Neutral Citation Number: [2008] IEHC 462

THE HIGH COURT

BETWEEN

EJW (A PERSON OF UNSOUND MIND)

APPLICANT

AND

DR. LIAM WATTERS, CLINICAL DIRECTOR OF ST. SENAN'S PSYCHIATRIC HOSPITAL, AND THE MENTAL HEALTH COMMISSION

RESPONDENTS

Judgment of Mr Justice Michael Peart delivered on the 25th day of November 2008:

1. The applicant, aged 70 years, and is detained at the first named respondent's hospital ("the hospital") following the making of an involuntary admission order on the 22nd February 2008 under Section 14 of the Mental Health Act. 2001 ("the Act").

2. Section 15 (1) of the Act provides that such an order shall remain in force for a period of 21 days thereafter, subject to any renewal of that order under the provisions of s. 15 (2), (3) and (4) of the Act.

3. Upon the making of the admission order, the applicant is entitled to have a review of that order conducted by a Mental Health Tribunal under s. 18 of the Act, and the decision of that Tribunal is required to be made as soon as possible, but not later than 21 days from the date of its making.

4. Section 17(1) of the Act sets out certain procedures to be observed by the Mental Health Commission once it has been notified of the making of the admission order. That section provides:

> *"17.(1) Following the receipt by the Commission of a copy of an admission order or a renewal order, the Commission shall, as soon as possible –*
>
> *(a) refer the matter to a tribunal,*
>
> *(b) assign a legal representative to represent the patient concerned unless he or she proposes to engage one*
>
> *(c) direct in writing (referred to in this section as `a direction) a member of the panel of consultant psychiatrists established under section 33(3)(b) to -*
>
> *(i) examine the patient concerned,*
>
> *(ii) interview the consultant psychiatrist responsible for the care and treatment of the patient, and*
>
> *(iii) review the records relating to the patient,*
>
> *in order to determine in the interests of the patient whether the patient is suffering from a mental disorder and to report in writing within 14 days on the results of the examination, interview and review to the tribunal to which the matter has been referred and to provide a copy of the report to the legal representative of the patient." (my emphasis)*

5. It is the requirement at s. 17(1)(b) above which is at the heart of the issue arising for determination in these proceedings.

6. By letter dated 26th February 2008, the Mental Health Commission informed Finbarr Phelan, solicitor, that he had been appointed as the patient's legal representative, and on the 27th February 2008 Mr Phelan accepted that appointment.

7. On the 3rd March 2008, Mr Phelan wrote to the respondent stating that on that same day he had attended at the hospital in order to interview the applicant and review her medical records, but that *due to her incapacity* she "*refused to and/or did not have the capacity to give him her written consent to allow me to access her records*". In his grounding affidavit at paragraph 10 thereof, Mr Phelan states that it is the practice of this and other hospitals to allow access to such records by the legal representative "*only where that patient consents*", and that this practice is "*regardless of the patient's mental capacity to consent or not*"'. The present applicant refused such consent, but Mr Phelan has averred in his said affidavit that the applicant is not mentally competent to grant or refuse that consent to access her medical records, and further that she is not competent to generally instruct him as her assigned legal representative for the purposes of the review hearing before the tribunal. For the purpose of this present application there is no dispute between the parties regarding the applicant's mental incapacity, and certainly it is not being contended by any party that the applicant had the mental capacity to make an informed decision to refuse consent, or indeed to give consent. It appears, sadly, that the applicant suffers from early-onset Alzheimers Disease.

8. Mr Phelan wrote to the respondent seeking its written permission to access the applicant's records in the light of her incapacity to give her consent, pointing out that as her legal representative he was required to inspect those records ahead of the review hearing before the Tribunal, and stating also that it was not practical for him to later seek the permission of the Tribunal, when it sat, to examine these records, thereby necessitating an adjournment of the hearing.

9. He received an e-mail response from the respondent dated 6th March 2008 which, *inter alia*, stated:

> *"... Please note that none of the employees here in the hospital do not [sic] have any authority in law to give anyone access to patients notes without written consent from the patient. Therefore, you will have to wait until the Tribunal sits to get access to the notes with their approval. If you do not have time to review the notes you can ask the Tribunal Chairperson to defer the tribunal to a later date..."*

10. The power of the Tribunal to grant such access in the absence of the patient's written consent is not specifically contained within the Act, but perhaps could derive from the general power contained in s. 49(2)(e) of the Act which provides:

> *"(2) (e) give any other directions for the purpose of the proceedings concerned that appear to the tribunal to be reasonable and just."*

11. It appears that in a circular dated 13th December 2006 from the Mental Health Commission to all solicitors on the panel of legal

representatives for such reviews, the Commission stated, *inter alia*:

> *"... If the patient refuses to consent or does not have the capacity to consent, access to files by the legal representative will have to await authorisation from the Mental Health Tribunal ... ... Approved centres can only release records with the patient's consent ... The Commission has no power to direct approved centres to provide copies of their files to legal representatives and the Commission's schedule of fees does not reimburse legal representatives or approved centres for costs associated with the copying of these files."*

12. Having referred to this circular and to the reply which he received by e-mail on the 6th March 2008, Mr Phelan goes on to say in his affidavit that it is not desirable that a legal practitioner is required to attend the scheduled hearing before the Mental Health Tribunal in the hope that an application will be acceded to for an adjournment to allow him to inspect the medical records, and that there is no reason why such a facility cannot be made available earlier in order to prevent a unnecessary delay in the review hearing being conducted. He believes that this stance taken by the respondent is one which infringes the patient's fundamental rights. He states that without advance access to a patient's medical records, he, as the appointed legal representative, cannot properly and fully represent his client at the review hearing.

13. Mr Phelan in his affidavit points also to the fact that the independent consultant psychiatrist nominated by the Mental Health Commission to prepare a report under s. 17 of the Act is afforded access to these records upon appointment. That is provided for in s. 17 (1)(c)(iii) where the Mental Health Commission is required to direct the independent consultant psychiatrist to, *inter alia*, "*review the records relating to the patient*". Section 17(2) requires the hospital to admit the independent consultant psychiatrist to the hospital and to allow him/her examine the patient "*and the records relating to the patient*". Indeed it is a criminal offence under s. 17 (4) of the Act for a person to interfere in the performance of these functions by the independent consultant psychiatrist.

14. Mr Phelan makes the point that at the review carried out by the tribunal, the legal representative can be at a disadvantage in representing the patient without the sort of access to the records which has been afforded to the independent consultant psychiatrist. He states in his affidavit that while it is the practice of the second named respondent to give access to records to the legal representative at the hearing, it is nevertheless a discretionary practice, and one which requires the legal representative to absorb all the detail of the records and examine if there are any issues arising in a brief time-frame, including whether it may be necessary to retain the services of an outside psychiatrist. He states that the time permitted is wholly inadequate for a proper representation of the patient at the Tribunal hearing. An adjournment is therefore regularly inevitable.

15. Following the swearing of this grounding affidavit, an *ex parte* application for leave to seek the reliefs set forth in paragraph c of the applicant's Statement of Grounds was granted on the 10`" March 2008, but because of the background to the case and its urgency a very early return date was given, namely the 140' March 2008. Those reliefs included a declaration in the following terms:

> *"A declaration that the refusal and failure to grant the applicant's assigned legal representative prior access to her medical records is in breach of the applicant's constitutional right and/or in breach of her rights under the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended."*

16. In the event that the Court concludes that the applicant is entitled to have her medical records provided to her legal representative at an earlier stage than following a direction made by the tribunal when it is convened, the form of declaration to be made in that regard is not necessarily confined to the terms in which the declaration has been sought in the Statement of Grounds, and in respect of which leave has been granted. The Court can make a declaration which it might deem appropriate in the circumstances.

17. By the time the matter came before the Court on the return date, matters had advanced to the point where records had been made available to the applicant's solicitor following a direction in that regard by the tribunal, thereby removing the need to pursue other reliefs contained in the Statement of Grounds, such as an order of *certiorari* quashing the decision to refuse prior access to the records without the written consent of the applicant, and an order of mandamus directing such prior access.

18. Given the fact that it was not in the applicant's interests that the Tribunal hearing be stayed or otherwise the subject of an injunction pending the hearing of the present application, no such application was sought beyond the return date given namely the 14th March 2008. Indeed by that date the Court was informed that in view of the intervening events whereby access had been given, the proceedings had been rendered moot.

19. Nevertheless, it is felt by all parties that the issue raised is an important one, and one which arose in many if not all cases where the consent of the patient cannot be obtained, and as such ought to be the subject of this Court's determination. Certain assurances have been given by the respondents that in the event that the application is unsuccessful, the applicant would not be adversely prejudiced in relation to the costs of these proceedings, since they are being pursued to a conclusion in the wider public interest and as a matter of general public importance.

20. In the Statement of Grounds filed on this application, the applicant pleads that the denial of prior access to records by the legal representative is a breach of fair procedures and natural justice, that the legal representative is unable to adequately and fully represent her interests at the review hearing without sufficient and timely access to records in order to inform himself properly of the applicant's circumstances and medical history, is a breach of the right to a fair hearing, to have adequate and properly informed legal representation, and the right to bodily integrity. Finally, it is pleaded that the failure to allow prior access to records is a failure by the respondents to exercise their functions in a manner compatible with the State's obligations under the European Convention on Human Rights and Fundamental Freedoms.

Statements of Opposition filed – 1st respondent (the hospital)

21. Apart from the usual traverse of certain matters contained in the Statement of Grounds, and certain admissions in relation to facts contained therein, the hospital pleads that the Act does not make provision for the disclosure by approved centres of medical records held in respect of patients who lack capacity to consent to such disclosure, and that in the absence of such consent, the hospital is unable, as a matter of law, to disclose medical records to the applicant's legal representative. In addition, it is pleaded that the manner in which the Tribunal in this case directed that records be disclosed to the applicant's legal representative, and adjourned the hearing to another date to permit that legal representative an opportunity to apprise himself of the contents of the medical records "*had the effect of ensuring that any hearing was carried out in a manner that fully vindicated and respected the natural and constitutional rights of the applicant*."

Replying affidavit of first named respondent

22. The first named respondent has sworn an affidavit in support of his Statement of Opposition. He has outlined the current practice

whereby medical records of the patient are not provided by hospitals to the legal representative in the absence of a written consent of the patient, and explains why this is the case. In relation to this particular applicant he confirms that given her state of mental health there is no question of her being in a position to give consent to access to her records. He also states that in fact the situation whereby a patient is unable to so consent is rare. In respect of his own hospital, he states that this situation arises perhaps once per annum.

23. He goes on to state that there is an essential difference between making such access available to the independent consultant psychiatrist and making them available to the legal representative. That difference is explained on the basis that the Act makes specific and express provision for the disclosure of the records to the psychiatrist, whereas there is no such express provision in respect of the legal representative. He refers to the circular to which I have already refers and to the procedure whereby the legal representative may apply for access to the Mental Health Tribunal when it is convened for the review hearing. But he states also hat the Tribunal cannot give such access until it actually sits for the review, since that is when it is convened, and that it is not possible for the Tribunal to grant access ahead of the sitting of the Tribunal.

24. He explains that there are two options therefore available to the legal representative. The first option is for the legal representative to attend the Tribunal and at the outset to apply for access to records, and then apply for a short deferral to a time later the same day so that in the meantime he/she can peruse and consider same. This procedure may be the appropriate option when the patient's file is not voluminous and the position is clear. However, he states that in some cases the file can be voluminous, and that in such a case it might be more appropriate for the legal representative to seek an adjournment to allow sufficient time for an examination and consideration of the records. In the present case this is what occurred and the review hearing was adjourned for a period of fourteen days.

25. He then outlines the reason for the denial of advance access to the records by the hospital in the absence of a written consent and explains that it has its origins in the established duty of confidentiality in respect of such records, and refers to the 6th Edition of the Medical Council's *Guide to Ethical Conduct and Behaviour* [2004], and to Section E thereof dealing with "Confidentiality and Consent. At paragraph 16.1 thereof it is clearly stated that "a doctor must not disclose information to any person without the consent of the patient". Paragraph 16.3 provides:

> *"16.3 Exceptions to Confidentiality:*
>
> *There are four circumstances where exceptions may be justified in the absence of permission from the patient:*
>
> *(1) When ordered by a judge in a Court of law, or by a Tribunal established by an Act of the Oireachtas.*
>
> *(2) When necessary to protect the interests of the patient.*
>
> *(3) When necessary to protect the welfare of society.*
>
> *(4) When necessary to safeguard the welfare of' another individual or patient."*

26. He then goes on to state that both he and the Health Service Executive recognises the logic of a legal representative gaining access to medical records of a patient who is entitled to legal representation at a review hearing. He states:

> *"23. The difficulty faced in this case is that the hospital is concerned that releasing records in the absence of consent may constitute a breach of duty to the patient and a breach of the ethical standards required of the individual Medical Practitioner responsible for the maintenance of those records.*
>
> *24. The Health Service Executive recognises the importance of Mental Health Tribunals as a safeguard for the rights of patients who are involuntarily detained and further recognises the intrinsic role of, and necessity for, independent legal representation as part of an oversight process."*

27. He informs the Court that at present there is within the Health Service Executive an ongoing review of good practice on a national level regarding good practice in relation to the release of medical records to legal representatives, and that a group is in the process of drafting new guidelines in this regard, but that *"the view of the Health Service Executive is that it is nonetheless generally in the best interests of the patient for those records to be disclosed to their legal representative if a mechanism can be identified to allow that process to occur lawfully."*

28. He concludes by wishing to make it clear that the decision made with regard to the disclosure of records of the applicant in this case was made with the utmost good faith and involved a genuine effort to balance the various interests of the patient, her right to privacy, and the hospital's understanding of its obligations to the patient regarding her records.

Statement of Opposition filed - second respondent (the Mental Health Commission)
29. The second named respondent pleads firstly that it made no decision to refuse to the applicant's legal representative access to medical records prior to the hearing, and that therefore there is no decision capable of being quashed by any order of this Court. Secondly, it is pleaded that the Commission has no power under the

30. It is pleaded also that the Act confers no power upon the Commission to direct a hospital or doctor to release medical records to a legal representative, and that it had therefore n power to direct the first named respondent to do so, and further, that the party with power to release the records of the applicant in the context of the operation of the review procedures contained in Part II of the Act is the first named respondent.

31. An affidavit in support of the second named respondent's Statement of Opposition has been sworn by Ms. Brid Clarke, the Chief Executive Officer of the Mental Health Commission. She refers to the steps taken in this case following the notification to the Commission of the making of the Admission.

32. Order, including the appointment of Mr Phelan as the applicant's legal representative. She states that when the Commission sent the circular to all legal representatives as already referred to, it was not seeking to adopt a fixed position but was merely setting out its understanding of the prevailing view relating to the release of patient's files, and goes on to state that given that a Mental Health Tribunal clearly has the power to release records to the legal representative "*the Commission can very much see the benefit in such records being released at an earlier .stage*". She goes on to state at paragraph 9 of her affidavit:

"9. It is the Commission's position that it would be preferable if legal representatives had access to patient's medical records in all cases in which they are appointed under Section 17 of the 2001 Act, for the purpose of facilitating the efficient conduct of reviews by Mental Health Tribunals under the 2001 Act and for ensuring that patients' best interests are protected in those reviews. The Commission has had a concern that there does not appear to be an express power in the 2001 Act for this purpose and has made a submission to the Department of Health and Children to the effect that this should he the subject of statutory amendment... ... ..."

Legal submissions – applicant

33. R. David Kennedy SC for the applicant at the outset has highlighted the fact that persons who are the subject of involuntary detention orders are vulnerable persons, who because of their illness are less able, or indeed unable, to understand their position and make relevant decisions and give instructions to their legal representative. He refers to the statutory requirement in s. 18 (1) of the Act whereby a Tribunal must conduct a review of the patient's detention, and that as required under s. 18 (2) of the Act *"a decision under subsection (1) shall be made as soon as may be but not later than 21 days after the making of the admission order, or, as the case may be, the renewal order concerned."*

34. He has referred to other relevant statutory provisions in the Act for the purpose of highlighting the central and important role assigned to the patient's legal representative under the statutory scheme, such as s. 49(6)(c) which requires that the Tribunal shall make provision

"enabling the patient the subject to review or his or her legal representative to be present at the relevant sitting of the Tribunal and enabling the patient the subject of the review to present his or her case to the tribunal in person or through a legal representative." (my emphasis)

35. This and other relevant provisions are referred to in order to highlight the right of the patient to be heard if necessary through a legal representative in recognition of a patient's natural justice and constitutional rights, and right to a fair hearing.

36. Mr Kennedy has referred to the fact that under s.17(1)(b) of the Act the Mental Health Commission must appoint a legal representative for the patient if the patient does not engage one. In other words, there are no circumstances in which a tribunal hearing can proceed without a legal representative being present, even in the event that a patient, having the capacity to choose, chooses not to engage one. It is submitted that this emphasises the paternal nature of the Act, ensuring that vulnerable patients are in a position to adequately have their fundamental rights protected, by having legal representation provided for them.

37. It is submitted that this legal representation is central to the procedures put in place by statute. Mr Kennedy characterises the professional relationship of the legal representative with the patient as being different to the normal solicitor/client relationship, given the vulnerability of the patient, and that this difference is the more acute in circumstances where the patient, on account of her illness, lacks the mental capacity to instruct him. In such a case as this, it is submitted that the legal representative stands in the shoes of the patient, and must, without any specific instructions, perform a supervisory role relating to all aspects of the detention not only before the tribunal, but also generally including if necessary by bringing relevant matters to the attention of the High Court for the purpose of an inquiry into the lawfulness of the detention under Article 40 of the Constitution.

38. Mr Kennedy suggests that this particular relationship is recognised implicitly in s. 49 (6) (c) of the Act, since it is provided that either the patient "or the legal representative" may consent to the admission of written statements into evidence at the review hearing.

39. It is submitted that if the legal representative is to be in a proper position to fulfil this unusual, even unique, role as advocate for his/her vulnerable client, one having no capacity to give instructions to the legal representative, as intended by the statutory provisions, he/she must be afforded prior access to the patient's records. Otherwise he/she could not possibly in the time available before the hearing of the review be in a position firstly to absorb the material, and secondly conduct if necessary a cross-examination of medical personnel. As to the available option, albeit one at the discretion of the tribunal chairman, of an adjournment of the review hearing in order to permit time to examine and consider the material, Mr Kennedy submits that this would inevitably lead, in some cases, including the present case, to a patient whose admission order or renewal order is ultimately revoked by the Tribunal being in detention for longer than if the adjournment (usually for 14 days) had not been required, and delaying any possible application for release under Article 40 of the Constitution.

40. Such a situation could be avoided, it is submitted, by access to medical records being facilitated at a stage earlier than the hearing date itself. It is submitted that delay in this regard cannot be regarded as being in the best interests of the patient, and in that regard has referred to s. 4 (1) of the Act which provides:

"In making a decision under this Act concerning the care or treatment of a person (including a decision to make an admission order in relation to a person), the best interests of the person shall be the principal consideration with due regard being given to the interests of other persons who may be at risk of serious harm if the decision is not made."

41. It is suggested that it cannot be in the best interests of the patient to be unlawfully detained, no matter how temporarily, and that by contrast it must be considered in the best interests of the patient for his/her legal representative to be afforded access, at the earliest possible moment, to records in order to properly represent that patient's interests at the review, and generally. He has referred also to the judgment of Hamilton CJ in *Croke v. Smith (No. 2)* [1998] 1 IR. 101 at p.118 where the learned Chief Justice states:

"The obligation which rested and rests on the Oireachtas is to ensure that a citizen who is of unsound mind and requiring treatment and care is not unnecessarily deprived, even for a short period, of his liberty and to ensure that legislation which permits the deprivation of such liberty contains adequate safeguards against abuse and error in the continued detention of such citizens. " (my emphasis)

42. Mr Kennedy has submitted in the present case that the adjournment of the tribunal, necessitated by the legal representative's need to have access to, and time to examine and consider, the medical records of the applicant led to her detention being unnecessarily prolonged.

43. Mr Kennedy has also referred to the judgment of Clarke J. in *LK v. The Clinical Director of Lakeview Unit* [2007] 2 IR 465. The applicant in that case had been detained as an involuntary patient under the relevant provisions of the Mental Treatment Acts 1945 - 2001. It was a case in which the applicant's legal advisers had sought the release of her medical records to a named psychiatrist for

the purpose of placing a report before the High Court on an application for release under Article 40 of the Constitution. In making such a direction, Clarke J. stated, as appears from p.484 of the judgment:

> *"in the absence of special or unusual circumstances, a person acting on behalf of someone detained is entitled to be facilitated with reasonable access both to that person and to that person's medical records for the purposes of facilitating a review by the court of the lawfulness or otherwise of the detention of the person concerned"*

44. In an earlier passage, the learned judge stated at p.483:

> *"While it may well be the case that objection could legitimately be taken to a request for the release to a lawyer, apparently acting on behalf of a person so detained, of that person's entire medical records, nonetheless it seems to me that there is an implied constitutional obligation on any such institution to afford the utmost facility to a person who wishes to mount a challenge to their detention. "*

45. It is of course the case that the detention of LK was under the 1945 Act, which did not contain the sort of detailed provisions as are contained in the 2001 Act for the review of the lawfulness of a patient's detention, including specific provisions in relation to the appointment of a legal representative for the patient, and a hearing before a mental health tribunal. But the recognition in LK of a latent right of reasonable access to medical records, albeit a limited one, and the constitutional obligation on an institution "*to afford the utmost facility to a person who wishes to mount a challenge to their detention*", is important, given the absence in the 2001 Act of any specific provision which requires the hospital to give any access to records to the appointed legal representative.

46. The applicant's case on this application is put on the basis that the hospital is under both a constitutional and statutory duty to ensure that timely access to the patient's records is provided to the legal representative, and that a failure to do so breaches the constitutional right of the patient to their production to her, or her legal representative where she is unable to give her written consent. It is submitted that the provision of such access at the earliest possible moment to the legal representative cannot be regarded as a breach of the doctor patient relationship of confidentiality as outlined in the ethical guidelines of the Medical Council, since that right to confidentiality, protected by these guidelines is owned by the patient and is owed to the patient, and since the legal representative is appointed so that he or she stands in the shoes of the patient, so that her interests are protected as mandated by the relevant provisions of the Act.

47. In so far as the Court might not find that the rights of the patient extend as far as providing access to these records by the legal representative in the absence of written consent, in circumstances where the patient is unable to provide such a consent, it is submitted that the failure of the 2001 Act to authorise such access to records before the review hearing renders the Act incompatible with the State's obligations under Article 5 of the European Convention of Human Rights.

Legal submissions - 1st named respondent

48. Barry O'Donnell BL for the first named respondent/Health Service Executive at the outset of his submissions has stated that the respondent acknowledges the right of the legal representative to be provided with access to these records, but submits that this right has been regulated or provided for by the scheme of the Act in as much as a mechanism is provided, and is available, by which the legal representative may make application when necessary to the tribunal for such access to be afforded, where the patient cannot or refuses to give written consent. In this way, it is submitted that none of the rights of the patient are infringed, and that in this way reasonable access is provided.

49. It is submitted that while there is a right of the patient to be provided with legal representative under the Act, it does not follow that there is an absolute, unfettered and unlimited right of access to medical records as incidental to the right to representation. In so far as it is contended that the disclosure of records is necessary, Mr O'Donnell refers to the consideration of implied powers by the House of Lords in *Ward v. Metropolitan Police Commissioner* [2006] 1 AC.23 where the following is stated:

> *"Third, as a general principle, there can be implied into a statutory power such incidental powers as are necessary for its operation: see Bennion, statutory Interpretation, 4'h ed (2002), p 430, Section 174. Thus a magistrate's power to order detention of someone who wilfully interrupted the proceedings of the court included `all incidental powers necessary to enable the court to exercise the jurisdiction in a judicial manner', specifically the power to direct that the person be brought before him: see Bodden v. Commr of Police of the Metropolis [1990] 2 QB 397, 405. In section 135(1), for example, the power to enter the premises in question must also include the power to search those premises in order to find the person believed to be suffering from mental disorder. It would be ridiculous to give the police officer power to break down the door to get into the premises but not the power to search them once he was inside. Section 135 is headed `Warrant to search for and remove patients'. It may also be that the police office can authorise others, such as the ambulance service or an approved social worker, to transport the person to the place of safety rather than doing it himself.*
>
> *Fourth, the issue here is not what can be implied into the constable's power to execute the warrant, but what can be implied into the magistrate's power to grant it. It is not sufficient that such a power be sensible or desirable. The implication has to be necessary in order to make the statutory power effective to achieve its purpose." (my emphasis)*

50. Mr O'Donnell submits by reference to this passage that given the power which the tribunal has to authorise disclosure of records in a regulated manner, it is difficult to see how an unregulated, automatic and unfettered right of access is "*necessary in order to make the statutory power effective to achieve its purpose* ".

51. He has referred to the provisions of s. 4(3) of the Act, which it is submitted are relevant to the question of providing access in the absence of written consent:

> *"4. -- (3) In making a decision under this Act concerning the care or treatment of a person (including a decision to make an admission order in relation to a person) due regard shall be given to the need to respect the right of the person to dignity, bodily integrity, privacy and autonomy." (my emphasis)*

52. Mr O'Donnell submits that this right to privacy is not reduced or diluted in any way in respect of a patient who lacks the mental capacity to give written consent, and that it must be respected by the hospital, and in addition a hospital or a doctor who disregards it would run the risk of acting contrary to the guidelines from the Medical Council. In this regard he has referred to the judgment of Hamilton CJ in Re: *A Ward of Court (No. 2)* [1996] 2 IR. 79 which addresses the administration of treatment where consent is absent because of a lack of capacity to give it. He urges that there is no implied power discernible from the Act which enables the hospital to grant such access ahead of the tribunal considering an application in that regard.

53. In support of the absence of any such implied power, Mr O'Donnell has referred to the provisions of s. 57 of the Act which in another context specifically empowers the hospital to administer necessary treatment without the patient's consent where "*by reason of his or her mental disorder the patient concerned is incapable of giving such consent*". It is submitted that if the Oireachtas had intended that the legal representative should be given access without the written consent where that could not be forthcoming on account of lack of mental capacity, and in advance of the tribunal sitting, it would have so provided in the Act, and by not so providing the Oireachtas has kept intact the patient's right to privacy in this regard.

54. Mr O'Donnell submits that in considering the need to have such access afforded to the legal representative for the tribunal review and the right to privacy of the patient, a balancing of rights must be undertaken, and that the mechanism available through the tribunal is therefore the mechanism for making that decision which the Oireachtas has chosen, and that it can be seen as being a reasonable solution. He submits also that the right to access to records is in any event not an absolute right, but one which may be curtailed for example where a disclosure of records might compromise or put at risk the safety of third parties, such as members of the patient's family.

55. In so far as s.49 of the Act gives certain powers to the tribunal, including that at s. 49 (2)(e) to give "*any other directions ... that appear to be reasonable and just*", Mr O'Donnell submits that the Oireachtas sees that power as sufficient to address the question of access to records to the legal representative, and that it must be presumed that the tribunal will act constitutionally and therefore in a way which affords to the applicant, and others in her position, including by appropriate access to medical records to the legal representative, even where no written consent is possible. It is submitted that the Oireachtas has acknowledged that some discretion must be exercised in relation to such access should be given in the absence of consent, and that the tribunal has been considered the appropriate forum in which that discretion is to be exercised.

56. In response to the submission made on behalf of the applicant that a delay in the provision of access to records can lead to a delay in the revokation of an admission order or a renewal order, and thereby potentially lead to a period of unlawful detention, Mr O'Donnell submits that this is not what this case is really about. He submits that the task of the tribunal is principally concerned with whether at the time the review takes place the patient is suffering from a mental disorder within the meaning of the Act. In other words, there can be a situation whereby the patient is detained under the Act, receives appropriate treatment from that time until the review hearing, and by the time the hearing is held has improved to the extent that continued detention is no longer justified. In such a situation, the Act provides for the revocation of the admission or renewal order. He submits that there is no overarching obligation upon the legal representative to inquire into the lawfulness of detention; but that in the course of perusing the records once access is provided, the legal representative can seek an inquiry into the lawfulness of detention if some issue arises from the perusal of the records. It is not accepted in the present case that any circumstance arose whereby this applicant was at any time held in unlawful detention. It is not accepted that the right to any prior access to records is necessitated by any consideration of the right to apply for an inquiry under Article 40 of the Constitution.

57. In response to the applicant's submission that the confidentiality in the records is that of the patient, Mr O'Donnell submits that this is not so, and that while the patient may at first glance be the most obvious person entitled to assert confidentiality, he/she is not the only person, and that other third parties can have an interest in the confidentiality of matters contained in the doctor or hospital records. It is submitted that before medical records may be disclosed to any person other than the patient, there must be a legal basis for doing so, or a written consent from the patient.

Legal submissions – 2nd named respondent

58. At the outset, Cian Ferriter BL for the second named respondent has submitted that an order of certiorari as sought cannot be granted in this case since in fact there has been no decision as such by the Commission to refuse access to these records by the applicant's legal representative, and that the position of the Commission as communicated was that it had no power under the Act to direct the hospital to grant prior access to the legal representative, and that it is the first named respondent which has the power to release the records. Mr Ferriter has stated that it the Commission's position on this application that it would be very much in the interests of the applicant that her legal representative should have access to the records at a stage earlier than the occasion when the tribunal decides that access should be given. They support the submissions made on the applicant's behalf.

59. He submits that it must be seen as being in the best interests of the patient that early access is afforded, and that what is in the best interests of the patient is a guiding principle of the Act. He submits that the appointment of a legal representative assists in ensuring that the best interests of the patient are protected at the review hearing at the tribunal, and that Part 11 of the Act was passed by the Oireachtas in the knowledge that in some cases at least the patient, by reason of illness as in this case, would be unable to give instructions to the legal representative, including the giving of consent to access to records. He submits that given the nature of the review carried out by a tribunal, i.e. whether the patient is suffering from a mental disorder, a review of the medical file is essential to that task. It follows in his submission that if a legal representative is to fully and properly fulfil his/her statutory role at a review hearing, prior access to the file is essential. The question arising is simply at what stage in the process should such access be given where consent cannot be given by the patient, and whether the granting of access *must* await the sitting of the tribunal conducting the review, as invariably occurs in such cases, very often necessitating an adjournment of the hearing.

60. In considering how to balance the timing of that access with the hospital's obligations to observe patient/doctor confidentiality, Mr Ferriter submits that the Court should have regard to the unique solicitor/client relationship which exists in a case such as the present one where the solicitor has been appointed as legal representative by the Commission, but cannot obtain instructions from his/her client in order to fulfil that task. In such a situation, the legal representative cannot even begin to fulfil his task until he/she has access to the records which constitute the sole source of relevant information. He points to the fact that in such a situation the legal representative can do nothing to advance the best interests of the patient/client until the actual day on which the Tribunal sits. The legal representative cannot make any preparations in advance of the hearing, cannot prepare or anticipate what questions might need to be asked of witnesses at the hearing, or what if any submissions could or ought to be made on behalf of and in the best interests of the patient.

61. It is submitted that such a situation offends against the scheme of the Act where matters are required to be completed within certain strict time limits so that no patient is detained for any longer period than is absolutely necessary. He refers to the provisions of s. 18 of the Act in this regard, which provides that the decision of the tribunal shall be made as soon as may be but not later than 21 days after the making of the admission order or renewal order.

62. It is submitted that it is not a sufficient answer to say that the legal representative may apply to the tribunal for access to records, and if necessary an adjournment, which may or may not be granted at the discretion of the tribunal, and that it inevitably leads to a situation, one which is inconsistent with the scheme of the Act, where such patients run the risk of being detained for a longer period than might otherwise be the case if the legal representative had access to the records immediately or within a very short time following appointment by the Commission.

63. As to the position of the first named respondent that the duty of doctor/patient confidentiality prevents access being given in the absence of patient consent without an order from the tribunal, Mr Ferriter refers to the Medical Council Guidelines referred to earlier and to the exception to the rule "when necessary to protect the interests of the patient". He suggests that since it is clearly in the best interests of the patient that the appointed legal representative has early access to the records in order to perform his/her appointed role at the tribunal hearing, access earlier than on the day of the hearing should not be considered to offend against the Medical Council's guideline in this regard, which acknowledges certain exceptions to the duty of confidentiality.

64. Mr Ferriter also submits that it is relevant to draw attention to the professional role and duty of confidentiality implied by the professional status of the legal representative, being a solicitor, and that disclosure of these records cannot be equated to disclosure to a third party, since the solicitor is under his/her own professional duty not to disclose these records to any other party. In that regard, he submits that the unique role of a solicitor appointed to represent the best interests of a client who is unable to give instructions is important to recognise, and that in such a situation, the legal representative is effectively standing in the shoes of the patient.

65. It is submitted that the provisions of Part II of the Act must be seen as involving what Mr Ferriter describes in his written submissions as "*a statutory trumping, in the best interests of a patient, of a doctor's right to keep the file confidential*".

66. In support of these submissions he refers also to what the first named respondent has stated in his affidavit, as already set forth and as follows:

> *"the view of the Health Service Executive is that it is nonetheless generally in the best interests of the patient for those records to be disclosed to their legal representative if a mechanism can be identified to allow that process to occur lawfully."*

67. Mr Ferriter suggests that the lawful mechanism by which that can be achieved is to be found through s. 17 of the Act when the legal representative is assigned by the Commission to represent the patient at and for the purposes of the review hearing at the tribunal, since that function cannot be performed without prior timely access for the reasons already stated. Being necessary for the fulfilment, it is therefore something which may be properly implied, and thereby permitted by the Act itself

Conclusions
68. Each of the respondents puts the issue for decision in this case somewhat differently in their very helpful legal submissions. The first named respondent puts that issue as:

> *"When a patient is admitted to a hospital as an involuntary patient does the hospital have the lawful authority to afford a legal representative appointed by the Mental Health Commission access to records held by the centre in respect of the patient prior to the hearing commencing by the Mental Health Tribunal where the patient lacks the capacity to consent to that disclosure?*

69. The second named respondent suggests the following:

> *"Is a detaining hospital obliged to give a patient's legal representative access to that patient's medical records, once the legal representative is appointed, in order to allow the legal representative effectively represent the patient before a Mental Health Tribunal or must the Tribunal first order the detaining hospital to make disclosure of the records to the legal representative?"*

70. I prefer to approach the issue arising in a somewhat different way. It is clear that each respondent agrees that it is in the best interests of the patient that his/her legal representative be given access to the records as soon as possible, the issue being at what point in time. The difficulty for the Commission is that it has no power under the Act to direct the hospital to provide these records. The difficulty for the hospital in a case where the patient cannot consent is that the view has been taken that to do so without either a court order or an order/direction from a tribunal would constitute a breach of doctor/patient confidentiality, with the risk that it would amount to a breach of professional conduct as found in the Ethical Guidelines issued by the Medical Council.

71. In my view the issue can be addressed by this Court arriving at the conclusion, if possible, that as a matter of law it would not constitute a breach of that duty of confidentiality if a hospital makes such records available to the appointed legal representative, as soon as practicable after it is made aware of that appointment. There might, in a given case, be some unusual circumstance which the hospital might consider justifies awaiting a direction from the tribunal, such as a countervailing interest arising from some aspect of the records which could impact adversely on third parties, or on the patient if the contents were disclosed to him or her. Consequently, I prefer not to approach the issue in the terms suggested by the second named respondent which speaks of an obligation on the hospital to provide access. Given the views expressed by the first named respondent as to the prohibition on providing access resulting from the duty of patient/doctor confidentiality, some clarity on that issue would assist in relation to the situation presented by the facts of this case, and which seem to arise in many other cases also.

The statutory scheme - intention of the Oireachtas
72. Underpinning the statutory scheme whereby a person suffering from a mental disorder may be involuntarily admitted to an approved centre is s. 4 (1) of the Act which requires that when any decision is made concerning the care and treatment of such a person "*the best interests of the person shall be the principal consideration*", albeit "*with due regard being given to the interests of other persons who may be at risk of serious harm if the decision is not made*". The adjective "principal" is sufficient to connote the primacy of the person's best interests over other interests. That is relevant to the view taken by the first named respondent that the obligation to observe the duty of confidentiality in respect of the medical records trumps access to those records being afforded to the applicant's legal representative in advance of a direction from the tribunal.

73. The best interests of the patient are clearly at the forefront of the provisions of the Act which regulate the manner in which an admission order and a renewal order may be made, containing as they do very specific procedures which must be observed, which serve as reasonable safeguards against any possibility that a person might be involuntarily detained for any period where there is no reasonable basis for same. The category of persons who may make an application for involuntary detention of a person is strictly circumscribed by the provisions of s. 9 of the Act, as are the circumstances in which such an application may be made. It is an offence provided for by s. 9(6) for such a person making such an application to do so on any false or misleading basis.

74. Very clearly stated and short time limits are provided in s. 10 and in s. 14 of the Act for essential steps to be taken subsequent to that application leading to a recommendation for involuntary admission, and for the duration of that recommendation, and any admission order which may follow. Section 15 of the Act provides that an admission order shall expire after 21 days, unless that period

has been extended for a period not exceeding 3 months under the provisions of s.15 (2) of the Act, or further extended as provided for in s.15 (3) or (4) of the Act.

75. One can clearly observe in these provisions the great care which has been taken by the Oireachtas to provide as far as reasonably possible that no person is involuntarily detained without adequate safeguards being in place to ensure that the patient's best interests are at the forefront of the minds of those responsible for any decision to made in that regard, and to ensure that the clearly defined procedures leading to detention for a period longer than the initial 21 days are carried out expeditiously. Such provisions recognise the primacy of the right of the patient to "*dignity, bodily integrity, privacy and autonomy*" as expressed in s. 4 (3) of the Act.

76. Sections 16, 17 and 18 of the Act make similarly clearly defined and specific provision for the protection of the patient's rights and best interests by providing for a review of the detention under an admission order or a renewal order by a Mental Health Tribunal, whose decision, as provided in s. 18 (2) of the Act "*shall be made as soon as may be but not later than 21 days after the making of the admission order concerned, or, as the case may be, the renewal order concerned*".

77. The provision of a review of the detention by a tribunal is absolutely central to the statutory scheme for the protection of the patient. Following the making of an admission order or a renewal order, the consultant psychiatrist who has made such an order must, not later than 24 hours thereafter, send a copy of such order to the Mental Health Commission, and give written notice thereof to the patient which must contain a statement informing the patient of certain rights and other relevant information, including that he/she "*is entitled to legal representation*".

78. This right to legal representation is not stated to be limited in any way by being confined to legal representation at the tribunal. It is an entitlement simply to "*legal representation*". The Act is silent as to the date on which that right to legal representation is to commence. The section could have provided that the patient was entitled to legal representation at the tribunal hearing, but it has not done so. It follows in my view that the Act therefore intends that the patient should have legal representation to him/her from the moment that the Commission appoints the legal representative, and therefore, that the patient's legal representative is acting on behalf of that patient, not simply in relation to the hearing of the review hearing which could be more than two weeks away of more, but generally in order to protect the patient's interests, as may be appropriate in any particular case.

79. Section 17 requires the Commission, as soon as possible following the receipt by it of a copy of the admission order or renewal order, to refer the matter to a tribunal, assign a legal representative "*to represent the patient concerned*" unless the patient proposes to engage one himself or herself, and to direct an independent consultant psychiatrist to examine the patient, interview the consultant psychiatrist who is responsible for the care and treatment of the patient, and to review the records relating to the patient.

80. Section 49 of the Act contains provisions in relation to the functions of the tribunal following its appointment under s. 48 of the Act by the Commission, and gives the tribunal certain powers to direct the attendance of the patient, and other necessary witnesses, as well as for the production of documents required for the review hearing.

81. Section 49 (6) provides at the outset:

> *"The procedure of a tribunal in relation to a review by it under this Act shall, subject to the provisions of this Act, be such as shall be determined by the tribunal and the tribunal shall, without prejudice to the generality of the foregoing, make provision, for ... "*

82. Subsequent paragraphs include those at (f) and (g) as follows:

> *"(f) the examination by or on behalf of the tribunal and the cross-examination by or on behalf of the patient the subject of the review concerned (on oath or otherwise as it may direct) of witnesses before the tribunal called by it.*
>
> *(g) the examination by or on behalf of the patient the subject of 'the review and the cross-examination by or on behalf of the tribunal (on oath or otherwise as the tribunal may determine) of witnesses before the tribunal called by the patient the subject of the review."*

83. It is clear that if a legal representative of a patient is to be properly in a position to perform the task of examining and cross-examining witnesses at the tribunal, this will involve him or her in such examination of medical witnesses, which in turn will be reliant by way of preparation on a detailed consideration and examination of medical notes and reports which will be made available to him only after the tribunal sits, where the patient has not the necessary capacity to consent to advance access to records provided. This cannot provide reasonably adequate time for such preparation. I cannot see how such a legal representative can be reasonably expected to look after the best interests of a patient in such circumstances. It follows that an adjournment application will, in all but the simplest cases be necessary, thereby requiring that the tribunal hearing is adjourned to another date. Clearly the question of adjourning the hearing is a matter within the discretion of a tribunal. Having said that, however, it would be difficult to see how such an application could be refused by a tribunal acting reasonably, where a legal representative has not been afforded an opportunity of seeing his/her client's medical records.

84. Mr Justice Clarke had occasion to consider this issue in a different contest in LK. In that case the applicant sought her release under Article 40.4.2 of the Constitution, and for the purpose of that application, a direction was sought that the applicant's medical records be made available to a consultant psychiatrist nominated by the applicant's solicitor for the purposes of preparing a report. That applicant was also considered not to be in a position to give consent to the release of her medical records. In deciding that it was appropriate in the interests of fair procedures that her medical records should be made available to the applicant's consultant so that a report could be prepared for presentation to the Court on her behalf on the application for release, the learned judge stated at p. 470-471:

> *"... it seems to me the court needs to be creative as to the procedures that need to be followed. The starting premise is the finding of the Supreme Court that the court is obliged to conduct an inquiry, but of course that inquiry must be conducted in accordance with fair procedures and must allow for the reasonable vindication of any rights that may be involved and, therefore, procedures must be designed such as to ensure a fair hearing. However, these procedures must be crafted in a manner to avoid, insofar as it may be possible, the risk of doing harm to the person who may be in the position of the applicant in such proceedings...".*

85. It seems to me that the same applies with equal force to procedures undertaken in accordance with the statutory scheme for

review under the Act in order to ensure that the patient's right to fair procedures is fully vindicated. That full vindication seems to me to be threatened or at least diluted where the legal representative in the circumstances of this and similar cases is deprived of timely access to medical records until the sitting of the tribunal occurs, rather than ahead of it. Again one returns to the question as to whether it is possible within the statutory scheme to find a mechanism whereby this can occur. The Act itself is silent in that regard.

86. I have referred already to the fact that the Act specifically authorises the release of the medical records to the independent consultant psychiatrist under the provisions of s. 17 of the Act. Counsel for the first named respondent has suggested that by so doing, the Oireachtas has intended such prior access to be given to that psychiatrist, and that the failure to so provide in relation to the legal representative must be seen as an intention that such access be not afforded to the legal representative without a direction from the tribunal. It has been submitted by Counsel for the second named respondent that the silence of the Oireachtas in the latter respect is indicative of the fact that the right to such prior access for the legal representative is so obvious as not to require a specific provision, since the legal representative is acting on behalf of the patient, whereas the independent consultant psychiatrist is performing a different function in order to provide evidence to the tribunal as to the existence or otherwise of a mental disorder. In my view this is an important and significant distinction. One cannot equate the role of the independent consultant psychiatrist with that of the legal representative. While it goes without saying that such a psychiatrist will perform his/her statutory function having regard at all times to the best interests of the patient, and in a professional manner, such a person is not representing the patient in the sense of speaking or advocating on behalf of the patient, or in any way representing the patient. That role is given to the legal representative alone.

87. The Court must see the role of the legal representative as being one whereby he/she both advises the patient in so far as that is possible, and acts as an advocate on his/her behalf both at the tribunal review hearing, and where necessary, with or without the assistance of counsel, in any application which may appear necessary by way of application for release under Article 40.4.2 of the Constitution, or judicial review or otherwise.

88. The fact that following assignment by the Commission the fees of the assigned legal representative payable by the Commission are confined to those applicable to the review hearing, and that other costs and outlays fall to be awarded, or not as the case may be, under either the Attorney General Scheme where applied for, or under the normal party and party rules, cannot itself indicate that the legal representative is intended to only represent the patient at the review hearing. In my view the assignment to the patient of a legal representative, without any limitation on that appointment being specified in the Act, means that the role of the legal representative extends, as necessary in any given case, beyond the review itself.

89. That conclusion in my view does no violence to the language of the Act, and is consistent with the paternalistic nature of the statutory scheme, enacted to protect not just some of the best interests of the patient, but all those interests. That must mean that the legal representative has a role which necessitates the availability to him or her of his or her client's file or medical records, otherwise I can see no reasonable way in which the representative role can be fulfilled properly and professionally. It cannot have been the intention of the Oireachtas that the patient's best interests, those of a patient in the context of the present case who is particularly vulnerable and disadvantaged by not having the capacity to consent to release of records, be protected by the assignment of a legal representative who has no opportunity to obtain adequate information about his/her client until the very moment at which the tribunal convenes. That is to expect the legal representative to perform his/her role while blindfolded. In addition it disadvantages such a patient in a way that another patient who has such capacity is not disadvantaged. That would constitute an inequality which would be so unfair as to raise issues of constitutionality, and certainly one which this Court could not view as having been the intention of the Oireachtas. The provisions of the statutory scheme do not suggest any such intention. I favour the view, expressed in argument, that affording prior access to the legal representative is such an obvious and necessary ingredient of the role of the legal representative that it was not considered to make any specific provision in relation to it. Indeed, as I have referred to already, it is difficult, if not impossible, to think of a situation where a tribunal might deny access to records to the assigned legal representative, albeit that in some limited number of cases it may be considered that it was necessary to specify certain safeguards in relation to the information contained in those records.

90. In my view the entitlement of the legal representative to apply for an adjournment is not an adequate vindication of the rights of the patient. At issue at the review hearing is whether or not the patient suffers from a mental disorder to the extent that detention is required. That issue touches upon the right to liberty, and the patient is entitled to have that right vindicated at the earliest possible moment. An adjournment necessarily delays the decision of the tribunal. That can lead to a situation where a patient's detention may be unnecessarily prolonged in circumstances where, if the adjournment was not required, an order might be made by the tribunal to revoke the admission order or renewal order under review. There is nothing in the Act which indicates that unsatisfactory situation, and unfairness, to have been the intention of the Oireachtas.

91. I fully appreciate the importance of the professional duty on members of the medical profession to adhere strictly to the Ethical Guidelines of the Medical Council, and specifically to observe the rules against disclosure of medical records to third parties. That is a duty of the highest importance and must be respected. I fully accept that the unwillingness to give access to a patient's medical records to a legal representative without the written consent of the patient exists because the view has been taken that such disclosure would breach the guidelines in this regard as interpreted, and that there is no question of mala fides in holding that view. However, I do not agree that the guidelines must be interpreted or understood in such a restricted way. I have referred to the fact that these guidelines themselves at paragraph 16.3 permit those records to be disclosed without the consent of the patient "*when necessary to protect the interests of the patient*". In my view, such necessity arises where the admission order or renewal order is being subjected to a review by a mental health tribunal under s. 18 of the Act, and from the time that the assigned legal representative accepts the assignment to represent the patient concerned. It is necessary so that the patient can be adequately represented at the hearing set for the review hearing, and not simply at any adjourned date thereof. Failure to so disclose the records in sufficient time for the hearing date interferes with the best interests of the patient.

92. The concerns of the first named respondent where no consent can be given by the patient are in my view adequately, reasonably and fully addressed and respected by the existence of the professional duties and obligations of the legal representative, as a member of the solicitor's profession. Those duties and obligations require that where the legal representative comes into possession of confidential information, such as that contained in a client's medical records, that information must not be disclosed to any third party. That does not mean that the solicitor may not disclose that information to counsel who is instructed by him/her, who also is under the same level of professional obligation not to disclose same to others. The legal representative is, as has been submitted, standing in the shoes of the patient, and as such, the disclosure must not be confused with providing access to some other person who is a stranger, with no statutory duty to perform on behalf of the patient under the statutory scheme.

93. For these reasons, I have no difficulty in declaring, for the sake of clarity, that where a patient, who has been subject to the provisions of Part II of the Mental Health Act 2001, does not have the medical capacity to give written consent, the disclosure by the Hospital or treating Psychiatrist there, upon request, to the legal representative assigned to that patient pursuant to Section 17 of

the said Act of the medical records and/or medical file relevant to the reason(s) why the Admission Order or renewal Order under the said Act has been made, is necessary to protect the interests of the patient and is not a contravention of any duty of confidentiality owed by the Hospital or the Psychiatrist to that patient.

94. Such a declaration does not preclude the hospital or treating psychiatrist from reasonably forming a view in a given case that the decision to give such access should await a decision of the tribunal. It would not be appropriate to speculate as to what might reasonably justify such a view. One would presume that the reason would need to be exceptional in nature given the professional duties and obligations expected of the solicitor assigned by the Commission, such duties being as weighty in nature as those contained in the Guidelines of the medical Council for members of the medical profession.

95. I will make such a declaration in substitution for any of the specific declarations sought in the applicant's Statement of Grounds, and refuse the remaining reliefs.