



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
MARILYN SUSANNE LYONS**

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

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

**APPEARANCES: ACCUSED/PATIENT: Marilyn Susanne Lyons
ACCUSED/PATIENT COUNSEL: D. Nielsen
HOSPITAL/CLINIC: J. Co Dr. J. Bondar
ATTORNEY GENERAL: T. Dorchester**

[1] CHAIRPERSON: On January 14th, 2009 the British Columbia Review Board convened a hearing at the Forensic Psychiatric Hospital to form an opinion as to the fitness to stand trial and to make a disposition in the matter of Marilyn Susanne Lyons.

[2] Ms. Lyons is 58 years of age. On October 31, 1998 she was charged with aggravated assault. The victim of the assault was her companion. The assault occurred while she was on visit leave from Riverview Hospital. It involved the accused stabbing the victim, in an act she labels as self-defence.

[3] She was, on November 30th, 1998, given a verdict of unfit to stand trial. At her first hearing before the Review Board on January 12th, 1999 she was found unfit and detained. Between the date of her verdict and her first Review Board hearing the accused assaulted a co-patient at FPH. That assault also resulted in a verdict of unfit to stand trial. However, that charge was stayed in 2001. Therefore, Ms. Lyons is before us on the single verdict premised on the aggravated assault.

[4] Under the prevailing circumstances it is necessary to set out some of Ms. Lyon's psychiatric history as well as to document to some extent her progress under our jurisdiction. The accused has a lengthy history of chronic schizophrenia dating from 1973. Prior to her verdict she apparently had as many as 28 admissions to various hospitals. She was an inpatient at Riverview between June of 1997 and November of 1998, during which period the index offence occurred. Throughout the entire time she was described as psychotic, provocative, assaultive and frequently violent.

[5] Ms. Lyons' illness has persisted throughout. She has remained overtly psychotic. Her illness has been only partially responsive to an array of medications as well as to other interventions including ECT. She has, in the past, suffered severe side effects from medications.

[6] The chronicity of Ms. Lyons' symptoms and her resulting mental instability caused her to demonstrate an ever-increasing or escalating level of violence. That pattern continued while she was at FPH. In her first six months in this institution she allegedly committed as many as five assaults. Her violence has historically been directed at staff or co-patients in her various institutional placements.

[7] The current hearing represents Ms. Lyon's 11th appearance before this Board. She has consistently been found unfit to stand trial and she has consistently been detained

under custodial dispositions. She has, throughout, remained relatively acutely symptomatic.

[8] Happily, since her earlier days under our jurisdiction her aggressive and violent presentation has ameliorated to some extent. For example, in the year that followed her May 1999 hearing, and despite being under close supervision, the accused demonstrated more than 30 incidents of violence. By 2001 the frequency and the severity of her aggressive incidents eased somewhat despite the fact that she remained consistently symptomatic and considerably disorganized. In the year preceding her March 2003 hearing, her aggressive incidents or attempts further ameliorated with the imposition of a behaviour modification program. Only 17 such incidents were documented that year.

[9] Between March of 2003 and 2004 her behaviour further improved with only four unprovoked assaultive incidents reported despite the fact that Ms. Lyons remained grossly psychotic. Again by way of example, in the year between March of 2004 and 2005 the evidence suggests only a single incident of physical aggression despite the persistence and unremitting nature of her symptoms.

[10] Bringing matters up to date, despite the ongoing chronicity of her illness, Ms. Lyons' last overtly aggressive incident was recorded in November of 2007. It consisted of an apparent attempt to strangle a peer.

[11] Along with her psychiatric illness Ms. Lyons has also become afflicted by additional medical challenges including heart problems and most recently a diagnosis of lung cancer which is monitored and treated as possible in this hospital. According to Mr. Co in his submission for the current hearing, Ms. Lyons remains severely ill, chronically symptomatic and paranoid, but she has committed no assaults in the past year.

[12] Dr. Bondar has recently assumed care and treatment of this accused. In assuming those responsibilities, he has provided a comprehensive report including a description of the index offence. He also reminds us that she now has a documented history of more than 100 assaultive incidents at FPH since her admission attributable to her chronic symptoms and disorganization.

[13] In terms of her other medical concerns, Dr. Bondar confirms a decline in her physical health with tumours in both lung fields. Her illness requires control through the use of opiates. The current dosage of Oxycodone required to control or render her pain tolerable remains relatively small at this time. Although she approached the hearing in a

wheelchair, Dr. Bondar tells us that Ms. Lyons remains mobile on the unit and on hospital grounds. She has also had escorted outings into the community accompanied by two staff. Ms. Lyons does not believe that she suffers from cancer.

[14] We are of course convened to once again assess the accused's fitness to stand trial. It was Dr. Bondar's evidence that it is extremely difficult to engage Ms. Lyons in a formal fitness assessment. He tells us in writing and orally that when the issue of her index offence or her need to answer to the charge in court is broached, Ms. Lyons becomes labile, agitated and distressed, which leads to increasing disorganization of thought form. She expressed the belief that she does not need to go back to court and that she is wrongly detained at this hospital where she has been placed by her former common-law spouse, the victim of the index offence.

[15] Dr. Bondar believes that to attempt to force the accused into a more structured fitness interview or discussion would do nothing but cause her undue psychological stress and harm. He says it is hard to ascertain what she actually understands about the court process given her quick descent into disorganization and distress. She does perseverate that the index offence was either in self-defence or actually perpetrated by other entities.

[16] Accordingly, Dr. Bondar does not believe that the accused could meaningfully participate in her own defence. He indeed believes that the accused's unfitness to stand trial may be permanent. He knows of no treatment or interventions which could be reasonably expected to restore her to fitness.

[17] With respect to the matter of disposition, her long history of conflict in hospital, though it has recently reduced, as well as her medical state, which requires fastidious monitoring and treatment, lead Dr. Bondar to conclude that her detention at FPH remains optimal from the perspective of Ms. Lyons' clinical needs as well as from the perspective of public protection. No other less restrictive or less onerous resource which could meet her needs has been identified. He is also concerned that the accused's aggression outside of the supervision and security of this hospital would increase to an unacceptable level.

[18] In answer to questions from counsel Nielsen, Dr. Bondar did say that even if her charges were stayed Ms. Lyons remains certifiable. He believes that her current residence is optimal under the circumstances.

[19] The Review Board had an opportunity to interact with and hear from Ms. Lyons. As already observed, she approached the hearing room under escort and in a wheelchair

but, after a short break, she was able to enter the hearing room under her own strength and assume her place at the table.

[20] Although Ms. Lyons frequently smiled and appeared quite pleasant throughout the evidence, she sought to interrupt or to contradict statements that were being made by others, in particular by Dr. Bondar. At times she became tearful and evidently distressed and what I would call significantly labile.

[21] It therefore came as something of a surprise that when subjected to questions by the Review Board, Ms. Lyons demonstrated a remarkably robust ability to attend to and respond to questions put to her. Although she at times gave way to tears, she was able to demonstrate a somewhat detailed memory of the index offence, including protesting that the victim indicated he would murder her. She then described how she chose her weapon; where and how deeply she stabbed the victim; that he called 9-1-1. She recalled being in court previously and was able to recall the name of her lawyer, Mr. Sudeyko.

[22] Although she frequently resorted to the use of the word "magistrate," she was able to explain that a magistrate is in the same position as a judge. She was able to indicate that the judge's role is to determine guilt or innocence. She believed that the Review Board would help her leave hospital where her boyfriend, Len, had placed her.

[23] She was able to describe the role of a lawyer in court and at the Review Board hearing she said that she trusts her current lawyer. She protested that she understands the duty to tell the truth and indicated she would always tell the truth in court. She said that she would like to leave the hospital to get onto the bus to go home where she promised to take her medications. She was able to say that the offence she stands charged with is one of aggravated assault or attempt murder and that it is a charge under the *Criminal Code*.

[24] Her responses to these and other queries were surprisingly robust even to her long-term lawyer who indicated that this was the best she had seen her client perform in the past ten years. The Crown also conceded that Ms. Lyons had performed very well in the course of today's hearing.

[25] The Review Board was therefore challenged to seriously revisit the status of her fitness to stand trial as of the time of this hearing. We reacquainted ourselves with the historic evidence, with the *Taylor* test and with the circumstances of the index offence including its relative complexity or lack thereof. We also discussed the possibility that Ms.

