BRITISH COLUMBIA REVIEW BOARD

IN THE MATTER OF PART XX.1 (Mental Disorder) OF THE CRIMINAL CODE R.S.C. 1991 c. 43, as amended S.C. 2005 c. 22, S.C. 2014 c. 6

REASONS FOR PLACEMENT DECISION
IN THE MATTER OF

MARK DAMIEN LINDSAY

aka

ROXANNE LINDSAY

aka

DEMARIS LINDSAY

HELD BY:	**Video** **October 29, 2021**	
BEFORE:	**CHAIRPERSON:**	**B. Long**
	MEMBERS:	**Dr. L. Grasswick, psychiatrist** **Dr. K. Polowek**
APPEARANCES:	**ACCUSED/PATIENT:**	**Mark Lindsay**
	ACCUSED/PATIENT COUNSEL:	**D. Abbey**
	DIRECTOR, AFPS:	**Dr. A. Kolchak**
	DIRECTOR'S REPRESENTATIVE:	**D. Lovett, QC**
	CSC:	**J. Hrenryk, K. Klatt**
	ATTORNEY GENERAL:	**L. Hillaby**

***Pursuant to section 672.86(1)(a) of the *Criminal Code*, the Review Board recommends that the accused be transferred as soon as practicable to the Province of Alberta, for the purpose of the reintegration of the accused into society.**

INTRODUCTION

[1] On October 29, 2021, the British Columbia Review Board held a hearing to make a placement decision pursuant to s. 672.68 (2) of the *Criminal Code* in the matter of Mark Damien Lindsay, also known as Roxanne Lindsay. The purpose of the hearing was to determine whether the accused's place of custody should be a prison or a hospital. At the conclusion of the hearing the Board reserved its decision. For the reasons that follow, the Board determined that the accused's existing place of custody in prison remained appropriate.

COURT VERDICTS

[2] On March 15, 2013, Ms. Lindsay was found not criminally responsible on account of mental disorder ("NCRMD") on charges of robbery, possession of a weapon and two counts of aggravated assault. The court deferred disposition to the Board. On June 13, 2013, the Board held the initial disposition hearing and ordered that the accused be detained in hospital.

[3] On October 27, 2016, Ms. Lindsay was found guilty of obstruction of justice and second-degree murder. She was sentenced to life imprisonment with parole eligibility set at 16 years. The accused thereby became a dual status offender, meaning a person who is subject to both a custodial disposition and a term of imprisonment. Pursuant to s. 672.67 (1) of the *Code,* the most recent order, namely the life sentence imposed by the court, took precedence over the custodial disposition made by the Board. Ms. Lindsay has remained in prison under the supervision of the Correctional Services of Canada ("CSC") since the imposition of her sentence.

[4] Ms. Lindsay was further convicted of carrying a concealed weapon in 2019. However, this conviction as well as the 2016 conviction for obstruction of justice, had no real bearing on the main issue before the Board. For all practical purposes, the competing legal orders that led the Board to hold this hearing were the custodial disposition following the NCRMD verdict and the life sentence imposed following the murder conviction.

CHRONOLOGY

[5] The order of the court verdicts did not follow the sequence of the underlying events. The first offence occurred on August 15, 2011, when Ms. Lindsay murdered her

girlfriend at or near Edmonton, Alberta. She stabbed the victim in the eye with a pencil with the intent that it would enter her brain and kill her. The accused admitted that she then asphyxiated the victim although it is unclear whether she was already dead. The accused then ran over her body with a motor vehicle in order to ensure that the victim was dead.

[6] Although Ms. Lindsay was a suspect in the murder, she was not arrested following the discovery of the deceased. In order to gather further evidence, the police embarked upon an investigation that employed an undercover police officer who pretended to befriend the accused. Ms. Lindsay and the undercover officer subsequently took a motor vehicle trip from Edmonton to Kamloops. During a stop at a gas station near Kamloops on September 21, 2011, the accused attacked the undercover officer with a knife while they were in in the vehicle. The officer escaped through a window and the accused drove off in his vehicle. The accused was apprehended shortly thereafter and detained in custody.

[7] About one month later, on October 20, 2011, Ms. Lindsay suddenly attacked a cellmate while they played Scrabble. She stabbed him in the eye with a pencil, blinding him in that eye. She later admitted that she intended to kill the victim. She made other admissions that included that she intended to kill the undercover police officer on September 21, 2011. She also confessed to killing her girlfriend on August 15, 2011.

[8] The accused was charged with murder on February 27, 2013, but remained in British Columbia on the charges stemming from her attack upon the undercover police officer and cellmate. Shortly after Ms. Lindsay was found NCRMD on the British Columbia offences on March 15, 2013, she was returned to Alberta for prosecution on the murder charge. The accused remained in Alberta in pretrial custody until she was convicted in 2016.

[9] Ms. Lindsay has spent very little time at the Forensic Psychiatric Hospital (“FPH”) in British Columbia. She had an admission prior to the NCRMD verdict for a court ordered assessment of her mental status and a second short stay following the NCRMD verdict. By the time of her first disposition hearing in June 2013, the accused had been returned to Alberta on the murder charge. She appeared at that hearing by video, as she has at every subsequent disposition review.

[10] The last disposition hearing was held on June 8, 2021. The Board noted that the only live issue was whether it should make a placement decision. The Board found that it did not have sufficient information to make an informed decision as to whether Ms.

Lindsay's place of custody continued to be appropriate and made an order to hold a hearing to make a placement decision. We observe that this is the first time that a hearing to make such a decision has been held since the accused became a dual status offender.

BACKGROUND OF THE ACCUSED

[11] Ms. Lindsay is 34 years old age. She was born biologically as a male and did not begin to identify as a female until she was approximately 30 years old. The accused was adopted when she was 19 days old and grew up in relatively affluent circumstances in Edmonton. Her adoptive father was a former chief of police of Edmonton, a lawyer, as well as a church deacon. Her adoptive mother was a librarian. Ms. Lindsay's birth mother used alcohol and drugs while she was pregnant and this may have had an impact upon the accused's mental health. She developed difficulties in elementary school and was diagnosed as having ADHD by age 11. As a teenager she began using illicit substances that included alcohol, marijuana, crack cocaine, and crystal methamphetamine.

[12] Ms. Lindsay's parents reported that she developed a "dark personality" as a teenager. Her mother noted that the accused began to hear voices by age 19. Her mental state subsequently deteriorated. She grew increasingly paranoid and came to believe that people were trying to kill her. She had her first psychiatric admission to hospital in 2008 in response to suicidal thinking, acute paranoia, and auditory hallucinations. The accused was diagnosed with a probable substance-induced psychotic disorder and was discharged within weeks. The accused's next admission to hospital occurred in March 2011 in the context of heavy use of substances and paranoia. Within a week of discharge, she was back in hospital after experiencing suicidal thinking, auditory hallucinations, and noncompliance with psychiatric medication. By the time of the index offences, the accused reported that she had become preoccupied by paranoid delusions about serial killers.

[13] Ms. Lindsay has been diagnosed with a daunting and complex array of mental disorders over the years. These include schizophrenia, gender dysphoria, antisocial personality disorder, ADHD, illness anxiety disorder, and a history of polysubstance abuse. There is some disagreement regarding specific diagnoses, symptom onset, severity, and the level of control exerted by the accused over expressed symptomatology for the purpose of secondary gain.

EVIDENCE AT THE HEARING

[14] The new evidence added to the disposition information consisted of a report from Dr. Kolchak, the accused's psychiatrist from FPH, and a report from CSC, jointly prepared by the accused's psychologist Ms. Hrenryk and parole officer Ms. Klatt. The Board heard oral evidence from Dr. Kolchak, Ms. Hrenryk, Ms. Klatt, and Ms. Lindsay.

[15] The report from Ms. Hrenryk and Ms. Klatt noted that Ms. Lindsay was placed in a Moderate Intensity Intermediate Care ("MIIC") unit at Edmonton Institution ("EI") in November 2016. An MIIC unit consists of specially funded beds to support individuals who have a mental illness that impedes their ability to function on a regular mainstream unit. The accused's care included regular access to a psychiatrist, prescribed psychiatric medication, and one to one contact with a primary worker/clinical case coordinator to pursue treatment goals.

[16] Over the next 20 months Ms. Lindsay's experience was marked by problems caused by interpersonal stressors on the unit, misconduct, multiple instances of self-injurious behaviours, and bizarre behaviours that included talking to herself, disorganized speech, and expression of religious-based delusions. Her progress was described as "inconsistent" and notable for continuing instability and behavioural incidents that had a negative impact on her well-being.

[17] Ms. Lindsay was voluntarily transferred to the Regional Psychiatric Centre ("RPC") in Saskatoon in July 2018 "for the purpose of program participation under Intermediate Care High Intensity." The transfer also facilitated access to additional programs that included dialectical behavioural therapy. However, Ms. Lindsay did not complete this therapy. She was described as "ambivalent about meeting with members of her treatment team, except for her psychiatrist, with whom she constantly requested to see." She had numerous episodes of attempting to divert her medication. She demonstrated many problematic behaviours and did not have any periods of prolonged stability. She was also found to have weapons in her possession on several occasions.

[18] Ms. Lindsay was discharged from RPC in August 2019 due to lack of engagement in her treatment plan, ongoing interpersonal conflicts, and behavioural concerns. She was transferred back to the MIIC at EI but moved to segregation shortly thereafter due to disruptive behaviours. The accused was returned to the MIIC about two

months later. She was again removed from the MIIC unit in May 2021 after throwing her shirt in the face of a staff member.

[19] Ms. Lindsay's treatment goals have included transfer to a women's institution. This has been denied due to the potential risk to other female inmates, ongoing instability, substance use concerns, medication non-compliance, possession of prison made weapons, and absence of evidence that the accused would have fewer interpersonal problems. A psychological assessment found that the accused was at high risk for violent recidivism. The accused has been provided with additional services to assist her with gender transition through the Gender Program of Alberta Health Services and was started on hormone therapy in 2021.

[20] Ms. Lindsay's progress with other treatment goals is described as "much more protracted." The accused has reported or exhibited intermittent symptoms of mental illness that have included hallucinations, tangential speech, thought blocking, delusions, paranoia, and self injury. The accused's engagement in treatment has continued to be problematic. She has been unable to complete various treatment modules, citing reasons such as the materials being damaging to her psyche, that she already knew all the materials, and that too much treatment could be harmful.

[21] Ms. Lindsay has applied for transfer to other CSC treatment centres. She was recently accepted to Kent Institution in British Columbia where she will be placed on a unit similar to an MIIC.

[22] CSC has designated Ms. Lindsay as a maximum-security offender. She is deemed to have high institutional adjustment issues marked by complex mental health problems, noncompliance with medication, inappropriate sexually explicit behaviour, difficulties following staff direction and institutional rules, manipulative behaviour, conflict with staff and other inmates, violent tendencies, and in need of constant management intervention and direct supervision. The accused is assessed as at moderate escape risk due to her life sentence, absence of remorse, and emotional instability. CSC considers the accused to be at high risk to public safety based on multiple factors that include her history of violent behaviour and possession of weapons in an institutional setting.

[23] In oral evidence Ms. Klatt noted a recent episode of October 2, 2021 when Ms. Lindsay was found to have converted a stereo into a weapon. She added that the accused's transfer to Kent Institution would likely occur early in 2022.

[24] Dr. Kolchak's report began by observing that Ms. Lindsay has repeatedly engaged in misbehaviour while in prison. He noted that there were about 50 such incidents between February 22, 2019 and August 10, 2021. He found that the accused's violent behaviour was driven by both antisocial attitudes and psychotic perception. The accused reports experiencing paranoia based on delusions of authorities being infiltrated by radio guided demons. The accused's thinking is disorganized at times and contributes to impulsive behaviour in the context of ongoing paranoia. Dr. Kolchak noted that the accused clearly feels the need to fashion weapons to protect herself and that she has not hesitated to use available weapons in past offences. He found that Ms. Lindsay's diagnoses of schizophrenia, substance abuse, and antisocial personality disorder were major contributors to past and potential future violence. He concluded Ms. Lindsay's risk for reoffending to be "clearly foreseeable" and "very high."

[25] Dr. Kolchak opined that the accused's history of poor engagement in programming constituted an additional risk factor. He noted that Ms. Lindsay did not engage in professional services outside of pharmacological treatment. He added that she continued to break institutional rules. In his opinion the combination of the accused's symptoms of psychosis and antisocial personality disorder posed serious management challenges even in a maximum-security correctional setting. He concluded that Ms. Lindsay requires the highest security environment in order to manage her risk. Should the accused be transferred to FPH, she would need to be placed in seclusion in order to prevent her from having direct contact with peers who would be at high risk of harm.

[26] Dr. Kolchak was questioned extensively in oral evidence. He said that the treatment that could be offered to Ms. Lindsay at FPH would not be different from what was being provided in prison. He reiterated that the accused's behaviour would be hard to manage in a hospital like FPH and that the correctional system was better designed to manage this type of risk. He stressed that the accused's identification as a female raised significant problems because FPH's policy would require her to be placed in a women's unit. Apart from the risk to other female patients, the female unit was not set up to manage maximum-security individuals like the accused. As a consequence, Ms. Lindsay would have to be placed in seclusion in order to protect vulnerable patients. He observed that FPH was designed with the aim of reintegration. This would not be possible for a significant period of time in view of the accused's life sentence.

[27] The Board heard evidence from Ms. Lindsay. When asked to describe her diagnosis she launched upon a lengthy historical description of her symptoms. She said that she wanted to be transferred to FPH because it was mentally unhealthy to be locked up in a correctional facility. She added she wanted to take programs such as dialectic behavioural therapy. She stated that she needs treatment, not punishment, and would accept seclusion. She explained that she had trouble doing some of her assigned homework because she lacked supervision. She acknowledged that she was currently in protective custody because she had made a weapon for self defence and that other persons wanted to kill her. She repeated that FPH would be a better environment than Kent because it would offer proper care for people who are mentally ill.

SUBMISSIONS OF THE PARTIES

[28] The Director, represented by Ms. Lovett, submitted that Ms. Lindsay should remain in prison. She argued that protection of the public was the most compelling factor, observing that the accused had been described as exceptionally dangerous by the trial judge in the NCRMD proceedings. She noted that the accused has never been at FPH apart from a few weeks for assessment and following the NCRMD verdict. She argued that Ms. Lindsay requires constant management intervention in a highly structured environment, that FPH was not designed to manage high security violent offenders like the accused, and that CSC offered more programs than FPH.

[29] The Crown, represented by Mr. Hillaby, adopted the submission of the Director. He argued that Ms. Lindsay would be provided with more privileges in prison than at FPH and that CSC had a vast array of resources that FPH lacked.

[30] CSC, represented by Ms. Hrenryk and Ms. Klatt, took no position as to what order the Board should make.

[31] Ms. Lindsay, represented by Mr. Abbey, sought transfer to FPH. He submitted that the accused continued to suffer from schizophrenia and that CSC was not appropriately meeting the accused’s treatment needs. He argued that the accused’s treatment at MIIC had failed to focus on her symptoms. He submitted that the accused’s planned transfer to Kent would not address these issues.

ANALYSIS

[32] The criteria for making a placement decision are set out in ss. 672.68 (2) and (3) of the *Code*:

> (2) **Placement decision by Review Board** – On application by the Minister or of its own motion, where the Review Board is of the opinion that the place of custody of a dual status offender pursuant to a sentence or custodial disposition made by the court is inappropriate to meet the mental health needs of the offender or to safeguard the well-being of other persons, the Review Board shall, after giving the offender and the Minister reasonable notice, decide whether to place the offender in custody in a hospital or in a prison.
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> (3) **Idem** – In making a placement decision, the Review Board shall take into consideration
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> (a) the need to protect the public from dangerous persons;
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> (b) the treatment needs of the offender and the availability of suitable treatment resources to address those needs;
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> (c) whether the offender would consent to or is a suitable candidate for treatment;
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> (d) any submissions made to the Review Board by the offender or any other party to the proceedings and any assessment report submitted in writing to the Review Board; and
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> (e) any other factors that the Review Board considers relevant.

[33] The Board's consideration began with the need to protect the public from dangerous persons. Ms. Lindsay has histories of extreme violence. She was found guilty of murder and NCRMD on two charges of aggravated assault in which she acknowledged that she intended to kill the victims. The nature and gravity of these offences are at the most serious end of the offending spectrum.

[34] As the report from Ms. Hrenryk and Ms. Klatt noted, Ms. Lindsay has demonstrated a propensity to impulsive use of weapons while engaging in the most serious forms of violence. The accused was convicted of carrying a concealed weapon in 2019. As recently as October 2021 she was discovered to have fashioned a weapon from a stereo. The CSC report notes that Ms. Lindsay does not accept responsibility for her offences, shows no remorse, and that all of her risk factors remain outstanding and require

intervention. CSC has designated the accused as a maximum-security offender and considers her to be at high risk for future violence.

[35] Dr. Kolchak similarly found that Ms. Lindsay's risk for reoffending was very high. He also commented upon the accused's use of available weapons in past offences and that she continued to make or conceal weapons in prison. He found that the accused required a highly structured environment such as that provided in prison and that FPH was not designed to manage high security violent offenders. He concluded that in the less structured environment of FPH, the accused would pose a risk serious threat to a "much more vulnerable population of chronically mentally ill patients." If the accused were transferred to FPH, she would need to be placed in a women's unit. The threat to other patients would then require that the accused be placed in seclusion in order to manage her risk.

[36] The Board had little difficulty accepting that Ms. Lindsay continued to be at high risk of future violence. If transferred to FPH, she would need to be placed in a woman's unit where she would be in proximity to vulnerable individuals. We note that one of the index offences of aggravated assault involved the sudden and entirely unexpected attack upon a cellmate. Ms. Lindsay was convicted of carrying a concealed weapon in 2019. As recently as October 2021, the accused was discovered to have made a weapon. The accused is designated by CSC as a maximum-security offender. The Board concluded that the need to protect the public from dangerous persons strongly favoured that the accused remain in prison.

[37] The Board next turned to Ms. Lindsay's treatment needs and the availability of suitable treatment resources. CSC offers a wide range of mental health services that includes regional hospitals such as RPC where the accused spent about a year. The accused has otherwise been in an MIIC unit for most of the other time that she has been in prison. Such units are designed to support individuals with mental illness and include regular access to a psychiatrist as well as other programs. The accused has been approved for transfer to Kent Institution to a unit similar to a MIIC. CSC has provided Ms. Lindsay with additional services to assist her in gender transition that include hormone therapy that began in 2021.

[38] The Board found that CSC has offered Ms. Lindsay access to a wide range of treatment resources while in prison. There was no evidence that FPH could offer different treatment modalities appropriate for the accused that were not available in prison. The

Board concluded that the accused's treatment needs and the availability of suitable treatment resources also favoured that she remains in prison.

[39] We next considered whether Ms. Lindsay would consent to or is a suitable candidate for treatment. The accused has been offered treatment opportunities that include dialectical behavioural therapy at RPC in 2018. However, following transfer to RPC Ms. Lindsay was found to be ambivalent about meeting with members of her treatment team, apart from her psychiatrist. She did not complete dialectic behavioural therapy. Significantly, she was discharged from RPC after about a year for reasons that included lack of engagement in her treatment plan. There was no evidence or cogent argument to support that the accused would be more likely to participate in treatment at FPH. Thus, this factor did not support that Ms. Lindsay's place of custody should be altered.

[40] We next turned to consideration of any submissions made to the Board or written assessment reports. The Board found the following opinion expressed by Dr. Kolchak at the conclusion of his report to be persuasive:

> 10. In my clinical opinion, Ms. Lindsay is a high risk for re-offending violently in the future despite maximum security environment she resides in. Her violence could be both premeditated or impulsive and likely will be of a serious nature. It will be exhibited when she perceives a threat towards herself from others in the context of ongoing paranoia related to psychotic perception of the world due to ongoing symptoms of Schizophrenia. Her coping style utilizes antisocial behaviours and she is habituated to deal with threats she perceives towards self violently. Because she perceives ongoing threats to her integrity this should prompt conceptualization of her violence as imminent at this juncture. It is also my opinion that this level of violence requires a structured environment that can only be provided in correctional services with access to mental health management, such as regional treatment centers in federal corrections. Should she be placed in lesser structured environment, she will pose a serious threat to much more vulnerable population of chronically mentally ill patients at FPH. Furthermore, her own freedoms are likely to be more restricted in a facility like FPH as her level of violence cannot be managed safely in the much less structured environment of the hospital and will require seclusion to manage it. Ms. Lindsay's current risk of violence, therefore, can only be mitigated by current extensive supervision scheme and cannot be managed at the Forensic Psychiatric Hospital, which is not designed to manage the high security violent offenders. Therefore, it is my clinical opinion the Ms. Lindsay is appropriately placed from both risk management and treatment needs perspectives.

[41] Lastly in considering any other relevant factors, we note that the only connection that Ms. Lindsay has with British Columbia arises solely as a consequence of

her brief visit to this province when she committed the index offences. There was no evidence to suggest that the accused has any supports or other relationships with this province. We note as well that one of the primary goals of a hospital such as FPH is eventual community reintegration. That is clearly not on the horizon.

[42] Taking into account all of the foregoing factors, the Board concluded that Ms. Lindsay's current place of custody as a result of her murder conviction is appropriate to meet her mental health needs as well necessary to safeguard the well-being of other persons. The Board therefore declined to make an order that would alter Ms. Lindsay's place of custody from prison to hospital.

Reasons written by B. Long with Dr. L. Grasswick and Dr. K. Polowek concurring.

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