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

HARWINDER SINGH RANDHAWA

HELD AT: **Forensic Psychiatric Hospital**
Port Coquitlam, BC
13 February 2008

BEFORE:	**CHAIRPERSON:**	**B. Walter**
	MEMBERS:	**Dr. G. Laws, psychiatrist**
		D. Bell

APPEARANCES:
ACCUSED/PATIENT: Harwinder Singh Randhawa
ACCUSED/PATIENT COUNSEL: K. Love
HOSPITAL/CLINIC: B. Armstrong Dr. L. Meldrum
ATTORNEY GENERAL: L. Hillaby

Amendment: Para 25 “The fitness rules must have as a central requirement a rational interest understanding of one’s legal predicament.” Word "interest" removed

[1] CHAIRPERSON: On February 13th, 2008 the British Columbia Review Board convened an initial hearing pursuant to Section 672.47 of the Criminal Code to come to an opinion with respect to the fitness to stand trial and to make a disposition in the matter of Harwinder Singh Randhawa, a gentleman of 54 years of age.

[2] Mr. Randhawa was charged August 1st, 2006, over a year-and-a-half ago, with impaired driving, contrary to Section 253(a) of the Criminal Code, as well as with having consumed alcohol to a quantity of more than .08 milligrams of alcohol in 100 millilitres of blood while having care and control of a motor vehicle, contrary to Section 253(b) of the Code.

[3] In short, the accused, after being involved in a motor-vehicle accident during which he rear-ended a stopped vehicle, surrendered two breath samples giving rise to the charges.

[4] Mr. Randhawa's background or history is somewhat limited. We know that in an earlier assessment performed for the Court with respect to his fitness to stand trial, his grasp of the English language was deemed extremely limited. Therefore the Review Board had at this hearing the benefit, but also the added complication, of assessing Mr. Randhawa with the assistance of an interpreter in the Punjabi language.

[5] On first assessment while at pretrial, Dr. Hediger, in October of 2007, readily found the accused fit to stand trial. He apparently clearly understood the charges against him, the court processes, and there was no apparent reason to find him unfit in that physician's opinion.

[6] There is not much information as to Mr. Randhawa's activities or whereabouts between the time of the index offence on August 1st, 2006 and his assessment in October of 2007 at North Fraser Pretrial. Dr. Meldrum was not able to shed much light on that period of time in the course of his morning's hearing.

[7] Dr. Meldrum was subsequently asked to further assess the accused at FPH where he was admitted on December 20th, 2007. She found him to present in a grandiose manner, warranting his certification under the *Mental Health Act*. He was started on medication with some negative side effects and no immediate positive response. He was able to deny his intoxication or elevated alcohol blood levels at the time of the index offence. She found him "grossly disorganized and delusional."

[8] As to fitness, she provides a structured assessment at page 5 of Exhibit 3. On the basis of his grandiose utterances, including with respect to the judicial process and the role of the judge, he presented sufficiently disorganized that she believed he was unfit to stand trial. On the basis of Dr. Meldrum's assessment, the Court then on January 10th, 2008 found the accused unfit to stand trial and committed him for further assessment and disposition to FPH.

[9] We have the benefit of additional filings in preparation for this initial hearing, including a social history received as Exhibit 7 which provides little in the way of collateral or family information other than that the accused immigrated to Canada as recently as 1995 and that he worked as a farm labourer. It is also suggested that he does or has historically consumed alcohol to excess.

[10] We also have an assessment from case manager Armstrong of January 30th, 2008 which basically indicates that the accused has continued to endorse grandiose beliefs since his verdict and despite attempts to treat him.

[11] The key evidence in this matter may be found at Exhibit 8, Dr. Meldrum's recent report of February 1, 2008. She tells us that the accused denies any psychiatric history, and that despite collateral information of the accused's lengthy and extensive use of alcohol he minimizes his use of that substance. There is reference to past charges of domestic dispute or violence which apparently were stayed. She tells us that in hospital the accused remains grandiose, asocial and isolated from peers and staff. Though he is passively compliant, he complains about his medications.

[12] She also tells us that the matter of medication remains under assessment. Given the history of alleged alcohol abuse, Dr. Meldrum is also proposing further exploratory tests including a CT scan or possibly a neuro-psych assessment, to test her suspicions regarding the potential for cognitive impairment or exacerbation of a psychotic illness due to lengthy alcohol abuse.

[13] As to the matter of fitness which we asked the parties to address at the outset, Dr. Meldrum indicates in her February 1st assessment that the accused remains disorganized and denies any court involvement or outstanding charges. In her view he does not understand his situation and would, under the circumstances, be unable to communicate properly or converse with counsel in a way that could be considered helpful. She therefore suggests that he remains unfit to stand trial.

[14] Orally, Dr. Meldrum told us that the accused has been examined twice more since the writing of her report, most recently on the day before this hearing. He continues to insist that he is confronting no criminal charges and that he has no need for a lawyer. Indeed, he believes he owns the judges and all lawyers because he is a man of considerable financial means. In terms of the current proceeding, he also believes that the Review Board will have, on the basis of his grandiose beliefs, no choice but to release him. He has refused to discuss legal issues even to the point of refusing to sign papers intended to provide him with financial benefits.

[15] She continues to be of the view that Mr. Randhawa's ability to converse with counsel remains significantly impaired, although he is able to vaguely refer to the events of 2006. She hastens to add that Mr. Randhawa's version of those events differs from what has been reported and documented by others.

[16] He says if he were discharged he would live in the jungle or return to the greenhouse that he previously occupied on an unauthorized basis.

[17] As alluded to, Mr. Randhawa is scheduled for a CT scan in order to assess the potential effects of protracted alcohol abuse on his cognition. Nevertheless, Dr. Meldrum does endorse a likely AXIS I diagnosis of schizophrenia complicated by alcohol abuse. It is her impression that Mr. Randhawa's lengthy history of alcohol use may have exacerbated a preexisting psychotic disorder. Under such circumstances, treatment as well as enforced abstinence in custodial circumstances may offer hope of restoring the accused to fitness to stand trial.

[18] Historically, Dr. Meldrum adds that Mr. Randhawa has functioned in a significantly deteriorated manner since at least 2006. He has not improved since his admission to this hospital. Given the early stage of diagnosis and Dr. Meldrum's understandable cautions in that area, she is alive to the possibility that Mr. Randhawa's cognition may be sufficiently impaired that he might indeed remain unfit to stand trial permanently.

[19] On the matter of fitness to stand trial we also heard from Mr. Randhawa, as I have indicated, with the assistance of an interpreter. He knows of no offences, although he was able to tell us that his motor vehicle was run into by people whose faces were covered. He explained the role of his lawyer initially as to find fault and the role of the

judge as to listen to the arguments of the lawyers and “find” the arguments. He indicated that the events of 2006, that is the motor-vehicle collision, happened 100 years ago.

[20] He was able to explain that on a finding of guilty a Court could impose, or such a finding could entail, fines or imprisonment. He briefly seemed to admit that he was previously on probation with respect to a domestic argument. He was able to speak to the meaning of an oath as requiring truth telling. He went on to say that a judge has no power over him; that the doctor has told him there is nothing wrong with him; that he pays lawyers and judges. He believed that the Review Board has to set him free and that he is 100 years old.

[21] He was also asked questions with respect to the current proceeding and some of the participants in the hearing. Nothing that Mr. Randhawa told us allowed us to come to any other conclusion or to rebut the presumption that he remains unfit to stand trial.

[22] Of course, we acknowledge that he may understand aspects of the court process and have some grasp of the roles of certain of the participants in such a process. It is clear; however, that he has no understanding of the application of this process to himself under current circumstances. He does not see any personal involvement for himself in such circumstances, nor does he communicate any understanding that he may indeed confront personal jeopardy or limitation of his liberties from the outcome of such a proceeding.

[23] We also concluded that he would not be able to participate meaningfully in terms of attending to the evidence of others, assessing that evidence, parsing it and instructing his counsel, given the intensity or profundity of his current beliefs.

[24] Accordingly, applying the *Taylor* test, and notwithstanding his rudimentary understanding of certain aspects of the procedure, we had no hesitation in concluding that Mr. Randhawa currently lacks the capacity to participate meaningfully in his trial. He therefore remains unfit to stand trial.

[25] I also refer to a recent Ontario Court of Justice decision in R.U. *Xu (O.C.J. #0710000305, April 18, 2007),* which supports our finding, where it cannot be determined that an accused has any “rational” understanding of his circumstances or predicament. In that decision Schneider, J. reasoned:

> “The court in *Taylor* felt that this standard (the limited cognitive capacity test) struck ‘an effective balance’ between the objectives of the fitness rules and the

> right of the accused to choose his own defence and have a have a trial within a reasonable time. While expediency must be considered in setting the fitness standard, it may be the case that the 'right to choose' is a rather empty right where the accused does not have a rational understanding of his legal predicament; where choice is not rational choice. The right to choose must be read as 'rational choice' otherwise, from a protection perspective, it is a 'right' of questionable worth. Against the concern of expediency is the rationale for the rules in the first place. Principally, the rules are in place to ensure that an accused who is ill-equipped as a result of mental disorder is not subject to the prosecution machinery of the state. The rules are to protect the accused. They operate to hold the prosecution in abeyance until the accused is fit to respond."

and concluded at paragraph 10:

> "The fitness rules must have as a central requirement a rational understanding of one's legal predicament."

Mr. Randhawa does not and thus remains unfit to stand trial.

[26] Having come to an opinion with respect to the accused's fitness to stand trial, the Review Board reconvened to inquire into and to determine the matter of disposition. Under the circumstances we of course have only two dispositional alternatives available to us, those of discharge subject to conditions or detention at hospital: S672.54. On that matter Dr. Meldrum gave evidence, which may also be found in Exhibit 8, that the accused does not understand his illness, that he would not comply with treatment in the community, and under such circumstances may indeed remain unfit to stand trial indefinitely.

[27] It is her solution that the only way to assess the accused and the only hope that he might recover fitness sufficient as to confront his trial is to continue his treatment in a hospital setting, under which circumstances he may also be prevented from relapsing to significant abuse of alcohol. It is her fear that, as he has told her, if discharged he would be homeless having said that he would return to the jungle in the interior of B.C. or to the greenhouse where, of course, he is no longer welcome.

[28] Dr. Meldrum knows of no meaningful or tangible family or community support. She indicates that it is her information that Mr. Randhawa will indeed be served with divorce papers in the next day or so. He has been separated from his family for some years. She is concerned that if released, given his past record of assaultive and threatening behaviour in his domestic context, that he may indeed pose a risk to members of his family, especially in the context of alcohol abuse or florid psychosis.

[29] She also refers to an allusion by her patient of the need to regain access to weapons for self-protection purposes. She believes that he would protect himself if he felt

unsafe as he has indeed said he would. He also believes he is free to drink as he is retired. As I have said, subject to further exploration she believes he may indeed be permanently impaired so as to render him continuously unfit to stand trial.

[30] Once again, following submissions, we considered the second branch of our inquiry this morning, that of disposition. Accepting the generally uncontradicted evidence of the treatment team, we felt that we had no option but to detain Mr. Randhawa in the interest of his own needs and of his eventual reintegration.

[31] We saw fit to impose our disposition for less than the asked for 12-month period, understanding that we do have an obligation to maintain a watch on Mr. Randhawa's progress under treatment. Accordingly, we imposed an order of six months, again on the understanding that should Mr. Randhawa show a robust response to treatment within that period we would certainly expect the Director to seek an early review under the relevant section of the Criminal Code. Of course it is also open to Mr. Randhawa to seek an early hearing through his own or through the auspices of his counsel.

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Edited March 25, 2008