

CANADA / JUDGMENT

Lucas (Re)

2026 ONCA 340

COURT

Court of Appeal for Ontario

DECIDED

13 May 2026

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Lucas (Re) Collection Decisions of the Court of Appeal Date 2026-05-13 Neutral citation 2026 ONCA 340 Docket numbers COA-25-CR-1397 Judges Rouleau, Paul S.; Wilson, Darla A.; Madsen, Lene Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: Lucas (Re), 2026 ONCA 340 DATE: 20260513 DOCKET: COA-25-CR-1397 Rouleau, Wilson and Madsen JJ.A. IN THE MATTER OF: Matthew Lucas AN APPEAL UNDER PART XX.1 OF THE CRIMINAL CODE, R.S.C. 1985, c. C-46 Matthew Lucas, acting in person Mercedes Perez, appearing as amicus curiae Brent Kettles, for the respondent Attorney General of Ontario Jessica Szabo, for the respondent Person in Charge of Ontario Shores Centre for Mental Health Services Heard: April 30, 2026 On appeal against the disposition of the Ontario Review Board, dated August 11, 2025, with reasons dated August 21, 2025. REASONS FOR DECISION

- [1] The appellant was found not criminally responsible on account of mental disorder on a charge of careless storage of a firearm contrary to s. 86(1) of the Criminal Code, R.S.C., 1985, c. C-46 (the “index offence”).
- [2] He was apprehended at the Canada-United States border with a semi-automatic rifle, magazines, ammunition, an axe, a sledgehammer, and two hunting knives in his vehicle. He also had a notebook with him which was acknowledged to set out his thoughts on tactical shooting positions, descriptions of weapons and ammunition, and the phrase “fifty up is a good kill”. The appellant was detained under the Mental Health Act, R.S.O. 1990, c. M.7, and has been under the supervision of the Ontario Review Board (the “Board”) since November 2023, with annual reviews, as required.
- [3] The appellant appeals the current disposition, made on August 11, 2025 (the “Disposition”). The Disposition provides that the appellant will continue to be detained at Ontario Shores Centre for Mental Health Services (the “Hospital”) but removed conditions requiring drug and alcohol screening and granted certain privileges, including community living in approved accommodation and an expanded approved travel area.
- [4] At the hearing before the Board, the appellant, who was represented, conceded that he continued to pose a significant risk to public safety and that continued detention was the most appropriate disposition.

- [5] The appellant takes a different position on appeal. He submits that he does not pose a significant risk to the public, and asserts that if he does, it is at the “low end”; that Dr. DeFreitas, the appellant’s treating psychiatrist, erred in her analysis of foreseeability; that the Board failed in its inquisitorial role; and that the evidence before the Board was speculative. He adds that the index offence was an isolated event, and that journalling one’s thoughts is not a measure of risk nor criminal conduct. He seeks an absolute discharge, or in the alternative, a conditional discharge to live in the community. He also asks that a non-contact order in relation to a former partner be lifted.
- [6] Amicus curiae, assisting with the appeal, makes the following additional arguments: that the Board erred in law in concluding that the appellant remains a significant threat to public safety by failing to address the gravity of any future harm or, in the alternative, that the Board misapprehended evidence in failing to order a conditional discharge. In oral argument she emphasized the uniqueness of this case, in which the index offence is not a personal injury offence and the perceived risk arises from the evidence of the context of the offence.
- [7] We do not accept these arguments.

Analysis

- [8] Decisions of the Board are entitled to deference. This court will intervene only where a decision is unreasonable and cannot be supported by the evidence, is based on an error of law, or where there is a miscarriage of justice: s. 672.78(1) of the Code. A decision of the Board is reasonable where it is supported by reasons that can bear a “somewhat probing” examination: *R. v. Owen*, 2003 SCC 33, [2003] 1 S.C.R. 779, at para. 33; *Woods (Re)*, 2019 ONCA 87, at paras. 15, 17-19; *Cole (Re)*, 2025 ONCA 899, at para. 18.
- [9] The Board’s determination that the appellant remained a significant risk and that his continued detention was appropriate is reasonable. The decision was neither speculative nor uncertain. It rested on the unchallenged evidence of Dr. DeFreitas. That evidence included:
- that while the appellant had had a “very good year,” he continued to minimize the serious circumstances surrounding the index offence;
 - that the appellant continued to not acknowledge that the content of the notebook seized by police suggested the potential for violence and he would not discuss those writings with his treatment team;
 - that the appellant is diagnosed with schizophrenia but his commitment to continuing to take his medication if discharged is at best uncertain; and
 - that the appellant refuses to allow contact with collateral sources and is not very forthcoming with his clinical team.

- [10] The Board was also entitled to give significant weight to the Hospital's Report and the Empirically Based Risk Assessment. The report included the opinion of the appellant's treatment team that he remained a significant threat to the public. The Risk Assessment noted that the appellant minimized the seriousness of the index offence and indicated to clinical staff that he may acquire a weapon's license or a weapon if he was financially stable. The Risk Assessment considered a "plausible re-offence scenario" and ultimately concluded that the appellant would present a low and well-managed risk for re-offence "if he were to be awarded a [d]etention order with a provision for community living."
- [11] The Board was not required to precisely delineate either the likelihood of the appellant harming others or how, exactly, such harm might manifest. It was required to conclude, based on the evidence, that there was a substantial and foreseeable likelihood of significant physical or psychological harm if the appellant were discharged absolutely. The Board met that burden and neither erred in law nor misapprehended the unchallenged evidence before it.
- [12] Moreover, it is well established that the Board is entitled to give considerable weight to concessions regarding significant risk and the appropriate disposition under s. 672.54: *Re Esposito*, 2018 ONCA 780, at para. 2; *Re McLeod*, 2024 ONCA 413, at para. 6; *Re Kelly*, 2015 ONCA 95, at para. 6.
- [13] The further terms set out in the Disposition, including that the appellant continue to have no contact with his former partner, are reasonable and we would not intervene. The Board acceded to the appellant's request to remove drug and alcohol screening, expanded the appellant's ability to travel, and provided that the Hospital may permit him to live in the community, subject to terms.
- [14] We note that Dr. DeFreitas testified that the Hospital is of the view that discharging the appellant into the community in the coming year is a realistic possibility, albeit with a remaining need to address "supervision with respect to medications". In submissions, the appellant advised the court that he will be living in the community starting June 1, 2026 and is currently in school, working part-time, and volunteering. We encourage the appellant to continue with those efforts and to work cooperatively with his treatment team in furtherance of his goals.

Disposition

- [15] The appeal is dismissed. "Paul Rouleau J.A." "D.A. Wilson J.A." "L. Madsen J.A."

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