

**THE HIGH COURT****Record Number: 2007 No. 663 SS****IN THE MATTER OF AN APPLICATION FOR AN INQUIRY PURSUANT TO ARTICLE 40.4. OF THE CONSTITUTION OF IRELAND, 1937****BETWEEN****M.D.****APPLICANT****AND  
CLINICAL DIRECTOR OF SAINT BRENDAN'S  
HOSPITAL, AND DR MIRIAM GANNON****RESPONDENTS****AND  
THE MENTAL HEALTH COMMISSION  
THE MENTAL HEALTH TRIBUNAL****NOTICE PARTIES****Judgment of Mr Justice Michael Peart delivered on the 24th day of May 2007**

1. The applicant seeks the Court's inquiry into the lawfulness of his detention at the respondent hospital. His solicitor, Keith Walsh has sworn the grounding affidavit on the 20th May 2007, wherein he avers that he was assigned under the provisions of the Mental Health Act, 2001 ("the Act") to act as the applicant's legal representative at a Mental Health Tribunal which sat on the 15th May 2007.

2. The history of events relevant to this application is that on the 25th April 2007 a sister of the applicant made an application under s. 9 of the Act for a recommendation that the applicant be admitted as an involuntary patient. That recommendation was duly made under s. 10 of the Act on the same day.

3. An admission order was made to that effect under the provisions of s. 14 of the Act on the 26th April 2007 at 12.50 pm following an examination at 12.15pm by a consultant psychiatrist who concluded that the applicant was suffering from a mental disorder such that "failure to admit him would be likely to lead to a serious deterioration in his ... condition or would prevent the administration of appropriate treatment that could be given only by such admission."

4. The notice referred to in s. 16 of the Act was handed to the applicant as required, and a copy thereof was sent to the Mental Health Commission within twenty four hours as also required.

5. On the 1st May 2007, Mr Walsh was written to by the Commission whereby he was informed that he had been appointed as the applicant's legal representative, that an independent medical examination had been arranged with a consultant psychiatrist, and that the report on that examination would be made available to him.

6. By letter dated the 14th May 2007 Mr Walsh was informed by the Commission that a Mental Health Tribunal would sit on the 15th May 2007 at 2.30pm "to conduct a review".

7. That review (of the admission order) is one in respect of which, as required by s. 18(2) of the Act, a decision must be made within twenty one days of the making of the admission order. Otherwise, as provided by s. 15(1) of the Act, but subject to what is provided for in s. 15(2) and s. 18(4) of the Act, the admission order "shall then expire". Section 15(2) provides for an extension of the period of the admission order by the making of a 'renewal order' for a "further period not exceeding three months", and s. 18(4) makes provision for an extension of the twenty one day period for review in certain circumstances not relevant to the present application.

8. In the present case, subject to the issue arising in the present application as to the making of the renewal order which I shall come to, the admission order made on the 26th April 2007 would expire twenty one days later unless a review decision was made within that time which affirmed it or revoked as provided for by s. 18 of the Act.

9. So, the situation was that an admission order was made under s. 14 on the 26th April 2007, and a review of that admission order was scheduled to take place on the 15th May 2007, within the 21 day period required.

10. However, on the 10th May 2007, and therefore five days before that review of the admission order had taken place, a 'renewal order' was made by the responsible consultant psychiatrist. She examined the applicant at 11.25am on the 10th May 2007 and at 11.27 am certified that he continued to suffer from a mental disorder, and gave her opinion that he should continue to be detained "for a period not exceeding 3 months". It is the making of that renewal order ahead of the review of the admission order which has given rise to the present application.

11. At any rate, on the 10th May 2007 the renewal order for three months was made under s. 15(2) of the Act. The applicant was given a notice purporting to be one required by s. 16 (2) of the Act. In fact, as it happens and as a result of what I am informed is simply an error or oversight, the Notice given to the applicant in this regard fails to tick either of the boxes provided on the Patient Notification Form to indicate whether the patient is being detained on foot of an admission order or a renewal order. But it has to be assumed that since this form is dated the same date as the renewal order was made, it was intended to be a notification of the making of that order rather than the admission order.

12. In addition, the Commission was sent a copy of the renewal order as required so that it could refer the matter to a Mental Health Tribunal and do the other things required of it under s. 17 of the Act, and, as with the review of an admission order, the decision on the review of the renewal order must be given not later than twenty one days after it is made. In this case that decision would have to be made on or before the 31st May 2007.

13. On the 15th May 2007, and therefore after the making of that renewal order on the 10th May 2007, the Mental Health Tribunal which was convened in order to review the admission order made on the 26th April 2007 duly sat, and having considered the report of the consultant psychiatrist presented to it decided to affirm the admission order made on the 26th April 2007.

14. On this chronology, what presently remains outstanding is the decision on the review of the renewal order dated 10th May 2007, which must be completed before the 31st May 2007. So far as the Court is aware that Tribunal has not yet been convened to sit.

15. Feichín McDonagh SC for the applicant submits that an interpretation of s. 15 of the Act which permitted of a renewal of the admission order to take place before the review of that same admission order has been concluded would be absurd, and would fail to

reflect the plain intention of the Oireachtas, and that accordingly the section should be interpreted in a way which reflects that plain intention as required by s. 5 of the Interpretation Act, 2005 which provides:

"5.—(1) In construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction)—

(a) that is obscure or ambiguous, or

(b) that on a literal interpretation would be absurd or would fail to reflect the plain intention of—

(i) in the case of an Act to which paragraph (a) of the definition of "Act" in *section 2 (1)* relates, the Oireachtas, or

(ii) in the case of an Act to which paragraph (b) of that definition relates, the parliament concerned,

the provision shall be given a construction that reflects the plain intention of the Oireachtas or parliament concerned, as the case may be, where that intention can be ascertained from the Act as a whole."

16. The interpretation contended for by Mr McDonagh is that the section must be read as meaning that an order renewing an admission order may not be made until at least the admission order itself has been reviewed and affirmed under s. 18 of the Act. He submits that unless this is so an absurd situation could exist where an admission order is made, and was renewed before the review took place, only to find that upon the review of the admission order it was revoked, leaving in place the renewal order under which the patient could continue to be detained. He submits that this could never have been and is not the plain intention of the Oireachtas when enacting the legislation.

17. It is submitted also that the making of the renewal order on the 10th May 2007 had deprived the Tribunal of jurisdiction to review the admission order, on the basis that the renewal order must take effect from the date on which it is made, and replaces the admission order. Alternatively it was argued that if the renewal order took effect upon the expiration of the admission order, the applicant was deprived of his opportunity to have the admission order revoked upon the review of it. In such circumstances it is submitted that the only sensible interpretation of the legislation is that the renewal order cannot be made until the admission order has received affirmation following its review within 21 days of its making. Accordingly, the renewal order dated 10th May 2007 is an order which was not properly made, and since the applicant is detained on foot of it, his detention is unlawful, and he must be released.

18. Reliance is also placed upon the fact that the notice given to the applicant on the 10th May 2007 fails to inform him whether he is being held on foot of the admission order or on foot of the renewal order, and that accordingly he has not received proper notification. Mr McDonagh submits that the giving of this notice is not just some empty formula or ritual to be performed, but must be properly done in a way which provides the information to which the applicant is entitled under the Act.

19. Counsel for the respondent and Counsel for the Notice Parties each submit that a reasonable and proper interpretation of s. 15 from the words used by the Oireachtas to express its intention is that there is nothing to prevent a renewal of an admission order being made prior to the review of the admission order have taken place. Each submit that the absurd result contended for by the applicant is unreal, and that the reality is that where an admission order is made with a review to take place within 21 days, and where there is a renewal order made for whatever reason before that review, then the situation which results from any revocation of such an admission order is that the applicant under the Act must be discharged in accordance with s. 18(1)(b) of the Act, and the renewal order simply lapses since the admission order which is its foundation has disappeared. It is submitted that the renewal order has no independent existence or status in the absence of any underlying admission order. In this way the absurdity contended for by Mr McDonagh is non-existent.

20. It has been urged upon the Court that there could be purely practical reasons why a renewal order would have to be made before the review of the admission order has taken place. For example, a necessary person could be about to be absent on leave, to take one simple example. Such a future event would require that the renewal order be in place so that after the review has been concluded, the detention can be continued seamlessly in the interests of the patient.

21. But it is submitted that what has occurred in this case is clearly permitted by the express wording of the section chosen by the Oireachtas, and that if the section was to be interpreted in the way contended for by Mr McDonagh it would require the importation of words into s. 15(2) requiring that the renewal order be not made until the review has been completed. Those words are absent.

22. Paul Anthony Mc Dermott BL who appears for the Notice Parties has drawn attention to the precise words of the section and to the use of the words "period of 21 days" in subsection (1) and to the reference in subsection (2) to "the period". He submits that the latter is clearly referable to the former period of 21 days and that it is therefore clear that the renewal order extends the period of 21 days and not any shorter period. In other words, the renewal order kicks in only on the expiration of the admission order, provided that it has not been revoked in the meantime by the Tribunal after it has completed its review. He submits that there is nothing absurd in such a meaning.

23. I notice in passing that in s. 15(3) it is quite specifically stated that the period can be further extended "for a period not exceeding 6 months beginning on the expiration of the renewal order made by the consultant psychiatrist under subsection (2)...."

24. The facts in the present case are that an admission order was made on the 26th April 2007. A review of that admission order had to take place not later than 21 days thereafter, otherwise the admission order would lapse. That review has taken place on the 15th May 2007 and was affirmed, albeit after the date on which the renewal order was made. The renewal order which was actually made on the 10th May 2007 took effect in my view on the expiration of the 21 day period of life of the admission order.

25. There does not seem to be any violence to the section in concluding that the renewal order takes effect on the expiration of the initial period of 21 days. That renewal order itself must be reviewed not later than 21 days after its date. But there is nothing in the section which suggests that the renewal order is to have effect sooner than the 21 day period which is specified to be the lifetime of an admission order. There is nothing to suggest that an admission order may in some circumstances last for some shorter period. The section is clear and unambiguous in this regard. An admission order lasts for 21 days, unless it is revoked following a review which happens to take place before the expiration of that 21 day period. In such a case the legislation requires that the patient be discharged, and it is unreal in my view to suggest that an order for renewal made prior to that revocation would still entitle the hospital to detain a patient. As I have said the sensible interpretation of the section, and one which does no violence to the words

used by the Oireachtas is that the renewal order takes effect only at the end of the 21 day period and in the event that at that time there is in existence a valid admission order which has received its review.

26. It seems to me that there is a clear sequencing of events contemplated by the terms of sections 14, 15, 16, 17 and 18 of the Act. Various periods of detention and extensions of detention are provided for, and none of these periods can be seen as overlapping. Each new period of detention commences upon the expiry of the previous period. Each period of detention is required to receive a review also, and it does not seem to me to be contrary to anything stated in the sections under scrutiny, or the plain meaning intended by the Oireachtas, to conclude that an order renewing an admission order may for any reason be made a day or some days or at any time in fact before the review of that admission order has been completed, since the renewal order will take effect only at the conclusion of the specified 21 day period following the making of the admission order.

27. It is important to note that the patient retains the right to a review of the admission order even if a renewal order is made ahead of that review, and that there is also the right to a review of the renewal order. Those rights are not diminished in any way by the first review occurring after the date on which the renewal order is made.

28. As to the point made also that the notification to the applicant of the renewal order dated the 10th May 2007 failing to have the relevant box ticked due to oversight, I do not believe that it results in any unlawfulness of detention. It would be preferable if such oversights did not occur in documents whose very purpose is to inform the patient of the basis of his detention, but nonetheless it is easily rectified and would not justify this Court in ordering the release of the applicant from the detention which is clearly in his best interests at the present time.

29. For these reasons I am satisfied that the applicant is detained in accordance with law.