



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
MICHAEL ANDREW SHACHTAY**

**HELD AT: Forensic Psychiatric Hospital
Port Coquitlam, BC
07 September 2007**

**BEFORE: CHAIRPERSON: B. Walter
MEMBERS: Dr. H. Parfitt, psychiatrist
 N. Avison**

**APPEARANCES: ACCUSED/PATIENT: Michael Andrew Shachtay
ACCUSED/PATIENT COUNSEL: P. Stark
HOSPITAL/CLINIC: V. Bhauruth Dr. M. Saini
ATTORNEY GENERAL: L. Hillaby**

[1] CHAIRPERSON: On September 7, 2007 the British Columbia Review Board convened a first hearing pursuant to Section 672.47 Criminal Code to come to an opinion as to the fitness to stand trial of, and to make a disposition with respect to, Mr. Michael Andrew Shachtay who is the accused in this matter. Mr. Shachtay is 29 years of age. He has a verdict of unfit to stand trial dated July 3rd, 2007.

[2] The index offences giving rise to that verdict occurred on two different dates. First, on May 24th, 2007, Mr. Shachtay is accused of having kicked and damaged a neighbour's garage door. Shortly after that event he was observed chasing his father on the street and uttering threats to kill him. When Mr. Shachtay's father, the victim of the threats, asked a passerby to call 9-1-1 for assistance, the accused punched the innocent bystander. In Reports to Crown Counsel prepared by law enforcement authorities with respect to the incident it is indicated that this accused has been the subject of a considerable number of police contacts, or as many as 13 occurrences since March of 2006.

[3] The second alleged index offence occurred on June 25th, 2007. On that day the accused was a patient at Richmond General Hospital psychiatric ward where he had apparently been certified and where he uttered threats directed at hospital staff.

[4] In terms of criminal background, there is a June 2006 conviction for uttering threats and causing a disturbance with which Mr. Shachtay's counsel took some issue during the current hearing. Again, the Report to Crown Counsel at Exhibit 2, indicates the accused is considered at high risk to reoffend.

[5] When the accused was seen at Surrey Pretrial for assessment he was found to be acutely psychotic, verbally disorganized and unable to instruct counsel. Dr. Adilman had him certified and placed at the Forensic Psychiatric Hospital.

[6] This is a rather complex case from both psychiatric and legal perspectives. We spent some time trying to make sense of this relatively young man's history. He apparently developed social problems and anxiety, accompanied by obsessive-compulsive behaviours, at the young age of 16. These behaviours caused him to be socially isolated whereupon he left school. He has had ongoing contact with mental health services since. By that age he was also demonstrating aggressive behaviour and threatening his only, lifelong caregivers, his parents. Although medicated, he could not be relied upon to consistently comply with prescribed medications.

[7] In 1994 he was admitted to the Maples Adolescent Treatment Centre where Dr. Quan identified symptoms of acute anxiety, depression, obsessive-compulsive behaviours and extreme social isolation. Dr. Quan first assigned a diagnosis of Asperger's Syndrome which the DSM defines as a form of autism accompanied by cognitive deficits. A more formal definition includes "a disorder of development characterized by gross and sustained impairment in social interaction and restricted, repetitive and stereotyped patterns of behaviour, interests and activities occurring in the context of preserved cognitive and language development.": *American Psychiatric Glossary Seventh Edition*.

[8] We heard in the course of the current hearing that additional aspects of the accused's disorder include very concrete thinking, disorganization of thought, as well as an acute sensitivity to the influences of his environment. While at MATC it is noted that the accused demonstrated assaultive behaviours. He was treated with Lorazepam to reduce anxiety that medication proved ineffective.

[9] At that time as well, in Dr. Quan's assessment, Mr. Shachtay's relationships with his parents were termed dysfunctional and contradictory to the point where the experts recommended that there be limitations on ongoing access or contact between the accused and his parents. His parents removed him from MATC against medical advice. It has been a consistent theme of this man's treatment and progress that he requires a highly specialized form of group care, a resource which to date has not been identified.

[10] After his discharge from MATC the accused continued to experience numerous hospitalizations including four to Riverview Hospital. While treated at UBC Hospital in 1995, he was also diagnosed with a mixed personality disorder. Exhibit 4, which is a very comprehensive report by Dr. Speth, a psychologist, documents as many as 12 additional admissions to Richmond General Hospital, VGH, MATC, Riverview and UBC Hospital. There is also a 2004 progress note which indicates as many as 157 admissions to Richmond General Hospital in one year while the accused was "out of control."

[11] At some point the theory arose that the accused may be manipulating his behaviours and his presentation in order to achieve various goals. It was also observed that he tended to do better in stable, secure, consistent environments. In

2006 Dr. Speth, whose report may be found at Exhibit number 4, also assigned the further diagnosis of “factitious” disorder which involves feigning of symptoms in order to gain clinical attention, though not necessarily through threats to others. There is in the history as well some documentation of actual physical assaults on both parents.

[12] The accused was seen by Dr. Meldrum at FPH where he was being assessed following a threatening charge. In her report at Exhibit 5 dated November 2006 she again cites the accused's youthful difficulties and his problematic family relationships including past recommendations that he live apart from his parents in semi-independent circumstances. In her assessment Dr. Meldrum also cited and supported both diagnoses of Asperger's and factitious disorder. She agreed that his complaints have had an attention-seeking aspect to them.

[13] Further in her assessment of November 2006 Dr. Meldrum found the accused free of any impulsive or aggressive behaviour. He was medically compliant and willing to remain in hospital. No overt psychosis or depression were observed. Psychological testing or consultation also indicated a presentation consistent with malingering or, perhaps more to the point, feigning of symptoms. In that assessment Dr. Meldrum found the accused readily fit to stand trial. It was not until the recent events of July 3rd, 2007, based on more recent but brief assessments in custodial circumstances, that the accused was found unfit to stand trial on all complaints and detained at FPH.

[14] The Review Board of undertook to convene a hearing within 45 days pursuant to Section 672.47 of the Criminal Code. However, on July 12th the accused's consistent counsel, Ms. Stark, who has apparently represented him for some three years, requested an adjournment of the scheduled August 8th hearing due to her availability.

[15] For the current hearing we have been provided with a report from case manager Letwin at Exhibit 11 which does not add anything concrete with respect to the matter of fitness or disposition. It simply indicates that, at least as of July 26, 2007, the accused has been generally cooperative and settled on the A2 ward at this hospital. Mr. Shachtay's care and treatment has been the responsibility of Dr. Saini who attended the hearing and provided a report received as Exhibit 13. Dr. Saini provides an extremely well-written and comprehensive forensic report. He has attended to the accused regularly and documents in some detail the accused's psychiatric history.

[16] We are told that shortly before the writing of that report the accused assaulted a female nursing staff, occasioning considerable injury. It was of concern to his caregivers that that assault was quite unpredicted and without provocation. Following that incident the accused was secluded over several days, well into the month of August. There are no charges currently pending as a result of this incident.

[17] Dr. Saini also reports in some detail his attempts to evaluate the accused's fitness to stand trial on at least seven occasions prior to this hearing, in the course of which the accused at times refused to engage in discussions with respect to the legal process confronting him. Orally, Dr. Saini provided evidence that the accused has settled quite well into the hospital environment at FPH. His anxiety appears to have decreased. With respect to diagnosis he has emphasized less the aspect of factitious disorder. He agrees though that the accused suffers from an autistic spectrum disorder, like Asperger's Syndrome, which renders him highly sensitive to his environment. Dr. Saini's evidence throughout indicates that the accused does much better in a consistent, predictable environment where external stimuli are to some extent managed or dampened.

[18] On the basis of his cumulative interviews, and despite the fact that the accused has at certain points chosen to remain silent about his charges, and bringing matters up to his most recent interview on September 5th, 2007, just two days before the current hearing, Dr. Saini is of the view that the accused understands the Review Board process, is capable of understanding the concept of guilt or innocence and his right to remain silent. In Dr. Saini's psychiatric opinion he could be considered fit to stand trial.

[19] Dr. Saini was examined to some extent on past assessments which considered the accused as psychotic and unfit to stand trial. We did not consider that evidence overwhelmingly relevant in the course of the current hearing to the extent that we are well aware that fitness to stand trial can be something of a moving target. It is our task to assess that issue as of the date of the hearing. Certainly it is Dr. Saini's opinion that the accused is not currently psychotic and not currently suffering or presenting with a factitious disorder, although he does assign dependent personality traits on AXIS II.

[20] Again, it is Dr. Saini's opinion that the accused is doing better now due to his consistent, stable environment and burgeoning familiarity with consistent staff on his ward. Although he considers him fit, he does acknowledge that Mr. Shachtay's fitness is of a fragile nature. Given his sensitivities he could be expected to lose that tenuous fitness relatively rapidly if he were precipitously exposed to or placed in a less stable, unfamiliar environment. Dr. Saini testified that the key to maintaining this accused's fitness would be to preserve consistency in his environment.

[21] Armed with that evidence the Review Board prepared to hear evidence from Mr. Shachtay himself who, it must be observed, sat patiently and without interrupting through an hour-and-a-half of rather complicated expert evidence. Under questioning from his counsel, Ms. Stark, the accused was able to say that the issue before the Board on this date is his fitness to stand trial, whereupon he became highly disorganized, tangential and verbalizing thoughts, ideas and themes which, if not psychotic, were certainly bordering on delusional. Rather than confining himself to answering his counsel's questions or the questions of other participants, Mr. Shachtay was quite determined and persevered in putting forth his own ideas on a range of topics including the effectiveness and accountability of mental health treatment services. At times he was voluble, at other times he was quite curt. He was able to express that he had no problem going to court and would be willing to do so forthwith. He indicated to us that he is pleading insanity and was able to tell us that the Court makes the ultimate decision. Some examples of the accused's enormously disorganized communication are provided:

"MS. STARK:

Q Well, Michael, let's go with the questions and then there'll --

A Well, because I want to say why I shouldn't have been charged or removed from the hospital. First of all, it's going to take two minutes and then I'll finish it like they do in Toastmasters. Okay, this is how it went, okay. What happened is staff members from VGH got me -- Dr. Billards (phonetic) was his name, and Julie, got me to do a borderline test which they were supposed to get the results, which Workers' Compensation Board in Richmond uses this Minneapolis, Minnesota book to see if you're a borderline person. Now, the lady that was the psychologist on the top floor is supposed to get that result and they believe probably at this time that I'm not borderline, but

the result should be checked through Dr. Derek Eaves. The staff returned me to hospital for a nightly assessment, or a day assessment, for some reason for an incident on the street or whatever. She was not supposed to remove though the day before the judge was supposed to make a decision of the assessment. Tracey Miller ran at me and said to me that she was going to threaten to harm me because they were getting overly pressured that they don't know which medications to use, they cannot sedate me with what's called Acuphase or anything." : Excerpt of Proceedings pg. 2

"MS. STARK:

Q Okay, Michael, first of all I'm asking --

A In neuro-diagnostics and in cardiopulmonary.

Q Michael, I'm asking you what pleas could you and I discuss that you could offer to the Court? When you hear the charges that are laid are you -- what options do you have to say to those charges?

A Well, the only thing I've been offered was probation from this Melissa Polizima (phonetic) or whatever her name is -- or Michelle Parole (phonetic), or I don't know what her name is. But anyways, probation or --

Q Well, I'm actually asking you --

A -- Vancouver Regional Clinic or Surrey -- or an absolute, which means you don't have to see any of these people but you're offered up to 30 days freely in these hospitals and in any boarding home. That's what I was told. And an absolute comes on yellow or something like that. So I plead for my absolute. I don't know if they're going to make it go obsolete (sic) or unfit or hung like the O.J. Simpson case or the Michael Jackson case. But at this time I have no comment and we go right into court." : Excerpt of Proceedings pg. 6

"Q Okay. And do you know what decisions they could make? What are the decisions? When they hear the case what can they decide? What are the decisions that are available?

A Well, when you say "We the jury find the" -- the person that's being tried or convicted on an absolute and being plead insane you have options almost across the world when you can be sedated and require ECT or an exorcism. Like I was thrown into a door and on the wall and then back on the bed, just like in Emily Rose how fires were starting or the -- what's called the -- the boonies hospital, it's called the Whitehorse Castle Hospital, which they have me currently registered for which can continue on to

