



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**

**IN THE MATTER OF THE FITNESS TO STAND TRIAL
AND
DISPOSITION HEARING OF**

HANS BECKER

HELD BY: Video
December 9, 2020

BEFORE: CHAIRPERSON: Dr. M. Lawrence
MEMBERS: Dr. J. Smith, psychiatrist
Dr. C. Webster

APPEARANCES: ACCUSED/PATIENT: Hans Becker
ACCUSED/PATIENT COUNSEL: D. Abbey
DIRECTOR, AFPS: Dr. A. Kolchak
DIRECTOR'S REPRESENTATIVE: P. Golding
ATTORNEY GENERAL: J. Fogel

INTRODUCTION AND BACKGROUND

[1] The British Columbia Review Board (“Board”) convened on December 9, 2020 in the matter of Mr. Hans Becker for an initial fitness hearing under section 672.48(1) of the *Criminal Code* and for the determination of disposition pursuant to section 672.47. At the conclusion of the hearing, the Board reserved its decision. The Board subsequently determined that Mr. Becker is fit to stand trial and ordered that Mr. Becker be discharged on conditions. These are the reasons of the Board for its decision. They were prepared on an expedited basis, so as to accommodate court process, and for that reason may be abridged in parts.

[2] By way of background, Mr. Becker is charged with one count of knowingly conveying a threat to cause death or bodily harm contrary to section 264.1(1)(a) of the *Criminal Code*. The alleged victim is a former psychiatrist who treated Mr. Becker on occasion between 1997 and 2001. The particulars provided to the Board include the allegation that on or about December 27, 2019, Mr. Becker posted a message on Facebook to the effect that he would pay monies to have someone execute the alleged victim. It is reported that Mr. Becker previously posted the same message, and other similar messages targeting the alleged victim, in 2013. The resulting criminal process concluded that same year with the imposition of a peace bond.

[3] The Board was not provided with information about the date or circumstances of Mr. Becker’s arrest on the outstanding charge. Notations in the court record suggest that Mr. Becker has been in custody since at least May 1, 2020. It appears that for part of this time he was detained on consent, and for other parts he was subject to assessment and treatment orders. An assessment order initially issued on May 7, 2020 was twice extended to accommodate a bed shortage at the Forensic Psychiatric Hospital (“FPH”).

[4] It was not until September 10, 2020 that the issue of Mr. Becker’s fitness to stand trial came before the court for determination. On that date, the Honourable Judge Sutherland conducted a hearing on the question and determined that Mr. Becker was not fit to stand trial. For reasons that are not clear to the Board, Judge Sutherland did not also determine disposition and did not defer disposition to the Board, as stipulated in section 672.45(1.1) of the *Criminal Code*. Instead, in reliance on section 672.58, Judge Sutherland ordered that Mr. Becker receive treatment at FPH for a period not exceeding 60 days.

[5] This apparent oversight was subsequently identified, and the matter was brought before the Honourable Judge Senniw on November 12, 2020 for remedy. At that time,

Judge Senniw ordered that disposition be deferred to the Board. The Warrant for Committal conveyed with the Deferral of Disposition directed the Director of FPH to keep Mr. Becker for a period not to exceed 45 days for disposition by the Board pursuant to section 672.54(1) of the *Criminal Code*.

EVIDENCE AT HEARING

[6] The Board received documentary evidence that included court filings in connection to the index offence as well as a report dated December 2, 2020 from Dr. A. Kolchak. Dr. Kolchak is a forensic psychiatrist. He was assigned to assess and treat Mr. Becker at FPH. At the hearing, the Board received additional *viva voce* evidence from Dr. Kolchak as well as *viva voce* evidence from the accused and MM. MM is the accused's mother.

[7] Included in the documentary evidence were descriptions of Mr. Becker's psychiatric history and prior contacts with the mental health system. It is not necessary to repeat that information here. What is significant for the purposes of the issues before the Board is the fact that Mr. Becker likely suffers from either delusional disorder (persecutory type) or schizoaffective disorder, and that he has long-held, fixed delusions of having been sexually assaulted by the alleged victim and by police. He believes himself to be the victim of a conspiracy perpetrated against him by criminal justice actors and others. Mr. Becker's criminal record does not contain any convictions for acts of violence, but it does include dated convictions for uttering threats (2010) and criminal harassment (2013), as well as the above mentioned peace bond.

[8] Dr. Kolchak included in his December 2, 2020 report a statement to the effect that Mr. Becker likely remains unfit to stand trial. That opinion is based on historic presentation and previously reported delusions. Dr. Kolchak was not able to collect additional information from Mr. Becker, or otherwise engage sufficiently with Mr. Becker at FPH, to permit an informed assessment of Mr. Becker's current mental state as it relates to the question of fitness to stand trial. Mr. Becker was reportedly irritable, inappropriate and obstructive in his dealings with Dr. Kolchak. Although Mr. Becker became more settled after voluntarily resuming his medication, he nonetheless remained distrustful of psychiatrists in general and refused to engage with Dr. Kolchak in particular. In response to questions put to him in the course of the hearing, Dr. Kolchak noted that Mr. Becker's delusions, although impairing his work as a forensic psychiatrist, did not extend to defence counsel. Dr. Kolchak

reported his own observations that Mr. Becker appeared to be communicating effectively and appropriately with his counsel in the course of the Board's hearing on this matter.

[9] In his report, Dr. Kolchak also provided the Board with an opinion on future risk. He concluded on the basis of the information available to him — limited though it may be — that there is an ongoing risk of threat to the alleged victim. There is a potential risk of threat to other psychiatrists and to the police if Mr. Becker's delusions expand. Dr. Kolchak does not expect that Mr. Becker's risk will be modified pharmacologically but said that it might be possible to mitigate risk through effective supervision. Dr. Kolchak acknowledged that Mr. Becker has no history of physical violence. He acknowledged also that, apart from the aforementioned resistance in dealings with Dr. Kolchak, and a stated distrust of psychiatrists, Mr. Becker has been compliant with his medications as well as cooperative and well-mannered in his dealings with hospital staff. Dr. Kolchak was not aware of any conflict arising from Mr. Becker's dealings with police.

[10] Mr. Becker addressed the Board. He correctly answered questions about the operation of the justice system, including questions about the roles of the different parties, the nature and consequences of different plea options, the function of evidence, and the importance of the oath. At points he revealed some measure of insight into the operation of the justice system. He commented, for example, on the limited sentencing options available to the court and shared his own view as to the desirability of restorative justice outcomes. Mr. Becker also reported upsetting experiences in the legal system, including in connection with a court proceeding that resulted in his daughter being removed from his care. Mr. Becker spoke of his ongoing mistrust of police, prosecutor, judges and others but said he was hopeful he would be treated fairly in this case. He confirmed that his mistrust did not extend to defence counsel, and that he would be seeking a female defence counsel to represent him in this case. He indicated also his preference for a female psychiatrist. Mr. Becker also answered questions about his proposed living arrangements if released from FPH. He confirmed his obligation to return to court. He indicated his willingness to take his medications, to report as required, and to otherwise comply with any terms the Board might impose.

[11] In her presentation to the Board, MM described Mr. Becker's living arrangements in a manner consistent with the information shared by Mr. Becker. She attested to Mr. Becker's ability to live independently. She indicated also that Mr. Becker had not exhibited

any signs of violence or aggression in the past several years. He was generally compliant with his medications.

[12] Mr. Becker comported himself appropriately throughout the hearing, and in the course of his evidence in particular. He listened to the questions asked of him, and responded to these questions directly. Mr. Becker spoke out of turn on occasion but stopped when directed by his lawyer or the Chair to do so.

ANALYSIS AND DISPOSITION

[13] The Director took the position that Mr. Becker remains unfit and should be detained at FPH. Crown took the contrary position, submitting that the evidence tendered in the hearing supported a finding of fitness to stand trial. Mr. Becker's counsel agreed. Crown counsel and defence counsel disagreed, however, on the question of disposition. Crown counsel argued that Mr. Becker should be detained pending a bail hearing. Defence counsel advocated in favour of the grant of a conditional discharge.

Fitness to Stand Trial

[14] In this case, by operation of section 672.32(2) of the *Criminal Code*, the burden rests on Mr. Becker to prove fitness to stand trial on a balance of probabilities. The Board is informed in its assessment by the definition of "unfit to stand trial" included in section 2 and interpreted by the courts in the cases of *R. v. Taylor* (1992), 11 O.R. (3d) 323, *R. v. Morrissey*, 2007 ONCA 770 and *R. v. Daley*, 2019 NBCA 89. These cases were cited with approval in the recent decision of Madam Justice Devlin of the B.C. Supreme Court in *R. v. Kampos*, 2020 BCSC 1437.

[15] The Board agrees with the Crown and defence on the issue of fitness to stand trial. It is persuaded that the evidence tendered in the course of the hearing is sufficient to rebut the statutory presumption and support a finding of fitness. Mr. Becker has demonstrated to the requisite standard sufficient cognitive capacity to understand the nature of the proceedings in which he is engaged, to understand the possible consequences of these proceedings, and to communicate effectively with counsel. It cannot place significant weight on Dr. Kolchak's opinion on fitness given the acknowledged limitations on Dr. Kolchak's engagement with Mr. Becker in the assessment process. It finds instead that, notwithstanding persistent delusions and ongoing mental health struggles, Mr. Becker is capable of participating in the criminal process in a meaningful

way. His mental state will not encumber that participation or otherwise render the continuation of the criminal prosecution unfair.

Disposition

[16] It is important to note at the outset that section 672.49 of the *Criminal Code* is not in play in this case. The parties did not argue — and the Board does not find as a matter of fact — that there are reasonable grounds to believe that Mr. Becker will become unfit if released from custody.

[17] By operation of section 672.47 of the *Criminal Code*, the Board is required at this point to make a disposition. Although the Board appreciates the Crown's suggestion that Mr. Becker should be detained pending a bail hearing, it is not aware of any legal authority that directs this outcome or vests with the Board discretionary authority to order the continued detention of an accused person on this basis. The Board does not consider the decision of the British Columbia Court of Appeal in *Evers vs British Columbia (Adult Forensic Psychiatric Service)*, 2009 BCCA 560 to be applicable as that case concerned a subsequent review, not an initial review.

[18] It is the understanding of the Board that in the determination of disposition following an initial review of a finding of unfit to stand trial, the Board is required to apply section 672.54 of the *Criminal Code: Re Stojanov* (April 2, 2004) BCRB and *Re Tully* (April 29, 2009) BCRB. In doing so, the Board must determine whether Mr. Becker constitutes a significant threat to public safety within the meaning of section 672.5401. If so, it must go on to determine whether the necessary and appropriate disposition in the circumstances of the case is one of continued detention or discharge on conditions. It is well established that the “necessary and appropriate” standard in section 672.54 is synonymous with the “least onerous and least restrictive” standard articulated in the pre-2014 version of the *Criminal Code: Re Ranieri*, 2015 ONCA 444 and *McAnuff*, 2016 ONCA 280.

[19] On the question of future risk, the Board accepts Dr. Kolchak's opinion in part. The evidence does not support a finding that Mr. Becker is likely to commit acts of physical violence, or that he is likely to engage in threatening behaviours against the police or other mental health professionals. However, it does establish a real risk of future threats against the alleged victim. Such threats would be of a criminal nature and could result in serious psychological harm, and for that reason the Board finds that Mr. Becker constitutes a significant threat to public safety.

[20] It is the view of the Board that the nature and degree of this risk, although serious, does not justify continued detention in FPH. The Board is mindful of its obligation to impose a disposition that is the least onerous and least restrictive, taking into account the paramount consideration of public safety as well as Mr. Becker's particular mental condition, reintegration prospects and other needs. The Board is satisfied that, in the circumstances of this case, Mr. Becker can be safely managed in the community on the conditions stipulated in its order of December 10, 2020. These conditions include protective conditions for the alleged victim as well as provisions for supervision by the Director. The Board expects the Director will be attentive to the intensity of Mr. Becker's symptoms and to his compliance with medication. Given the potentially exacerbating effects of alcohol and drugs on the accused's mental condition, the Board also has included specific conditions restricting substance use and providing for testing if there are reasonable grounds to believe the accused is in breach of this prohibition.

[21] Accordingly, for the reasons set out above, the Board has determined that Mr. Becker is fit to stand trial and must be returned to court, and has ordered that Mr. Becker be conditionally discharged.

Reasons written by Dr. M. Lawrence with Dr. J. Smith and Dr. C. Webster concurring.

