BRITISH COLUMBIA REVIEW BOARD

IN THE MATTER OF PART XX.1 (Mental Disorder) OF THE CRIMINAL CODE R.S.C. 1991 c. 43, as amended S.C. 2005 c. 22, S.C. 2014 c. 6

REASONS FOR DISPOSITION
IN THE MATTER OF

ANDREW FROEHLICH

HELD AT: **Forensic Psychiatric Hospital**
Port Coquitlam, BC
March 15, 2018

BEFORE:	**CHAIRPERSON:**	**B. Walter**
	MEMBERS:	**Dr. W. Pankratz, psychiatrist**
		P. Cayley
		Dr. M. Burnett *(ex officio)*

APPEARANCES:
ACCUSED/PATIENT: Andrew Froehlich
ACCUSED/PATIENT ADVOCATE: T. Reyes
DIRECTOR AFPS: Dr. S. Lax, T. Vincent
DIRECTOR'S COUNSEL:
ATTORNEY GENERAL: L. Hillaby

INTRODUCTION AND BACKGROUND

[1] On March 15, 2018, the BCRB convened an annual hearing to review its disposition, made on April 6, 2017, in the matter of Andrew Froehlich, the accused, now 28 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] In 2003, at age 13, the accused suffered a head injury in a skateboard accident. His mother reported that the accused's behaviour grew odd around this time. He experienced a number of hospital admissions in Abbotsford. In 2004, MCFD child protective services became involved due to parent/child conflict. The accused apparently made a suicide attempt in 2004. There were allegations of drug abuse and school suspensions in 2004 and 2005. His school issues included truancy, fire setting, drug use and other misbehaviours. He was unable to remain in school as of 2005. In 2006, he was placed in the psychiatric ward of BCCH for 8 weeks. He was diagnosed with schizophrenia as well as declining or impaired cognition. In December 2006, the accused was again admitted to hospital in Maple Ridge.

[4] Almost eleven years ago, the then 18 year old accused was living with his mother in Abbotsford. The family was well known to law enforcement. Between 1999 and 2006, there were reportedly as many as 68 police calls from Mr. Froehlich's mother in the context of complaints of domestic conflict.

[5] On April 28, 2007, Mr. Froehlich shoved his mother outside the house where he began to punch her in the head. The accused retreated to the house, returned with a paring knife and stabbed the victim in the chest and upper abdomen. A neighbour struck the accused with a golf club. The victim suffered serious injuries. Mr. Froehlich was charged with attempted murder: s.239(b) *CC*.

[6] There has been evidence throughout, of the accused's conflicted or enmeshed relationship with the victim. His mother has consistently wanted him to return to her home.

The evidence suggests that she may not fully understand his situation or accept that he is mentally ill. Mr. Froehlich has no prior record of criminal involvement or convictions.

[7] On October 2, 2007, Mr. Froehlich received a verdict of NCRMD and was detained at FPH. He was started on injectable medication but showed only a moderate response to treatment.

PROCEDURAL PROGRESS

[8] Under the jurisdiction of the BCRB, Mr. Froehlich was, on the basis of his early treatment response, his non-disclosiveness *vis a vis* his treatment providers, his unsettled, challenging behaviour, his admission of inappropriate focus on females, thoughts of assaulting co-patients and raping staff, and his use of marijuana, detained at FPH. His mental state slowly improved and his symptoms resolved. His relationship with his mother was the central focus of risk management. Their interactions have been monitored and at times been the subject of comment.

[9] In the period from November 2008 to 2009, and although his symptoms appeared to resolve, Mr. Froehlich's behaviour remained problematic. He aggressively approached peers for sex. He declined to participate in psychological counselling. He made unwanted telephone calls to a former "girlfriend".

[10] In the following year, Mr. Froehlich was briefly placed on the open Hawthorne unit but was unable to comply with expectations. His mental state appeared to deteriorate to the point where he endorsed psychotic symptoms. He also yielded multiple positive urine screens.

[11] In September 2010, Mr. Froehlich again contacted his former friend against her wishes. Despite disclosure of some auditory symptoms, his insight improved and by September of 2011, he was considered non-psychotic.

[12] Mr. Froehlich was allowed community outings escorted by his mother. He made some sexually inappropriate comments to a female nurse. His mother, considered the sole object of risk from the accused, repeatedly made it clear that she did not fear her son and did not want protection from him.

[13] In its Reasons for Disposition dated September 26, 2011, the Board said:

> Dr. Ploesser offers a risk assessment following the HCR-20 format. He notes a number of historical items that place the accused at increased risk of future violence, including the accused's history of violence that began at an early age, substance abuse, and the presence of a serious mental disorder. A clinical variable of concern is the accused's failure to acknowledge his potential for future violence toward his mother. More encouraging is the accused's positive response to his current anti-psychotic medication regime, improved insight into his illness and the absence of negative attitudes. Under risk variables Dr. Ploesser notes that the accused's plans often lack feasibility, particularly with regard to his limitations to academic achievement stemming from his mental illness. Dr. Ploesser observes that a return by the accused to live with his mother carries a possibility such a plan will not succeed considering their past conflicted and at times violent relationship. However, Dr. Ploesser notes that the accused's past violence toward his mother occurred when the accused was experiencing acute psychotic symptoms and these have been resolved with medication. Dr. Ploesser identifies the most significant potential destabilizers for the accused are his resorting to illicit drugs and his problematic relationship with his mother. Dr. Ploesser suggests that, based on past events, the accused's mother is the only person at physical risk from the accused, however, the accused's mother has made it clear to Dr. Ploesser that she is not afraid of the accused. Dr. Ploesser includes the following comment in this regard:
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> > “She made clear that she is prepared to assume possible risk to herself in the interest of preservation of the family relationship between herself and her son, as well as in the interest promoting her son’s progression in life and career development, which she sees as unnecessarily held up by the continued detention at the Forensic Psychiatric Hospital. Mr. Froehlich's mother, victim of the index offense, repeatedly and adamantly made clear that she does not wish to be protected from her own son by means of a custodial order of the Review Board. Her insistence that her son be released from hospital has reached a point that she has come to perceive certain members of the treatment team, notably Dr. Murphy (former treating psychiatrist) and Sheila Letwin, RPN as adversaries, standing in the way of being able to maintain a family bond as desired by her with her son.”: *Ex.26, par.8.*

[14] The Board went on to state that:

> Dr. Ploesser considers that the risk inherent in the accused's mental state at the time of the index offence has been mitigated through effective psychiatric treatment. The significant threat posed by the accused is only in relation to the accused's mother and she wishes to assume the possibility of risk to herself.: *Ex.26, par.9*.

[15] At his April 30, 2012 hearing, and although the accused remained in custody, the BCRB heard evidence that the accused might be becoming institutionalized. Although

he was considered suitable to undertake expanded liberties, no internal application for these had been processed. His treating psychiatrist provided evidence that:

> He is free of psychotic symptoms. The need to reintegrate the accused into society would in my opinion favour a decision of discharge from hospital rather sooner than later as behavioural deterioration and exposure to antisocial peers as well as signs of institutionalization may be areas of concern with prolonged hospitalization.: *Ex.28, par.21.*

[16] As a potential resource had been identified, the RB decided to order a visit leave of at least 7 days' duration within the first 45 days of the accused's new disposition: Ex.29. However, due to a deterioration in Mr. Froehlich's mental state and behaviour, the condition was not implemented by the Director: Ex. 30. On June 17, 2012, after a number of successful day leaves with his mother, the accused, without warning or provocation, stabbed a staff member in the jaw or neck with a "Bic" pen. He said that the Pope had told him to stab the victim. This was reminiscent of an utterance he had made in 2010. Assessment suggested that Mr. Froehlich was responding to psychotic impulses. The accused was referred for a formal psychological assessment for possible personality issues. Mr. Froehlich was termed an "unpredictable risk". He was secluded, in a psychotic state, for several months after this second index offence but he eventually responded to treatment.

[17] Mr. Froehlich was charged with assault causing bodily harm as a result of the June 19, 2012, attack. Dr. Brink provided a report to the Court on the basis of which Mr. Froehlich was given a second verdict of NCRMD on April 15, 2013.

[18] Because of Mr. Froehlich's unusual behaviour, interpersonal style and other cues, an Autism Spectrum Disorder Assessment was pursued.

[19] On May 23, 2013, at his first hearing after the new verdict, the BCRB ordered that Mr. Froehlich be detained. He remained apsychotic, stable and fully compliant in the months following.

[20] In 2015, Mr. Froehlich was enrolled in Anger Management programming. He participated enthusiastically, to the best of his ability and presented in a calm manner. He was initiated on supervised community outings. Mr. Froehlich's mental state, behaviours, and insight continued to improve. His illness remained in remission. He handled his

supervised outings appropriately and discharge planning was slowly initiated. His drug screens were negative.

[21] On April 16, 2016, Mr. Froehlich was conditionally discharged for the first time since his admission to FPH in 2007, to be placed at a facility known as Timber Creek, a relatively restrictive setting, where a wider range of programs was available. His symptoms were considered in “optimal remission” and, according to clinical opinion, his treatment needs and risk could both be managed on an outpatient basis at Timber Creek.

[22] Having finally agreed to psychological testing, an assessment indicated that Mr. Froehlich functions at a full scale IQ of 90 (low average). Autism testing was inconclusive. His odd behaviours attributed to cognitive deficit, possibly secondary to schizophrenia.

[23] At Timber Creek, Mr. Froehlich was generally polite but at times impatient, challenging and rigid in his thinking. He appeared happy to be living at Timber Creek where he was able to progress through privilege levels to the point of achieving full unescorted access to the community. He remained reliant on his mother to venture out. He tended to be socially isolative at his residence and demonstrated some obsessive behaviours. His symptoms remained in remission and his medication regime was simplified. He yielded a positive urine screen in October 2016. Other less restrictive but supervised housing options began to be explored.

EVIDENCE FOR CURRENT HEARING

[24] Mr. Froehlich remained at Timber Creek until August 2017, when he was transferred to another 24/7 supervised care facility known as Nicola Lodge. He has been seen by his case manager every three weeks and by Dr. Lax every six weeks.

[25] Case management has focused on increasing Mr. Froehlich’s independence including his skills to navigate the community. Ms. Vincent’s evidence was highly focused on Mr. Froehlich’s amotivation, disinterest in planning for his future, asocial presentation and reluctance to attend agreed-upon programs, about which he has apparently been less than fully candid. Despite training and programming, Mr. Froehlich refuses to use public transit. Instead he relies on his mother or staff to transport him to appointments. He has declined volunteer opportunities which require public transport. He has made no new friends at Nicola. His primary relationship continues to be with his mother.

[26] Mr. Froehlich has not demonstrated the skills he would require to live and function more independently. He has shown no interest in transition to more independent accommodation such as CTC. He has presented as polite, asymptomatic, abstinent, non-aggressive, and reliable in consuming his medication.

[27] In contrast to evidence provided in the more recent past, Mr. Froehlich has once again said that he wishes to reside with his mother, who continues steadfast in her desire to reunite, accommodate and supervise his medication. Mr. Froehlich has been permitted a number of brief overnight visit leaves to his mother's home. Ms. Vincent believes returning to his mother's home would serve to undermine Mr. Froehlich's independent functioning in the future.

[28] Despite its singular focus on Mr. Froehlich's amotivation and even resistance, Ms. Vincent's report acknowledges that he did successfully participate in programs required by his residence. Mr. Froehlich has been successful at completing courses and achieving certification in first aid and forklift operation as per the expectations of his residence. He has also independently gained part-time employment for 10 hours per week at a Canadian Tire store and his performance has been reliable. Mr. Froehlich appears diligent and highly motivated by this opportunity.

[29] Dr. Lax confirms the diagnoses of schizophrenia and substance abuse disorders and adds a "vocal tic". He acknowledges that testing has not supported a diagnosis of Autism Spectrum Disorder. Mr. Froehlich continues to demonstrate some compulsive behaviours and odd use of language.

[30] Dr. Lax also says that it has been difficult to assist Mr. Froehlich in more complete reintegration. Mr. Froehlich has explained that he wants to remain at Nicola for the time being and become more independent over a period of years.

[31] On the threshold issue of significant threat Dr. Lax notes:

1) Mild irritability when Mr. Froehlich is challenged about his diagnosis or short term re-integration plans. That said, he has shown no untoward behavioural or affective instability.

2) Mr. Froehlich is asymptomatic, though his amotivation may be due to some negative symptoms. Ms. Vincent did not agree with this statement. Should he be experiencing more intense positive symptoms these would be observable.

3) Mr. Froehlich's insight remains limited or impaired, despite his demonstrated compliance, raising the possibility of future non-compliance. He appears unable to foresee a future relapse.

4) Mr. Froehlich's recent desire to live with his mother is of concern, as Dr. Lax considers the underlying parent-child conflict unresolved. The treatment team should be involved in any process of re-unification.

5) A scenario where Mr. Froehlich relapses to substance use, fails to comply with or ceases treatment would be a worst-case scenario for possible future violence.

6) Dr. Lax provides no cogent or persuasive explanation regarding the relevance of a possible autism diagnosis, as a factor in Mr. Froehlich's potential future serious threat.

7) Mr. Froehlich's mother may not have a full understanding or acceptance of his illness.

[32] Mr. Froehlich provided evidence about some of the programs he has attended and about achieving his first aid and forklift certificates. He described his day-to-day and weekly activities at Nicola Lodge, where his mother has visited weekly. He says he has had three to five overnight visits at her house. He complains of no side effect from his current medication regime and is able to name his medications and their purpose.

[33] In seeking absolute discharge, Mr. Froehlich says he would continue to work with his treatment team to establish contact with a community mental health team.

[34] Mr. Froehlich does not feel he is ready to live fully independently. He wishes to reside with his mother and see more of his extended family for support, until he amasses the financial resources to live on his own. He wants to save up to $20,000 and get a vehicle. He says it will take him 3 years to achieve independence. He recognizes that he continues to need support. He plans to seek employment in, or a possible transfer of his job to, Abbotsford. He derives evident pride from his position with Canadian Tire.

[35] Mr. Froehlich says he committed the index offence while he was psychotic. He would remain on his medication for life, receive support and monitoring from a local mental health team, and abstain from drugs and alcohol.

ANALYSIS AND DISPOSITION

[36] The Board's decision making is governed by 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:
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> **(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;
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> **(b)** by order, direct that the accused be discharged subject to such conditions as the court or Review Board considers appropriate; or
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> **(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.

[37] The Board is required to gather evidence which addresses the considerations in s.672.54 and then determine whether that evidence discloses that the accused is a "significant threat" to public safety. There is no presumption that the accused poses a significant threat. If it concludes that the accused is not a significant threat it must order absolute discharge: ***Winko v. British Columbia (Forensic Psychiatric Institute)*** [1999] 2 S.C.R. 625, par.62.

[38] Significant threat is defined in s.672.5401:

> **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.

[39] As indicated above, the Board must first determine whether, on the evidence, Mr. Froehlich poses a significant threat to public safety as defined in s.672.5401. The Board does not conduct its own assessment of an accused's significant threat to public safety. As must any adjudicative body, the Board can only evaluate the evidence admitted at a hearing to determine whether it meets that threshold.

[40] In ***Calles v. British Columbia*** (Adult Forensic Psychiatric Services), 2016 BCCA 318, the BC Court of Appeal confirmed that:

> A significant threat to public safety is defined in s. 672.5401 of the *Criminal Code* to mean "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". The threat posed must be more than speculative and be supported by the evidence. It must 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 minuscule risk of grave harm will not suffice", nor will a high risk of trivial harm: Winko, at para. 57. *(para. 15)*

[41] A finding of significant threat must be based on evidence rather than speculation. 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 conduct of concern must be criminal in nature. There must be a foreseeable and substantial risk that the accused would, or is likely to commit a serious criminal offence if discharged absolutely. In making these determinations, we must have regard both to the interests of individual liberty as well as to the paramount consideration of public protection.

[42] As a matter of practice or usage at Review Board hearings, the Director usually provides risk assessment evidence in the format of the HCR.20.V3 instrument. Utilizing this organizational approach, the Board has considered:

1) Previous Violence

Under this rubric, we consider the accused's two serious index offences, including the first against his mother, now eleven years ago, with whom he appears entirely reconciled and with whom he proposes to reside. The victim cleaves to the same goal.

She has repeatedly said she knows no fear for her personal safety and offers to supervise and monitor the accused's treatment requirements.

The second index offence though less serious, was unpredicted and unprovoked and occurred 6 years ago in 2012.

Mr. Froehlich has demonstrated no violence since. He harbours no violent ideation or attitudes. He has no antisocial personality diagnosis and is entirely asymptomatic, stable and compliant, despite behavioural oddities.

2) Mr. Froehlich is, by personality, somewhat asocial. His primary stable relationship has always been and continues to be, his mother, although he wishes to reconnect to some extended family members. Despite the precipitating history of relationship conflict between Mr. Froehlich and his mother there is, despite what may be viewed as inadequate boundary issues, no evidence of current conflict.

3) Mr. Froehlich has a substance abuse diagnosis but despite yielding several positive screens for cannabis earlier in his tenure at FPH, he has not done so since October 2016. He says he will abstain in the community. There is no suggestion that substances were implicated in either index offence. The scenario proffered by Dr. Lax at Paragraph 30.5 above is in our view impermissibly speculative.

4) Mr. Froehlich's major mental illness has been under adequate medical control since 2012.

5) Mr. Froehlich is said to lack full insight into his illness which may contribute to future non-compliance and decompensation. That said, he has been and says he will continue to take medication for life, will accept connection to a community treatment team and remain abstinent. To suggest that an accused should not be absolutely discharged until his compliance and stability have been "tested" is a circular and impermissible argument. Such an approach erroneously places an onus on the accused to prove he is not a risk: ***Re Marzec*** 2015 ONCA 658, par. 30.

6) Mr. Froehlich's occasional mild irritability when challenged was not expanded upon by Dr. Lax as a potential factor for serious violence.

[43] In ***Winko*** (supra) the Supreme Court of Canada said in case of doubt on the issue, or if the evidence does not support a positive finding that the accused is a significant threat, the only possible disposition is absolute discharge: paras. 48-50; 52.

[44] In this case, we find the evidence of Mr. Froehlich's significant threat of serious harm to be speculative and unpersuasive. Mr. Froehlich is in law entitled to be absolutely discharged.

[45] We have however, determined to delay the effective date of the disposition until May 1, 2018. In the intervening period and even beyond, it is our expectation that Mr. Froehlich will be given incremental, acclimatizing, visit leaves to his mother's home, under supervision. This will also provide his treatment team with the opportunity to pursue assertive efforts to establish Mr. Froehlich's linkage to, and relationships with an outpatient treatment team. Finally it will provide a window for Mr. Froehlich's treatment team to engage in assertive psychoeducation efforts involving Mr. Froehlich's mother, including clear expectations in respect of his medication supervision and the monitoring of his mental state.

Reasons written by B. Walter in concurrence with Dr. W. Pankratz and P. Cayley.

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