

CANADA / JUDGMENT

Levesque (Re)

2026 ONCA 178

COURT

Court of Appeal for Ontario

DECIDED

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Levesque (Re)

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COA-25-CR-0809

Judges

Thorburn, Julie; Pomerance, Renee M.; Rahman, Moiz

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Levesque (Re), 2026 ONCA 178

DATE: 20260312

DOCKET: COA-25-CR-0809

Thorburn, Pomerance and Rahman JJ.A.

IN THE MATTER OF: Joshua Levesque

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

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

Joshua Levesque, acting in person

Russell Browne, appearing as amicus curiae

Gavin MacDonald, for the respondent Attorney General of Ontario

Heard: February 17, 2026

On appeal against the disposition of the Ontario Review Board, dated April 4, 2025, with reasons dated April 28, 2025.

REASONS FOR DECISION

- [1] The appellant, Joshua Levesque, had his annual Ontario Review Board (the “Board”) hearing on March 26, 2025. He sought an absolute or conditional discharge. The hospital submitted that his detention order should remain with an expansion of his privileges in the community.
- [2] The Board decided that he should remain at the Forensic Psychiatry Program of St. Joseph’s Healthcare in Hamilton, subject to privileges in the discretion of the person in charge.
- [3] He appeals the Board’s decision.

The Index Offences, NCR Finding, and Diagnoses

- [4] The appellant was detained after committing the following offences contrary to the Criminal Code, R.S.C., 1985, c. C-46:
 - (a) assaulting a peace officer,
 - (b) mischief endangering life,
 - (c) assault,
 - (d) uttering a threat to cause death or bodily harm,
 - (e) possession of a weapon for a dangerous purpose,
 - (f) carrying a concealed weapon,
 - (g) discharge of an air gun or pistol with intent,
 - (h) discharge of a firearm being reckless as to the life and safety of another, and
 - (i) assault causing bodily harm.
- [5] These offences took place between August 2021 and July 2022.

- [6] The offences were violent and included throwing a rock from a bridge onto the QEW highway and shattering the windshield of a passing car, spitting blood in the face of an officer, assaulting a nurse in a psychiatric unit to which he was admitted, purchasing an air pistol, riding his bike to a nightclub and firing four or five shots at the victim through her car window one of which had to be surgically removed from her head, and threatening to kill a convenience store employee.
- [7] The appellant was found not criminally responsible (“NCR”) for these offences on February 13, 2023, and has been subject to the jurisdiction of the Board since then. He has been diagnosed with schizophrenia and polysubstance abuse disorder, which has been in remission in this controlled environment.
- [8] The April 2, 2024, annual Board review resulted in a continuation of the detention order with new privileges, including passes for up to seven days to enter the community of Southern Ontario with an approved person. He was granted further privileges in 2025 including entering Southern Ontario, while indirectly supervised.

The Appellant’s Grounds of Appeal

- [9] The appellant claims that the Board's 2025 conclusions and disposition were unreasonable. He seeks an absolute or conditional discharge; or in the alternative that the matter be remitted back to the Review Board for a new hearing before a different panel. He also seeks an extension of time to perfect the appeal which is not contested.
- [10] Amicus filed a brief on the appellant’s behalf claiming that the Board failed to consider evidence from the appellant’s psychiatrist and treatment team. Amicus submits that although the psychiatrist testified that the appellant lacked insight into his illness, he believed that the appellant would continue taking his medication if granted an absolute discharge. The psychiatrist also agreed with the assessment of the appellant’s treatment team that he posed only a moderate risk of recidivism.
- [11] In the alternative, amicus submits that a conditional discharge was appropriate and that the Board failed to consider the evidence regarding: (i) the risk of non-attendance for medication; (ii) the mechanism and timeframe required to secure the appellant’s attendance at hospital; (iii) the effect of any delay on the appellant’s mental health, and (iv) the risk to public safety posed by a delay in treatment. Amicus submits that the Board failed to adequately explain why any significant risk posed by the appellant could not be managed within the community if a conditional discharge were ordered.

The Threshold to be Met

- [12] In rendering its decision, the Board must make the least onerous and restrictive order, bearing in mind (i) the need to protect the public, (ii) the mental condition of the NCR patient, (iii) the reintegration of the NCR patient into society, and (iv) the patient's other needs: s. 672.54 of the Criminal Code and *Marmolejo (Re)*, 2021 ONCA 130, 155 O.R. (3d) 185, at para. 43.
- [13] Section 672.78(a) of the Criminal Code allows this court to set aside a disposition of the Board or order a new hearing, if the Board decision is unreasonable or cannot be supported by the evidence. The applicable standard of review is reasonableness: *R. v. Owen*, 2003 SCC 33, [2003] 1 S.C.R. 779, at para. 33.

The Decision Below

- [14] The Board held that the appellant's detention order should remain as, notwithstanding his progress, he continued to pose a significant threat or risk of serious physical or psychological harm to members of the public.
- [15] The Board recognized that although there had "been no incidents of violence or aggression" by the appellant under the hospital's supervision, there continued to be signs that he required additional treatment. The appellant was still in the "early days of treatment" and, while he appeared to be "taking some positive steps", there remained issues "regarding coping, stressors, impulsivity, judgment, substances and relationships" to be resolved. The Board dismissed the conditional discharge given the need to act quickly in the event of decompensation.

The Evidence Adduced

- [16] In making its decision to dismiss the appellant's request for absolute or conditional discharge, the Board relied on the evidence of the appellant's treating psychiatrist since May 2024, as well as a Hospital Report dated March 12, 2025 which reviewed the appellant's background and history in care.
- a. Evidence from the Treating Psychiatrist
- [17] The psychiatrist held that the many very serious index offences were committed only a few years ago, and he was in the early years of rehabilitation.
- [18] The psychiatrist also noted that the appellant's impulsiveness and vulnerability to influence from others, made it premature to consider an absolute discharge. There were ongoing concerns such as the fact that the appellant had tested positive for methamphetamine in August 2024 (which the appellant denied), and more recently in January 2025 vaped tobacco to the point that he vomited. The appellant had also purchased marijuana for other patients, although he did not consume it himself. In the psychiatrist's view, the appellant continued to require significant management, was vulnerable, and did not fully understand the nature of

his illness or the importance of his medication. The psychiatrist was concerned that, without adequate supervision, the appellant would decompensate.

- [19] The psychiatrist noted that there were stressors at his family home and a lack of suitable accommodation in either Niagara or the surrounding area of Hamilton.
- [20] Finally, he noted that if a conditional discharge were granted, there was a shortage of psychiatric services in the community. He also believed that the Mental Health Act, R.S.O. 1990, c. M.7, was inadequate to keep the appellant in hospital to achieve baseline in the event of dysregulation.
- b. The Hospital Report [21] The Hospital Report noted the appellant's generally positive progress over time. He did not demonstrate any recent aggressive or self-harmful behaviour and there was no recent evidence of psychosis.
- [22] However, the Hospital Report noted that the appellant occasionally endorsed auditory hallucinations, had paranoid thoughts, and demonstrated "limited insight into his overall mental illness". Moreover, although he had only tested positive for drugs once in August 2024, he was using his shopping privileges to procure cannabis for other patients.
- [23] The report indicated that as of April 2024, he was assessed as not having the necessary skills to live independently, and there were concerns about his ability to manage money. It assessed his risk for violence as in the low range with monitoring in place while in hospital, but that with fewer restrictions, he posed a "moderate risk and case prioritizations, moderate imminence, and moderate-to-high risk of serious physical harm".

Analysis and Conclusion

- [24] For the reasons that follow, we are satisfied that the Board considered the totality of the evidence and that its decision was reasonable.
- [25] The Board noted that while the appellant had made considerable progress and there were no incidents of violence or aggression during the preceding year: (i) the index offences were committed less than three years earlier; (ii) the offences were very serious and there were many of them; (iii) there had been multiple admissions to hospital before the index offences; (iv) there continued to be signs that the appellant required additional treatment; (v) there were no concrete plans that would protect the public while addressing the appellant's needs; and (vi) there was a need to act quickly in the event of dysregulation.
- [26] The Board accepted the psychiatrist's opinion that although the appellant had made positive strides, he continued to pose a significant risk of serious harm. This conclusion was supported by reference to the Hospital Report.

- [27] The Board was entitled to consider the need for suitable accommodation given that there were stressors in the family home and that alternative suitable accommodation was not yet available. Highlighting the need to re-admit the appellant quickly in case of decompensation was also a reasonable consideration for the Board to take given the appellant's psychiatric history and limited insight into his own illness: *Re Scalabrini*, 2021 ONCA 212, at paras. 18-22.
- [28] While this court has held that a detention order cannot be justified on the grounds that it makes it easier to return an NCR accused to the hospital, the disposition in this case was based on more than "mere convenience to the hospital": *Ahmadzai (Re)*, 2020 ONCA 169, at para. 24.
- [29] A detention order is necessary to allow approval of the appellant's accommodation as the Board's power to require the hospital to approve is only possible under a detention order: *Re: Aeichele*, 2025 ONCA 707, at para. 13.
- [30] In view of this evidence, the Board's conclusion that the least onerous and restrictive disposition consistent with the safety of the public was continuation of the detention order, was reasonable.
- [31] The appellant has made significant progress and is to be commended for this. He has shown noticeable improvement and as a result he has had progressively more privileges in terms of direct and indirect supervised access. It is hoped that further positive strides will lead the Board to assess matters anew with an appreciation of his continued efforts, and we note that a further assessment with evidence from the 2025-2026 reporting period is to take place in early March 2026.
- [32] For the above reasons, the request to extend the deadline to perfect is approved, and the appeal is dismissed.

"Thorburn J.A."

"R. Pomerance J.A."

"M. Rahman J.A."

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