Citation: *R. v. Nehass,* 2026 YKTC 7

Date: 20260116
Docket: 25-00810
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Cairns

REX

v.

MICHAEL DAVID ARCHIE NEHASS

Appearances:
Neil Thomson — Counsel for the Crown
Mark Chandler — Counsel for the Defence

This decision was delivered from the Bench orally and has since been edited without changing its substance.

RULING ON APPLICATION

[1] CAIRNS T.C.J. (Oral): On November 24, 2025, the Crown brought an application for an assessment order to determine whether Mr. Nehass was fit to stand trial and whether he was, at the time of the offence, suffering from a mental disorder so as to be exempt from criminal responsibility. Subsequently, the Crown abandoned its application in relation to fitness, continuing only its application for an assessment order pursuant to s. 672.11(b) of the *Criminal Code* (the "*Code*").

[2] Mr. Nehass is represented by counsel. He opposes the application.

Allegation

[3] Mr. Nehass is charged with an offence contrary to s. 348(1)(b) of the *Code*.

[4] The allegations underlying the offence Mr. Nehass is charged with are set out in the Crown's application materials at paras. 6 to 8 as follows:

> 6) Just prior to 0500 on November 4, 2025, RCMP received a call for an alarm at the Jiffy Lube in Whitehorse, Yukon. It was indicated that multiple motion alarms and an exit door had been triggered between 0456-0458. Members attended shortly after and made observations of the building. Of note, a broken window was observed on the building's west side along with a rock amongst broker [*sic*] glass and a loose $5 bill on the pavement.
>
> 7) A representative from the business attended and opened the building for the RCMP who cleared the building. It was found that the cash register had been removed and placed on a desk and approximately $300 was removed. Nothing else was noted as broken or missing. Footage was gathered which showed an individual outside the Jiffy Lube throw a rock several times at a window on the western side of the building, subsequently crawl through a broken window, remove and go through a cash box in the building, and leave through the back door. Officers reviewed security footage of the incident and Constable Isabelle and Constable Lafleur identified the individual as Michael Nehass.
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> 8) Between 1400 and 1500 that same day, officers were making patrols for Mr Nehass and identified him in the Home Hardware parking lot in Whitehorse. At the time he was wearing a hoodie, jacket, pants, shoes, and hat that appeared to match the individual on video breaking into the business. A search of Mr Nehass resulted in a pair of orange and black gloves being recovered which were also consistent with the video recording.

[5] Mr. Nehass is in custody and has not sought his release. Pleas have not been entered.

Criminal Code

[6] The relevant sections in the *Code* are:

Section 2 of the *Code* defines “mental disorder” to mean “a disease of the mind”.

Section 16 reads:

> (1) No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong. [emphasis added]
>
> (2) Every person is presumed not to suffer from a mental disorder so as to be exempt from criminal responsibility by virtue of subsection (1), until the contrary is proved on the balance of probabilities.
>
> (3) The burden of proof that an accused was suffering from a mental disorder so as to be exempt from criminal responsibility is on the party that raises the issue.

Assessment orders are made pursuant to s. 672.11:

> A court having jurisdiction over an accused in respect of an offence may order an assessment of the mental condition of the accused, if it has reasonable grounds to believe that such evidence is necessary to determine [emphasis added]
>
> ...
>
> > (b) whether the accused was, at the time of the commission of the alleged offence, suffering from a mental disorder so as to be exempt from criminal responsibility by virtue of subsection 16(1);
>
> ...
>
> 672.12 (1) The court may make an assessment order at any stage of proceedings against the accused of its own motion, on application of the accused or, subject to subsections (2) and (3), on application of the prosecutor.

As subsection (2) deals with fitness, the applicable subsection here is:

> (3) Where the prosecutor applies for an assessment in order to determine whether the accused was suffering from a mental disorder at the time of the offence so as to be exempt from criminal responsibility, the court may only order the assessment if [emphasis added]
>
> > (a) the accused puts his or her mental capacity for criminal intent into issue; or
> >
> > (b) the prosecutor satisfies the court that there are reasonable grounds to doubt that the accused is criminally responsible for the alleged offence, on account of mental disorder.

Law

[7] As these sections demonstrate, Parliament has made it more difficult for the Crown to obtain an assessment order when the accused person has not placed their mental condition in issue, as is the case here (*R. v. John Doe*, 2011 ONSC 92, para. 34). Given the potential for significant consequences to an accused, the assessment provisions in the *Code* must be applied with restraint (*John Doe,* para. 35).

[8] As noted in *R. v. John,* 2025 ONCJ 334, the burden falls to the Crown is to satisfy the court that, on account of mental disorder, there are reasonable grounds to doubt that Mr. Nehass either lacked the capacity to appreciate the nature and quality of his conduct or know that it was wrong. Providing reasonable grounds to believe Mr. Nehass suffered from a “mental disorder” at the time of the alleged offences, is not sufficient. The Crown must establish an evidentiary link between the mental disorder and the issue of criminal responsibility (*R. v. Sammut*, 2017 ONCJ 302, para. 34).

[9] The term “reasonable grounds” has been interpreted to mean “a credibly based probability” (*R. v. Goudreau*, 2015 ONSC 6758, para. 14). A mere “possibility” is not sufficient (*John Doe*, para. 40).

Evidence

[10] The Crown has provided a number of reports detailing Mr. Nehass’ extensive mental health history. I have reviewed the following reports:

- Dr. Lohrasbe, January 2014;
- Dr. Bringsli, March 2014;
- Dr. Lohrasbe, May 2014;
- Dr. Smith, February 2015;
- Dr. Grasswick, May 2016;
- Hillside Adult Psychiatric Centre, 2017; and
- Ontario Shores Centre for Mental Health Sciences, 2017.

[11] These reports provide comprehensive information about Mr. Nehass’ background, upbringing, and significant mental health history. For example, Dr. Lohrasbe’s May 2014 report, prepared for the purposes of determining fitness to stand trial, described Mr. Nehass as experiencing a major mental disorder, including delusions and paranoia. He was also described as having an intact capacity to think

through options in the legal process, a fluctuating awareness of his jeopardy, and an ability to communicate with counsel.

[12] The above-noted reports provided are all dated, the most recent being from 2017. While they are certainly useful in providing a helpful background, their dated nature lessens their value to the deliberation I am being asked to make in 2026.

[13] In addition to the reports, Crown relies on Mr. Nehass' criminal record, pointing out that he has committed numerous unsophisticated break and enter offences. The argument is that the manner in which these offences have been committed give rise to serious concerns about his mental health.

[14] The Crown also relies on various observations made by Crown counsel during Mr. Nehass' court appearances between April 2, 2025 and November 5, 2025 and are set out in the Crown's application materials at para. 29 (a) to (f) as follows:

> a) April 2, 2025: Mr Nehass refuses to attend out of his cell to address the court.
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> b) April 9, 2025: Mr Nehass once again refuses to leave his cell to address the court.
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> c) June 25, 2025: Mr Nehass presses his finger to his nose for the hearing. Indicates that Elon Musk and Starlink are starting wars, and speaks about brain implants.
>
> d) June 9, 2025: Crown counsel notes indicate that Mr Nehass is incoherent in court and begins suggesting he is unlawfully detained citing the Geneva convention.
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> e) August 29, 2025: Crown counsel records that the accused presents questionable fitness, that he is commenting on sovereignty, the rights of the Queen, and a 'painting on the wall'.
>
> f) November 5, 2025: Mr Nehass addresses the court with his finger pressed to his nose the entire time. He behand to speak about human

> rights abuses of mind control and stating the the video he is on has been copied and spliced. He comments on "the 82nd armoured division/neura link technology; we are in a mishap; almost 27 years in custody; to miss their destination, concluding by stating he was "being treated like a dumb Indian that's schizophrenic"."

[15] Notably, the November 5, 2025 court appearance occurred one day after the current allegations of break and enter Mr. Nehass is facing.

[16] Mr. Nehass is represented by counsel. His counsel filed a record of the medication administered to Mr. Nehass while in custody at Whitehorse Correctional Centre ("WCC"). This record shows that he has steadily been taking Olanzapine since November 10, 2025.

[17] Mr. Nehass' counsel takes the position that Mr. Nehass understands the Court process and is opposed to the Crown's application. In response to the Crown's characterization of various break and enters, Mr. Nehass' position is that he was homeless and impoverished and in need of money. His counsel stated that he pleaded guilty to these prior offences and took responsibility. I observed that, when Mr. Nehass addressed the Court during this application, he did not express any delusions or paranoia.

Ruling

[18] I want to make clear that I have been very impressed with how Mr. Nehass has conducted himself and addressed the Court throughout these proceedings. He has made every effort to clearly express himself and ensure that I understand his perspective. Through counsel, and by speaking for himself, he has conveyed that he is

taking his medication and is not experiencing delusions nor hallucinations. Rational grounds for opposing the Crown's application that are linked to his prior experiences with the Court system have been put before the Court.

[19] The Crown bears the burden on this application. I note that two of the decisions the Crown relies on – *R. v. Sealy*, 2010 QCCQ 4504 and *Goudreau* – were applications made by an accused. In *Goudreau*, at para. 31, the Court said that "the threshold is low for applications made by an accused".

[20] However, as noted in *R. v. Kindersley*, 2020 ONCJ 349, at paras. 29 and 30:

> 29 A plain reading of the *Code*, demonstrates Parliament's intention to make access to an Not Criminally Responsible ("NCR") assessment more challenging when requested by the Crown than the defence. When the prosecutor, rather than the defence puts the accused mental capacity for criminal intent into issue, there is an additional hurdle before an assessment can be ordered. The prosecutor must satisfy the court that there are reasonable grounds to doubt that the accused is criminally responsible for the alleged offence, on account of mental disorder.
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> 30 As noted by Justice Brown in *R*. v. *Pancer,* 2018 ONCJ 355 ("*Pancer*"), the test is two-fold. In order for the court to order an NCR assessment at the request of the Crown, there must be reasonable grounds to believe that the person was suffering from a mental disorder and reasonable grounds to doubt criminal responsibility arising from suffering from a mental disorder at the time of the allegations…

[21] As well, the Court in *R. v. Hanssen*, 2021 ONSC 7947, para. 8, stated:

> The assessment provisions under Part XX.1 must be approached with caution, especially when the Crown seeks to rely upon them. An assessment under Part XX.1 is the first step in what might ultimately result in a severe restriction of [an accused's] liberty.
>
> Similarly, see *John*, para. 4.

[22] In *R. v. Capano*, 2014 ONCA 599, the Ontario Court of Appeal made clear that the decision to order an assessment must be approached with care given the person impacted by it may face the loss of liberty for an indefinite period of time as the assessment could lead to a verdict of not criminally responsible. As Trotter J. stated in *John Doe*, at para. 35:

> …an assessment under Part XX.1 is an entrance into a socially protective regime, one that is accompanied by significant deprivations of liberty. Accordingly, one must proceed with restraint when applying these provisions. …

[23] That concern is heightened when the Crown seeks an assessment as opposed to an accused putting mental health in issue (*John Doe,* para. 35.)

[24] Courts have also commented that the scope and nature of the evidence adduced in support of a request for an assessment order is likely to depend on whether the assessment is on consent or contested (*Sammut*, para. 35). The consequences of a finding of not criminally responsible on account of mental disorder ("NCRMD") can be so profound that a high degree of procedural fairness and scrupulous attention to the rights of the accused are required (*R. v. Szostak*, 2012 ONCA 503, para. 64;).

[25] No particular evidence is necessary to support an application for an assessment order; however, the basis for the court's belief must "clearly and plainly" appear on the record (*John*, para. 6). It is not enough to rely on evidence that the accused has a mental disorder; there must be a basis for the belief the accused may have a mental disorder of a sort that rendered them not criminally responsible (*R. v. T.A.S.*, 2017 SKQB 218, para. 9).

[26] It is also concerning that, on a contested application of this nature, with the potential for such a significant impact on the accused, I have not been provided with affidavit or *viva voce* evidence. I note that the decision of Chisholm J. in *R. v. Pang*, 2020 YKTC 34, at para. 18, commented that "the preferable practice in contested applications for assessment orders would be for the calling of *viva voce* evidence or the tendering of affidavits".

[27] In this case, the evidence provided by the Crown includes numerous mental health reports that easily persuade me of Mr. Nehass' lengthy mental health history. As noted above, the most recent of those reports is from 2017. The dated nature of these reports does not allow me to give them significant weight in this current application.

[28] The Crown also relies on various in-court observations made by Crown counsel; I am concerned that this evidence was not tendered as either *viva voce* or affidavit evidence. Further, evidence from the arresting officers, WCC correctional staff, or a nurse from the WCC hospital might have been persuasive as to Mr. Nehass' state of mind at the time of the offence but no such evidence was provided.

[29] The Crown also argues that the nature of offences Mr. Nehass tends to commit raise strong concerns about his mental health. I am unable to find that committing unsophisticated break and enters is evidence that I can rely on in ordering an assessment. Further, there is nothing in the summary of the allegations that causes me concern for Mr. Nehass' mental health or his capacity to appreciate the nature of the act or knowing it was wrong.

[30] I accept that Mr. Nehass presented in Court on November 5, 2025, the day after the offence charged, with delusions and paranoia. However, I have not been presented with evidence that support reasonable grounds to believe that those delusions and paranoia were such that he was incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong.

[31] On the basis of the evidence I have heard, I accept that there is a strong basis for the belief that Mr. Nehass suffers from mental health issues that are of longstanding duration.

[32] I am not, however, satisfied that Crown has established an evidentiary link between the mental disorder and the issue of criminal responsibility needed to order an assessment pursuant to s. 672.11(b) of the *Code*.

[33] The Crown has not met its burden of establishing that, on account of mental disorder, there are reasonable grounds to doubt that Mr. Nehass either lacked the capacity to appreciate the nature and quality of his conduct or know that it was wrong.

[34] I dismiss the Crown's application.

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CAIRNS T.C.J.