

**IN THE MATTER OF PART XX.1 (Mental Disorder) OF THE CRIMINAL CODE
R.S.C. 1985 c. C-46, as amended 1991, c. 43**

AND

THE BRITISH COLUMBIA REVIEW BOARD

**IN THE MATTER OF FITNESS
AND
DISPOSITION HEARING OF
ROBERT RUSSELL**

**HELD AT: Forensic Psychiatric Institute
Port Coquitlam, BC
18 September 2001**

**BEFORE: CHAIRPERSON: C. Brown
MEMBERS: Dr. N. Collins, psychiatrist
 N. Avison**

**APPEARANCES: ACCUSED/PATIENT: Robert Russell
ACCUSED/PATIENT COUNSEL: G. Power
HOSPITAL/CLINIC: V. Bhauruth/Dr. W. Widajewicz
ATTORNEY GENERAL: L. Hillaby**

1 CHAIRPERSON: We have come to an unanimous decision. I am just going to give
2 that decision and not give extensive reasons at this time. We will move on to
3 the second part of our hearing.

4 We have decided, Mr. Russell, that you are fit to stand trial.

5 Let us now turn to the question of disposition.

6 (SUBMISSIONS)

7 The panel have deliberated on the question of disposition and we have
8 come to a unanimous decision on this issue. Our decision is that you will be
9 detained in custody. This order will run for a period of up to three months from
10 today's date.

11 The terms of the order are that you will be subject to the direction and
12 supervision of the Director. At the Director's discretion, you may have
13 unescorted or unsupervised access to the community. At the Director's
14 discretion, you may have overnight stays in the community for a period not
15 exceeding 28 days. You are not to acquire, possess or use any firearm,
16 explosive or offensive weapon. You are not to have direct or indirect contact
17 with Florence Russell, Anna Rose Baker, or Brian Cooper. You are to keep the
18 peace and be of good behaviour and you are to present yourself before court
19 for trial of the issue of whether you are fit to stand trial as required.

20 It is the understanding of the Review Board that you should be able to
21 attend to court within a matter of weeks.

22 The reasons for the two decisions that we gave today are as follows. The
23 purpose of today's hearing was to determine whether, in our opinion, Mr.
24 Russell is fit to stand trial, pursuant to s. 672.47 of the Criminal Code. The

1 Provincial Court, on August 9th, 2001, and earlier on July 6th, 2001, found Mr.
2 Russell unfit to stand trial and deferred disposition to the Review Board.

3 Mr. Russell has been charged with ten counts, including mischief,
4 assaults, uttering threats and six counts of failing to comply with terms of an
5 undertaking. After the July 6th court appearance, Mr. Russell was released on
6 an undertaking with conditions. In August 2001, Mr. Russell allegedly breached
7 several of those conditions and after a court hearing on August 9th, the judge
8 ordered him detained in custody at the Forensic Psychiatric Hospital.

9 At the hearing, the Review Board heard from Mr. Russell's treating
10 psychiatrist and Case Management worker. The Crown was represented, and
11 Mr. Russell was represented by counsel. As well, there was a sign language
12 interpreter to assist Mr. Russell.

13 We commenced with the issue of fitness to stand trial first. The *Criminal*
14 *Code*, s. 2, defines "Unfit to Stand Trial" and the Review Board is guided in its
15 interpretation of s. 2 by the decision, *Regina v. Taylor*. There are three
16 requirements to finding fitness; (1) that the accused person is able to
17 understand either the nature or objective of the court process; (2) that the
18 accused person is able to understand the possible consequences; and, (3) that
19 the accused person is able to communicate with counsel.

20 The essential point that we bore in mind was that s. 2 establishes a
21 capacity test. The Review Board was inquiring not so much as to whether Mr.
22 Russell had knowledge at this time of all the relevant factors concerning what
23 may or may not happen in court and the roles of all the players; rather, we
24 looked at whether Mr. Russell is capable or not of understanding, if given

1 proper supports, preparation and assistance. Is Mr. Russell capable of fulfilling
2 the three criteria at this time?

3 With respect to communicating with counsel, that was not a contentious
4 issue. All of the evidence was very clear that Mr. Russell can communicate
5 with counsel the necessary facts about the offences charged to enable his
6 counsel to conduct a defence.

7 The contentious issues were with respect to Mr. Russell's understanding
8 of the nature and objective of the court procedures and understanding of the
9 consequences. Mr. Russell answered a great many questions on this issue.
10 His answers indicated a very limited knowledge, but as I stated earlier, the test
11 is not so about the extent of his current knowledge. What was clear was that
12 he recognized the roles of the primary players, that is, the judge and his lawyer
13 and understood his responsibility to the judge. It was apparent that he was
14 drawing on his previous experiences in court. Mr. Russell has had experience
15 with court orders and indicated how he has been able to follow their terms in
16 the past. He may not have always followed all of the conditions of his court
17 orders but he has demonstrated that he knows that he ought to and he has
18 demonstrated that he has successfully done so on occasion. Mr. Russell was
19 adamant that imprisonment was not a possible consequence for him. It was
20 pointed out by counsel that given his court experiences and the possible legal
21 advice he may have been given up to this point in time, his firm conviction on
22 this question should not be regarded as evidence of inability to understand
23 possible consequences. We agree and we note that when he was pressed Mr.
24 Russell indicated that he understood that jail was a sentence that a judge could
25 order.

1 Overall, our opinion was that Mr. Russell's capacity to understand that he
2 is in a courtroom and to understand the requirements of the judge and of telling
3 the truth in court, and to participate to a necessary extent in his defence is
4 sufficient to meet the test outlined in the Criminal Code. We are satisfied Mr.
5 Russell is capable, notwithstanding the difficulties he has in communication and
6 notwithstanding his limited knowledge. With patient counsel, with preparation
7 and with the assistance of an interpreter, we find that Mr. Russell can satisfy all
8 three requirements of the fitness test.

9 We next turn to the question of disposition. Mr. Russell has been in
10 custody at the hospital since August 10, 2001. The Hospital is recommending a
11 further detention order or, alternatively, discharge with conditions and the
12 implementation of such an order being delayed. Mr. Russell is seeking a
13 discharge with conditions, and the Crown is recommending a detention, with
14 the understanding that a trial appearance date could be set within two weeks in
15 all likelihood.

16 As in other types of cases, the Board must determine the disposition after
17 considering the four factors listed in s. 672.54; that is, the need to protect the
18 public from dangerous persons, the mental condition of the accused person,
19 their reintegration into society and other needs that they may have. Mr. Russell
20 has resided in the community on his own for quite some time but with the
21 assistance of social service workers, including a one-to-one worker. This is in
22 the community of Victoria. Prior to this, Mr. Russell lived in institutions from
23 childhood.

24 Mr. Russell does not have a mental illness and does not need to be
25 hospitalized necessarily in order to maintain fitness to stand trial. However, he

1 does have a multiplicity of problems, including mild mental retardation, profound
2 speech and hearing impairment. He has, since childhood, suffered from
3 impulsive, unpredictable and aggressive behaviours. We note that there have
4 been several assaults on his mother and allegations with respect to assaults on
5 his ex-girlfriend, Ms. Bakker.

6 During the course of the hearing, Mr. Russell was questioned specifically
7 with respect to the no contact prohibitions which are in his court orders, and
8 specifically with respect to not contacting his mother. It was not demonstrated
9 to the Board's satisfaction that Mr. Russell is likely at this time to abide by such
10 a prohibition, especially with respect to his mother. In the opinion of the Review
11 Board, with respect to protection of the public, the Board is quite concerned
12 about the protection of Mrs. Russell. We were told that Mr. Russell had uttered
13 threats to her as recently as the past weekend and that she was fearful of him.

14 With respect to reintegrating Mr. Russell into the community, we note that
15 he has lost his apartment that he used to live in and that no other suitable
16 accommodation has been found for him yet. The support workers that he has
17 reside in Victoria. Mr. Russell states he is willing to go to Victoria but he is also
18 stating that he wants to live in Vancouver where he has no support services
19 established for him. We are not confident that Mr. Russell's reintegration plans
20 have been sufficiently planned at this time.

21 It makes sense to the Board that the reintegration should be somewhat
22 gradual and hence, we have included the 28-day visit leave provision to assist
23 him in that endeavour.

24 However, we are also aware of the Crown's assertion that an early court
25 date may be arranged and we have, therefore, made this a short order.

