

**THE HIGH COURT**

**2009 81 SS**

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

**BETWEEN:**

**C. C.**

**APPLICANT**

**AND**

**THE CLINICAL DIRECTOR OF ST. PATRICK'S HOSPITAL**

**RESPONDENT**

**AND**

**THE MENTAL HEALTH COMMISSION**

**NOTICE PARTY**

**Judgment of Mr. Justice Hedigan, delivered on the 6th day of February, 2009**

1. The applicant in these proceedings is a married woman and the mother of several children. She has been a psychiatric patient at St. Patrick's Hospital in Dublin since December 2004.
2. The respondent is the senior official in St. Patrick's Hospital and is the official responsible for the applicant's detention for the purposes of the present proceedings.
3. The notice party is an independent statutory body established under the Mental Health Act 2001 ('the 2001 Act'). Its principal functions are the promotion and maintenance of high standards in the delivery of mental health services, as well as the protection of the interests of persons detained in approved centres under the 2001 Act. The notice party is also responsible for the administration of Mental Health Tribunals, which are independent bodies possessing statutory powers to revoke or affirm decisions to detain persons pursuant to the 2001 Act.
4. The applicant seeks to impugn the lawfulness of her detention, under the procedure laid down in Article 40.4.2º of the Constitution. She does so on the basis that:

- (1) The respondent has continued to detain her in spite of a decision of the Mental Health Tribunal to revoke her involuntary admission order, something which it is not entitled to do, at least in the absence of a material change in her condition; and
- (2) The respondent's decision to continuously detain her was made on foot of an invalid procedure, whereby the doctor who certified her continued detention pursuant to section 24 of the 2001 Act had previous clinical involvement with her and as such did not possess the requisite degree of independence.

**I. Factual and Procedural Background**

5. The applicant was born in 1939 and is now 69 years of age. In 1984, she was diagnosed with Bi-Polar Affective Disorder and since then she has spent extensive periods in psychiatric care in both St. Patrick's Hospital and St. John of God Hospital. She was variously admitted to St. Patrick's in 1984, 1985, 1994, 1999 and most recently in 2004.
6. Dr. Martina Corry has been the applicant's treating psychiatrist at the hospital since 1989. At present, the applicant has been prescribed a significant medication regime to deal with her condition, including Lithium and further medication for her diabetic condition.
7. On the evening of the 8th of December 2008, the applicant's husband made an application to the family's general practitioner, Dr. Patrick Feeney, under section 9 of the 2001 Act. Section 9 specifies the persons who are entitled to apply for the involuntary admission of an individual to an approved treatment centre. The applicant's husband made the application on the basis that the applicant had stopped taking her prescribed medication, apparently citing the fact that the Holy Spirit and Our Lady had told her to do so. The applicant's husband reported that this had resulted in episodes of elation and mania.
8. Dr. Feeney assessed the applicant and made a recommendation that she be admitted to an approved treatment centre. In the early hours of the 9th of December 2008, the applicant was admitted to the care of St. Patrick's Hospital, on foot of this recommendation. She was accompanied to the hospital by one or more representatives of An Garda Síochána.
9. The applicant's admission was based on an assessment by Dr. Séamus O'Ceallaigh, a consultant psychiatrist working in the Special Care Unit of St. Patrick's Hospital. He formed the view that an admission order should be made pursuant to section 14 of the 2001 Act. In particular he noted that the applicant's mania and psychotic tendencies constituted a "mental disorder" for the purposes of section 3(1)(b) of the 2001 Act. Dr. O'Ceallaigh was of the opinion that, owing to

the severity of the applicant's illness, and because her judgment was so impaired, that a failure to admit her to hospital would be likely to lead to a deterioration of her condition and would prevent the administration of appropriate treatment.

10. The admission order of the 9th of December 2008 was affirmed at a sitting of the Mental Health Tribunal on the 19th of December 2008. During the course of the hearing, the applicant's legal representative sought to challenge the original admission order on the basis that the applicant had been accompanied to St. Patrick's Hospital by the Gardaí. The Tribunal ruled that it did not have jurisdiction to deal with such a challenge, and could only revoke or affirm the admission order based on its assessment of the applicant's condition.

11. Later on the 19th of December 2008, Dr. O'Ceallaigh made a renewal order pursuant to section 15 of the 2001 Act. The effect of this order was to continue the applicant's detention in the hospital for a further period of one month, to expire on the 16th of January 2009.

12. On the 29th of December 2008, the applicant was granted a conditional order of *habeas corpus* by McMahon J. in the High Court and the matter was made returnable for the following day. There followed a two-day hearing, during which the applicant argued that her detention by the Gardaí prior to her admission to St. Patrick's Hospital was unlawful, and therefore her subsequent admittance by the hospital was irreparably tainted by that illegality. The applicant thus argued that the admission order of the 9th of December 2008 was void and of no legal effect, although she did accept that the hospital authorities had not caused the involvement of the Gardaí and had acted bona fide at all times. This allegation of illegality formed the sole basis for the applicant's challenge; no issue was taken as to her diagnosis by the staff at St. Patrick's Hospital, nor was any medical evidence proffered on her behalf.

13. Also on the 29th of December 2008, and before judgment was delivered in the *habeas corpus* proceedings, the applicant was assessed by an independent consultant psychiatrist, Dr. Patricia Walsh, at the behest of the Mental Health Tribunal. Dr. Walsh subsequently produced a report dated the 2nd of January 2009 in which she found that the applicant was suffering from delusions and had no insight into her mental illness. She opined that the applicant was at risk of deterioration and self-neglect and needed to be stabilised using medication.

14. The renewal order of the 19th of December 2008 was independently reviewed by the Mental Health Tribunal on the 5th of January 2009. Dr. Corry and Dr. O'Ceallaigh gave evidence to the effect that the applicant continued to suffer a mental disorder within the meaning of section 3(1)(b) of the 2001 Act. Dr. Corry, in particular, noted that although there had been some overall improvement in the applicant's condition, she had not fully recovered to her base line at this time. Dr. Corry noted that owing to the applicant's reticence to accept her diagnosis, there was cause to fear that she would not adhere to the necessary medication regime were she not treated in hospital.

15. During the course of the Mental Health Tribunal hearing on the 5th of January 2009, the chairman of the Tribunal asked the applicant and her legal representative whether she would be willing to remain in hospital as a voluntary patient for a period of two weeks. She indicated that she would be willing to do so. The Tribunal went on to hold, in spite of the evidence of Dr. Corry, Dr. O'Ceallaigh and Dr. Walsh, that the applicant was no longer suffering from a mental disorder within the meaning of section 3(1)(b) of the 2001 Act and revoked the renewal order of the 19th of December 2008. The Tribunal ordered that the applicant be discharged as an involuntary patient with immediate effect.

16. Following the revocation order of the Mental Health Tribunal, the applicant became a voluntary patient at St. Patrick's Hospital and continued to accept treatment there. The applicant seemed generally content in this arrangement although she did complain at times that she was unable to leave the ward to visit the hairdresser and that she was unable to wear her own clothes. She also expressed discontent at the level of noise in her room as well as other similar issues. She indicated on occasion that she wished to leave the hospital but was persuaded to remain on a voluntary basis.

17. On the 13th of January 2009, however, the applicant's solicitor wrote to the respondent indicating that the applicant intended to leave the hospital the following day at noon. On that date, the applicant packed her bags and gave clear indication of her intention to depart on the basis that she was perfectly well. She denied that she had ever agreed to remain as a voluntary patient and refused to provide any details as to where she intended to go on departure. She also refused to allow the hospital staff to contact anyone on her behalf.

18. On learning this, Dr. Corry considered the applicant's position and became concerned that she continued to suffer from a mental disorder within the meaning of section 3(1)(b) of the 2001 Act. Dr. Corry was aware of the complexities of the particular case but felt that to allow the patient to leave in such uncertain circumstances would not be in her best interests. Dr. Corry decided, therefore, to order that the applicant be detained pursuant to section 23(1) of the 2001 Act for a period of 24 hours for the purposes of formal assessment.

19. On the 15th of January 2009, the applicant was assessed by Dr. O'Ceallaigh for the purposes of section 24 of 2001 Act. He noted that she did not accept that she was suffering from a mental illness and that she was of the opinion that she was able to heal others and had cured several other patients during her time in the hospital. Dr. O'Ceallaigh formed the view that the applicant remained manic with grossly impaired judgment. He further opined that while she was likely to deteriorate if she were discharged from hospital, especially in light of her unwillingness to adhere to her regime of medicaments, she had been responding well to treatment and might be ready for discharge in a number of weeks.

20. Dr. Corry then re-examined the applicant and certified her for involuntary detention and treatment pursuant to section 24(3) of the 2001 Act. In the certification form, she noted that the applicant's condition had deteriorated in the previous week. The applicant was transferred to the Special Care Unit at St. Patrick's Hospital where she remains under the care of Dr. O'Ceallaigh. In light of this order, the applicant's solicitor wrote to the respondent seeking to ascertain the basis of the applicant's detention. The respondent replied on the 16th of January 2009, confirming that Dr. Corry had made an admission order pursuant to section 24(3) of the 2001 Act. On the 16th of January 2009, the applicant was granted a conditional order of *habeas corpus* by McGovern J. and the matter was made returnable before this Court.

21. McMahon J. ultimately delivered judgment in respect of the first *habeas corpus* application on the 20th of January 2009, holding that the applicant had in fact been validly detained. The High Court noted that the hospital and the responsible consultant psychiatrist had adhered to the procedures laid down in the 2001 Act and did not have any awareness of the events prior to her arrival, in particular the involvement of the Gardaí. As such, McMahon J. held that the hospital authorities were not obliged to conduct an enquiry into the circumstances in which the applicant arrived. Had they embarked upon such an analysis, instead of engaging in a consideration of the applicant's medical circumstances, he

was of the opinion that they would have failed in their statutory duties which they owed to the applicant.

## **II. The Legislative Framework**

22. The 2001 Act came into effect on the 1st of November 2006. The long title of the legislation states that it is:

"An Act to provide for the involuntary admission to approved centres of persons suffering from mental disorders, to provide for the independent review of the involuntary admission of such persons and, for those purposes, to provide for the establishment of a Mental Health Commission and the appointment of Mental Health Commission Tribunals and an Inspector of Mental Health Services, to repeal in part the Mental Treatment Act, 1945, and to provide for related matters."

23. In *T.O.D. v. Kennedy* [2007] 3 IR 689, Charleton J. described sections 3 and 4 of the 2001 Act as its two "fundamental sections". They provide *inter alia* as follows:

"3. (1) In this Act "mental disorder" means mental illness, severe dementia or significant intellectual disability where:-

(a) because of the illness, disability or dementia, there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons, or

(b) (i) because of the severity of the illness, disability or dementia, the judgment of the person concerned is so impaired that failure to admit the person to an approved centre would be likely to lead to a serious deterioration in his or her condition or would prevent the administration of appropriate treatment that could be given only by such admission, and

(ii) the reception, detention and treatment of the person concerned in an approved centre would be likely to benefit or alleviate the condition of that person to a material extent...

4. (1) 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.

(2) Where it is proposed to make a recommendation or an admission order in respect of a person, or to administer treatment to a person, under this Act, the person shall, so far as is reasonably practicable, be notified of the proposal and be entitled to make representations in relation to it and before deciding the matter due consideration shall be given to any representations duly made under this subsection.

(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."

24. Section 17 of the 2001 Act prescribes the procedure for referral of an admission order by the Mental Health Tribunal while section 18 sets out the findings which the Tribunal is entitled to reach upon such referral. Under section 19, a patient may appeal a decision of the Tribunal to affirm the order made in respect of him. Section 18 provides *inter alia* as follows:

"(1) Where an admission order or a renewal order has been referred to a tribunal under section 17, the tribunal shall review the detention of the patient concerned and shall either:-

(a) if satisfied that the patient is suffering from a mental disorder, and

(i) that the provisions of sections 9, 10, 12, 14, 15 and 16, where applicable, have been complied with, or

(ii) if there has been a failure to comply with any such provision, that the failure does not affect the substance of the order and does not cause an injustice,

affirm the order, or

(b) if not so satisfied, revoke the order and direct that the patient be discharged from the approved centre concerned..."

25. Section 23 of the 2001 Act creates a power to prevent a voluntary patient from leaving an approved centre in certain circumstances. It provides *inter alia* as follows:

"(1) 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..."

26. Section 24 of the 2001 Act operates in tandem with section 23. It allows for the further detention of voluntary patients in specific circumstances and provides *inter alia* 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...

(6) References in this section to the consultant psychiatrist responsible for the care and treatment of the person include references to a consultant psychiatrist acting on behalf of the first-mentioned consultant psychiatrist."

27. Section 28 of the 2001 Act imposes significant obligations on the consultant psychiatrist responsible for the care and treatment of a patient in the context of admission, renewal and discharge orders. It provides *inter alia* as follows:

"(1) Where the consultant psychiatrist responsible for the care and treatment of a patient becomes of opinion that the patient is no longer suffering from a mental disorder, he or she shall by order in a form specified by the Commission revoke the relevant admission order or renewal order, as the case may be, and discharge the patient.

(2) In deciding whether and when to discharge a patient under this section, the consultant psychiatrist responsible for his or her care and treatment shall have regard to the need to ensure:-

(a) that the patient is not inappropriately discharged, and

(b) that the patient is detained pursuant to an admission order or a renewal order only for so long as is reasonably necessary for his or her proper care and treatment.

(3) Where a consultant psychiatrist discharges a patient under this section, he or she shall give to the patient concerned and his or her legal representative a notice in a form specified by the Commission to the effect that he or she:-

(a) is being discharged pursuant to this section,

(b) is entitled to have his or her detention reviewed by a tribunal in accordance with the provisions of section 18 or, where such review has commenced, completed in accordance with that section if he or she so indicates by notice in writing addressed to the Commission within 14 days of the date of his or her discharge..."

### **III. The Submissions of the Parties**

#### **(a) The Significance of the Mental Health Tribunal Decision**

28. The applicant submits that in light of the fact that the Mental Health Tribunal found on the 5th of January 2009 that the applicant was not suffering from a mental disorder within the meaning of section 3(1)(b) of the 2001 Act, the order of the 15th of January 2009 detaining her on an involuntary basis paid no regard to the findings of the Tribunal and as such was unlawful.

29. In this regard, the applicant submits that the legislature clearly intended, in creating the framework of the 2001 Act, that the Mental Health Tribunal should have power to agree or disagree with the assessment of a patient's treating consultant psychiatrist and/or the opinion of the independent consultant psychiatrist appointed pursuant to section 17 of the 2001 Act. She notes that under section 18(1)(b) of the 2001 Act, if the Mental Health Tribunal is not satisfied that a patient is suffering from a mental disorder, it *must* revoke the order and direct that the patient be immediately discharged.

30. The decision of the Mental Health Tribunal to revoke or affirm the admission or renewal order is, in the applicant's submission, absolutely binding on all parties. She argues that no other body, judicial or otherwise, has the competence to change or disregard such a decision. She contends that the statutory scheme established by the 2001 Act mandates that there be a system of independent review by the Mental Health Tribunal, to which deference ought to be shown by all other relevant bodies. The applicant submits that the remainder of the 2001 Act must be interpreted in light of this fundamental requirement.

31. The applicant therefore argues that neither the respondent, nor the applicant's treating psychiatrist was entitled to simply disregard the decision of the Mental Health Tribunal of the 5th of January 2009. She submits that they were obliged to release her when she decided that she wished to leave, irrespective of their own clinical opinions as to where her best interests lay and regardless of the fact that she had remained for some time in St. Patrick's Hospital as a voluntary patient. The decision to remain, she contends, cannot have any bearing on the effect or validity of the Tribunal's ultimate decision.

32. The applicant submits, in the alternative, that if it is possible to utilise the section 23 procedure in circumstances where a patient has remained voluntarily in an approved centre after their detention order has been revoked, then this can only be done where the use of the procedure would not have the effect of 'setting at naught' the decision of the Mental Health Tribunal. For a section 23 order to be justified, such a short period of time after the Tribunal had ordered the applicant's release, she submits that there would have to be a significant deterioration in her condition such that the Tribunal would now be compelled to reach a different conclusion. Were it otherwise, the applicant submits that the powers of independent review exercised by the Tribunal would be completely vitiated. In the circumstances of the present case, she submits that there was no evidence that her condition had deteriorated to such a material extent and, as such, the making of the section 23 order was invalid.

33. The respondent denies any suggestion that Dr. Corry was precluded from making the section 24 order, based on the enduring validity of the Mental Health Tribunal decision or otherwise. He contends that the Court should consider the actions of the staff at St. Patrick's hospital in the light of the overarching duty not to inappropriately discharge a patient which is placed on the respondent by section 28 of the 2001 Act. In this respect, he relies on the decision of this Court in *F.W. v. Department of Psychiatry St. James' Hospital* (High Court, unreported, 18th August 2008) as well as the comments of McMahon J. in the applicant's first *habeas corpus* application.

34. The respondent strongly contests the argument that a decision of the Mental Health Tribunal to revoke a patient's admission order in any way prevents, for a certain period, a consultant psychiatrist from exercising the powers conferred upon him by the 2001 Act in the best interests of the patient. The respondent submits that no such ring-fencing mechanism was included in the legislation by the Oireachtas, nor should one be included by the Court. The respondent further submits that even could such a prohibition be conceivably read into the terms of the 2001 Act, it would be utterly impracticable owing to the absence of any indication as to how long it should last.

35. The respondent also rejects as impracticable, the argument of the respondent that an admission order could only be made subsequent to a Mental Health Tribunal decision where a significant change in circumstances had arisen. The respondent submits that to develop such a test would be to, in effect, require a consultant psychiatrist to put himself in the position of the Tribunal and assess whether that body would be satisfied that a material change had occurred. In the respondent's submission, this amounts to a quasi-judicial function which a clinician should not be expected to perform, nor is it commensurate with his or her true responsibilities under the 2001 Act.

36. The Court must remain mindful, the respondent submits, of the fact that the procedures under section 23 and 24 of the 2001 Act are designed to operate in situations of emergency. He submits that in framing those particular provisions without the kind of restraints which the applicant seeks to imply, the Oireachtas clearly recognised the need to allow clinicians to make sudden judgment calls which in their opinion are in the best interests of the patient.

#### **(b) Section 24 Detention**

37. The applicant submits that Dr. O'Ceallaigh was not a competent consultant psychiatrist for the purpose of examining and certifying her pursuant to section 24 of the 2001 Act. In this regard, she points to the fact that Dr. O'Ceallaigh is a consultant psychiatrist on the staff of the approved centre in question. By virtue of the provisions of section 23 of the 2001 Act, such an individual is one of the classes of persons capable of deciding to detain a patient for 24 hours in the approved centre. Section 24 of the 2001 Act, however, requires that the patient must be examined by "another consultant psychiatrist" before the consultant psychiatrist responsible for the care and treatment of the patient ('the responsible consultant psychiatrist') in question can make an admission order detaining the patient against their will. The applicant submits that if the term "another consultant psychiatrist" in section 24 were interpreted to include consultant psychiatrists on the staff of the approved centre in question then the same consultant would be permitted to initiate the section 23 procedure while also providing the second opinion for the purposes of section 24. The applicant argues that such an arrangement would be incompatible with the spirit of the legislation and would defeat the objective of obtaining an independent second opinion.

38. Further and in the alternative, the applicant submits that Dr. O'Ceallaigh cannot appropriately be classed as "another consultant psychiatrist" because he is also one of the responsible consultant psychiatrists. She contends that section 24 draws a distinction between a responsible consultant psychiatrist and "another consultant psychiatrist" because section 24(6) expressly provides that, for the purposes of the section, more than one doctor can act as the responsible consultant psychiatrist. In this regard, she argues that the assessment of whether a doctor is performing the role of responsible consultant psychiatrist is a matter of fact and places reliance on the decisions of this court in *J.B. v. Director of the Central Mental Hospital* [2007] 4 IR 778 and *W.Q. v. Mental Health Commission* [2007] 3 IR 755.

39. The respondent submits that there is no statutory requirement that the second consultant psychiatrist should in some way be independent from the medical history of the patient in question. He submits that the only restriction imposed by section 24(1) of the 2001 Act is that the second consultant psychiatrist should not be a spouse or relative of the patient in question. Had the Oireachtas wished to impose a criterion of independence, it was, in his submission, open to them to do so. In the absence of any express mention of such a requirement, however, he contends that it ought not to be read into the legislation by this Court.

40. The respondent submits that there are good reasons justifying the decision of the Oireachtas not to overly limit the category of persons capable of acting as the second consultant psychiatrist. Firstly, he submits that a consultant psychiatrist who has familiarity with a particular patient's case, such as Dr. O'Ceallaigh in the present case, is much more likely to be in a position to make a full and informed decision in their best interests. Secondly, he submits that too stringent a requirement of independence would generally be impracticable in emergency situations, in particular in cases arising in the more remote approved treatment centres which are often many miles apart from any other such centre.

41. The respondent contends that the arguments made by the applicant in respect of this issue effectively seek to introduce a test of legal objective bias which is unnecessary, unworkable and detached from the pertinent considerations which arise under sections 23 and 24 of the 2001 Act.

### **IV. The Court's Assessment**

#### **(a) The Significance of the Mental Health Tribunal Decision**

42. The primary function of the Mental Health Act 2001 is to create a discreet regime for the detention of mentally ill persons on an involuntary basis. As outlined above, the best interests of the particular patient are at the heart of all actions which are taken thereunder. The obligations of the responsible consultant psychiatrist are also infused, by virtue of section 28, with a need to ensure that a patient is not inappropriately discharged. These considerations must be kept at the forefront of the Court's mind when considering the validity of any measures taken by staff at approved treatment centres such as St. Patrick's Hospital.

43. In light of these principles which are clearly contained within the terms of the 2001 Act, I cannot accept, in the absence of an express legislative provision, that the Oireachtas intended that a decision of the Mental Health Tribunal should in some way be immune from contradiction for an indeterminate period after its issue. The Tribunal does, of course, exercise a highly important statutory function. However, that does not mean that its decisions should be permitted to inhibit a responsible consultant psychiatrist from acting in a patient's best interests where appropriate. To hold that a

finding of the Tribunal could in some way fetter future medical assessment and/or clinical discretion would be to impede the important function performed by sections 23 and 24 of the 2001 Act.

44. The finely nuanced and potentially changeable differences that may exist between those patients who meet the criteria for involuntary detention and those who do not, require that the decision of a Mental Health Tribunal should not be regarded as creating a bar for some indeterminate period to *bona fide* clinical judgments by treating consultants. The nature of mental illness demands a certain flexibility, albeit one requiring careful oversight by the courts.

45. In this case, it seems to me on the evidence that the facts are rather unusual. I can readily accept that there is a strong possibility that the applicant could well have been without the criteria required for involuntary detention on the 5th of January when the Mental Health Tribunal decided thus and within when Dr. Corry and subsequently Dr. O'Ceallaigh made their assessment on the 14th and 15th of January respectively. In the circumstances, I would consider it highly desirable that another Mental Health Tribunal should sit in relation to a person such as the applicant as soon as possible to assuage concerns which naturally arise when apparently conflicting assessments are made.

#### **(b) Section 24 Detention**

46. In respect of the applicant's argument that section 24 of the 2001 Act requires that the second consultant psychiatrist should be independent from the particular patient's medical history, I am equally unconvinced. The terms of the Act are once again quite clear as to what is required, I do not think that the phrase "another consultant psychiatrist who is not a spouse or relative of the applicant" can conceivably be read to involve the highly limiting criterion being suggested by the applicant in the present case.

47. Further on this point, I am inclined to agree with the submissions made by the respondent to the effect that such a requirement would be extremely impractical, and even dangerous, in many of the more urgent cases which engage the procedure created by sections 23 and 24. Moreover, to oblige the responsible consultant psychiatrist to screen potential assessors on the basis of allegations of objective bias would be an unnecessarily onerous burden and one which might well be inimical to the best interests of the patient in question.

#### **V. Conclusion**

48. I am satisfied, in the present case, that the consultant psychiatrists and other staff at St. Patrick's Hospital acted *bona fide* and in the applicant's best interests at all times. This is a fact which has not been disputed by the applicant and one which was also noted by McMahon J. in his judgment in the first *habeas corpus* proceedings. In the circumstances of this case, I do not find that there was anything untoward in invoking the statutory powers in question so soon after the decision of the Mental Health Tribunal, nor do I conclude that there was any impropriety in Dr. O'Ceallaigh acting as the second consultant psychiatrist.

49. I am therefore of the opinion that Dr. Corry was entitled to exercise her clinical discretion to certify the applicant pursuant to section 23 of the 2001 Act on the 14th of January 2009 and section 24 of the same Act the following day. In light of the foregoing, I am satisfied that the applicant is being detained by the respondent in accordance with law and will accordingly refuse this application.