CITATION: *Top End Mental Health Services v B [2002] NTMC 045*

PARTIES: Top End Mental Health Services
Applicant

v

B
Patient

TITLE OF COURT: Mental Health Review Tribunal

JURISDICTION: Mental Health and Related Services Act

FILE NO(s): 528/02

DELIVERED ON: 6 December 2002

DELIVERED AT: Darwin

HEARING DATE(s): 19 June 2002

DECISION OF: Mr V M Luppino SM

CATCHWORDS:

Application for order for involuntary detention pursuant to Mental Health and Related Services Act – Criteria to be satisfied before order for involuntary detention can be made – Meaning of "mental illness" – Meaning of "serious disturbance of mood".

Mental Heath and Related Services Act (NT) 1998 ss 6, 14, 39, 123, 141,

Judgment category classification: B
Judgment ID number: [2002] NTMC 045
Number of paragraphs: 19

IN THE MENTAL HEALTH REVIEW TRIBUNAL
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 528/02

BETWEEN:

TOP END MENTAL HEALTH SERVICES
Applicant

AND:

B
Patient

REASONS FOR DECISION
(Delivered 6 December 2002)

Mr V M LUPPINO SM:

1. This matter involved a hearing in the Mental Health Review Tribunal ("the Tribunal") conducted pursuant to section 123(1)(a) of the Mental Health and Related Services Act 1998 ("the Act"). Publication of reports and reasons for decision by the Tribunal is restricted in that the pre-requisites set out section 141(3) of the Act must first be satisfied. It is also an essential requirement that I must seek out and give due consideration to the wishes of the relevant patient, who shall herein be referred to as "B" to preserve the patient's anonymity. The solicitor acting for B has notified me that B is agreeable to publication of reasons. As I am of the view that the pre-requisites set out in section 141(3) are satisfied, I proceed to publish these reasons.

2. By way of background, the matter came before the Tribunal consequent upon the initial admission of B pursuant to section 39 of the Act. As required by the Act, that initial admission was reviewed by the Tribunal as Top End Mental Health Services ("MHS") sought an order for continuing involuntary detention.

At the hearing the Tribunal comprised myself as Legal Member, Ms B Walker as Community Member and Dr J Greenwood as Medical Member. Dr D Mendels, an authorised psychiatric practitioner ("APP") and Dr Kym Ngo, a medical intern attended to give evidence on behalf of MHS. B was in attendance and was represented by Ms Hepburn. The Tribunal declined the order sought as it was not satisfied that the criteria for involuntary admission of a person on the grounds of mental illness was made out.

3. The initial admission of B pursuant to section 39 of the Act was made on 16 June 2002. Section 39 of the Act provides as follows:

> (1) A person admitted as an involuntary patient on the grounds of mental illness may be detained at the approved treatment facility –
>
> (a) for up to 24 hours; or
>
> (b) for up to 7 days, where the person who made the recommendation for psychiatric examination was an authorised psychiatric practitioner.
>
> (2) An authorised psychiatric practitioner must examine a person detained under subsection (1)(a).
>
> (3) Following the examination, if the authorised psychiatric practitioner is satisfied that the person –
>
> (a) fulfils the criteria for involuntary admission, the authorised psychiatric practitioner may detain the person at the approved treatment facility for a further period of up to 7 days; or
>
> (b) does not fulfil the criteria for involuntary admission, the authorised psychiatric practitioner must discharge the person as an involuntary patient.
>
> (4) An authorised psychiatric practitioner must not rely exclusively on any other assessment that may have been made of a person when assessing the person under this section.
>
> (5) An examination under this section may be conducted through the use of teleconferencing or other forms of interactive video conferencing.

4. In the case of B, and as is usually the case, section 39(1)(a) applies to the initial admission of the patient. Consequently an examination by an APP is then required to be effected pursuant to section 39(3). A patient is "sectioned" when the examination pursuant to section 39(3) occurs and in consequence thereof, the APP considers that the criteria for involuntary admission are made out. Detention is then authorised for a further period of up to seven days.

5. The "sectioning" referred to in the preceding paragraph is a decision that must be reviewed by the Tribunal pursuant to section 123(1)(a) of the Act. What is to occur following a review is set out in section 123(5) and (7) of the Act. Section 123(5) applies where the Tribunal is satisfied that the patient fulfils the criteria for admission or treatment under the Act. Section 123(7) applies where the Tribunal is not satisfied that the criteria are made out and in that event, section 123(8) then makes provision for consequential orders.

6. The relevant subsections of section 123 are now set out hereunder namely;

> (1) The Tribunal must review the admission of a person as an involuntary patient –
>
> > (a) on the grounds of mental illness not later than 7 days after the person is admitted; or
> >
> > (b) on the grounds of mental disturbance not later than 7 days after the person is admitted, where the person continues to be detained under section 42(2).
>
> (3) The Tribunal must review an order made under subsection (5) by the date fixed under that subsection.
>
> (5) Following a review, the Tribunal if it is satisfied that –
>
> > (a) the person fulfils the criteria for admission on the grounds of mental illness, it may order that the person be detained as an involuntary patient on those grounds for not longer than 3 months and, where it does so, it must fix a date for the order to be again reviewed;

(b) the person fulfils the criteria for admission on the grounds of mental disturbance, it may order that the person be detained as an involuntary patient on those grounds for not longer than 14 days and, where it does so, it must fix a date for the order to be again reviewed; or

(c) the person fulfils the criteria for involuntary treatment in the community, it may make a community management order in relation to the person for not longer than 6 months and, where it does so, it must fix a date for the order to be reviewed again.

(7) Following the review, if the Tribunal is not satisfied that the person fulfils a criteria referred to in subsection (5), it must revoke the order admitting the person as an involuntary patient or revoke the interim community management order or community management order, as the case may be.

(8) Where the Tribunal revokes an order admitting the person as an involuntary patient it must order that the person –

(a) be immediately discharged from the approved treatment facility; or

(b) be discharged when arrangements are made for the care of the person on his or her discharge.

7. As required by Tribunal procedures, MHS submitted a report, dated 18 June 2002, signed by both Dr Mendels and Dr Ngo which succinctly set out the evidence relied upon in respect of each of the criteria which are required to satisfied before an order for involuntary detention can be made.

8. The application was made on the grounds that B suffered a "mental illness". The criteria for involuntary detention on the grounds of mental illness are set out in section 14 of the Act which provides as follows:

> The criteria for the involuntary admission of a person on the grounds of mental illness are that –
>
> (a) the person has a mental illness;
>
> (b) as a result of the mental illness –

(i) the person requires treatment that is available at an approved treatment facility;

(ii) the person –

(A) is likely to cause imminent harm to himself or herself, a particular person or any other person; or

(B) is likely to suffer serious mental or physical deterioration,

unless he or she receives the treatment; and

(iii) the person is not capable of giving informed consent to the treatment or has unreasonably refused to consent to the treatment; and

(c) there is no less restrictive means of ensuring that the person receives the treatment.

9. It is clear from section 14 that the existence of a mental illness is central to the power to order detention. It was this aspect of the criteria upon which the Tribunal declined the order and the balance of these reasons deals predominantly with that aspect of the criteria. For current purposes it is sufficient to point out that the Tribunal was satisfied in relation to all of the other criteria set out in section 14.

10. The term "mental illness" is defined in section 6 of the Act which provides as follows;

(1) In this Act, "mental illness" means a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person in one or more of the areas of thought, mood, volition, perception, orientation or memory and is characterised –

(a) by the presence of at least one of the following symptoms:

(i) delusions;
(ii) hallucinations;
(iii) serious disorders of the stream of thought;

(iv) serious disorders of thought form;
(v) serious disturbances of mood; or

(b) by sustained or repeated irrational behaviour that may be taken to indicate the presence of at least one of the symptoms referred to in paragraph (a).

(3) A person is not to be considered to have a mental illness merely because he or she –

(f) uses alcohol or other drugs;
(g) has a personality disorder or a habit or impulse disorder;

11. It is to be noted that the definition of "mental illness" for the purposes of the Act is narrower than that term as it is commonly understood within the psychiatric profession. In particular the provisions of subsection 6(3) places significant limitations on the extent of a mental illness for the purposes of the Act.

12. The extent of the evidence of mental illness as contained in the report referred to in paragraph 7 hereof comprises as follows;

> "Depressed/frustrated/angry mood recently, surrounding recent event (one week) ago (low) energy/sleep/appetite/libido/feels guilty. No formal thought disorder or delusions. Poor judgment – wants to kill himself to end the suffering (and) pain. Constant suicidal and homicidal thoughts. Absconded 18/6 (and) brought back by Police. Considered to be suffering Adjustment Disorder with depressed mood."

13. Further evidence on this part of the criteria was given by Dr Mendels before the Tribunal. Relevant extracts from the transcript follow. These extracts help to put the Tribunal's decision into context.

> DR GREENWOOD: Can I come back to Doctor Mendels just for one moment. One of the things that we have to consider Doctor Mendels, is the criteria for involuntary admission, and the first of those is that the client has a mental illness.

I'm just struggling to find, in your report, what that mental illness is. Could you perhaps clarify the mental illness diagnosis?

DR MENDELS: Yes, yes, my working diagnosis is adjustment disorder with depressed mood, and also poli-substance abuse with issues of dependence.

DR GREENWOOD: Right, well with respect to the second issue, poli-substance abuse with dependence, I think that you'll find that that is not an acceptable - - -

DR MENDELS: Under the Acts, yes.

DR GREENWOOD: Yes, under the Act.

DR MENDELS: Right.

DR GREENWOOD: With respect to the first issue, I'm not sure that that constitutes a mental illness.

DR MENDELS: Adjustment disorder with depressed mood?

DR GREENWOOD: Yes, it is a diagnosis, I mean it is listed within DSM IV and all that sort of stuff, but I'm not sure that that constitutes a mental illness in terms of the Act. Perhaps if Vince could clarify that for us, if he's got the Act in front of him but I'm not sure that that is a - fulfils the legal definition of mental illness, according to the Act. [*Dr Mendels then considered the definition of "mental illness" in section 6 of the Act.*]

DR MENDELS: Well, of all of those symptoms [*in section 6(1)(a) of the Act*]- - -- - -that you've just read, the only one that is applicable, in my view, is the mood, and - so I would be happy to take the Tribunal's view as to whether that - whether the disturbance is sufficiently severe to constitute mental illness and then secondly whether there are sufficient grounds - whether the grounds are made out for detention, and as I said, if they're not, then that's fine, we will live with that. So at the moment you're saying that mood is the issue and the symptom is disturbances of mood but the Act does require a serious disturbance in mood.

MR LUPPINO: Feel free to express an opinion, you are entitled to express an opinion as to whether you feel that those symptoms are made out.

DR MENDELS: Well, there is - I think it is reasonable to question that, there is a disturbance of mood, one may question the seriousness of the mood disturbance.

DR GREENWOOD: I think that that's just to make it more clear, because Mr B might very well feel somewhat ignored if we were to say that he doesn't have a serious disturbance of mood when he has obviously made serious attempts to harm himself and is quite significantly distressed by what he's been through.

But I think in terms of the Act, the disturbance of mood is something that is distinguishable from a chronic mood state, that is Mr B has a long standing and no doubt, severe and distressing condition, and we're not minimising or ignoring the fact that this is something that is of major significance to him in his life, but whether he has had an acute disturbance in his moods, such that it has changed significantly, at a particular point, and that the admission to hospital is going to cause a reversion, such that it is going to change significantly again, that's the question that I'm asking you.

And by serious disturbance of mood, I think that it means a relative disturbance, not a matter of severity but whether there has been a significant change from one time to another, and what I'm concerned about is that Mr B seems to have a condition that is likely to be persistent, as it has been persistent in the past, and that is not a significant change in something that is obviously very distressing to him.

MR LUPPINO: But by the same token, we've got a recent history of suicidal and homicidal ideation, I mean, does that flow from - well - to use the term loosely at this stage, seeing that's what we're trying to determine, but does that flow from what you say is a mental illness?

…….

DR MENDELS: I believe that is an aspect of this condition, and there is a change in that B was managing all right with his condition until he received the news about the molestation of the 3 year old girl and that effected him.

So there was that acute incident and following which his distress increased and he presented for treatment, and it is particularly more the suicidally that I'm concerned about, than the mood.

The mood disturbance could well be treated in the community - - -

DR GREENWOOD: Well, if you're saying that the mood disturbance is not the primary consideration, the issue that we have to consider is, is that a mental illness.

.....

DR GREENWOOD: If someone has a risk taking behaviour, that is that they may be at risk to themselves, that is a criteria, but it is not the criteria for the diagnosis of mental illness and if the mood issue is one that can be managed in the community, then it raises the issue as to whether or not this constitutes a mental illness.

I'm sure there are plenty of people who fulfil one of the criteria or maybe two, under the Act, for involuntary admission, but the Act requires that they fulfil all of those criteria so that, for example, if someone is unreasonably refusing treatment, there might be lots of people who unreasonably refuse treatment, but that, in itself, doesn't mean that someone has to be admitted as an involuntary patient.

They also have to have a mental illness and they also have to, you know, have a - as a result they'll need attention and treatment and without this treatment they'll be a risk to themselves our others, and so on and so forth.

So again, I've just got a question mark over the first criterion of the mental illness. I don't doubt that Mr B is distressed.

DR MENDELS: Indeed, so I believe that there is mental illness present, as understood by psychiatry, according to my understanding of psychiatry, but as you've pointed out that may not satisfy the criteria for mental illness, under the Act.

DR GREENWOOD: Well I think, that actually by psychiatry, within - with psychiatry, if we're talking about the diagnostic classifications....we would say that a mental disorder is present, not necessarily a mental illness.... and if we're talking about mental illness, under the Act....then we're wondering about whether that's a legally defined mental illness, although both of us would agree about the mental disorder component.

DR MENDELS: Yes, and I believe that there is an adjustment disorder, a disturbance of mood and even though that could be treated in the community, in itself, it's actually, as I've said, the suicidality that is my main concern and reason for seeking an involuntary order, but that that is on the basis of the mood disturbance.

So with all of that it still maybe the case that mental illness, under the Act, is not satisfied.

14. This evidence is to the effect that although B had a personality disorder, that alone did not establish that he suffered a "mental illness" as defined by the Act absent one or more of the characteristics set out in section 6(1)(a) of the Act. To summarise the evidence of Dr Mendels, the only possible characteristic in the subsection that could apply to B was that in subparagraph (v) ie., "serious disturbance of mood". Although Dr Mendels agreed there was a disturbance of mood, he could not classify that as a "serious" disturbance. The view of the Tribunal is that the word "serious" in that subparagraph means a relative disturbance as opposed to a measure of severity *per se*. The latter is more appropriately termed a chronic mood state and that is the condition B suffers from. B had a long standing and severe condition but the evidence shows that there has been little or no change in that condition over an extended period of time and this is distinguishable from a "serious disturbance of mood" in psychiatric terms. B's condition was severe in absolute terms in that it is very distressing but the condition is persistent, has persisted for a considerable period of time and was likely to persist unchanged in the future. A disturbance of mood can only be classified as a "serious" disturbance for the purposes of the definition of "mental illness" under the Act if there is a significant change in the condition or presentation from one time to another. That was not the position in B's case on the evidence presented to the Tribunal.

15. That however was not the end of the matter as the Tribunal had to consider the impact of section 6(1)(b) of the Act. Although section 6(1)(b) is an alternative to 6(1)(a), it is clear from the wording of that subsection that all the former subsection does is provide an alternative means to satisfy the finding of any one or more of the symptoms specified in section 6(1)(a). It is clear from the wording of section 6(1)(b) that the "sustained or repeated irrational behaviour" referred to therein must in any event point to the existence of one or more of the symptoms referred to in section 6(1)(a).

16. To help to put that into context, the relevant evidence in relation to this issue is the evidence of suicidal and homicidal ideation on the part of B. The subsection speaks of "sustained or repeated irrational behaviour". In B's case there was evidence that he had made a suicide attempt two years ago, another in April 2002 and B said at the hearing that he had attempted to overdose on prescription tablets coupled with alcohol intake only the day preceding the hearing.

17. The evidence of Dr Mendels before the Tribunal was that although the suicidal and homicidal ideation of B was "irrational behaviour" within the meaning of section 6(1)(b), that could not be said to be sustained or repeated. In any event Dr Mendels did not consider there to be a serious disturbance of mood and according to Dr Mendels, that was the only one of the symptoms in the section 6(1)(a) which could possibly apply to the current case.

18. There was evidence of apparent use of alcohol or other drugs by B. There also does not appear to be any doubt that B has a personality disorder as that term is commonly known in the psychiatric profession. Those conditions alone however cannot bring a person within the meaning of mental illness as they are excluded from that consideration by section 6(3). The net effect is that although in psychiatric terms it can be said that B has a mental disorder, it cannot be said that B has a "mental illness" for the purposes of the Act.

19. The structure of section 6, namely the limitation to the relevant symptomatology in section 6(1) and the exclusion of various factors by section 6(3), makes it clear that Parliament intended that the definition of mental illness for the purposes of the Act, and specifically for the purposes of a determination as to whether a person can be involuntarily detained on that basis, is narrower than that term is understood in the psychiatric profession generally. That interpretation being clear, then on the evidence the Tribunal found that the criteria for involuntary detention in section 14 of the Act was

not made out. In consequence pursuant to section 123(7) the Tribunal made an order revoking the admission of B as an involuntary patient and made a consequential order pursuant to section 123(8) ordering the discharge of B when arrangements were made for his care on his discharge.

Dated this 6th day of December 2002.

____

V M LUPPINO SM
Delegate of the President,
Mental Health Review Tribunal