IN THE SUPREME COURT OF BRITISH COLUMBIA

Re: *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

Date: 20210625
Docket: S213212
Registry: Vancouver

Between:

Arash Tizvar

Petitioner

And

Mental Health Review Board and
The Director of Burnaby General Hospital

Respondents

Before: The Honourable Mr. Justice Groves

Corrected Judgment: The judgment was corrected at page 6 and onwards on August 13, 2021

On judicial review from: A decision of a review panel under the *Mental Health Act*, R.S.B.C. 1996, c. 288 (dated February 12, 2021)

Corrigendum to Oral Reasons for Judgment

Counsel for Petitioner:	J.G. Blair
Counsel for Respondent Mental Health Review Board:	P. McLaughlin
Counsel for Respondent Director of Burnaby General Hospital:	R.P. Hrabinsky
Place and Date of Trial/Hearing:	Vancouver, B.C. June 25, 2021
Place and Date of Judgment:	Vancouver, B.C. June 25, 2021

[1] **THE COURT:** This petition is an application for judicial review of a decision of a panel constituted under the *Mental Health Act*, R.S.B.C. 1996, c. 288 [*Act*] (the "review panel"). The reasons of the review panel are before me and are dated February 12, 2021.

[2] The petitioner seeks to set aside the decision of the review panel of that date and order that the matter be remitted back to a panel for a redetermination with directions.

[3] The brief facts are that the petitioner was involuntarily detained under the provisions of the *Act* on March 11, 2020, close to two years prior to the review hearing. The provisions for involuntary detention are set out in s. 22 of the *Act.*

[4] The circumstances factually which appear to be present when he was involuntarily detained in March of 2020 were that he was apparently repeatedly calling the police and shouting on about various conspiracies. He was brought to the Burnaby General Hospital where he was certified and involuntarily detained.

[5] Of note, it seems clear that the petitioner has a history of mental health issues and has a history, perhaps, of not following recommended regimes of either medication or other treatment which would have the effect of monitoring or controlling his symptoms and thus his behaviour.

[6] After his detention in March of 2020, I take from what happened that his condition improved. He was placed on what is called extended leave, allowing him to live in the community where he resides and it appears, in close connection with his mother and his sister. However, he is seemingly continually monitored because of his status of still being detained under the provisions of the *Act*.

[7] I agree with counsel for the respondent, the Burnaby General Hospital, that there are essentially three sections of the *Act* which require interpretation in this decision. Those sections included the definition section as it relates to "person with a mental disorder," and ss. 22(3)(a)(ii) and 22(3)(c), as well as s. 25 of the *Act*, specifically s.25(1) and (2):

> 22
>
> …
>
> (3)Each medical certificate under this section must be completed by a physician who has examined the person to be admitted, or the patient admitted, under subsection (1) and must set out
>
> (a) a statement by the physician that the physician
>
> …
>
> (ii) is of the opinion that the person or patient is a person with a mental disorder,
>
> …
>
> (c) a statement, separate from that under paragraph (a), by the physician that the physician is of the opinion that the person to be admitted, or the patient admitted, under subsection (1)
>
> (i) requires treatment in or through a designated facility,
>
> (ii) requires care, supervision and control in or through a designated facility to prevent the person's or patient's substantial mental or physical deterioration or for the protection of the person or patient or the protection of others, and
>
> (iii) cannot suitably be admitted as a voluntary patient.
>
> …
>
> 25 (1)A patient detained under section 22 is entitled, at the request of the patient or a person on the patient's behalf, to a hearing by a review panel
>
> (a)within a prescribed time after the commencement of a one month period, or further one month period, referred to in section 23 or in section 24 (1) (a),
>
> (b)within a prescribed time after the commencement of a 3 month period referred to in section 24 (1) (b), or
>
> (c)during any 6 month period referred to in section 24 (1) (c), within a prescribed time after 90 days after the conclusion of any previous hearing.
>
> …
>
> (2)The purpose of a hearing under this section is to determine whether the detention of the patient should continue because section 22 (3) (a) (ii) and (c) continues to describe the condition of the patient.

[8] In its most simplistic form as I understand the provisions of the *Act* as it relates to involuntary admission, a person can be involuntarily committed but must be found immediately by one doctor and within a short period of time by two

independent doctors to be a person with a mental disorder. That is the first criteria. That is the criteria set out in s. 22(3)(a)(i).

[9] Further, the provisions of ss. 22(3)(c)(i) to (iii) must also be made out, and here I will paraphrase that a person can be involuntarily committed if they require treatment in or through a designated facility; if the person requires care, supervision or control; and the person cannot be suitably admitted as a voluntary patient. I have somewhat abbreviated the criteria, but that is the gist of involuntary admissions.

[10] Section 25 sets out the review panel procedure. I will actually read this section again as its wording is crucial. Section 25(1) reads:

> 25 (1)A patient detained under section 22 is entitled, at the request of the patient or a person on the patient's behalf, to a hearing by a review panel
>
> (a)within a prescribed time after the commencement of a one month period, or further one month period, referred to in section 23 or in section 24 (1) (a),
>
> (b)within a prescribed time after the commencement of a 3 month period referred to in section 24 (1) (b), or
>
> (c)during any 6 month period referred to in section 24 (1) (c), within a prescribed time after 90 days after the conclusion of any previous hearing.

Then 25(2) reads:

> (2)The purpose of a hearing under this section is to determine whether the detention of the patient should continue because section 22 (3) (a) (ii) and (c) continues to describe the condition of the patient.

[11] With that legislative criteria in mind, I now wish to, as I am required, say a few words about the standard of review. All parties agree that the standard of review here is correctness. As such, if the court finds there was an error, the court is entitled to either substitute its decision or remit the matter back. The remedy sought here is to remit the matter back.

[12] For the sake of fulness, the other common standard of review, the one involving deference and the one often deferring to a decision of expert tribunals,

unless their decision is, to use my words, egregious, a standard of review of reasonableness is not applicable in these circumstances.

[13] Additionally, I agree with the argument advanced by counsel for the petitioner that when an individual's liberty is at stake and where their *Charter* rights are infringed by legislation, as is the case under the *Act* and the provisions I have cited, it is an obligation of the court in interpreting the section which places restrictions on liberty in the most generous fashion possible to the person whose liberty is being eroded or restricted.

[14] Because of time factors which I have noted, I am not going to repeat chapter and verse of the cases cited in advance of this proposition by counsel for the petitioner. They were not challenged by any other party at this hearing. This conclusion is perhaps trite but needs to be said.

[15] Finally, I agree with the argument advanced by counsel for the petitioner that it is incumbent in any exercise of statutory interpretation to consider the entirety of the legislative framework and analyze the true meaning and intent of the legislature in regards to the various individual provisions by interpreting the individual provisions on the basis of a full review of the intent of the *Act*. It is not simply a slice and dice of actual words or phrases. The *Act,* how it is set up, what goals it intends to achieve, and in this case its basic regulatory framework, need to be considered in interpreting the language. Again, I am not citing any case authority being advanced by the petitioner on this point, because again, that matter was not argued to the contrary by any counsel for the respondents.

[16] Put in its simplest form, it is the basis of the petition that the review panel hearing the petitioner's application failed to properly interpret s. 25 when it came to a noted conclusion in those reasons.

[17] That conclusion I have extracted for ease sake from the submissions of counsel for the petitioner. The hearing panel stated in part:

> The advocate submitted that the Applicant's ability to react appropriately to his environment and to associate with others is not seriously impaired at present. The advocate said that although the Applicant did have some difficulties with his neighbors in the past, that was when the Applicant was in a different living situation. At the time, the Applicant was not sleeping well at his residence and was dealing with a relatively new multiple sclerosis diagnosis from 2013 and he was recovering from spinal surgery in 2016. The advocate referred to the evidence that the Applicant's mother told the Doctor recently that the Applicant is doing well now, and he helps her with her with the grocery shopping. The advocate also noted that the Applicant now has positive relationships with his mother and his sister.
>
> The Review Panel rejects the advocate's argument on the basis that the first criteria requires the Applicant have a "disorder of the mind that seriously impairs the Applicant's ability to react appropriately to his environment or to associate with others". There is no requirement that the Applicant must have current symptoms that seriously impair the Applicant's ability to react appropriately to his environment or to associate with others. The Review Panel found that this criteria was satisfied because, as stated in the examples above, his ability is seriously impaired when he is unwell or untreated.

[18] Having considered the purpose of the *Act* as a whole, the language of s. 25, and noting that any interpretation should weigh in favour of an individual maintaining their liberty, I find that this conclusion, in my view, is a failure by the review panel to properly direct itself in regards to s. 25 and is in my view an error of law.

[19] Section 25(2) clearly states that the purpose of a hearing by a review panel is to determine whether detention should continue because the conditions which resulted in his or her involuntary detention, those four criteria set out in 22(3)(a)(ii), and 22(3)(i) to (iii) "continues to describe the condition of the patient."

[20] In my view, the language is clear that it is the role of the review panel to look afresh at all the criteria set out in the above noted subsections of s. 22 and analyze whether or not they continue. It is the antithesis of an obligation to determine if a condition continues to default to a finding that the condition was initially present. Their analysis in this respect ignores the obligation they have to determine whether or not the mental illness continues.

[21] It would be illogical in an analysis of the word "continues" to simply say it existed in the past. That would eliminate the criteria as a consideration by any review panel under s. 25 as no one comes before the review panel who is not

already subject to an involuntary admission. The circumstances of mental disorder would exist with every patient that appears before a review panel in this current analysis because no patient under the noted subsections of s. 22 is confined or subject to involuntary admission unless they suffer from a mental disorder.

[22] The fundamental question that the review panel has to decide under the direction in s. 25(2) is whether or not the patient is a person with a mental disorder. That determination has to be made not on the basis that the person at one point had a mental disorder, but whether at the time of the hearing the person does. That is fundamental to the regime of review as I understand it, and it is fundamental to compliance that the review panel must have with its obligations under s. 25(2).

[23] As such, I find the review panel is in error in its decision of February 22, 2021, and I grant the application for judicial review. I remit the matter back for reconsideration.

[24] Counsel for the petitioner, do you have any suggested language for the order in light of these reasons?

[25] CNSL J. BLAIR: My Lord, I think the way I phrased it -- I apologize. I seem to be getting an echo. I don't know if you guys are. But the way I phrased it at the end of my submissions that I'll just repeat for you right now. That the Mental Health Review Board must determine whether the patient has a mental disorder that continues to impair them at the time of the hearing.

[26] THE COURT: All right. That seems appropriate. So I am directing that in remitting the matter back to a review panel under the *Mental Health Act*, I am directing that that panel must determine whether the patient has a mental disorder that continues to seriously impair them at the time of the hearing.

[27] Thank you all.

"J.R. Groves J."

GROVES J.