



PROVINCE OF MANITOBA
CANADA

Review Board

IN THE MATTER OF: Part XX.1
Criminal Code of Canada

AND IN THE MATTER OF: Vince Weiguang Li

AND IN THE MATTER OF: A Disposition hearing held in Winnipeg, Manitoba
on Monday, June 1, 2009

QUORUM: John Stefaniuk, Chairperson
John Brown, Member
Dr. Thomas Thompson, Member
Dr. Maralyn MacKay, Member
Peggy Dillon, Member

APPEARANCES: Vince Weiguang Li

Mr. A. Libman and Mr. G. Bates,
Counsel for Mr. Li

Ms. C. Deegan,
Counsel for the Attorney General

DISPOSITION AND REASONS

Vince Weiguang Li appeared before the Review Board on Monday, June 1, 2009 for a Disposition hearing pursuant to Section 672.47(2) of the **Criminal Code of Canada**.

In making this disposition, we have considered the evidence before the Board at Mr. Li's hearing, submissions by counsel, the evidence of Dr. S. Yaren and the victim impact statements filed in these proceedings, on June 1, 2009. We have also taken into consideration the need to protect the public from dangerous persons, the present mental condition of Mr. Li and his reintegration into society and his other needs.

Background

Mr. Li was required to appear for this hearing, having been found not criminally responsible on account of mental disorder in the Court of Queen's Bench, Winnipeg, Manitoba on March 5, 2009 with respect to a charge of Second Degree Murder. After rendering the verdict, the presiding justice did not make a disposition but granted an extension of time to 90 days within which the Review Board is required to hold a hearing and make a disposition regarding Mr. Li.

The facts surrounding the index offence and those related to Mr. Li's background and history are set out in the agreed statement of facts submitted by counsel in Mr. Li's trial before the Honourable Justice Scurfield in the Manitoba Court of Queen's Bench and the reports of Dr. Rootenberg, Dr. Robertson, and the several progress reports of Dr. Yaren prepared following Mr. Li's incarceration and the direct evidence of the witnesses which also formed exhibits in this hearing. Those facts were not put in issue by the parties at this hearing.

Mr. Li was born in China in April, 1968, and while there is no history of mental health issues while he was growing up, he was frequently sick and fragile during his early childhood. A maternal uncle had an unspecified mental illness for many years, but there was no other family mental health history. Mr. Li denied any history of truancy, vandalism, or behavioural difficulties during his childhood or young adult years. He was a good student and obtained a Bachelor of Science degree in China.

He worked as a computer software engineer, and studied English, with the anticipation of emigrating to Canada, which he did in June, 2001. He married his wife, Ana, in 1995 in China, and, in 2005, went back to China and obtained a divorce, although he maintained a sporadic marital relationship with her until he left her in Edmonton just prior to the index offence. Ana reported that in the summer of 2004, Mr. Li was acting "weird" following several days when he did not sleep or eat regularly, "he cried a lot and told me he saw God". She thought he was just tired and she bought sleeping pills for him. The symptoms remitted spontaneously in about seven days.

He worked at various jobs in Winnipeg, Thompson and Edmonton after his arrival from China.

He had one psychiatric admission to hospital. In 2005, he went to Ontario from Winnipeg in search of employment. He was picked up by police walking on the highway on his way back to Winnipeg and was admitted to William Osler Health Centre in Etobicoke.

According to the reports, in 2008, God's voice told Mr. Li to move from Edmonton to Winnipeg. He traveled by bus. At a stop in Erickson, Manitoba he left the bus for a time, during which he disposed of some personal possessions. He boarded another bus believing that God may be angry with him for not strictly following God's instructions, which Mr. Li found to be conflicting. It was on that bus that Mr. Li committed the index offence suddenly and without provocation, while under a paranoid delusion that the deceased victim was a threat to his life, both before and after the deceased victim's death.

At the time of the hearing, Mr. Li was residing at the PsychHealth Centre in Winnipeg and was under the care of Dr. S. Yaren.

Recommendations

The treatment team recommended that Mr. Li be detained in custody in a locked forensic unit of a psychiatric hospital, either in PX3 at the PsychHealth Centre or in the Selkirk Mental Health Centre, and that if he had to leave the hospital for any reason, he be escorted by the highest level of security

Ms. Deegan, on behalf of the Crown, agreed with the recommendations of the treatment team, and further recommended that if Mr. Li had to leave the secure unit of the hospital, he be accompanied on a two to one basis by Sheriff's Officers.

Mr. Libman, counsel for Mr. Li, agreed with the treatment team's recommendations, but suggested that two to one escort was not required.

Reasons for Decision

Preliminary Matters

At the start of the hearing, Mr. Norman Boudreau, counsel for certain family members of the deceased victim and for others who are connected with the incident giving rise to the index offence, appeared with his co-counsel, Mr. Jay Prober, and sought standing for his clients as parties to these proceedings. Mr. Boudreau, on behalf of his clients, wished to advance the position that Mr. Stefaniuk should recuse himself as Chairman on account of Mr. Stefaniuk's law firm's position as counsel for Greyhound Canada in civil litigation commenced by the family of the deceased victim and others against Greyhound and others. He also wished to submit argument on the issue of whether the Board is obligated or entitled to release its Orders and Reasons for Decision to the public.

Prior to the commencement of the hearing, counsel for Mr. Li gave notice to the Board of their intention to raise issues with respect to the appropriateness of and admissibility of all or certain portions of the victim impact statements that were received by the Board. Counsel provided cases in support of their position.

Standing

At the hearing Mr. Boudreau presented two authorities in support of his clients' position that they should have standing as of right or that they ought to be granted standing by the Board. These were *MacMillan Bloedel Ltd. v. Simpson* (1996), 8 W.W.R., 305, and *Hy & Zel's Inc. v. Ontario (Attorney General)* (1993), 3 S.C.R. 675.

The Board considered each of the authorities at the hearing. In the opinion of the Board neither was particularly germane to the question of standing before a review board under the Criminal Code.

MacMillan dealt with an injunction proceeding which directly affected the rights of the Appellants to continue with a blockade preventing the Plaintiff from shipping its cut timber. Hy & Zel's dealt with a Provincial Statute regarding the right to work on Sundays. Both cases dealt with the issue of "standing" by unnamed persons, (the blockaders in MacMillan, and the employees in Hy & Zel's).

In MacMillan, the Supreme Court of Canada held that the British Columbia Supreme Court had jurisdiction to grant injunctions against unnamed persons, and addressed the issue of standing where a private litigant's rights are affected by criminal conduct. The Court concluded that there was no question that the private litigant has such standing. In Hy & Zel's the issue was whether unnamed persons had standing where a large number of employees sought to have the provisions of a Provincial statute declared unconstitutional. Here the Supreme Court ruled against the Appellants, finding that there were other remedies available to them.

Both cases dealt with the issue of the infringement of private and public rights, and in our opinion are clearly distinguishable. If this Board were to deal with any matters that affected the private or public rights of Mr. Boudreau's clients, there may be an argument in favour of granting standing, but our sole mandate is clear. The Criminal Code dictates that if Mr. Li represents a significant risk to the safety of the public, we must make a disposition that is least onerous and least restrictive to him. This is not a situation where the victim's rights are in issue. The harm that has been done is clearly obvious, but our disposition does not affect the family's rights or those of any other victim in any way. In both cases cited by Mr. Boudreau, the future rights of the litigants were directly affected by the decisions sought, and they clearly had a right to be heard.

The issues before us are based on Mr. Li's mental status, and his potential for dangerous or violent behaviour, and do not affect the present or future rights of the victims. There is no loss of private or public rights, and therefore no right of standing before this Board.

In terms of any discretionary basis under which the Board might grant such standing, Mr. Boudreau did not present any persuasive argument that would support the exercise of such discretion. In the opinion of the Board, the interests of each and every victim as well as the interests of the public at large are ably represented by counsel for the Attorney General, who is made a party to these proceedings.

Recusal

Because the Board decided that Mr. Boudreau's clients did not have standing, the Board did not provide him the opportunity to make further submissions; however, out of fairness to parties the Board did put the matter of recusal before them, even though the matter was not raised by the parties themselves. When the question was put to them at the hearing, neither counsel for the Attorney General, nor counsel for Mr. Li expressed support for the position advanced by Mr. Boudreau on behalf of his clients.

In addition the Board is itself satisfied that there is no basis to require Mr. Stefaniuk to recuse himself as Chairperson of the Board. The issues raised in a civil law suit against Greyhound Canada are not in any way associated with the issues to be determined by this Board. If Greyhound has any civil liability, its position does not and cannot affect or be affected by the decision that we must make. As expressed at the outset of the hearing, our sole responsibility is to determine if Mr. Li represents a significant risk to the safety of the public, and then to make the appropriate disposition, having regard to the criteria set out in the Criminal Code. Greyhound has no role in those decisions, either directly or indirectly, does not benefit from those decisions and in our opinion, there is no issue of conflict that would give rise to a need for the Chairperson to recuse himself.

Publication/Disclosure of Reasons for Decision

In our opinion a hearing before this Board is not the appropriate forum for determining the matter of disclosure or publication of its Reasons for Decision except in the context of the limited powers of the Board to limit publication as set out in the Criminal Code. No such request to limit publication was made. If this Board or its Administrator were to determine that its Reasons for Decision ought not to be released, in whole or in part, by reason of the application of provincial privacy legislation, such legislation provides a remedy and a forum in which to exercise that remedy, including access to the Courts, to any person seeking to contest that decision.

Victim Impact Statements

We have considered all of the victim impact statements properly submitted to the Board, as required by the Criminal Code. Since the parties were largely in agreement in terms of the recommended disposition, as discussed below, it is unnecessary for us to deal with the individual victim impact statements in detail in these reasons.

Counsel for Mr. Li objected to the acceptance of certain portions of certain statements that were filed with the Board by victims and those who classified themselves as victims. In some cases the victims included statements that went beyond the impacts that the offence had upon them. While there is no question that all of the individuals who submitted victim impact statements suffered great personal loss as a result of the commission of the index offence, counsel for Mr. Li raised the issue of whether the authors of certain of the statements met the definition of "victim" as contemplated by section 722(4) of the Criminal Code, and also the issue of whether portions of certain of the statements went beyond what may be submitted to the Board under section 672.5(14), as each of those provisions have been interpreted by the Courts.

Counsel for Mr. Li, to their credit, were most sparing with their objections, raising only their most serious concerns. In its own review of the statements the Board identified many other possible objections. Counsel provided several authorities to the Board in support of their submissions, including *R. v. Gabriel*, 1999 CanLII 15050 (Ont. C.A.), *R. v. Daley*, 2002 CanLII 393 (N.B. Q.B.), *R. v. Jackson*, 2002 CanLII 41524 (Ont. C.A.) *R. v. McDonough*, 2006 CanLII 18369 (Ont. S.C.), *R. v. Duffus*, 2000 CanLII 22831 (Ont. S.C.) and *R. v. Bremer*, 2000 CanLII 345 (B.C.C.A.), which were of great assistance to the Board in its consideration of the issues.

Counsel for the Attorney General, Ms Deegan, argued that all of the victim impact statements ought to be accepted in their entirety. She argued, in part, that was the case because the statements had been prepared by their authors in accordance with the written guidelines provided to them by the provincial Victim Services Branch. With respect, we do not accept that position; those guidelines do not have the force of law and do not override the applicable jurisprudence that interprets the Criminal Code requirements applicable to victim impact statements.

Following its deliberations, which were conducted during a recess during the proceedings, the Board permitted the victims who wished to read in their statements to do so, but with the offending portions of those statements struck out. Carol de Delley, Nadine McLean, Alex McLean on behalf of Andrew McLean, Brenda Lewis and counsel on behalf of Bruce Martin read in the victim impact statements, in their redacted form.

The remaining victim impact statements were taken as filed, subject to the objections referred to above.

It is unfortunate indeed that individuals who see themselves and are seen by many as victims, (in the sense of their having suffered loss as a result of the commission of the index offence), and who have taken the time to write their earnest and heartfelt statements with the intention of reading those statements at the hearing, can find themselves in the position of having the admissibility and appropriateness of their statements challenged at the hearing, sometimes without advance warning. This can only exacerbate feelings of victimization. This might be avoided if the victims were given some additional assistance in the preparation of their statements.

We strongly urge the Victim Services Branch to review all statements with their authors to ensure, so far as is reasonable, that the statements meet the statutory criteria for victim impact statements. This review should take place before the statements are filed with the Board. At the very least, the persons who submit statements should be made aware of the possibility that there may be objections to the contents of or admissibility of their statements if those statements are alleged to go beyond what is permitted under the Criminal Code.

The Main Issue

We now direct our attention to the main issue before us. It was common ground that Mr. Li does indeed represent a significant risk to the safety of the public, and that he must be detained in custody in a secure ward of a mental hospital. Dr. Yaren presented his opinion verbally to the Board, and we have also considered the reports of Dr. Rootenberg, Dr. Robertson, and the several progress reports of Dr. Yaren prepared following Mr. Li's incarceration. It is clear that Mr. Li suffers from Schizophrenia and continues to show some of the negative symptoms of the disease. The active psychotic symptoms have pretty well dissipated over the approximately 12 weeks that he has spent in hospital.

The issue that we must address is whether Mr. Li represents as a significant risk to the safety of the public at this time, and whether he is likely to do so in the foreseeable future. Dr. Yaren testified that the psychotic symptoms exhibited by Mr. Li are a definite risk factor for violent behaviour. And we note that the symptoms which preceded the index offence are the very same symptoms which preceded his admission to hospital in 2005, and are similar to those reported by his wife in 2004. Dr. Yaren further testified that if violence has been an aspect of psychotic behaviour in the past, it is a factor to be taken seriously with regard to future actions by someone with a diagnosis of schizophrenia.

Schizophrenia was described as a lifelong disease, and is an illness characterized by emergent psychotic symptoms particularly related to non-adherence with treatment, but such episodes can occur even with adherence to treatment, and having had at least one paranoid type of episode, the likelihood of another is increased.

We agree with the opinions presented and we are in no doubt that the substantial risk factors with respect to Mr. Li's propensity for dangerous behaviour are his major mental disorder and the psychotic symptoms he experiences when his mental condition seriously decompensates; his lack of insight into his illness and the need for treatment; his history of being non-compliant with prescribed treatment; his poor judgment; his unpredictable, threatening, impulsive and anti-social behaviour and his history of having exhibited dangerous behaviour when he has become psychotic, including actual physical harm and threats of significant violence.

We are of the opinion that without the continued, close supervision provided by detention in hospital, Mr. Li would be a significant risk to the safety of the public, and that neither an absolute discharge nor a discharge upon conditions would be appropriate.

We are of the opinion that Mr. Li should be confined to the locked ward at PsychHealth Centre or the Selkirk Mental Health Centre, and that if he is to leave the locked ward, he must be escorted by two staff members, and if it is necessary to leave the hospital, he must be escorted by two peace officers.

Finally, we would like to note in these Reasons that with the consent of all parties, an Order setting out this disposition was previously issued and came into force on the 5th day of June, 2009.

Disposition

In accordance with Section 672.54(c) of the **Criminal Code of Canada**, Vince Weiguang Li is to be detained in custody in a hospital, subject to the following conditions:

1. That he reside on the locked ward at either the PsychHealth Centre, Health Sciences Centre, Winnipeg, Manitoba or the Selkirk Mental Health Centre, Selkirk, Manitoba;
2. That if he is required to leave the locked ward within the hospital, he is to be escorted at all times by two staff members;

3. That if he is required to leave the hospital for any reason, he is to be escorted at all times by two peace officers;
4. That he present himself before the Review Board as directed by the Chairperson thereof;
5. That he keep the peace and be of good behaviour.

DATED this 15th day of September 2009, at Winnipeg, Manitoba.



John Stefaniuk, Chairperson,
Manitoba Review Board