

[1] On July 11, 2007 the Review Board convened to hold an annual review pursuant to Section 672.81(1) of the Criminal Code. Mr. Fitzpatrick's last review proceeded in the absence of parties, by way of a paper review conducted on July 12, 2006. At that time, a custody disposition was imposed as Mr. Fitzpatrick was content to remain at FPH until affordable accommodation to his liking could be arranged.

[2] Mr. Fitzpatrick is 32 years old and has been under the jurisdiction of the Review Board since he was found Not Criminally Responsible by Reason of a Mental Disorder on a charge of assault in September 1999 at age 24.

[3] Mr. Fitzpatrick had been living with his mother who at the time was diagnosed with active symptoms of schizophrenia. Mr. Fitzpatrick and his mother ran out of money and Mr. Fitzpatrick moved back with his father. However, he left his father's house over a disagreement between father and son with respect to the younger Mr. Fitzpatrick's sense of entitlement to be supported by his father while he pursued his concerns for the environment. The evidence shows that at the time, Mr. Fitzpatrick's father was aware of his son's deteriorating mental condition.

[4] Mr. Fitzpatrick moved to Duke House, a group facility when he committed the index offence of assault. This offence seems to stem from the inability of the accused to compromise and share space with a co-habitant. The assault arises from a dispute about Mr. Fitzpatrick's wish for the victim to leave the bedroom. The victim suffered a bleeding nose, cut lip, and other facial injuries.

[5] In addition to the index offence, Mr. Fitzpatrick's criminal history consists of an 1998 assault charge which was stayed, and a mischief charge for which Mr. Fitzpatrick served a term of probation which ended in 2000. The mischief charge involved damage to an automobile which Mr. Fitzpatrick associated with poisoning the environment.

[6] At the time of his arrest on this mischief charge, Mr. Fitzpatrick was assessed as suffering from active delusions and hallucinations that were directing his actions.

[7] Over the years, Mr. Fitzpatrick has displayed both uneven compliance with his prescribed medications and some difficulty maintaining abstinent from illicit drugs which compromise his mental health.

[8] He has consistently denied that he suffers from schizophrenia and that he requires antipsychotic medications. However, at the hearing today, Mr. Fitzpatrick acknowledged that his mood has significantly improved because of his course of anti-depressant medication. He expressed considerable conviction that absent an order from the Review Board, he would continue to take this medication.

[9] At the hearing, Mr. Fitzpatrick presented as an intelligent, pro-social, articulate young man. He has a slight build and is medium height.

[10] We canvassed a number of events and beliefs that had contributed to Mr. Fitzpatrick's risk. These included:

a. The cost of his commitment to healthy foods

Consistent with Mr. Fitzpatrick's concern for the environment, he believes that many foods are not healthy. He is committed to a healthy diet, including fresh foods. This places a considerable strain on his budget as many budget foods are processed and pre-packaged.

b. Inability to compromise

Mr. Fitzpatrick has had many unsuccessful attempts (including the index offence) of living in a group home or communal setting. He prefers to live alone and remains convinced that he is under no obligation to compromise in order to meet an accommodation budget that could be supported by his disability income from the Ministry of Employment and Income Assistance. He will be pursuing independent rather than group living.

c. Belief that he deserves to be treated fairly

Mr. Fitzpatrick has a unique perspective on what constitutes “being treated fairly”. He is prepared to work to supplement his disability income if he can find an employer who treats him well. Otherwise, Mr. Fitzpatrick sees no reason for to maintain employment. As an example, Mr. Fitzpatrick described a situation in which his job was to prepare food for a non-profit society. The supervisor wanted broccoli as an ingredient in the salad; Mr. Fitzpatrick did not agree. They reached an accommodation whereby others could add the broccoli if they wished, but he was free not to comply with the established recipe.

d. Stated value of non physical dispute resolution versus propensity to hit. Although Mr. Fitzpatrick values non violent dispute resolution, he admittedly resorts to acting out aggressively. In one example, Mr. Fitzpatrick described his frustration with a disabled and mentally challenged co-patient. Out of anger and frustration, Mr. Fitzpatrick kicked the co-patient’s wheelchair. In another incident, Mr. Fitzpatrick stated that he was ashamed of his reaction which was to punch a co-patient. Past incidents include throwing water and sandwiches, although he has not demonstrated these behaviours in the past year.

e. Sensitive to racial slurs or insults

Mr. Fitzpatrick related an incident in which a co-patient expressed a racial insult, and following Mr. Fitzpatrick’s reaction, he was later able to engage this patient in a more social interaction. Mr. Fitzpatrick admittedly has difficulty in managing his reactions to the racial slurs.

f. Use of non-prescribed drugs and alcohol

Mr. Fitzpatrick has been abstinent from illicit drugs and alcohol for well over a year. During his last community placement, he was making beer; however, there is no evidence of recent alcohol abuse.

[11] While Dr. Guan expressed the view that these two recent examples (kicking the wheelchair and punching a co-patient) render an Absolute Discharge inappropriate, the Board is obliged to undertake an independent assessment of risk. In so doing, we rely on the principles articulated in by the Supreme Court of

Canada in Winko i.e. a serious risk of significant harm, presently, or in the foreseeable future.

[12] With respect to “serious risk”, we note that Mr. Fitzpatrick is able to demonstrate pro-social concerns and behaviours. He is articulate and seems capable of expressing his preferences effectively. Further, he has demonstrated significant ability to engage in non-violent ‘manipulation of process and / or administrative systems.

[13] With respect to “serious harm” we note that Mr. Fitzpatrick’s criminal past is limited, with offences at the low end of the spectrum of causing serious harm. While the index offence did cause harm, there was nothing previous or since in Mr. Fitzpatrick’s behaviour that could be meet the test in Winko: “a real risk of physical or psychological harm to members of the public that is serious in the sense of going beyond the merely trivial or annoying.”

[14] Mr. Fitzpatrick has not recently shown any suicidal ideation and states his commitment to maintaining his anti-depressant medication. In this, we are unable conclude that he presents a risk to harm himself.

[15] While Mr. Fitzpatrick shows narcissistic traits, a non-compromising belief system, and considerable sense of entitlement, the panel was unable to conclude that taken together, this constituted serious risk to cause serious harm in the foreseeable future.

[16] The panel therefore concludes that Mr. Fitzpatrick should be discharged absolutely.

[17] However, in order to assist in Mr. Fitzpatrick’s reintegration, the panel agrees to delay the effect of the discharge for 6 weeks to enable Mr. Fitzpatrick to locate housing and connect with a mental health professional to supervise Mr. Fitzpatrick’s medications.

Reasons by Ms. F. Jeffries and concurred in by G. Warrion and B. Walter.