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COURT OF KING'S BENCH OF MANITOBA

IN THE MATTER OF: Trevor Robert Farley

A REVIEW UNDER S. 672.84(3) OF THE *CRIMINAL CODE OF CANADA*

) W. Rustyn Ullrich
) Shannon D. Benevides
) for the Crown
)
) Carley L. Mahoney
) Caleigh M.A. Glawson
) for the accused
)
) Judgment Delivered (Orally):
) June 16, 2026
)
) Judgment Delivered:
) June 17, 2026

CHAMPAGNE J.

INTRODUCTION

[1] On October 27, 2021, Trevor Robert Farley (“Farley”) was arrested and charged with first-degree murder for killing his mother Judith Swain, second-degree murder for killing his father Stuart Farley and attempted murder for the attack on his co-worker, Candyce Szkwarek.

[2] On October 17, 2023, after reviewing significant medical evidence and hearing the joint submission of Crown and defence, I found Farley Not Criminally Responsible on account of a Mental Disorder ("NCRMD"). An individual found NCRMD usually falls under the jurisdiction of a Provincial Review Board (the "Review Board").

[3] In July 2014, the High Risk Accused ("HRA") designation became law (s. 672.64 (1) of the *Criminal Code of Canada* (the "**Code**"). The legislation prioritizes the protection of the public. The practical result of a HRA designation is to remove discretion from the Review Board.

[4] Due to the horrific and brutal nature of these acts, the Crown sought a HRA designation for Farley.

[5] On October 18, 2023, after hearing the submissions of the Crown and the consent of Farley, I designated Farley as a HRA pursuant to s. 672.64(1)(b) of the **Code**.

[6] The HRA designation imposes significant liberty consequences as it requires a mandatory detention order with placement in a secure hospital setting and strict limitations on community access. Only a superior court judge can revoke the HRA designation and detention order. The Review Board is tasked with managing the accused's risk within the detention order, but the Review Board is unable to grant a conditional or absolute discharge.

[7] The Review Board held their first hearing for Farley on December 1, 2023, and made the necessary detention order pursuant to s. 672.54(c) of the **Code** subject to the restrictions found in s. 672.64(3). The HRA designation and detention order with

restrictive conditions remains in place until there is no longer a “substantial likelihood” that Farley will use violence that could endanger the life or safety of another person.

[8] On November 18, 2024, the Review Board held the annual review hearing for Farley. The Review Board found that there is no “substantial likelihood” that Farley will use violence that could endanger the life or safety of another person. Pursuant to s. 672.84(1) of the *Code*, the Review Board referred their finding to the Court of King’s Bench for review. The Review Board’s written decision was released on December 13, 2024.

[9] For reasons that follow, I am satisfied that there is no “substantial likelihood” that Farley will use violence that could endanger the life or safety of another person. Therefore, I revoke the HRA designation and direct Farley be detained in custody in a hospital, subject to such conditions the Review Board considers appropriate.

[10] As this case involved the first HRA designation in Manitoba and the first revocation of the HRA designation, I will provide additional background information about this matter that includes a summary of Farley’s acts, his personal background, the NCRMD verdict, the HRA designation and the law that applies to revocation of the designation.

THE ATTACKS ON THE VICTIMS

[11] On October 27, 2021, Farley’s mental health was in serious decline. He had been admitted to the Winnipeg Crisis Centre (“Crisis Centre”) on an involuntary basis. He walked away from the Crisis Centre and went directly to his father’s home in Winnipeg, Manitoba (the “City”).

[12] In a surprise and unprovoked attack, Farley killed his father. Stuart Farley was 73 years old, sitting in his living room chair at the time of the attack. Stuart Farley was elderly, sitting in a vulnerable position and defenceless. Stuart Farley never moved from the chair. He was stabbed over 30 times. The attack focused on vulnerable areas of the body including the face, neck, chest and abdomen. There were injuries to vital organs including the jugular veins, pulmonary artery, aorta, lung, small bowel and colon. Farley was in and out of his father's home within four minutes and immediately drove 50 kilometres to New Bothwell, Manitoba, where he killed his mother.

[13] Farley arrived at his mother's home at approximately 12:30 p.m. Judith Swain was on the phone with Farley's wife, Martha Uchala, as she was trying to locate Farley knowing he had left the Crisis Centre. The attack on his mother was immediate, unprovoked and relentless. Judith Swain was 73 years old. She was a petite woman, five feet tall and 110 pounds. She lived on a rural property. She was alone, vulnerable and defenceless.

[14] Farley stabbed his mother many times, targeting her face, neck, chest, back and abdomen. He went on to use an angle grinder to cut her body. He used a hammer to pulverize his mother's face and head. The level of violence was beyond brutal and beyond the definition for stark horror. Farley was in his mother's home for no more than seven minutes. In that time, he destroyed her physical being.

[15] He returned to the City and attended Seven Oaks Hospital where he attempted to kill his co-worker, Ms. Szkwarek. His intention was to cut out the contamination of evil in his co-workers. In preparation, he stopped at two different stores to purchase knives.

He arrived at Seven Oaks Hospital at 2:20 p.m. He was armed with a new sharp boning knife. He entered the hospital and walked towards the information desk located in the atrium. Ms. Szkwerek was standing in the area speaking to a colleague.

[16] Farley walked past her, turned and attacked her from behind. He stabbed her in the back, chest, abdomen and neck area. He threw her to the ground and continued stabbing. A doctor tackled Farley knocking him to the floor. Farley got up and walked out of the hospital. He was arrested in the parking lot. Ms. Szkwerek suffered catastrophic injuries and was moments from dying. But for the immediate medical attention she received, she would have perished. These violent and horrific acts took place in less than three hours.

BACKGROUND OF FARLEY

[17] Farley was 37 years old at the time of these events. He had no prior criminal record. He had no history with alcohol or drugs. He was well educated working as a registered nurse at the Seven Oaks Hospital since 2014. He had been married to Ms. Uchala for over a decade and they share four children. By outward appearances, Farley was leading a productive life and a contributing member of the community.

[18] Behind closed doors, there were concerns about his mental health. Ms. Uchala notes that Farley started to exhibit signs of paranoia shortly after graduating from nursing. As time went on the paranoia would subside and then return. By August 2021, Farley's paranoia was seriously affecting his marriage, as he incorrectly believed his wife was unfaithful. This led to a separation. Although separated, Ms. Uchala remained close and was concerned about her husband's well-being.

[19] On August 30, 2021, Ms. Uchala called the Crisis Centre to voice her concerns about Farley. She explained he was going without sleep but had increased energy. After several days without sleep, he would become paranoid. She had serious concerns about his paranoia.

[20] On August 31, 2021, Ms. Uchala again called the Crisis Centre expressing concerns over her husband's mental health. She provided further information about his history of paranoia and that it presented in cycles. The current cycle had been ongoing for a couple of months.

[21] On October 23, 2021, Ms. Uchala called the Crisis Centre again with concerns about Farley's mental health. She explained that she drove him to the Crisis Centre, but he refused to get out of the vehicle. Her concerns were increasing as Farley was now blaming her for having kids with him and not recognizing his mental health issues.

[22] On October 25, 2021, Farley did attend the Crisis Centre. He was tremulous and shaking. He reported COVID symptoms and feeling unwell. He was directed to the Health Sciences Centre emergency room. Ms. Uchala called the Crisis Centre to explain her concerns that he would not wait eight hours in the emergency room.

[23] Farley did attend the emergency room at 7:51 p.m. He reported that he was having a mental health crisis, anxious and unable to think. Shortly after, he left the emergency room.

[24] That same evening, he attended the St. Boniface Hospital emergency room around 9:00 p.m. He explained he felt his mental health was deteriorating. He requested an anti-depressant prescription, as he wanted to sleep. He obtained the prescription and

left the hospital. He returned to the St. Boniface Hospital just before midnight wanting to speak to someone about his mental health.

[25] He described having “chronic mental health issues” that it feels unsafe to go home, stated that he hears voices, described a historical phenomenon where he could see white flames, and an ability to engage in paranormal activities due to his superior intellect. The impression on discharge was one of anxiety and to query autism spectrum disorder, he was discharged with recommendation to see a counsellor.

[26] Farley attended the Crisis Centre 24 hours later, shortly after 11:00 p.m. on October 26, 2021. He requested mental health services. He voluntarily remained at the Crisis Centre overnight.

[27] On October 27, 2021, Farley met with the psychiatric health team at 8:50 a.m. After the assessment, a decision was made to involuntarily admit Farley pursuant to ***The Mental Health Act***, C.C.S.M. c. M110. The Form 4 admission document noted:

“Disorganized thought process, refusing admission, variable insight” and also “believing he is a prophet; delusions on a phone being hacked; believes cameras are in his home; auditory hallucination of an angel telling him he is a prophet of God; change in behaviour; per wife; thought his patient at work was a paid actor; quit job October 26; intense thoughts of suicide October 26, denies today”.

[28] At 11:35 a.m., Farley simply walked out of the Crisis Centre. Staff from the Crisis Centre called police to advise Farley had left. Within three hours, Farley committed the carnage that brings us here today.

NCRMD

[29] Section 16(1) of the *Code* explains that “No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong”.

[30] As a society, we have come a long way in discussing and understanding mental illness. Section 16 of the *Code* acknowledges and reflects societal values that those who are truly ill should not be subject to criminal sanction such as imprisonment but rather they should be treated for their mental disorder in a hospital setting while subject to conditions and supervision of the court or Review Board.

[31] The issue of criminal responsibility turns on the evidence from the forensic mental health experts. On October 17, 2023, I found Farley NCRMD based on the expert evidence from the Department of Psychiatry, Adult Forensic Services and the joint submissions of Crown and defence counsel. I will briefly summarize the expert evidence that supported the NCRMD verdict. The forensic team included forensic psychiatrist Dr. Skye Rousseau, forensic psychologist Dr. David Hill, and Ms. Gina De Vos who was the team lead for forensic mental health services and responsible for obtaining all the relevant information necessary to complete the assessment.

[32] The diagnosis of mental disorders can be difficult and are seldom black and white. Our mental faculties are incredibly complex and often impacted by numerous factors. The forensic team undertook an extensive, comprehensive and exhaustive review of all relevant information before offering an opinion about Farley.

[33] The evidence included numerous interviews and psychological testing of Farley. In part, the psychological testing is designed to assess if an individual is malingering. This means Dr. Hill was deliberately and carefully considering if Farley was feigning mental illness. The tests revealed he was not trying to fool the forensic team.

[34] Dr. Hill went on at length to describe Farley's thinking and behaviour which was significantly impacted by symptoms of psychosis at the time of the offences. He diagnosed Farley with Bipolar 1 Disorder with psychotic features. It is a mental illness that impacts an individual's mood, thinking and behaviour.

[35] Farley was paranoid and believed a worldwide Cabal had orchestrated the COVID pandemic, vaccines and passports. He believed the angel Gabriel was speaking to him. He believed the Messiah talks to angels and therefore he was the Messiah. He believed his parent's souls were unclean and contaminated by the devil. He asked Gabriel how to help his parents and was told he should cut out the contamination.

[36] He truly believed he was helping his parents by cutting out the contamination. After "helping" his mother, he decided to go and help his co-workers. Upon seeing Ms. Szkwarek, he felt the same revulsion that he felt when seeing his parents and realized she was also contaminated by the devil and he had to cut the contamination out.

[37] Dr. Rousseau explained that Farley was experiencing psychotic symptoms at the time of the offenses. He goes to explain an exact diagnosis is difficult. He prefers a diagnosis of bipolar disorder featuring manic and depressive episodes with anxious distress and psychotic features.

[38] Dr. Rousseau also explains an alternative diagnosis but makes clear that the evidence provided demonstrates Farley was severely impacted by psychotic symptoms at the time of the offences. The impact was so serious that he would not understand the nature of his actions and he was unable to appreciate the moral wrongfulness of his actions as he believed he was saving the victims from evil.

[39] After a complete and thorough assessment, Dr. Hill and Dr. Rousseau concluded independently of one another that Farley was suffering from a multitude of disorders with severe psychotic symptoms. The mental disorders were occurring on October 27, 2021, at the time of the offences. My conclusion is that Farley was suffering from a mental disorder that rendered him incapable of appreciating the nature of the quality of his acts and incapable of knowing his acts were wrong.

[40] I determined Farley committed the acts of killing his parents and attempting to kill Ms. Szkwarek on October 27, 2021, but was not criminally responsible on account of mental disorder pursuant to s. 16(1) of the *Code*.

PART XX.1 OF THE *CODE* – MENTAL DISORDERS

[41] Part XX.1 of the *Code* provides the law in relation to individuals who suffer from mental disorders. This part of the *Code* is lengthy and complex. The law is designed to provide for the treatment of the mental disorder of an accused while taking into account the safety of the public which is the paramount consideration. The courts and Review Boards are to assess different levels of risk when considering necessary and appropriate dispositions for a NCRMD accused.

[42] Once a court determines an accused is NCRMD, the jurisdiction of that individual typically passes on to the Review Board.

[43] The court or Review Board is required to hold a disposition hearing shortly after the NCRMD verdict. Prior to the 2014 amendments, the law allowed for three possible dispositions that include an absolute discharge, a conditional discharge or detention order for the accused to be held in custody in a hospital as follows:

Dispositions that may be made

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:

- (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;
- (b) by order, direct that the accused be discharged subject to such conditions as the court or Review Board considers appropriate; or
- (c) by order, direct that the accused be detained in custody

Décisions

672.54 Dans le cas où une décision est rendue au titre du paragraphe 672.45(2), de l'article 672.47, du paragraphe 672.64(3) ou des articles 672.83 ou 672.84, le tribunal ou la commission d'examen rend, en prenant en considération, d'une part, la sécurité du public qui est le facteur prépondérant et, d'autre part, l'état mental de l'accusé, sa réinsertion sociale et ses autres besoins, celle des décisions ci-après qui est nécessaire et indiquée dans les circonstances :

- a) lorsqu'un verdict de non-responsabilité criminelle pour cause de troubles mentaux a été rendu à l'égard de l'accusé, une décision portant libération inconditionnelle de celui-ci si le tribunal ou la commission est d'avis *qu'il ne représente pas un risque important pour la sécurité du public*;
- b) une décision portant libération de l'accusé sous réserve des modalités que le tribunal ou la commission juge indiquées;

in a hospital, subject to such conditions as the court or Review Board considers appropriate.

c) une décision portant détention de l'accusé dans un hôpital sous réserve des modalités que le tribunal ou la commission juge indiquées

[emphasis added]

[44] If the court or Review Board is satisfied that the accused is *not a significant threat to the safety of the public*, then an absolute discharge will be imposed, the court or Review Board loses jurisdiction, and the accused remains in the community with no restrictions. This test, *not a significant threat to the safety of the public*, sets out the level of risk to be determined prior to making a disposition and is at the heart of the NCRMD legislation.

[45] In ***Winko v. British Columbia (Forensic Psychiatric Institute)***, 1999 CanLII 694 (SCC), [1999] 2 S.C.R. 625, McLachlin C.J. wrote, at para. 49: "To repeat, absent a finding that the NCR accused represents a significant risk to the safety of the public, there can be no constitutional basis for restricting his or her liberty".

[46] McLachlin C.J. went on at para. 57 to explain the risk. She wrote:

[57] . . . Section 672.54 provides that an NCR accused shall be discharged absolutely if he or she is not a "significant threat to the safety of the public". To engage these provisions of the Criminal Code, the threat posed must be more than speculative in nature; it must be supported by evidence: *D.H. v. British Columbia (Attorney General)*, [1994] B.C.J. No. 2011 (QL) (C.A.), at para 21. The threat must also 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 a grave harm will not suffice. Similarly, a high risk of trivial harm will not meet the threshold. Finally, the conduct or activity creating the harm must be criminal in nature: *Chambers v. British Columbia (Attorney General)* (1997), 1997 CanLII 2978 (BC CA), 116 C.C.C. (3d) 406 (B.C.C.A.), at p. 413. In short, Part XX.1 can only maintain its authority over an NCR accused

where the court or Review Board concludes that the individual poses a significant risk of committing a serious criminal offence. If that finding of significant risk cannot be made, there is no power in Part XX.1 to maintain restraints on the NCR accused's liberty.

[47] Part XX.1 of the **Code** was amended in July 2014 in response to public outcry about several high profile NCRMD accused receiving absolute discharges.

[48] The 2014 amendments adopted, refined and codified the test from **Winko** with the enactment of s. 672.5401 of the **Code**, which provides:

Significant threat to safety of public

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

Risque important pour la sécurité du public

672.5401 Pour l'application de l'article 672.54, un risque important pour la sécurité du public s'entend du risque que courent les membres du public, notamment les victimes et les témoins de l'infraction et les personnes âgées de moins de dix-huit ans, de subir un préjudice sérieux — physique ou psychologique — par suite d'un comportement de nature criminelle, mais non nécessairement violent.

HRA DESIGNATION

[49] The 2014 amendments provided for an additional disposition for the most dangerous NCRMD accused with the enactment of the HRA designation. The HRA amendment further prioritizes the protection of the public and removes discretion from the Review Board as the HRA designation can only be revoked by the courts.

[50] Since 2014, courts have determined HRA findings are exceptional in nature and should be imposed sparingly. (See **R. v. Hadfield**, 2024 ONCA 46 and **R. v. Teggart**, 2025 ONCA 431.)

[51] Section 672.64(1) provides two legal pathways to a HRA designation:

Finding

672.64(1) On application made by the prosecutor before any disposition to discharge an accused absolutely, the court may, at the conclusion of a hearing, find the accused to be a high-risk accused if the accused has been found not criminally responsible on account of mental disorder for a serious personal injury offence, as defined in subsection 672.81(1.3), the accused was 18 years of age or more at the time of the commission of the offence and

(a) the court is satisfied that there is a substantial likelihood that the accused will use violence that could endanger the life or safety of another person; or

(b) the court is of the opinion that the acts that constitute the offence were of such a *brutal nature* as to indicate a risk of grave physical or psychological harm to another person.

Déclaration

672.64(1) Sur demande du poursuivant faite avant toute décision portant libération inconditionnelle de l'accusé, le tribunal peut, au terme d'une audience, déclarer qu'un accusé âgé de dix-huit ans ou plus au moment de la perpétration de l'infraction qui a fait l'objet d'un verdict de non-responsabilité criminelle pour cause de troubles mentaux pour une infraction grave contre la personne — au sens du paragraphe 672.81(1.3) — est un accusé à haut risque si, selon le cas:

a) il est convaincu qu'il y a une probabilité marquée que l'accusé usera de violence de façon qu'il pourrait mettre en danger la vie ou la sécurité d'une autre personne;

b) il est d'avis que les actes à l'origine de l'infraction étaient d'une *nature si brutale* qu'il y a un risque de préjudice grave — physique ou psychologique — pour une autre personne.

[emphasis added]

[52] In this case, Farley's path to a HRA designation came from subsection (b), the "brutal nature" criterion.

[53] To assist with the risk assessment, the **Code** lists several factors to consider.

Section 672.64(2) provides:

Finding	Facteurs à considérer
672.64(2) In deciding whether to find that the accused is a high-risk accused, the court shall consider all relevant evidence, including	672.64(2) Pour décider s'il déclare ou non que l'accusé est un accusé à haut risque, le tribunal prend en compte tout élément de preuve pertinent, notamment :
(a) the nature and circumstances of the offence;	a) la nature et les circonstances de l'infraction;
(b) any pattern of repetitive behaviour of which the offence forms a part;	b) la répétition d'actes comme celui qui est à l'origine de l'infraction;
(c) the accused's current mental condition;	c) l'état mental actuel de l'accusé;
(d) the past and expected course of the accused's treatment, including the accused's willingness to follow treatment; and (e) the opinions of experts who have examined the accused.	d) les traitements suivis et à venir de l'accusé et la volonté de celui-ci de suivre ces traitements; e) l'avis des experts qui l'ont examiné.

[54] In my view, this is a non-exhaustive list of factors. There may be other factors not listed that could be considered. In addition to these factors, s. 672.541(b) of the **Code** requires a court to consider any victim impacts statements before determining whether an accused should be designated a HRA and victim impact statements are to be considered prior to a determination to revoke the designation.

[55] After considering all relevant evidence and the submissions from Crown and defence I concluded the actions of Farley were of such a “**brutal nature**” as to indicate a risk of grave physical or psychological harm to another person and designated him HRA pursuant to s. 672.64(1)(b).

THE LEVEL OF RISK REQUIRED FOR A HRA DESIGNATION

[56] There is debate across the country about the level of risk that must be satisfied pursuant to s. 672.64(1)(b) of the **Code** before a NCRMD accused can be designated HRA.

[57] There appears to be consensus that a “substantial likelihood” that the accused will use violence that could endanger the life or safety of another person found in s. 672.64(1)(a) of the **Code** is a higher level of risk than the “significant threat” level found in ss. 672.54(a) and 672.5401.

[58] In **R. v. Gautreau**, 2025 ONCA 873, the Ontario Court of Appeal explained:

[41] The jurisprudence supports the proposition that a “substantial likelihood” is higher than the “significant threat” characterization in ss. 672.54(a) and 672.5401. In *R. v. Schoenborn*, 2017 BCSC 1556, 354 C.C.C. (3d) 393, Devlin J. wrote, at para. 42: “It would be illogical to ground these liberty deprivations in the same level of risk that is already required to maintain Review Board jurisdiction over a NCR accused in the pre-existing NCRMD regime, which already provides for custodial detention in a hospital where necessary.” In *Hadfield*, this court said, at para. 13: “The use of the words “substantial likelihood” denotes a high degree of probability that the accused will endanger either the life or safety of another” (emphasis added).

[emphasis in original]

[59] The debate about the level of risk in s. 672.64(1)(b) of the **Code** focuses on the word “risk”. In **R. v. Schoenborn**, 2017 BCSC 1556, Devlin J. determined that mere “risk” was insufficient to satisfy a finding that a NCRMD accused can be designated a

HRA. Devlin J. concluded the “substantial likelihood” standard in s 672.64(1)(a) applies to s. 672.64(1)(b).

[60] The Ontario and Quebec Courts of Appeal have determined the level of “risk” described in s. 672.64(1)(b) of the **Code** is a lower standard than “substantial likelihood” concluding the level of risk to be met is one of “significant threat”. The analysis and reasoning are summarized in **Gautreau** where Trotter J.A. explained:

[66] Devlin J. concluded that the “substantial likelihood” standard explicitly stated in s. 672.64(1)(a) is also applicable to s. 672.64(1)(b). This was based on a number of considerations, one being the overall purpose of the HRA regime. As she noted, the purpose of the HRA designation is to identify NCRMD accused who pose “an unacceptable risk to society”, beyond the “significant threat” standard in s. 672.5401: at para. 26.

[67] More fundamentally, Devlin J. wrote that the standard must be interpreted in light of the review provision in s. 672.84. As noted above, a Review Board may refer a HRA to a superior court for consideration, and that court may revoke the finding, if it is proved that “there is a not a substantial likelihood that the accused will use violence that could endanger the life and safety of another person”: s. 672.84(3). For this reason, Devlin J. held, the same level of risk – substantial likelihood – must be applied regardless of what pathway is taken to the designation. She observed that, if this were not the case, a person found to be a HRA pursuant to a lower standard in s. 672.64(1)(b) – mere “risk” – would be immediately eligible to have their finding set aside under s. 672.84: paras. 95-96.

[68] Aspects of Schoenborn have been cited with approval by this court in Cousineau, Hadfield and Teggart, although not on the interpretation of s. 672.64(1)(b). However, Devlin J.’s interpretation of this provision has been followed by some trial judges in this province: see R. v. Ochelebe, 2025 ONSC 5261, at paras. 141-150; R. v. Caines, 2023 ONSC 5482, at para. 55.

[69] The Crown relies on the decision of the Court of Appeal of Quebec in Lafrenière c. R., 2022 QCCA 96, leave to appeal refused, [2022] S.C.C.A. No. 86. That court rejected the Schoenborn approach in favour of an interpretation more in keeping with the plain language of s. 672.64(1)(b), which requires “a risk of grave physical or psychological harm to another person.”

[70] At the outset, the court in Lafrenière observed that ss. 672.64(1)(a) and (b) are different. Section 672.64(1)(b) is less demanding as a result of the brutal nature of the offending. In this context, all that is required is a “risk” of serious harm, physical or psychological, to another person: at para. 11. Still, the court

was prepared to allow that the risk must approach the degree of risk required under s. 672.54 of the Code. As the court said, at para. 19, the prosecution must “demonstrate a risk of grave harm ... a real risk (and therefore not hypothetical), which is more than ‘minimal’ / ‘miniscule’, that this harm will occur” (translation from French).[1]

[71] The court in *Lafrenière* acknowledged the observation of Devlin J. in *Schoenborn* that a HRA under s. 672.64(1)(b) may be immediately entitled to have the designation removed through the review process in s. 672.84. However, this possibility does not render the provision frivolous in the circumstances. The court pointed to the different roles of the courts and Review Boards under Part XX.1 of the Criminal Code. It characterized the designation as an emergency provision, at para. 25, furnishing judges with the power to protect the public by imposing enhanced liberty restrictions until the case comes before the Review Board. At that time, the Board, with its specialized expertise, may be better equipped to assess the nature of the risk posed by a HRA and determine whether the case should be referred to the superior court under s. 672.84: *Lafrenière*, at para. 23.

[72] With respect, I agree with the approach in *Lafrenière*. The differential phrasing and language in ss. 672.64(1)(a) and (b) demonstrate that Parliament was well aware of the distinction it created. The *Lafrenière* approach is faithful to the modern framework for statutory interpretation, privileging the grammatical and ordinary meaning of the text, in the context of the Parliament’s public protection goal: see *R. v. Guerrier*, 2024 ONCA 838, 174 O.R. (3d) 675, at paras. 21-23; *R. v. Kloubakov*, 2025 SCC 25, 450 C.C.C. (3d) 34, at para. 61.

[73] The subsections do not simply exchange one level of risk for another; rather, they are calibrated to different apprehended harms. Section 672.64(1)(a) demands a higher level risk of lesser harm, whereas s. 672.64(1)(b) permits a lower level risk of grave harm. Failing to recognize this distinction between ss. 672.64(1)(a) and (b) would render the subsections redundant.

[74] I accept the Crown’s submission, consistent with *Lafrenière*, that s. 672.64(1)(b) permits a court to intervene quickly to prioritize public safety (by blocking unsupervised access to the community) where an NCRMD accused has committed a brutal offence at a time when the Crown may not be in a position to establish a high degree of probability of re-offending. This may arise in a situation where an accused person is in the early stages of a mental illness, with little if any treatment history. It will then be for the Board to subsequently assess the HRA’s risk.

[75] I should note that the Crown does not submit that the standard under s. 672.64(1)(b) should be any lower than the “significant risk” test that the Supreme Court of Canada in *Winko* held was required to maintain the constitutionality of s. 672.54 (and, now, s. 672.5401). I agree – the level of “risk” referred to in s. 672.64(1)(b) must be subject to the same constitutional threshold. As McLachlin C.J. wrote: “[t]here must be evidence of a significant risk to the public before the court or Review Board can restrict the NCR

accused's liberty": para. 49. This minimal threshold must apply to s. 672.64(1)(b) with equal weight, as it too restricts the liberty of the NCR accused.

[76] Having reached this conclusion, there is no reason to challenge the trial judge's alternate HRA finding under s. 672.64(1)(b). The brutality of the appellant's actions speaks for itself. In the wake of this brutality, in combination with his highly treatment-resistant mental illness, the trial judge did not err in finding that, left to his own devices and without any conditions, there is a significant risk that the appellant will cause grave harm to another person, just as he intimidated while under pre-trial psychiatric care.

[61] Farley was designated a HRA pursuant to the "brutal nature" criterion under s. 672.64(1)(b) of the **Code**. Whether a NCRMD accused is designated a HRA under subsection (a) "substantial likelihood" or subsection (b) "brutal nature" criterion, the test for revoking the HRA designation is the same.

THE CONSEQUENCES OF A HRA DESIGNATION

[62] Section 672.64(3) explains the result of a HRA designation. If the court finds the accused to be a HRA, the court shall make a disposition under s. 672.54(c) of the **Code**, but the accused's detention must not be subject to any condition that would permit the accused to be absent from the hospital unless:

- a. it is appropriate, in the opinion of the person in charge of the hospital, for the accused to be absent from the hospital for medical reasons or for any purpose that is necessary for the accused's treatment, if the accused is escorted by a person who is authorized by the person in charge of the hospital; and
- b. a structured plan has been prepared to address any risk related to the accused's absence and, as a result, that absence will not present an undue risk to the public.

[63] As a result of the HRA designation, Farley has been subject to a strict detention order at the Selkirk Mental Health Centre in a forensics unit known as Area 15 (“Area 15”).

THE HRA REVIEW

[64] The revocation of a HRA designation is a two-stage process. The first stage involves a determination by the Review Board. The second stage for revocation of the HRA designation is a court hearing that occurs by way of referral from the Review Board.

Section 672.84(1) provides:

Review of finding — high-risk accused

672.84(1) If a Review Board holds a hearing under section 672.81 or 672.82 in respect of a high-risk accused, it shall, on the basis of any relevant information, including disposition information as defined in subsection 672.51(1) and an assessment report made under an assessment ordered under paragraph 672.121(c), if it is satisfied that there is not a substantial likelihood that the accused — whether found to be a high-risk accused under paragraph 672.64(1)(a) or (b) — will use violence that could endanger the life or safety of another person, refer the finding for review to the superior court of criminal jurisdiction.

Révision de la déclaration — accusé à haut risque

672.84(1) Dans le cas où la commission d’examen tient une audience en vertu des articles 672.81 ou 672.82 à l’égard d’un accusé à haut risque, elle est tenue, à la lumière de tout renseignement utile, notamment les renseignements décisionnels au sens du paragraphe 672.51(1) et tout rapport d’évaluation fait à la suite d’une ordonnance d’évaluation rendue en vertu de l’alinéa 672.121c), si elle est convaincue qu’il n’y a pas de probabilité marquée que l’accusé — qu’il ait fait l’objet d’une déclaration aux termes de l’alinéa 672.64(1)a) ou de l’alinéa 672.64(1)b) — usera de violence de façon qu’il pourrait mettre en danger la vie ou la sécurité d’une autre personne, de renvoyer l’affaire à la cour supérieure de juridiction criminelle pour révision de la déclaration.

[65] After the Review Board refers their findings to the court, s. 672.84(3) of the **Code** requires the court to hold a hearing to determine whether the HRA designation is to be revoked:

Review of finding by court

672.84(3) If the Review Board refers the finding to the superior court of criminal jurisdiction for review, the court shall, at the conclusion of a hearing, revoke the finding if the court is satisfied that there is not a substantial likelihood that the accused will use violence that could endanger the life or safety of another person, in which case the court or the Review Board shall make a disposition under any of paragraphs 672.54(a) to (c).

Révision de la déclaration par la cour

672.84(3) S'il y a renvoi de l'affaire à la cour pour révision de la déclaration, celle-ci, au terme d'une audience, révoque la déclaration si elle est convaincue qu'il n'y a pas de probabilité marquée que l'accusé usera de violence de façon qu'il pourrait mettre en danger la vie ou la sécurité d'une autre personne; dans ce cas, elle ou la commission d'examen rend une décision en application de l'un des alinéas 672.54a) à c)

THE NATURE OF A REVIEW HEARING

[66] The parties and I agree, the review hearing is different from a typical criminal trial which is adversarial and the Crown has the onus to prove the case beyond a reasonable doubt.

[67] The review hearing is an inquisitorial exercise that requires the court to seek out all relevant evidence in support or not in support of the HRA designation. The court relies on the parties to identify and ensure all relevant evidence and witnesses are presented to the court.

[68] There is no onus on the accused to convince the court that he does not meet the HRA designation threshold and likewise there is no onus on the Crown to convince the

court there remains a “substantial likelihood” that the accused will use violence that could endanger the life or safety of another person.

[69] The legal standard to apply is whether I am “satisfied” that there is no “substantial likelihood” that the accused will use violence that could endanger the life or safety of another person. If satisfied the HRA designation is to be revoked.

[70] I have the benefit of the Review Board’s decision, but to be clear, the court hearing is a fresh proceeding, and my determination is based on the evidence presented at the hearing and submissions provided to the court.

[71] In the hearing before me, the Crown voiced concerns about the Review Board hearing and their reasons. I note the Review Board decision is a “disposition” which can be appealed to the Manitoba Court of Appeal. The Crown could have but did not appeal the findings of the Review Board.

[72] The final consideration regarding the nature of the review hearing involves identifying the appropriate context of a “substantial likelihood” inquiry pursuant to s. 672.84(3) of the **Code**. There are three possible assumptions.

[73] First, the inquiry could proceed based on Farley’s present circumstances of being bound by a mandatory detention order in hospital with strict restrictions on his liberty. Second, the risk inquiry could proceed on the assumption that Farley would be discharged from Review Board supervision and no longer be bound by any conditions. Third, the inquiry could proceed on the assumption that revocation of the HRA designation will result in Farley being subject to conditions applicable to a traditional NCRMD accused.

[74] Farley submits that the appropriate context to consider is whether the court is satisfied that there is no “substantial likelihood” that the accused will use violence that could endanger the life or safety of another person, knowing that revocation of the HRA designation should result in the accused reverting to traditional NCRMD status.

[75] The Crown argues the appropriate context for consideration is whether the “substantial likelihood” test would be met if the accused were given an absolute discharge and was no longer subject to the Review Board or bound by any conditions.

[76] The appropriate context for assessing “substantial likelihood” was considered in ***Cousineau (Re)***, 2021 ONCA 760. That case involved the appeal of a disposition by the Review Board. Cousineau was a HRA and who believed he was significantly progressing with treatment and wanted the HRA designation reviewed. He requested the Review Board order an assessment to determine whether he still qualified as a HRA. The Review Board declined to order the requested assessment. Cousineau claims that it erred in doing so and appealed.

[77] I acknowledge this decision is made in relation to a disposition by the Review Board. In my view it equally applies to a HRA designation review by the court as the “substantial likelihood” test is the same in ss. 672.84(1) and 672.84(3) of the ***Code***.

[78] Starting at para. 42 in ***Cousineau (Re)***, Paciocco J.A explains:

[42] To determine whether this is so, it is necessary to address the issue described above and to identify the appropriate context of a “substantial likelihood” inquiry pursuant to s. 672.84(1). Is the Board required to inquire into “the substantial likelihood that the accused... will use violence that could endanger the life or safety of another person”: (1) now, in the present circumstances; as opposed to (2) if discharged from Board supervision; as opposed to (3) if the “high-risk accused” designation is removed?

[43] Clearly, the first option – asking whether the accused poses a substantial likelihood of violence “now, in the present circumstances” – is not realistic. The circumstances that apply “now” include the high-risk accused designation coupled with the mandatory constraints on liberty imposed to secure public safety. The designation and those mandatory constraints are put in place for the very purpose of removing the substantial likelihood that the accused will use violence that could endanger others. Interpreting s. 672.84(1) according to this first option would therefore effectively require the Board to request a review of the designation in every case where there are reasonable grounds to believe that the designation is achieving its purpose.

[44] Mr. Cousineau argues that the latter inquiry is the appropriate one. He argues that if there are reasonable grounds to believe that there would not be a substantial likelihood that he would use violence endangering others if his high-risk accused designation was removed and he was subjected to a less restrictive disposition than the high-risk accused designation requires, then the Board is obliged to request a review of his high-risk accused designation. He argues that the Board decision in Grant (Re) supports his position. In that case the Board requested a review of Mr. Grant’s high-risk accused designation because there was not a substantial likelihood that he would violently endanger others “when under the jurisdiction of the board”: at para. 20.

[45] I do not agree that the “substantial likelihood” inquiry is to be undertaken on the assumption that the restrictions of a disposition order are in place. Instead, the inquiry must be into whether, based on the inherent or endemic risk of violence the accused currently poses, there continues to be a “substantial likelihood” that the accused will use violence that could endanger the life or safety of another. Put in the terms expressed by Mr. Cousineau, the requisite inquiry is to evaluate whether there would be a substantial likelihood that the accused would use violence that could endanger the lives or safety of others, if discharged from Board supervision.

[46] The starting point in arriving at this conclusion is to recognize that a s. 672.84(1) request for review involves a preliminary evaluation by the Board of the substantial likelihood that the accused will use violence that could endanger others. Significantly, this preliminary evaluation is undertaken for the purpose of determining whether a court should be asked to review its evaluation of the substantial likelihood that the accused will use violence that could endanger others. In effect, the Board’s review performs a screening function. It would not make sense if the criteria the Board was to consider during its preliminary screening review differed from the criteria that a court would ultimately apply while conducting a requested review. And quite clearly, a court that is conducting a review is not to do so on the assumption that a disposition order will be in place. Instead, the court is to assess the intrinsic or endemic risk the accused would present if not subject to the restrictions under a disposition order. I say this for three reasons.

[47] First, s. 672.84 provides a mechanism for courts to conduct the “review” of a designation that was made pursuant to s. 672.64. A “review”, by its nature,

necessarily inquires into whether the original designation remains appropriate. Naturally, that "review" should be undertaken using the same criteria that were used to make the designation that is being reviewed.[1] The criteria that are applied when an initial designation is made focus exclusively on the inherent or endemic risk posed by the accused as an individual, not on the risk the accused would present if subject to constraints on their liberty. This is evident from the fact that the focus of the inquiry is expressed to be into the risk "the accused" poses. Moreover, although the list of relevant factors provided for in s. 672.64(2) is not exhaustive, each of those factors are relevant only to the intrinsic or endemic risk the accused presents. Specifically, they focus on the accused's past behaviour and mental health, including "the nature and circumstances of the [index] offence" the accused committed; "any pattern of repetitive behaviour [by the accused] of which the offence forms part"; "the accused's current medical condition"; "the past and expected course of the accused's treatment, including the accused's willingness to follow treatment" and "the opinions of experts who have examined the accused". None of these factors engage the risk the accused would pose if subject to constraints.

[48] Second, to require a court to consider the ameliorating effects of a disposition order in evaluating the risk the accused presents is not in keeping with the step-by-step approach set out in s. 672.84(3). That provision contemplates that a court will first determine whether to set aside the high-risk accused designation, and only then will the appropriate disposition be determined. If a court was required to consider the ameliorating effects of a disposition order before that disposition order is even identified, the best the court could do would be to speculate as to what the disposition order could look like. If that speculation proves wrong, a disconnect would be created. A court could revoke a high-risk accused designation on an assumption that never materializes. There is no sense in such a regime.

[49] Third, a high-risk accused designation under s. 672.64 is part of the scheme for identifying the available dispositions. Its role is to determine where on the ladder of available dispositions the accused's case should stand. Specifically, if the accused is found not to present a "significant threat to the safety of the public" the accused is to be absolutely discharged pursuant to s. 672.54(a). If the accused poses a "significant threat to the safety of the public", the accused is to be subject to any disposition available pursuant to s. 672.54(b) and (c), including a conditional discharge or a detention order with conditions. If the accused is not simply a "significant threat to the safety of the public" but also qualifies as a high-risk accused and is designated a high-risk accused by a court pursuant to s. 672.64(1), the accused will be restricted to the disposition restrictions identified in s. 672.64(3). It is sensible and important that each of these inquiries take place employing the same focus, and it is not controversial that the other steps in the disposition eligibility ladder involve an examination of the inherent or endemic risk of violence the accused presents.

[50] I am therefore persuaded that a Board conducting a s. 672.84(1) review, is to examine the risk posed by the accused on the assumption that the accused is not subject to external constraints imposed to reduce that risk. Put otherwise,

the Board's assessment is to be undertaken relating to the risk the accused would pose if not under the Board's jurisdiction.

[79] In the case of *Singh v. R.*, 2026 QCCS 1214, which resulted in the revocation of the HRA designation, the Quebec court adopted the appropriate context from *Cousineau* explaining at para. 43:

[43] In the matter of *Cousineau (Re)*, the Ontario Court of Appeal was clear: the risk must be assessed in the context of an unconditional discharge, meaning a situation where the accused is no longer bound by any legal restriction and is no longer under the jurisdiction of the Review Board.

[44] Therefore, investigation into the "substantial likelihood" should not be based on the existence of security measures. Rather, it should be based on the inherent or endemic risk of violence that the accused currently poses if he were no longer subjected to the Review Board's supervision. Put another way, the question is: *Is there still a substantial likelihood that Mr. Singh would use violence that could endanger the life or safety of others if he were released from the Review Board's supervision?*

[emphasis in original]

[80] I accept that this is the appropriate context to consider when undertaking the "substantial likelihood" inquiry. Therefore, I must be satisfied that there is no "substantial likelihood" that Farley will use violence that could endanger the life or safety of another person, if he were no longer subject to the Review Board or bound by any conditions.

THE EVIDENCE AND ANALYSIS

[81] In deciding whether to revoke the HRA designation I am required to consider all relevant evidence, including:

- a. the nature and circumstances of the offence;
- b. any pattern of repetitive behaviour of which the offence forms a part;
- c. the accused's current mental condition;

- d. the past and expected course of the accused's treatment, including the accused's willingness to follow treatment; and
- e. the opinions of experts who have examined the accused.

[82] In addition to these factors, s. 672.541(b) of the **Code** requires a court to consider any victim impacts statements before determining whether an accused should be designated a HRA and victim impact statements are to be considered prior to a determination to revoke the designation.

[83] I now turn to the factors I am to consider.

(a) The Nature and Circumstances of the Offence

[84] I have already described the circumstances of the offences; they were horrific and by any definition were of such a brutal nature as to indicate a risk of grave physical or psychological harm to another person. Although there is evidence that Farley had experienced bouts of paranoia, he had no prior treatment history, and this was his first acute psychotic episode. This factor is static, it will never change and it supports maintaining the HRA designation.

(b) Any Pattern of Repetitive Behaviour of which the Offence Forms a Part

[85] Although, these three offences are separated by time and place, I concluded they were part of one ongoing transaction. They took place in less than three hours. In my view, a pattern of repetitive behavior requires a history of offending. Farley has no criminal record and no history of violence. There are no prior incidents to consider and therefore no pattern of repetitive behaviour exists.

(c) The Accused's Current Mental Condition

[86] On December 6, 2023, Farley was admitted to Area 15. He had been under strict supervision with little to no access outside Area 15. On February 14, 2025, I signed an order to allow Farley to attend the Selkirk Mental Health Centre Gym which is located on the hospital grounds. He is only allowed to attend if accompanied by a hospital staff member and a security guard. If it was necessary for Farley to leave the hospital grounds, he was placed in shackles and accompanied by staff and security.

[87] In preparation for the annual Review Board hearing on November 18, 2024, a comprehensive risk assessment report was prepared for consideration by the Review Board. The assessment report was prepared by psychiatrist, Dr. Shauna Sawich, social worker, Krista Lightly and psychologist, Dr. David Hill.

[88] In part, the report describes Farley's diagnosis and treatment. As of November 7, 2024, Farley has a diagnosis of Bipolar I Disorder. He has been settled and appropriate throughout his time in hospital. There has been no violence, no aggression, and no bizarre behaviour.

[89] Farley displays organized thought content. There are no signs of psychosis, no signs or symptoms of mania or hypomania. At one point, in February 2024, Farley experienced a depressive episode that went into the summer. It was determined that the episode was due to changes in medication. Farley's medications were adjusted and he has been stable since then with no depressive symptoms.

[90] The assessment reveals that Farley has good insight into his illness and understands his diagnosis. He is actively engaged on learning more about his illness and

treatment. He has engaged in numerous discussions about the index offences and recognizes the role his diagnosis played in the events related to the index offences.

[91] In preparation for the HRA designation review hearing that took place before me in November 2025, a further psychiatric assessment report was prepared. The forensic mental health team responsible for completing the assessment included Dr. Shauna Sawich, Dr. David Hill and Erin Brown, who is a community mental health specialist.

[92] The report was completed on September 11, 2025. It updates the information contained in the November 7, 2024 report that was prepared for the Review Board. Farley lives with a diagnosis of Bipolar I Disorder. He remains settled in Area 15. He has presented with a stability of symptoms, good insight and is actively engaged with treatment. He is polite and cooperative. There are no behaviour concerns, and he has not presented with any acts of aggression or acts of violence.

[93] Farley participates in weekly meetings with a psychiatrist and has completed worksheets on Cognitive Behavioural Therapy. Elements of Supportive Therapy have been utilized during meetings. He remains engaged in discussions about the index offences and symptoms that he previously experienced.

[94] On October 27, 2025, Dr. Sawich prepared an addendum to the September 11, 2025 assessment report. The addendum was prepared in response to information provided to her from the manager of Shared Health. The information provided to Dr. Sawich can be described as concerns raised by nurses and staff at the

Selkirk Mental Health Centre upon learning that there was going to be a review of Farley's HRA designation.

[95] Information suggested some responses from Farley were seen as "calculated". Some hospital staff indicated when they challenged Farley about an issue his response might vary, and some staff members concluded this was a "crack" in his presentation. Dr. Sawich shared that this change in presentation was difficult to put into words but could be unsettling for the staff.

[96] Another observation by staff related to "subtle defiance". One example provided was that Farley would pace in the dining hall when he finished his meal rather than remaining seated until everyone was finished. When directed to take a seat, one staff member noted Farley would briefly show agitation and roll his eyes but would then take his seat.

[97] There was discussion about the hospital changing the cell phone policy for Area 15. Farley expected further consultation about any change in policy and voiced concerns with one staff member. The staff member wrote Farley displayed an angry affect with intense eye contact. The staff member also noted Farley was fairly respectful during the conversation.

[98] There was a comment from one staff member that they spoke to a patient who in turn advised the Farley had told that patient to stop taking a certain medication as it was not a good drug. Farley denied that he told other patients to stop their medications and there was no evidence presented to support that he did make the comment. In the addendum and in her testimony, Dr. Sawich reported that she investigated these

concerns and determined that they do not relate to Farley's current mental condition. I note that the Crown in his submission referred to these events as hiccups in Farley's treatment journey.

[99] I conclude Farley's current mental condition is stable and supports the revocation of the HRA designation.

(d) The Past and Expected Course of the Accused's Treatment, Including the Accused's Willingness to Follow Treatment

[100] Farley has no history with treatment. When I designated Farley a HRA on October 18, 2023, I noted we are in the early days of Farley's treatment. I commented that this is another factor to be carefully addressed at future hearings for assessing risk. At the time, I did highlight concerns about Farley's willingness to follow treatment.

[101] I mentioned Farley's education and work experience as a nurse in a hospital would place him in a better position than most to understand mental health. The evidence from his wife Ms. Uchala raised a concern about his willingness to address mental health issues. Ms. Uchala explained that Farley began displaying signs of paranoia shortly after graduating with his nursing degree. She described the episodes of paranoia as occurring in cycles. It appears as time went on the episodes increased in frequency and duration. Ms. Uchala noted that in the two years leading up to these offences, Farley had episodes when he would go days without sleep but high energy and increased paranoia and then a crash. After sleep and rest, the paranoia would subside and life returned to normal.

[102] Ms. Uchala explained that Farley would often apologize to her for his behaviour during these episodes. I conclude he had an understanding that his behaviour was off. Rather than attempt to address the underlying issue, Farley concealed the problem and

continued like nothing happened. Farley had the education and work experience to understand he had mental health concerns. His avoidance or unwillingness to address the mental health issues at that time raises concerns about his willingness to follow treatment in the future.

[103] The Crown also pointed out that Farley was unwilling to abide by his involuntary admission to the Crisis Centre. I agree this is a concern, but I am mindful that Farley was in the throes of serious psychosis at the time that would have impaired his ability to follow direction.

[104] Since Farley's admission to Area 15 on December 6, 2023, Farley's willingness to follow treatment has been that of a model patient. Farley has engaged in his treatment plan and he has researched his disorder and the medication necessary to keep him healthy. He has followed the treatment plan and has demonstrated the desire to maintain stable mental health. The treatment plan would see him continue with medication and move to a less restrictive setting in Area 14. He would remain in hospital but be in a position to gradually earn more privileges that would involve fewer restrictions on his liberty. This is a gradual and progressive treatment plan that allows the treatment team to monitor Farley to ensure compliance with treatment. If there is noncompliance or any concerns the treatment team can easily rescind privileges and have Farley restricted to Area 14 in the hospital.

[105] I conclude Farley's compliance and engagement with the treatment plan since December 2023 supports revocation of the HRA designation.

(e) The Opinions of Experts who have Examined the Accused

[106] Dr. Hill was tasked with providing a risk assessment for Farley. Dr. Hill concludes that Farley is at a low risk to reoffend violently in his current environment, that being a secure hospital setting. Dr. Hill explained it is difficult to provide a risk assessment for Farley if no conditions or supervision were in place. There is a risk that Farley could stop taking medication then his symptoms of mania and psychosis could return. Without treatment Farley could experience delusions and hallucinations that could result in violent behaviour towards others.

[107] Dr. Hill advises the most important risk management strategy is to remain compliant with medication and treatment recommendations. Dr. Hill and Dr. Sawich both opine that Farley is ready for community planning to begin. To be clear, that means revocation of the HRA designation but an ongoing order of detention in the hospital to allow for the gradual and progressive treatment plan that would see Farley gain privileges that are supervised and assessed to determine if more freedoms can be provided or if more restrictions are necessary.

[108] Although the experts are unable to opine on the level of risk should Farley be released without conditions, the totality of their evidence supports a finding that there is no longer a "substantial likelihood" that Farley will use violence that could endanger the life or safety of another person.

[109] The evidence from the experts does support a finding that Farley remains a *significant threat to the safety of the public*, and that he should remain in custody in a

hospital setting under the supervision of the treatment team and jurisdiction of the Review Board.

Victim Impact

[110] I have also considered the victim impact statements filed for this application. All the victim impact statements relate to the terrifying attack of Ms. Szkwarek at the Seven Oaks Hospital.

[111] The impact of Farley's actions have been severe, life altering and everlasting. The statements from Ms. Szkwarek, her daughter, Jackie Motoch, and Ms. Szkwarek's co-worker, Lori Schellenberg, capture and describe the devastation and trauma they have suffered.

[112] I am not going to review the impact as it is extremely painful for these people, and the statements are part of the record. I will say that the common thread running through all statements is one of fear. The extreme violence inflicted on Ms. Szkwarek and witnessed by her co-workers has shattered their sense of safety and security.

[113] The fear and trauma suffered by Ms. Szkwarek, her daughter and her co-worker appear to be static factors as that fear and trauma will remain. I am mindful that victim impact is to be considered when determining if there is no longer a "substantial likelihood" that Farley will use violence that could endanger the life or safety of another person, but fear of an individual is not a significant factor when assessing the "substantial likelihood" of further violence by a HRA.

[114] I have carefully considered the submissions of the parties. The Crown's position, when boiled down, can be summarized with two words "too soon". The Crown argues

that it is simply too soon to revoke the HRA designation as there has not been enough time to assess Farley's compliance with his treatment plan and whether or not, there is a "substantial likelihood" that Farley will use violence that could endanger the life or safety of another person. The Crown submits that more can be done within the confines of the HRA designation that would allow Farley to demonstrate and prove the elevated risk no longer exists. The Crown suggests that more privileges could be granted to Farley that would allow the treatment team to monitor his illness and conduct while being observed in an environment with fewer restrictions.

[115] For the most part, Farley agrees with the outcome of the Crown's submission. Farley is seeking more liberties within the hospital setting. He is not asking to be released with no conditions and he not asking to be released into the community pursuant to a conditional discharge. Farley has the insight to understand that he has a serious mental illness that led to him committing these brutal acts. He has demonstrated a strong commitment to understanding his illness and a commitment to follow the treatment plan. Farley submits that the evidence proves there is no longer a "substantial likelihood" that he will use violence that could endanger the life or safety of another person. I agree.

[116] Pursuant to s. 672.54 of the **Code**, I am tasked with making a disposition that is necessary and appropriate in the circumstances. This continues to mean that the disposition should be the least onerous and least restrictive in the circumstances that addresses the paramount consideration of public safety.

[117] In conducting this review, I have examined the risk posed by Farley on the assumption that he would not be bound by conditions or be under the Review Board's jurisdiction which is the same context that existed when I designated Farley a HRA.

[118] I have considered all the relevant evidence, and I have explained the significant change in circumstances since Farley was admitted to the Selkirk Mental Health Centre on December 6, 2023. The evidence satisfies me that there is no longer a "substantial likelihood" that Farley will use violence that could endanger the life or safety of another person. Said another way, the evidence fails to demonstrate a high degree of probability that Farley will endanger the life or safety of another person.

[119] Should Farley's treatment falter, should the medication no longer control his mental illness, should Farley refuse treatment or become aggressive or violent, the Crown could pursue another HRA designation as the law allows the prosecutor to make an application before any disposition to discharge an accused absolutely.

CONCLUSION

[120] Pursuant to s. 672.84(3) of the **Code** I revoke the HRA designation for Farley. Although the evidence no longer supports a HRA designation, the evidence does support and satisfies me that Farley remains a *significant threat to the safety of the public*. Pursuant to s. 672.54(c) of the **Code**, I order Farley be detained in custody in a hospital, subject to such conditions as the Review Board considers appropriate.

_____ J.