



**BRITISH COLUMBIA REVIEW BOARD**

**IN THE MATTER OF PART XX.1 (Mental Disorder) OF THE CRIMINAL CODE  
R.S.C. 1985 c. C-46, as amended S.C. 2005 c. 22**

**REASONS FOR DISPOSITION  
IN THE MATTER OF**

**DAVID FOMRADAS**

**HELD AT: Forensic Psychiatric Hospital  
Port Coquitlam, BC  
November 1, 2017**

**BEFORE: ALTERNATE CHAIRPERSON: I. Friesen  
MEMBERS: Dr. J. Smith, psychiatrist  
B. Walter**

**APPEARANCES: ACCUSED/PATIENT: David Fomradas  
ACCUSED/PATIENT ADVOCATE: T. Reyes  
DIRECTOR AFPS: Dr. M. Hediger, K. Melhus, B. Lohmann  
DIRECTOR'S COUNSEL:  
ATTORNEY GENERAL: G. Kabanuk**

## **INTRODUCTION AND BACKGROUND**

[ 1 ] On November 1, 2017, the British Columbia Review Board (the Board) held a hearing to review a restriction of liberties and to review the disposition in the matter of David Fomradas, who was found not criminally responsible on account of mental disorder (NCRMD) on June 4, 2010. The Board reserved its decision. Subsequently, Mr. Fomradas was absolutely discharged. These are the Reasons.

[ 2 ] Although we have considered all the evidence on record, for the purpose of these Reasons we only recite that which is necessary to our decision.

[ 3 ] The index offences of theft of a motor vehicle, dangerous operation of a motor vehicle, aggravated assault, assault with a weapon, and mischief occurred on December 29, 2009. The accused impulsively boarded a bus to Vancouver from Lethbridge, arriving only hours before the index offence. He stopped a vehicle traveling on a busy downtown street by jumping on the hood and pounding on the windshield. The driver got out of the vehicle and went to speak with a witness. The accused entered the driver's seat and drove away with the passenger still sitting in the next seat. The driver attempted to stop the accused and was dragged alongside the vehicle. After a short distance, the accused crashed the car into the CBC Radio building, seriously injuring both the driver and the passenger. Mr. Fomradas was combative and resisted arrest. At the time of the incident, the accused was exhibiting significant symptoms of psychosis and mania.

[ 4 ] Mr. Fomradas is a 39-year-old man. He experienced his first major disturbance in his mental state in 1999 when he became manic and then depressed. In 2000 he took his brother's vehicle without permission and engaged in a high-speed police chase. He was admitted to hospital for assessment and diagnosed with bipolar mood disorder and narcissistic personality traits. Following his discharge from hospital, the accused became non-compliant with medication. He has a criminal record arising out of the motor vehicle incident, including convictions for taking a motor vehicle without owner's consent, possession of stolen property, false pretenses, fraud, obstruction of police officer, and failure to appear in court. Sentences on these offences were suspended and he was placed on probation for 18 months.

[ 5 ] Prior to the index offences, the accused had been living with his parents in Lethbridge, Alberta. He showed signs of mania approximately two to three months prior to the index offences. He spent savings of approximately \$7,000 and ran up credit card debt

of about \$6,000. After arriving in Vancouver and before the index offences, he was checked by the police after engaging in bizarre behaviour at a local hotel.

[ 6 ] The accused was admitted to the Forensic Psychiatric Hospital (FPH) on January 5, 2010, after his arrest for the index offences. He continued to exhibit bizarre and disorganized behaviour and experienced delusions with grandiose and religious themes. Mr. Fomradas' mental and behavioural state improved significantly after he was started on anti-psychotic medication. At the time of his first hearing, Mr. Fomradas had recovered sufficiently to be discharged conditionally to Coast Transition Community Cottages (CTC) on August 30, 2010 and again at his next hearing on July 15, 2011. The Board justified its jurisdiction on the basis of the seriousness of the index offences, the perceived risk of rapid mental deterioration, the accused's past history of non-compliance, his lack of insight into his illness and need for medication, and his vulnerability to stressors.

[ 7 ] The accused has been unable to reintegrate smoothly into the community. On November 10, 2011, he was returned to FPH for inappropriate behaviour such as staring at staff, argumentative attitudes, guardedness, paranoia and concerns over potential stressors. He became disengaged with his treatment, believing he ought to have been absolutely discharged. His third hearing resulted in a broad custodial disposition on December 6, 2011. He progressed through the system of privileges at the hospital and was again preparing for reintegration into the community. On his first unaccompanied visit to CTC on May 28, 2012, Mr. Fomradas eloped by bus to Calgary. He was AWOL for over two years. He was not in touch with his family, was homeless and non-compliant with medication.

[ 8 ] Mr. Fomradas was arrested by RCMP on September 16, 2014. He showed signs of hypomania upon readmission to hospital. He resisted disclosing his activities while on unauthorized leave and failed to engage in a therapeutic alliance with his treatment team. He was dismissive, argumentative and sarcastic, and challenged unit rules and limits. He was given a further custodial disposition on November 13, 2014.

[ 9 ] From February to May 2015, Mr. Fomradas became more settled, directable and pleasant. He began to develop insight into his need for anti-psychotic medication. His cooperation and engagement with his treatment team improved, although he maintained a residual guardedness.

[ 10 ] On November 30, 2015, Mr. Fomradas was released on another conditional discharge. A few weeks after discharge, and seemingly as a result of receiving news that his father had died, he eloped again and went to his mother's home in Lethbridge. He was arrested on March 13, 2016 and returned to FPH.

[ 11 ] On April 13, 2016, the accused received another custodial disposition. At FPH, the accused again worked through the levels of privilege and displayed improving attitudes and behaviour. He exercised a number of supervised community outings for work placements for up to 4 hours' duration. His was settled with no evidence of psychosis, mood swings, irritability, verbal or physical aggression. His therapeutic relationship with his treatment team improved.

[ 12 ] On March 21, 2017, Mr. Fomradas was conditionally discharged to live at CTC.

### **EVIDENCE AT THE HEARING**

[ 13 ] In preparation for the hearing, the Board received exhibits and reports including the notification of change of liberties dated September 14, 2017 (Exhibit 44), report from Dr. Hediger dated October 13, 2017 (Exhibit 45), letter and photos (Exhibit 46), report from the case manager dated October 3, 2017 (Exhibit 47), and report from Dr. Lax dated October 25, 2017 (Exhibit 48).

[ 14 ] On September 14, 2017, Mr. Fomradas was returned to FPH after exhibiting behaviour that raised the concerns of CTC staff. The accused was paying unwanted attention toward a female staff member and not respecting appropriate boundaries. During a subsequent search of the accused's room, staff found a number of items including an X-ACTO knife, rocks, chains, scissors, leather awl, metal files, duct tape and 2 sets of heavy chains connected to leather loops. A letter written by the accused was also seized. The letter contained bizarre statements and diagrams. The items were seized and pictures taken (Exhibit 46).

[ 15 ] On his return to FPH, Mr. Fomradas was behaviourally settled with no evidence of psychosis, mood symptoms or hypomania. There were no signs of substance abuse. There was no indication of non-compliance with medication. Mr. Fomradas initially exhibited a somewhat arrogant and oppositional attitude and denied that his actions or seized items should cause concern. However, after discussions with Dr. Hediger, his attitude softened significantly. He developed an appreciation for the perspective of the staff who found the seized items frightening. Mr. Fomradas explained that he used the tools for

leatherworking and that he was making exercise equipment. The chains attached to cuffs were not designed as handcuffs, rather, to attach to exercise pulleys for isometric exercises. A female friend informed the team that, months earlier, Mr. Fomradas demonstrated his workout method with the chains and cuffs. Mr. Fomradas insisted that the letter merely recorded fragments of thoughts in preparation for writing.

[ 16 ] Dr. Hediger knows Mr. Fomradas well. He has been his treating psychiatrist since his first admission to hospital. Dr. Hediger opined that the letter contains unusual thoughts and communication style, but evinces no florid psychosis, hallucinations or overly disorganized behaviours. While the accused's possession of the seized items was ill advised and showed poor judgment, Dr. Hediger could not find any evidence that the items were meant for some nefarious purpose. Dr. Hediger testified that assessing Mr. Fomradas has always presented challenges. Over the course of his treatment, Mr. Fomradas has often displayed "unusual behaviours" and when questioned, does not provide good explanations. He is vague and difficult to follow. Mr. Fomradas has no history of sexual violence, and there has been no incidents of violence save for the index offences. Dr. Hediger testified that Mr. Fomradas' possession of the seized items does not increase his risk to the public safety.

[ 17 ] Dr. Hediger is perplexed regarding Mr. Fomradas' slow progress toward community integration and absolute discharge. While there are personality issues, Dr. Hediger cannot conclude there is an identifiable personality disorder. Early on in treatment, Mr. Fomradas displayed more arrogant, dismissive behaviours and was disrespectful toward authority. His behaviour has improved in recent years and he seems to have matured. It has been easier for staff to redirect and engage him.

[ 18 ] If given an absolute discharge, Dr. Hediger opined that the accused would continue treatment in the short term, but would likely discontinue taking his medication over time. If non-compliant to medication, Mr. Fomradas would experience a very slow deterioration in his mental health. The accused's risk of violent behaviour occurring in the next few years, even if unsupported in the community, is low to medium. Mr. Fomradas could live independently given his high level of functioning.

[ 19 ] Mr. Fomradas has lost his accommodation at CTC, although CTC is willing to consider a referral in the future. The Director proposed another custodial disposition of 6 – 12 months in order to allow Mr. Fomradas to return back to CTC on visit leaves.

[ 20 ] Mr. Fomradas explained his use of chains and cuffs apparatus in the gym, that he attaches them with carabiners to the pulley weight system. He testified that he can do arm and leg exercises with the equipment, allowing for greater freedom of movement. He is interested in developing a business selling exercise equipment. He has been working out at a gym 3 times a week.

[ 21 ] The accused explained his letter as “therapeutic writing” and no more than “creative expression” and poetry. He was inventing games that reflect the spirit of Halloween.

[ 22 ] Mr. Fomradas seeks an absolute discharge and wants to return to Lethbridge to live with his mother. She is in her late 70s and he is anxious to help her and develop his relationship with her. His mother will allow him to reside in a basement suite in her home. He will connect with the mental health community in Lethbridge. He experiences no side effects with his current medication and is motivated to continue taking it. He does not think a doctor would ever tell him to come off his medication. He does not wish to experience psychosis again. He would like to get his license back but won't be able to do so until he is able to pay ICBC and the money he owes on the civil judgment against him.

### **ANALYSIS AND DISPOSITION**

[ 23 ] The Board agreed that the Director's restriction of liberties was appropriate. The accused's possession of knives in his room is a breach of his disposition prohibiting knives or weapons. His possession of the seized items and the letter understandably caused safety concerns for the staff and their decision to return him to FPH was amply justified.

[ 24 ] The Board considered whether the seizure of the items and letter increased Mr. Fomradas' risk to the public. The seized items look alarming. Mr. Fomradas' letter seems to advocate for unusual behaviours involving other people. On the face of it, these items appear to suggest that Mr. Fomradas intended to harm others. However, the evidence at the hearing did not support this perspective. Dr. Hediger could not opine that the accused's possession of these items raised his risk to public safety. Mr. Fomradas' writing did not indicate deterioration in his mental state. Dr. Hediger could not conclude that Mr. Fomradas intended to use the items for a dangerous purpose. Mr. Fomradas has provided an explanation that may reasonably be true: that he built an exercise system that he finds effective in the gym. Certainly, he appeared at the hearing to have been working out. The

Board could not therefore conclude that the accused's behaviour leading to the restriction of liberties increased the accused's risk to the public.

[ 25 ] The Board went on to consider whether Mr. Fomradas meets the threshold of significant threat to the safety to the public under s. 672.5401 of the *Criminal Code*.

[ 26 ] In the Supreme Court of Canada in ***Winko v. British Columbia (Forensic Psychiatric Institute)***, 1999 CanLII 694 (SCC), [1999] 2 S.C.R. 625. Per Justice McLachlin, as she then was, stated (at paragraph 57) that the risk cannot be speculative and must be:

. . . 'significant' 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 minuscule risk of grave harm will not suffice. Similarly, a high risk of trivial harm will not meet the threshold.

at paragraph 49:

Section 672.54, read thus, does not create a presumption of dangerousness. There must be evidence of a significant risk to the public before the court or Review Board can restrict the NCR accused's liberty. Nor does s. 672.54 permit the court or Review Board to refuse to grant an absolute discharge because it harbours doubts as to whether the NCR accused poses a significant threat to the safety of the public. Since there must be a positive finding of a significant risk to the safety of the public to engage the provisions of the *Code* and support restrictions on liberty, something less – i.e., uncertainty – cannot suffice.

[ 27 ] In ***Re Carrick***, 2015 ONCA 866 (CanLII), 128 O.R. (3d) 209, at para. 17, the Ontario Court of Appeal held as follows:

[T]he "significant threat" standard is an onerous one. An NCR accused is not to be detained on the basis of mere speculation. The Board must be satisfied as to both the existence and gravity of the risk of physical or psychological harm posed by the appellant in order to deny him an absolute discharge.

We accept that, as was the case in ***Re Ferguson***, 2010 ONCA 810 (CanLII), 271 O.A.C. 104, an absolute discharge may not be in the appellant's best interests: see para. 45. But that is not relevant to the Board's duty and this court's task on appeal. The appellant is entitled to his liberty absent a reasonable finding that he constitutes a significant threat to the safety of the public.

[ 28 ] While Mr. Fomradas has been difficult to manage in the community and has displayed behaviours of concern to CTC staff, his actions have never been violent while he

has been under the jurisdiction of the Board. His past dangerous incidents occurred while he was in a state of florid mania while driving a motor vehicle. He was in that state in 2000 during a police chase involving his brother's vehicle. He was also in that state in 2009 at the time of the index offences. His mental state has not deteriorated to florid psychosis since then. Even when he was AWOL and homeless, living without supports, treatment or medication for two years, his mental state did not deteriorate to the point of psychosis. He did not engage in dangerous behaviour.

[ 29 ] Mr. Fomradas' mental health is not complicated by a drug abuse problem. He has a residence and the support of his mother in Lethbridge Alberta. He is capable of finding mental health supports in that community. Mr. Fomradas has insight into his need for medication. He is motivated to continue with medication as he does not wish to return to a psychotic state.

[ 30 ] While troubling and frustrating for his treatment team, Mr. Fomradas' "unusual behaviours", do not pose a sufficient threat to the public safety to justify continued Board oversight. Mr. Fomradas' mental health has been stable for many years. If he relapses in the future, the deterioration will be slow. His mother knows his background and will be able to seek help if his mental health begins to deteriorate. Mr. Fomradas has shown a remarkable ability to handle stressors even while living homeless and unsupported in the community. Dr. Hediger's assessment of the accused's future risk for violence is low to medium. The Board concluded that Mr. Fomradas' risk to the public does not reach the threshold of "significant risk" and that its continued jurisdiction of the Review Board is not justifiable. Mr. Fomradas is entitled to an absolute discharge.

Reasons written by I. Friesen in concurrence with Dr. J. Smith and B. Walter.

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