

# COURT OF APPEAL FOR ONTARIO

CITATION: Le Feuvre (Re), 2019 ONCA 930

DATE: 20191126

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Lauwers, van Rensburg and Hourigan JJ.A.

IN THE MATTER OF: Geoffrey Le Feuvre

AN APPEAL UNDER PART XX.1 OF THE *CODE*

Anita Szigeti, for the appellant Geoffrey Le Feuvre

Ken Lockhart, for the respondent Attorney General of Ontario

Michele Warner, for the respondent Centre for Addiction and Mental Health

Heard: November 8, 2019

On appeal against the disposition of the Ontario Review Board, dated February 4, 2019, with reasons dated February 21, 2019.

## REASONS FOR DECISION

[1] Leading up to the Ontario Review Board hearing in February 2019 Mr. Le Feuvre was subject to a disposition that required his detention in the Secure Forensic Unit, with discretion to the Person in Charge to transfer him to the General Forensic Unit, with privileges up to and including to enter the community indirectly supervised. He was transferred to the General Forensic Unit in July 2018. Mr. Le

Feuvre appeals the disposition of the Board for his continued detention in the General Forensic Unit at the Centre for Addiction and Mental Health, with conditions. He seeks an absolute discharge, or in the alternative an independent assessment of his treatment plan and risk, with a new early hearing date.

[2] The context for this appeal is set by Mr. Le Feuvre's appeal of the Board's previous disposition dated December 18, 2017, and this court's decision, released on August 31, 2018 and reported at 2018 ONCA 712.

[3] At the time of the previous appeal, Mr. Le Feuvre was detained in the Secure Forensic Unit, with discretion to the Person in Charge to transfer him to the General Forensic Unit. If and when he was transferred to the General Forensic Unit, the Board granted the Person in Charge discretion to permit the appellant to live in the community in a 24-hour a day supervised accommodation.

[4] On the previous appeal, the appellant argued that he should be granted an order detaining him in the General Forensic Unit, with the discretionary privilege of residing in the community in a supervised accommodation on the approval of the Person in Charge. The appellant also alleged that there was a treatment impasse. This court accepted the existence of a treatment impasse, noting at para. 15:

Plainly, the Board recognized the pressing need to take meaningful steps toward the ultimate goal of returning the appellant to the community. He is 67 years old and in poor health. The Board also noted that the appellant's treatment – suspension of his indirectly supervised passes for mere rule violations (typically involving the

appellant's smoking addiction) that "did not rise to the level of a significant threat" – was "bordering on punitive".

[5] This court expressed some impatience with the Board's approach and noted, at para. 16:

Having identified a treatment impasse and recognized the urgency of the situation, it was unreasonable for the Board simply to continue the hybrid order and make suggestions about what CAMH should do – suggestions that do not appear to have been acted upon, at least in a timely way. Given the appellant's advancing age and declining health, the length of his detention, and in particular the lack of progress that has been made in improving his situation, the Board's *suggestions* to CAMH are inadequate.

[6] As a result, this court allowed Mr. Le Feuvre's appeal with clear directions set out at para.17:

Accordingly, we allow the appeal to this extent: the Person in Charge is directed to obtain an independent assessment of the appellant and to have a report prepared, in consultation with the appellant's current treatment team, reviewing the appellant's history and establishing a plan to advance the appellant toward the ultimate goal of reintegration into the community. The report should be prepared within three months of the date of this decision.

[7] Dr. Jennifer M. Pytyck provided the Board with an independent assessment performed on January 10, 2019. Her report largely substantiated the assessment of hospital staff that Mr. Le Feuvre continued to be a significant risk to the public. The Board's reasons under appeal state, at para. 31:

The Board unanimously accepts the uncontroverted evidence of Dr. Ramshaw [Mr. Le Feuvre's treating psychiatrist] and Dr. Pytyck and finds that Mr. Le Feuvre continues to meet the threshold for significant threat. Mr. Le Feuvre suffers from a major mental disorder. He has very limited insight into his illness and does not appreciate the link between his illness and his past offending behaviour. That he continues to struggle with substance use is illustrated by his recent relapse to crack cocaine use in August 2018. Nor does he appreciate the connection between his ongoing use of substances and the potential destabilization of his illness and the resulting increased risk of violence to others. Mr. Le Feuvre also remains prone to impulsive rule-breaking behaviour and while some of these behaviours may not directly increase his risk to the public others, particularly substance use, are very relevant to his future risk.

[8] The Board concluded that a detention order is necessary and appropriate.

The Board commented on the treatment impasse previously found and stated, at para. 34:

As indicated above, should the Board not grant Mr. Le Feuvre an absolute discharge, Ms. Bryan seeks an alternative remedy. Counsel invites the Board to order another independent assessment and/or an early review. The Board sees no reason to order another independent assessment. Dr. Pytyck's report is comprehensive and adequately addresses all the issues raised by the Court of Appeal. The treatment plan, in particular the adjustment of the restriction of privileges issue, would appear to be working quite well. Mr. Le Feuvre has had a positive year. He is moving forward toward community reintegration. Dr. Ramshaw is optimistic, as is Dr. Pytyck, that he will be able to reside in the community within the current reporting year, subject to the availability of appropriate supervised accommodation. It is the Board's opinion that Dr. Pytyck has addressed the concerns

which gave rise to Court of Appeal's ordering an independent review.

[9] It is noteworthy that the Board went on to say, at para. 35: "When appropriate accommodation is available, and the hospital deems it appropriate, Mr. Le Feuvre will be able to move into the community."

[10] The difficulty with this statement is that Mr. Le Feuvre is presently 68 years of age and the waiting lists for appropriate accommodation are years long. The expectation appears to be that he will not be put on an active waiting list for housing until he is completely abstinent from drugs and no longer compulsively breaks rules.

[11] Mr. Le Feuvre's counsel argues that he is not a significant risk and that he is still at a treatment impasse. The improvements in his living conditions as a result of being on a less secure unit are not, she asserts, really getting at the basic issue, which is when he can begin to live in the community.

[12] The Board's finding that Mr. Le Feuvre continues to meet the threshold for significant threat is amply justified on the evidence, as it noted at para. 31 quoted above.

[13] The court also accepts the Board's determination that the treatment impasse has been resolved, that the hospital has addressed the restrictions of privileges issue, and that Mr. Le Feuvre has "had a positive year".

[14] That said, the court is concerned that there appears to be no plan in place “to advance the appellant toward the ultimate goal of reintegration into the community.” This was something required by this court at para. 17 of the previous decision. The sense of urgency in this court's previous decision, is remarkably absent from the Board’s most recent disposition, and this is perplexing.

[15] It is our expectation that the Person in Charge will have prepared such a plan for the consideration of the Board, in the context of the appellant’s upcoming annual review, that would, among other things, identify the steps required for community reintegration that are realistic in terms of Mr. Le Feuvre's age, and the challenges of his ongoing substance abuse and occasional rule violations.

[16] The appeal is dismissed.

“P. Lauwers J.A.”  
“K. van Rensburg J.A.”  
“C.W. Hourigan J.A.”