

**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
BEVERLY RICHARD WILSON**

**HELD AT: BC Review Board Offices
Vancouver, B.C.
04 January 2006**

**BEFORE: CHAIRPERSON: B. Walter
MEMBERS: Dr. H. Parfitt, psychiatrist
 L. Chow**

**APPEARANCES: ACCUSED/PATIENT: Beverly Richard Wilson
ACCUSED/PATIENT COUNSEL: R. Fowler
HOSPITAL/CLINIC: M. Yaremy Dr. M. Dilli
ATTORNEY GENERAL: L. Hillaby**

***Pursuant to s.672.501(1) of the Criminal Code, the British Columbia Review Board hereby prohibits the publication, broadcasting or other transmission of any information that could identify a victim or a witness under 18 years of age in this matter. Failure to comply with this order is an offence.**

[1] CHAIRPERSON: On January 4th, 2006 the British Columbia Review Board convened an early hearing to, inter, alia review its opinion with respect to the fitness to stand trial and to make a further disposition in the matter of Beverly Richard Wilson, age 87. The early hearing is necessitated as a result of an Assessment Order of the British Columbia Review Board dated December 6th, 2005, made on the application of counsel, pursuant to section 672.121(a) of the Criminal Code. That Assessment Order may be found at Exhibit number 9 in these proceedings. It was evidently imposed by the Review Board following a hearing in contemplation of a possible recommendation that the court of original jurisdiction hold an inquiry to determine whether a stay of proceedings should be ordered in this matter as contemplated by section 672.851 of the Criminal Code, which provisions were proclaimed in force as of June 30th, 2005.

[2] The accused, Mr. Wilson, was charged under a Supreme Court of British Columbia Indictment, with seven offences. In particular, it is alleged that between January of 1967 and December of 1980, a period of some 13 years, he committed four acts of indecent assault and three acts of gross indecency contrary to sections 156 and 157 respectively, of the Criminal Code of Canada. In a summary way it is alleged that the accused, while he was in a position of authority, became sexually involved with a number of young male sea cadets, at least three of whom are the complainants in the current index offences.

[3] In anticipation of his appearance in court to make answer to the allegations, the accused was assessed by a number of mental health experts including Professor Roesch, Dr. Eaves, and Dr. Dilli of the Adult Forensic Psychiatric Services of British Columbia. The latter has, as of the current hearing, assessed Mr. Wilson on no less than four occasions. All of the accumulated expert evidence indicates, and it is not seriously questioned, that the accused at 87 is of advanced age and has resided in an extended care senior citizens' facility since at least 2004. There is collateral information, including self-report, that the accused has at least a distant history of significant alcohol abuse and on assessment or examination he demonstrates considerable signs of dementia or cognitive deficits, including memory, recall, retention, and learning problems.

[4] An October 24th, 2005 assessment by a physician, Dr. Sloan, also indicates that the accused has a number of physical afflictions and has had one or more strokes which have also occasioned further cognitive impairment. All in all, one gains a picture of an

elderly individual who requires considerable care in terms of his daily living and support needs and who is indeed largely bed-ridden. When Dr. Dilli first examined the accused in November of 2004, it was his conclusion that the accused was likely unfit to stand trial. That finding or opinion agreed with earlier assessments done by Dr. Eaves in August of 2004 and one by Dr. Roesch performed in September of 2004. All of those historic assessments may be found at Exhibit 2 in this matter.

[5] Dr. Dilli also provided an updated assessment in October of 2005 prior to the accused's appearance for trial of the issue in the Supreme Court of British Columbia. In that latter document, which also forms part of Exhibit number 2, Dr. Dilli concludes that Mr. Wilson has indeed demonstrated further deterioration since his November 2004 assessment. In any event, as indicated, the accused appeared in Supreme Court on October 26th and was on the basis of all of the expert evidence found unfit to stand trial by the Honourable Mr. Justice McEwan. In consideration of the issues before us in the current hearing, I would observe that at page 87, line 11, of the trial transcript the Court accepted the expert evidence and without hesitation found that on a balance of probabilities Mr. Wilson was unfit to stand trial. That conclusion is outlined in the Court's reasons which may be found at Exhibit 7 in this matter. Again, of relevance to the current proceeding, I would observe that on the basis of evidence that the accused was largely bed-ridden for approximately 22 hours per day, and was indeed in deteriorating health, the accused was excused from attending at court on October 26th, 2005.

[6] In anticipation of the accused's first appearance before the British Columbia Review Board, his counsel, Mr. Fowler, approached the tribunal with a view to gaining its permission for the accused to be absent during his first Review Board hearing which was scheduled for December 6th, 2005. That request was granted in the course of an in-camera and ex parte proceeding of the Review Board which occurred on November 30th, 2005. In exercising its authority under section 672.5(10), the Review Board took into account Mr. Wilson's frail condition, the lack of opposition of the Crown, and concluded that it would present an unnecessary hardship to compel Mr. Wilson to attend his first disposition review hearing. As indicated, that first hearing took place on December 6th, 2005, pursuant to section 672.47(1) of the Criminal Code. Although we disagree with the hearing panel's characterization of the operative test governing its determination as outlined at paragraph 4 of the reasons found at Exhibit 8 in this matter, nonetheless the panel had no difficulty in concluding that this accused should be considered unfit to stand

trial. In so concluding, the Review Board took into account the evidence indicating that the accused was suffering from a vascular dementia of a degenerative nature which was occasioning considerable intellectual and cognitive deficits. It also observed a drastic deterioration in the accused's cognitive capacities in the preceding year-and-a-half. On the basis of that presentation it concluded that the accused could not contribute or participate in his defence in a meaningful way. The Review Board unanimously opined that the accused was unfit to stand trial and then discharged the accused subject to conditions.

[7] As indicated, on the basis of an application by counsel on behalf of the accused, the Review Board imposed an Assessment Order pursuant to section 672.121(a) of the Criminal Code in anticipation of reconvening to consider a recommendation to the court for an inquiry whether or not to stay the proceedings pursuant to section 672.851. The assessment has been provided and this hearing has been convened consequent to that order.

[8] The updated assessment is once again authored by Dr. Dilli and has been received as Exhibit 10 in this matter. I would indicate that at the outset of today's hearing Mr. Fowler, on behalf of the accused, once again made an application pursuant to section 672.5(10) of the Criminal Code, to have the accused excused from attending this hearing. Mr. Fowler's application was based on Dr. Dilli's updated assessment previously distributed to all parties in accordance with section 672.51 of the Criminal Code, and which contains information that the accused remains largely bed-ridden for at least 22 hours per day and that he is relatively immobile, such that when he is not in his bed he is transported by wheelchair. He is frequently incontinent and he does not leave his extended care residence. In terms of Mr. Fowler's application, the other parties were canvassed and Dr. Dilli indicated that he had seen the accused for purposes of assessment as recently as December 28th, some seven days before this hearing. He saw Mr. Wilson either in his wheelchair or in bed and concluded that the accused was further deteriorated in terms of both his physical and mental condition. The Crown, although not conceding that the accused remains unfit to stand trial, took no position on the issue of the accused's attendance at hearing. Accordingly, and after due deliberation, the Review Board exercised its authority under section 672.5(10) of the Code to excuse the accused from this hearing albeit without prejudice to any further inquiries or evidence-gathering activities it might see fit to pursue before the close of the current hearing.

[9] Dr. Dilli's report was very helpful. It represents the fifth time that Mr. Wilson has been seen by this physician. Dr. Dilli attended upon Mr. Wilson at his residence in the past week pursuant to the Board's Assessment Order to further evaluate his fitness to stand trial as well as to examine the issue of whether or not the accused could be considered to pose a significant threat to public safety. On further examination of the accused's current mental status, Dr. Dilli concluded that in his clinical opinion, and due to the accused's ongoing cognitive deterioration, this accused remains unfit to stand trial. I quote Dr. Dilli at page 4 of his report where he says:

“...I am of the opinion that Mr. Wilson remains incapable of communicating with his counsel adequately, as well, he is not in a physically and mentally satisfactory shape to be able to pay attention during the Review Board hearing and give appropriate instructions to his lawyer.”

“Considering the nature of his mental condition which is basically the product of his intellectual/cognitive/memory deterioration and taking into account also the fact that he is eighty-seven and a half years old, I am furthermore of the opinion that the likelihood of Mr. Wilson ever being restored to fitness to stand trial is practically non-existent.”(Emphasis added).

Certainly when one reads the totality of Dr. Dilli's assessment report, one is left with the impression that Mr. Wilson's cognitive capacity has indeed deteriorated even in the last several months. Dr. Dilli clearly expects Mr. Wilson to decline further in the future. His physical condition and injuries are expected to contribute to his ongoing cognitive decline, and these impairments are irreversible. In terms of that latter opinion, Dr. Dilli also relied upon the observations of the accused's caregivers. In fairness, Dr. Dilli did acknowledge that in all of his interactions and conversations with Mr. Wilson, he has never directly discussed the circumstances, victims, or the accused's memories, if any, of the alleged index offences; clearly a limitation of the report.

[10] Dr. Dilli's assessment also addressed the additionally relevant criterion of section 672.851(1) of the Criminal Code, that of the accused's capacity to pose a significant threat to public safety, which is of course a concept that this tribunal must deal with and determine on a daily basis. In aid of a conclusion on that pivotal issue, Dr. Dilli applied the HCR20 risk assessment instrument in concluding that the accused does not currently pose a significant threat to public safety as that concept is understood in the Supreme Court of Canada decision known as *Winko*. Dr. Dilli cites the absence of any history of physical violence on the accused's part beyond of course the coercive aspects implicit in the index charges. Mr. Wilson has exhibited no behavioural problems, impulsivity or aggression at

his senior's residence to which he is largely confined. Dr. Dilli again reminds us that the accused's physical health continues to deteriorate to the point where he is currently largely bed-ridden and that any mobility beyond his bed requires the assistance of a wheelchair. Accordingly, Dr. Dilli concludes that the accused's poor physical status and ongoing mental deterioration render his risk to re-offend violently as "nil". Dr. Dilli also indicates that the accused, when confronted, denied any pedophilic tendencies or interests and reminds us that Mr. Wilson is the subject of no known allegations of misbehaviour since 1980. In terms of Mr. Wilson's future management, Dr. Dilli indicates that the accused is well taken care of in his current facility where he will likely remain for the rest of his life. While in that facility he is safe and free from any potential to cause serious risk to others.

[11] The Review Board considered all of the historic evidence as well as the submissions of parties. It remains the uncontradicted evidence of at least three mental health experts that this accused has experienced a significant decline in his cognitive capacity, from which he is unlikely ever to recover. That expert evidence persuaded the Supreme Court of British Columbia to find the accused unfit to stand trial. We note that there is no evidence in the record which would raise the suggestion or suspicion that the accused is malingering. Although we acknowledge that an accused's unfitness to stand trial represents but a snapshot in time, we nonetheless take the view that in order to reach a different opinion than the court and the previous panel of the Review Board, this panel at least requires evidence on a balance of probabilities that the accused is now fit to stand trial. There is no evidence before us, tendered by the parties or adduced as a result of the Review Board's own Assessment Order, that would in any way allow us to dispel the accused's presumed unfitness. Moreover, given the uncontradicted evidence of the accused's frailty and physical infirmity, we were not persuaded that we should unilaterally exercise our inquisitorial duty to directly examine the accused as a panel. There is simply no evidence before us which would allow any conclusion but that this accused remains unfit to stand trial, and we rely on Dr. Dilli's most recent report to support our opinion under section 672.851(1)(b)(i) that the accused is not likely to ever become fit to stand trial.

[12] The Review Board must then proceed to address the criterion contained in section 672.851(1)(b)(ii) of the Code, that of whether or not the accused poses a significant threat to public safety. On the basis of Dr. Dilli's formal risk assessment as well as our own understanding of the accused's physical limitations, we conclude that the accused does not currently pose a foreseeable significant threat to the safety of the public

