



BRITISH COLUMBIA REVIEW BOARD

**IN THE MATTER OF PART XX.1 (Mental Disorder) OF THE CRIMINAL CODE
R.S.C. 1985 c. C-46, as amended S.C. 2005 c. 22**

**REASONS FOR DISPOSITION
IN THE MATTER OF**

EDWIN MAN TSUN LEE

**HELD AT: Forensic Psychiatric Hospital
Port Coquitlam, BC
23 April 2007**

**BEFORE: CHAIRPERSON: B. Long
MEMBERS: Dr. W. Warrian, psychiatrist
L. Chow**

**APPEARANCES: ACCUSED/PATIENT: Edwin Man Tsun Lee
ACCUSED/PATIENT COUNSEL: W. Wong
HOSPITAL/CLINIC: S. Letwin Dr. W. Widajewicz
ATTORNEY GENERAL: L. Hillaby**

[1] CHAIRPERSON: These are the reasons for Disposition in the matter of Edwin Lee following a first disposition review conducted earlier today pursuant to s.672.47(1) of the *Criminal Code*. At the conclusion of the hearing the Board informed the parties of its unanimous decision to make a broad custodial order reviewable by September 1, 2007. Reasons were reserved

[2] Mr. Lee is a 24 year old, single and unemployed man who was born and raised in Hong Kong. The accused and his family came to Vancouver from Hong Kong in 1991. The accused attended high school in Richmond and finished two credits short of his high school diploma. He experienced significant social isolation, with no friends and notable difficulties with social interaction. There are several reports that the accused was consistently bullied.

[3] The accused returned to school at Kwantlan College in 2003 in order to obtain his GED. He was involved in two incidents with a female classmate in January and April of 2004 that resulted in separate charges of assault. He was convicted in each of the incidents and placed upon probation. A forensic assessment conducted at this time found that the accused had borderline intelligence. He was noted to have concrete thinking which left him with the propensity to misread social cues. This sometimes led to inappropriate behaviours. The assessment documented that the accused had developed an odd fixation on women's shoes. For example, he asked the Cantonese interpreter that was required for the assessment to hug him or take off her shoes. The accused did not recognize the inappropriateness of his behaviour. Although the forensic assessment recommended treatment, the accused did not act on that recommendation.

[4] Mr. Lee was involved in another odd incident in 2006. He asked to use the telephone in a stranger's home. When his request was refused by the female occupant, the accused entered the home and stole the woman's shoe. Mr. Lee was charged with break and enter and theft. He was admitted to FPH for a second assessment. Borderline intellectual functioning was again diagnosed along with Tourette's Syndrome, and a pervasive developmental disorder on the autistic spectrum. Further psychological testing confirmed borderline intelligence that impacted overall functioning. The assessment documented low self-esteem, poor social skills, poor insight, and limited capacity to form close attachments to others. Significantly a pattern of aggressive behaviour towards Asian women was identified. Somewhat presciently, the accused was considered to be at risk to

engage in further impulsive and aggressive behaviours. Mr. Lee was subsequently convicted of break and enter and placed on probation.

[5] On January 24, 2007 the accused was walking with his father on a sidewalk near their home in Richmond. The accused came upon a woman waiting to cross the road. He approached her from behind, grabbed her leg, removed her shoe, and ran away. Mr. Lee's father tried to give the victim money in an effort to end the incident. The police were notified and later attended the accused's residence on February 1, 2007. The accused tried to flee by running out the rear exit. He was arrested in the garden. Mr. Lee was charged with assault and theft under \$5,000. On March 24, 2007 he was given a verdict of not criminally responsible by reason of mental disorder on these charges. The accused was detained in custody. The court deferred disposition to the Board.

[6] In preparation for this hearing the Board was provided with a number of exhibits consisting of several psychiatric assessments; copies of court documents related to the NCR proceedings; a case manager's report and social history compiled by a social worker at FPH. The Board heard oral evidence from Dr. Widajewicz, the accused's psychiatrist; Ms. Letwin, the accused's case manager; and Mr. Lee.

[7] Mr. Lee was admitted to FPH following the NCR verdict. He experienced difficulties adjusting to his new environment. Although he exhibits no overt symptoms of mental illness, he continues to demonstrate symptoms of neurological disorder. For example he will pause for several seconds in the midst of conversation and then resume where he left off, seemingly unaware that there has been a pause. He engages in impulsive, childish, mischievous and otherwise inappropriate behaviours. Some have been sufficiently problematic to require the accused be placed in seclusion. More ominously, the accused has exhibited a number of threatening and angry responses when circumstances have not been to his liking. He remains noticeably preoccupied with Asian female staff, times staring intently at their feet. He often impulsively grabs staff, sometimes by the hand. Mr. Lee is able to acknowledge that his behaviours are inappropriate and regularly promises to desist. Unfortunately, he seems incapable of actually doing so.

[8] Although the index offences seem trivial, particularly in comparison to the many serious offences that the Board is accustomed to hearing about, Dr. Widajewicz expressed concern that the accused's behaviours seemed to have been escalating. The assaults

against his classmate at Kwantlen College, although minor, involved more persistent grabbing. The accused appears unaware that such behaviours can trigger violent responses. While this may initially leave the accused at risk, he also is capable of reacting angrily and violently.

[9] For example, about nine days ago the accused was involved in a fight. Dr. Widajewicz said the incident took place just in front of the nursing station on the highest security ward at FPH. Mr. Lee reports that another patient began to kick him in the neck, resulting in the incident. The staff did not see this, but the accused was observed attacking the victim, striking him in the head forcefully. The victim was left bleeding and sustained a black eye with other facial bruises. Dr. Widajewicz opined if in fact this assault was retaliation for a kick, the response was disproportionate. He said that the accused would have severely beaten the victim if staff had not intervened.

[10] The Director, represented by Dr. Widajewicz and Ms. Letwin, recommend a broad custodial order reviewable in six months. Dr. Widajewicz submits that the accused has a complicated and usual combination of disorders. He observed that Mr. Lee has lived a very sheltered life with his parents. They are aging and the accused requires intensive assessment and treatment if he is to have any real chance to achieve independent living in the future. Dr. Widajewicz submits that such assessment and treatment cannot be provided outside the forensic system.

[11] The Crown, represented by Mr. Hillaby, agreed with the Director's submission. Mr. Hillaby observed that in some senses the accused was lucky that the NCR verdict had introduced him to the forensic system. He expressed the hope that forensic treatment could halt the decline in the accused's behaviour and equip him with appropriate strategies for the future.

[12] Mr. Lee, represented by Mr. Wong, for the most part agreed with the position of the Director and the Crown, except for the timeframe of the order. Mr. Wong submitted that the evidence showed that a shorter order would meet the accused's needs and concluded that a four month order was the least onerous and least restrictive disposition.

[13] Although no party suggested that the accused should be absolutely discharged, the Board is independently required to address the issue of risk. The Board must make the least onerous and least restrictive disposition compatible with the accused's circumstances while taking into account the need to protect the public from dangerous

persons, the mental condition of the accused, the reintegration of the accused into society, as well as the other needs of the accused. Unless the Board concludes that the accused is a significant threat to public safety, the least onerous and least restrictive disposition must be an absolute discharge.

[14] We note that Dr. Widajewicz' risk assessment was not challenged by any of the parties. The evidence establishes that the accused's inappropriate behaviours have been escalating in recent years. Significantly, the accused did not comply with recommended treatment when he came into conflict with the law prior to the index offences. In fact the accused was on probation for assault when the next break and enter offence was committed, and again at the time of the index offences.

[15] Mr. Lee is unable to restrain his impulsive behaviours. These place him at real risk for developing confrontations that can escalate to overt violence. The accused has been twice convicted of assault prior to the index offences. While the incidents were not the most serious, they demonstrate a sustained pattern of unacceptable behaviours. The assault of nine days ago amply demonstrates the risk of more serious conduct.

[16] Mr. Lee presents as a bit of a diagnostic puzzle. He likely has some pervasive development disorder that falls within the autistic spectrum. He has borderline intellectual functioning. He requires comprehensive assessment and treatment. We conclude that absent mandatory treatment the accused would be unlikely to deal with his array of problems. We find that the accused is a significant threat to public safety and must therefore remain under Board jurisdiction.

[17] In considering dispositional alternatives, the Board agreed with Dr. Widajewicz' assessment that the accused was poorly integrated into the community. He led a particularly isolated existence, spending most of his time at home either watching television or building models. Dr. Widajewicz said that the resources necessary for the most effective treatment of the accused's disorder were based at FPH for in-patients. A neuropsychological assessment with a Cantonese-speaking psychologist has been scheduled. We agree with Dr. Widajewicz' opinion that this young man's best hope for gaining some control over his existing behavioural disinhibitions require hospitalization at FPH.

[18] Mr. Wong submitted that the objectives articulated by the Director could be accomplished within a four-month time frame. Dr. Widajewicz said he expected the

