



[ 1 ] CHAIRPERSON: On March 19th, 2008 the British Columbia Review Board convened an early hearing to once again review its disposition in the matter of C.F.S., a "young person" within the meaning of the former *Young Offenders Act, Canada*. C.F.S. is now 26 years of age.

[ 2 ] C.F.S.' index offences occurred between July and October of 1997. They consist of three counts of sexual assault and two counts of sexual touching of a minor under the age of 14. C.F.S.' index offences, his personal and developmental history, as well as his procedural history under the respective jurisdictions of the Yukon and British Columbia Review Boards as a result of his September 1999 verdict of NCRMD, are all well chronicled in the evidence before us and in particular in reasons for disposition resulting from his various Review Board appearances.

[ 3 ] This panel of the BC Review Board is mindful and continues to consider all of that history in its decision-making with respect to the current hearing. We accept the various findings of fact and conclusions arrived at by our predecessors over the course of at least 14 previous hearings. Of significance is C.F.S.' developmental impairment which, on testing in excess of ten years ago now, indicates that he functions at an IQ level of 40. As we have had occasion to observe him year over year, he also presents with communications impairments, hearing loss, asthma and seizures.

[ 4 ] His offences, which he in the main admitted, represent the culmination of a period of some 12 months of inappropriate sexual touching or behaviour toward young children. The victims of the index offences were under ten years of age.

[ 5 ] An assessment performed by Dr. Riar at Exhibit 15 dated April 6th, 1998, refers to this accused's somewhat recent history of inappropriate behaviour and, in particular, a worrying comment that, in addition to of course being unconsented to, his persistence in touching his young victims may have contained an element of coercion:

"His inappropriate sexual behaviours towards children emerged only within the last year and a half and there have been at least four victims. In some circumstances, he was forceful in satisfying his urges and disregarded the victims' responses of distress. It is difficult to ascertain whether his abhorrent behaviours were paraphiliac (sic) in nature, as it was difficult to access his thinking process. Having said that, his tendency to choose younger victims, repetitive touching and being forceful raises some concern." (Exhibit 15)

[ 6 ] Throughout C.F.S.' time under Review Board jurisdiction the accused has remained in the community, under the supervision and care of his family and extended family members. That rather impressive system of intrafamilial monitoring and supervision has been the subject of considerable comment by this Review Board. In our estimation, C.F.S.' family has never demonstrated anything in the way of inordinate or inappropriate denial of the accused's challenges or the potential risk they present to others. Nevertheless, the family has been steadfast in not only providing but in apparently understanding the need for consistent and continuous monitoring and management of their son and sibling. It should also be observed that, until very recently, C.F.S.' family, who have consistently participated and been parties to his Review Board proceedings, have not strongly advocated for his absolute discharge from this *Criminal Code* scheme.

[ 7 ] The chronicity or permanence of C.F.S.' mental impairment, resulting in a degree of immaturity, potential opportunism or impulsivity, and uninhibited by adequate social judgment, together with what have come to be called pedophilic tendencies or traits, have supported our successive conclusions or findings that this accused could, notwithstanding the extraordinary efforts of his family, pose a significant threat to the safety of others, especially if he were not fully supervised, including through forensic and collateral resources. This conclusion has been reached despite a considerable period during which C.F.S. has demonstrated no concerning or inappropriate behaviours. As per the Review Board's reasons of February 13th, 2007:

“The Review Board took time to consider the evidence and its disposition. While we agree with Mr. Hillaby that given the extraordinary and supportive efforts of his family an absolute discharge is a legitimate and not unrealistic consideration, there are as yet insufficiently developed plans, programs and services to effect the accused's firm reintegration into the community. At this point the accused continues to need consistent supervision. Failing such supervision and structure, his impulsivity, social immaturity and lack of judgment might still cause him to behave in a manner which subjects others to an unacceptable level of risk. At the same time, we are hopeful that in the next reporting period this insightful and capable family can be provided with the resources it requires to support their son on an ongoing basis without ongoing forensic psychiatric intervention.” (Exhibit 85, paragraph 24)

[ 8 ] That consistent threshold determination was most recently supported in independent risk assessment information developed and gathered at the request of the

Review Board in an order dated February 13, 2007. The results of our inquiry are documented in reasons for disposition dated October 3rd, 2007 and found at Exhibit 92. Those reasons quote the independent assessor, Dr. Lopes, who in the course of his assessment concludes that C.F.S. at that time continued to pose a moderate to high risk of reoffending should his then level of supervision not be maintained.

[ 9 ] That independent assessment was brought forward by the Director's expert treating psychiatrist, Dr. Wang, whose assessment of risk is cited at paragraph 16 of Exhibit 92:

"In response to the Review Board's request for a comprehensive risk assessment, Dr. Wang cited:

- the accused's lack of insight regarding his sexual offending issues;
- the risk of impulsive behaviour under unsupervised circumstances and the accused's likely difficulties/limitations in controlling his own behaviour;
- inconsistencies in the non-disclosures regarding his sexual interests related to Dr. Wang and Dr. Lopes;
- though the accused honestly does not want to re-offend, he acknowledges the possibility." (Exhibit 87, paragraphs 3, 5 & 7)

[ 10 ] Dr. Wang succinctly summarizes:

"There are two important factors to consider in an assessment of C.F.S.' sexual functioning and risk of reoffending. The first is developmental delay and the poor social judgment associated with this. The second is access to children and the potential for sexual behaviour toward children as a function of opportunity. Whether or not C.F.S. is considered to be a pedophile, these two factors are still the main issues in his risk management. Unfortunately, they are chronic issues and are difficult to manage."

[ 11 ] In its analysis of the evidence tendered on October 3rd, 2007, the Review Board cited a number of critical considerations in continuing its jurisdiction over C.F.S. Those are found at paragraph 23 of Exhibit 92 and will be commented on further in so far as they remain relevant in our current decision-making.

[ 12 ] On the basis of the evidence available on October 3rd, 2007, the Review Board determined to continue its jurisdiction over C.F.S., albeit under a slightly relaxed supervisory scheme, and in order to provide the designated party, Ms. Trimble, the opportunity to present a concrete, culturally relevant, community-based treatment and

supervision plan that would enable the withdrawal of forensic and Review Board jurisdiction without exposing the community to undue risk. It was our expectation that the Director of FPSC and the accused's family would collaborate in the identification and development of an array of culturally compatible services to manage the accused beyond FPSC auspices.

[ 13 ] In summary then, the following themes emerge from a review of previous proceedings respecting this young man: risk assessments which indicate a certain chronicity or ongoing risk due to the accused's apparent sexual interests, although these appear to be evolving, coupled with the permanency of his cognitive impairments; the ongoing and continuous availability of a family which is capable of providing adequate supervision with the assistance of certain collateral services; an ongoing assessment of the strengths and weaknesses of the accused's family and extended family systems; a desire on the part of the family to identify, utilize and manage their son in a more culturally compatible milieu; and a recent desire to move beyond the coercive jurisdiction of the Criminal Code as represented by this tribunal.

[ 14 ] Turning first to the new evidence adduced by the Director of AFPS. Mr. Snyders, the forensic case manager, has continued to see the accused for an hour or so every six weeks. He has also had conversations with members of the accused's family and staff of his Chilliwack-based Community Living programs. The accused continues to reside with his family and attends his supervised Community Living programs in Chilliwack five days per week.

[ 15 ] Recently, an additional social component in the form of Friday evening activities have been added which the accused also attends. He apparently enjoys the program, has been in the main cooperative, polite, and is well regarded by his peers and staff. He appears to benefit from the program.

[ 16 ] Following the Board's last order, the accused has been allowed minimally freer access to the community in his immediate neighbourhood. There have been no reports of problematic behaviours. It appears that the family has embarked on a business venture and have decided to lease premises with a view to operating a restaurant. The accused assists in that venture. In terms of his social activation he has also has the benefit of a one-to-one worker with whom he accesses the community weekly.

[ 17 ] There have been some reports of what might be termed socially inappropriate vocal and staring behaviours, although on close questioning Mr. Snyders did not characterize that conduct as evidence of increased or high risk to others. Mr. Snyders also reports that the accused has been seeing Dr. Lopes, the previously mentioned psychologist, for sex offender counseling, bi-weekly. He agrees to continue with the Chilliwack Society for Community Living. Although, as that service is funded by FPSC, it would not be continued if the accused were absolutely discharged. Although requested to do so by the Review Board's previous order, Mr. Snyders provides evidence that he has, despite some efforts, been unable to identify or access any relevant, culturally compatible, First Nations programs to which to refer C.F.S.

[ 18 ] Although the accused could continue to access his Community Living Services day programs, as well as continuing to enjoy the assistance of a one-to-one worker, if absolutely discharged he would no longer be provided with the transportation benefits he now enjoys as this is again a service which is currently funded by FPSC.

[ 19 ] The Review Board was once again provided with an expert assessment from Dr. Wang which was augmented by a one-page submission entered at the hearing and entitled "*A Proposed Safety Plan for C.S.*" Dr. Wang has only seen the accused twice since his last hearing in October. He comments on the so-called socially inappropriate behaviours identified by his one-to-one workers which, coincidentally, the accused denies.

[ 20 ] There was also a concerning note contained in Dr Wang's report which suggested that the accused had been working as a "bouncer" at an exotic dance establishment. That concern was responded to by the accused's mother in the course of her evidence.

[ 21 ] In terms of exploration of C.F.S.' sexual functioning or interests, he has improbably and somewhat inconsistently reported masturbating anywhere from five to fourteen times per day. He has as yet not consented to a course of antiandrogen or other medication intended to dampen his highly developed sex drive or what Dr. Wang calls his hypersexuality. Dr. Wang considers that a course of an SSRI might be helpful in that regard.

[ 22 ] Dr. Wang also reports that the psychologist, Dr. Lopes, has indicated that the accused has difficulty in remembering reoffence prevention strategies between sessions. Although the accused does not appear highly engaged in psychotherapy, he does appear

to have an "honest desire not to reoffend." During more intensive or focused discussions of sexual matters, the accused tends to tangent away or change the subject. He does indicate that he reviews the prevention strategies with his family.

[ 23 ] Dr. Wang continues to endorse that the accused presents with pedophilic interests and a highly active libido. He does acknowledge that, despite the slight reduction in supervision over the past six months, the accused's behaviour has not been the subject of any concerns with regard to inappropriate behaviour. This positive progress may represent a slight reduction in risk. Nevertheless, Dr. Wang continues to endorse the notion that an adequate level of supervision is the critical component in managing this accused's risk in the short to intermediate term. Beyond his sexual interests, C.F.S. presents with no other identified AXIS I disorders.

[ 24 ] Dr. Wang also acknowledges that the supervision that has been and continues to be provided by the accused's family and extended family members, and augmented by CLS programs, has been effective. It is noteworthy that the family understands and accepts the importance of supervising the accused. Dr. Wang also reiterates that the accused appears to have an understanding that it is wrong to sexually approach children and that he does not want to reoffend, although he requires external controls to help him maintain that prosocial desire. Dr. Wang also supports the accused's access to First Nations specific programs to enhance socialization and to provide a degree of social modelling for him.

[ 25 ] The designated party, Ms. Trimble, provided a document entitled "*A Cultural and Safety Plan for C.S.*" which was received at Exhibit 96. It was tabled in satisfaction of the Board's requirement, outlined in its most recent reasons, for a more concrete plan of culturally appropriate service provision. In essence, Ms. Trimble, on behalf of C.F.S.' family, agrees to have the accused continue to see Dr. Lopes or another psychologist; to link the accused to a nonforensic community psychiatrist in May of 2008; to maintain the family's and extended family's level of direct supervision and activation, as well as to attempt to involve the accused in First Nations programs to the extent these are identifiable and accessible, along with the family's and its social group's own cultural and social activities and ceremonies.

[ 26 ] Although we welcome Ms. Trimble's outline, it must be said that much of it is expressed in conditional language. It falls short of an ideal or concrete plan or recitation of services that actually will be offered the accused.

[ 27 ] Once again the accused's mother, who has been a consistent witness in support of her son, gave evidence describing C.F.S.' typical days, including the additional activity of assisting her at the family's restaurant after his daily CLS programs. She also provided evidence that the family now has improved transportation resources and that in the short term at least the family will assume responsibility for the accused's travel to and from his CLS programs. In the longer term she would like to see the accused graduate beyond those programs and to become an active, functioning participant in the restaurant venture.

[ 28 ] She also tells us, and we have come to view her as an entirely credible and informed witness, that she has not noticed that C.F.S. has been or is engaging in any unusual or concerning sexual behaviours, either in the community or privately. If concerns arose, she persuaded us that she would seek help as she has done in the past. She has not seen him try to touch or approach any young persons. She clarified that the accused was not acting as a "bouncer" at the dance establishment. She agrees to continue to comply with at least steps 1 to 5 of Dr. Wang's safety plan. She acknowledged feeling that FPS supervision is no longer necessary to maintain her son safely in the community.

[ 29 ] C.F.S., despite his language and expressive problems told us, that he enjoys working in the family's restaurant; that he would continue to attend psychologist Lopes and see a community psychiatrist. He was proud that he had obtained his food safety certificate while in the Yukon. He had no complaints vis-à-vis his treatment by peers in the community.

[ 30 ] Once again the Review Board, in its decision-making, reacquainted itself with the historic evidence relevant to this longstanding accused. We remind ourselves that C.F.S. has throughout been managed in the main by the supportive supervision and monitoring of his family, which we have no reason or evidence to believe would change absent forensic involvement.

[ 31 ] Although C.F.S.' clinical presentation and picture remain and are expected to remain unchanged, it would appear that the past and ongoing supervision of his family has successfully managed his risk for close to ten years now. Importantly as well, C.F.S.

