

INTRODUCTION AND BACKGROUND

[1] On November 6, and November 27, 2018 the British Columbia Review Board conducted a mandatory hearing, under s. 672.81(2.1) of the *Criminal Code*, in the matter of Alireza Gholamreza-Kashi (the accused). The hearing is triggered by the imposition of a significant restriction on the accused's liberties for more than seven days: s. 672.56(2).

[2] The accused speaks Farsi and has little English. He has communication difficulties even with the assistance of an interpreter. He has a history of depression and anxiety and, as of 2017, was diagnosed with Alzheimer's disease, a neurocognitive disorder. The effect of this disorder is that Mr. Gholamreza-Kashi's self-care is compromised and he requires external support in terms of his day-to-day functioning, including with the monitoring and administration of medication. His dementing illness is most likely progressive and certainly permanent. A more detailed history may be found at paragraphs 9 and 10 of Exhibit 8, Reasons for Disposition dated October 22, 2018.

[3] On March 24, 2017 Mr. Gholamreza-Kashi was charged with assault causing bodily harm and uttering threats. The victim of these alleged acts is the accused's now estranged spouse. There is a documented history of discord between the two. On this occasion it is alleged that the accused left his spouse threatening voicemails and thereafter also attended at her residence, which is located in the same apartment building as his own, and seriously assaulted her, fracturing her cheekbone and inflicting lacerations to her nose and eye. The accused was previously accused of assaulting the same victim in September 2011. Despite the current charges, Mr. Gholamreza-Kashi continued to occupy his residence in the same building as the victim until his recent admission to FPH on or about October 23, 2018.

[4] On August 28, 2018 Mr. Gholamreza-Kashi was given a verdict of unfit to stand trial, and released on a recognizance which allowed him to occupy his residence, but which restrained him from communicating with the victim or attending at her apartment. At his initial hearing on October 22nd, 2018, the Review Board determined that the accused remained unfit to stand trial. The Board made a disposition of conditional discharge which inexplicably included a condition prohibiting him from attending the address of both his wife's and his own apartments. Under the circumstances, the accused had nowhere to go. The Director had no

ability to secure alternate accommodation for him. Therefore, he was detained at FPH triggering the current hearing.

EVIDENCE

[5] At FPH Mr. Gholamreza-Kashi has been mainly settled and compliant. On observation, he presents with evident memory impairment. He is gradually expected to continue to decline functionally. He has interacted socially and in an appropriate manner. On the issue of fitness to stand trial, Dr. Gharakhanian, who has known Mr. Gholamreza-Kashi for some time, opines that given his dementing illness, the accused remains unfit and is unlikely ever to become fit to stand trial.

[6] On the issue of the appropriate disposition, Dr. Gharakhanian expresses concern about the accused's capacity to function independently in his home without considerable support. There is, of course, also concern for the safety of the victim who has come to harm in the course of her efforts to assist Mr. Gholamreza-Kashi. Given his compromised cognition, Mr. Gholamreza-Kashi may not have the ability to comply with orders to stay away from the victim, although we note that there have been no complaints in the 20 plus months since the index offence.

[7] Dr. Gharakhanian's evidence is that Mr. Gholamreza-Kashi does not require treatment in a psychiatric hospital for clinical reasons. Rather, depending on an assessment of his global functioning, he likely requires placement in a suitable and appropriately staffed care facility where his clinical needs and risk of aggression (which has only ever been directed at his wife and is the product of paranoid misinterpretation about her actions), can be met and managed.

[8] Dr. Gharakhanian offers the observation, based upon his experience in collateral mental health services, that Mr. Gholamreza-Kashi's legal or forensic status might indeed pose a barrier to his placement in a so-called civil mental health facility.

[9] Based on Dr. Gharakhanian's evidence, the Review Board determined to order the production of a functional assessment by an occupational therapist in order to inform its decision making in respect of disposition. On reconvening, the Director filed a functional assessment report dated November 20, 2018 from Ms. Hanzouli (Exhibit 11). Ms. Hanzouli generated her report by interviewing the victim and others involved in Mr. Gholamreza-Kashi's

care, visiting and observing Mr. Gholamreza-Kashi in his home and administering several assessment instruments. In summary, Ms. Hanzouli reports that:

- Mr. Gholamreza-Kashi's wife remains supportive of him;
- Mr. Gholamreza-Kashi's wife and a friend have cleaned the accused's apartment and laundered his belongings;
- Though he can be resistant to outsiders, Mr. Gholamreza-Kashi was amenable to allowing a Farsi speaking person to clean his apartment;
- Mr. Gholamreza-Kashi has issues in relation to his personal hygiene and cleanliness;
- Mr. Gholamreza-Kashi was able to perform self-care tasks independently and adequately with prompting;
- Mr. Gholamreza-Kashi was able to perform simple cooking tasks, but it is of concern that he did not turn off his cookstove;
- Mr. Gholamreza-Kashi's spouse, with the assistance of others, continues to help him in problem solving, including advising him with respect to periodic payment of utility bills which he has neglected; and
- Mr. Gholamreza-Kashi's functional mobility is good.

[10] Ms. Hanzouli reports that Mr. Gholamreza-Kashi is well regarded and has supportive neighbours. She concludes that with appropriate supports, including twice weekly cleaning, assistance in bill paying and financial arrangements, and support in the administration and monitoring of medications which are delivered by his pharmacy, Mr. Gholamreza-Kashi could be returned to live in his apartment and be able to look after himself. In addition, Meals on Wheels would be of significant benefit. Mr. Gholamreza-Kashi has also had the benefit of support from an adult protection worker, provided by older adult mental health services in West Vancouver, although the nature of the services this person contributes remains unelaborated.

[11] Ms. Hanzouli testified that Mr. Gholamreza-Kashi's spouse understands and is mindful of how to protect herself and that their contact is indirect and occurs through a third party intermediary.

[12] The Board was also presented with information, albeit indirect, through the joint auspices or efforts of Crown and defence counsel, that Mr. Gholamreza-Kashi's wife wants him back in his apartment and is not in fear of him.

[13] Dr. Gharakhanian testified additionally that if Mr. Gholamreza-Kashi were to be discharged, he would likely also certify him under the *Mental Health Act* as a means of marshalling additional resources and supervision. It is also at least a possibility that because of his role with civil mental health services, Dr. Gharakhanian could continue as Mr. Gholamreza-Kashi's psychiatrist on an outpatient basis.

[14] The Board reserved its decision in the matter.

ANALYSIS AND DISPOSITION

[15] This hearing is mandated by s. 672.81(2.1) of the *Criminal Code* which provides:

The Review Board shall hold a hearing to review a decision to significantly increase the restrictions on the liberty of the accused, as soon as practicable after receiving the notice referred to in subsection 672.56(2).

[16] Under the circumstances, as the previous disposition prohibited Mr. Gholamreza-Kashi from returning to his residence, in effect leaving him homeless, we find that the Director had no alternative but to house Mr. Gholamreza-Kashi at FPH.

[17] Dealing next with the issue of fitness to stand trial, s. 2 of the *Criminal Code* provides:

unfit to stand trial means unable on account of mental disorder to conduct a defence at any stage of the proceedings before a verdict is rendered or to instruct counsel to do so, and, in particular, unable on account of mental disorder to

- (a) understand the nature or object of the proceedings,
- (b) understand the possible consequences of the proceedings, or
- (c) communicate with counsel;

[18] Once an accused has been found unfit to stand trial, unfitness is presumed unless that presumption is rebutted in subsequent proceedings, as provided in s. 672.32(2):

“The burden of proof that the accused has subsequently become fit to stand trial is on the party who asserts it, and is discharged by proof on the balance of probabilities.”

