Evers also is confronting foreclosure proceedings.

[36] As she resents taking medications without consent, and she sees no benefit to it, she would clearly not comply with treatment. She therefore sees no point in having to report to the Nanaimo Clinic on an outpatient basis. Dr. Meldrum, on the basis of the accused's presentation, had no difficulty predicting her decompensation, although she was unable to state within certainty the pace of such decompensation.

[37] Having found the accused fit, the Review Board is of course required to impose one of two dispositional alternatives under Section 672.54 of the *Criminal Code*; that is, a disposition of detention or of discharge subject to conditions, bearing in mind the public safety issues and the admonition to impose the least onerous and least restrictive alternative. Irrespective of that analysis, the Review Board also has the option under Section 672.49(1) of the *Criminal Code* to detain an accused if there are reasonable grounds to believe she would become unfit to stand trial if released.

[38] This is actually Ms. Evers' first in-person hearing. The majority of the Board were of the view that there is evidence to believe, including Ms. Evers' own protestations against medication, that if she were discharged and if she were noncompliant in the face of her persistent stressors, she would become unfit to stand trial in short order. The majority therefore determined to impose a disposition of custody notwithstanding the absence of any findings of significant threat in order to safeguard her stability, and so that Ms. Evers may be able to confront her charges and put these matters behind her in reasonably short order.

Dissent

[39] CHAIRPERSON: I was persuaded that the benefits that she has obtained from her medication to date will sustain for another month. To the extent she has stable accommodation in the community where she has resided for close to 20 years and, to the extent that she does not pose anything amounting to a threat to the safety of others, Ms. Evers could, in my view, be released pending her return to court for trial of the issue. I remind myself that the underlying social policy objectives and entire approach of the drafting of Part XX.1 of the *Code* posits a presumption against detention. Neither the index offences nor the accused’s clinical status are in my view sufficiently compelling evidence to rebut that presumption.

[40] Under the circumstances the majority imposed a disposition of custody. The opinion of the majority does contemplate that if the Director considers her sufficiently

stable she may be provided visit leaves to her family home under a regime which continues to make it possible to treat her absent her consent under the *Mental Health Act*.

[41] Though he did not attend this hearing Mr. Farenholtz, Agent for the director of Public Prosecutions (Canada), was designated as a party to this proceeding: s. 672.5(4) *Criminal Code*.

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Edits KW Feb 9/09