

COURT OF APPEAL FOR ONTARIO

CITATION: McAnuff (Re), 2024 ONCA 301

DATE: 20240423

DOCKET: COA-23-CR-0862

Fairburn A.C.J.O., Zarnett and Favreau JJ. A.

IN THE MATTER OF: Novar McAnuff

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

Novar McAnuff, acting in person

Étienne Lacombe, for the respondent Attorney General of Ontario

Leisha Senko, for the respondent Person in Charge of the Centre for Addiction
and Mental Health

Michael Bartlett, appearing as *amicus curiae*

Heard: March 22, 2024

On appeal against the disposition of the Ontario Review Board, dated December
15, 2022, with reasons dated January 17, 2023.

REASONS FOR DECISION

[1] The appellant, Novar McAnuff, was found not criminally responsible (“NCR”) in 2011 on three charges of assault. On December 15, 2022, the Ontario Review Board (the “Board”) denied Mr. McAnuff’s request for an absolute discharge on the basis that he continues to pose a significant threat to the safety of the public.

[2] Mr. McAnuff appeals that disposition. *Amicus* argues that the Board erred in finding that Mr. McAnuff remains a significant threat to the safety of the public.

[3] We see no error in the Board’s disposition.

Background

[4] At the time of the hearing before the Board, Mr. McAnuff was 49 years old. He was first diagnosed with schizophrenia when he was 17 years old and his first psychiatric admission was in 1993. Since then, he has had multiple psychiatric admissions. His current diagnosis is schizophrenia, cannabis use disorder, cocaine use disorder in remission and unspecified personality disorder with antisocial traits.

[5] Mr. McAnuff does not believe that he has a major mental illness. His delusions include a belief that cannabis gives him special powers. However, when he consumes cannabis, he is susceptible to significant decompensation, including anger and irritability.

[6] Mr. McAnuff has a criminal record going back to 1989. His convictions include robbery and assault. He has also been charged with several other criminal

offences that were withdrawn, including for harassment and possession of a weapon.

[7] The three index offences occurred on September 2, 2010. Mr. McAnuff approached two women and lunged at the dog they were walking. One of the women swung her keys at Mr. McAnuff, who then grabbed her. She pushed him away and he then grabbed the other woman by the shirt. She managed to get away from his grasp and both women ran away. Soon after, Mr. McAnuff approached a mother and her daughter. He grabbed the daughter. The mother swung an umbrella at Mr. McAnuff, who then let go of the daughter. The mother and daughter then ran away. Shortly after, Mr. McAnuff was arrested by police.

[8] Mr. McAnuff has been under the jurisdiction of the Board since the finding of NCR in 2011. Since that time, he has primarily been required to live at CAMH, although the Board's disposition gives him privileges that include the ability to live in the community in supervised accommodation approved by the person in charge of CAMH.

[9] In April 2021, Mr. McAnuff was permitted to live in the community in supported housing. In October 2021, while still living in the community, Mr. McAnuff attended CAMH for a regular appointment. At the time, his speech was difficult to comprehend and he smelled of cannabis. He was also very agitated and irritable, and showed signs of decompensation due to his use of cannabis. He

was then readmitted to CAMH, after which it took approximately two weeks for Mr. McAnuff to de-escalate and return to his baseline. The strategy used by CAMH to de-escalate Mr. McAnuff's behaviour included the use of chemical restraints and for staff to disengage with him.

[10] Initially, after Mr. McAnuff returned to CAMH, he was in a general forensic unit. However, he continued to obtain and use cannabis. He also tried to get other patients to get him cannabis. On November 4, 2022, Mr. McAnuff was transferred to a secure forensic unit. He then returned to a general forensic unit on December 5, 2022.

The Board's decision

[11] The December 2022 Board review was triggered by Mr. McAnuff's placement in the secure forensic unit in November. At the hearing, the Board dealt with this issue and with the issue of whether Mr. McAnuff continued to pose a significant threat to the safety of the public.

[12] The Board found that the transfer to the secure unit was appropriate and that Mr. McAnuff continues to pose a significant threat to the safety of the public.

[13] In its decision, the Board noted that Mr. McAnuff has not been violent or threatened anyone since the index offences. However, the Board based its finding that Mr. McAnuff continues to pose a significant risk on his lack of insight and on the effects of his persistent use of cannabis. In particular, the Board was

persuaded that, if Mr. McAnuff was discharged into the community, he would resume his use of cannabis and decompensate to a state similar to the circumstances under which he committed the index offences:

The Hospital Report indicates that, Mr. McAnuff's insight into his mental condition, its symptomatology, the role of treatment, effects of substance use, and risk of re-offence remains limited. He does not believe he suffers from a mental disorder, nor is he able to appreciate the manifestations of psychosis. He does not believe that he requires psychiatric treatment and is motivated to take medication due to external reasons. He does not appreciate recent evidence of his mental decompensation when using substances.

The Board acknowledges that Mr. McAnuff has been under the Board's jurisdiction for a lengthy period and that this is a source of frustration for him. The Board also acknowledges that Mr. McAnuff has not demonstrated physical violence since the index offences. However, even in the context of treatment compliance and a structured supportive environment his ongoing cannabis use has resulted in irritability throughout the reporting year and at the time of his readmission to the Hospital in October 2021, he was described as delusional and agitated and requiring chemical restraint and the clinical staff who knew him well felt it necessary to disengage with him until he settled.

The evidence indicates that should he be discharged absolutely Mr. McAnuff would likely leave the Hospital immediately, return to substance use and no longer take his medication, this would result in a decompensation similar to that at the time of the index offenses.
[Emphasis added.]

[14] The Board concluded by emphasizing that CAMH should develop a strategy to assist Mr. McAnuff in transferring to community living:

As stated above, Mr. McAnuff's cannabis use is intertwined with his delusional belief system. This is unlikely to change. Mr. McAnuff has now been under the Board for 11 years and it is incumbent on the Hospital to develop a strategy to manage Mr. McAnuff's risk in the community in such a fashion that he will eventually be able to transfer to a supportive civil mental health team that can help maintain his stability.

Analysis

[15] The appeal focuses on the Board's finding that Mr. McAnuff continues to pose a significant threat to the safety of the public.

[16] At the hearing before us, *amicus* made helpful submissions in support of Mr. McAnuff's position that he does not pose a significant threat to the safety of the public and that he should receive an absolute discharge. In making this submission, *amicus* pointed out that Mr. McAnuff has not committed any acts of violence since the finding of NCR, that his levels of irritability and anger have diminished since his last Board review, and that the original index offences were not serious violent offences.

[17] This court will only interfere with a decision of the Board if the decision was unreasonable or if the Board made an error of law: *R. v. Owen*, 2003 SCC 33, [2003] 1 S.C.R. 779, at para. 31. A Board decision is reasonable if its risk assessment and disposition order are supported by reasons that can bear even a "somewhat probing" examination: *Owen*, at para. 33. The court must evaluate reasonableness by considering the reasons given by the Board and the context in

which the decision was made to determine whether an acceptable and defensible outcome has been reached: *Wall (Re)*, 2017 ONCA 713, 417 D.L.R. (4th) 124, at para. 22.

[18] In this case, the Board's finding that Mr. McAnuff continued to pose a significant risk to the public was based on multiple factors, including:

- Mr. McAnuff lacks insight into his illness and persists in his delusional belief that cannabis gives him special powers.
- When Mr. McAnuff uses cannabis, it causes significant irritability and anger, which are consistent with his state of mind at the time of the index offences.
- If he were released into the community without any support, Mr. McAnuff would immediately resume his use of cannabis, decompensate and stop taking his medication.
- The negative effects of cannabis on Mr. McAnuff increase depending on the amounts used and the length of time of use.
- Once the effects of cannabis take hold on Mr. McAnuff, de-escalation takes time, and can require chemical restraints and a space where he can be left alone.

[19] In other words, the Board tied Mr. McAnuff's continued and persistent use of cannabis to the risk that he would commit offences similar to the index offences. These findings are entitled to deference and, in the circumstances of this case,

support the Board's conclusion that Mr. McAnuff continues to pose a significant risk to public safety.

[20] The fact that Mr. McAnuff has not committed an act of violence or made any threats since the index offences does not mean, on its own, that he does not pose a significant threat to public safety. The Board noted this fact and was nevertheless satisfied that Mr. McAnuff poses a risk based on his lack of insight, continued use of cannabis and the impact cannabis has on him.

[21] We also disagree that the index offences were not serious. Within a short period of time, Mr. McAnuff lunged at and grabbed three people he did not know. While there were no injuries, these incidents would nevertheless have a real impact on the victims. Mr. McAnuff has a history of similar behaviour. The finding of the Board about the risk of Mr. McAnuff committing similar offences while under the influence of cannabis is entitled to deference.

[22] One of the challenges in this case is that the risk posed by Mr. McAnuff seems to be closely tied to his use of cannabis and that deterring his use of cannabis is proving to be very difficult. This no doubt explains the Board's strongly worded suggestion at the end of the decision that CAMH develop a strategy to manage the risk he poses in the community. We support that recommendation.

[23] Nevertheless, based on Mr. McAnuff's circumstances at the time of the hearing, we are satisfied that the Board's finding that Mr. McAnuff continues to

pose a significant threat to the safety of the public and that he should continue to be detained at CAMH were reasonable.

Disposition

[24] The appeal is dismissed.

“Fairburn A.C.J.O.”

“B. Zarnett J.A.”

“L. Favreau J.A.”