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

DANA DANIEL HEIDEN

HELD AT: Forensic Psychiatric Hospital
Port Coquitlam, BC
August 8, 2008

BEFORE:
CHAIRPERSON: B. Walter
MEMBERS: Dr. P. Constance, psychiatrist
P. Barnsley

APPEARANCES:
ACCUSED/PATIENT: Dana Daniel Heiden
ACCUSED/PATIENT COUNSEL: Scott Hicks
DIRECTOR AFPS: R. Dominguez Dr. J. Bondar
Dr. R. Magee (via phone)
ATTORNEY GENERAL: L. Hillaby

[1] CHAIRPERSON: On August 8, 2008 the British Columbia Review Board convened a mandatory hearing as a result of an Enforcement Order under s. 672.94 of the *Criminal Code*, to review the circumstances and disposition of Dana Daniel Heiden, the accused, aged 30. Given the timing of the current hearing, it will also be considered as an annual review pursuant to s. 672.81 of the *Code* as Mr. Heiden's most recent hearing was on August 23, 2007.

[2] Between January of 2005 and March of 2006 the accused was charged with a number of offences including shoplifting or theft under $5,000 in Victoria; mischief in relation to property; breach of an undertaking; a further theft under $5,000, as well as dangerous driving. A final shoplifting under $5,000 occurred in Nelson in March of 2006. The June 27, 2005 dangerous driving offence was considered somewhat dangerous. The accused stole a car and drove while the owner was hanging onto the roof of the vehicle. With respect to the mischief and breach charges, the accused attended at a Mental Health office in Nelson and smashed a chair. When he was released on an undertaking not to attend at those offices, the accused, in breach of that undertaking, was again found at the Mental Health Services a day later and refused to leave when asked to do so by staff.

[3] On July 6, 2006 the accused was given a verdict of NCRMD on some but not all of the offences charged. The verdict was based on two counts of theft under $5,000, one count of dangerous driving and one count of breach of an undertaking. The accused's disposition should reflect proper index offences as there appears to be an erroneous recitation of those on the past orders as a result of administrative error.

[4] The accused has a significant criminal record prior to coming under the Review Board's jurisdiction including three previous convictions for dangerous driving, however he has not demonstrated or been convicted of any interpersonal violence per se. The accused has a lengthy psychiatric history from 1985 including numerous contacts with Forensic Psychiatric Services in the community. His illness and his management in the community has been complicated or rendered more difficult as a result of a significant narcotics abuse issue. There is an example in Exhibit 12, a report authored by Mr. Heiden's community case manager, which indicates that the accused has encountered as many as 263 civil mental health contacts and hospitalizations since 2000. Apparently this accused also has a diagnosis of neuropathy which causes him considerable hand and foot pain and his pain

disorder has lead to his considerable alcohol and drug difficulties including the use of morphine and cocaine.

[5] The accused had been treated for several years by Dr. Magee, who remains his community psychiatrist. At Exhibit 13 Dr. Magee gave a summary of the accused's difficulties and afflictions saying:

> "Dana has been a challenging individual to treat at the best of times. His early history was very much complicated by his history of alcohol abuse. It would seem at least initially we were uncertain as to the diagnosis. There appeared to be some evidence of a psychosis but this has only become apparent over the years. Clearly he seems to be driven at times by paranoid delusional behaviour which likely had some impact on the index offense but also substance abuse has been a major factor. His illness has been complicated by the fact that he developed Lymphoma a number of years ago and required chemotherapy. Although the treatment for the lymphoma was successful, he did develop some peripheral neuropathy. He was also introduced to pain medication and this became a significant factor in terms of his mental health well being. He became quite a significant narcotics abuser and this escalated to quite a behavioural problem particularly last year around the time of the incident. We had exempted (sic) to send him off for drug treatment but it was only after his family doctor who is also the Methadone doctor in our local community, started him on Methadone that we began to experience some success. This was certainly very instrumental in his well being as it did seem to placate his narcotic drug seeking. Irrespective, the incident did occur in June of last year where he had not been taking anti-psychotic medication and was becoming increasingly paranoid. Much of his behaviour was also exacerbated by drug abuse": **Exhibit 13.**

[6] In his assessment, Dr. Magee also found this accused had no history of significant interpersonal violence and considered the key risk management factor his likely relapse to significant substance abuse. He gave a diagnosis of schizophrenia as well as identifying schizoid or avoidant personality traits on AXIS II.

[7] After his first appearance before the Review Board in September of 2006 the accused remained in the community on conditional discharge. In the year that followed that hearing his functioning in the community remained marginal and he failed to attend several of his scheduled appointments. He also admitted periods of non-compliance affecting his thinking and acknowledged ongoing auditory hallucinations. He admitted he occasionally used cocaine and clearly presented as reluctant to see his psychiatrist and to adhere to follow-up treatment. His treatment was not fully effective.

[8] A further hearing occurred in August of 2007 and the accused was again left in the community under conditions.

[9] On July 15, 2008 an Enforcement Order brought the accused to FPH precipitating the current hearing. As evidence in the matter we have Exhibit 18, a report from Forensic Liaison Worker Auger dated May 23, 2008. That report indicates the accused is already co-managed by Forensic Psychiatric Services as well as Nelson Mental Health Services. The accused's functioning is said to remain marginal. His attendance to appointments has been poor so his case manager tends to visit him at his home. His personal hygiene and his care of his residence are, not unexpectedly, quite poor. The accused is difficult to engage in terms of therapeutic relationships. In the past year the accused has had a further conviction for theft, specifically on November 28, 2007. He was placed on probation until August 27th, 2008. He has had difficulty complying with his probation conditions. An attempt at closer monitoring has been made by seeing that his medications are prescribed by his family physician and dispensed on a daily basis. The accused is required to attend his pharmacy to pick up his medications twice per day, thereby ensuring his compliance.

[10] Dr. Magee has also remained involved with this accused representing FPSC in this co-management scheme. In a report filed in anticipation of the current hearing he confirms that the accused continues to demonstrate compliance and reporting problems. He describes the accused as having foul personal hygiene and being very neglectful of himself as a result of what Dr. Magee calls profound negative symptoms of his illness. His ongoing social interaction with known drug users also raises suspicions. He has definitely not shown much in the way of progress and has virtually no insight into his illness or his circumstances. His longstanding behavioural and functional pattern persists. In addition to his pain management medication regime, Dr. Magee acknowledged orally his belief that the accused may be augmenting his morphine with street drugs. His historic pattern of marginal or even non-compliance has had no consequences so he persists in neglecting his legal responsibilities. Dr. Magee expressed the hope that his admission to FPH may have had a sobering impact upon the accused.

[11] Despite this accused's poor functioning, Dr. Magee identified no major concern regarding danger to others in the community. Indeed, orally he indicated that this accused is less likely to engage in severely or seriously dangerous behaviour and while monitored considered him of a low risk to others.

[12] Dr. Bondar treated the accused on his return to FPH. In his submission to the Review Board at Exhibit 21, Dr. Bondar again reviews the accused's social, medical, substance use and legal history. He notes also that the accused's scheduled annual

hearing in Nelson on July 11th was a non-event as a result of the accused's failure to attend. It was that non-attendance that persuaded his treatment providers to initiate breach proceedings and to have him returned to FPH. Dr. Bondar also cites collateral evidence or suspicion that the accused may be using iv drugs. Certainly on admission to FPH he was disorganized and appeared to be responding to internal stimuli. He remains somewhat psychotic and is considered a chronic substance user. Orally Dr. Bondar indicated that the accused was at the time of the hearing showing no significant positive psychotic symptoms but that he remains seriously afflicted by negative symptoms of his illness. Nevertheless, he believes that despite the accused's poor global functioning he could be released and managed in the community under the current FPSC/Community Mental Health co-management scheme.

[13] In terms of risk assessment Dr. Bondar identifies mainly the accused's historic dangerous driving convictions which occurred while he was psychotic and which could be considered of high risk to others. However he did not feel that those historic offences justified the accused's ongoing detention. Under questioning it was revealed that the accused has disclosed no history of command hallucinations.

[14] For his part, Mr. Heiden obviously wanted to return to Nelson and indicated he would make more effort to co-operate with Dr. Magee in future.

[15] In considering our options this panel of the Review Board, despite the positions of the parties, including the accused who were consensually recommending the accused's conditional discharge, we were unable to identify or point to evidence indicating that this accused is currently a foreseeable significant threat as that concept has been illuminated from time to time in the case law and therefore, despite his marginalized existence, we felt we had no basis to extend our jurisdiction over him and absolutely discharged Mr. Heiden. We assume in doing so that not much will change in terms of his community management regime in any event.

Prepared by B. Walter and concurred in by Dr. P. Constance and P. Barnsley.

/dlw
Edits KW Sept 17/08