

**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**

LARRY WONG

**HELD AT: B.C. Review Board
Vancouver, B.C.
01 December 2005**

**BEFORE: CHAIRPERSON: B. Walter (Reasons)
MEMBERS: Dr. R. Holland, psychiatrist (concurring)
 L. Chow (concurring)**

**APPEARANCES: ACCUSED/PATIENT: Larry Wong
ACCUSED/PATIENT COUNSEL: D. Nielsen
HOSPITAL/CLINIC: P. Gummerson Dr. M. Dilli
ATTORNEY GENERAL: L. Hillaby**

[1] CHAIRPERSON: On December 1, 2005, the British Columbia Review Board convened an early hearing in the matter of Larry Wong, an accused aged 72. The purpose of the hearing was to once again inquire into and to form an opinion as to Mr. Wong's fitness, or more to the point unfitness, to stand trial, and as well to determine an appropriate disposition in the matter. The hearing had a third objective arising from recent amendments to the Criminal Code occasioned by Statutes of Canada 2005 Chapter 22. Those amendments, inter alia, bring into force as of June 30th, 2005, a new provision, section 672.851. Under that provision the Review Board is provided with the ability to make a recommendation to the court of original jurisdiction over an accused found unfit to stand trial, to hold an inquiry in order to determine whether a stay of proceedings should be ordered in the matter. At the close of our hearing on December 1, 2005, and considering the novel aspect of the proceeding, the Review Board saw fit to reserve its findings and disposition in order to engage on a more rigorous review of the historic evidence in this matter with a view to better informing its decision as to whether or not to make a recommendation to the court. On the basis of its analysis, the Review Board has made the following findings and determinations.

[2] First, it has concluded that the accused remains unfit to stand trial and is not likely to regain fitness to stand trial. Second, the Review Board has concluded that the accused does not pose a significant threat to public safety such as would warrant our ongoing jurisdiction over an NCRMD accused person. Finally, on the basis of those two pivotal findings and conclusions, the Review Board determines to make a recommendation to the court to hold an inquiry as contemplated in section 672.851(1) of the Criminal Code as amended. The following are our reasons.

[3] In November of 1991 Mr. Wong was charged with attempt murder contrary to section 239 of the Criminal Code. Mr. Wong attacked his landlords when they approached his domicile. Under the apparently delusional or mistaken belief that these individuals were approaching him to rob and even kill him, he assaulted them with a weapon, to wit: a knife or cleaver. He has, likely as a result of his schizophrenic illness, consistently asserted that he acted in self-defence and in fear of his life. He was, on December 3rd, 1991, under the previous Criminal Code scheme found unfit to stand trial on account of insanity. His December 1st, 2005 appearance constitutes his 19th hearing before this tribunal since that verdict.

[4] Mr. Wong immigrated to Canada over 60 years ago. He has a long and well established psychiatric history. Previous to the current index offence and verdict, he had experienced numerous admissions to psychiatric and forensic psychiatric facilities. He has a diagnosis of chronic paranoid schizophrenia. He has throughout his time under forensic treatment and Review Board supervision consistently failed to appreciate the nature and impact of the index offence and the charges arising therefrom. He has, as I have said above, consistently clung to the apparently delusional belief that he was in fact the victim of the index offence and acting in self-defence. Mr. Wong has just as consistently failed to demonstrate any insight into the fact that he suffers from a mental illness, indeed he denies same, and that he needs anything in the way of treatment to manage the symptoms of that illness.

[5] At a very early stage in his progress under forensic and Review Board mandates, he was deemed unlikely to ever become fit to stand trial. For a number of years Mr. Wong, in his unfit state, was detained in the custodial environment of the Forensic Psychiatric Hospital. From that venue, on the basis of evidence adduced at his March 1997 hearing, the Review Board concluded that the accused could possibly be found fit to stand trial and it ordered his return to court for further examination of that issue. However, the court reached a different conclusion. On April 23rd, 1997 he was once again found unfit to stand trial and returned to Review Board jurisdiction. Mr. Wong was detained for a number of reasons including his lack of insight likely to lead to non-compliance with medications except under closely supervised circumstances. He was also refusing to entertain residing at a supervised psychiatric boarding home in the community. As a result of the lack of any acceptable alternative, and his need for 24-hour supervision to ensure medication compliance in order to manage his illness, the Board had no alternative but to continue to detain him.

[6] In 1998 Mr. Wong demonstrated some slight improvement in terms of the symptoms of his illness contemporaneous with the initiation or administration of the medication known as Olanzapine. Despite some improvement, however, he still remained insightful and unlikely to comply medically in unsupervised circumstances. Nevertheless, in 1998 he agreed to visit a licensed community mental health facility known as Victory House and was wait-listed for accommodation in that resource. He started those visit leaves in 1999. By January of 2000 Mr. Wong had begun a program of overnight visit leaves with a view to integrating him into the environment at Victory House. At his 12th

Review Board hearing on May 17th, 2000, he was once again found unfit to stand trial, but was conditionally discharged to reside in that closely supervised mental health setting.

[7] In terms of his mental state, his fixed delusions about the circumstances of the index offence, as well as some of the negative symptoms of his illness such as social withdrawal, have continued unabated. On a more positive note it must be said that he did not and has not developed new delusions incorporating other individuals or events. Mr. Wong, despite his early recalcitrance, settled very appropriately into Victory House and very soon indicated his happiness and wish to remain in that setting indefinitely.

[8] At his 15th appearance before the tribunal on March 20th, 2003, the Review Board, on the basis of an extensive analysis, once again opined that the accused could be found fit to stand trial and it ordered him to return to court for further trial of that issue as required according to law. The Review Board's analysis with respect to Mr. Wong's fitness to stand trial may be found in extensive reasons for disposition found at Exhibit 69 in this matter. The accused did indeed, in accordance with the Board's order, appear in court in September of 2003 for a re-trial of his fitness to stand trial, however, he once again demonstrated a poor understanding of the judicial process and of the consequences of a trial. On September 24th, 2003 he received his third verdict of unfit to stand trial.

[9] Over the course of his subsequent appearances in 2003 up until the present time, the evidence has been unequivocal. The accused has never appeared to understand the reasons why he has been required to confront judicial proceedings. His memory has been found to be impaired and deluded. He has been considered unable to instruct counsel in the conduct of a defence to the index offence, the circumstances of which he has never acknowledged. At the same time he has remained happily resident at Victory House where he has demonstrated no behavioural problems, indeed nothing amounting to aggressive behaviour whatsoever. He has just as consistently indicated his desire to remain resident in that facility on an indefinite basis. As well, he has remained insightless as to the need for medication and continues to deny his illness. Indeed he quite consistently approaches his caregivers and treatment providers with requests to discontinue his medication, although he has never overtly refused to consume same when asked to do so by his caregivers.

[10] By 2004 Dr. Dilli, his treating outpatient forensic psychiatrist, began to suspect that either as a result of a lengthy history of four decades of illness, or perhaps in part as a

result of the aging process, the accused might be experiencing some cognitive deterioration or intellectual decline. He was also presenting as more frail at a physical level. Accordingly, Mr. Wong was referred for a neuropsychological assessment of his global functioning. The results of that evaluation, which may be found at Exhibit 79 in this matter, indicate that the accused demonstrates short term memory impairment and some significant decline in cognitive functioning such that he is now considered to be performing at a borderline IQ level. At his 17th hearing before the Review Board on October 14th, 2004, Mr. Wong was unable to explain why he appeared before the Review Board. He denied any charges against him and was unable to satisfy any inquiry with respect to the court process.

[11] The Review Board last convened for the purposes of an annual hearing on September 29th, 2005. At the outset of that hearing, the accused's counsel, relying on the new section 672.851 of the Criminal Code, asked that the Board order an assessment of the accused pursuant to the new section 672.121(a) of the Criminal Code. That provision contemplates a Board ordered assessment for the purposes of making a recommendation to the court under section 672.851(1). The Board provided an opportunity for other parties, including the Director of Forensic Psychiatric Services and the representative of the B.C. Attorney General, to respond to that request and made a short order of unfit to stand trial and conditional discharge in order to provide an opportunity for such submissions. On the basis of those submissions the Board did, on October 11th, 2005, issue an Assessment Order pursuant to section 672.121(a) directing the Director of Adult Forensic Psychiatric Services to provide an opinion as to the accused's fitness to stand trial and the likelihood of his ever being restored to fitness to stand trial, as well as a comprehensive forensic analysis of the accused's significant threat to public safety. That Assessment Order was complied with in the form of Dr. Dilli's November 2, 2005 submission which has been marked as Exhibit 87 in this matter.

[12] The evidence adduced in the course of this full hearing consisting of Dr. Dilli's earlier report at Exhibit 81, as well as Ms. Gummerson's report at Exhibit 82, and Dr. Dilli's updated assessment report at Exhibit 87 were the focus of the Board's inquiry at this hearing. That evidence was also augmented by oral input from Dr. Dilli and Ms. Gummerson. In the psychiatric report at Exhibit 81 dated September 8th, Dr. Dilli indicated that he saw the accused five times over the course of the past year and the accused has demonstrated no change in terms of his mental state. He described the accused's social

milieu, his contacts, and his ongoing delusional beliefs involving members of his family. He told us that the accused endorsed no thoughts of harm to himself or others and he appears to function adequately in his supported community environment. In Exhibit 81 Dr. Dilli, as is his habit, provided a verbatim transcription of his questions and Mr. Wong's answers regarding the issue of fitness to stand trial. In summary, on the basis of that examination, Dr. Dilli concluded that it was unlikely that Mr. Wong would ever be restored to fitness to stand trial on account of his chronic and serious mental illness. He doubted that Mr. Wong would ever be able to participate in future court proceedings.

[13] Ms. Gummerson's report at Exhibit 82, supported by oral evidence at today's hearing, was also helpful. Ms. Gummerson sees the accused at least monthly either at his residence or in interviews with Dr. Dilli. She reports no change whatsoever in the accused's overall presentation. The accused remains resident at Victory House, a licensed 24-hour staffed and supervised mental health residence, housing up to 48 clients. She describes Victory House as a safe, stable, and appropriate environment for Mr. Wong. Mr. Wong enjoys living at Victory House and has voiced no wish to leave that residence or to relocate to other accommodation. There have been no reports of any behavioural issues or, in particular, aggressive gestures, from either staff, co-residents, or from the community. Although Mr. Wong routinely asks Ms. Gummerson and Dr. Dilli to stop his medications because they make him tired, he is nonetheless perfectly compliant once encouraged to consume his medications.

[14] We refer to another documentary submission at Exhibit 84 from Ms. Rada Kosic, the resident care supervisor at Mr. Wong's residence. In her letter she says:

Larry always complies with his medications. Larry regularly asks the doctor to discontinue his medications because he states that it makes him feel very tired. When it is explained to him that he must continue to take the medication due to his current health condition, he accepts the explanation.

She goes on to say:

Being Larry's case supervisor for five years I am confident in stating that his mental condition is stable with the ongoing daily support and medication he receives at Victory House.

She also indicates that the accused has not expressed any desire to move; believes that this "safe, supportive environment" is the best place for him, and that they plan to continue to have him as resident there.

[15] Ms. Gummerson in her submission also confirms that the accused has no other identified family or social supports in the community beyond the professional environment of Victory House. His functioning is such that he requires supervision and support regarding his daily living skills and is considered unable to live independently. Orally Ms. Gummerson also advised that residents of Victory House have access to a community mental health service. Many or most are seen by case managers and connected to physicians at the Strathcona Community Mental Health Clinic. She also reminded us that as a result of Mr. Wong's functioning, as well as his routine requests to discontinue the medications, and the fact that he perceives no benefit therefrom, his medications are actually administered to him by staff at Victory House. If Mr. Wong were to miss any prescribed dosage of his medication, that event would be immediately noted and known to the trained supervisory staff at his residence.

[16] In terms of his physical health, Ms. Gummerson indicated that Mr. Wong dislocated his right arm two years ago and now uses his left hand to eat and to dress himself and care for himself. He ventures into the community with co-residents and under staff supervision. He only accesses the community alone within a six-block radius for the purposes of purchasing cigarettes at a local store. When asked to opine as to the accused's future compliance, Ms. Gummerson indicated that with ongoing staff support Mr. Wong would likely continue to take his medications even if Forensic Psychiatric Services team were no longer involved. It is also her evidence that there is no financial or jurisdictional barrier to the accused's remaining at Victory House on an indefinite basis even if he is no longer under Review Board or forensic supervision, although she does point out that he cannot be coerced to live there should he at some point in the future wish to relocate. When pointedly asked by Mr. Hillaby with respect to his potential threat, she reminded us that he has never been angry or paranoid while she has known him. She believes that as long as he is treated Mr. Wong will be quite harmless. If untreated, she allows that he could become paranoid, but was unable to predict whether he could then respond in a violent manner. She reminds us that staff at Victory House monitor all aspects of his presentation, of his mental health, of the administration of his medication, and of his behaviour and functioning.

[17] The Review Board also considered the Board-ordered assessment provided by Dr. Dilli at Exhibit 87 as well as Dr. Dilli's oral update. The Board was grateful for Dr. Dilli's very comprehensive assessment provided pursuant to section 672.121(a) of the Criminal

Code. Dr. Dilli has now known Mr. Wong for at least five years as his outpatient treating psychiatrist, and has in the past indicated that he has never seen the accused in a floridly psychotic state. I would also note for the record that for purposes of this assessment Dr. Dilli interviewed the accused in the presence of Ms. Gummerson and with the assistance of an interpreter who speaks Mr. Wong's mother tongue. As has been the case generally, Mr. Wong was cooperative and had no particular complaints to report. He indicated that his mental state was subjectively good and he complained of no depressive symptoms. Despite some evident and obvious tardive dyskinesia as a result of his Risperidone, he does not complain. Members of the Board observed that Mr. Wong's involuntary movements and tics are quite evident, however, we were told that Mr. Wong will not receive Clozapine, which might hold some promise in terms of relieving his movement disorder, because he will not consent to the blood work which is a necessary accompaniment to the administration of Clozapine. As has been his consistent pattern, Mr. Wong denies his illness. According to Dr. Dilli, he continues to lack anything amounting to insight and he remains grossly deluded in terms of his historic beliefs. Dr. Dilli also again confirmed that after some four decades of consistent mental illness the accused is indicating some cognitive decline. Under questioning Dr. Dilli said that Mr. Wong's cognition could currently be considered at the borderline mental retardation level. Certainly it is Dr. Dilli's unequivocal opinion that medication compliance is key to maintaining Mr. Wong's stability and safe conduct in the community.

[18] As to the issue of fitness, Dr. Dilli at pages 3, 4, and 5 of his report, provided a verbatim transcription of the questions he asked and the answers Mr. Wong provided in the course of his interview. In a summary way Dr. Dilli concludes that the accused remains unable to understand the nature of the charges or the offences he allegedly committed. He has some limited understanding of the roles of participants in a court process, but would be unable to participate meaningfully in his trial, to understand the potential consequences, and in particular to instruct counsel. Mr Wong continues to believe that he was in a position of having to defend himself against imminent danger, which Dr. Dilli also believes indicates that if Mr. Wong is in circumstances where he perceives himself threatened by circumstances in his environment, he could indeed act defensively in a manner which may pose a threat to others. Once again, and importantly for the purposes of his assessment and indeed this proceeding, Dr. Dilli believes that the accused is unlikely to become fit in the future and can suggest no form of treatment that

would have any promise of restoring Mr. Wong to fitness to stand trial. His fitness assessment concludes as follows:

Above all Mr. Wong remains incapacitated in the third cycle legal ability, not only that he has been unable to give any instructions to his counsel in the past, he has in fact maintained all along that he has not required legal help as he denied having committed any offences in the first place. In view of all this evidence, Mr. Wong has been deemed by court and Review Board over the past 14 to 15 years as unfit to plead and stand his trial. In my opinion, Mr. Wong's condition is unlikely to change in the future. For reasons discussed above, no other treatment modalities are feasible that would lead to any breakthrough in his mental state and the issues surrounding his fitness. Therefore, he will most probably remain permanently unfit for court: (Exhibit 87, page 5).

[19] Dr. Dilli also provided evidence and was examined with respect to the second important criteria underlying an inquiry under section 672.851 of the Criminal Code, that of the accused's potential to pose a significant threat to others. In administering a risk assessment, Dr. Dilli utilized the HCR20 instrument. Among the factors he considered was the accused's past violence. For example, he mentioned an historic arrest and hospitalization in 1966 relating to possession of a weapon, followed by his admission to Riverview Hospital. In 1968 he was charged with assault causing bodily harm in an attack on a young girl in a park. In 1991 he committed the index offence, which was admittedly violent, and injured the victim. However, there has been no evidence of violent behaviour in the 14 years since. He has never been violent when not in the florid throes of his illness. Mr. Wong is not considered to have a de-stabilizing history of substance abuse and is not impulsive. He is currently compliant although he lacks insight into his illness or the need for treatment. He has stable ongoing accommodation where he says he is happy and willing to remain. There are no upcoming identified stressors in Mr. Wong's life. His future potential dangerousness is entirely linked to the possibility of non-compliance with medication under which circumstances he would most certainly relapse in terms of his mental state. His lack of insight and his denial of his illness are considered key aspects of his illness, as are some of the ongoing false beliefs he continues to harbour. On the other hand, he has been consistently and constantly stable, despite his residual symptoms, as long as Dr. Dilli has known him. Dr. Dilli does not consider his stability to be fragile under treatment. Dr. Dilli was unable to predict how quickly, following medication non-compliance, Mr. Wong would decompensate, but he indicated that he might not be obviously psychotic or behaviourally discontrolled for some time. Again, any risk that he poses stems from active symptoms of his psychotic illness under which circumstances he

might become paranoid and misperceive events in his environment as threatening. Even though he has become quite frail and infirm physically, Dr. Dilli believes that under such circumstances he might indeed lash out in a dangerous fashion. However, Dr. Dilli also acknowledged that Mr. Wong may indeed be too physically frail to do much real harm. Certainly in terms of protective factors, Dr. Dilli considers Victory House as an ideal setting for the accused and he would be of different opinion if Mr. Wong were not residing in that environment.

[20] Dr. Dilli was also questioned with respect to the implications of Mr. Wong's perseverating in his requests to stop his medications. In response to that query, which may be founded on the theory that Mr. Wong is only compliant because of the coercive aspects of his Review Board disposition or its potential consequences, Dr. Dilli did say that he believes that staff at Victory House and a new community mental health team could continue to persuade the accused to remain treatment compliant as he has been with his current forensic treatment team. He also confirmed again that Mr. Wong has developed or incorporated no new paranoid delusions.

[21] Given the benefits of maintaining Mr. Wong in his current residential environment, Dr. Dilli was asked about the likelihood that Mr. Wong might wish to relocate if allowed the choice. Dr. Dilli believes that given Mr. Wong's frailty and restricted mobility, it is unlikely that he will wish to relocate or venture further a field than he is currently doing. On balance, Dr. Dilli concluded that it is likely that Mr. Wong will remain in his current residence indefinitely and is likely to comply with the type of support and monitoring that is provided in his residential environment. In that environment we were also told that a community mental health team routinely attends and visits the residents for follow-up treatment and monitoring.

[22] The Review Board then heard from Mr. Wong who was able, in his somewhat restricted communication style, to indicate that he wishes to remain at Victory House and likes living there. Several times in the course of his evidence, he volunteered spontaneously his belief that the medication makes him tired and demonstrated the facial twitches and tics which I have referenced previously. He tells us that he does not go out alone very often and does not utilize public transit. He repeated that he wished to stay at Victory House. He was able to endorse no understanding of or benefits from the medications he consumes. In a number of aspects his answers were wide of the mark and

quite non-responsive to topic. He denies that he suffers from a mental illness and did not know what kind of physician Dr. Dilli is.

[23] In closing, and under the circumstances giving rise to this hearing, the Review Board must of course undertake an analysis of the evidence bearing in mind a number of objectives, that is, to form an opinion as to whether the accused remains unfit to stand trial, and to impose the appropriate least onerous and least restrictive disposition under section 672.54 of the Criminal Code. Given the special nature of this hearing, if we conclude that the accused is unfit to stand trial, we have the additional task of making a finding with respect to the likely permanence of that condition, and as well to determine whether or not the accused poses a significant threat to public safety as that concept has been defined in *WINKO*. On the first branch we defer to the psychiatric expertise of our witness Dr. Dilli in accepting his findings that, given the duration of Mr. Wong's mental disorder and its now evident attendant cognitive implications, in our view Mr. Wong remains unfit and is not likely to ever become fit to stand trial. We observe that no party at this hearing took an opposite view. On the other hand, we acknowledge that Mr. Wong is currently well cared for in a wrap-around environment of service provision, support, supervision, and monitoring. Accordingly for dispositional purposes, he remains eligible for discharge subject to the conditions which have formed the basis of his recent and current orders.

[24] As to the next branch of our enquiry, that of significant threat, while we acknowledge that Mr. Wong has a distant history of violent behaviour while ill, we do take into account that he has been manifestly stable and non-aggressive for more than 14 years now. We also consider that despite his lack of insight, the public is currently protected by his all-encompassing and enveloping, professionally staffed and supervised residential environment. In such an environment Mr. Wong will continue to be treated and fastidiously supervised and monitored. He will be linked with necessary community mental health services whose task it will be to maintain an ongoing watch on his mental state. We also take into account that in his current environment his medications are administered to him to an extent that if he misses even one dose of his prescribed formulations that event will not only come to attention but will be responded to.

[25] Finally, we take into account that Mr. Wong, by virtue of aging and his physical afflictions, is becoming more frail and indeed more dependent, such that the likelihood of his precipitously deciding to relocate to independent accommodation is becoming somewhat remote. In *Winko* the Supreme Court of Canada indicated that a legal finding

