

THE HIGH COURT

[2013 No. 1472 SS]

IN THE MATTER OF AN ENQUIRY PURSUANT TO ARTICLE 40.4 OF THE CONSTITUTION OF IRELAND

BETWEEN

M.K.

APPLICANT

AND

THE CLINICAL DIRECTOR, ST PATRICK'S UNIVERSITY HOSPITAL

AND

GOVERNORS OF ST. PATRICK'S HOSPITAL DUBLIN ALSO KNOWN AS ST. PATRICK'S UNIVERSITY HOSPITAL

RESPONDENTS

Judgment of Ms. Justice Laffoy delivered on 28th day of August, 2013.

The proceedings

1. On foot of an *ex parte* application made on behalf of the applicant on 16th August, 2013, it was ordered by the High Court (O'Malley J.) in accordance with Article 40.4.2 of the Constitution that the first named respondent do certify in writing the grounds for the detention of the applicant at the hearing of the application on 20th August, 2013. On 20th August, 2013 a certificate of detention of that date was furnished to the Court, wherein Professor James Lucey (Professor Lucey), the first named respondent, certified that the applicant is being lawfully detained at St. Patrick's University Hospital (St. Patrick's), an approved centre, under the Mental Health Act 2001 (the Act of 2001) on the authority of Professor Declan McLoughlin (Professor McLoughlin), the applicant's "Responsible Consultant Psychiatrist", on foot of a renewal order dated 9th August, 2013.

2. On 20th August, 2013 the enquiry as to whether the applicant was unlawfully detained in St. Patrick's, as alleged, was adjourned to 22nd August, 2013 for hearing.

3. The evidence before the Court at the hearing on 22nd August, 2013 consisted of the following affidavits:

(a) an affidavit of Mark Felton (Mr. Felton) a solicitor appointed by the Mental Health Commission (the Commission) to act as legal representative for the applicant before the Mental Health Tribunal (the Tribunal) referred to later, which was sworn on 16th August, 2013;

(b) a further affidavit of Mr. Felton sworn on 21st August, 2013, in which he exhibited copies of the medical records of St. James's Hospital (St. James's) in relation to the applicant for the period from 11th July, 2013 to 19th July, 2013; and

(c) a replying affidavit sworn by Professor Lucey on 22nd August, 2013, wherein there were exhibited copies of the medical records in relation to the applicant since his admission to St. Patrick's on 11th July, 2013.

At the hearing, counsel for St. Patrick's informed the Court that Professor Lucey was available to give oral evidence and to be cross-examined, if necessary. However, counsel for the applicant indicated that the attendance of Professor Lucey was not necessary. Accordingly, the enquiry has been conducted on the affidavit evidence, including the exhibits.

4. Before outlining the factual background to the enquiry, it is convenient to outline the provisions of the Act of 2001 which were in issue on the enquiry.

Relevant provisions of Act of 2001

5. The provisions of the Act of 2001 invoked on behalf of the applicant are primarily s. 23 and s. 24.

6. Section 23(1) provides as follows:

"Where a person (other than a child) who is being treated in an approved centre as a voluntary patient indicates at any time that he or she wishes to leave the approved centre, then, if a consultant psychiatrist, registered medical practitioner or registered nurse on the staff of the approved centre is of opinion that the person is suffering from a mental disorder, he or she may detain the person for a period not exceeding 24 hours or such shorter period as may be prescribed, beginning at the time aforesaid."

The expression "voluntary patient" is defined in s. 2 of the Act of 2001 as meaning –

". . . a person receiving care and treatment in an approved centre who is not the subject of an admission order or a renewal order."

Sub-sections (2), (3) and (4) of s. 23 relate to a child and are of no relevance to the issues on the enquiry.

7. The provisions which are of particular relevance are subs. (1), (2) and (3) of s. 24 which provide as follows:

"(1) Where a person (other than a child) is detained pursuant to section 23, the consultant psychiatrist responsible for the care and treatment of the person prior to his or her detention shall either discharge the person or arrange for him or

her to be examined by another consultant psychiatrist who is not a spouse or relative of the person.

(2) If, following such an examination, the second-mentioned consultant psychiatrist –

(a) is satisfied that the person is suffering from a mental disorder, he or she shall issue a certificate in writing in a form specified by the Commission stating that he or she is of opinion that because of such mental disorder the person should be detained in the approved centre, or

(b) is not so satisfied, he or she shall issue a certificate in writing in a form specified by the Commission stating that he or she is of opinion that the person should not be detained and the person shall thereupon be discharged.

(3) Where a certificate is issued under subsection (2)(a), the consultant psychiatrist responsible for the care and treatment of the person immediately before his or her detention under section 23 shall make an admission order in a form specified by the Commission for the reception, detention and treatment of the person in the approved centre."

Sub-section (4) of s. 24 applies the provisions of ss. 15 to 22 to a person detained under s. 24. Section 15 deals with the duration and renewal of admission orders. Sub-section (1) provides that an admission order shall remain in force for a period of twenty one days from the date of the making of the order and subs. (2) provides that that period may be extended by a renewal order for a further period not exceeding 3 months.

8. The expression "mental disorder" is defined in s. 3 of the Act of 2001. However, it was made clear by counsel for the applicant that there is no issue as to whether the applicant is suffering from a mental disorder within that definition, which I understand to mean that he is.

Factual background

9. The applicant is a man in his late 60s who is suffering from psychosis characterised by paranoia and delusions on a background of cognitive impairment and confusion against the background of certain physical impairment. The psychiatric symptoms are of relatively recent onset. Prior to 11th July, 2013, the applicant had been admitted to St. Patrick's on two occasions during the month of February 2013. Professor Lucey has averred that the applicant, when last examined on 21st August, 2013, was suffering from mental disorder and fulfils the criteria for detention under s. 3(1)(b) of the Act of 2001. That was not controverted by counsel for the applicant, who made it clear that it was accepted that the applicant has been clinically treated in good faith in St. Patrick's.

10. It is common case that the applicant was admitted to St. Patrick's as a voluntary patient on 11th July, 2013. He was examined by Professor McLoughlin, who considered that he was extremely ill and should receive a bed on the Special Care Unit.

11. Later on the same day, 11th July, 2013, the applicant repeatedly attempted to leave the ward and was uncooperative. At 17.50 a nurse invoked s. 23(1) of the Act of 2001 to detain the applicant for a period not exceeding twenty four hours. Part A of the relevant Clinical Practice Form was completed by the nurse at 17.50 on 11th July, 2013.

12. At approximately 23.50 on the night of 11th July, 2013, and before Professor McLoughlin had discharged or arranged for the applicant to be examined by another consultant psychiatrist in accordance with s. 24(1), the applicant suffered a significant seizure, which was considered a medical emergency and treated on an emergency basis. The conclusion was that the applicant required acute emergency medical treatment and assessment at an appropriate acute medical facility. In consequence, the applicant was taken by ambulance from St. Patrick's at 00.25 on 12th July, 2013 and was brought to St. James's, where he was treated until 19th July, 2013, when he was taken back to St. Patrick's. The kernel of the case made that the applicant is currently not lawfully detained in St. Patrick's is the contention that, because the mandatory requirements of s. 24, which were triggered by the invocation of s. 23, were not complied with, in that the applicant was neither discharged nor examined in accordance with subs. (2) of s. 24, the applicant's detention ceased to be lawful. A crucial element of that argument is the assertion that the applicant was "transferred" from St. Patrick's to St. James's, not "discharged" from St. Patrick's on 12th July, 2013. In response, Professor Lucey averred that that assertion is factually misconceived. He averred that, when a patient is removed from St. Patrick's to another hospital for emergency medical treatment, such as was the case with the applicant, he is discharged from the care of St. Patrick's. What happened in this case, he asserted, was that the applicant was discharged from St. Patrick's and admitted to St. James's, so that he was no longer under the care of St. Patrick's but was, in fact, under the care of St. James's.

13. As has been outlined earlier, Part A of the Clinical Practice Form was completed on 11th July, 2013 at 17.50. Part B was completed on the following day, 12th July, 2013, by Professor McLoughlin. Part B contained two questions. The first was whether the applicant was detained under an admission order pursuant to s. 24(3). The "No" box was ticked opposite that question. The second question was did the applicant stay in the approved centre as a voluntary patient. Neither the "Yes" nor the "No" box opposite that question was ticked. Mr. Felton, in his first affidavit, noted that a Form 13, the nature of which will be considered later, was not completed "for the purpose of section 23 of the Act of 2001" in relation to the invocation of that section on 11th July, 2013.

14. The applicant remained an in-patient in St. James's until 19th July, 2013. The Discharge Summary created on 19th July, 2013 at St. James's disclosed the investigations which had been carried out during his stay as an in-patient there. It was stated that he had no further seizures. He was agitated on several occasions during admission, "requiring 1:1 special". It was recorded that he was non-compliant with medications. It was further recorded that he had been transferred back to St. Patrick's that day for further psychiatric evaluation. Counsel for the applicant laid emphasis on the fact that there were several references in that document to the applicant being "transferred" back to St. Patrick's. For instance, opposite "Discharge Description", what was recorded was "Transfer to Other Hospital".

15. Professor Lucey's characterisation of what happened on 12th July, 2013 was that, when the applicant was "transferred" back to St. Patrick's, what, in fact, occurred was that he was discharged from St. James's and he was re-admitted to St. Patrick's. He was no longer under the care of St. James's; he was under the care of St. Patrick's. As regards the "transfer" and "discharge" dichotomy, Professor Lucey dismissed it on the basis that, when hospital staff use the word "transfer" in the context in which it was used, they implicitly mean that the service user has been discharged from their service. He also made the point that medical records contained numerous references to the applicant's "discharge" from St. Patrick's and his "admission" to St. James's in or around 11th July, 2013, and to his "discharge" from St. James's and his "re-admission" and "admission" to St. Patrick's in or around 19th July, 2013, pointing to certain examples.

16. Professor Lucey's evidence was that the applicant was re-admitted to the Special Care Unit of St. Patrick's on 19th July, 2013

and that it is clear that he consented to being re-admitted to St. Patrick's as a voluntary patient. He referred to the "Consent to Assessment and Treatment" Form which the applicant signed on 19th July, 2013. He acknowledged that the applicant's signature, following the first seven segments of that form, is difficult to decipher. The eighth segment, which was a consent to being photographed, was not signed by the applicant but there is a note: "Unable to sign (happy to consent)". On 19th July, 2013 the applicant was examined by Dr. S. Brady, Psychiatry Registrar, on "re-admission". Professor Lucey drew attention to Dr. Brady's notes, observing that Dr. Brady sought and obtained the applicant's consent to certain interventions/assessment and respected his refusal in regard to others.

17. It was submitted on behalf of the applicant that the applicant was detained as an involuntary patient on his return to St. Patrick's on 19th July, 2013, whereas Professor Lucey's position was that prior to 22nd July, 2013 he was never detained as a involuntary patient. He had merely been subject to a temporary and limited twenty four hour detention pursuant to the provisions of s. 23(1) on 11th July, 2013, but the position changed later on 22nd July, 2013. Professor Lucey averred that at approximately 09.22 on that day, the applicant demonstrated acute psychotic symptoms, paranoia and unpredictable behaviour. He expressed his belief that he was in prison and ran to the door on two occasions in an apparent attempt to leave St. Patrick's. A nurse invoked s. 23(1) at 09.22 on that day. The nurse completed Part A of a Clinical Practice Form in relation to s. 23(1). Professor McLoughlin completed Part B later following compliance with the s. 24 process outlined below, indicating that the applicant was detained under an admission order pursuant to s. 24(3) and that he did not stay in St. Patrick's as a voluntary patient.

18. The process on 22nd July, 2013 after s. 23(1) was invoked was that the applicant was examined by Professor McLoughlin, who assessed him as being in an acute confusional state and as demonstrating aggressive behaviour. Professor McLoughlin arranged for the applicant to be examined by another consultant psychiatrist, pursuant to s. 24(1) of the Act of 2001. The applicant was examined by Dr. Patrick Power, who expressed the view that the applicant was "acutely confused, disoriented and paranoid believing that people are trying to kill him on the ward with a gun because he is a mind reader". Professor McLoughlin then made an admission order pursuant to s. 24 at 19.05 on 22nd July, 2013.

19. The events of 22nd July, 2013 were recorded on a Form 13 for the Commission. Part 1 of the Form 13 recorded, *inter alia*, the invocation of s. 23(1) on that day. It also recorded Professor McLoughlin's examination of the applicant that afternoon and his opinion that the applicant was suffering from a mental disorder, giving his reasons for that opinion. Professor McLoughlin signed Part 1. Part 2 recorded the examination of the applicant by Dr. Power and his conclusion that the applicant was suffering from a mental disorder, setting out his reasons for that conclusion, which have already been recorded. Dr. Power signed Part 2. Finally, Part 3 was the admission order, which was made by Professor McLoughlin. Professor McLoughlin signed Part 3. The Form 13 was submitted to the Commission in accordance with the Act of 2001.

20. Having regard to the purpose of, and the requirements for completion of a Form 13, in my view, the fact that Form 13 was not completed when s. 23 was first invoked on 11th July, 2013 is wholly irrelevant. On that day, the process had not proceeded with in a manner which required the completion of a Form 13.

21. Following the making of the admission order and its notification to the Commission, in accordance with the Act of 2001, the Commission took the following steps:

- (a) it referred the matter to a Tribunal,
- (b) it assigned Mr. Felton to represent the applicant, and
- (c) it directed a member of the Commission's panel of consultant psychiatrists, Dr. Ann Leader, to examine the applicant.

Dr. Leader's report under s. 17(1)(c) of the Act of 2001, having examined the applicant on 30th July, 2013 and interviewed Professor McLoughlin on 1st August, 2013, was exhibited. Her opinion was that the applicant is suffering from a mental disorder.

22. The Tribunal reviewed the admission order of 22nd July, 2013 on 9th August, 2013 and in its decision (Form 8) it affirmed the admission order. In the statement of reasons contained in Form 8, the Tribunal recorded that Mr. Felton had made submissions to the Tribunal similar to the submissions made on this enquiry, namely, that following the invocation of s. 23 on 11th July, 2013, the provisions of s. 23 and s. 24 of the Act of 2001 were not complied with. Having heard the evidence of Professor McLoughlin, the Tribunal recorded that it accepted his evidence that the applicant had, in fact, been discharged from St. Patrick's and admitted to St. James's for treatment and made a finding that the applicant –

"was therefore 'discharged' and therefore one of the options available as set out in s. 24 of the Act as set out above was selected and the section complied with."

As regards the re-admission of the applicant to St. Patrick's on 19th July, 2013 as a voluntary patient, the Tribunal recorded that Mr. Felton had further submitted that, prior to such re-admission, the applicant should have had a capacity test in order to determine his capacity to consent to be admitted as a voluntary patient. Having quoted the definition of "voluntary patient" for the purposes of the Act of 2001, which has been quoted earlier, the Tribunal stated:

"[The applicant] on July 19, 2013 was not the subject of an Admission Order or a Renewal Order. By definition under the Act, he was therefore admitted as a voluntary patient. There is no statutory provision within the framework of the Act that requires a test of capacity to be carried out prior to such an admission. On the basis of the foregoing, the Tribunal accepts that [the applicant] was admitted as a voluntary patient to St. Patrick's Hospital on July 19, 2013. [The applicant's] status was changed from voluntary to involuntary on July 22, 2013 and it is the Admission Order made on July 22, 2013 that the Tribunal is tasked with reviewing."

On the review, having taken into account the medical and nursing reports, the report of Dr. Leader, the evidence of Professor McLoughlin, the evidence of the applicant and the submissions of Mr. Felton, the Tribunal decided to affirm the order. It found that the applicant –

"satisfies the provisions of s. 3(1)(b)(i) and (ii) of the [Act of 2001] and this decision is made in [the applicant's] best interests."

23. Following the affirmation by the Tribunal of the admission order of 22nd July, 2013, Professor McLoughlin made a renewal order pursuant to s. 15 of the Act of 2001 on 9th August, 2013. The Certificate and Renewal Order (Form 7) has been exhibited. It extended the period of detention and treatment for a further period ending on 9th October, 2013, that is to say, for a further two

months. In accordance with the Act of 2001, the renewal order is the subject of a review by a Mental Health Tribunal, which, at the time of the hearing, was scheduled for 27th August, 2013 and in connection with which the applicant had been examined by an independent consultant psychiatrist, Dr. Aileen Moran, pursuant to s. 17 of the Act of 2001.

Recent jurisprudence on the Act of 2001

24. Counsel for the parties in their legal submissions have helpfully addressed the recent jurisprudence of the Superior Courts on the application of the Act of 2001. Having considered the authorities in question and the submissions of counsel for the parties in relation thereto, it seems to me that the decision which gives most assistance in the resolution of the issue the subject of the enquiry, that is to say, the lawfulness or otherwise of the detention of the applicant in St. Patrick's at this time, is the decision of the Supreme Court in *E.H. v. Clinical Director of St. Vincent's Hospital* [2009] 3 I.R. 774.

25. To put the judgment of Kearns J., with whom the other Judges of the Supreme Court concurred, in the *E.H.* case in perspective, it is necessary to summarise the core facts on that appeal. While there was a previous history, I consider that the appropriate starting point is 7th August, 2008, when the applicant was involuntarily admitted to a psychiatric unit in St. Vincent's Hospital. That admission was subsequently affirmed by a Tribunal on 25th August, 2008. A renewal order was made on 10th September, 2008. The applicant was detained involuntarily in St. Vincent's Hospital from 10th September, 2008, until 10th December, 2008, when a Tribunal revoked the renewal order, because the Tribunal considered it lacked jurisdiction to further renew the order under which the applicant was being detained because a date had been left out of a renewal form. In any event, the applicant remained in St. Vincent's Hospital after 10th December, 2008. The evidence on affidavit of the Clinical Director was that what had happened had been explained to her and she had indicated that she was pleased that there was no longer an order detaining her in the unit, but that she verbally agreed to stay until her brother came to collect her at a future date. However, she did not sign the voluntary admission form and the hospital records indicated that she lacked the "capacity" to sign a voluntary form "because of her dementia and mental illness". On 22nd December, 2008 the applicant tried to leave the unit. As a result, the provisions of ss. 23 and 24 of the Act of 2001 were invoked. An admission order was made on 22nd December, 2008, which was reviewed by a Tribunal on 9th January, 2009, which affirmed that admission order. Various renewal orders were subsequently made and, as of the date of the hearing of the appeal to the Supreme Court, the applicant was detained in St. Vincent's Hospital on foot of a further renewal order made on 9th April, 2009.

26. Having outlined the various provisions of the Act of 2001, including, *inter alia*, the definition of "voluntary patient", s. 15, s. 23(1) and s. 24, Kearns J. observed as follows (at para. 31):

"In the light of the obligation of this court pursuant to s. 2(1) of the European Convention on Human Rights Act 2003, (the Act of 2003), insofar as is possible and subject to the rules of law relating to interpretation and application, to interpret the Act of 2001 in a manner compatible with the State's obligations under the Convention provisions, article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 is relevant."

Having quoted Article 5, he then went on to state (at para 32):

"As noted by the trial judge herein, the first aspect of the Act of 2001 which requires consideration is the definition of a voluntary patient. It was submitted in the High Court, and again before this court, that the word 'voluntary' must be given its ordinary meaning, a meaning which respects the provisions of the Constitution and a meaning which, having regard to the State's obligations pursuant to s. 2(1) of the Act of 2003, respects the necessity for a freely given consent to detention by a person who has capacity to give it. Counsel for the applicant submitted that where a lack of capacity by virtue of mental disorder had been clearly demonstrated, as in the instant case, it was not open to the respondents to detain such a person against her will where that person is receiving care and treatment in an approved centre but is not the subject of an admission order or renewal order. Nor could the provisions of ss. 23 and 24 of the Act of 2001 be invoked in respect of such a person as the person in question was not in reality a voluntary patient."

27. Having considered the judgment of the High Court (O Néill J.) and analysed a decision of the European Court of Human Rights relied on by counsel for the applicant, Kearns J., on the basis of the proper construction of the Act of 2001, rejected the submission made on behalf of the applicant. He stated (at para. 41):

"The terminology adopted in s. 2(1) of the Act of 2001 ascribes a very particular meaning to the term 'voluntary patient'. It does not describe such a person as one who freely and voluntarily gives consent to an admission order. Instead the express statutory language defines a 'voluntary patient' as a person receiving care and treatment in an approved centre who is not the subject of an admission order or a renewal order. This definition cannot be given an interpretation which is *contra legem*. The furthest counsel for the applicant can go is to argue that the definition must be construed and applied in accordance with the provisions of the Constitution and those provisions of the Convention designed to respect and uphold the individual's right to freedom and personal autonomy."

Kearns J. went on to state that any interpretation of the term "voluntary patient" in the Act of 2001 must be informed by the overall scheme and paternalistic intent of the legislation. He concluded that the decision of the European Court of Human Rights relied on by counsel for the applicant could not possibly bear on the applicant's detention subsequent to 22nd December, 2008 for the following reason articulated in para. 45:

"All of the statutory protections and procedures which counsel for the applicant contends were absent from the 10th to 22nd December, 2008, were fully restored from that time onwards and there was no want of any procedure whereby the rights of the applicant could be asserted."

28. As regards the evidence, Kearns J. went on to state that, in his view, the trial Judge had ample evidence upon which to find that the applicant was a voluntary patient within the meaning of the Act of 2001 between 10th and 22nd December, 2008, in circumstances where the Clinical Director, as treating specialist, had given evidence on affidavit to that effect and had not been cross-examined about her opinion at that time. Although Kearns J. stated that such finding was sufficient in itself to dispose of the matter, he stated (at para. 46), that, even if he had taken a different view of the status of the applicant as of 22nd December, 2008, he would have arrived at no different conclusion, and he continued:

"I agree with the conclusion arrived at by the trial judge that the admission order made on the 22nd December, 2008, pursuant to s. 24(3) of the Act of 2001 was in all respects valid. To the extent that the applicant was at any time denied the benefit of certain procedural protections, it is absurd and unreal to suggest that she was removed at any point from the protection of the Act of 2001. Indeed, as noted by O Néill J., the first respondent maintained a very high level of supervision of the applicant's condition and was at all times poised to reinstate her status as an involuntary patient when in her judgment it was appropriate to do so. Accordingly, the protection of the procedural requirements of the Act of

2001, even if suspended for a short period of time, was fully restored to the applicant as a result of the admission order made on the 22nd December, 2008."

29. Kearns J. concluded (at para. 47) that the appeal was moot. He did not believe that any "domino effect" applied. He stated (at para. 48) that the case was moot from 22nd December onwards. He referred to two previous decisions of the Supreme Court which he stated had "effectively put paid to any suggestion that a domino effect or theory of infection applies to cases of this nature". In concluding his judgment, Kearns J. stated (at para. 50):

"Mere technical defects, without more, in a patient's detention should not give rise to a rush to court, notably where any such defect can be, or has been, cured - as in the present case. Only in cases where there had been a gross abuse of power or default of fundamental requirements would a defect in an earlier period of detention justify release from a later one."

30. The earlier of the two previous decisions of the Supreme Court referred to by Kearns J. was the decision in *R. L. v. Clinical Director of St. Brendan's Hospital* (Supreme Court, 15th February, 2008). In that case, on the application under Article 40 of the Constitution, it had been certified that the applicant was detained in St. Brendan's Hospital pursuant to s. 15 of the Act of 2001 on foot of an admission order for her detention made on 22nd December, 2007, in respect of which a review by a Tribunal was then pending. The judgment of the Supreme Court was delivered (*ex tempore*) by Hardiman J. The issues which arose in relation to the legality of the applicant's detention arose on the application of s. 13 of the Act of 2001, which deals with the removal of a person, in respect of whom a recommendation for involuntary admission has been made, to the approved centre. Hardiman J. stated that the Supreme Court had to agree that there was, on the face of it, a breach of s. 13(2), which provided for removal of the person to the approved centre "by members of the staff of the approved centre", which had not occurred. However, Hardiman J. went on to state that the Court could simply see no reason whatever to believe that an irregularity or a direct breach of s. 13 would render what was on the face of it a lawful detention on foot of an admission order made under s. 14 invalid. Further, Hardiman J. stated that the Court could not see, and it did not believe, that there was any authority for the proposition that s. 14 could not work at all, simply could not be operated, if there was a defect in the execution of the removal under s. 13. In a passage, quoted by Kearns J. in the *E. H.* case, Hardiman J. stated:

"But this is not a case which calls for protection under Article 40 of the Constitution, fortunately. The scheme of Article 40 is that the court orders the person detaining . . . to certify. She did certify. She certified relying on the admission order and the obligation of the court . . . when these things are done is that we must order the release of such person from detention unless satisfied that he or she is being detained in accordance with law. The position in this case is that we are satisfied that she is being detained as of today, and was when the case was before the High Court, being detained in accordance with law and therefore we will decline to order the release."

Application of principles identified by Supreme Court to the facts

31. As I have stated, it is common case that on 11th July, 2013 the applicant was voluntarily admitted to St. Patrick's. Although s. 23 was invoked prior to the occurrence of the emergency shortly before midnight on that night, the applicant's voluntary patient status did not change either before he was transferred to, or while he was in St. James's, by reason of the fact that the requirements of s. 24, which could have resulted in a change to involuntary status, were not implemented because the emergency occurred. After 17.50 on 11th July, 2013, the applicant remained a voluntary patient within the meaning of that expression in the Act of 2001, because he was not the subject of an admission order or a renewal order at that time, and that remained the position until 22nd July, 2013. That conclusion is consistent with the interpretation of the expression of "voluntary patient" by Kearns J. in the *E. H.* case. It also explains why s. 22 of the Act of 2001, which empowers a clinical director to arrange for the transfer "of a patient detained in that centre for treatment to a hospital or other place and for his or her detention there for that purpose", was not invoked in this case, because it could not have been invoked.

32. It is true that once s. 23 is invoked, compliance with the requirements of s. 24 is mandatory. It is also true that those requirements were not complied with following the emergency because, even if the transfer of the applicant from St. Patrick's to St. James's could be regarded as his discharge in the ordinary sense, it was not a discharge within the meaning of s. 24(1). As a matter of fact, Professor McLoughlin, who was the consultant psychiatrist responsible for the applicant's care and treatment, was, understandably, not involved in his emergency transfer to St. James's after midnight on 11th July, 2013. In completing Part B of the relevant Clinical Practice Form, Part A of which had been completed by the nurse at 17.50 on 11th July, 2013, as had been recorded earlier, Professor McLoughlin, having answered the question whether the applicant had been detained under an admission order pursuant to s. 24(3) in the negative, did not answer the final question, namely, whether the applicant stayed in St. Patrick's as a voluntary patient. Professor Lucey averred that he had not spoken with Professor McLoughlin and could not comment on the reason why that question was not answered but asserted that, in any case, it is clear that the applicant did not stay in St. Patrick's as a voluntary patient as he was, in fact, discharged from St. Patrick's.

33. The "discharge" versus "transfer as equivalent to non-discharge" dichotomy which has arisen on the parties' submissions, in my view, does not really determine the legality or otherwise of the applicant's detention when the *ex parte* application was made on 16th August, 2013. What constitutes discharge in the context of a transfer of a patient from one hospital to another in the context of the ordinary operations of the hospitals is, in my view, immaterial. What this Court is concerned with is the application of the provisions of the Act of 2001 and, in particular, the application of ss. 23 and 24. Section 24 does not make provision for the situation which arose in the applicant's case, that an emergency arose within the twenty four hour period following the invocation of s. 23 which required that the applicant be moved by ambulance to St. James's and necessitated his admission, not using that word in any technical sense, to St. James's and his retention there for almost a week, which made it utterly impracticable and probably impossible for Professor McLoughlin, as the person charged with complying with the mandatory requirements of s. 24, to do so. There is no question but that the action taken in St. Patrick's was necessary and was in the best interests of the applicant. In terms of the application of the Act of 2001, in my view, the consequence of the impracticability and probable impossibility of complying with the requirements of s. 24 is that the applicant retained the status of a voluntary patient within the meaning of the Act.

34. The failure to comply with the requirements of s. 24 arose because of the intervention of the emergency. Such failure cannot be characterised as "a gross abuse of power", nor can it be characterised as "default of fundamental requirements" such as was identified by Kearns J. in the *E.H.* case as a defect in an earlier period of detention which would justify release from a later one. While the requirements of s. 24 are unquestionably fundamental and not mere technicalities, it would be grossly unfair to find that failure to comply with them in the aftermath of the emergency was due to default, which would imply some form of wrongdoing. On the evidence, I am satisfied that there was no default on the part of the personnel in St. Patrick's or any abuse of power in relation to the treatment of the applicant around midnight on 11th July, 2013. On the contrary, there was an emergency which was appropriately dealt with.

35. As regards the non-completion of the final question in Part B in the Clinical Practice Form, in my view, that is of no relevance to the issue the Court has to determine. The Clinical Practice Form, as is clear on its face, is merely a document which records the events which have happened which, when completed, is required to be filed in the patient's clinical file, so that it may be inspected at a later stage on behalf of the Commission, if that is necessary. I am satisfied that the non-completion of Part B had no bearing on the status of the applicant as a voluntary patient between 12th July, 2013 and 19th July, 2013 and did not in any way render what happened subsequently as unlawful detention.

36. Turning to the second limb of the case made on behalf of the applicant, namely, that he lacked the capacity to agree to be taken back into St. Patrick's to receive care and treatment on 19th July, 2013, so that he was unlawfully brought back into the hospital and unlawfully detained there, I am satisfied that that submission is at variance with what was decided by the Supreme Court in the *E.H.* case. If anything, there is even stronger evidence in this case than there was in the *E.H.* case upon which a finding can be made that the applicant was a voluntary patient within the meaning of the Act of 2001 from 19th July, 2013 until 22nd July, 2013, when s. 23 was once again invoked. Professor Lucey's evidence is corroborated by contemporaneous documentation, including a consent form signed by the applicant, even though his signature is difficult to decipher, and also Dr. Brady's medical record of what occurred during his examination of the applicant on 19th July, 2013.

37. Accordingly, the applicant remained a voluntary patient in St. Patrick's until 22nd July, 2013, when s. 23 was once again invoked and the process mandated by s. 24 was implemented. It was not suggested that that process was implemented in an improper manner, nor could it be. The process led to the making of the admission order of 22nd July, 2013. By virtue of the admission order, its affirmation by the Tribunal, and the renewal order made on 9th August, 2013, the applicant has been lawfully detained in St. Patrick's up to the hearing of the enquiry and that remains the position, unless, on the review, which I understand was to take place yesterday, the Tribunal which conducted that review has failed to affirm the renewal order.

Decision

38. On the assumption that that is not the case, on the authority of the decisions of the Supreme Court to which I have referred, and, in particular, the decision in the *E.H.* case, the Court must hold the applicant is being lawfully detained at St. Patrick's on foot of the renewal order dated 9th August, 2013 and will remain so until 9th October, 2013 and I so find.