



## INTRODUCTION AND BACKGROUND

[ 1 ] On March 19, 2019, the British Columbia Review Board convened an annual hearing to review the disposition of Sarah Baranyais, the accused, who is now 38 years of age.

[ 2 ] We are entitled to accept some, none or all of the evidence before us. While we have considered all of the evidence on record in this case, we only recite that which is necessary to our decision.

[ 3 ] The current hearing is Ms. Baranyais' fourteenth appearance before the Board since her 2005 verdict on the index offence of assault, contrary to s. 266 of the *Criminal Code*. The circumstances of the index offence, an attack on the accused's mother, in the context of delusional beliefs that the victim and other family members were imposters, as well as Ms. Baranyais' social and clinical histories have been documented and will not be repeated at this stage.

[ 4 ] Essentially, Ms. Baranyais' largely positive progress under care and treatment since her verdict and the fact that she has now been successfully residing in the community with support since 2010, prompted the Review Board at her last annual hearing in February of 2018, to order an independent risk assessment to determine whether or not Ms. Baranyais continues to meet the threshold for ongoing Review Board jurisdiction over her. Therefore, the issues before the Board at the current hearing, simply stated are two-fold: First, we must determine whether Ms. Baranyais continues to satisfy the jurisdictional threshold of "significant threat" as defined. If not, she must be absolutely discharged, which she seeks. If that issue is answered in the positive, then the Board must proceed to reconsider s. 672.54 and impose the disposition which is necessary and appropriate and the least restrictive in the circumstances.

[ 5 ] These two issues which I have identified are resolved or answered by the Board applying s. 672.54 of the *Criminal Code* which provides:

**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.

[ 6 ] The threshold test of significant threat was articulated in ***Winko v. British Columbia (Forensic Psychiatric Institute)***, [1999] 2 S.C.R. 625:

[T]he threat posed must be more than speculative in nature; it must be supported by evidence: *D.H. v. British Columbia (Attorney General)*, [1994] B.C.J. No. 2011 (QL) (C.A.), at para 21. The threat must also be “significant”; both in the sense that there must be a real risk of physical or psychological harm occurring to individuals in the community and in the sense that this potential harm must be serious. A miniscule risk of grave harm will not suffice. Similarly, a high risk of trivial harm will not meet the threshold. Finally, the conduct or activity creating the harm must be criminal in nature. (*Par. 57*)

[ 7 ] In ***Calles v. British Columbia (Adult Forensic Psychiatric Services)***, 2016 BCCA 318 , the BC Court of Appeal provided further guidance, saying that the Board must not adopt an interpretation of the term “significant threat” that places a burden on an accused to negate any future possibility that he might pose a significant risk of causing serious harm of a criminal nature to a member of the public. While the phrase implies a consideration of possible events, the evidence must take the Board beyond mere speculation. If applied over-broadly, the effect would be to foreclose ever granting any accused an absolute discharge. The Board must be careful not to impose on an accused a legally impermissible onus to disprove he is a threat.

## **DETERMINATION OF SIGNIFICANT THREAT**

[ 8 ] In coming to a determination about whether or not Ms. Baranyais continues to pose a significant threat, we are entitled to consider the circumstances of the index offence, as well as any other history of violence demonstrated by the accused. In this case, the index offence consists of an assault on Ms. Baranyais' mother. There is no indication that serious injury was inflicted, however, that is not in and of itself dispositive. There is also evidence that following her verdict and while under a disposition of conditional discharge, Ms. Baranyais, again in the context of a hospitalization due to a deterioration in her mental state as a result of non-compliance, attacked her treating psychiatrist in February of 2006. There is also some more vague history of violent ideation towards a former landlady. The record also notes that Ms. Baranyais' angry and negative animus towards her family members continued until her beliefs abated in intensity about two years after her verdict.

[ 9 ] The clinical evidence is clear that Ms. Baranyais carries a multi-factorial diagnosis. She has schizophrenia which has brought with it delusions of mis-identification about her mother, her sister and others. The phenomenon of schizophrenic mis-identification is known as Capgras Syndrome. It was these delusional beliefs, as well as the animus or anger that they generated that caused her to assault her mother, and possibly Dr. Chale, her psychiatrist in the community. Clearly these symptoms of schizophrenia have animated the accused's behaviour in the past, including the desire to harm or kill her mother which was quite persistent and overt over time. In his testimony, Dr. Wang alluded to research which suggests that Capgras Syndrome is associated with a somewhat elevated risk profile.

[ 10 ] Regrettably, despite a positive response to treatment with medication, and positive engagement with a supportive treatment team, Ms. Baranyais has consistently lacked insight into her illness. That lack of insight has been referred to and appears to us to be profound and dramatic. Ms. Baranyais steadfastly denies that she has a mental illness. Furthermore, and although she has been ostensibly medication compliant, Ms. Baranyais does not believe, despite evidence to the contrary, that the medication has any benefits for her or that it has had any impact on beliefs to which she continues to adhere. Given Ms. Baranyais' persistent denial of her illness, of the benefits of medication and, indeed, of any connection between the illness and her potential for violent or risk laden behaviour, Ms.

Baranyais has been consistent and to her credit, honest, in saying that if absolutely discharged from forensic oversight, she would in relatively short order stop consuming her medication. Under such circumstances, clinicians who have examined her say that the delusional beliefs to which she continues to cleave, will increase. She will become more intensely symptomatic and disorganized, and based on past experience, may well choose to act out against the objects of her beliefs in a violent manner.

[ 11 ] Ms. Baranyais was also diagnosed with an early brain injury, leaving her with at least a minor degree of cognitive impairment. This impairment may have a role in impeding the development of insight and certainly the ability to make, implement and adhere to plans for her own life.

[ 12 ] Ms. Baranyais also has distant drug issues, including use of THC, ecstasy, cocaine, as well as alcohol. Her alcohol abuse was present at the time of the index offence. According to Dr. Wang, and despite Ms. Baranyais' avoidance of the topic, there has been a recent and admitted increase in alcohol use to the point of intoxication. It is suggested that Ms. Baranyais may be resorting to drink to relieve the acute anxiety which she apparently experiences when out in the public. An exacerbation in alcohol use could serve to disinhibit her behaviourally and could be expected to interfere with her already grudging medication compliance. In addition, the evidence of Ms. Baranyais' progress in the past years suggests that she has, and continues to tamper or self-adjust her medications and has likely been doing so for a long time. It is therefore not surprising to her clinician that, not only do her residual beliefs persist, but there has, in the past year, been indication of evolving delusions involving her long time case manager, the details of which were disclosed at the hearing.

[ 13 ] Given the current dynamic and interplay of symptoms of her illness and her lack of insight, Dr. Wang has no hesitation in suggesting that, without support and supervision imposed by the Board's disposition, Ms. Baranyais would cease her involvement with mental health services, and discontinue her antipsychotic medication. In such circumstances, her mental state would most certainly deteriorate with an increase in delusions and disorganization of thinking, and even perhaps the incorporation of new individuals into the framework of her belief system. She would then be vulnerable to negative peer influence, exercise poor judgment in decision making, possibly become

unstable, and certainly at an increased risk of delusional driven violence, at least to the extent that was present at the index offence.

[ 14 ] As indicated, for the purposes of this hearing, the Review Board also ordered an independent risk assessment which was provided in a report from Dr. Riley. Dr. Riley identifies the same clinical and behavioural issues as does Dr. Wang, but says that there are protective factors such as a lack of pre-index offence violence and no history of involvement with weapons. In his risk assessment, Dr. Riley also focuses on Ms. Baranyais' history of non-compliance early in her tenure under our jurisdiction. He notes that she has in recent times adjusted and reduced her own medications. Dr. Riley also notes that despite engagement and medication, there has only been a partial response to treatment. Ms. Baranyais continues to adhere to many of the delusional beliefs that she endorsed at the time of the index offence. Dr. Riley is also concerned, given her history, about recent increasing alcohol use. He agrees that Ms. Baranyais shows no insight into her illness, her need for treatment, or the potential risk to others that could accompany a relapse to more intense symptoms. He says that Ms. Baranyais has "no intention of continuing her medications" and that under such circumstances, her decompensation is not just likely but inevitable. This would logically heighten her risk of harm to others. Dr. Riley is unable to predict the likelihood of violence ensuing or the significance or degree of violence which might be occasioned. He is able to say that full relapse would most certainly occur given her noncompliance on a voluntary basis. The severity of her psychotic symptoms would have a direct bearing on her risk.

[ 15 ] Ms. Baranyais remains, as she has consistently been, vague about any future plans or prospects. It is clear is that she does not think she needs her medications at this time and that she would "probably" stop consuming them. She points to the fact that she has unilaterally decreased her dosages with no apparent negative effects in her estimation.

[ 16 ] As much as we have sympathy for Ms. Baranyais' aspirations to be absolutely discharged from this scheme, and while we commend her for a 14-year history with no further reported violence, we are simply unable to diminish or discount the evidence of two experts in forensic risk assessment that under the scenarios outlined, Ms. Baranyais could indeed relapse to the point where her risk rises to the level required to justify our jurisdiction

under the *Criminal Code*. Regrettably, we are unable to resile from our earlier findings that our jurisdiction over Ms. Baranyais remains justified.

### THE NECESSARY AND APPROPRIATE DISPOSITION

[ 17 ] Having concluded that Ms. Baranyais remains a significant threat, we are required to reconsider and apply the criteria in s. 672.54 to the evidence to arrive at the necessary and appropriate disposition in this case:

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: **McAnuff (Re)**, 2016 ONCA 280. (Par 22)

[ 18 ] Given Ms. Baranyais' ongoing positive, if reluctant, engagement with her treatment team, we have no basis for imposing a more onerous disposition than her current discharge subject to conditions and it therefore remains the necessary and appropriate disposition.

Reasons written by B. Walter in concurrence with Dr. P. Constance and A. Markwart.

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