# 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 DISPOSITION**
**IN THE MATTER OF**

**ALLAN DWAYNE SCHOENBORN**

| | | |
|---|---|---|
| **HELD BY:** | **Video** | |
| | **March 3, 2022** | |
| **BEFORE:** | **CHAIRPERSON:** | **S. Boorne** |
| | **MEMBERS:** | **Dr. J. Smith, psychiatrist** |
| | | **P. Singh** |
| **APPEARANCES:** | **ACCUSED/PATIENT:** | **Allan Schoenborn** |
| | **ACCUSED/PATIENT COUNSEL:** | **R. Gill** |
| | **DIRECTOR, AFPS:** | **Dr. R. Lacroix, A. Calinao** |
| | | **Dr. S. Coupland** |
| | **DIRECTOR'S COUNSEL:** | **D. Lovett, QC** |
| | **ATTORNEY GENERAL:** | **T. Shaw, M. Booker** |

## INTRODUCTION AND BACKGROUND

[ 1 ] On March 3, 2022, the British Columbia Review Board (the Board) convened a hearing under s. 672.81 of the *Criminal Code* (the *Code*) to review the disposition of Allan Dwayne Schoenborn. At the conclusion of the hearing, the Board reserved its decision. We subsequently ordered Mr. Schoenborn detained in hospital and extended discretion to the Director to grant the accused overnight stays in the community for a period not exceeding 28 days, for the purpose of assisting in his reintegration into society. These are our reasons.

[ 2 ] Mr. Schoenborn is before the Board as a result of a verdict of not criminally responsible on account of mental disorder (NCRMD) dated February 22, 2010, on three counts of first-degree murder. The index offences were committed between April 5 and 6, 2008 and the victims were the accused's three young children. They were 5, 8 and 10 years old.

[ 3 ] Mr. Schoenborn is 54 years old and carries diagnoses of delusional disorder, in remission; paranoid personality disorder traits; and alcohol and cannabis use disorders in sustained remission in a controlled environment. This is Mr. Schoenborn's ninth hearing before the Board. His personal and forensic histories are extensively documented in the exhibits and previous reasons for disposition and will not be repeated. In brief, the symptoms of the accused's delusional disorder have been in remission for many years and the primary focus of risk assessment and treatment relates to underlying personality features that include anger management issues. The accused has remained abstinent from all substances since his admission to the Forensic Psychiatric Hospital (FPH).

[ 4 ] The parties agree that Mr. Schoenborn continues to constitute a significant threat to the safety of the public, necessitating ongoing Board jurisdiction, and that detention in custody remains the necessary and appropriate disposition. The sole issue in contention at this hearing is whether the Board should extend discretion to the Director to grant Mr. Schoenborn overnight stays in the community for a period not exceeding 28 days, for the purpose of assisting in his reintegration into society.

[ 5 ] Mr. Schoenborn last appeared before the Board in 2020. At that time, the panel found that Mr. Schoenborn continued to present a significant risk to the safety of the public and made an order for a continued custody disposition. The panel also extended discretion to the Director to allow Mr. Schoenborn to have unescorted access to the community, depending on his mental condition and having regard to the risk he then poses to himself or

others. That disposition was extended on consent for a further 12 months in March of 2021.

**EVIDENCE AT THE HEARING**

[ 6 ] To prepare for the current hearing, the Board reviewed reports from Dr. Lacroix, Mr. Schoenborn's treating psychiatrist (Exhibits 89 and 92), three psychological assessment and treatment reports prepared by Dr. Druhn (Exhibit 87) and Dr. Coupland (Exhibits 88 and 94) as well as Review Board liaison reports prepared by Ms. Abdjalieva (Exhibit 90) and Ms. Calinao (Exhibit 93). Dr. Lacroix, Ms. Calinao and Mr. Schoenborn testified.

[ 7 ] Dr. Lacroix reports that Mr. Schoenborn continues to reside on the Elm North unit. His psychotic illness, which is treated with long-acting depot antipsychotic medication, remains in complete remission. All regular urine screens have been negative for any illicit substances. Mr. Schoenborn has good insight into his psychotic illness and the need for treatment. His medication is administered in an injectable format on a monthly basis and compliance is not an issue.

[ 8 ] Mr. Schoenborn's pattern of periodic irritability and abrasiveness with staff and co-patients has continued over the past year. Dr. Lacroix reports that this behaviour often occurs in response to taunting by others, or in the context of what Mr. Schoenborn believes is the inconsistent enforcement of rules or of the manner in which he is treated by staff. If staff members direct Mr. Schoenborn to do something in a certain tone, he can perceive this in a negative light, as if he is being singled out.

[ 9 ] Dr. Lacroix testified that several staff members approach Mr. Schoenborn differently due to the notoriety of his offences and frequently "pick on him." As a result, it can be difficult to disentangle staff bias from what might otherwise be a misinterpreted slight. He provided an example of a time when he reviewed Mr. Schoenborn's chart, which is stored at the nursing station and only accessible to staff. On the inside cover of the chart where a photograph of each patient is located, the word "killer" was written across the photograph. Dr. Lacroix testified that this incident demonstrates a biased attitude amongst some staff members that comes across in their dealings with Mr. Schoenborn on the unit.

[ 10 ] Dr. Lacroix testified that while there is no question that Mr. Schoenborn can be surly and irritable, it is unclear to what extent this kind of underlying bias from certain staff members triggers or perpetuates his response in individual situations. While Mr.

Schoenborn's behavioral response is frequently belligerent, it is not physically aggressive or violent.

[ 11 ] Mr. Schoenborn continued individual psychotherapy sessions with Dr. Coupland which have focused on interpersonal issues and managing stressors associated with community reintegration. Dr. Coupland reports that she has met with Mr. Schoenborn approximately once per month since July 2020. Treatment has focused on addressing his underlying hostile attributional style, improving his interpersonal relationships and skills, promoting flexible thinking and enhancing his motivation.

[ 12 ] Mr. Schoenborn continues to be willing to engage in psychological counselling, accept feedback, and implement what has been discussed in his daily life. He continues to struggle with managing his emotions in the moment but, when he is less emotionally heightened, has demonstrated the ability to engage in flexible thinking and take responsibility for his contribution to negative interactions. According to reports from nursing staff mentioned in Dr. Coupland's report, Mr. Schoenborn continues to be abrupt and argumentative but will later take responsibility for his behaviour and apologize to staff. Dr. Coupland recommends that Mr. Schoenborn continue to engage in one-on-one psychological treatment during the coming year, particularly as he begins to move forward in his transition into the community.

[ 13 ] Dr. Lacroix testified about an incident in July 2021 when Mr. Schoenborn was subject to an unprovoked attack from behind by a co-patient in the TV room. The altercation which was captured on video shows Mr. Schoenborn and his assailant falling to the ground and exchanging punches for a few seconds. That same video shows them subsequently standing up and calmly cleaning up the furniture that had been knocked around during the incident. At the request of the Crown, the panel viewed the video in chambers at the conclusion of the hearing.

[ 14 ] Dr. Lacroix testified that the assailant was one of Mr. Schoenborn's friends and that neither patient reported the incident until it came to light the following day when staff noticed a facial injury to the other patient. Dr. Lacroix testified that his review of the video satisfied him that Mr. Schoenborn was attacked by the co-patient and defended himself. In his opinion, Mr. Schoenborn's response did not appear to be disproportionate in the circumstances.

[ 15 ] Mr. Schoenborn completed the MATRIX drug and alcohol recovery program in the spring of 2020. Dr. Lacroix testified that Mr. Schoenborn was subsequently enrolled in a

MATRIX aftercare program for drug and alcohol abstinence held at FPH in early 2021. Due to some interpersonal tension between Mr. Schoenborn and the group facilitator, he declined to participate further and the treatment team determined that continued drug and alcohol abstinence treatment could be pursued during his individual psychotherapy sessions.

[ 16 ] Dr. Lacroix testified that Mr. Schoenborn has participated in a number of escorted and unescorted community outings during the past year and no problems have been reported. The next step in preparing him for community reintegration involves a transfer to the minimum-security Hawthorne unit where his independent living skills can be assessed and refined. It is anticipated that this transfer will occur within the next few months. Patients in the Hawthorne unit live in independent cottages on the hospital grounds but are responsible for their own cooking, cleaning, shopping and other activities of daily living.

[ 17 ] Dr. Lacroix testified that the treatment team has been working with Mr. Schoenborn to secure community-based employment which is a necessary precursor to any form of extended community access. Mr. Schoenborn has been working with vocational counsellors to create a resume and prepare for job interviews. He also attended a week-long community-based skills building workshop in September 2021 where he obtained several certifications in safety and equipment operation.

[ 18 ] Reintegration planning will also include identifying suitable living accommodation for Mr. Schoenborn in the community. Dr. Lacroix reports that he believes independent housing will be more suitable given the dynamics at play in a group living situation. These dynamics make it much more likely that any community placement would fail due to incompatibilities with co-residents or staff. The need for independent housing highlights the importance of Mr. Schoenborn being able to maintain secure employment in order to subsidize his current disability allowance which will be insufficient for him to live on. Mr. Schoenborn has met his community forensic treatment team and rapport was quickly established. The team has also identified a community-based MATRIX aftercare social support group for Mr. Schoenborn.

[ 19 ] Dr. Lacroix reports that he has assessed Mr. Schoenborn’s risk of violence using the HCR-20 version 3 instrument. His risk assessment remains unchanged from previous years and highlights two foreseeable risk scenarios. The first involves potential violence resulting from intensifying psychotic symptoms that could be expected to develop if Mr. Schoenborn were to stop taking his antipsychotic medication with potential exacerbation of

these symptoms with cannabis use. Dr. Lacroix testified that, in his opinion, a relapse to alcohol on its own would not lead to the development of psychotic symptoms. However, adding alcohol to the above scenario could certainly exacerbate Mr. Schoenborn's psychosis or impair his ability to control his impulses.

[ 20 ] The second foreseeable risk scenario would involve reactive aggression arising from interpersonal conflict. This could occur in the absence of psychotic symptoms. Dr. Lacroix reports that this kind of behaviour has mostly arisen at FPH in response to disparaging remarks made by co-patients concerning Mr. Schoenborn's index offences. Dr. Lacroix testified that Mr. Schoenborn has previously been assaulted by co-patients and, on one occasion, suffered a serious head injury after he was attacked by a co-patient who struck him with billiard balls wrapped in a sock. Dr. Lacroix reports that the incident where he was attacked by a co-patient in July 2021 demonstrates that it is unlikely that Mr. Schoenborn's response in defending himself would be disproportionate to the trigger. Alcohol use would increase the risk of Mr. Schoenborn engaging in this kind of behaviour.

[ 21 ] Dr. Lacroix reports that Mr. Schoenborn's risk of reactive violence is much higher in the confined environment of an institutional setting where he is subjected to repeated taunting and insults and where patients are forced to deal with each other 24 hours a day. That kind of situation would not be replicated in the community. Dr. Lacroix testified that Mr. Schoenborn carries a great deal of guilt and shame. If he were recognized and taunted in an employment situation or by a neighbour, Mr. Schoenborn would be unlikely to engage in violence but would rather simply leave and return to hospital.

[ 22 ] Dr. Lacroix testified that the treatment team will be working hard to attempt to limit the potential for these kinds of scenarios to develop in the community. This will involve any future employers and landlords being fully aware of Mr. Schoenborn's case and all of the issues that may arise given his notoriety.

[ 23 ] Mr. Schoenborn testified that he would like to have the opportunity to work and live an everyday normal existence outside of the hospital. His greatest fear is being found out in the community. He testified that he would "tuck tail and run" away from any altercation with a member of the public and return to hospital. He acknowledged that if he were "jumped" like he was in the TV room in July 2021, he would likely protect himself.

[ 24 ] Mr. Schoenborn testified that he has learned a lot from therapy including how to not be so reactive but that this was a slow process. He has had numerous successful community outings with his mother and had a very positive impression of his newly

assigned forensic outpatient treatment team. Mr. Schoenborn was questioned about his potential for relapsing to substance use in the face of the stress of living and working in the community. He testified that he has had significant problems throughout his stay at FPH, including repeated taunting from co-patients and staff. Despite this, he has not resorted to substance use and is “absolutely positive” he will not do so in the future. He testified he has been abstinent for 14 years and enjoys sobriety.

[ 25 ] Mr. Schoenborn testified that he will continue to take medication as long as his doctors recommend it. He is aware of what could happen if he stops taking medication or relapses to substances, and that scares him. He testified that he wants to be the best he can be and does not wish to threaten anyone. Taking medication is an easy step that he can take to minimize the risk he presents. Mr. Schoenborn expressed his gratitude to his treatment team, acknowledged that he has made mistakes during the course of his treatment and testified that he is “just trying to take it one day at a time.”

**SUBMISSIONS**

[ 26 ] In closing submissions, Ms. Lovett for the Director submitted there was no issue regarding the Board’s jurisdiction or the continued need for a custodial disposition. She highlighted the most salient risk factors which include Mr. Schoenborn’s chronic psychotic illness, his personality difficulties and his substance use. His illness is in remission and well treated. The risk of relapse to alcohol is low with Mr. Schoenborn displaying good insight and an intrinsic desire to remain abstinent. Ms. Lovett highlighted that Mr. Schoenborn has participated in 14 escorted day leaves with his mother and approximately another 14 unescorted day leaves in addition to numerous staff escorted community outings. All have been without incident.

[ 27 ] Ms. Lovett submitted that given all of the evidence including the number of successful community outings, the least onerous and least restrictive disposition in this case is to extend discretion to the Director to grant Mr. Schoenborn overnight stays in the community for a period not exceeding 28 days, for the purpose of assisting in his reintegration into society. Should the Board extend this authority to the Director, any such recommendation would be exercised in a manner that recognizes the overarching paramountcy of public safety.

[ 28 ] Ms. Booker for the Crown submitted that the evidence did not establish that Mr. Schoenborn had addressed the ongoing risk presented by his substance use. She

highlighted the very real difference between managing the challenges presented by substance use in the controlled setting of the hospital versus in the community. The Crown also submitted that there were continuing challenges with respect to anger control and that Mr. Schoenborn demonstrated a tendency to rely on interpersonal violence, notwithstanding the fact that his psychotic illness is in remission and that he is sober. Ms. Booker highlighted the risk scenario involving Mr. Schoenborn's misinterpretation of the behaviour of others which could include people that he might find himself engaged with in the community. When in hospital, any aggression can be quickly responded to and controlled by staff and security officers. This is not necessarily the case in the community. Ms. Booker also highlighted the fact that Dr. Lacroix and Dr. Coupland would both be leaving the hospital shortly and submitted that this could lead to a destabilizing situation for Mr. Schoenborn. The Crown submitted that Mr. Schoenborn required further improvement before overnight stays in the community should be considered.

[ 29 ] Mr. Gill on behalf of Mr. Schoenborn submitted that the evidence supported the viability of the recommendation put forward by Mr. Schoenborn's treatment team. He took issue with the Crown's repeated arguments regarding dangerousness, anger management problems and destabilization resulting from a change in treatment team. He submitted the Crown made the same argument in 2019 when Mr. Schoenborn's previous treating psychiatrist left the hospital and he was replaced by Dr. Lacroix. Despite this, Mr. Schoenborn has continued on a positive trajectory toward community reintegration. Mr. Gill submitted that the argument about how Mr. Schoenborn would react if taunted by a member of the community was speculative. He submitted that a member of the public who was aware of Mr. Schoenborn's reputation would be highly unlikely to taunt him. The experiences of taunting which have led to reactive aggression have been in the context of his being held in a secure setting with people who are well aware of his demeanour. He submitted that the panel should rely on the medical evidence of Dr. Lacroix and Dr. Coupland which has consistently predicted what would occur as Mr. Schoenborn was granted greater degrees of privileges.

## ANALYSIS AND DISPOSITION

[ 30 ] The Board's decision is governed by s. 672.54 and s. 762.5401 of the *Code*:

> **672.54** When a court or Review Board makes a disposition under subsection 672.45(2), section 672.47, subsection 672.64(3) or section 672.83 or 672.84, it shall, taking into account the safety of the public, which is the paramount consideration,

the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused, make one of the following dispositions that is necessary and appropriate in the circumstances:

(a) where a verdict of not criminally responsible on account of mental disorder has been rendered in respect of the accused and, in the opinion of the court or Review Board, the accused is not a significant threat to the safety of the public, by order, direct that the accused be discharged absolutely;

(b) by order, direct that the accused be discharged subject to such conditions as the court or Review Board considers appropriate; or

(c) by order, direct that the accused be detained in custody in a hospital, subject to such conditions as the court or Review Board considers appropriate;

**672.5401** For the purposes of section 672.54, a significant threat to the safety of the public means a risk of serious physical or psychological harm to members of the public — including any victim of or witness to the offence, or any person under the age of 18 years — resulting from conduct that is criminal in nature but not necessarily violent.

[ 31 ] All parties agree that Mr. Schoenborn continues to constitute a significant threat to the safety of the public and the panel has no hesitation in making this finding, which is amply supported by the evidence.

[ 32 ] Having found the accused continues to meet the threshold for Board jurisdiction, we are required to consider the necessary and appropriate disposition. The disposition that is necessary and appropriate is also one that is the least onerous and least restrictive, as explained in *McAnuff (Re)*, 2016 ONCA 280:

> The "necessary and appropriate" standard came into force on July 11, 2014. Before then, the *Criminal Code* required that the disposition be the "least onerous and least restrictive to the accused". This court has endorsed the Board's view that the two standards are synonymous – in other words, the "necessary and appropriate" disposition is also the "least onerous and least restrictive" disposition: *Ranieri (Re*), 2015 ONCA 444, 336 O.A.C. 88, at paras. 20-21. The change in language was meant to clarify the standard and make it easier to understand, not to modify it. Thus, the jurisprudence developed under the least onerous and least restrictive standard continues to apply to dispositions under the necessary and appropriate standard (para 22).

[ 33 ] There is no issue amongst the parties that the necessary and appropriate disposition in this case is a custody order. We agree. There is no discharge plan in place which would allow Mr. Schoenborn to reside in the community. He has also not secured

employment and we accept the evidence of Dr. Lacroix that stable employment needs to be a precondition to any form of overnight stays in the community. We also accept the evidence of Dr. Lacroix that Mr. Schoenborn's risk will be more safely managed in the community if he were to reside in independent housing, as opposed to shared staff supervised accommodation, as the latter will increase the risk of taunting by peers, thereby leading to negative interactions similar to those that have occurred at FPH and potentially sabotaging the placement.

[ 34 ] On the issue of overnight leaves to the community, the panel has carefully reviewed the evidence and the submissions of the parties including the victim impact statement filed by MC in 2019 which was highlighted by the Crown during this hearing. .

[ 35 ] We accept the evidence of Dr. Lacroix that the most salient risk factor in this case is Mr. Schoenborn's psychotic illness which has been in remission for many years and which is fully controlled through an injectable form of long-acting antipsychotic medication. We note that given the long-acting nature of this medication, even if Mr. Schoenborn were to stop taking it, it would be many months before his psychotic illness would re-emerge. We accept the evidence of Dr. Lacroix that during that time any significant decompensation in his mental state would be noted and addressed by his treatment team either at FPH or in the community.

[ 36 ] We note the uncontroverted evidence that the accused has been abstinent from substances for approximately 14 years, has no history of involvement in the institutional contraband trade and appears genuinely motivated to abstain from substance use. We note that issues around the need for continued abstinence from substances can be addressed in one-on-one psychological counselling and that dedicated group substance use aftercare counselling is not a prerequisite to managing that risk.

[ 37 ] The panel accepts the evidence of Dr. Lacroix that Mr. Schoenborn has insight into his anger issues and that he has a reasonable retrospective view of his actions in these situations. The panel also reviewed the video of the altercation involving Mr. Schoenborn on July 21, 2021 and we find no reason to dispute Dr. Lacroix's opinion that Mr. Schoenborn's response was proportional to the situation, given the circumstances of being in a confined environment with other psychiatric patients.

[ 38 ] The panel notes that in our experience, the Director has proceeded in an incremental and cautious manner in extending privileges in these kinds of cases. In light of the foregoing, we are satisfied that the plan put forward by the Director is well-thought-out

and, if properly implemented, will adequately manage the risk to the community occasioned by visit leaves. We find that the necessary and appropriate disposition in this case includes extending the potential for Mr. Schoenborn to be able to access the community on overnight visit leaves not exceeding 28 days in order to assist with his reintegration.

[ 39 ] This order is reviewable in 12 months.

Reasons written by S. Boorne with Dr. J. Smith and P. Singh concurring.