



## **BRITISH COLUMBIA REVIEW BOARD**

**IN THE MATTER OF PART XX.1 (Mental Disorder) OF THE CRIMINAL CODE  
R.S.C. 1991 c. 43, as amended S.C. 2005 c. 22, S.C. 2014 c. 6**

### **REASONS FOR DISPOSITION IN THE MATTER OF**

**CHELCEY RAYEL HODDER**

**HELD AT: Forensic Psychiatric Hospital  
Port Coquitlam, BC  
December 10, 2018**

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

**APPEARANCES:       ACCUSED/PATIENT: Chelcey Rayel Hodder  
ACCUSED/PATIENT ADVOCATE: T. Reyes  
DIRECTOR AFPS: Dr. S. Lessing/Dr. A. Kolchak/ B. Lohmann  
ATTORNEY GENERAL: L. Hillaby**

## INTRODUCTION AND BACKGROUND

[ 1 ] On December 10, 2018 the British Columbia Review Board convened a mandatory hearing pursuant to s. 672.81(2.1) of the *Criminal Code*. The hearing is premised upon, or triggered by, a restriction imposed by the Director on the liberties of Ms. Hodder, the accused, who is 35 years old.

[ 2 ] For the record, Ms. Hodder was the subject of an earlier hearing, her first, on October 4, 2018. No evidence was introduced or admitted at that hearing and the matter was resolved by way of Ms. Hodder consenting to a disposition of conditional discharge, thereby, in effect avoiding or adjourning the evidentiary portion of the hearing. Following that brief proceeding, Ms. Hodder was, on November 2, 2018, directed to FPH essentially as a result of non-compliance with the requirements of her discharge and the directions of her community treatment team in Kamloops.

[ 3 ] Ms. Hodder has an extensive and lengthy history of school and drug difficulties. She has demonstrated what are now considered chronic signs of psychosis, since 2007. She has periodically been non-compliant in terms of her medication. Nevertheless, she has in the main been considered adherent to contact with community mental health services and has recently been followed by an assertive community treatment (ACT) team. Her afflictions rise beyond mental illness or psychosis and include chronic disorganization of thought, homelessness, and unremitting substance abuse. In 2015 she was diagnosed with schizophrenia, independent of the effects of substances.

[ 4 ] It is now clear that her multiple diagnoses, that is her schizophrenia and multiple substance abuse, have also contributed to an impairment of Ms. Hodder's cognition.

[ 5 ] In October of 2017, Ms. Hodder was found near a private home in the early morning hours, seated in a vehicle that was not hers. She was apprehended under the *Mental Health Act* and charged with trespassing near a dwelling house, contrary to s. 177 of the *Criminal Code*. Her only previous conviction was in relation to possession of a controlled substance. Although there is some hearsay evidence of historic threats to her

parents, including torching of their home, there is no documentation of these events and no formal charges on the record.

[ 6 ] After her July 5, 2018 verdict of NCRMD, Ms. Hodder was released on an undertaking. She remained homeless in the community though chronically psychotic due to her schizophrenic illness and her continuous crystal meth abuse. She was able, by choice, to be monitored by the Kamloops ACT team on a weekly basis. She has, in the past at least, been able to receive her oral medications from pharmacies in Kamloops and her injectable formulation from her community mental health team. As of January 2018 she has had as many as eight admissions to hospital for opioid overdoses, including the use of heroin. She denies her illness and lacks insight into her afflictions.

[ 7 ] As indicated, Ms. Hodder's first appearance on October 14<sup>th</sup> did not result in a full evidentiary hearing.

### **EVIDENCE AT HEARING**

[ 8 ] The evidence suggests that, following what was intended to be her first Review Board hearing, Ms. Hodder began missing ACT appointments. In September she was found in possession of stolen property. She continued to live a transient, outdoor lifestyle in the company of her boyfriend and declined offered assistance to secure more stable accommodation or housing. On October 31<sup>st</sup>, she failed to appear for her injection and was made the subject of a search. On November 1, 2018 she was admitted to Royal Inland Hospital and had demonstrably not been consuming her medications. Under those circumstances, Dr. Lessing decided to return her to FPH under the provisions of the Code cited above, which resulted in a significant restriction on the liberties provided under the terms of her conditional discharge.

[ 9 ] Dr. Lessing, who is Ms. Hodder's community psychiatrist, agrees with the diagnosis of schizophrenia with chronic symptomology, and meth abuse or addiction, to which Ms. Hodder has recently added heroin as well. Dr. Lessing confirms that the accused has been homeless; that there have been new charges, which are to be further dealt with in court on January 4, 2019; that on October 31<sup>st</sup>, Ms. Hodder missed her depot injection and was hospitalized. As her circumstances appeared to be deteriorating, she was admitted to FPH.

[ 10 ] Dr. Lessing is obviously seriously concerned about Ms. Hodder's deteriorating functioning in the community, but although her health and wellbeing are clearly at risk due to her lifestyle and circumstances, she orally agrees that Ms. Hodder is probably not a significant threat to others such as warrants the Review Board's jurisdiction. Dr. Lessing admits that though Ms. Hodder is really unmanageable under the terms of a conditional discharge, she is likely eligible for absolute discharge. Her hope is that her patient will be certified and placed in a mental health setting such as the Burnaby centre.

[ 11 ] Dr. Lessing provides a detailed description of Ms. Hodder's deteriorating circumstances in the community. Her description would not, in our application of the legal standard, support a finding of significant threat. As examples, Dr. Lessing describes Ms. Hodder's public behaviour and the complaints and concerns that are emanating in the community such as "aggressive pan handling"; being "rude and confrontational at a thrift store; making a threat to smash windows; crossing streets in an unsafe manner; presenting in an irritable, rude, and disrespectful manner; being socially unstable; having disregard for interpersonal conventions; causing stress for nursing staff; presenting a challenge to the community; behaving in a disordered and callous manner; and not making an effort to address her difficulties or afflictions." Dr. Lessing is also concerned, albeit she has no direct or documented evidence, that Ms. Hodder may possibly be a victim of domestic violence in the context of her personal relationship.

[ 12 ] All in all, Dr. Lessing's description of Ms. Hodder's progress in the community qualifies her as or perhaps slightly beyond a nuisance. Despite the concerns that it is no doubt raising, it does not appear, to support a finding of significant threat. She is apparently a high-profile noticed person in the community, in part due to her odd manner of dress and her chronic intoxication. However, despite considerable concern, and her exhaustion of community resources, Dr. Lessing does not suggest that she is a foreseeable threat of serious harm to the public.

[ 13 ] Dr. Kolchak has been treating Ms. Hodder since her admission to hospital on November 2nd, 2018. He says that on admission she was distressed and endorsing evolving grandiose delusions. Although she admits that she has been diagnosed with schizophrenia as of age 24 or 25, Ms. Hodder believes that she no longer suffers from that

illness. Her multiple hospital admissions are likely less due to her psychosis than they are to her extensive abuse of substances, since adolescence.

[ 14 ] Ms. Hodder's behaviour at FPH is described as appropriate and violence free. And she continues to endorse delusional beliefs including about feces, about being part of a royal family, and about her former boyfriend. She has been manifestly non-aggressive. Despite her lack of insight, Dr. Kolchak agrees that she likely is not a significant threat to public safety. His plan would be to certify Ms. Hodder and see her detained in a civil mental health facility.

[ 15 ] Ms. Hodder seeks absolute discharge to return to Kamloops and to reside with her boyfriend in a tent, until such time as other housing is identified. Although she denies that her schizophrenia continues, her presentation was labile and her many, many, psychotic ideas were freely and spontaneously elicited.

## **ANALYSIS AND DISPOSITION**

[ 16 ] The Board's decision making is governed by s. 672.54 AND s. 672.5401 of the *Criminal Code* which provide:

**672.54** When a court or Review Board makes a disposition under subsection 672.45(2), section 672.47, subsection 672.64(3) or section 672.83 or 672.84, it shall, taking into account the safety of the public, which is the paramount consideration, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused, make one of the following dispositions that is necessary and appropriate in the circumstances:

(a) where a verdict of not criminally responsible on account of mental disorder has been rendered in respect of the accused and, in the opinion of the court or Review Board, the accused is not a significant threat to the safety of the public, by order, direct that the accused be discharged absolutely;

(b) by order, direct that the accused be discharged subject to such conditions as the court or Review Board considers appropriate; or

(c) by order, direct that the accused be detained in custody in a hospital, subject to such conditions as the court or Review Board considers appropriate.

**672.5401** For the purposes of section 672.54, a significant threat to the safety of the public means a risk of serious physical or psychological harm to members of

the public — including any victim of or witness to the offence, or any person under the age of 18 years — resulting from conduct that is criminal in nature but not necessarily violent.

[ 17 ] As confirmed in **Calles v. British Columbia (Adult Forensic Psychiatric Services)**, 2016 BCCA 318, the codification of the definition in s. 672.5401, has not changed its earlier interpretation:

A significant threat to public safety is defined in s. 672.5401 of the *Criminal Code* to mean “a risk of serious physical or psychological harm to members of the public – including any victim of or witness to the offence, or any person under the age of 18 years – resulting from conduct that is criminal in nature but not necessarily violent”. The threat posed must be more than speculative and be supported by the evidence. It must be significant “both in the sense that there must be a real risk of physical or psychological harm occurring to individuals in the community and in the sense that this potential harm must be serious. A minuscule risk of grave harm will not suffice”, nor will a high risk of trivial harm: **Winko**, at para. 57. (*para. 15*)

[ 18 ] The Review Board’s jurisdiction must be based, or founded on, a finding that the accused is a significant threat as defined. In this case there is a dearth of any history that would suggest that Ms. Hodder poses a foreseeable and significant threat of serious criminal harm to others. Although her life is manifestly in disarray, and she may well come to personal harm considering her lifestyle choices, hers are not circumstances which require the coercive force of the criminal justice system in order to safeguard the public.

[ 19 ] Ms. Hodder is therefore entitled to be absolutely discharged and we so order.

Reasons written by B. Walter in concurrence with Dr. P. Constance and P. Cayley.

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