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T G.M.P. (Re)

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 IN THE MATTER OF the Disposition Hearing of
G.M.P. a.k.a. G.M.P. (a young person)

[1999] B.C.R.B.D. No. 33

British Columbia Review Board
B. Walter, Chairperson, A. Marcus and
J. Budden-McMurdo, Members

June 28, 1999.

(86 paras.)

Appearances:

G.M.P., accused/patient.

D. Nielsen, counsel for the accused/patient.

M. Acheson, counsel for the Director AFPS.

K. LeReverend, counsel for the Director YFPS.

L. Hillaby and R. Harris, for the Attorney General.

N. Sharma and H. Hughes, for the Ministry of the Attorney General.

CHAIRPERSON:--

1.0 INTRODUCTION

¶ 1 On June 15, 1995, GMP was charged with aggravated assault, assault causing bodily harm, sexual assault causing bodily harm, threatening and possession of a dangerous weapon: see Exhibits 38, 12.

¶ 2 On December 22, 1995 GMP was given a verdict of NCRMD at Kamloops, BC and ordered hold in custody at MATC (The Maples) pending review and disposition by the BC Review Board, (BCRB).

¶ 3 A review of the materials resulting from previous Review Board disposition hearings support the

conclusion that GMP's case has been and continues to be complex and challenging from clinical treatment planning, case management and legal perspectives.

¶ 4 As of February 9, 1998 GMP was given a disposition of discharge on conditions allowing him to reside in a supervised non custodial setting under the joint direction and supervision of both the Director Adult Forensic Psychiatric Services (AFPS) and the Director Youth Forensic Psychiatric Services (YFPS) (MCF): [Ex. 38]. GMP reached the age of 19 years on May 22, 1998.

1.1 BACKGROUND TO THE CURRENT HEARING & DISPOSITION

¶ 5 After the Board's February 9, 1998 disposition, counsel for GMP requested an early hearing to review that disposition on the basis that:

- * GMP had successfully completed the LINK rehabilitation program and his ongoing residence there was inappropriate; and
- * Due to funding constraints no appropriate alternative placement had been secured by the "Directors", other than placement at FPI, despite the absence of an AXIS I diagnosis.

¶ 6 An early review hearing was granted and scheduled for July 23, 1998. At the outset of this hearing GMP's advocate raised a number of issues and questions including:

- * The designation of FPI as a facility for the custody and treatment of a "young person", [Young Offenders Act, (Y.O.A.)];
- * The authority, in light of case law, to place GMP in FPI under the auspices of a "conditional discharge";
- * The authority of the Review Board to direct placement of an accused on a specific ward or unit within FPI.

¶ 7 The July 23, 1998 hearing was adjourned to accommodate the preparation of legal submission on these issues by the parties.

¶ 8 A further hearing was scheduled for September 28, 1998. A further adjournment was requested on behalf of GMP in order to generate additional disposition information including an independent psychiatric assessment.

¶ 9 On September 29, 1998 at GMP's request the Review Board amended its disposition of February 9, 1998, to clarify that under its terms GMP was entitled to unsupervised access to community: [Ex. 38].

¶ 10 On September 30, 1998 the Director YFPS moved GMP from the LINK program to a residential facility known as the "White House".

¶ 11 A further hearing was scheduled for November 30 and December 1, 1998. Counsel for the Director AFPS requested an adjournment due to the late submission of disposition information.

¶ 12 On December 10, 1998, counsel for GMP filed Notice Pursuant to Constitutional Questions Act, indicating her intention to argue that Ministerial Order M-427, (August 16, 1995), was ultra vires and in contravention of s. 15 of the Charter: [Ex. 56].

¶ 13 A hearing was convened for January 26 and 27, 1999. The Board heard evidence over the course of those 2 days and, with the consent of the parties, imposed a short order of discharge subject to conditions on the same terms and conditions as were imposed February 9, 1998, to be further reviewed on or before April 30, 1999: [Ex. 62].

¶ 14 This short-term resolution was implemented in order to enable GMP's counsel to obtain further detailed information from the Directors in writing as well as to establish a schedule for the parties to produce, exchange and submit legal argument with respect to the constitutional issues raised; in particular the preliminary issue of the Board's capacity or jurisdiction to consider Charter issues; as well as the matter of the Board's authority to specify placement within FPI.

¶ 15 Circumstances prevented the submission of arguments before the stipulated deadlines for further review of the January 28 disposition. On April 29, 1999 the Board made a new interim or bridging disposition with the consent, and in the absence of, the parties, to be further reviewed by July 1, 1999.

¶ 16 A further hearing was scheduled for May 11, 1999 for the express narrow purposes of issuing the Board's decision on the issue of its jurisdiction to consider Charter questions, and to hear GMP's counsel's arguments with respect to the Director's failure to respond fully to her written interrogatories. The Board issued its decision that it did have the authority and jurisdiction to apply the Charter in the context of the GMP case. On May 13, 1999 counsel for the Attorney General of British Columbia served Notice of an application to set aside the Board's decision and to prohibit the Board from considering Charter arguments in the GMP matter. This application stands adjourned sine die.

¶ 17 Finally, a hearing was convened on June 28, 1999 to enable the Board to complete its review of GMP's clinical and residential circumstances, including hearing the accused, and to render an appropriate disposition pursuant to s. 672.54 Criminal Code of Canada.

¶ 18 The proceedings of January 26 and 27, May 11, and June 28, 1999 are described in greater detail below.

2.0 EVIDENCE RECEIVED CONSIDERED FOR DISPOSITION OF JUNE 28, 1999

2.1 HEARING OF JANUARY 26, 27, 1999

¶ 19 In preparation for the hearing of January 26, 27, 1999 a series of clinical reports generated over the course of more than 6 months were submitted as disposition information. These are summarized as follows:

EXHIBIT 40: M. FOREMAN, PHD (July 9, 1998)

¶ 20 At the time of this report GMP continued to reside at the LINK program where, in addition to sexual offender programming, he was provided with modules in incorporating communications, life, and independent living skills. He also completed a vocational planning and job hunting program in the community (PARC).

¶ 21 Dr. Foreman indicated that GMP had been compliant to program rules and staff direction. His family remained generally uninvolved in his clinical progress. GMP presented as somewhat reluctant to assume greater responsibility for himself and to expand his opportunities and involvement in the community. He had not responded actively to employment challenges or opportunities.

¶ 22 Although Dr. Foreman's involvement with GMP was terminated as of September 30, 1998, the date of his transfer to the White House residence, Dr. Foreman also provided oral information at the hearing. Dr. Foreman does not ascribe to GMP a diagnosis of sexual sadism or gerontophilia [see Ex. 49, 53]. Rather he ascribes a diagnosis of conduct disorder and substance abuse disorder, both in remission.

¶ 23 Dr. Foreman expressed concern that no formal alcohol and drug treatment programming had been provided to GMP and about the degree and level of supervision GMP was receiving at the White House residence. In Dr. Foreman's view GMP was (as of his assessment) not yet ready for fully independent living.

¶ 24 The identification and securing of an appropriate resource aside, Dr. Foreman believes GMP is appropriate for placement in the community; he opines that a return of GMP to custody would be counter-therapeutic and punitive in the face of demonstrated clinical progress.

¶ 25 Dr. Foreman did not provide a formal risk assessment but acknowledged that the nature of the risk of reoffending posed by GMP does involve violence.

EXHIBIT 42: LINK PROGRAM PROGRESS SUMMARY (JULY 1998)

¶ 26 This exhibit prepared by case manager Gabriel indicated that GMP's earlier gains or progress in the LINK program had plateaued or stalled, but that he was not prepared for independent living. He was expending less effort, initiative and interest in community activities, and demonstrating behavioral deterioration. She expressed the view that his ongoing residence at LINK was becoming detrimental. The author of this report did not provide oral evidence at the hearing.

EXHIBIT 43: G. KUMKA. YFPS CO-ORDINATOR (JULY 20, 1998)

¶ 27 This submission confirmed GMP's progress at LINK and essentially recommended a confirmation of his legal status. It also recommended that sole responsibility for GMP's treatment and supervision be transferred to the Director AFPS.

¶ 28 Mr. Kumka also expressed the view that GMP no longer required 24 hour supervision as required by his disposition of February 9, 1998.

EXHIBIT 49: DR. R. LAMBA AND A. CYR (AFPS) (SEPTEMBER 18, 1998)

¶ 29 This assessment lists an inventory of problematic behaviours demonstrated by GMP while in the case of YFPS, including:

- * Lying;
- * Manipulative behaviour;
- * Teasing and intimidation of peers;
- * Sexually inappropriate behaviour toward female peers and difficulties with female staff;
- * Passive aggression;
- * Assaults on staff (x 2).

¶ 30 Dr. Lamba assigns to GMP the following diagnoses:

- * AXIS I: Substance abuse disorder; paraphilia, N.O.S.
- * AXIS II: Antisocial personality disorder

¶ 31 Dr. Lamba assessed GMP using the Psychopathy Check List (PCL) as well as the Violence Risk Assessment Guide (V.R.A.G.) instruments. He concluded that GMP posed a moderate to high risk of violent reoffending. On the basis of this report, the authors recommended GMP be detained in custody at FPI. Dr. Lamba did not provide oral evidence at the hearing. His submission also included a package of "rap" lyrics apparently written by GMP which disclosed violent and misogynistic themes: [Ex.51].

EXHIBIT 52: DR. R. STEVENSON (SEPTEMBER 23, 1998)

¶ 32 Dr. Stevenson, an outpatient psychiatrist for YFPS, confirmed GMP's borderline intellectual functioning or cognitive limitations, complicated by possible antisocial and/or schizotypal personality traits.

¶ 33 He described a more empathetic, cooperative and insightful youth, who had responded well to expectations and enhanced privileges, and who was genuinely motivated to ongoing progress.

¶ 34 He commended GMP's apparent avoidance of relapse to substance use even without specific treatment, despite access and opportunities to indulge. He recommended ongoing monitoring and supervision of GMP, albeit in a non-custodial environment, which he believed would be counter productive to GMP's rehabilitation and reintegration.

¶ 35 Dr. Stevenson also provided oral information. He disagreed with the alternative diagnostic formulations offered regarding to GMP, including sexual sadism and gerontophilia: [Ex. 49, 53].

¶ 36 While he felt that the level of supervision and facilities provided by the White House residence were less than optimal, in Dr. Stevenson's view GMP had demonstrated sufficient maturity, responsibility and "authentic growth" to allow him to be considered for more independent living in the community, supported by ongoing therapy and observation.

¶ 37 According to Dr. Stevenson GMP currently disavowed the attitudes and sentiments expressed in the "lyrics" he composed previously [Ex. 51], and he did not believe these to be necessarily reflective of GMP's current fantasies or intentions toward females; nor did he feel these lyrics were necessarily diagnostically relevant.

EXHIBIT 53: DR. J BRINK (NOVEMBER 21, 1998)

¶ 38 Dr. J. Brink, a forensic psychiatrist was engaged to provide an independent assessment of GMP. Dr. Brink ascribed the following diagnoses:

- * AXIS I: Paraphilia, N.O.S., suggestions of gerontophilia and sexual sadism;
Alcohol, cannabis and LSD in remission
- * AXIS II: Antisocial Personality Disorder

¶ 39 Dr. Brink did not identify the presence of any AXIS I diagnosis or illness requiring or indicative of pharmacological intervention. He agreed with Dr. Lamba's conclusions based on GMP's PCL scores, but did not believe GMP required removal to a maximally secure custodial setting in lieu of a structured community based placement, treatment and supervision targeting to relapse prevention and GMP's personality issues.

¶ 40 Dr. Brink also provided oral input via telephone. In response to questioning Dr. Brink added that he found GMP aware of his own risk and relapse issues; clear and coherent about the index offence; and that his sexual issues could be further explored, and addressed on an outpatient basis.

EXHIBIT 55: DR. STEVENSON (NOVEMBER 25, 1998)

¶ 41 This report was submitted as an update to Exhibit 52. It chronicles GMP's transfer to the White House facility on September 30, 1998, and the assumption of monitoring and supervisory responsibility by AFPS.

¶ 42 Dr. Stevenson described a noticeable improvement in GMP's mood, energy, demeanour and affect, and his commitment to increased self-sufficiency which he attributed to the greater freedom and personal responsibility associated with the change in residences.

¶ 43 The Board also heard from Carl Archer the owner/proprietor of the White House, an unlicensed facility, where, at the time of the hearing, GMP was the sole resident. Under close questioning by all parties including members of the hearing panel, we believe that it is fair to say that the level of accountability, professional care, treatment, supervision and monitoring provided to GMP at the White House appeared well below what was contemplated by the Board-imposed requirement of 24 hour supervision: [Ex. 38].

INTERIM DISPOSITION, JANUARY 27, 1999

¶ 44 Well before the end of the second day of hearings (January 27) it became apparent that additional evidence with respect to the respective mandates and administration of AFPS and YFPS would be required by counsel for GMP as a basis for legal argument.

¶ 45 As an interim resolution, the parties agreed to a continuation of the status quo with respect to disposition until April 30, 1999, in order to enable Ms. Nielsen to pose written questions to the appropriate officials and to provide time for the respective Directors to respond thereto. Ms. Nielsen would thereafter submit written legal arguments to all parties who would in turn have until March 5, 1999 to reply.

RULING ON COLLATERAL ISSUE OF THE ADMISSION OF GMP's COMPACT DISCS

¶ 46 At the request of counsel for AFPS the Review Board issued a subpoena (November 30, 1998) for the production of music compact discs of music belonging to GMP and in the possession of the LINK program. The request was based on the opinion of Dr. Lamba that this material as well as GMP's own compositions [Ex. 51], might be indicative of GMP's mental state and therefore relevant to the Board's assessment of risk. Counsel for GMP objected to the issuance's of the subpoena in the absence of prior submissions.

¶ 47 The Board Chair issued the subpoena pursuant to s. 672.43 and s. 672.5 (12) on the understanding that the ultimate admissibility and indeed reception of the materials in question would be open to argument and determination at the outset of the hearing. The subpoena was merely intended to ensure the availability of the materials in the event that following submissions the Board considered them both relevant and admissible at hearing.

¶ 48 After hearing submissions from parties and learning that the 32 subject compact discs have not been in GMP's possession for some time nor necessarily reflective of his current musical interests or attractions, the Board took the view that the music in question might not be either a scientifically reliable

barometer of GMP's thinking or a tool by which to predict his future behaviour. Moreover their content and relevance were considered in the more formal risk assessments completed by both Dr. Lamba and Dr. Brink. Consequently, the subpoenaed compact discs were not admitted or considered in the course of the hearing. The "lyrics" written by GMP were admitted: [Ex. 51].

2.2 HEARING OF MAY 11, 1999

¶ 49 On May 11, 1999 the Review Board reconvened specifically in order to:

- (a) Resolve and rule on the outstanding issues in dispute relating to responses to questions submitted by counsel for GMP to the Directors of YFPS and AFPS.
- (b) Deliver the Board's position on the threshold question of its jurisdiction to hear and consider arguments involving the Charter of Rights.
- (c) Identify other outstanding issues relating to this proceeding and establish a schedule to bring the matter to closure and disposition.

¶ 50 As to the matter of jurisdiction the panel ruled that using a pragmatic and functional approach, in the matter before us the Review Board has the implicit jurisdiction "to entertain" and will apply the Charter: Ex 73. Counsel for the Attorney General of British Columbia indicated her intention to challenge that conclusion and to seek an order prohibiting the Board from considering Charter arguments.

¶ 51 As to the matter of the Board compelling further or additional responses to the questions posed by counsel for GMP, the panel felt disinclined to order any further response thereto.

¶ 52 Finally the Board imposed a schedule for submission, response and filing of outstanding written legal arguments.

2.3 HEARING OF JUNE 28, 1999

¶ 53 The Board reconvened on June 28, 1999. The Director of AFPS sought a disposition of custody on behalf of GMP, under the care and supervision of AFPS. Counsel however did indicate that her client would be prepared to accommodate and carry out its responsibilities pursuant to a conditional discharge.

¶ 54 The Director of YFPS requested a disposition of discharge on conditions to be monitored and implemented by the Director AFPS.

¶ 55 The Crown took no position at the outset of the hearing.

¶ 56 On behalf of GMP, Ms. Nielsen sought a disposition of discharge subject to conditions which would enable GMP to reside in an unsupervised or supported independent living arrangement.

¶ 57 At the outset of the hearing Ms. Hughes on behalf of the Attorney General of British Columbia was provided with the opportunity to highlight in a summary manner her arguments on the Charter issues raised.

EVIDENCE AT HEARING

¶ 58 On behalf of the Director AFPS, Ms. Worsfold indicated that as of February 19, 1999 GMP's file was transferred to the Vancouver Outpatient Forensic Clinic for ongoing supervision, case management and treatment by Ms. Worsfold and Dr. Kerr.

¶ 59 Thereafter GMP was moved from the White House to the "South Surrey Residence" of the John Howard Society, a 24 hour supervised residence able to accommodate a maximum of 4 patients. This move occurred because AFPS considered the level of supervision provided at the White House inadequate and inappropriate.

¶ 60 As of the hearing, GMP was responding appropriately to supervision by AFPS. In March 1999 he completed a 3 week job training course, but had not yet followed up on or implemented plans to further his education. This was seen as a concern, as was a verbal outburst or altercation some weeks in the past. By way of therapy GMP was receiving 90 minutes per day of group therapy/counselling involving living skills, values, to be augmented in the future by sexual offending and substance abuse components.

¶ 61 Ms. Worsfold indicated that the Director of the residence believed that GMP could currently or foreseeably within 6 months, function adequately in a supported independent living program. The panel was told that updated assessments were being developed by doctors Kerr and Atkinson. She confirmed that GMP was not receiving psychotropic medication, and appeared to be maintaining his abstinence from substances. Ms. Worsfold considered GMP a "moderate to high" risk of re offending based on previous assessments.

¶ 62 The Board heard from Ms. Eli Garland, Co-ordinator of the South Surrey Residence, [see also Ex. 79]. She stated that GMP was more remorseful and empathetic and accepting of responsibility with respect to his past actions, despite his continuing youthful self-centredness and occasional anger or inability to tolerate frustration. She recommended that with some enhancement of GMP's daily living and self care skills he could function in supported independent living.

¶ 63 GMP told the hearing about the relative pros and cons of living at the White House as opposed to South Surrey. Certainly the relative distance of the latter from his reporting, school and residential obligations and opportunities appears to pose a significant logistical issue. He hopes to be accepted into a hockey school this fall and would like to live and attend school closer to that program. GMP appeared to understand his need to avoid relapse to substance use and the importance of establishing a stable, consistent pattern for his life.

3.0 SUBMISSIONS ON DISPOSITION

DIRECTOR AFPS

¶ 64 Ms. Acheson submitted that the Director of AFPS should be solely responsible for the care and supervision of GMP, which has been the de facto situation for some months. Despite adhering to her original recommendation of a custodial disposition Ms. Acheson stated that AFPS could accommodate a conditional discharge pending further assessment by Dr. Atkinson, Dr. Kerr and the Broadway Outpatient Clinic. She also argued that the Board should not consider directing GMP to a specific residence beyond the Director's usual discretion or flexibility in choosing a placement as the patient progresses through programs.

DIRECTOR YFPS

¶ 65 Ms. LeReverend agreed that GMP should be under the sole direction of AFPS as he appears to have exhausted the resources, benefits and programs of YFPS; moreover that he now needs the relatively more independent approaches available through AFPS. She continued to recommend discharge under conditions.

THE CROWN (R.B.)

¶ 66 Mr. Hillaby supported transfer of authority for GMP solely to AFPS. With respect to disposition Mr. Hillaby argued that given the voluminous diagnostic and assessment information and GMP's profile of "dreadful violence, sporadically" the Board ought to seriously consider custody at FPI.

GMP

¶ 67 Ms. Nielsen made no additional submission with respect to responsibility for GMP's supervision. She submitted, recalling her written submissions, [Ex. 60], that the request to order GMP at FPI under a disposition of discharge was moot; that the question of the Board's authority to specify a placement under either a disposition of detention or discharge was also moot; but that the issue of the Boards authority to order either of the Directors of AFPS or YFPS to provide treatment and services to GMP remained a live issue insofar as provision of an appropriate placement is concerned.

¶ 68 She argued that to ensure an appropriate placement, the Board ought to exercises its inquisitorial responsibilities and inform itself on the range of available facilities in order to choose one which best matches or meets GMP's specific needs.

¶ 69 With respect to legal status Ms. Nielsen argued that the evidence does not support a custodial disposition, especially as GMP had been living in community without difficulty or incident since September 1998, despite limitations in his supervision.

4.0 DISPOSITION

¶ 70 The Board having become intimately familiar with the extensive clinical, assessment and case management information which has been developed and submitted in relation to GMP, and having taken into account the considerations outlined in s. 672.54 C.C.C., as recently elaborated in the case of Winko (S.C.C. June 17, 1999), and s. 13.2(6) Y.O.A., agreed that a conditional discharge requiring GMP to reside under the sole direction and supervision of AFPS was the least onerous, restrictive and most appropriate disposition.

¶ 71 We considered the serious and cruel sexual and physical harm occasioned in the index offence; GMP's chaotic, neglectful, dysfunctional and unstable upbringing; his youthful behavioral manifestations including manipulation, anger and binges of multiple substance abuse; his diagnosis including his intellectual limitations; and his relative success, manageability, compliance and passivity while in the community since September 1999. We are of the view that GMP deserves to have his positive progress acknowledged by being enabled to continue to reside in the community.

¶ 72 We would recommend that in preparation for greater independence GMP be provided with programming targeted at his anger and sexual issues. We also welcome an updated, comprehensive risk assessment for GMP's next hearing.

5.0 OUTSTANDING LEGAL ISSUES:

¶ 73 A great deal of time and resources have been devoted, in the course of this proceeding, to the so-called "Charter" issue, and the Review Board's jurisdiction to entertain and deal with such a matter. The written submission also address a number of additional and important issues.

ISSUE: Can The BCRB Order That An Accused May Reside At FPI Under A Disposition Of Discharge On Conditions?

¶ 74 GMP argued that it is open to the Review Board to require a conditionally discharged accused to reside at the Forensic Psychiatric Institute (FPI); that the Johnson decision concerned the liberty interests of the accused, as opposed to where an accused should reside. This position was opposed by the Director of AFPS, who interprets the Johnson decision to require that a conditional discharge releases an accused from custody in hospital to the community; and that it is beyond the jurisdiction of the Review Board to order FPI to provide a service to GMP that does not otherwise exist.

¶ 75 At the June 28, 1999 hearing, counsel for GMP admitted that the issue is largely moot, as GMP was no longer asking the Review Board for a conditional discharge to reside at FPI.

¶ 76 Without minimizing the importance of the question, the Board does not need consider it necessary to determine the issue in the context of this proceeding.

ISSUE: Can The BCRB Order A Specific Placement?

¶ 77 Counsel for GMP argued that the Review Board should exercise its inquiry function to independently examine alternative placements throughout the province. She has also argued that the Review Board must not consider resources when making a disposition; that to consider availability from a funding perspective would violate s. 7 of the Charter.

¶ 78 The Directors of AFPS and YFPS argued that despite Pinet the Review Board lacks the authority to order either service to establish and pay for a specific placement: Auckland Harbour Board. The Director AFPS also argued that the Review Board should not specify GMP's place of residence beyond its usual condition which delegates the choice of an appropriate placement and relative level of supervision/security to the Director.

¶ 79 The Board determined that for the foreseeable duration of its disposition GMP is appropriately placed at the South Surrey Residence. There was no evidence to persuade us to restrict the Director's discretion in this area. The Board was not asked to exercise, and therefore does not need to determine the question of, its authority to order a specific placement.

ISSUE: Does Ministerial Order M-27 Violate S. 15 Of The Charter Of Rights?

¶ 80 Counsel for GMP argued that Ministerial Order M-27 gives discretion to the Review Board in choosing whether the Adult Forensic system of the Youth Forensic system should supervise GMP. Counsel for the Attorney General of B.C. agrees. On behalf of GMP it was further argued that, in the absence of an application analogous to one contemplated under s. 24.5 Y.O.A., he remains a young person; and that if Ministerial Order M-27 purports to automatically require his transfer to an adult facility it violates the Charter.

¶ 81 In other words if Ministerial Order M-27 requires AFPS to supervise Youths who are over 18, then it contravenes s. 15 of the Charter. The Charter then would require the Review Board to ignore Ministerial Order M-27, and decide which service should supervise GMP based on his "best interests"; alternately, the Young Offenders Act requires that the decision as to which service should be responsible for GMP is based on his "best interests"; the Ministerial Order is therefore void as ultra vires.

¶ 82 On behalf of the Attorney General of British Columbia and the Director YFPS it was argued that GMP need no longer be considered a young person as defined in s. 2, YOA; that in any event Ministerial Order M-27, being merely administrative in nature, does not require the mandatory transfer of GMP to an adult facility but leaves the ultimate choice of facility to the Board based on its s. 672.54, C.C.C. considerations. The Ministerial Order is not directive; GMP is no longer a youth; Charter and ultra vires issues do not arise.

¶ 83 The Parties differ on which service would be responsible for GMP, should Ministerial Order M-27 provide a discretion. Ms. Acheson on behalf of the Director of AFPS submitted that AFPS should be

solely responsible for the care and supervision of GMP, which has been the de facto situation for some months. Ms. LeReverend agreed that GMP should be under the sole direction of AFPS as he appears to have exhausted the resources, benefits and programs of YFPS; moreover he now needs the relatively more independent approaches available through AFPS. Mr. Hillaby supported transfer of authority for GMP solely to AFPS. On the other hand, GMP argues that the Director of YFPS is more appropriate.

¶ 84 The Board's application of the governing law to the evidence adduced in this matter has resulted in a s. 672.54(b) disposition, rather than a disposition of detention in a designated hospital under s. 672.54 (c).

¶ 85 Whether or not the Ministerial Order is ultimately mandatory or permissive; whether or not GMP remains a "Young Person", the Board has determined the Director AFPS should supervise him. There is no need for the Board to pronounce on or determine whether transfer of GMP to FPI would constitute discrimination on the basis of age in violation of s. 15 of the Charter. In the final analysis the Board has based its disposition, as it is required to do, on the individualized, person-centered criteria of s. 672.54 C.C.C.

¶ 86 We thank the parties and wish GMP well in the coming months.

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