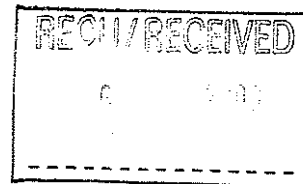


**IN THE MATTER OF PART XX.1 (MENTAL DISORDER) OF THE CRIMINAL CODE,
R.S.C. 1985, c. C-46 AS AMENDED 1991, c. C-43**

AND

THE BRITISH COLUMBIA REVIEW BOARD

HELD AT: VANCOUVER, B.C.



NOVEMBER 7, 2000

**IN THE MATTER OF A
DISPOSITION HEARING**

RE: PETER LAI

BOARD:

B. WALTER, Chairperson
DR. S. LOHRASBE, Member
MS. M. ANDERSON, Member

CASE MANAGEMENT COORDINATOR:

MS. C. RODGERS

APPEARANCES:

L. HILLABY, ESQ.

for Attorney-General

MS. D. NIELSEN

for patient accused,
PETER LAI

ORIGINAL

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VANCOUVER, B.C.

NOVEMBER 7, 2000

THE CHAIRPERSON: While there are obviously lots of questions, potential pitfalls and a real likelihood that the Court might differ with us, we think that the extraordinary work that's been done with this young man ought to be supported; that he be given a chance to move on. Therefore, we are going to find him fit, albeit marginally at this point in time, to stand trial.

It would be helpful if either his defence counsel or Ms. Rodgers could find a time between now and his appearance to take him to a courtroom and allow him to sit in for 20 minutes, to watch a court in progress. To perhaps use that as an occasion to heighten his comfort level in that rather complex place.

Peter Lai is before us as a result of a number of charges which were brought between February and March of 1998, including arson, sexual assault, threatening and common assault. On December 3rd, 1998, some months after those charges were brought, he was found unfit to stand trial. That has also been the opinion of this Board since that has been the opinion of this Board since that time.

Peter Lai has significant mental handicaps,

physical disabilities and some obvious and clearly diagnosed communications disabilities.

When he was initially assessed he had no understanding of the Court process; of the reasons for or of his need to appear before a Court.

I refer to Exhibit 13 where a history of behavioural problems, including anger, aggression, impulsivity are documented. There is also noted behaviour from an early age including theft and fire starting.

Throughout his now three full hearings before this Board he has consistently been found unfit to stand trial. The Board has nonetheless consistently seen fit to discharge him under conditions with the supervision of the Forensic Out-Patient Service, into the care of his parents.

In May of 1999 we said that in our view Peter's fitness to stand trial was unlikely to change. If we have come to a different opinion today it must be attributed to the excellent efforts of Ms. Rodgers and the services she has been able to enlist on Peter's behalf including, of course, Dr. Johnson, who was so helpful today.

A big issue has been the stressors in caring for Peter on his family. Efforts have been made to bring

programs and services from other mandates to bear, to support and render sustainable Peter remaining in the care of his parents. I notice Mrs. Lai is somewhat frail today and must have had some health issues just in this past year.

At Peter's last full hearing Ms. Rodgers began to tell us that she has been working with Peter, imparting to him or teaching him some of the aspects or issues that might be encountered in taking part in a court process. Her efforts were still garnering minimal results. He still presented to us, on assessment, as shy and inaccessible and, of course, limited in terms of his ability to communicate.

We learned that although Mr. Lai had been able to repeat to Ms. Rodgers some of the concepts that she was trying to teach him, he actually forgot these when they weren't repeated for a few days.

We also learned at that time that he had begun to see Dr. Johnson for counselling and treatment in terms of communication skills. Dr. Johnson was also getting into the areas of sexual boundaries and sexual education with Peter. Those sessions were starting to go quite well. I recall remarking in the reasons of last hearing, even though we found Peter unfit to stand trial, that Dr. Johnson thinks Peter functions

at a higher level than has been assessed in the past. He also believed that Peter knows right from wrong. Nonetheless, we the majority of the panel at the hearing of April 14th, 2000, were of the view that Peter remained unfit to stand trial despite some positive progress.

In preparing for this hearing we have a new report from Ms. Rodgers who has seen the accused at least twice weekly in recent times. She tells us that he also sees Dr. Johnson on a weekly basis.

He has learned with coaching some aspects of the Court process. Since the last hearing there have been no disturbing incidents with respect to Peter's possession of prohibited items. Previously we had concerns that he was hoarding or secreting matches or incendiary devices. At this point there are no troubling reports from his daycare program.

Dr. Adilman also provides a brief report and acknowledges that he has had very little contact with the accused perhaps over the course of the past year. He finds the accused shy, withdrawn and uncooperative. We certainly don't share the view today that this young man is in any way uncooperative. Clearly he is shy and withdrawn in an unfamiliar context or environment.

Ms. Rodgers was very helpful in bringing the props or learning tools that she uses with Peter in her efforts to bring him to fitness to bring him to fitness to stand trial. She went through a demonstration with respect to the flashcard exercises that she uses about the Court process and the individuals involved in that process. She does that once every two weeks with him at his daycare program.

She acknowledges that Peter's attention span is limited; that he is distractable. But with the use of those tools as well as by a system of rewarding his attention, she feels that he understands the basic issues and concepts or has the capacity to understand them. She has taught him a rather daunting array of definitions. She has left nothing out. She teaches him the name of the concept, the definition and then over time teaches Peter to repeat back those concepts or definitions.

She is able to tell us that he knows he did something wrong; what the things were that were wrong or that it is alleged he did. He may have a basic understanding, in her view, of communicating with counsel. It is in that area that the limitations and the doubts persist.

Mr. Hillaby asked Ms. Rodgers about the

significance of the rewards system. In her view, they help him to focus. He would probably need a similar system of rewards to help him to maintain his focus in the actual trial process. The question is whether or not that corrupts the information that is forthcoming. We are not persuaded that it necessarily does taint or in any way devalue the actual information that he gives.

Ms. Rodgers was asked about how long Peter is able to participate. In her view, he is able to focus for twenty minutes to a half hour. She acknowledges that a half day hearing would be difficult for Peter to follow, but that perhaps he could handle as much as two hours in the morning when he is fresh. She suggests that any such proceeding be liberally interspersed with appropriate rest or refreshment periods; breaks, in other words.

She repeats her view that he may be somewhat more intelligent than past assessments would indicate; than his shyness and autism would allow him to readily demonstrate.

She was less sure in answer to Dr. Lohrasbe's questions about what his most sophisticated executive function might be.

We heard from Dr. Johnson who indicated his own

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areas of discomfort in terms of the sufficiency or standards of the understanding that Peter is expected to achieve; the threshold we are dealing with today. He stressed the importance upon Peter of environment and context. He elaborated on that by saying that a strange environment, an arena that Peter is not used to, will affect his anxiety, will make him feel anxious and uncomfortable. That anxiety is not surprisingly going to affect his performance. That is certainly something to keep in mind when Peter goes back before the Court.

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Dr. Johnson also stressed the importance of vocabulary language and presentation. He was trying to stress for us that Peter responds more completely, more meaningfully, to visual cues rather than vocabulary or spoken language.

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He has seen Peter on 25 occasions in the past year. Peter comes to his office on his own, which requires a journey of some distance and some distance and some complexity.

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Mrs. Lai tells us that Peter spontaneously remembers his appointments and when he needs to go to Dr. Johnson. It is obvious that there is some rapport there. Peter enjoys those visits. Dr. Johnson uses pictures, simple diagrams from a legal or a visual

legal text program in his exercises with Peter.

He went through the very interesting exercise of showing Peter pictures and eliciting responses from him. He showed pictures that Peter was able to identify as the Crown and the defence. He then answered questions about who is the lawyer's "boss" in Court. He answered that both the client and the judge are the lawyers' "boss" in Court. He was able to recite some things that he could tell his lawyer to say to the judge on his behalf. He seemed to understand the consequences of not telling the truth in Court. In answer to a question about whether or not Peter's answers were purely rote memory functioning or had some underlying meaning to them, Dr. Johnson did feel that there was some meaning in Peter's answers.

Mr. Hillaby asked Dr. Johnson whether or not Peter was following what was going on in this hearing today. Dr. Johnson candidly said that Peter was not necessarily following everything in the hearing; that his attention would fluctuate in and out of the hearing as he found something engaging or interesting. By example, he could follow a T.V. crime drama in its more dramatic or action aspects but perhaps not necessarily its underlying or more subtle narrative

sub texts.

He does believe Peter understands the charges and the jeopardy that he confronts in Court. He understands the role of the defence or the role of marshalling a defence to those charges.

Peter was able to recite for Dr. Johnson a recent unpleasant incident at a bus stop that he obviously found distressing. He was able to maintain that memory over a series of visits.

Dr. Johnson does not and has not discussed with Peter the index offence or his memory of the events involved in the index offence.

Peter himself for the first time spoke to us in today's hearing. In answer to albeit simple questions from Ms. Nielsen he told us about his charges. He identified them as "fire", "assault", "touching" and "threatening". He told us that if found guilty he might go to jail. He told us if he is found not guilty he could go home. Who decides guilt or innocence? Peter says it is the judge. The job of his lawyer is to defend him and to help him. The job of the Crown is to find him guilty. An oath is something he says on the Bible. It means to tell the truth and lying is "bad".

While Peter's fitness is no doubt somewhat

marginal and may, as Mr. Hillaby forewarns us, perhaps not meet the standards that would be applied by a judge in a courtroom, nonetheless our job is to form an opinion today. Under Section 672.48 of the Criminal Code, we are here to make a determination whether, in our view, the accused is fit to stand trial at the time of this hearing. We recited earlier the concepts and the criteria of Section 2 of the Criminal Code. We take guidance from the case of Regina v. Taylor. Obviously the most complex aspect of the Section 2 definition is that of being able to be able to communicate with counsel and to instruct counsel. Taylor tells us that the test is that of limited cognitive capacity. Whether or not the accused can recount to counsel the facts relating to the offence that counsel can properly present in answer.

Ms. Nielsen played out a potential scenario in terms of the kind of communication that Peter could be expected to carry on with an appropriately experienced and sensitive defence counsel. He may not even be called upon to speak in Court.

For all of the above reasons, we find Peter fit to stand trial at this point.

Next I take guidance from Section 672.83(1) of

the Criminal Code. Having made the determination that the accused is fit to stand trial, we do not need to go into the dispositional aspects. We will simply order, in the hope that Peter can be brought to trial very quickly, that the previous disposition remains in full force and effect as to his supervision in the community until such time as the Court can once again assess the issue of fitness.

MS. NIELSEN: Well, there were a couple of things that I wanted to correct or comment on in one of the reports.

THE CHAIRPERSON: I'm sorry, I -- well, are they by way of correction?

MS. NIELSEN: Yes. Well, one is --

THE CHAIRPERSON: Why don't you put them on the record.

MS. NIELSEN: One is from -- they're both from -- I think can be addressed in Dr. Adilman's report. On page 1, Mr. Lai is a 22 year old single Canadian male from Vancouver. He was born in --

THE CHAIRPERSON: It says Cambodian.

MS. NIELSEN: Yes. He is not Cambodian. He is Canadian. He was born in Ottawa. And then the third paragraph it says: "As part of his rehabilitation and in an attempt to try and make Mr. Lai fit to stand trial he has been attending a West 8th activity club, Monday to Friday on a daily basis." Well, that's a -- the third

paragraph.

THE CHAIRPERSON: Yes.

MS. NIELSEN: It's my understanding that he would go to the West 8th activity club whether he was -- whether he had these charges or not. That's just a continuation of his education and his training.

THE CHAIRPERSON: So you're trying to say it's not necessarily part of his so called rehabilitation?

MS. NIELSEN: It's not part of making him fit to stand trial. He would go there no matter what.

THE CHAIRPERSON: Ms. Nielsen, you had another issue that you wanted to mention on the record.

MS. NIELSEN: Well, I was going to get this evidence from Peter or from Mrs. Lai but I can tell you what this will be, if that makes it simpler.

THE CHAIRPERSON: Where are you referring?

- MS. NIELSEN: Cathy Rodger's report, page 2, third paragraph from the bottom.

THE CHAIRPERSON: On April 28th?

MS. NIELSEN: H'm hmm. And it says, Mr. Lai left Playdium and involves him and one of the teenagers dropped her pants and rubbed herself against him. Well, it's my understanding that one of the teenagers pulled her zipper down and showed her underpants and that was the extent of that exchange.

THE CHAIRPERSON: All right.

MS. NIELSEN: And that was why the police were not called.

THE CHAIRPERSON: All right. Is that it?

MS. NIELSEN: Yes.

THE CHAIRPERSON: But you wouldn't have been arguing for a different disposition?

MS. NIELSEN: No. No. It was just to clarify some of the incidents reported.

THE CHAIRPERSON: Mr. Hillaby, do you want to respond to any of that?

MR. HILLABY: Well, I just checked with Ms. Rodgers and she got it from another person. So I don't have any problem with taking into account that what was written seems a bit more dramatic than what probably happened.

THE CHAIRPERSON: All right. Are there any questions with respect to what we have done? Again, thank you very much for the efforts here, Ms. Rodgers and all parties. Hopefully this young man can be brought to Court as quickly as possible. Maybe somebody could take the time to show him a courtroom between now and then. Thank you.

(PROCEEDINGS ADJOURNED)