

CANADA / JUDGMENT

Knight (Re)

2026 ONCA 127

COURT

Court of Appeal for Ontario

DECIDED

24 February 2026

Source: norma.lexum.com · Research copy typeset by Esheria. Not court-issued or certified.

Knight (Re)

Collection

Decisions of the Court of Appeal

Date

2026-02-24

Neutral citation

2026 ONCA 127

Docket numbers

COA-25-CR-0735

Judges

Miller, Bradley; Dawe, Jonathan; Wilson, Darla A.

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Knight (Re), 2026 ONCA 127

DATE: 20260224

DOCKET: COA-25-CR-0735

Miller, Dawe and Wilson JJ.A.

IN THE MATTER OF: Amy Knight

AN APPEAL UNDER PART XX.1 OF THE CRIMINAL CODE,

R.S.C. 1985, c. C-46

Anita Szigeti, for the appellant

Julia Cappellacci, for the respondent Crown

Julie A. Zamprogna Ballès, for the respondent Person in Charge of Southwest Centre for Forensic Mental Health, St. Thomas

Heard: February 10, 2026

On appeal from the disposition of the Ontario Review Board, dated May 22, 2025, with reasons dated June 13, 2025.

REASONS FOR DECISION

- [1] The appellant appeals the disposition of the Ontario Review Board (“the Board”) at her most recent annual review in the spring of 2025. The Board found that the appellant continued to pose a significant threat to the safety of the public, and granted her a conditional discharge. The appellant maintains that the Board’s conclusion was unreasonable and that she should have been granted an absolute discharge.
- [2] The Crown and the Southwest Centre for Forensic Mental Health, St. Thomas (“the Hospital”) both submit that the Board’s decision was reasonable based on the evidence at the review hearing. However, the Hospital seeks to adduce fresh evidence of significant post-hearing changes in the appellant’s psychiatric diagnosis and to her risk profile. The Hospital’s position, supported by the appellant, is that this fresh evidence should be admitted, and this court should allow the appeal and grant the appellant an absolute discharge.
- [3] The Crown disagrees, arguing that the Hospital’s fresh evidence should not be admitted on appeal. If the fresh evidence is admitted, the Crown argues that the appellant’s matter should be remitted to the Board for a new hearing so that the Board, rather than this court, can determine whether the appellant should be granted an absolute discharge.
- [4] For the following reasons, we would admit the fresh evidence, allow the appeal, and grant the appellant an absolute discharge based on the fresh evidence. It is therefore unnecessary for us to decide whether the Board’s decision not to grant an absolute discharge was reasonable based on the different evidentiary record it had before it.

A. Background [5] The appellant is now 35 years old. In 2014, when she was in her mid-20s, she became addicted to crystal methamphetamine. Between 2014 and 2018 she acquired a criminal record that includes convictions for failures to comply with court orders, possession of controlled substances, mischief over \$5,000, assault, and uttering threats. Although the appellant had intervening periods of sobriety, she continued to use crystal methamphetamine up to the time of the index offences in 2020.

- [6] In January and February of 2020, the appellant was hospitalized multiple times under the Mental Health Act, R.S.O. 1990, c. M.7, after exhibiting bizarre and disruptive behaviour. She was diagnosed with substance-induced psychosis. In February 2020 she was charged with two counts of mischief (one over \$5,000 and the other under \$5,000) after kicking in the doors of other units in her apartment building and causing other property damage. On December 3, 2021, the appellant was found not criminally responsible on account of mental disorder (NCRMD) on the mischief charges, and was detained at the Hospital.
- [7] On January 12, 2022, the appellant was determined to be incapable of making her own treatment decisions. Her doctors began administering long-lasting injectable anti-psychotic medication. The appellant's mental condition rapidly improved, and her treatment team arrived at a diagnosis of schizophrenia.
- [8] In August 2023, the appellant was allowed to move into the community, first into an apartment run by a community service organization, and later into a larger apartment where she lived with her then-partner and one of her six children. She continued taking her prescribed injectable anti-psychotic medication and found full-time employment. Although she has had some relapses, the most recent in December 2023, the appellant has largely abstained from using crystal methamphetamine.
- [9] At the appellant's annual review hearing in May 2025, the Board heard testimony from the appellant's former treating psychiatrist, Dr. Prakash, from her current psychiatrist, Dr. Mokhber, and from the appellant herself.
- [10] Dr. Prakash supported the appellant's current diagnosis of schizophrenia, testifying that if the appellant were to discontinue her anti-psychotic medication injections he believed she would decompensate within weeks or months, if not sooner. This decompensation would occur even more rapidly if she resumed using crystal methamphetamine. Dr. Prakash agreed with the conclusion in the hospital report that the appellant presented a significant threat to the safety of the public. The Board noted that Dr. Prakash also "supported the applicability of the most recent HCR-20 v. 3 assessment", conducted in November 2024, "which placed her risk for violence as 'high' in the context of an Absolute Discharge."
- [11] The appellant's current psychiatrist, Dr. Mokhber, has been treating the appellant since January 2025, having previously treated her in 2022. In her testimony before the Board, Dr. Mokhber questioned the correctness of the appellant's schizophrenia diagnosis, explaining that she was reassessing the appellant's history and thought that it was "highly likely that we change the diagnosis" to substance-induced psychosis. Dr. Mokhber explained further that

she was considering conducting a trial in which the appellant's anti-psychotic medication would be discontinued "to make sure that this is primary psychosis, or drug induced psychosis."

B. The Board's decision [12] The Board relied primarily on Dr. Prakash's evidence to find that the appellant continued to pose a significant danger to the public, explaining in its reasons:

Considering the evidence in its entirety, the panel found that Ms. Knight continues to represent a significant threat to the safety of the public. The panel accepts and relies upon Dr. Prakash's opinion to this effect. In his opinion, without adherence to prescribed medication, and with a return to the use of crystal methamphetamine, violent behaviour would re-emerge. The potential for such behaviour causing serious physical or psychological harm is, in the panel's estimation, real and substantial. That likelihood is neither speculative nor minuscule.

[13] However, the Board concluded that this risk could be safely managed under a conditional discharge order. The panel also noted that Dr. Mokhber was "considering tapering down and potentially discontinuing Ms. Knight's medication", and concluded:

There is some residual risk that adjustments to Ms. Knight's medication could result in a mental status deterioration that, while concerning, would not authorize the Hospital to detain Ms. Knight involuntarily under the Mental Health Act. The panel is satisfied that this risk is sufficiently mitigated by the combination of the retention of the prohibition against substance use and the requirement for weekly appointments during the upcoming reporting period while diagnostic and medication adjustment investigations are to be undertaken.

C. The Hospital's proposed fresh evidence [14] The Hospital seeks to adduce as fresh evidence an affidavit from Dr. Mokhber setting out new information about events that have occurred since the appellant's May 2025 annual review.

[15] In her affidavit, Dr. Mokhber explains that starting in June 2025 she began gradually tapering down the appellant's injections of anti-psychotic medication, and that "[b]y August, 2025, Ms. Knight's antipsychotic medication was completely discontinued and has not been restarted or replaced." Since this time the appellant's "mental status has remained within normal limits", even though she has also experienced some significant life stresses. Dr. Mokhber states:

It has been nearly six months since Ms. Knight's medication was discontinued with no evidence of symptoms of a primary psychotic disorder. In my professional opinion, Ms. Knight's diagnosis is a substance-induced psychosis, and not Schizophrenia.

[16] Dr. Mokhber also explains in her affidavit:

I have recently conducted a fresh, structured professional risk assessment, using the HCR-20 V3 framework. Based on historical, clinical, and risk management factors, Ms. Knight's current level of risk is assessed as low. She demonstrates stable mental health, good insight, effective coping strategies, engagement with services, and multiple protective factors, including employment, family responsibilities, and future planning.

Since discontinuing antipsychotic medication between June and August, 2025, Ms. Knight has remained psychiatrically stable with good psychosocial functioning and a low risk profile. In my professional opinion, at this time and as long as she remains abstinent from intoxicating substances, Ms. Knight does not present a significant threat to public safety.

D. The admissibility of the fresh evidence [17] The admission of fresh evidence in an appeal of a disposition under Part XX.1 of the Criminal Code, R.S.C. 1985, c. C-46, is governed by s. 672.73(1), which provides that appeals “shall be based on a transcript of the proceedings and any other evidence that the court of appeal finds necessary to admit in the interests of justice.” In *R. v. Owen*, 2003 SCC 33, [2003] 1 S.C.R. 779, at paras. 48-56, Binnie J. explained that the interests of justice must be considered contextually, bearing in mind that:

The appeal of an NCR disposition order under Part XX.1 of the Criminal Code is not an appeal in an adversarial criminal prosecution ... but an inquisitional administrative procedure designed to arrive at the least restrictive regime for an NCR detainee consistent with public safety.

[18] Binnie J. added at para. 59 that:

An absolute discharge, in my view, should be granted only upon consideration of all of the reliable evidence available both at the time of the Board hearing and, if appealed, at the time of the appellate review.

He observed further that “it will generally be desirable for an appellate court to admit fresh evidence that is trustworthy and touches on the issue of risk to public safety as being ‘necessary . . . in the interests of justice’”: *Owen*, at para. 71.

[19] The Hospital, supported by the appellant, takes the position that Dr. Mokhber’s fresh evidence meets the test for admission under *Palmer v. The Queen*, [1980] 1 S.C.R. 759, as interpreted in *Owen* in the context of Part XX.1 appeals: *Owen*, at paras. 50-53. The evidence was not available at the time of the Board hearing; it is credible and reliable, and, the Hospital submits:

[I]t bears upon decisive issues raised by the parties relating to significant threat to the safety of the public, the necessary and appropriate disposition, and specifically to the appellant’s diagnosis, mental state and risk profile since the hearing under appeal.

[20] The Hospital argues further that Dr. Mokhber’s fresh evidence supports the conclusion that the appellant no longer presents a significant threat to the safety of the public, and that if we admit the fresh evidence we should allow the appellant’s appeal and grant her an absolute discharge. The appellant supports this outcome.

- [21] However, the Crown disagrees that the fresh evidence is admissible, arguing that Dr. Mokhber's evidence about developments since the May 2025 annual review hearing does not call into question the reasonableness of the conclusions the Board reached at the time, based on the evidence that was then available.
- [22] While we agree that Dr. Mokhber's fresh evidence does not bear on reasonableness of the Board's decision at the time it was made, that does not end the analysis. Consistent with Owen, this court has previously held that fresh evidence of post-hearing developments bearing on the issue of public safety should generally be admitted in Part XX.1 appeals. Sometimes this fresh evidence will provide new support for the conclusion that a person found NCRMD presents a significant threat to the safety of the public: see e.g., *Providence Continuing Care Centre v. Edgar* (2006), 216 C.C.C. (3d) 563 (C.A.), at paras 57-59; *Furlan (Re)*, 2014 ONCA 740, 123 O.R. (3d) 287. In other cases, as here, the fresh evidence will call into question whether the "significant threat" threshold in s. 672.54 of the Criminal Code continues to be met: see e.g. *R. v. Stanley*, 2010 ONCA 324, 100 O.R. (3d) 81, at para. 28; *Wightman (Re)*, 2021 ONCA 429, at para. 23, per van Rensburg J.A.; para. 35, per Hoy J.A. (dissenting in the result); *Krivicic (Re)*, 2017 ONCA 379, 139 W.C.B. (2d) 55, leave to appeal refused, [2017] S.C.C.A. No. 317, at paras. 3, 11-20, per Huscroft J.A.; at para. 21, per Feldman J.A. (dissenting as to remedy).
- [23] Here, Dr. Mokhber's new opinion evidence is plainly "trustworthy and touches on the issue of risk to public safety": Owen, at para. 71. We are satisfied that it is in the interests of justice for us to receive it and consider it.
- [24] We must next consider how admitting Dr. Mokhber's fresh evidence affects the outcome of the appeal.
- [25] As in *Krivicic*, this is "an unusual situation, in which the appellant's new treating psychiatrist and the person in charge of [her] current treatment centre agree that [s]he should be absolutely discharged", on the basis of new psychiatric opinion evidence that was not available to the Board: *Krivicic*, at para. 16, per Huscroft J.A., see also para. 33, per Feldman J.A., dissenting as to remedy. The court in *Krivicic* unanimously held that the appeal should be allowed, although the panel disagreed over whether to order a new Board hearing (the majority) or grant the appellant an absolute discharge (Feldman J.A., dissenting on remedy).
- [26] Following the approach in *Krivicic*, we are satisfied that the appeal must be allowed on the basis of the fresh evidence. This makes it unnecessary for us to consider or address the appellant's arguments that the Board's decision was unreasonable based on the evidentiary record it had before it.

E. The appropriate remedy [27] Section 672.78(3) of the Criminal Code authorizes an appellate court that allows an appeal from a Board disposition under Part XX.1 to "make any disposition under section 672.54 ... that the Review Board could have made" or, alternatively, remit the matter to the Board for a re-hearing.

- [28] In this case, the parties are divided over the appropriate remedy. The appellant and the Hospital take the position that we should grant the appellant an absolute discharge. However, the Crown argues that we should remit the matter back to the Board to determine the appropriate disposition.
- [29] The Crown makes two main arguments in support of its position. First, Crown counsel notes that Dr. Mokhber's opinion that the appellant's diagnosis should be revised to one of substance-induced psychosis has not been tested through cross-examination, and argues that there is other evidence that may continue to support a diagnosis of schizophrenia. Second, the Crown argues that even if Dr. Mokhber's revised diagnosis is correct, the possibility that the appellant might relapse and resume using crystal methamphetamine may be sufficient on its own to lead the Board to find that she still presents a significant threat to the safety of the public.
- [30] On the first point, we acknowledge that in *Krivicic* a majority of this court found that disputes over conflicting psychiatric opinion evidence should generally be resolved by the Board. The appellant in *Krivicic* had been transferred to a different psychiatric hospital, and his new treatment team disagreed with the risk assessments that had been conducted at the previous hospital. As *Huscroft J.A.* explained at para. 18:

It is not for the court to reconcile the competing psychiatric evidence in this case. That is the responsibility of the Board, an expert body charged with responsibility for evaluating the medical evidence, and the Board must be permitted to do its job.

- [31] However, we agree with the Hospital that this is not a case in which there is conflicting psychiatric evidence. Dr. Prakash testified before the Board that, based on the appellant's history, "there may be reason to explore whether or not her diagnosis is schizophrenia." He did not dispute Dr. Mokhber's evidence that the issue could be resolved by gradually withdrawing the appellant from her anti-psychotic medication. Dr. Mokhber's fresh evidence explains that this trial has now been successfully conducted, without the appellant experiencing any adverse consequences. It would be speculative for us to assume that either Dr. Prakash or some other psychiatrist will disagree with the conclusions Dr. Mokhber has drawn from these new developments.
- [32] The circumstances here are also very different from those in *Wightman*, another case where a majority of this court held that the question of whether to grant the appellant an absolute discharge on the basis of fresh evidence should be left to the Board. The fresh evidence in *Wightman* did not include "the opinion of the appellant's forensic or community psychiatrist addressing the central question of significant threat": *Wightman*, at para. 31. That is not the case here. Dr. Mokhber is the appellant's forensic psychiatrist, and her affidavit addresses and explains the basis for her opinion that the appellant no longer presents a significant threat to public safety, provided that "she remains abstinent from intoxicating substances". As counsel for the Hospital points out, Dr. Mokhber's opinion takes into account the appellant's entire psychiatric history, including the evidence the Crown points to as

potentially supporting the previous diagnosis of schizophrenia.

- [33] The Board based its conclusion that the appellant presents a significant threat to public safety on three main concerns: (i) the possibility that the appellant would decompensate as a result of discontinuing her anti-psychotic medication; (ii) the possibility that she might decompensate because she has a drug relapse; and (iii) her HCR-20 V3 test score from 2024, which “placed her risk for violence as ‘high’ in the context of an Absolute Discharge”.
- [34] The fresh evidence substantially reduces or eliminates two of these three concerns. The appellant has now been off her anti-psychotic medication for more than six months, with no observable change to her mental condition, and Dr. Mokhber recently conducted a fresh HCR-20 V3 risk assessment under which the appellant’s “current level of risk is assessed as low”.
- [35] There is still some risk that the appellant could have a drug relapse that causes her to decompensate and become violent. However, “the ‘significant threat’ standard is an onerous one”: Carrick (Re), 2015 ONCA 866, 128 O.R. (3d) 209, at para. 17. It cannot be met merely by identifying the existence of some risk, since “[r]elease always involves risk”: Frazer (Re), 2025 ONCA 466, at para. 22.
- [36] Dr. Mokhber’s fresh evidence affidavit addresses the risk of the appellant having a drug relapse. She states:

In my further opinion, Ms. Knight's risk to public safety relates to her use of intoxicating substances and her diagnoses of Methamphetamine and Cannabis Use Disorders, both of which are in remission. Ms. Knight's last known use of intoxicating substances (crystal methamphetamine) was over two years ago, in December 2023. Since then, she has been regularly and randomly tested for substance use, and toxicology screens have returned negative. Over her time in the forensic system, she has participated in hospital-based and community-based substance use treatment and relapse prevention programs. At present, she continues to engage with "Narcotics Anonymous" and with an addictions counsellor through "the Aimex" in St. Thomas, on her own initiative. Ms. Knight has developed insight into the negative consequences of substance use on her mental health.

- [37] In our view, the appellant’s recent history of abstaining from drugs and establishing supports in the community reduces the risk of her experiencing a relapse and acting out violently to tolerable levels. This is particularly true when this risk is viewed in light of all of the evidence, including Dr. Mokhber’s recent HCR-20 V3 risk assessment.
- [38] It is appropriate for this court to exercise its authority to grant an absolute discharge when we are satisfied that this would be the only reasonable outcome of further proceedings before the Board: Stanley, at para. 29. Considering the evidence as a whole, including the fresh evidence adduced by the Hospital, we are satisfied that this is such a case.

[39] We accordingly admit the fresh evidence tendered by the Hospital, allow the appeal, set aside the conditional discharge order made by the Board, and in its place, substitute an absolute discharge.

“B.W. Miller J.A.”

“J. Dawe J.A.”

“D.A. Wilson J.A.”

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://norma.lexum.com/coa/coa/en/item/23960/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/knight-re-2026>

Prepared on 26 October 2026 · Esheria