Indexed as:

Silva (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
Paul Pereira Silva

[1999] B.C.R.B.D. No. 31

British Columbia Review Board
F. Falzon, Chairperson, S. Lohrasbe and K. Lehal, Members

July 30, 1999.
(75 paras.)

Appearances:

Paul Pereira Silva, accused/patient.
D. Nielsen, counsel for the accused/patient.
Dr. W. Wanis and R. Domingues, for the hospital/clinic.
D. Duncan, for the Attorney General.

¶ 1 CHAIRPERSON:-- The Review Board has deliberated in this matter. Our decision is unanimous. Because of the exigencies of time, we have decided to give our order with our reasons to follow in written form and I expect that they will follow relatively shortly.

¶ 2 We have carefully considered the submissions of all the parties and the evidence before us. We have unanimously concluded that if absolutely discharged, this accused would pose a significant threat to the safety of the public and we have absolutely no hesitation in coming to that conclusion. We also have concluded, in accordance with the law as stated in Winko, what would be the order which would be least intrusive to the accused, having regard to all the factors in s. 672.54 of the Criminal Code.

¶ 3 We have decided to proceed as follows: We will make a one year order, Mr. Silva. That order will require that you reside here at the Forensic Psychiatric Institute. You be subject to the general direction and supervision of the Director, Adult Forensic Psychiatric Services. We are going to order that you, at the Director's discretion, may have unescorted or unsupervised access to the community depending on your mental condition having regard to the risk you then pose to yourself or others. What that means is that once Dr. Wanis and the Treatment Team feel that it is okay for you leaving the grounds on your own and go off for a period of time into the community, that you will have that right.

There will also be a condition that you attend at any time and place required by the Director for the purpose of assessment, counselling, rehabilitation or assisting you in your treatment. You are not to possess, acquire or use any firearm, explosive or offensive weapon. There will be an absolute prohibition on the use of alcohol or hallucinogens. That is zero alcohol. No drugs except as approved by your doctor. There will also be a random monitoring clause so that if you are out in the community, the Director will have a right to give you a test for the purposes of determining whether you have alcohol or drugs in your system and you will be required to submit to that testing on demand. There will be a requirement that you keep the peace and be of good behaviour and that you present yourself to the Review Board when required. There is also going to be a clause prohibiting you from having any contact either direct or indirect with R.B. or with D.B. or her daughter, whose name is A.B.

¶ 4 The issue that we spent a significant amount of time discussing had to do with the reconciliation of that no contact provision with a visit leave provision that has been suggested by the Director. When we asked the Crown about this, the Crown's submission was that under the Winko decision, one could not justify an order that prohibited a visit leave at that address given that the no contact provision was in place unless there was a risk of you acting out while you were back at home. We see it differently. In our view, the fact of the psychological injury having occurred and having been quite profound in this case as is clear from the Victim Impact Statement, makes it clear that any contact, direct or indirect in the vicinity of this child's home, including her parents' awareness of your presence across the street, would reopen and make worse the psychological harm that is being suffered. This is not a past injury. It is a present, reasonable and profound psychological fear that Ms. D.B. has. We find that Mr. Silva's presence in the home over the next year and the proximity of that home to the home of the child where she visits her father, and the nature of how people live their lives walking in and out of their homes, are sufficient that if they were to see Mr. Silva and be aware of his proximity to their daughter, it would be sufficient to continue to cause them serious psychological harm. The victim family has not been consulted about any of this. We have no hesitation in coming to that conclusion.

¶ 5 Accordingly, we will craft the visit leave provision in order that will come out next week in such a way that while he may have visit leaves which include overnight stays for a period not exceeding 28 days for any one leave for the purpose of assisting him in his or her reintegration into society, that will exclude his residence in the family home for the period of this order. Now, I would like to say this about that and I will make it clear in the written reasons as well, it will be open to the Treatment Team and Mr. Silva to come before this Board at a time when there is a consensus that he is appropriately ready to have visit leaves and the view were taken that he ought to go home, to come back to this Review Board and make a request that he do so with an appropriate plan that discusses the steps that have been taken to alert the victim, to discuss the matter with the family and also that further exploration will have been done on many of the issues with respect to Mr. Silva's condition which is as yet very much untested and fragile and, indeed, in respect of which there seems to be a great deal that is unknown because a therapeutic rapport is evidently yet to be established.

¶ 6 There are some concerns in respect of the detailed questions that were quite properly posed by Dr. Lohrasbe today that the accused showed very little insight into his illness or the impact of his behaviour on the victims and as a result of that and for other reasons that will appear in the formal

written statement of reasons, we are very concerned that a return home will, unless other work is done, inevitably re-open, if not make worse, the psychological harm that has already transpired in this case. We do not suggest that Mr. Silva cannot visit his parents elsewhere than at the family home. We do not suggest that this order would prohibit him from visiting there if the family across the street were to move but at this juncture, we believe that the appropriate order, and given that the Supreme Court of Canada has emphasized liberty must give way to a significant threat of more than trivial harm, is that public safety must be paramount.

¶ 7 As I say, we are open to hearing at some point in the future a plan that will allow such visits to take place where conditions are different, where there is greater confidence about Mr. Silva's insight and, in particular, where there has been appropriate preparatory work done with the victims but that has not happened yet and, therefore, we are not prepared to countenance a return based on the evidence before us.

¶ 8 Appreciating that these are oral reasons and more extensive written reasons will follow, I will just ask my panel members if they have anything to add at this juncture.

¶ 9 DR. LOHRASBE: Just a couple of points. Looking really to the next year, I think quite appropriately the Treatment Team saw Mr. Silva as being unstable in mental state and, therefore, inherently sort of posing a risk. I just want to point out that even after his mental condition has stabilized, there are various issues that need to be addressed if the risk to the public is going to be adequately addressed. It is not clear to me how much of his limitations are cognitive ones. Certainly some of his responses to questions suggest to me that there may be cognitive limitations that are quite separate from his schizophrenic illness and perhaps more detailed testing on that, I appreciate that there has been outpatient testing, but further testing might help. Training on appropriate and inappropriate social behaviour, et cetera would be important. Alerting him, as well as family members about substance abuse and the gross minimization that he has shown of it would be important. These would all be risk management features that would have to be addressed before we can seriously consider an absolute discharge.

¶ 10 CHAIRPERSON: Anything to add, Ms. Lehal?

¶ 11 MS. LEHAL: Nothing.

¶ 12 CHAIRPERSON: All right. Just speaking to Dr. Lohrasbe's last point, that does remind me, Madam Crown, that in advance of the next hearing of this Review Board, we would be very grateful if the Crown could please provide as much detail about any previous history of violence that the police had referred to in the original Report to Crown Counsel, plus the details particularly of the possession of a weapon and uttering threats.

¶ 13 MS. DUNCAN: There is also the 1998 causing a disturbance.

¶ 14 CHAIRPERSON: Yes.

¶ 15 MS. DUNCAN: Would you like information about that as well?

¶ 16 CHAIRPERSON: Yes. And there were charges as well that were stayed in 1990 and 1992, one of which was mischief, the other, again, of which was possession of a weapon and one was assault with a weapon and, obviously, the weight we give to a lot of those materials is something that we determine but the Crown stays charges for all sorts of reasons and it would be most helpful in this case for us, as well as for the Director, in doing future risk assessments to have all of that information.

¶ 17 Mr. Silva, it is evident to us from your responses today that there are people that you want to talk to about a lot of things in your life. You have a lot of things that you want to get off your chest. We have not made our order today in any way, shape or form as a punishment to you. We have to take into account your needs as well as the needs of the public. We believe that our order does that and what we would hope for you, and ask you to try to do is make the best of the time that you are here so that you can explore a lot of issues that perhaps in years gone by have been left and have not been really explored. So, we genuinely wish you well, sir. We appreciate it was a long day today and a difficult hearing for you and we certainly hope for better things to come in the months and time ahead. Thank you.

REASONS FOR DISPOSITION

1. Introduction

¶ 18 On July 30, 1999, Mr. Silva had his first hearing before the British Columbia Review Board. The Panel issued an Order for custody with conditions under s. 672.54(c) of the Criminal Code. As a result of time constraints, we made a series of brief comments on the record (now transcribed) and advised that full written reasons would follow. These are those reasons.

¶ 19 On June 22, 1999, the British Columbia Provincial Court issued a verdict that the accused was not criminally responsible on account of mental disorder of the offence of criminal harassment of a woman, which harassment caused her to reasonably fear for her safety: Criminal Code, s. 264. The Court deferred disposition to the Review Board, which held this hearing under the jurisdiction of s. 672.47(1) of the Criminal Code.

2. The index offence

¶ 20 The accused and the victim live in the Kootenays. They lived in proximity to one another - across the street - for a period of time in the City of Castlegar. From the material before us, it appears that they had seen one another at their respective homes, but had never spoken face to face.

¶ 21 The accused began making telephone calls to the victim after she moved to another community.

Between July, 1998 and May, 1999, the accused initiated a series of highly disturbing phone calls to the victim at her workplace and her place of residence. The contents of these calls are summarized in the Report to Crown Counsel at Exhibit 7.

¶ 22 In the first call, on July 21, 1998, the accused called the victim at her workplace. She had no idea who he was until she "finally figured out" that he had lived across the street from her in Castlegar. He insisted that they were in love and should be married. He also made some references to burning down Pope-Talbot, his former place of employment about which we will say more below. The victim told the accused never to call her again. The victim reported this call to Trail R.C.M.P.

¶ 23 In late March and early April, 1999, the victim began receiving "hang-up" phone calls at her home as soon as she arrived home from work. This reasonably frightened her as she thought someone must be watching her. She would also receive hang-up calls at midnight and 3:00 a.m.

¶ 24 On April 6th, the complainant contacted RCMP after a troubling call she received from the accused in which the accused told her "that he'd said bad things about her and felt bad about it, and that if he ever hears anyone doing that he would "fucking kill them" and he would do anything to be with her and come to her house and have dinner". Again the victim told him never to call again. Police called the accused and warned him that if he persisted, charged would be laid. The accused denied knowing the victim.

¶ 25 On May 12, 1999, the victim called police in tears after receiving nine phone calls at her home between 1 a.m. and 2:30 a.m. The first call, at 1:00 a.m., involved what appeared to be the accused playing an interview of the victim who appeared on a cable broadcast the previous year. The report reads:

> "She said 'oh my god', he said 'I know' and she immediately hung up. She then called her ex-husband who still lives across the street from the accused to see if the accused's vehicle was at his house".

¶ 26 Five minutes later, he called again and she hung up on him. She dialled *69 to attempt to obtain the number that was calling, but the call had been blocked.

¶ 27 Fifteen minutes later, the accused called again and the victim asked the accused why he was watching her and he said "because I learn" to which she asked "learn what":

> "and he said something about getting rid of her friend so she is all alone."

¶ 28 In the 4th call, he asked her to stop crying and she yelled at him to stop phoning and hung up. She called Trail R.C.M.P. and was advised to activate *57 to enable BC Tel to trace the calls.

¶ 29 The 5th call was perhaps the most disturbing of all. I reproduce the summary in full:

> At 1036 hours - accused called again, stated that they had to get together without anyone knowing, it's the only way they would get anything. He said "We have a dream right, we want a house right, we want a car, that little single thing?" Don't give me a scrap, you're in Trail right, I'm going to hike into Trail to your office and we're going to go for a walk and your little kid, what is her name [A]? Don't worry, we are going to take care of her." [Victim] asked accused what meant take care of her? Accused's said "well I'm going to be her old man right?" He asked what time did she want to meet him and then he answered saying 12:00, he said they were going to walk around, that he might even grab her hand and if anyone comes up to them and tells them they are doing something wrong, they would just tell them to fuck off. He said "I'll find a way to come to your house". D.B. hung up on him and dialled *57.

¶ 30 We pause to note that the accused's reference to the victim's young daughter would terrify any reasonable parent. In the circumstances, the fear caused his statement that they would "take care of her" would hardly have been tempered by his statement that he would be her "old man". The subjective impact of all this is made very clear in the Victim Impact Statement, referred to later in these reasons.

¶ 31 But the chronology does not end there. The accused persisted in making four more calls, one of which again included mention of the victim's child:

> At 0150 hrs - accused called again, was rambling on that if anybody comes near her that he was "fucking going to tell them to go to hell, about them going to California, they get the hell "out of this fucking place", that he would take her daughter to the Mall and make sure she had a good time, that he would see her tomorrow at noon, that he couldn't believe he was talking to [the victim], that he should be making love to her, that he wanted to make love. She hung up on him.

¶ 32 At 2:40 a.m., the accused was arrested by police at his parents' home where lived in the basement. He was charged with criminal harassment the same day. There is evidence he had been drinking.

3. Other incidents of harassment

¶ 33 The index offence was not the first incident in which the accused has displayed conduct which others have reasonably perceived as threatening or harassing. The record shows that after losing his job at the Pope and Talbot sawmill in August, 1995, the accused harboured the belief that the company owed him money and that a particular human resources supervisor was to blame for his dismissal. He approached and harassed various employees of the Mill at various locations in town asking about the alleged debt - which has not been shown to be a real debt - and making various comments about this particular supervisor. The accused even attended the police station in April, 1998 and advised police that he would burn the plant down if the mill did not pay him the money they owed him.

¶ 34 The Provincial Court issued a s. 810 Criminal Code "peace bond" against the accused on June 3, 1998. In the report to Crown respecting the peace bond, police stated that the accused was well known to them, that he has at times been violent and that he is capable of carrying out any of the threats he has made. His criminal record includes possession of a weapon and uttering threats in 1993. Under the recognizance, he was, inter alia, forbidden from contact with the human resources supervisor.

¶ 35 We pause again to observe that at no time did the accused seek to deny or rebut police comments that he has been violent or capable of carrying out threats. At the hearing, he informed us that one of the convictions listed on his criminal record involved a threat he made to kill his girlfriend at the time. Pursuant to our inquisitorial process as described in Winko, we formally record our request at the hearing of the Crown to ensure that all relevant information in respect of his criminal record, including charges that have been stayed, are placed before the Board in advance of the next hearing.

¶ 36 The accused breached the peace bond on July 27, 1998. He did so by going to the residence of the supervisor in question. He told the man that the man had made a "big mistake". He made a number of bizarre comments and went out of his way to also make a brief comment to the man's wife.

¶ 37 The report to Crown Counsel states that the supervisor fears for the safety of his family as he believes the accused will not obey any document imposing conditions on him. We have the pre-sentence report prepared for this breach of the probation order. It appears that the accused received a suspended sentence and two years probation.

4. Accused's mental illness and other circumstances

¶ 38 The accused is mentally ill. He has been diagnosed as suffering from paranoid schizophrenia which includes Erotomanic delusions. One delusion involved the victim of the index offence. Another delusion, more described to the psychiatrists and which might appear to conflict with the beliefs described above, was that the supervisor was his friend and would be supplying him with money in the future. At times, the two delusions have been interwoven.

¶ 39 In addition to his Axis I diagnosis of schizophrenia, the accused has also been diagnosed with Antisocial Personality Disorder. In this connection, we note that during our hearing, the accused in our opinion showed little real awareness of or empathy for the profoundly serious and ongoing impact of his behaviour on the victim family in this case.

¶ 40 The accused is also diabetic, a condition diagnosed when he was 2 years of age. He requires insulin injections 3 times daily.

¶ 41 The written reports before us show that in the period between his arrest on May 12, 1999 and the Court's NCRMD finding on June 22, 1999, the accused at one time suggested that he heard a "little girl's voice" making sexual comments to him, but later stated it was all in his head. During that period, there are reported comments reflecting paranoia, and aggression toward nursing staff. He bit a staff member.

He was certified and started on a medication known as Loxapine. He made sexualized, aggressive and threatening comments to staff. He exposed himself to staff.

¶ 42 On May 26, 1999, while at FPI, the accused stated that "you know that girl ... the reason I am here ... if I don't get my money I'll blow her head off". The accused made this statement only two months before our hearing.

¶ 43 On May 31, 1999, the accused threatened to kill the supervisor or anyone who got between them. He was secluded on at least two occasions.

¶ 44 The records suggest that after his return from Court late last month, the accused has been more cooperative, oriented and polite. Still, there are reports that he was "cheeking" medications and that he continued to make sexually inappropriate comments about nursing staff.

¶ 45 While his active symptoms appear to have been responding positively to the medication, he shows no insight into his illness or the need for medication.

¶ 46 As it is not uncommon within his cultural context, the accused, who is 30, lives at home with his parents. The family is close and supportive. However, he has always been very quiet and isolative, even from his family. His mother loves him and feels he needs help. While there is evidence that he had friends at school, there is no evidence of any present friendships.

¶ 47 We had the benefit of speaking to the accused's mother, who was called as a witness by the accused. His mother participated via telephone conference at our hearing. Her love for her son was clear, but it was also apparent that she does not have a great deal of awareness about her son's illness, the need for medication, the issues raised by his drinking and how the family might most effectively help to manage his illness if he were to return home. Nor does their relationship in recent years appear to have been marked by a high level of interaction and communication.

¶ 48 The accused quit school prior to graduation, and it does not appear he attended very often before quitting. He worked for a period of time at Pope and Talbot, where his father works, but was terminated for contraventions of the Mill's safety protocols, including failing to lock out equipment and sleeping on the job. We are told that this matter proceeded to arbitration, and while we have no records from that proceeding, we are told that the accused was unsuccessful. He has been receiving BC benefits.

¶ 49 While the accused and his mother have both stated that he does not have a problem with alcohol or drugs, the treatment team proposes to examine this issue further. The accused has two alcohol related offences, he was reported intoxicated when picked up by police for the index offence and he has on other occasions admitted to drinking fairly heavily. He told Dr. Wanis that he drank a litre of wine on the night of the index offence. He told us that he likes to drive cars "as if he were drunk". Dr. Wanis is properly concerned that, in addition to his lack of insight regarding his illness, the accused may be minimizing his use of alcohol.

¶ 50 Mr. Silva has not, it is fair to say, been entirely forthcoming with the treatment team as of yet about his thoughts and beliefs, all of which is no doubt connected in part to the nature of his illness, his lack of insight into it and other personality issues.

5. R. v. Winko

¶ 51 It will at this juncture be appropriate to comment on our legal mandate. The principles governing the exercise of our duty have recently been articulated by the Supreme Court of Canada R. v. Winko (June 17, 1999, unreported, S.C.C.).

¶ 52 The Court in Winko confirmed in the discharge of our statutory function, Review Boards are governed by the criteria set out in s. 672.54 of the Criminal Code. These provisions require the Board, in making a disposition, to take into consideration the need to protect the public from dangerous persons, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused and then to make the least restrictive disposition in respect of the accused. Where the Board forms the opinion that the accused is not a significant threat to the safety of the public, the Board is required to grant the accused an absolute discharge.

¶ 53 A major insight provided by the Court in Winko, which represents a departure from the law as stated by the Court of Appeal, is that when the Board sits in its capacity from time to time, it must answer, in a decisive manner, the issue of significant threat. It cannot defer the question to a later date, as had previously been accepted as the most wise and reasonable interpretation of the section by our Court of Appeal and by Justices Gonthier and L'Heureux Dube in the Supreme Court of Canada.

¶ 54 The need to be "decisive" having been articulated, it would be a significant error to confuse the need for decisiveness about risk with the question whether harm will certainly happen. We are doing our utmost to responsibly predict the future, and by definition, questions about future risk cannot be answered with certainty or empirical precision. If they could, these inquiries would not be about "risk". Consequently, while doubt about the question of "significant threat" entitles a person to an absolute discharge, doubt about the question whether a criminal act will certainly occur does not entitle a person to an absolute discharge. Even in the face of a finding of significant threat, there is always doubt about whether something will occur. A finding of significant threat does not demand omniscience, psychic foresight and the absence of doubt. Such a requirement would be entirely unrealistic and a serious misreading of the judgment.

¶ 55 As recognized by the Supreme Court of Canada, the test we have to concern ourselves with is concerned with potential dangerousness and in particular, whether the accused poses a significant threat to the safety of the public. In arriving at that conclusion, stereotypical notions that mentally ill persons are inherently dangerous must be avoided. There is no presumption that an NCRMD accused is a threat unless they prove otherwise. The Review Board's job is to make that assessment on all the facts within our inquisitorial process, with the benefit of our experience and skills, and on an individualized basis. In making our decisions, we must take into account and resist tendencies toward the over prediction of

dangerousness.

¶ 56 The Court in Winko made clear that it was not suggesting that Courts and Review Boards apply the test in a fashion that would expose the community to undue threats to its safety and well-being. To the contrary. Where the Board opines that there is a real risk to public safety, no absolute discharge can follow.

¶ 57 An opinion of significant threat must be based on the evidence rather than speculation. It must be significant in the sense that there must be a real risk of physical or psychological harm to individuals in the community that is serious in the sense of going beyond the merely trivial or annoying. The potential antisocial conduct of concern must be criminal in nature. There must be a foreseeable and substantial risk that the accused would commit a serious criminal offence if discharged absolutely. In making these determinations, we must have regard both to the interests of individual liberty and public protection.

¶ 58 If the RB determines that the accused is a significant threat, it must, in choosing between custody and a conditional discharge, make the disposition least intrusive to the accused in light of the preamble factors.

6. Oral evidence presented at the hearing

¶ 59 In oral evidence before the Panel, Dr. Wanis expressed what we regard, in light of the record, a legitimate concern about whether it the apparent sudden development of insight by the accused in the two weeks prior to our hearing was in fact credible. After insisting on July 7th, 1999 that he is not mentally ill and does not need medication, the accused evidently reversed his position on these points on July 26th.

¶ 60 Dr. Wanis expressed serious concern about the accused's history of substance abuse. While this issue has, as noted above, been downplayed by the accused and his mother, Dr. Wanis has not yet had the opportunity to explore this issue more fully and quite properly intends to explore that issue further.

¶ 61 With respect to the issue of Antisocial Personality Disorder, Dr. Wanis referred not just to the accused's criminal record, but other antisocial features such as the accused's aggressive behaviour on the ward (where there is no alcohol) and his aggressive and threatening behaviour toward nursing staff, although this conduct ceased on July 6th. Dr. Wanis told us that the accused has no insight into the frightening nature of the index offences. While the accused now denies any feelings of aggression toward the victim, Dr. Wanis, again, is in our view rightly concerned about the credibility of those statements as well.

¶ 62 The accused also gave evidence at our hearing. He was questioned at length by the Panel. He stated that he is able to tolerate his injectable medication and has not experienced side effects. He spoke of being lonely. He stated that he does not drink too often, but likes to drive a car "as if he has been

drinking" as this experience gives him freedom. In connection with the victim and the Pope and Talbot situation, he described having experienced a "delusion within a delusion". He said he no long believes the company supervisor owes him money, and that if he ever saw him, he would ignore him. As for the victim, he states that he has been reading her impact statement "all these nights" and feels sorry for what he did to her. He said that didn't mean his comments; he has a hard time expressing himself.

¶ 63 He states that he would like to return home to live. He would like to train for a welding degree and possibly move to Regina where he has family and may find work. He knows that the victim's daughter lives across the street with her father, and says he would not speak to her.

¶ 64 The accused was questioned in detail about the nature of his beliefs regarding Pope and Talbot and the victim, and his recent conduct and statements on the ward. We found that his responses were general, lacked real insight and were at times evasive. The content and manner in which his answers was expressed during our hearing did not convince us that he has in fact rid himself of his belief system, and for us confirms Dr. Wanis's opinions regarding the low degree of confidence which can be placed in the accused's statements at this time.

¶ 65 Dr. Wanis undertook a risk assessment using the HCR-20, which identifies a series of historical and clinical risk factors that have been shown to be significant in the assessment of risk. Based on his analysis, he concluded as follows:

> 1. I recommend that Mr. Silva be detained in custody a the Forensic Psychiatric Institute, allowing community access.
> 2. Mr. Silva currently presents a high risk to reoffend. The major concerns in his risk factors remain the issues related to substance abuse that have not yet been addressed, his insight into substance abuse as a disinhibiting factor, his lack of insight into his illness, his lack of insight into his need for medications and his floridly psychotic and aggressive behaviour when not on medications. Hence, in the absence of significant follow-up controls and adequate placement in the community, Mr. Silva is, in my opinion, at high risk to act out, and at this time, Mr. Silva presents a significant risk to the community.

We believe that this opinion is sound.

7. Decision

¶ 66 The accused has asked us to consider an absolute discharge. On his behalf, his counsel submitted that while there is evidence of threatening behaviour, there is no evidence of actual violence. She used the word "nuisance" in connection with his behaviour. She submits that he is stable now, shows some insight and remorse, has not phoned the victim since coming to FPI, has promised not to go near the victims again, has been compliant with medication and should properly return to the stability of his family environment.

¶ 67 We take a very different view of the matter. We have no hesitation in concluding that, if discharged absolutely, the accused would pose a significant risk to the safety of the public. Based on all the evidence before us, including our hearing with the accused, we question his recent insights into his illness and the need for medication. We also question the reliability of statements that a complex and intense delusional belief system, which has carried on for years, is something he has put behind him in the two weeks before our hearing. While he is "compliant" with medication, he of course required to take his injectable medication while in hospital, but he has "cheeked" oral medication. As for the support his family provides, it is clear to us that both the accused and his parents need to spend some time learning about his illness, the need for medication, and developing strategies to deal with it. Until then, a return to the same isolative style of living in the parental home, as occurred before the index offence, would constitute a risk factor to the community.

¶ 68 In R. v. Winko, supra, at para. 57, the majority defined "significant threat", as potential physical or psychological harm that is serious and is based on the evidence and which is criminal in nature. In our view, there is a very real risk that if discharged absolutely, the accused will again act in ways that, at a minimum, are threatening to others, including the victim family involved in the index offence.

¶ 69 In this connection, we take strong issue with any attempt to characterize the accused's actions as a mere "nuisance". The offence charged is a criminal offence. While the accused was found NCRMD, the fact that the victim of the index offence had reasonable grounds to fear for her safety was never in issue. The events giving rise to the index offence caused terror and serious psychological harm, as clearly illustrated in the following passages from the Victim Impact Statement signed by the victim on June 8, 1999 (Ex. 16):

> The night he was arrested, I became hysterical when he started talking about being alone with ... my 3-year-old daughter. I know all mothers are very protective of their children, but she's my life. I wasn't able to have children and it took invasive medical intervention to enable me to have her. I cannot have any more children. I gave up my marriage, my home and my friends to do the right things for her. I was sickened by the knowledge that he now has that on his mind. I was screaming and crying hysterically. I didn't even recognize my own voice. My entire body was shaking, and I couldn't stop pacing, fidgeting and whimpering ....

> Despite the wonderful healing of time, the walls of my home still feel permeated with his ugly and demented thoughts of me, of him watching me on video. I feel violated and I shudder and panic when I think of his sickness, how his obsession progressed over the nine months (to the point of talking about taking my daughter) and what he'll do next if given the chance. Although I can now have a few moments every day when I'm not thinking about it, he still dominates my thoughts. I always thought you could have everything taken away, but your thoughts would always be yours, private and secure. I don't believe that anymore. I feel like he's robbed me of a certain innocence that can only exist without having experienced the threat and violation he has imposed on me. He has invaded my life and now I know fear. I can't look at a poster of a missing child without panicking. I now know repulsion and hate in a way I never needed or deserved to know.

After discussing the physical and financial effects of her reaction to these events, the statement says:

> My ex-husband still lives across the street from Paul. He takes [the child] three or four days every second week as part of our custody arrangement. If Paul is out of jail, she will not be able to go there. I'll do whatever I can to make sure he never sets eyes on my daughter again. This means either my ex-husband has to uproot and move, something he would otherwise have no intention of doing, or just visit her in my home. Neither option is fair to them and will most surely cause even more undue emotional and perhaps financial stress on all of us if he is released.

¶ 70 In responding to the reasons of Gonthier J., McLachlin J. was at pains to assure readers that the majority's definition of risk "does not expose the community to undue threats to its safety and well-being": para. 51. In our opinion, to grant an absolute discharge would expose the community to undue threats to its safety and well-being for the reasons we have given.

¶ 71 Consistent with the high value which is properly placed on the accused's liberty, the next question we must address is whether the least intrusive disposition consistent with preventing such threats is a conditional discharge or a custody order. Again, we have no hesitation in forming the opinion, for the reasons given above, that the risks posed by the accused cannot at this time be safely be managed under a discharge order. In circumstances like these, issuing a conditional discharge order depends fundamentally on our assessment and confidence that, between periodic visits to an Outpatient Clinic, the threats posed by the accused's risk factors will not materialize. We do not at this time have the required degree of confidence given the state of the accused's illness, his lack of insight into that illness, the lack of social supports for the accused in the community, the present level of awareness of his parents regarding their son's issues, unresolved issues regarding his use of alcohol and the constant reminder to the accused served by his parent's close proximity to the home where the child stays when she is with her father. We have also taken into account the fact that the accused has in the recent past failed to comply with "no contact" provisions in a court order, something which we must consider in discharging a person into the community under conditions. Our disposition in this case also includes an order that the accused have no direct or indirect contact with the victim or her child.

¶ 72 At the same time, we have recognized that, consistent with the accused's liberty and his needs, and the interests that both he and society have for what we all hope will be his eventual reintegration into the community, the accused should be given the opportunity under this Order to receive unescorted absences and visit leaves when the Director is satisfied that he is ready for them.

¶ 73 In the unique circumstances of this case, however, a conflict arose between the condition prohibiting either direct or indirect contact with the victim and her child, and the accused's desire to exercise visit leaves at his parent's home, across the street from where the little girl lives part time. Given that proximity, we concluded that visit leaves to that location should not be permitted without further order of this Board, until such time as the victim family has been consulted and a proper plan is presented to this Board to ensure that no such contact takes place. On this important issue, we were not prepared to make a wholesale delegation on this question to the Director.

¶ 74 As noted in our brief oral comments at the hearing, the psychological damage that has been caused to the victim in real, serious and ongoing. The victim has not been consulted about the spectre of the accused returning home. Nor were we given any information about whether she would be consulted, or how her views would be taken into account by the Director, prior to such a proposed visit leave. Had the victim learned, after the fact, about his liberty under such an order made by this Board, or learned that the accused had "shown up" back at home and, in the inevitable incidental contact of small town life, come into contact with the child either directly or indirectly, further serious psychological harm to the victim would be a certainty, not a risk. We do not think such harm would be countenanced by the Supreme Court of Canada, which has conferred upon Review Boards the difficult task of reconciling competing considerations in the unique circumstances of individual cases. In addition to serious psychological harm,. the liberty of this child and her family also would be most seriously affected by such an Order because her mother would recognize the risks of contact occasioned by such close proximity and, understandably, would not want the child to visit her father there anymore. We do not think that the child and family should necessarily have to sacrifice their liberty where the accused has not, at a minimum, sought to present us with other reasonable options where he can exercise visit leave privileges.

¶ 75 We wish to emphasize that we are perfectly prepared, within the one year term of this order, to hear an application in favour of granting the accused visit leaves at his home based on proper information from the parties canvassing the Director's basis for believing he is ready for such leaves, whether alternative visit leave locations are reasonably available, what discussions have taken place with the accused's parents to ensure that our Order will be respected, and what consultations have taken place with the victim's family. In our view, these are all common sense steps which, perhaps understandably in these early days, have not yet been taken, but which in the circumstances of this case, will ensure that everyone's rights are properly balanced and protected.

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