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

THE BRITISH COLUMBIA REVIEW BOARD

IN THE MATTER OF THE DISPOSITION HEARING OF

BRUCE ADDISON FENTON

HELD AT: Forensic Psychiatric Institute
Port Coquitlam, BC
22 October, 1999

BEFORE:	**CHAIRPERSON:**	**J. Bubbs**	**-- dissenting**
	MEMBERS:	**Dr. H. Parfitt, psychiatrist**	**-- for the majority**
		B. Long	**-- for the majority**

APPEARANCES:
ACCUSED/PATIENT: Bruce Addison Fenton
ACCUSED/PATIENT COUNSEL: C. Bow
HOSPITAL/CLINIC: Dr. R. Levy / C. Rodgers
ATTORNEY GENERAL: L. Hillaby

CHAIRPERSON: Mr. Fenton, you may have noticed by the length of time it took us to bring you back in here that we had some difficulty in coming to a decision today. However, we have reached a decision and it is not a unanimous one. The majority of this panel is of the opinion that the evidence before them indicates that you are a significant threat to the public safety and that more time needs to go by for the transition to be made to independent living. Therefore, there will be a conditional discharge, but there will be a change to the current order. The difference will be in the length of the order. This order will be reviewable by February 22nd, 2000, i.e., four months from today.

The panel has decided that we will reserve our reasons and they should be coming to you in short order. Dr. Parfitt and Mr. Long were of the opinion that you continue to represent to a significant threat to the public safety. I dissented from that opinion and I will be preparing reasons in dissent. We wish you very well with your new move to Santiago Lodge, Mr. Fenton and the Review Board will be seeing you again in approximately, I would think, about three and a half months' time to look again at this question. In the interim we will be relying to some extent on the representations of Ms. Rodgers that some more work will be done with transition to Community Mental Health Services.

Any questions? Thank you all. We are concluded.

Reasons for the majority:

On October 22, 1999, a hearing was convened before the British Columbia Review Board. The purpose of the hearing was to conduct a disposition review in this matter. The Board was unable to reach a unanimous conclusion. These are the majority reasons of panel members Barry Long and Dr. Hugh Parfitt.

The last disposition hearing in this matter was conducted on June 2, 1999, at which time the Board heard a number of arguments regarding jurisdiction. The Board dismissed those arguments and affirmed its reasons of April 28, 1999 on the substantive issue of disposition. That is when the Board had actually heard evidence and submissions on that issue.

Bruce Fenton is a 48 year old man who has been a patient of the Adult Forensic Psychiatric Services since 1973, when he was found not guilty by reason of insanity on a charge of obstructing a peace officer. Following the finding of not guilty by reason of insanity, Mr. Fenton was hospitalized at FPI for a prolonged period of time. In June 1990, Mr. Fenton attacked a fellow inmate at FPI and struck him on the head twice with a hammer. He was subsequently found to be not criminally responsible in October, 1991.

His medical diagnosis is one of chronic paranoid schizophrenia. His history has been one of attempts to place him in the community, which generally resulted in readmissions to FPI due to behavioral difficulties. In the past he has been chronically psychotic and mentally unstable. He has struggled with physical difficulties, including obesity and obstructive sleep apnea. He has also had difficulties abstaining from the consumption of alcohol.

In May 1998 Mr. Fenton, who had previously been subject to a custodial disposition, received a conditional discharge. Since then, and until very recently, he has been living at Willingdon House. Mr. Fenton, despite his lengthy history, has made enormous progress. On April 28, 1999, the date of Mr. Fenton's last review, the Board found Mr. Fenton had demonstrated "real progress". It wrote:

> "your relationships with your hospital staff and your care givers had improved. You had successfully completed one visit leave to Willingdon house. Your efforts to address your medical issues, including the obesity have been diligently and successfully pursued. You were spending five days a week at the food bank. You have remained abstinent since 1996. Aside from some concerns or suspicions raised around 1996, you have been compliant with your treatment.
> ...we have new information that says your stay at Willingdon has been overall successful. The staff there speak well of you. They report no

> concerns. Everyone says you are cooperative. You report as directed. You are openly compliant with your medication despite the fact that you seem to have some real motivation or drive to get the medication out of your life in the long term. You really want to try to find alternatives to it, despite the fact that Clozapine achieved some major benefits for you. You now, openly, and you have for some time acknowledged when you were having difficulties in terms of your thoughts or symptoms."

The Board concluded that:

> "the reason we think you ought to stay on the conditional discharge for a while longer is because, as I said at the outset, of the possible stresses of independent living, the unknown future of the relationship, the need to bring more structure into your life, and the possibility that those events in the next while you move into more fullsome integration into the community, could cause you to relapse to symptoms and possibly your commitment to medication. ...we are simply saying that after this period of time, your integration ability to function in the community should be tested further. For that reason we are harbouring doubt and deferring your absolute discharge for the time being."

Although Mr. Fenton has been placed on a waiting list for an independent living arrangement, an opening did not become available in a suitable setting until October 17, 1999, when he moved to Santiago Lodge, which is located in the downtown east side of Vancouver. This is an area that is notorious for its poverty, high crime rate, and ready availability of drugs. As a result Mr. Fenton, through no fault of his own, has not had an opportunity to attempt to reintegrate into the community where he will be living.

Ms. Cathy Rogers, a community nurse with the Adult Forensic Community Service, responsible for supervising Mr. Fenton, is generally of the opinion that Mr. Fenton is just beginning a major transition. He will be exposed to a number of stressors to which there is no way of accurately predicting his response. Her report of October 22, 1999 summarizes her concerns. It stresses the many significant changes Mr. Fenton is now just facing. She concludes that:

> "Mr. Fenton has a serious and chronic illness. Without treatment and proper community follow up, he will deteriorate quickly. In the past he has decompensated very quickly and had become increasingly hostile,

> agitated, and violent. When acutely psychotic he becomes paranoid and hears command hallucinations telling him to kill. Mr. Fenton has had a wide spectrum of delusions and command hallucinations telling him to kill various people, for example – his mother, ward staff, his psychiatrist, or fellow patients. Additionally he has had delusions about children and politicians, although he has not reported command hallucinations in conjunction with these. Therefore, he would most likely not discriminate as to who would be his potential victim should he decompensate. Further, Mr. Fenton's insight into his illness is minimal and superficial. He is ambivalent with his need for medications. On August 18, 1999, Mr. Fenton stated "the meds help a bit... I guess they help".
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> Mr. Fenton has been living in the community very briefly and spent the majority of his life in hospital. He requires a very stable placement with a lengthy period of stability in the community with the appropriate supports before an absolute discharge can be supported by the team."

The Board also had the opportunity to hear from Dr. Levy, in addition to reviewing his report of October 7, 1999. In summary, Dr. Levy agreed with Ms. Roger's opinion expressed above.

The Board also had the benefit of hearing from Mr. Fenton. He was frank in admitting that he still heard voices although he said that he took comfort from hearing them. He was equally frank in admitting that while he was not tempted by use of drugs such as marijuana, he has been tempted to use alcohol, shortly after he moved to Santiago Lodge. This admission illustrates the concerns that his treatment team has regarding his ability to handle stressors and whether he will decompensate in his new setting.

In determining the appropriate disposition to be made in this hearing, we are guided by the recent decision of the Supreme Court of Canada in *Winko v. British Columbia (Forensic Psychiatric Institute)*. We bear in mind our obligation to make the least onerous and least restrictive disposition taking into consideration the need to protect the public from dangerous persons, the mental condition of the accused, the reintegration of the accused in society as well as other needs of the accused.

Mr. Fenton's continued progress and commitment to following his medical regime is commendable. Mr. Fenton wishes to be absolutely discharged. However, in view of

Mr. Fenton's very significant history and the evidence presented before us, we find that Mr. Fenton still poses a significant risk to the safety of the public. He has not yet had the opportunity to even meet his new treatment team from the Strathcona Community Health Services. He has had no opportunity to test how he will deal with the challenges of his new residence. In all the circumstances, we believe that the current Order should be continued on the same terms as before. We have also decided to make this Order reviewable in four months. This will permit Mr. Fenton to come before this Board at the soonest possible time in order to demonstrate his capacity to handle his new environment.

Reasons for Dissent:

(Per J. Bubbs, Alternate Chairperson):

CHAIRPERSON: With the greatest respect to my Review Board colleagues, I am unable to come to the conclusion that Bruce Addison Fenton continues to represent a significant threat to the public safety. Mr. Fenton's lengthy history with the Forensic Psychiatric Services is well set out in the disposition information and in the majority reasons written by Mr. Long.

I wish to point out, however, that this man has been an inpatient at the Forensic Psychiatric Institute since approximately March of 1981. His mental state was highly unstable and his prognosis poor until February of 1992 when he was commenced on the novel antipsychotic medication Clozapine. Since then, there has been a marked improvement in the mental stability of Mr. Fenton. Although he has remained actively psychotic and on many occasions has admitted to hearing command hallucinations, he has not acted upon those

commanding voices. Since June of 1996, he has functioned well in the "cottages" which are minimum-security group homes located on the grounds of Riverview Hospital some two kilometres away from the main campus of the Forensic Psychiatric Institute. Except for a brief return to the main campus in spring of 1996, Mr. Fenton has remained in minimum security. Indeed, by January of 1996, his Treatment Team had begun the process of referring Mr. Fenton to appropriate supervised boarding home placements. Back in 1996, it was the opinion of the Treatment Team that it was time to try Mr. Fenton in a supervised placement, but community placement agencies were reluctant to act upon the Treatment Team's referral.

It took until February of 1998 to enable Mr. Fenton to commence visit leaves to Willingdon House, a supervised mental health boarding facility in Burnaby. His disposition was changed to a conditional discharge on March 4th of 1998. Since that time, Mr. Fenton has resided on the less supervised side of Willingdon House and has been responsible for the administration of his own medications four times a day in bubble packs which contain medication sufficient for two weeks at a time. There has been no indication since his discharge into the community that Mr. Fenton has been non-compliant with his prescribed medication regime. Likewise, there has been no indication that Mr. Fenton has been using alcohol or drugs since that time and all urine screens have been negative. Indeed, in the past six months no urine screens have been taken because there have been no reasonable grounds to believe that Mr. Fenton has been abusing any substances.

Reports from Willingdon House have been very positive. Staff indicate that Mr. Fenton has been a helpful resident in that facility. He has had a part

time job during that time assisting with lawn work and other chores around Willingdon House. He has been faithful in his reporting regime and there is no indication that he has acted out in an aggressive or violent fashion since his conditional discharge.

Mr. Fenton was last seen by a panel of the Review Board on April 28th, 1999, at which time a conditional discharge of six months duration was ordered. That panel wanted to see more time go by to test Mr. Fenton's ability to live independently and safely in the community. On October 17th, 1999, Mr. Fenton moved into a non forensic mental health boarding facility known as Santiago Lodge and is delighted with his new apartment.

I was impressed today with Bruce Fenton's commitment to taking antipsychotic medication for so long as he is advised to do so by a psychiatrist. I further believe that Mr. Fenton will continue to receive psychiatric treatment from the Strathcona Mental Health Team. Although I appreciate the caution expressed by Nurse Rodgers and the majority of this panel in wanting to assess how well Mr. Fenton can manage in a "skid row" setting where he is exposed daily to psychosocial stressors and offers of street drugs and alcohol, nevertheless, I am of the opinion that there is no significant difference between Mr. Fenton's previous residence at Willingdon House and his current residence at Santiago Lodge.

The key to the protection of the public safety in this case is, in my opinion, compliance with antipsychotic medication and abstinence from the use of disinhibiting substances such as alcohol and street drugs. It is my opinion that Bruce Fenton has amply demonstrated his commitment to his future mental health care and his determination to abstain from the use of drugs and alcohol.

I cannot therefore find him to be a significant threat to the public safety and would have ordered an absolute discharge.

/dw
jb/edit dissent/
08/11/1999