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

DONALD JOHN GUTHRIE

HELD AT: Forensic Psychiatric Hospital
Port Coquitlam, BC
October 3, 2016

BEFORE:	**ALTERNATE CHAIRPERSON:**	**A. MacPhail**
	MEMBERS:	**Dr. T. Tomita, psychiatrist**
		B. Walter

APPEARANCES:	**ACCUSED/PATIENT:**	**Donald John Guthrie**
	ACCUSED/PATIENT COUNSEL:	**D. Abbey**
	DIRECTOR AFPS:	**Dr. G. Gharakhanian, M. Byer**
		Dr. M. Riley, T. Vincent
	DIRECTOR'S COUNSEL:	
	ATTORNEY GENERAL:	

INTRODUCTION AND BACKGROUND

[1] On October 3, 2016 the British Columbia Review Board (the Board) held an annual and a mandatory hearing based on a significant restriction on his liberties, in the matter of Donald John Guthrie. At the conclusion of the hearing the Board imposed a conditional discharge, including the condition that, pursuant to s. 672.55(1) of the *Criminal Code*, and with Mr. Guthrie's consent, Mr. Guthrie will comply with treatment recommended by the Director.

[2] Mr. Guthrie is before the Board as a result of a verdict of not criminally responsible on account of mental disorder (NCRMD) dated March 19, 2008, in relation to the murder by strangulation of his wife, N.D.T., in April 2007. He was in an acute psychotic state and believed that his wife, in concert with a criminal gang, was trying to harm their daughter, who was then two years old.

[3] Mr. Guthrie was first diagnosed with a mental illness after becoming depressed by the death of his sister in 2006. He became psychotic, was certified under the *Mental Health Act* and admitted to hospital for a month. He was diagnosed with bipolar disorder. His response to treatment was not robust. Following his discharge, he was non-compliant with medication and experienced a number of episodes of psychosis. In the weeks prior to the index offence he telephoned police a number of times because he feared he was being followed or otherwise felt he was in danger, to the point of barricading himself inside his house.

[4] On arrest, the accused was admitted to the Forensic Psychiatric Hospital (FPH). Mr. Guthrie was also involved in a hostage incident while under arrest. When his symptoms settled in response to medication, he was released on bail, which was continued after the NCR verdict. The Board ordered a conditional discharge in April 2008, but in November 2010, he was returned to FPH following a serious dispute with his niece, the guardian of his daughter. The confrontation concerned the care of his daughter. The treatment team was concerned that the accused's heightened emotional state bore similarities to his condition and mental state at the time of the index offence. During the dispute with his niece, the accused swore violently at her and kicked her vehicle. He then followed her vehicle in his own for a short period.

[5] Although conditionally discharged again in December 2010, after the incident with his niece, the accused was once more directed back to hospital in January 2011 when his

mental condition deteriorated. The accused became depressed and overwhelmed by loneliness. He was unable to manage the stress of running his affairs in the community. Much of that stress related to his cleaning business (now closed) and a very significant tax debt owing to the Canada Revenue Agency (CRA). That issue remains outstanding with a debt owing of over $50,000 in relation to one tax year. He has not filed returns for several other tax reporting periods.

[6] We note that at the time of the index offence, the accused had been married three times. He has an adult son, but he does not maintain a strong connection. His return to hospital in January 2011 resulted from persistent feelings of loneliness, depression and stress. In spite of this, the accused has consistently denied stress or any difficulties in the community. He adopts a stoic attitude and copes with adversity.

[7] The accused was detained in February 2011 and once stabilized he was conditionally discharged in July 2011. Since then the accused has been living in the community under a series of conditional discharges.

[8] The accused's progress towards absolute discharge has consistently been hampered by his resistance or inability to establish a credible therapeutic alliance with the treatment team. Throughout his period under the Board's jurisdiction, the evidence describes him as evasive, non-disclosive and avoidant, including about his relationship with women. The treatment team has periodically noted that the accused tends to characterize events in whatever manner suits him or places him in the best light. He will minimize or deny difficulties with coping with stress, which historically has proven to be a major de-stabilizer for him. Perhaps the most graphic example of this tendency is his minimizing interpretation of his wife's death. Although he will acknowledge it was a murder, he nevertheless has tried to explain it as the unintentional consequence of him sitting on her legs, trying to slow her down and get her to go to sleep. Mr. Guthrie's insight has throughout been described as limited, superficial or unconvincing.

[9] Mr. Guthrie's liberties were restricted on August 14, 2016 as a result of his deteriorated mental state and he was directed back to FPH.

EVIDENCE

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

[11] Dr. Riley testified that over the past year, Mr. Guthrie has continued to not form a true therapeutic alliance with his treatment team in the community. This is related to his lack of insight into the connection between his mental illness and the index offence, the risk of further relapses of his mental illness, and the need for ongoing treatment and support to reduce the risk of relapse and minimize his risk of harming others in the future.

[12] Over the past year, Mr. Guthrie has insisted, against Dr. Riley's advice, that his mood stabilizing medication be reduced and then eliminated. His treatment team increased the frequency of his appointments with them, in part because of the need to monitor the effect of the reduction in his medication but also because of his lack of non-professional support in the community. The last reduction in his medication was in late March 2016, and there have been no further reductions, primarily because of a number of physical health issues.

[13] Mr. Guthrie had three admissions to the Surrey Memorial Hospital between May 18 and August 11, 2016. The first was as a result of a significant physical health issue, diagnosed as bilateral hydronephrosis and renal failure. He was released on June 6, but then readmitted on June 12 under the *Mental Health Act*, following a physical altercation with emergency services who responded to a 911 call from Mr. Guthrie who had become lost while driving in New Westminster. He quickly stabilized in hospital. The diagnosis on discharge was delirium secondary to an infection, and secondarily, poor compliance with his psychiatric medications. On August 9, he called an ambulance to take him to the hospital. He was readmitted and again certified due to concerns about the stability of his mental state. He reported not taking his medications regularly and he believed that unidentified persons were angry with him. He was not overtly psychotic or manic but he admitted to not feeling safe living on his own. Arrangements were made for him to be transferred to a respite bed in Coast Cottages. While this was not considered ideal, there was no bed available for him in FPH.

[14] At Coast Cottages, Mr. Guthrie was intimidating and inappropriate with female staff and patients. He appeared angry and was "banging things about". Ultimately he was returned to FPH as unmanageable, and would not likely be accepted to return to Coast. He is not in the habit of being violent, but was recently combative with police and emergency services staff when they have responded to 911 calls.

[15] With respect to risk, Dr. Riley said that Mr. Guthrie tends to minimize the index offence, referring to it as an accident. He continues to believe that he does not suffer from a mental illness, does not require medications and does not believe he will have any problems in the future. His observance of the terms of his conditional discharge is grudging and incomplete. In particular, he is slow to report details of any relationship he has with women. Dr. Riley recognized that Mr. Guthrie does not have a history of violence except for the index offence. However that offence was extremely serious, and occurred in the context of Mr. Guthrie being under out-patient psychiatric care, and non-compliant with his medications. Dr. Riley predicted that, in the absence of controls, Mr. Guthrie would be non-compliant in the future and his mental state would deteriorate. In the recent incidents of decompensation, Mr. Guthrie was combative with police and emergency personnel, and was inappropriate and intimidating with female staff and patients at Coast Cottages.

[16] Dr. Riley noted that over the last few months in the community, Mr. Guthrie was highly resistant to treatment and to communicating effectively with his treatment team. As a result, there were significant challenges to monitoring him effectively. Based on his experience over the previous few months, Dr. Riley submitted that if Mr. Guthrie were to be released on a conditional discharge, he would have to consent to intensive supervision and cooperate with his treatment team.

[17] Mr. Guthrie has a number of on-going stressors in his life, including his tax debt, the stresses of his employment (although this has recently resolved as Mr. Guthrie can no longer work because of his physical health challenges), his relationship with his daughter and her guardian, and the state of his father's health. He has been dealing with these stressors independently with some resilience. It appears that the reduction in his medications and his new physical health challenges contributed significantly to his decompensation.

[18] Dr. Gharakhanian said that during his time in hospital, Mr. Guthrie has for the most part been settled. The dosage of his psychiatric medications has been increased and his mental condition has stabilized, although this could also be due to his physical health issues being brought under control. Dr. Gharakhanian said that Mr. Guthrie's mental and physical health issues are related. When he is mentally ill, he does not look after his physical health concerns, which escalate to a point that they affect his mental health. His physical health is now stabilized so they can address the optimal medications to stabilize his mental health. A depot medication has not yet been considered because of

its possible effect on Mr. Guthrie's kidney function, but that is now appropriate to consider. Dr. Gharakhanian said that it would be more appropriate to adjust Mr. Guthrie's medications in hospital in order to achieve optimal results.

[19] Ms. Vincent testified that when Mr. Guthrie is unwell, he changes his behaviour. He doesn't reach out for help until it is too late. The treatment team has frequent contact with Mr. Guthrie but he is resistant to seeing them, and then makes a 911 call when he cannot cope any longer. At the time of Mr. Guthrie's return to FPH he was floridly psychotic but the treatment team had not appreciated the extent of his relapse.

[20] In his evidence, Mr. Guthrie said that he knew he was bipolar. He said that he had symptoms that are bipolar, but he was not sure if it was delirium, mood swings or depression - he had not really inquired. He was depressed prior to the index offence, but not since then. Recently he was confused and delirious, and his physical health problems had added to his confusion. He accepts that the increase in his medication was appropriate. He hopes that it could be less, but said he would take whatever dosage Dr. Riley recommends as it "normalizes" him.

[21] Mr. Guthrie said that he has learned from this incident that he has to reach out to his treatment team if he is having problems so that he can be looked after. While he can accept an injectable medication, he would prefer to be taking pills.

[22] In response to questions about his failure to disclose issues to his treatment team, he said that he was not sure what he had withheld. He said that they know about his various stressors. He said he had disclosed information about romantic relationships, but he did not think that he had to disclose information about friendships or where he might have had coffee with a woman in a public setting. He said that perhaps he could do better informing his treatment team about non- romantic relationships.

ANALYSIS AND DISPOSITION

[23] The Director did not take a position as to whether the appropriate disposition was custody or a conditional discharge. Dr. Gharakhanian suggested that if the Board were to conditionally discharge Mr. Guthrie, it would be appropriate to include a treatment condition pursuant to s. 672.55(1). Ms. Vincent suggested that the Board consider a short custodial disposition with 28 day visit leaves which would permit Mr. Guthrie to return to his apartment, but return to FPH on a regular basis in order that his medications could be adjusted under hospital supervision. Mr. Abbey, on behalf of Mr. Guthrie, submitted that a

conditional discharge was the appropriate disposition, and that Mr. Guthrie consented to treatment as recommended by the Director. There is no clinical or safety reason to keep Mr. Guthrie in hospital.

[24] The Board must first consider whether Mr. Guthrie constitutes a significant threat as defined by Section 672.5401 of the *Criminal Code.* A person is a significant threat if they represent "a risk of serious physical or psychological harm to members of the public … resulting from conduct that is criminal in nature but not necessarily violent." If he does not pose such a threat, he is entitled to be absolutely discharged. If he does pose a significant threat to the safety of the public, we must then determine the necessary and appropriate disposition.

[25] The index offence was extremely serious and Mr. Guthrie continues to minimize his responsibility for the death of his wife. That offence occurred when Mr. Guthrie was not compliant with his medications, and his recent noncompliance led to destabilization of his mental state, aggressive and intimidating behaviour, and subsequent return to hospital. The Board is satisfied that it is unlikely that Mr. Guthrie would take his medications in the absence of forensic control, and that he represents a significant risk to public safety.

[26] We find that, in the circumstances described, Mr. Guthrie's readmission to hospital was justified.

[27] At the same time, he has been living in the community without committing any further violent offences, despite the significant stressors he has experienced, as well as his incomplete adherence to his medication regime.

[28] In *R. v. Breitwieser;* 2009 ONCA, 784, the Ontario Court of Appeal stated at paragraph 18:

> [18] In our view, in any case where the primary issue is compliance with conditions, and there is an air of reality to the claim that a conditional discharge would be an appropriate disposition, the Board must address these two elements. First, the Board must canvass whether the accused will consent to appropriate conditions under s. 672.55. Second, it must address the potential mechanisms for the accused's return to the hospital in the event of non-compliance, and determine whether the patient is likely to agree to return or whether a combination of s. 672.55 and either s. 672.92 or 672.93(2) or another route of return would be sufficient in the circumstances. The Board must consider these elements in light of the legislative scheme and the requirement of s. 672.54 that, after taking into consideration the designated factors, the Board must make the disposition "that is the least onerous and least restrictive to the accused". This

> consideration is in keeping with the direction of the Supreme Court in *R. v. Winko* [1999] 2 S.C.R. 625 at para. 43 that the "offender is to be treated with dignity and accorded the maximum liberty compatible with Part XX.1's goals of public protection and fairness to the NCR accused.

[29] The Court went on to say that the Board's failure to address the s. 672.55 issue in its inquiries is an appealable error in law. In our view, Mr. Guthrie's case is illustrative of the Court's concerns and directions in *Breitwieser*. Mr. Guthrie has amply demonstrated that despite medical advice, he will make his own decisions regarding medication compliance. Furthermore, Mr. Guthrie's current asymptomatic presentation and risk profile render his discharge a realistic option despite the fact that FPH might be the optimal environment to reintroduce and monitor the effectiveness of his prescriptions.

[30] We accept Dr. Gharakhanian's assessment that the best environment to optimize Mr. Guthrie's medication would be in the controlled environment of FPH. However we are of the view that this is not required in order to protect the public safety and that, with Mr. Guthrie's consent to a condition under s. 672.55(1) to comply with recommended treatment, his risk is manageable in the less restrictive environment of the community. As Mr. Guthrie has provided the requisite consent, we order him discharged subject to this and other conditions; in particular condition 7 of his disposition will provide:

> 7. THAT pursuant to s. 672.55(1) of the Criminal Code, the accused consents and will comply with treatment recommended and approved by the Director, and his compliance with such treatment is a condition of this disposition.

Reasons written by A. MacPhail, with Dr. T. Tomita and B. Walter concurring