

**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 THE
DISPOSITION HEARING OF**

LAURINA MARIE AUNE

**HELD AT: Forensic Psychiatric Hospital
Port Coquitlam, BC
August 21, 2003**

**BEFORE: CHAIRPERSON: B. Walter
MEMBERS: Dr. G. Laws, psychiatrist
 N. Avison**

**APPEARANCES: ACCUSED/PATIENT: Laurina Marie Aune
ACCUSED/PATIENT COUNSEL: A. Bryant
HOSPITAL/CLINIC: B. Fisher Dr. L. Meldrum
ATTORNEY GENERAL: L. Hillaby**

1 CHAIRPERSON: On August 21, 2003 the British Columbia Review Board
2 convened a first hearing pursuant to s. 672.47(1) of the Criminal Code to
3 make a disposition in the matter of Laurina Marie Aune who is now age
4 26.

5 Ms. Aune comes under the jurisdiction of this Board as a result of a
6 charge of second degree murder contrary to s. 235 of the *Criminal Code*.
7 In an indictment found at Exhibit 1 it is alleged that on or about November
8 1, 2002 Ms. Aune killed her then two-year-old daughter. The
9 circumstances of the offence were disclosed in the course of a psychiatric
10 interview on December 16, 2002, which occurred during an investigation
11 into the young child's whereabouts, as she had not been seen for some
12 six weeks or more. Following her disclosure in the context of that
13 psychiatric interview, she later, on the same date, disclosed the details of
14 her actions and her activities immediately following the index offence in a
15 taped police interview, part of which may be found at Exhibit 6 in these
16 proceedings. A search of the accused's apartment followed on December
17 17, 2002, whereupon the young child's remains were discovered and the
18 accused was arrested.

19 On July 17th, 2003, following her assessment at the Forensic
20 Psychiatric Hospital, the accused was found NCRMD by the Supreme
21 Court of British Columbia seated at Nanaimo. Her further disposition was
22 deferred to the British Columbia Review Board. The accused has been
23 committed to FPH since the date of that verdict by virtue of a warrant of
24 committal made on the same date.

25 **Application to Exclude Public**

1 In the course of three days of trial and expert evidence culminating
2 in the NCRMD verdict, Mr. Justice Taylor, ordered the sealing and
3 withholding of various exhibits tendered in support of the accused's
4 verdict. These include Exhibit 1, an admission of facts which was released
5 with certain passages deleted and with attachments thereto withheld; a
6 package of forensic photographs detailing the murder investigation;
7 Exhibit 3, a video recording of the accused prior to her arrest; Exhibit 4, an
8 audio interview of the accused upon arrest. Justice Taylor considered
9 those exhibits sufficiently prejudicial and unnecessary such as to
10 persuade him to withhold their broader distribution and publication.

11 On convening this, Ms. Aune's first hearing before the Board, her
12 assigned counsel, Mr. A. Bryant brought an application pursuant to s.
13 672.5(6) of the Criminal Code to exclude members of the public from the
14 hearing or, in the alternative, to exclude members of the public, including
15 the media, from certain parts or aspects of the proceeding. In an
16 application filed on the 13th of August, Mr. Bryant based his request for an
17 order banning the publication of certain selected portions of the evidence
18 on sections 7 and 24(1) of the *Charter of Rights and Freedoms*, however
19 he did not see fit to pursue or make submissions on that aspect of his
20 application at the hearing.

21 On the matter of the application to exclude pursuant to s. 672.5(6),
22 it became clear during the course of his submissions that Mr. Bryant, in
23 lieu of a total exclusion of members of the public, wished to have such
24 exclusion apply only to a representative of the *Vancouver Sun* who was in
25 attendance, in respect of what he considered prejudicial aspects of the

1 psychiatric evidence he believed might be tendered at the disposition
2 hearing.

3 In considering the application the Review Board invited
4 submissions from counsel for the other parties. Ms. Fisher, on behalf of
5 the Director of AFPS, took no opening position. Mr. Hillaby, representing
6 the Attorney General of British Columbia, submitted that because the
7 information in question was likely already publicly known, the hearing
8 should proceed in an open, unrestricted manner.

9 In order to provide a full opportunity for all perspectives to be
10 heard, aired and considered, the Board also invited Ms. Pemberton, a
11 reporter for the *Vancouver Sun*, to make submissions or to comment on
12 the request for a closed hearing. She was provided with a brief break in
13 the proceedings to enable her to contact her employer's legal advisers.
14 Following that hiatus she returned indicating that while her legal advice
15 was to persuade the Board to conduct its proceeding in an open and
16 public manner, she had no objection to the Board hearing the application
17 for exclusion itself in- camera. Thereafter she left the hearing room and
18 the evidence in support of the application to exclude was heard.

19 Mr. Bryant called Dr. Meldrum, with the objective of putting on the
20 record psychiatric evidence supporting the theory that an open hearing
21 and the possible publication of the evidence to be adduced at the
22 disposition hearing could conceivably impair his client's mental state, her
23 treatment and certainly her community reintegration. He was also
24 concerned that publication of some of the more disturbing details could
25 expose the accused to risk of harm from staff or co-patients at this

1 hospital, as well as retaliation from staff in a community psychiatric setting
2 she may come to reside in at a future time.

3 Dr. Meldrum gave evidence that, while theoretically the stress of
4 publication of aspects of the evidence could conceivably cause her patient
5 stress in some of the areas mentioned by Mr. Bryant, her experience with
6 her patient and her patient's reactions in hospital to date, including her
7 reactions to previous publications following her trial, left her unable to
8 predict with any degree of certainty the probability that additional
9 publication would cause her client to relapse to psychosis or substantially
10 derail her treatment progress.

11 Dr. Meldrum also gave evidence that, a *Vancouver Sun* article,
12 published on July 18, 2003, including certain details of the index offence,
13 did not appear to overtly distress or decompensate her patient, nor was
14 Ms. Aune demonstrating excessive distress at the prospect of media
15 coverage at this disposition hearing beyond some mild annoyance and a
16 sense of intrusion on her privacy.

17 In terms of responding to possible pejorative media coverage, Dr.
18 Meldrum outlined a plan in place on the occasion of the accused's trial
19 under which hospital staff were prepared to monitor patients' access to
20 media, and assess the impact of same. She indicated that,
21 notwithstanding some cursory coverage of the accused's trial, no
22 concerns came to fruition and no special measures were found to be
23 necessary to suppress coverage or to protect the accused.

24 In considering the evidentiary submissions on the application the
25 Board came to the conclusion that it would not exercise its power to

1 exclude members of the public from the disposition review hearing,
2 without prejudice to Mr. Bryant's opportunity to renew his request at
3 various strategic points in the hearing.

4 Our reasons for denying the application are as follows. Our
5 reading of the *Criminal Code*, and in particular s. 672.5(6), s. 672.51(7)
6 and s. 672.51(11) persuade us that the legislation intends and presumes
7 hearings of the Review Boards to be open to the public; otherwise, the
8 power to exclude and the power to withhold disposition information would
9 be redundant. The rationale for the presumption of openness is, of
10 course, found in the long held value that openness to public scrutiny is
11 fundamental to accountability and impartiality in the administration of
12 justice. Nonetheless, it has been considered and determined by the B.C.
13 Court of Appeal in the case of **Blackman** (B.C.C.A., Jan. 24, 1995,
14 CA017480) and, more recently, by the Ontario Court of Appeal in **Oshawa**
15 **This Week** (2002 (0J) No. 554), that the power to exclude under s.
16 672.5(6) though valid, must be exercised with great caution; implemented
17 on a case-by-case inquiry, and ultimately based upon evidence which
18 satisfies both branches or criteria articulated in the subsection.

19 The first branch of that test has to do with the best interests of the
20 accused. That test has been interpreted to include evidence that the
21 accused's treatment or mental state would be seriously compromised or
22 interfered with by the attendance of the public and subsequent publication
23 of the proceedings. Cases such as **Blackman (supra)** and the British
24 Columbia Review Board's decision in **Fisher** indicate that such a
25 determination must be based on cogent, clear and compelling evidence

1 that public attendance and publication would (inter alia) trigger a
2 decompensation in the patient or would expose the patient to risk from
3 others.

4 The second branch of the test under s. 672.5(6) holds that the
5 decision to exclude must not be contrary to the public's interest in open
6 proceedings. The case law makes it clear that the best interest of the
7 accused is not the determining factor, nor is it necessarily identical to the
8 public interest. In all cases the Board must weigh the accused's interests
9 in a closed hearing against the value of openness and accountability. In
10 **Oshawa This Week (supra)**, the Ontario Court of Appeal said that the
11 Ontario Review Board should, in each case, assess whether the exclusion
12 or ban on publication is necessary to protect the legitimate interests of the
13 mentally disordered offender and whether the salutary effects (for the
14 accused) of a ban outweigh the deleterious effects on freedom of
15 expression.

16 In applying these tests, we consider the following evidence with
17 respect to Ms. Aune's case. According to the assessment evidence, we
18 have been provided, she appears at this early stage in her treatment quite
19 affectively insulated from the facts surrounding the index offence. We
20 also note that publication of critical information has already occurred in the
21 form of the aforementioned article published in the *Vancouver Sun* on July
22 18th, 2003. It chronicled the circumstances and the process whereby the
23 court arrived at the NCRMD verdict. We have no evidence that
24 publication caused Ms. Aune any decompensation or significant setback
25 in terms of her treatment. Indeed, Dr. Meldrum indicated that the accused

1 did not decompensate or suffer any inordinate distress as a result of the
2 publication of that article, nor did its publication appear to expose her to
3 any inordinate or unmanageable personal risk within this institution.

4 Given the publication of that article, it is clear as well that the
5 circumstances of the index offence and subsequent events are widely
6 known, along with the finding that Ms. Aune was suffering from a
7 disordered state of mind which served to exempt her from criminal
8 responsibility.

9 Although Justice Taylor found that on July 17, 2003 the accused
10 was in a somewhat fragile state, Dr. Meldrum indicates that she is no
11 more fragile on the date of the current hearing. She is, therefore,
12 unprepared to predict her patient's imminent decompensation as a result
13 of an open hearing.

14 On the basis of that evidence, we feel that the first branch of the
15 test under 672.5(6) has not been met. In other words, we have not been
16 provided with compelling evidence that an open hearing, including the
17 potential publication of aspects and outcomes of this proceeding, would
18 predictably harm this patient's treatment progress in a substantial way.

19 To the extent that the first branch of the test has not been satisfied,
20 we do not need to discuss the public interest aspect; the second branch of
21 the test. The hearing was therefore declared open to the public and to the
22 media.

23 **THE DISPOSITION HEARING**

24 At the outset of the disposition hearing exhibits were marked and
25 all parties were invited to state their positions as to disposition. The

1 parties, including the accused, agreed that the appropriate disposition to
2 be made should be one of custody for a 12-month period.

3 In arriving at the appropriate and least restrictive disposition in this
4 matter in accordance with s. 672.54 of the *Criminal Code*, the Review
5 Board considered the following written and oral evidence.

6 We understand that in more recent times the accused has alleged
7 that she was a victim of past childhood abuse around the age of eight.
8 She has also acknowledged some history of depression. The assessment
9 information also indicates the accused has self-reported her use of
10 marijuana since adolescence and an increased use of that substance,
11 proximate to the index offence.

12 Collateral information gathered following the offence and
13 documented in the assessment information provided to the court, raises
14 the possibility of the presence of psychotic phenomena in Ms. Aune since
15 her early teens. She is also described as somewhat socially isolated;
16 financially and otherwise stressed; disorganized as a single parent, and
17 having general coping difficulties. During the period following the birth of
18 her child, the victim of the index offence, the accused received some
19 mental health services due to, among other things, symptoms of
20 depression. She has never received consistent psychiatric treatment or
21 follow up. In January of 2002 she saw a psychologist but was not
22 considered psychotic. In February 2002 she was prescribed Paxil by a
23 general practitioner. In May 2002 she presented with paranoid delusional
24 ideas. During the summer of 2002 she seemed to stabilize and improve
25 in her effectiveness as a parent to her young child.

1 Following her arrest she was, on December 19, 2002, admitted to
2 FPH for assessment as to her fitness to stand trial and as to her mental
3 state at the time of the index offence. The following quote is taken from
4 Exhibit 9, a report Dr. Meldrum provided to the Court:

5 Ms. Aune described herself to Dr. Randhawa as a worrier and
6 stated she had been abused in the past by two different
7 perpetrators and claimed that she had never disclosed this
8 abuse to anyone in the past. She acknowledged that she had
9 seen shadows in the dark which had begun when she was
10 approximately age 13. She felt that these shadows were spirit
11 visitations and that she has perceived spirits inside her and
12 outside her. She felt that she received messages from these
13 spirits and that she had been experiencing this at a greater
14 intensity following the birth of her daughter. She appeared
15 bewildered throughout the interview with Dr. Randhawa and
16 her affect appeared blunted and downcast. She appeared
17 distracted and appeared to be responding to auditory
18 hallucinations. At times she was tangential in her thinking and
19 of concern was her ongoing suicidal ideation. Dr. Randhawa's
20 differential diagnosis included a psychosis (NOS) with the
21 differential being bipolar mood disorder, schizoaffective
22 disorder with the need to rule out an organic etiology to the
23 psychosis. Dr. Randhawa felt that Ms. Aune met the criteria
24 for certification and completed the first certificate under the
25 *Mental Health Act*.

26
27 Once Dr. Meldrum saw Ms. Aune she endorsed a similar diagnostic
28 formulation and initiated the accused on medication. Unfortunately,
29 although Ms. Aune improved progressively, she developed some
30 significant side effects and her medication was changed from Risperidone
31 to Olanzapine.

32 Under close treatment and observation she was considered fit to
33 stand trial by February. She was also subjected to neuro-psychological
34 testing while at FPH. That testing revealed that Ms. Aune is of average or
35 above-average intelligence and presents as generally normal in terms of
36 her executive functioning. She is free from any acquired brain injuries or

1 neurological disease. The assessment also raised the possibility of a
2 schizoid personality disorder. In the result Dr. Meldrum ultimately
3 assigned a diagnosis of schizophrenia or schizoaffective disorder,
4 although preferring schizophrenia in her clinical judgment: Exhibit 10.

5 In that same report Dr. Meldrum also provides a detailed
6 description of the index offence as disclosed by the accused. While we
7 have no wish to belabour the somewhat grim and disturbing details
8 surrounding the death of a young child, the following passage might be
9 useful for future proceedings of this tribunal:

10 Ms. Aune stated that because of her belief that people were
11 coming up through the trap door to rape her she had a knife in a
12 basket by the door. She stated she took this knife and walked Kyla
13 towards the bathroom. She describes being "drawn there." She
14 stated that in the bathroom she took off hers and Kyla's clothes
15 because she wanted to be "physically closer" to Kyla and she didn't
16 want their clothes to get messy. She stated that she had turned
17 Kyla's back to her because "I wanted her to feel secure." She
18 stated that she held Kyla between her legs and then hesitated a bit
19 because she did not want to "cause her physical pain." She stated
20 that she was concerned that she might not be effective in cutting
21 Kyla's throat and that this would cause Kyla undue pain. She
22 stated that her motivation at the time was to kill Kyla to end her
23 pain: Exhibit 10.

24
25 Further on, Dr. Meldrum also endorses Ms. Aune's belief that in cutting
26 her daughter's throat she felt she was operating upon instructions. Ms.
27 Aune endorsed such directives or commands in the course of her
28 questioning by the Board at the disposition hearing.

29 The Review Board also takes into account in the course of its
30 deliberations an assessment report by Dr. Lohrasbe dated April 12, 2003
31 and found at Exhibit 11. In that report Dr. Lohrasbe describes an
32 intensive interview which occurred at the Forensic Psychiatric Hospital,
33 during which he found the accused emotionally detached, indifferent and

1 limited in terms of her insight into the illness. Significantly, he found that
2 even in April of 2003 the accused's understanding of her actions remained
3 impaired.

4 In arranging this first hearing of the Review Board, we have been
5 provided with additional disposition information in the form of victim impact
6 statements found at Exhibit 19; a social history at Exhibit 20; an updated
7 psychiatric report from Dr. Meldrum at Exhibit 21, and a report from Case
8 Manager Dominguez at Exhibit 22.

9 The social history, at Exhibit 20, adds little to the picture already
10 assembled in the written assessments, reciting once again some aspects
11 of the accused's developmental history and an apparent adolescent onset
12 of some mild interest in the occult. It also underscores the accused's
13 regular use of marijuana to the extent of two to four joints per day.

14 In her new report at Exhibit 21 submitted to this tribunal, Dr.
15 Meldrum also once again summarizes and reiterates the accused's social
16 and developmental history.

17 The accused currently resides on the Dogwood Unit at FPH, which
18 serves as a multi-level somewhat secure unit for female patients at FPH
19 and where Ms. Aune was, at least until August 5, 2003, overall
20 cooperative, non-impulsive and non-aggressive. According to Dr.
21 Meldrum the accused remains limited in terms of her insight in the sense
22 that she continues to have difficulty describing her mental illness or its
23 symptoms and she does not appear to fully understand its treatment
24 needs. Though passively compliant, she also appears somewhat

1 ambivalent about her medication. There are no plans to dramatically alter
2 her treatment regime at this time.

3 Dr. Meldrum augmented her report verbally, indicating that Ms.
4 Aune's past familial and social relationships cannot be relied upon as
5 active, tangible supports in aid of her community reintegration, at least
6 into the foreseeable future.

7 She also reviewed the accused's mental health history, including
8 brief attendances at Nanaimo Mental Health Services for anxiety, a GP for
9 depression and a psychologist for a variety of somewhat vague
10 complaints and coping difficulties. As stated above she has never
11 received consistent or ongoing diagnosis or treatment for a psychotic
12 illness. Dr. Meldrum also considers, in terms of her substance history,
13 that future use of even marijuana is likely to negatively affect her current
14 level of mental stability.

15 Dr. Meldrum was asked to review Ms. Aune's course in hospital
16 since her admission in December of 2002. She reminded us that the
17 accused was severely and acutely psychotic on admission to the point
18 where she was actively delusional, hallucinating and presenting with both
19 suicidal ideation, as well as homicidal thoughts toward staff and others.
20 She was considered an acute risk to herself and was closely monitored for
21 some time. Once her symptoms resolved under treatment she presented
22 as mostly pleasant, cooperative, though somewhat superficial and non-
23 disclosive. She remains non-disclosive and disengaged in terms of her
24 internal mental processes. She appears to have difficulty describing or
25 verbalizing her mental and emotional state, although she does appear

1 able to discuss the details of the index offence without apparent affect or
2 undue distress. At this point Dr. Meldrum believes Ms. Aune's
3 schizophrenic disorder is marked by profound negative symptoms.

4 Given her presentation, the treatment team sees it as a priority to
5 develop a working, trusting, therapeutic relationship with Ms. Aune. Dr.
6 Meldrum believes that this will take some time to accomplish. She has no
7 imminent plans to change Ms. Aune's medications and has initiated a
8 referral and assessment by drug and alcohol counselling services in the
9 hospital. Ms. Aune may also be provided with symptom management
10 programming.

11 As to risk assessment, Dr. Meldrum cites the accused's ongoing
12 lack of engagement and insight; the absence of any objective evidence of
13 current active, overt psychotic symptoms; concerns about the possibility of
14 reintegrating Ms. Aune to the Nanaimo community given the grisly nature
15 of the index offence; the absence of any discharge plan or aspirations at
16 this point in time, as well as the absence of any significant identifiable,
17 social supports.

18 In arguing for a disposition of custody, Dr. Meldrum also requests
19 that we prohibit any unescorted community access until such time as the
20 accused becomes more disclosive and more engaged in her own
21 treatment.

22 Following Dr. Meldrum's evidence and her examination by all
23 parties and members of the Review Board, Mr. Bryant presented his client
24 to answer questions from the parties. In answer to questions from Mr.
25 Hillaby, Ms. Aune acknowledged that she believes she may have a mental

1 illness. She acknowledged that she had experienced episodic psychotic
2 phenomena and memory problems since age 13. She confirmed she felt
3 commanded or directed in her actions at the time of the index offence.
4 She has not had strange experiences since approximately the time of her
5 admission or at least since before her NCRMD hearing. Her presentation
6 while unfailingly polite was at the same time eerily calm.

7 As indicated at the outset of these reasons, all parties were at
8 consensus with respect to the appropriate disposition to be made.

9 In support of finding Ms. Aune a significant threat such as warrants
10 our jurisdiction over her, we further consider the recency of acute
11 symptoms; the intensity of her violent and homicidal thoughts present at
12 admission; her untreated history of substance abuse, resumption of which
13 would certainly raise the risk of relapse and therefore the risk of harm to
14 others. We also consider an incident which occurred during the past
15 weekend during which Ms. Aune, labouring under misperceptions,
16 demonstrated what appears to have been impulsive behaviour resulting in
17 a significant assault on a co-patient. That event is currently the subject of
18 police investigation.

19 We note that Ms. Aune has demonstrated no evidence of a grief
20 reaction to the loss of her daughter and Dr. Meldrum believes this is
21 probably due to the profundity of the negative symptoms attributable to
22 her illness.

23 In summary, we had no hesitation concluding that, considering the
24 horrific nature of the index offence; the acuteness of the accused's illness
25 at the time; the early stages of her but partial recovery; her lack of insight;

