

BAC 1

Together with the next page

This is the Annexure marked "BAC1" referred to in the affidavit of Brett Anthony Collins sworn/affirmed 31 August 2010 before me:

The Hon Greg James QC
President
Mental Health Review Tribunal
Fax: 9879 6811 and 9817 4543
Email: gjame@doh.health.nsw.gov.au

RE: CHANGES IN CONDITIONS FOR MR SAEED DEZFOULI

Following the hearing today and at your invitation we would like to bring the following issues for your immediate attention, consideration and review.

Mr Dezfouli is an involuntary patient following a tragic incident where a woman died and another person was hurt on 18/1/2002. He acknowledges his responsibility in the matter and is remorseful for the tragic death of his colleague.

Mr Dezfouli is not a violent or aggressive man, as has been stated many times by his treating doctors and nurses. He had not intended the harm that was caused seven and a half years ago. If he had been convicted of an offence, and behaved the way he has during his period of incarceration, he would have been released by now.

In fact Mr Dezfouli is being held in the highest security area available to Justice Health and the most restrictive environment within the Forensic Hospital. He has never had access to ground leave and every fortnight he is being held face down by up to eight nurses and forcibly injected with a substance that makes him feel agitated and has other severe side effects.

It is wrong that despite having no criminal conviction, he is immeasurably worse off than a convicted prisoner having maliciously committed the same act.

We ask that:

- 1) Under s.44(2) of the Mental Health Forensic Provisions Act the Tribunal issue an order for the release of Mr Saeed Dezfouli immediately. If the MHRT were to decide that that is not practicable at this stage we ask the following:
- 2) Enforced medication by injections to cease immediately and Saeed to go back on oral medication taking 30mg of Abilify which was his medication for five years until he was forced to cease smoking in March this year.
- 3) Dr Ventura be appointed as treating psychiatrist to Saeed.
- 4) Saeed be transferred to the high stimulus section of the Clovelly Ward since the low stimulus section is unproductive, inactive, boring, depressing and maddening for him. The high stimulus section would prepare him for rehabilitation and has better community interaction.

- 5) Saeed be transferred to Deewhy Ward as soon as possible to establish confidence in him in preparation for a movement to Bunya or Morrisset.
- 6) Saeed be given escorted ground leave, escorted day leave and weekend leave.
- 7) Saeed be given access to the donated computer from the University of NSW Law students for educational purposes and diversional therapy.
- 8) Saeed's patients rights, civil, legal and human rights be recognised and respected by his treating team in a written statement signed by them and countersigned by Saeed and his Primary Carer.

Please acknowledge this letter upon receipt both to Mr Dezfouli and Primary Carer Mr Collins.

Yours sincerely,

Saeed Dezfouli

Brett Collins

August 20, 2009

c.c. Sylvia Hale MLC, Gillian Skinner MP, John Della Bosca MLC, Jocelyn McGirr President CJC, Douglas Holmes,

For acknowledgement:

Saeed Dezfouli,
Forensic Hospital,
P.O.Box 150,
MATRAVILLE NSW 2036

Brett Collins
Fax: 9283 0112
brett@justiceaction.org.au

BAC 2

From: Brett Collins <brett@justiceaction.org.au>
Date: Tue, 25 Aug 2009 16:22:14 +1000
To: Greg James <gjame@doh.health.nsw.gov.au>
Subject: Greg James Proposal to MHRT re Saeed Dezfouli

Hi Greg,

I sent through the email underneath on Thursday last week but haven't had acknowledgement. I also faxed it to both of the fax numbers. Today our other Coordinator made contact with your office and he was assured by your office that it had been received.

At the hearing on Thursday I deliberately asked for a timeline for acknowledgement and response. You undertook to acknowledge it within 48 hours. You said that I should approach Justice Health through you.

I don't want to be ungrateful, but we have become exasperated with the contempt with which we have been dealt with by Justice Health. In the hearing I expressed my disappointment with the way I had been treated as Mr Dezfouli's primary carer. The head of the treating team Jeremy O'Dea had been ignoring my emails and I could not get answers to serious questions, even to assisting with his education. I had been ignored rather than being seen as an essential bridge to a patient who has been the focus of considerable attention. Orally Jeremy O'Dea agreed that my involvement has been very useful. Saeed has been communicating with him for the first time.

I have undertaken a responsibility and have put my time into assisting without any charge to the State. That same respect has to be offered on all sides.

Today Mr Dezfouli was forcibly injected again.

There are some matters below that have been raised with Justice Health many times and can and should be handled expeditiously. It is time for Justice Health to show its commitment to its obligations. To not respond urgently and positively after the hearing last Thursday would not be acceptable.

Please acknowledge this and the previous email. What timeline is there for Justice Health to respond?

Regards,

Brett
Brett Collins
JUSTICE ACTION
Trades Hall, Suite 204, 4 Goulburn St, Sydney NSW 2000
PO Box 386, Broadway NSW 2007
T 02 9283 0123 ext 14 | F 02 9283 0112 | M 0438 705003
E brett@justiceaction.org.au
<http://www.justiceaction.org.au>

BREAKOUT DESIGNPRINTWEB <http://www.breakout.net.au>
proudly sponsors Justice Action

This is the Annexure marked "BAC2" referred to in
the affidavit of Brett Anthony Collins sworn/affirmed
31 August 2010 before me:

.....

BAC3



Mental Health
Review Tribunal

Building 40 Gladesville Hospital, Gladesville
PO Box 2019 Boronia Park NSW 2111
Tel: (02) 9816 5955 Toll Free: 1800 815 5
Fax: (02) 9817 4543
Fax: (02) 9879 6811 (Forensic only)
Website: www.mhrt.nsw.gov.au
Email: mhrt@doh.health.nsw.gov.au

Brett Collins
Justice Action

By Facsimile: 9283 0112

F0825

27 August 2009

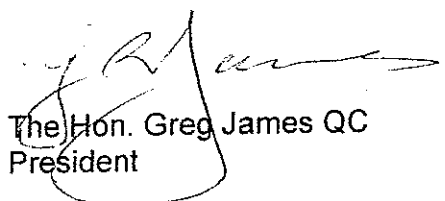
Dear Mr Collins

RE: Saeed Sayaf Mr Dezfouli

Thank you for your letter dated 20 August 2009 and our telephone discussion of 26 August 2009. I note also your recent email.

I have been in touch with Justice Health which is initiating a comprehensive review of Mr Dezfouli's care and treatment which is hoped to be completed within the next 4-6 weeks. I will be back to you about the issues you raised in your letter as soon as the results of this review are available and will remain in touch with Justice Health to review its progress.

Yours sincerely



The Hon. Greg James QC
President

This is the Annexure marked "BAC3" referred to in
the affidavit of Brett Anthony Collins sworn/affirmed
31 August 2010 before me:

From: Brett Collins [mailto:brett@justiceaction.org.au]
Sent: Friday, 28 August 2009 5:07 PM
To: JAMES, Greg
Subject: Proposal to MHRT re Saeed Dezfouli

BAC4

Dear Mr James,

Thanks for the fax received today regarding Mr Dezfouli.

I note your paragraph:

³I have been in touch with Justice Health which is initiating a comprehensive review of Mr Dezfouli's care and treatment which is hoped to be completed within the next 4-6 weeks. I will be back to you about the issues you raised in your letter as soon as the results of this review are available and will remain in touch with Justice Health to review its progress.²

Mr Dezfouli and I have had a discussion about the progress following the MHRT hearing on August 20. We are most concerned that Justice Health has not responded to my requests as his primary carer regarding his care and treatment including education, access to exercise etc or a statement as to his rights more generally which are well documented including the emails pasted below. There can be no justification in asking for any more time when the issues have been raised carefully months ago without a response. Nothing has changed and yet Mr Dezfouli is told he should accept what was previously unacceptable.

We are also concerned that requests from the primary carer no longer require responses from Justice Health, but need the authority of the MHRT to be answered. Where is the welcome, goodwill or partnership for health care in that? Who would bother? What about the time lag for such bureaucratic responses while the patient and the taxpayer are the losers.

We expect rapid, honest answers to the entirely reasonable requests, and directly from Justice Health who have clear obligations in the matter. I can't wait for three more assaults with the fortnightly forcible injection into my friend for whom I have a personal responsibility, before a chance of anything changing.

Do you agree that Justice Health should respond to primary carers¹ requests respectfully, rapidly and directly?

Together with the next page
This is the Annexure marked "BAC4" referred to in
the affidavit of Brett Anthony Collins sworn/affirmed
31 August 2010 before me:

.....

11

From: Brett Collins
Sent: Friday, 19 June 2009 7:51 AM
Subject: Visit to Saeed Dezfooli

Thanks for the chance to visit Saeed yesterday.

There are several issues that I would like to raise with you, at the request of Saeed, for whom I am primary carer.

He says that he is forcibly injected once a fortnight and asked me to intercede to stop that and find another way of dealing with any apparent problem. Can I ask for an urgent discussion with you about this before it recurs? I would like to understand why it is occurring so I can advise Saeed on alternatives for him.

I understand he is currently being held where he doesn't get access to the grass oval to do exercises. He told me that there is no library, no computer access, no education programs and that he doesn't have the chance for social stimulation and community development with patients with whom he feels an affinity.

I would like the chance to discuss this issues with you when you get the chance. Is there a document about services offered to patients that I could receive?

Cheers,

Brett

From: Brett Collins <brett@justiceaction.org.au>
Date: Thu, 06 Aug 2009 16:44:57 +1000
To: Jeremy O'Dea <Jeremy.O'Dea@justicehealth.nsw.gov.au>
Cc: John Basson <john.basson@justicehealth.nsw.gov.au>
Subject: Saeed - education

Hi Jeremy,

Following up on my email of yesterday, which you haven't yet acknowledged, Saeed has asked if we would assist him with his education whilst he is held by Justice Health.

He feels that he would be happier if he had something to do to allow him to develop rather than just wait there in the unit. He has a lot of energy, and time and feels frustrated. He wants to use the opportunity while he is there, and to start to feel better about his future. I think that is a wonderful idea, don't you agree?

We have put aside a computer donated by the University of NSW Law School which would be suitable for him. What is the best arrangement for getting it to him? We also thought that he could prepare his application to the Mental Health Review Tribunal on it too. That provides a really good reason to start writing and expressing himself.

Would you let me know and I'll pop it out on my next visit.

Brett Collins

BAC5

From: Greg James <gjame@doh.health.nsw.gov.au>
Date: Mon, 31 Aug 2009 10:12:14 +1000
To: Brett Collins <brett@justiceaction.org.au>
Cc: "FENELEY, John" <jfene@doh.health.nsw.gov.au>, "HANSON, Sarah"
<shans@doh.health.nsw.gov.au>, John Basson
<john.basson@justicehealth.nsw.gov.au>, "BADEN, Leonie"
<lbade@doh.health.nsw.gov.au>
Subject: RE: Proposal to MHRT re Saeed Dezfouli

Dear Mr Collins

I note what you say and will have your concerns
taken up appropriately
Greg James

This is the Annexure marked "BAC5" referred to in
the affidavit of Brett Anthony Collins sworn/affirmed
31 August 2010 before me:

.....

From: Brett Collins <brett@justiceaction.org.au>
Date: Fri, 04 Sep 2009 17:57:14 +1000
To: Greg James <gjame@doh.health.nsw.gov.au>
Cc: John Feneley <jfene@doh.health.nsw.gov.au>, Sarah HANSON
<shans@doh.health.nsw.gov.au>, John Basson
<john.basson@justicehealth.nsw.gov.au>
Subject: Re: Proposal to MHRT for Saeed Dezfouli

BAC6

Hi Mr James and others,

No-one has responded to your Monday email and still none of the requests to Justice Health have received a response. No education, no exercise in an open area, no social contact with peers, attacked with a syringe every two weeks etc

As Saeed's primary carer I am concerned for his health while he is suffering unnecessarily, and I feel quite frustrated with the lack of respect and progress.

Would someone take responsibility please?

Brett Collins
Trades Hall, Suite 204, 4 Goulburn St, Sydney NSW 2000
PO Box 386, Broadway NSW 2007
T 02 9283 0123 ext 14 | F 02 9283 0112 | M 0438 705003
E brett@justiceaction.org.au
<http://www.justiceaction.org.au>

BREAKOUT DESIGNPRINTWEB <http://www.breakout.net.au>
proudly sponsors Justice Action

This is the Annexure marked "BAC6" referred to in
the affidavit of Brett Anthony Collins sworn/affirmed
31 August 2010 before me:

.....

Profile of Mental Health Patient Saeed DezfouliDraft 1/02/2010Saeed's History

Mr. Dezfouli was born in Iran on 4th December 1958, his mother a high school teacher and his father was a university lecturer. Upon coming to Australia as a political refugee in 1983, where he was subject to incarceration and torture by authorities in Iran, he had a degree in Bachelor of Arts and majored in Political Science. In 1986 he became a citizen of Australia and was working as a court interpreter for the Ethnic Affairs Commission NSW. He became fearful of his life and safety and said that he had been receiving death threats in and around 2001. He felt that he was constantly under surveillance.

Warnings to authorities

Mr. Dezfouli warned the authorities for 5 months prior to committing the offence by sending them letters about his concerns and he was ignored. One week prior to committing the offence Saeed sent letters to the then premier of NSW Bob Carr and Mr. Costa the Police Minister stating that if no contact had been made within 48hrs, he was going to set fire to the government office. He used this as a last chance strategy to warn authorities. As a result of been ignored yet again, on the 18/1/2002 Saeed implemented his statement and set fire to the government office, as stated, "to get attention to my case by the media." At the scene, Saeed introduced himself to police and told them "he did it." He was taken to Burwood Police Station where he was charged with several offences.

The ignorance demonstrated by authorities in ignoring the claims made by Mr. Dezfouli is significant. Mr. Dezfouli did everything within his powers to communicate his concerns to authorities. In a letter addressed to Randwick police station dated 28.11.2001 Mr. Dezfouli clearly explains his threat that if his concerns were not addressed within 48 hours he will "bring you in by force". These threats addressed to NSW police and noted politicians including the former premier of NSW Mr. Bob Carr and the former police minister Mr. Michael Costa were ignored. Mr. Dezfouli argues he was making these threats to obtain media attention and to highlight issues including his perception that he was under surveillance from the Australian government. This shines light on the response mechanism of government officials.

These threats from Mr. Dezfouli clearly were not taken seriously and Mr. Dezfouli followed through by setting fire to a government office. The above-mentioned letter was proceeded by two letters by Mr. Dezfouli both threatening action if his plight wasn't heard. In a letter sent by Mr. Dezfouli dated 26.09.2001 Mr. Dezfouli demonstrates his concerns regarding

Together with the next 4 pages

This is the Annexure marked "BAC7" referred to in the affidavit of Brett Anthony Collins sworn/affirmed 31 August 2010 before me:

being under surveillance and asks a direct question " *What do you suggest me to do with this*" followed by a direct statement " *I am considering my next move*". This cry for help from Mr. Dezfouli puts the ball in the court of the addressed politician's. No action was taken. Mr. Dezfouli followed this with an increasingly threatening tone in his next correspondence. In a letter dated 30.10.2001 again addressed to prominent politicians Mr. Dezfouli claims " *Or even may consider to set a government car or office on fire to force the NSW police department to respond and to arrest and charge me*". These threats were supported by Mr. Dezfouli' previously mentioned letter dated 28.11.2001. The earlier threats were obviously deemed not serious enough to warrant an investigation, this was clearly a mistake on behave of the NSW government.

Saeed Dezfouli is a mental health patient following a tragic accident where a woman died and another person was hurt on 18th January 2002. He acknowledges his responsibility in the matter and is remorseful for the tragic death of his colleague. He stated: "I committed my offence at 5:20 pm on Friday. Nobody was supposed to be there to be hurt. My intention was \$1,000 damage, \$2,000 damage to shed light on what was going on, on issues of concern." Three female employees were trapped by the flames and were taken to hospital in an unconscious state. One of them, a 53-year-old woman from Bonnyrigg, died from her injuries. Unfortunately on the day of the fire the Emergency Fire Exit Door was locked and the rubbish in the Foyer hadn't been collected and ultimately the rubbish blocked the path of the employees escaping the smoke and flames.

Detention in Long Bay Forensic Hospital

Mr. Dezfouli has been in detention since 19th January 2002. On 13th February 2002 Saeed was transferred to Long Bay Prison Hospital and in 2004 he was found not guilty due to mental illness. Mr. Dezfouli is not a violent or aggressive man, as has been stated many times by his treating doctors and nurses. He had not intended the harm that was caused seven and a half years ago. If Saeed was tried through the Criminal Justice System he would have already served his time and been released. However because he was tried through the Forensic System he has served a period of 8 years to date and is now held indefinitely, despite ongoing reviews with the Mental Health Review Tribunal. Mr. Dezfouli is being held in the highest security area at Long Bay Forensic Hospital, which he shares with 7 other patients who are classified as the "lowest functioning group." He is denied access to ground leave and has restricted access to a small courtyard. Saeed along with fellow patients are denied any access to education facilities and the only stimulation they get, if its even educational, is television or as Saeed refers to it the "idiot box"

Defending his rights

His mistreatment is a result of Saeed protesting and fighting for his rights and the rights of his fellow inmates. He was involved in a campaign to allow patients more time out of their cells, in which at the time they were spending a good part of the day locked inside their cells. He was also involved in the signing of a petition that was reported in The Australian Newspaper on 31 October 2005. The results of the petition were as follows, "26 of the 30 patients at Long Bay Prison Hospital in the ward have complained to the Health Care Complaints Commission and the NSW Ombudsman about notes on their psychiatric conditions that are fabricated and saying the nurses and doctors rarely bother to talk to them. Several prisoners had gone on hunger strikes. Many patients have been overdosed and medicated against their will."

Saeed then proceeded to write to the NSW Ombudsman and received a response dated 22 June 2005. Samantha Guillard Complaints officer wrote " I confirm that the petition was received in this office on 7 June 2005". She forwarded the complaint on to the HCCC for consideration. She said the complaint was about the conduct of medical officers. She also said the office would not pursue the issue. Nothing happened. Attached to the petition was Saeed's complaint about the issues regarding the medical treatment of patients inside Long Bay Forensic Hospital, some of the issues included:

- That the nurses do not provide adequate nursing care to patients;
- That the nurses' fabricated notes and call them nurses notes;
- That the Psychiatrists show up for a couple of days a week for a couple of hours a day, read the nurses' notes and then write prescriptions without seeing patients.
- That some patients do not speak to a doctor for months;
- That many nurses do not speak to many patients for months

As usual no further action was persuaded nor where any charges laid.

Involuntary Injection

Every fortnight Saeed is held down by 8 nurses and in forcibly injected with a substance called Clopixol, which is used to alleviate paranoia and hallucinations. This drug leaves Saeed feeling severely agitated and has other side effects. Since the time of his imprisonment he has been held indefinitely and subjected to continuous abuse.

Statement made by Saeed during his time in Long Bay Forensic Hospital.

Saeed states:

"I am a patient with patients' rights, an inmate with inmates' rights and a human being with human rights." These rights have been fundamentally and severely violated by the unprofessional, and sadistic state government employees in the

positions of psychiatrists, psychiatric nurses, and prison officers. They are required to go by the law, regulations, policy and procedures, codes of conduct practice and ethics, but they don't.

(http://www.justiceaction.org.au/index.php?option=com_content&task=view&id=223&Itemid=124)

Assessment from Dr. Bruce Westmore

On the 16th of July 2009, former Justice Action co-coordinator Michael Poydner received a report from leading forensic psychiatrist Dr. Bruce Westmore, had assessed and examined Saeed Dezfouli on the 10th of July 2009. The report was in preparation for Saeed's upcoming review in August with the Mental Health Review Tribunal (MHRT). The report consisted of the presenting complaint, his past and present medical history, family history and his personal history. In his presenting complaint, Saeed stated, "I didn't just blow a head gasket and go and do it." He said he sent numerous letters and faxes to politicians and police authorities regarding his problems. They were all left unanswered. Saeed also states that once he made such a serious threat that he fell under section 24 of the Mental Health Act 1990 and section 7 of the NSW Police Act, that by law the police were required to apprehend him, but that did not happen, once again he was ignored. When Dr. Westmore asked Saeed if he recognizes that he is a forensic patient he answered, "yes."

After spending two and a half hours with Saeed Dr. Westmore concluded that "Saeed presents himself in a neat and tidy manner and during our interview he was very pleasant and cooperative. He showed normal patterns of speech and body language and maintained good eye contact. He was not suffering from a major depressive illness. While there is current evidence that he maintains his strong views, his views on the issue that the then Prime Minister of Australia John Howard was going to have him assassinated has now been modified. Dr. Westmore also stated that Saeed is above average and possibly of superior intelligence.

There is also evidence to suggest that there has been a "shift" in his mental state, which may be a basis for the Tribunal to consider a possible "conditional release" for Saeed at some stage. Despite Saeed's reluctance to accept his mental illness, taken medication as prescribed and apart from not speaking to his current treating psychiatrist, Dr. Westmore concludes that Saeed appears to otherwise been of good behaviour since his incarceration.

Saeed's plans once he is released.

Saeed has stated that if he were released, his immediate objectives would be to relinquish his Australian citizenship, and protest about the treatment he endured whilst imprisoned. Such mistreatment includes, sexual harassment, abuse and neglect. On release he will return to his home country of Iran.

Requests made to the MHRT

Requests for access to a computer, which will be donated by the law students at the University of NSW, supervised ground leave and respect for his human rights have been forwarded to the Mental Health Review Tribunal, and ignored.

The MHRT have only shown an interest to Saeed's requests when it has been time for his review and even then, he is left without answers.

The Education Rights of Forensic Patients

Introduction

Education is defined by social scientists as an aspect of socialisation that involves acquisition of knowledge and learning skills with the intention of shaping one's beliefs, values and identity. It is also exploring the balance between society and individualism and to prepare oneself to make use of opportunities in order to live, to love and to learn. This paper examines the refusal of Justice Health to permit some of their forensic patients access to educational development including donated computers. The case history of forensic patient Saeed Dezfouli exposes the problem.

Education is a pathway to responsibly develop an individual's inherent abilities as well as teach them real life skills in order to socialise with others. It is important because it creates chances for individual's to participate equally in society by improving abilities for employment, attaining qualifications, helping family, gaining recognition through innovations and through serving as a role model for others. Detainees, whether prisoners or patients look to education to reintegrate into the general community.

If prisoners are allowed rights (http://www.mhcc.org.au/manual/ch1.aspx#ch1_rps_nsrr), then generally the rights of forensic patients should be greater because while prisoners have offended, mental health forensic patients are incarcerated for health support and treatment in order to return them to their community and aren't in there for punishment.

Under the United Nations Declaration of rights of Disabled Persons, forensic patients have: 'The right to any necessary training, rehabilitation, education, training and other services to help develop their skills and capabilities to the maximum.' The Special Rapporteur on Education chose to present to the United Nations Human Rights Council a report in 2009, on the right to education for people in detention.

His aim was:

- To clarify the content of the right to education in places of detention
- To identify those with the principal responsibility for its implementation
- To highlight the most notable challenges faced in that implementation
- To put together examples of innovative approaches to date and lessons learnt
- To offer recommendations as to how implementation might be improved

The Special Rapporteur stresses that "Profound global, social, political and economic changes have had an impact on all penal systems" (Munoz, 2009, 4). He strongly affirms that "human rights are not relinquished on imprisonment" especially the right to education (Munoz, 2009, 5).

Together with the next 5 pages
This is the Annexure marked "BAC8" referred to in the affidavit of Brett Anthony Collins sworn/affirmed 31 August 2010 before me:

The Special Rapporteur insists, "Detention institutions should maintain well-funded and accessible libraries, stocked with an adequate and appropriate range of resources and technology available for all categories of detainees" (Munoz, 2009, 25).

Case Study of Forensic Patient Saeed Dezfouli

Saeed Dezfouli has been a patient inside Long Bay Forensic Hospital for eight years. Dezfouli has expressed the need for education, in order to help him and the other patients to develop and rehabilitate. Health officials have constantly said that patients will have "access to computer rooms, group training rooms, art, therapy and industrial training rooms for educational purposes" (Previous Minister for Health, 19/10/04). They have also said, "The Forensic Hospital will begin providing services towards the end of the year and, in line with all other NSW Health mental health facilities, will provide educational and therapeutic programs" (Babineau, 2008).

A computer that was donated by the University of NSW Law School was intended for him - but was refused. Dezfouli has described that there is an area in the hospital that has computers and other recreational activities but he is refused access. There are no teachers and no courses to educate the patients despite early claims.

Right to Education

The Right and the benefit to humankind of education were recognised internationally under the Universal Declaration of Human Rights in 1948 Article 26. It states:

1. Everyone has the right to education...and that all kind of education shall be equally made available, accessible, acceptable and adaptable to all members of the human race regardless of their social, economic, cultural, religious, political, sexual and other backgrounds.
2. Article 26.2 of the Universal Declaration of Human Right decree maintains that education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups.

UNESCO adopted a declaration on the right to learn for all, including reading and writing, asking and analysing, imagining and creating, reading one's own world and inventing one's own history, accessing educational resources, developing individual and collective skills. This means that education can be reflected in peoples' desires and needs, as people have different background and levels of education.

Mental health patients have all these rights which are expressed in a separate convention. In the United Nations convention on the Rights of Persons with Disabilities under Article 24 for Education, it says:

1. State Parties recognise the right of persons with disabilities to education. With a view to realising this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

- a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- c) Enabling persons with disabilities to participate effectively in a free society.

“Attention should be given to persons from traditionally marginalised groups including women, minority indigenous groups, those of foreign origin and persons with physical, learning and psychosocial disabilities. Education programmes for such groups should pay close attention to accessibility and relevance to individual needs; the barriers to continued education upon release should also be addressed and taken care of properly” (Munoz, 2009, 26).

In NSW, Under Section 3 of the Mental Health Act 2007, an objective of this act is to provide obligation for the health department for the care and respect for civil rights in self-determination for patients.

Education benefits for patients

Education and training benefits not only the patients, by giving them similar opportunities that exist in the real world, but also more importantly, it can help the entire community by seeing that imprisoned citizens find the right pathways to responsible and productive participation in the life of the community.

The following skills and abilities are developed through education:

- Development of mental and physical skills: motor, thinking, communication, social, aesthetic;
- Knowledge of moral practices and ethical standards acceptable by society;
- Ability to recognise and evaluate different points of view;
- Giving and receiving recognition as human beings;
- Indoctrination into the culture;
- Capacity to live a fulfilling life;
- Ability to earn a living;
- Career education;
- Sense of well being
- Mental and physical health;
- Capacity to be a good citizen;
- Ability to think creatively;
- Cultural appreciation; art, music, and humanities;

- Understanding of human relations and motivations;
- Acquisition of values related to the physical environment;
- Clarification of personal values;
- Self-reflection: awareness of one's abilities and goals; and
- Self-esteem.

The Special Rapporteur reinforces the role of education within places of incarceration:

“Education is not a panacea for the social, psychological and physical damage caused by detention. It has the potential, however, to offer previously unmet realistic opportunities and assistance, which contribute to meeting the rights and needs of the incarcerated and those of our entire community” (Munoz, 2009, 8).

Problems encountered

Lack of equipment to prisoners and patients is an obstacle for learning about the law and preparing themselves for defence. Forensic patients and inmates often ceased their studies because of lack of equipment.

Areas of concern are that:

- Access to education is either denied or severely limited by the attitude of the doctors and nurses at the institute;
- Restricted access to basic office equipment like photocopying, computers and printers hampers students participating in distance education;
- Restricted access to electronic resources like educational materials on CD and DVD disks effectively deny participation in education.

This also ensures that patients are unable to:

- Have access to educational and computer supports to properly respond to the criminal justice processes. Because of this restriction, detainees can't access and deal with evidentiary material provided by the police in electronic format;
- Learn about the law and its processes; and
- Prepare documents giving instructions to lawyers.

Recommendations by the UN Special Rapporteur

The recommendations put forward by the Special Rapporteur encourages education and support as well as improving the prospects of rehabilitation for those who are in detention. The Rapporteur said:

90. a) “Education for people in detention should be guaranteed and entrenched in Constitutional and/or other legislative instruments” (Munoz, 2009, 24)

b) "The provision of education for persons in detention should be adequately resourced from public funds" (Munoz, 2009)

c) "Compliance with the standards set forth in international law and guidance pertaining to education in detention should be ensured" (Munoz, 2009, 25)

91. a) "The Rapporteur recommends that authorities in charge of public education:
- Make available to all detainees, whether sentenced or in remand, education programmes that would cover at least the curriculum of compulsory education in the primary and, if possible at the secondary level also;

b) "Together with the institutions of detention, arrange comprehensive education programmes aimed

92. Systematic and appropriate screening...upon entry to places of detention becomes the norm. Individual education plans with full participation of the detainee should result from this screening, and be monitored, evaluated and updated from entry to release (Munoz, 2009, 25)

93. States should identify the dispositional barriers to education and subsequently ensure adequate assistance and resources to meet their challenge (Munoz, 2009, 25)

94. Education programmes should be integrated with the public systems so as to allow for continuation of education upon release (Munoz, 2009, 25)

95. Detention institutions should maintain well-funded and accessible libraries, stocked with an adequate and appropriate range of resources and technology available for all categories of detainees (Munoz, 2009, 25)

Computer access for patients

- Education and personal development cannot be achieved without appropriate facilities such as computers. Because computers aren't widely available, patients and prisoners do not have easy access to the law or the necessary evidentiary materials for defending their cases.
- Computers ensure patients have proper access to educational resources so that they can build on their knowledge and in turn, use it for the benefit of the community as a whole.
- Computer access will enable forensic patients and prisoners to participate in the criminal justice processes with equity. Computer access will also assist patients and prisoners to have access to the evidentiary and other materials relied upon by the police in court cases without difficulties.

Conclusion

Learning through educational programmes for forensic patients are generally considered a tool of change because its value is judged by its impact on rehabilitation, reintegration and, more specifically, employment outcomes upon release. Education is, however, much more than a tool for change. It is a tool that gives forensic patients the chance to gain the strength to stand back up, reorganise his or her life and to climb the ladder back into society.

Upon his appointment, The Special Rapporteur decided to focus his attention on groups traditionally marginalised and vulnerable to discrimination in education. The Special Rapporteur has sought to establish the causes and circumstances surrounding such discrimination and the challenges that must be faced in order to promote the realisation of their right to education.

And as shown from the suggestions and information that The Special Rapporteur and the topics above have discussed; if education possesses the possibility of getting forensic patients back on their feet and reintegrated back into society - then it is far more beneficial than to allow them to be locked away inside an institute. Education is a chance for forensic patients to become stronger individuals, a chance that shouldn't be taken away because forensic patients have the right to learn and the right to be a part of society.

To properly implement the Rapporteurs recommendations, the right to education and computer access may need to be specifically written into the mental health law.

Bibliography

Mental Health Act 2007 - Section 105, Objectives of New South Wales public health system, New South Wales Consolidated Acts

Mental Health Coordinating Council, Retrieved from:
http://www.mhcc.org.au/manual/ch1.aspx#ch1_rps_nsrr

Munoz, V (2009) *United Nations: "Promotion and Protection of Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development"*, Human Rights Council, Eleventh Session, Agenda Item 3

Newell, C, Offord, B (2008) *"Activating human rights in education: exploration, innovation and transformation"* (ed.) Deakin West, ACT: Australian College of Educators

UN Enable – Promoting the Rights of Persons with Disabilities (2009) Retrieved from: <http://www.un.org/disabilities/default.asp?id=284>

The Right to Refuse Treatment for Involuntary Patients (Justice Action 11/09)

'... it is the inherent nature of all human beings to yearn for freedom, equality and dignity, and they have equal right to achieve that.'

His Holiness The Dalai Lama, New York, April 1994

The right to decline medical treatment has long been established in other areas of law. However, it has only recently become an issue in mental health. The issues surrounding mental health regulation are complex, resulting in ineffective or unjust outcomes for patients. This paper explores questions relating to the right to refuse treatment for involuntary patients. Firstly, the correlation between involuntary confinement and involuntary treatment raises concerns in relation to both human and civil rights. International instruments encourage the protection of the rights of the individual and ideally, should be reflected in domestic legislation. This paper will also examine the justification of involuntary treatment, for patients involuntarily confined, by reason of 'dangerousness,' a 'need to treat' or lack of capacity or competency. Furthermore, the removal of the right to make decisions regarding treatment demonstrates an element of discrimination. International standards and commentary, particularly by the Mental Disability Advocacy Centre, which is supported by the Council of Europe, demonstrates recognition of the rights of mental ill patients. Furthermore, many jurisdictions no longer equate involuntary treatment as an automatic result of involuntary confinement. In examination of the Australian position, it is argued that the *Mental Health Act NSW* removes any rights from patients to be involved in treatment decisions if they are involuntary patients. This paper concludes with the idea that consensual treatment is the most ideal form of therapeutic care and the approach of the NSW legislation does not equate to the 'best possible treatment,' as outlined in the parliament objectives.

Human Rights

Literature on the right to refuse treatment for mental health patients is grounded in the United Nations human rights ideals and international principles on the right of the individual. This includes, but is not limited to, *Principles of Persons with Mental Illness and Improvement of Mental Health* adopted by General Assembly Resolution in 1991, the *United Nations Convention on the Rights of Persons with Disabilities*, 2007, and the *United Nations Standard Rules for the Equalisation of Opportunities for Persons with disabilities*, 1993.

Countries such as the United States and Canada have an entrenched bill of rights, thus a legal basis by which action can be taken for violation of an individual's rights. Equality and autonomy are paramount to civil rights. Although Australia's protection of human rights is somewhat present in domestic legislation, such as the anti-discrimination legislation, current trends in the treatment of mental ill patients within institutions demonstrates that there is a lack of correlation between the protection of rights and the treatment of involuntary patients.

Together with the next 9 pages
This is the Annexure marked "BAC9" referred to in the
affidavit of Brett Anthony Collins sworn/affirmed 31
August 2010 before me:

Justification for involuntary treatment

Common justification for involuntary treatment includes 'dangerousness,' a lack of competency or a 'need to treat', which demonstrates a lack of ability.

The erroneous belief that mental disorder negates the ability of patients to make valid decisions is a major contributing facet in the debate on involuntary treatment.¹ Research has shown that mental illness does not make a person incompetent to make decisions about their treatment. The *MacArthur Treatment Competence Study*² has shown that, in relation to the ability to make treatment decisions, there is little difference between those with a mental illness and those without. This has led to the push for involuntary detained persons with a mental illness to be assumed competent, unless proved otherwise, and therefore be given the right to refuse or consent to treatment. Just as the legal system assumes innocent unless proven guilty, so too should the burden of proof err on the side of caution and create a rebuttable presumption that involuntary patients are competent, unless proved otherwise.

The notion of incompetence is also associated with idea of a 'need for treatment.' This implies a duty or an obligation to meet those needs.³ On the other hand, some jurisdictions justify compulsory treatment on the notion of 'dangerous.' It could be argued that 'dangerous' could be seen as weaker requirement, merely *permitting* the state to interfere as opposed to an *obligation* to interfere. Although both standards are used in different jurisdictions, changes in such wording have not shown to affect commitment rates.⁴ Appelbaum (1997) concludes that the lawyers and judges bend the wording so to conform to 'fixed' or shared moral institutions.⁵ Therefore, regardless of the justification for compulsory treatment, a 'dangerous' or a 'need to treat' approach, there is a lack of security and minimal safeguards on the rights of the patient.

When determining whether a patient has the capacity to decide on their own treatment plan, those involved must examine the specific context in which it is present. Appelbaum (1994) has found that only 10% of inpatients that have refused treatment usually did so for a short amount of time and reasons for refusal was often the dislike or distrust of the side effects.⁶ Even those who cannot provide reasons for their choices may still be clear as to their preference and their decision should be honoured. It can also be argued that in many ways patients are the experts on both the effectiveness and side-effects of the medications.⁷ This reinforces the importance of a holistic treatment plan in which the patients opinion and experience is of paramount importance.

In short, determination of capacity or competency is a central point in determining whether a patient's right of autonomy will be respected. Thus, in order to review a patient's capacity in the specific context in which it occurs, an independent

¹ Allan, Alfred *The Past, Present and Future of Mental Health Law: a Therapeutic Jurisprudence Analysis*. (2003) 20 *Law in Context* 24-53, 33

² Paul s and Appelbaum & Thomas Grisso, 'The MacArthur Treatment Competence Study: I. Mental Illness and Competence to Consent to Treatment,' 19 (1995) *L & Hum. Behav.* 105 in Fischer, 'A Comparative Look at the Rights to refuse treatment for involuntary Hospitalised Persons with a Mental Illness', 29 *Hastings International and Comparative Law Review* 153 (2005)

³ Radden, J 'Forced Medication, Patients' Rights and Value Conflicts' (2003) 10 *Psychiatry, Psychology and Law*, 4

⁴ Radden, J, above n 3, 4

⁵ Radden, J, above n 3, 4

⁶ Appelbaum, P (1997) *Almost a revolution*, Oxford University Press cited in Radden, J, above n 3, 5

⁷ Radden, J, above n 3, 4

application should be required to rebut the presumption of competence. This removes the 'dangerousness' and 'need to treat' decisions from the hands of the treatment team and forces an independent assessment of the patient's ability to make treatment decisions. An independent application will also require the treating party to sufficiently and justifiably demonstrate that the patient lacks the competency, or capacity, to make their own treatment decisions. Importantly, this approach would remove the connotation between involuntary confinement and involuntary treatment.

Discrimination

*'The delivery of a non-discriminative, autonomy-based legal framework for all treatment has been the goal of many reformers.'*⁸

It is increasingly being recognised that 'wherever possible the principles governing mental health care should be the same as those governing physical health.'⁹ It has been argued that mental health legislation discriminates against a category of people because of their mental disorder. Reviews have demonstrated that legislation governing involuntary patients demonstrates a lower degree of respect and patient autonomy than is afforded to other patients.¹⁰ *Mental Health Act 1986* (Vic) and *Mental Health Act 2007* (NSW) removes patient's ability to refuse treatment, as the treating psychiatrist can override lack of consent by the patient.¹¹ Although there is another right to a second opinion, the ultimate decision lies with the treating psychiatrist.

The differential treatment of involuntary patients should require further justification than merely their 'involuntary status.' It has been found that the increased risk arising from mental disorders is low in comparison to other factors such as age, gender, socio-economic status, drug or alcohol usage, or family breakdown.¹² Thus, it is difficult to argue, as a general proposition, that the risk involved with involuntary patients justifies the restriction of civil and human rights.

Right to autonomy may be impeded for a number of reasons such as 'intense pain, anxiety, temporary lapses in consciousness, or other forms of vulnerability.'¹³ Undeniably there may be more patients suffering a mental disorder that are impeded in their decision making by the underlying disorder, than those suffering a physical illness. However, this does not provide justification for a legal system that denies treatment decisions for those suffering a mental illness.¹⁴ Furthermore, the assumed inability to make a 'correct' decision for mental health patients about treatment is not in line with other social standards. Refusal of life-saving treatment is a right that physical patients have. Self-harm does not justify interference with an individual's right of autonomy.¹⁵

⁸ Donnelly, M 'From Autonomy to Dignity: Treatment for Mental Disorders and the Focus for Patient Rights' (2008) 26(2) *Law in Context*, 37

⁹ The Richardson Report (1999) *Review of the Mental Health Act 1983: Report of the Expert Committee* London: Department of Health cited in Donnelly, M, above n 8

¹⁰ Donnelly, M, above n 8

¹¹ *Mental Health Act 1986* (Vic), s12D

¹² Donnelly, M, above n 8

¹³ Matthews, E (1999) 'Mental and Psychological Illness: An Unsustainable Separation?' in N Eastman and J Peay (eds), *Law Without Enforcement: Integrating Mental Health and Justice* Oxford: Hart Publishing cited in Donnelly, M, above n 8

¹⁴ Donnelly, M, above n 8

¹⁵ Donnelly, M, above n 8

Courts in the US have recognised that individual autonomy in treatment decisions extend 'equally to mentally ill persons who are not to be treated as persons of a lesser status or dignity because of their illness.'¹⁶ It can be inferred that any legislation that removes all treatment decisions from patients, purely because of their involuntary confinement status, is in fact discriminatory.

International standards

A legal authority, in Europe, for the right to for individuals to make decisions in relation to medical treatment, can be found in the right to privacy in Article 8 European Convention on Human Rights (ECHR), or the right to be free from inhuman treatment contained in Article 3.¹⁷

The Mental Disability Advocacy Centre (MDAC), supported by the Council of Europe, states 'that right to decide is not contingent on the convenience of economic efficiency to the state of the person being treated, nor whether the a decision to refuse treatment by the patient is not the correct thing to do. It is simply a right that we enjoy.'¹⁸ Historically, this right has not extended to patients with a mental illness.

MDAC argues that the relationship between compulsory detention and treatment does not necessarily follow.¹⁹ Theoretically there is nothing inconsistent with involuntary detention and allowing the individual the authority to make treatment decisions.²⁰ Although it has been argued that justification of confinement was for medical benefit, this is not the way human rights law in general, and the ECHR in particular, have viewed confinement.²¹ According to the MDAC, the Strasbourg Court has never suggested that for justification of confinement there must be an effective treatment plan.²² Confinement has been determined on dangerousness and severity, rather than treatability. Thus, even if a patient is confined on grounds of dangerousness, there should be not automatic removal a patient's rights to treatment decisions.

There is an increasing international view that if patients are able to understand relevant information in relation to treatment decisions, they ought to be able to decide, regardless of their place of residence. The Committee for the Prevention of Torture outlines this view:

'Patients should as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorising treatment without his consent. It follows that every competent patient, whether

¹⁶ *River v Katz* (1986) 67 NY 2d 485 cited in Donnelly, M, above n 8

¹⁷ European Convention on Human Rights (ECHR) cited in Lewis, O., Thoronld, O & Bertlett, P 'The European convention on Human Rights and the rights of people with mental health problems and/or intellectual disabilities' (2003) *Mental Disability Advocacy Centre* at http://www.mdac.info/documents/MDAC_ECHR_training_pack_-_English_2nd_edition.doc

¹⁸ ECHR, MDAC, above n 17, 13

¹⁹ ECHR, MDAC, above n 17, 13

²⁰ ECHR, MDAC, above n 17

²¹ ECHR, MDAC, above n 17, 13

²² ECHR, MDAC, above n 17

voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention.²³

MDAC advocates that the right to make treatment decisions should depend on capacity, rather than diagnosis or confinement.²⁴ What constitutes 'capacity' itself is a debated issue. The individual should have the intellectual capacity to understand the diagnosis and basic information. It is the responsibility of the doctor to explain the treatment information in basic language. The United Nation reinforces this responsibility with Principle 11 of the *'Principles for the protection of Persons with Mental Illness:'*

Informed consent is consent obtained freely, without threats or improper inducements, after appropriate disclosure to the patient of adequate and understandable information in a form and language understood by the patient on:

- a) the diagnostic assessment;
- b) the purpose, method, likely duration and expected benefit of the proposed treatment;
- c) alternative modes of treatment, including those less intrusive; and
- d) possible pain or discomfort, risks and side effects of the proposed treatment.

Furthermore, skepticism on behalf of the patient should not equate to incapacity.²⁵

Although there have been many applications to the Strasbourg Court, few have been concerned with mental health issues. The right to be free from inhuman treatment or torture, in Article 3 of the ECHR, was challenged in *Herczegfalvy v Austria*.²⁶ Although the court found no violation, it recognised that the outcome could have been different had it been shown that she was capable of making the decision herself.²⁷ It also highlighted that the situation of vulnerability and powerlessness of persons detained in psychiatric institutions requires special vigilance on the part of the authorities.²⁸ Furthermore, as this case was heard in 1992, and as the ECHR is a 'living instrument,' there is much support that Courts today would come to a different decision.²⁹

An invasion of a person's body is an interference with private life under Article 8 of the ECHR. However, Article 8(2) allows for medical treatment 'for the protection of health.' The courts have, however, emphasized the need for vigilance when assessing whether someone 'needs' medical treatment. *Bensaid v United Kingdom*³⁰ reinforced that 'mental health must be regarded as a crucial part of private life associated with the aspect of moral integrity.'

The Council of Europe has established that treatment without consent should be based on law and 'only relate to strictly defined exceptional circumstances.'³¹ Treatment without consent must therefore be based on clear grounds related to the health or safety of the patient or to the protection of others.

²³ Committee for the Prevention of Torture 'VI. Involuntary placement in psychiatric establishments' Extract from the 8th General Report [CPT/Inf (98)12] 2002

²⁴ ECHR, MDAC, above n 17

²⁵ ECHR, MDAC, above n 17

²⁶ *Herczegfalvy v Austria* (1993) 15 EHRR 437

²⁷ ECHR, MDAC, above n 17

²⁸ *Herczegfalvy v Austria* (1993) 15 EHRR 437

²⁹ ECHR, MDAC, above n 17

³⁰ *Bensaid v United Kingdom* 6 Feb 2001

³¹ The CPT Standards, Chapter VI, para.41 at <http://www.cpt.coe.int/en/docsstandards.htm>.

Article 8 is clearly applicable to complaints that concern a matter of 'private life,' a concept that covers the physical and psychological integrity of a person.³² It reiterates that a person's body concerns the most intimate aspect of private life. Thus, a compulsory medical intervention, even if it is of minor importance, constitutes an interference with this right.³³

In some Canadian jurisdictions, patients with the capacity to make treatment decisions are able to exercise the right to make those decisions. Although this has been the case for almost twenty years, the medical profession received this approach with great concern. Contrary to their fears, implementation raised few practical problems and with time the medical profession are broadly content with this approach.³⁴ The recognition of the right to make treatment decisions has resulted in closer consultation and relationships between the treating doctor and patient.³⁵

American courts rejected the argument that involuntary hospitalisation equates to a patient's incompetence to make treatment decisions. In *Lessard v Schmidt*³⁶ it was established that finding of 'dangerous to self or others' is necessary in order to deprive a person of their individual freedoms. Furthermore, it was found that lengthy hospitalization may increase symptoms of mental illness and make transition into society more difficult.³⁷

The court held, in *Rodgers v Okin*³⁸, that hospitals could not forcibly medicate voluntary or involuntary patients with a mental illness except in cases of an emergency in which failure to do so would cause harm to the patient or others. The court also highlighted that;

1. Involuntary hospitalization did not equate to incompetence,
2. detained patients with a mental illness had a qualified right to refuse psychotropic and antipsychotic drugs; and
3. some kind of procedural mechanism taking into account the issue of side effects and other factors was necessary to ensure effectuation of the right.³⁹

In *Rennie v Klein*⁴⁰, the district court took a similar approach and decided that, in the absence of an emergency, the right to refuse treatment is grounded on the emerging constitutional right to privacy. The court noted three factors when this can be overridden:

1. whether or not patient can be confined without endangering other patients or staff, if the medication refuse would have curbed the dangerous tendencies,
2. whether the patient is competent to make the decision, and
3. whether or not there is a less restrictive alternative available.

Since *Rennie and Rodgers*, all states except Utah recognize a right to refuse treatment separate from the involuntary hospitalization treatment decision.⁴¹

In *Flemmings v Reid*⁴² a Canadian court found that an involuntary psychiatric patient expressed, while he was competent, that he did not wish to be medicated. Court

³² (see *X and Y v. the Netherlands*, judgment of 26 March 1985, Series A no. 91, p.11, § 22).

³³ (see *X v. Austria*, no. 8278/78, Commission decision of 13 December 1979)

³⁴ ECHR, MDAC, above n 17, 14

³⁵ ECHR, MDAC, above n 17

³⁶ *Lessard v Schmidt* 349 F. Supp. 1078 (ED Wis. 1972)

³⁷ Fischer, above n 2, 158

³⁸ *Rodgers v Okin*³⁸ 478 F. Supp 1342 (D Mass 1978)

³⁹ *Rennie v Klein*³⁹ 462 F. Supp 1131 (D.N.J 1978); *Rodgers v Okin*³⁹ 478 F. Supp 1342 (D Mass 1978) in Fischer, above n 2

⁴⁰ *Rennie v Klein*⁴⁰ 462 F. Supp 1131 (D.N.J 1978)

⁴¹ Fischer, above n 2, 158

⁴² *Flemmings v Reid* [1991] D.L.R 298

found that setting aside his competent wishes was contrary to his right to life liberty and security under section 7 of Canadian Charter.

In the UK, it is possible to be involuntary hospitalized without treatment. Likewise, Scottish law does not allow compulsory treatment simply based on involuntary admission. It requires a separate compulsory treatment order.⁴³

The Australian Experience

In some Australian jurisdictions, as in the United States and Canada, clinical standards alone are no longer considered a sufficient justification for the restriction and loss of liberty involved with the care of mentally ill patients.⁴⁴ The statutory tests for compulsory treatment, although different depending on the jurisdiction, generally consist of a number of objective criteria superimposing a 'dangerousness' or harm prerequisite over a 'need for treatment.'⁴⁵ The *Mental Health Act 2007* (NSW) for example, is more representative of the 'dangerousness' standard in its requirement that 'care, treatment *or control* of the person' must be necessary in order to prevent 'serious harm' likely to flow from their mental illness.⁴⁶ The *need for treatment* and the benefits that are likely to flow from such treatment, is the approach taken in the Victorian and ACT provisions.⁴⁷ The Victorian Act requires that the person's illness must require *immediate* treatment (in line with the standard preferred by the court in *Lessard v Schmidt*).⁴⁸

International legal frameworks may be contrasted to those in NSW, Victoria and the ACT, 'under which a person subject to an order authorising compulsory treatment may generally be provided with medication regardless of whether or not they object.'⁴⁹ This stems from the understanding that involuntary patients are incompetent to make treatment decisions while in confinement.⁵⁰ 'However, this justification is far from compelling, given that there is no express incompetence prerequisite for compulsory treatment.'⁵¹

Regardless of the validation that is given in the legislation, in a practical sense, the NSW legislation, in particular, simply creates a blanket authority that an involuntary patient does not have any right to refuse treatment that the treating doctor 'thinks fit.' There is no need or requirement for external application to give a doctor this power; rather legislation assumes incompetence on behalf of the patient regardless of the specific circumstances of the individual.

Australian mental health statutes, specifically the *Mental Health Act 2007 NSW*, go further than listing a set of objectives regarding the provision of care and treatment. They contain an attempt to give direction to decision-makers to implement those

⁴³ Fischer, above n 2, 175

⁴⁴ Carney, T, Tait, D, & Beupert, F. 'Pushing the Boundaries: Realising Rights Through Mental Health Tribunal' (2008) 30(2) Sydney Law Review, 7

⁴⁵ Carney et. al., above n 44

⁴⁶ *Mental Health Act 2007* (NSW), s14(1)

⁴⁷ Carney et. al., above n 44

⁴⁸ Carney et. al., above n 44

⁴⁹ Carney et. al., above n 44

⁵⁰ Carney et. al., above n 44, 9

⁵¹ Carney et. al., above n 44

objectives with little or no input from the patient, rather at the discretion of the treating doctor.⁵²

For example the Objects of the *Mental Health Act 2007* (NSW) are:

- (a) to provide for the care, treatment and control of persons who are mentally ill or mentally disordered, and
- (b) to facilitate the care, treatment and control of those persons through community care facilities, and
- (c) to facilitate the provision of hospital care for those persons on a voluntary basis where appropriate and, in a limited number of situations, on an involuntary basis, and
- (d) while protecting the civil rights of those persons, to give an opportunity for those persons to have access to appropriate care, and
- (e) to facilitate the involvement of those persons, and persons caring for them, in decisions involving appropriate care, treatment and control.⁵³

However, s 84 governs the treatment of patients and states that:

‘An authorised medical officer of a mental health facility may, subject to this Act and the *Mental Health (Forensic Provisions) Act 1990*, **give, or authorise the giving of, any treatment (including any medication) the officer thinks fit to an involuntary patient** or assessable person detained in the facility in accordance with this Act or that Act.⁵⁴

This broad authorisation allows involuntary patients to be treated against their will in NSW. There is little safeguard of the patients rights and no need for any other independent application to get authorisation to override lack of consent. The NSW position is not in line with any of the international standards and trends. As international law develops to recognise the right to refuse treatment, even for those involuntary hospitalised, NSW has stood still in the protection of civil and human rights.

The *Mental Health Act 1996* (Tas) provides a more desirable approach to the treatment of involuntary patients, than other jurisdictions in Australia. Under the Act, a patient in the Tasmanian jurisdiction cannot be forcibly treated merely when the treating doctor ‘thinks fit.’ Rather, an application has to be made under the *Guardianship and Administration Act 1995* and the Board determines whether to grant the application.⁵⁵ Tasmanian legislation appears to have erred on the side of caution for the rights of the patient and created a rebuttable presumption that involuntary patients are competent, unless decided otherwise by the Board. The approach taken in Tasmanian demonstrates that, while patients can be involuntarily detained, they are able to maintain some level of recognition of their rights.⁵⁶

⁵² Carney et. al., above n 44

⁵³ *Mental Health Act 2007* (NSW), s3

⁵⁴ *Mental Health Act 2007* (NSW), s84

⁵⁵ *Mental Health Act 1996* (Tas), s32

⁵⁶ Langford, L ‘The New Mental Health Act in Tasmania (1996): A comparative Review with the Former Act (1963): Can They Now Die with Their Rights on?’ (2003) 10 *Psychiatry, Psychology and Law*, 140

Sedation

The practice of sedation for involuntary patients, particularly in NSW, further highlights the abuse of rights and lack of respect shown to some of the most vulnerable member of society. NSW Health Policy Directive gives guidance to the sedation practices and clearly outlines the circumstances in which sedation may be used on a patient. The Policy Directive states that these 'chemical restraints' can only be used in 'extreme circumstances when other forms of management of a least restrictive nature have been proven unsuccessful'.⁵⁷ Furthermore, 'an injection without consent should be given only in the interest of the immediate physical safety of the patient or those in his or her vicinity'.⁵⁸ As noted, any other unauthorised IV sedation that does not comply with this Policy Directive may be considered assault.

The Policy Directive also gives direction in relation to restraint in psychiatric in-patient facilities. Again, 'restraint should only be applied for the minimum time necessary and its application must take into account the principle of care in the least restrictive manner'.⁵⁹

On the surface, these principles of care within the Policy Directive are safeguards for vulnerable patients. However, when read in conjunction with the *Mental Health Act* (NSW), the safeguards that protect patients can be easily abused.

When a patient is held down and jabbed with a syringe, that effectively knocks him out, one would assume this is classified as IV sedation, and thus governed by the directives established in the Policy Directive which states sedation should only be used in 'extreme circumstances.' However, the legislation has given treating doctors the ability to hide behind the notion of 'treatment.' If a patient complains that they are being sedated without justification, the treating doctor merely classifies the injection as 'treatment' and therefore is not bound by the Policy Directive. The NSW Health system does not adequately protect the patient's rights. Power is placed in the hands of the treating doctor. Even with restrictions on sedation, the doctor has ultimate discretion to the treatment of the patient. Sedation is not uncommon with mental health patients in forensic hospitals and violates the rights of the person when it is implemented outside the guidelines. Criminal charges of assault can be laid for breaches of the Policy Directive and should act as deterrence to abusive doctors. The problem arises from the difficulty in separating 'sedation' from 'treatment.' The NSW health system needs to update the guiding principles of patient care and remove the ability for doctors to abuse the authority they wield over mental health patients.

A positive result from the right to refuse treatment

The ability to refuse treatment by patients is also seen by some as therapeutic, as it recognises the right of the patient to privacy, competency and recognises their autonomy. Refusal of treatment has also been seen to encourage practitioners to communicate more effectively with the patients and be more patient oriented. In turn, this

⁵⁷ NSW Health 'Policy Directive: Seclusion Practices in Psychiatric Facilities' (2007) PD2007_054 at <http://www.health.nsw.gov.au/policies/a-z/s.asp>, 17

⁵⁸ NSW Health, above n 56

⁵⁹ NSW Health, above n 56

may encourage a patient's compliance.⁶⁰ Ignoring a patient's right to refuse treatment can also lead to disempowerment.

'There is evidence that practioners take more care that the medication they recommend is appropriate, monitor its effects well, and listen to the concerns of the patient.⁶¹ Greater transparency in the treatment process contributes to the overall recovery of the patient. Psychiatric medication is also often accompanied by sever side effects and can be highly invasive. Allowing patients to make treatment decisions utilises a patient's ability to understand themselves and their body's reaction.⁶²

There are ground to argue that the right to refuse treatment also can have non-therapeutic implications. It has been suggested that right to refuse treatment reinforce uncooperative behaviour, and may even encourage it. Furthermore, it may lead to more disruptions and encourage more attention to be paid to those refusing than those complying with treatment plans.⁶³ However, although there is competing and conflicting research in the area, it has been shown that a patient responds more favourably to treatment when staff treats them fairly as intelligence aware human beings. Furthermore, *Lessard v Schmidt*, highlighted that studies have shown that due process protections provide therapeutic benefits and reduce the misuse of medication.

Consensual treatment is the ideal form of therapeutic care. Allowing patient to make decisions enhances relationships and patients trust and confidence in the treating psychiatrist. It increases motivation to recover. Patients are said to respond better to treatment if they are internally motivated to comply with treatment as opposed to externally required.⁶⁴

⁶⁰ Allan, above n 1

⁶¹ Allan, above n 1, 34

⁶² ECHR, MDAC, above n 17

⁶³ Allan, above n 1

⁶⁴ Donnelly, M, above n 8

BAC10

By Email: attachments were Saeed's profile, and papers on Education rights and Right to refuse medication for mental health patients.

From: Brett Collins <brett@justiceaction.org.au>

Date: Fri, 12 Feb 2010 14:19:10 +1100

To: MHRT <mhrt@doh.health.nsw.gov.au>

Conversation: MHRT/Saeed Dezfouli

Subject: MHRT/Saeed Dezfouli

Hi MHRT,

As Saeed's primary carer I undertook at the hearing yesterday to forward digital copies of the documents I gave the chair. They are attached.

Several times the MHRT referred to its role as being, in essence, subservient to Justice Health.

According to the Mental Health (Forensic Provisions) Act 1990 No 10 under Section 47(1)a <http://www.legislation.nsw.gov.au/xref/inforce/?xref=Type%3Dact%20AND%20Year%3D1990%20AND%20no%3D10&nohits=y>

it has the authority to make orders as to detention, care and treatment of Saeed. Our documents tabled show that he is being treated wrongly, breaching his right to be at the lowest security despite being critical of Justice Health behaviour, right not to be assaulted, right to education, social community, exercise etc.

We asked for those things to be changed in our letter to the MHRT after the Review last year and at that Review yesterday 11/2/10. The MHRT refused to make those orders. It didn't carry out its undertaking to Saeed and myself after the previous hearing to deal with those issues.

I also place on record my complaint about Saeed's other support people being refused access yesterday. I ask the MHRT why that happened.

The Forensic Hospital refused access to two of our workers who applied last week and hadn't had any response until I followed it up on 10/2/10. The security manager rang both of them and said that they were refused because "it is a maximum security hospital and JA is not one of Justice Health's support partners".

At the last hearing for Saeed a Member of Parliament's policy adviser and one of our support people allocated to assist Saeed were allowed in without a problem. It was important for them to meet him and express their support.

On the MHRT website it says: Involvement of Relatives and Victims

http://www.mhrt.nsw.gov.au/forensic_patients.htm

The Tribunal reviews are open to the public and it may be possible for relatives of forensic or correctional patients or registered victims to attend hearings and make oral submissions in person, depending on the arrangements of the venue where the hearing is to be held. However, there are some venues, which prevent such attendance.

SAEED's RIGHTS

Together with the next page

This is the Annexure marked "BAC10" referred to in the affidavit of Brett Anthony Collins sworn/affirmed 31 August 2010 before me:

The principles of patients' rights on the Health Dept website refer to education and social relationships at point 11. Clearly they have been breached with Saeed. It gives the funding sources and amounts first. It links across from the Mental Health Review Tribunal website.
http://www.mhrt.nsw.gov.au/forensic_procedural_note.htm

Charter for mental health care in NSW
<http://www.health.nsw.gov.au/policy/cmh/legal.html>

Every person in NSW has the right to mental health services that:

1. Respect human rights.
2. Are compassionate and sensitive to the needs of the individuals they serve.
3. Foster positive attitudes to mental health in the larger community.
4. Promote positive mental health.
5. Encourage true consumer involvement at all levels of service delivery and policy development.
6. Provide effective treatment and care across the lifespan.
7. Are widely accessible to people with mental health needs.
8. Provide care in the least restrictive environment, consistent with treatment requirements.
9. Provide effective and comprehensive prevention programs across the lifespan.
10. Promote 'living well' with mental illness.
11. Address quality of life issues such as accommodation, education, work and income, leisure and sport, home and family and other relationships.
12. Use language that reduces stigma, discrimination, or negativity for those affected and their families.
13. Respect and are responsive to the diversity in lifestyle, sexuality and sexual preference.
14. Are culturally sensitive and appropriate to the needs of the individuals they serve.

Encourage and support self-help.

Please acknowledge and respond.

Regards,

Brett Collins
JUSTICE ACTION
Trades Hall, Suite 204, 4 Goulburn St, Sydney NSW 2000
PO Box 386, Broadway NSW 2007
T 02 9283 0123 ext 14 | F 02 9283 0112 | M 0438 705003
E brett@justiceaction.org.au
<http://www.justiceaction.org.au>

BREAKOUT DESIGNPRINTWEB <http://www.breakout.net.au>
proudly sponsors Justice Action
End of Forwarded Message

BAC 11



Mental Health
Review Tribunal

Building 40 Gladesville Hospital, Gladesville
PO Box 2019 Boronia Park NSW 2111
Tel: (02) 9816 5955 Toll Free: 1800 815 511
Fax: (02) 9817 4543
Fax: (02) 9879 6811 (Forensic only)
Website: www.mhrt.nsw.gov.au
Email: mhrt@doh.health.nsw.gov.au

received 19/2/10

F0825

16 February 2010

Mr Brett Collins
Justice Action
PO Box 386
BROADWAY NSW 2007

Dear Mr Collins

Re: Saeed Dezfouli

I received your email of Friday 12th February 2010. You have provided us with documents including:

- a profile of Mr Dezfouli;
- a document headed "The Education Rights of Forensic Patients";
- a document headed "The Right To Refuse Treatment for Involuntary Patients" apparently authored by Justice Action in November 2009; and,
- a document headed "Forensic Mental Patient Treatment – A Case Study of the Impact of the NSW Forensic System" also written by Justice Action.

These documents will be placed on file for Mr Dezfouli and referred to the Tribunal Panel conducting reviews of Mr Dezfouli's care, detention and treatment. Your letter raises a number of matters which I will deal with separately below.

In your email you asserted that at the hearing of the Mental Health Review Tribunal review of Mr Dezfouli's case conducted on the 11th February 2010, "*several times the MHRT referred to its role as being, in essence, subservient to Justice Health.*" That is an interpretation you have placed yourself on what occurred. I have made enquiries and I find no reasonable basis for that interpretation. The Tribunal did from time to time, refer to difficulties relating to resources and to placement particularly having regard to Mr. Dezfouli's condition. The Tribunal is strongly aware of the matters to which it has to have regard under section 68 of the *Mental Health Act 2007* as well as

Together with the next page
This is the Annexure marked "BAC11" referred to in
the affidavit of Brett Anthony Collins sworn/affirmed 31
August 2010 before me:

under section 74 of the *Mental Health (Forensic Provision) Act 1990* and has paid regard to those matters.

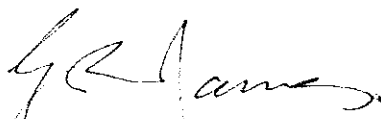
The assertion you make that because Justice Action has asked for things to be changed they should be changed regrettably is not acceptable in the light of the medical opinion concerning Mr Dezfouli. The Tribunal did take your submissions to it into consideration as well as the matters you had raised on previous occasions and in addition has taken into account your involvement and the views you have expressed, as the primary carer for Mr Dezfouli. Your reference to the Health Department website notes regarding education and social relationships does not note that those notes are, of course, to be read subject to your client's status as a forensic patient, as also must be the *Statement of Rights* set out in the *Charter for Mental Health Care in NSW*, to which you also refer.

As to attendance at hearings, the Tribunal has no power to require the secure institutions in which forensic patients are held, to provide access for any particular persons to the actual hearing site. It is for each institution to determine its own security requirements. Should persons be excluded by such an institution it will be necessary to take that matter up with the appropriate officer of that institution.

The Tribunal has gone to a great deal of trouble to take into account all that might put regarding Mr Dezfouli including being in touch with you by telephone and email and has done all it can to allow you to put all you might wish but in that regard it is not appropriate for you to insist that the Tribunal is required to give access to your coalition members or others nor is the Tribunal prepared to accept the assertions you make where there is a preponderance of evidence to the contrary.

Nonetheless, the material you provided will be reconsidered on each and every review of Mr Dezfouli's circumstances and should you wish to have access for persons who have been excluded, if they are able to meet the security requirements necessary to obtain access to a secure institution, they should make enquiries of the relevant institution as to the necessary procedure to obtain access.

Yours faithfully



Hon Greg James QC
PRESIDENT

From: Brett Collins [<mailto:brett@justiceaction.org.au>]
Sent: Friday, 19 March 2010 1:20 PM
To: MHRT; JAMES, Greg
Subject: Mr Saeed Dezfouli/Decisions and reasons

BAC12

19 March 2010

The Hon. Greg James QC
President, Mental Health Review Tribunal
Fax: 9879 6811

Dear Hon. Greg James QC,

RE: Mr Saeed Dezfouli/Decisions and reasons

I am writing in response to your letter of 8 March 2010. Mr Dezfouli will not be retaining the Mental Health Advocacy Service to act on his behalf in appealing the decision of the Mental Health Review Tribunal on 11 February 2010. Also he does not consent for them to represent him in the Mental Health Review Tribunal's six monthly reviews of his case. Mr Dezfouli has authorised myself, as his primary carer, to initiate an appeal on his behalf. I have attached a copy of his signed authorisation.

I thereby request a copy of the Mental Health Review Tribunal's decisions, orders and reasons concerning Mr Dezfouli following the hearing on 11 February 2010 and other occasions where orders have been made that affect him.

Would you kindly acknowledge receipt of this correspondence by fax or email, and urgently supply the requested material in the same way?

Yours faithfully,

Brett
Brett Collins
Coordinator
JUSTICE ACTION
Trades Hall, Suite 204, 4 Goulburn St, Sydney NSW 2000
PO Box 386, Broadway NSW 2007
T 02 9283 0123 ext 14 | F 02 9283 0112 | M 0438 705003
E brett@justiceaction.org.au
<http://www.justiceaction.org.au>

This is the Annexure marked "BAC12" referred to in the affidavit of Brett Anthony Collins sworn/affirmed 31 August 2010 before me:

.....

From: Greg James <gjame@doh.health.nsw.gov.au>

Date: Mon, 29 Mar 2010 16:29:59 +1100

To: Brett Collins <brett@justiceaction.org.au>, "Anina Johnson@agd.nsw.gov.au" <Anina_Johnson@agd.nsw.gov.au>

Subject: RE: Mr Dezfouli/appeal/MHRT Decisions and reasons

BAC13

Dear Mr Collins

As you are aware there was no change made nor any sought at the last review . Please advise what decision or determination , it is contended, was made , from which Mr Dezfouli is appealing so that we can identify what documents out of the wide range you have referred to might be relevant and brief the lawyers accordingly

This is the Annexure marked "BAC13" referred to in the affidavit of Brett Anthony Collins sworn/affirmed 31 August 2010 before me:

.....

From: Brett Collins [mailto:brett@justiceaction.org.au]
Sent: Monday, 29 March 2010 6:27 PM
To: JAMES, Greg; Anina_Johnson@agd.nsw.gov.au
Subject: Re: Mr Dezfouli/appeal/MHRT Decisions and reasons

BAC 14

Dear Mr James,

Thanks for your response below "there was no change made nor any sought at the last review"

That is entirely incorrect. We sent you and the MHRT an email dated February 12, the day following the hearing, referring to the issues we raised and changes sought. You responded to those requests in your fax attached which says amongst other things: "the assertion that you make that because Justice Action has asked for things to be changed they should be changed..."

In the light of that mistake please let the Supreme Court hear the appeal urgently and on its merits, and assist with the provision of the documents as requested.

Yours faithfully,

Brett Collins

PORTION OF EMAIL 12/2/10

From: Brett Collins <brett@justiceaction.org.au>

Date: Fri, 12 Feb 2010 14:19:10 +1100

To: MHRT <mhrt@doh.health.nsw.gov.au>

Subject: MHRT/Saeed Dezfouli

Hi MHRT,

As Saeed's primary carer I undertook at the hearing yesterday to forward digital copies of the documents I gave the chair. They are attached.

Several times the MHRT referred to its role as being, in essence, subservient to Justice Health.

According to the Mental Health (Forensic Provisions) Act 1990 No 10 under Section 47(1)a it has the authority to make orders as to detention, care and treatment of Saeed. Our documents tabled show that he is being treated wrongly, breaching his right to be at the lowest security despite being critical of Justice Health behaviour, right not to be assaulted, right to education, social community, exercise etc.

We asked for those things to be changed in our letter to the MHRT after the Review last year and at that Review yesterday 11/2/10. The MHRT refused to make those orders. It didn't carry out its undertaking to Saeed and myself after the previous hearing to deal with those issues.

This is the Annexure marked "BAC14" referred to in the affidavit of Brett Anthony Collins sworn/affirmed 31 August 2010 before me:

WZ



**Crown
Solicitor's
Office**

BAC15

My Ref: 201000761

T01 Anina Johnson

Tel: (02) 9224-5227

Fax: (02) 9224-5222

Email: crownsol@agd.nsw.gov.au

10 June 2010

Ms Pauline Wright
P J Donnellan & Co
Level 2, 91 Mann Street
GOSFORD NSW 2250

Together with the next page
This is the Annexure marked "BAC15" referred to in
the affidavit of Brett Anthony Collins sworn/affirmed
31 August 2010 before me:

By email pwright@pjdonnellan.com.au

Dear Ms Wright

Collins as tutor for Dezfouli S v Mental Health Review Tribunal - 2010/62963

As you may be aware, I act for the Mental Health Review Tribunal and the Attorney General for New South Wales in these proceedings.

I refer to your client's notice to produce directed to the Mental Health Review Tribunal seeking a copy of:

"The Mental Health Review Tribunal's decision, orders and reasons concerning Mr Saeed Dezfouli following the hearing on 11 February 2010."

The Mental Health Review Tribunal instructs me that it made no decision or order on 11 February 2010 in respect of the matters in s. 47 of the *Mental Health (Forensic Provisions) Act 1990* or otherwise under that Act.

I am instructed that the Tribunal takes the view that when conducting a review under ss. 46 and s. 47 of the *Mental Health (Forensic Provisions) Act 1990*, it is entitled, but not required to make an order or determination. I am instructed that Mr Dezfouli did not request that any specific orders be made by the Tribunal on 11 February 2010. Accordingly, in the case of the review of Mr Dezfouli conducted on 11 February 2010, the Tribunal did not make either an order or a determination.

The Tribunal did make a recording of the proceedings on 11 February 2010 and I am instructed that it agrees to provide you with a copy of that recording.

Both for any call on the Notice to Produce and so that the subject matter of the appeal may be known, your client will need to identify what decisions or orders your client says the Tribunal made on 11 February. Even if your client can identify a decision against which the appeal is brought, your client will still need to identify any asserted error of law and the reasons why leave should be granted.

When your client has identified the decision or order that your client says was made on 11 February, if there is a document in the possession of the Tribunal which is capable of being considered by the Court to be within the general parameters of your client's Notice to Produce as being a "decision, order or reasons", then the Tribunal instructs me that it will produce that document to the Court.

It will resist any call for access to that document until after the Court makes a decision as to whether that document is held to be a "decision", an "order" or "reasons for a decision".

I point out that it appears that if the document were to amount to reasons for decision, then the document could not be admitted into evidence by reason of s. 129 of the *Evidence Act 1995*, and further issues may arise as to your client being permitted access to it. Further, the Tribunal's view is that, if any such document is not the record of a decision or order or does not contain the reasons for a decision, then it could not assist your client on the present appeal.

In the circumstances, may I suggest that your client gives consideration to withdrawing the proceedings and instead Mr Dezfouli raises any concerns that he might have at his next review hearing which is scheduled to be conducted no later than August 2010.

It would be regrettable if costs were to be incurred in the litigation to little point, particularly since, as tutor your client would be personally liable if an order for costs were made. At this point, I am instructed that a withdrawal of the proceedings will not attract an application for costs. This letter may otherwise be relied on in a claim for costs. I refer you to the principles enunciated in *Calderbank v Calderbank* (1975) All ER 333, and *Messiter v Hutchinson* (1987) 10 NSWLR 525.

I look forward to hearing from you.

Yours faithfully


Anina Johnson
Senior Solicitor
for Crown Solicitor

BAC16

| | |
|-----------------|------|
| NO. 5464 | P. 5 |
| M.H.R.T. | |
| EXHIBIT No. 163 | |
| FILE No. F0825 | |

Reasons for Decision File Copy



Mental Health
Review Tribunal

Forensic Review: Saeed Sayaf Dezfouli
F0825 – 14th Review

s46(1) Review of forensic patients

Mental Health (Forensic Provisions) Act 1990

Date: 11/02/2010

Location: Forensic Hospital

Panel: Richard Gulley Deputy President

John Spencer Psychiatrist

Meredith Martin Other Member

Application: No change to the current order for detention

Decision: Approved

This is the 14th review of Mr Saeed Dezfouli, a forensic patient aged 51 years, pursuant to section 46(1) of the *Mental Health (Forensic Provisions) Act 1990*. Mr Dezfouli is currently detained at the Forensic Hospital. His treating team is seeking no change to the current order for care, treatment and detention.

BACKGROUND

Index event

Mr Dezfouli had been employed as an Iranian interpreter by the Ethnic Affairs Commission in Ashfield. On 18 January 2002 Mr Dezfouli set fire to the office of the Community Relations Commission in Ashfield, where numerous employees had been working. Some employees managed to escape, save for three people who were found unconscious. One employee later died in hospital.

On 1 May 2003 the Supreme Court of New South Wales found Mr Dezfouli unfit to be tried for murder. On 8 July 2003 the Attorney-General directed that a Special Hearing be conducted in respect to the offences.

Together with the next 4 pages

This is the Annexure marked "BAC16" referred to in the affidavit of Brett Anthony Collins sworn/affirmed 31 August 2010 before me:

On 19 March 2004 in the Supreme Court, on the limited evidence, the jury returned the verdict of not guilty of murder and not guilty of the offence of maliciously damage property intending by that damage to endanger life of another. The jury, however, on the limited evidence, did find that Mr Dezfouli was not guilty by reason of mental illness of manslaughter and not guilty by reason of mental illness of maliciously damage property pursuant to section 39 of the *Mental Health (Criminal Procedure) Act 1990*. Mr Dezfouli was ordered to be "detained at D Ward Long Bay Hospital until released by due process of law".

On 8 August 2008 the Court of Criminal Appeal considered Mr Dezfouli's appeal against the Special Verdict under the *Mental Health (Criminal Procedure) Act 1990* on the charges of manslaughter and maliciously damage property by fire, but dismissed the appeal.

Prior History

Mr Dezfouli had no criminal history in New South Wales prior to the index event. He was born in Iran and attended university where he obtained a Bachelor's degree in political science. He was teaching in Iran before immigrating to Australia in 1983. In Australia he primarily worked as an interpreter.

Forensic Patient History

Mr Dezfouli had been a patient at the Long Bay Prison Hospital since February 2002.

On 23 March 2009 an order pursuant to sections 76D and 76E of the *Mental Health (Forensic Provisions) Act 1990* was made to transfer Mr Dezfouli from the Long Bay Prison Hospital to the Forensic Hospital.

The Tribunal's last review was held on 20 August 2009 at the Forensic Hospital. Mr Dezfouli declined legal representation and sought to represent himself, however, he engaged the support of Mr Brett Collins of Justice Action as his Primary Carer. In addition, he was supported by Ms Lucy Kerley from Justice Action, and he had arranged for the attendance of Ms Hazel Blunden from the office of Sylvia Hale MLC.

The Tribunal heard evidence that Mr Dezfouli had no interaction and no communication, with his treating doctor, Dr O'Dea. At the previous hearings, indeed, Mr Dezfouli set forth a series of sections under the *Crimes Act* in which he sought to draw to the Tribunal's attention, with a

view to the Tribunal taking action in respect of those sections, against Dr O'Dea. At the last review he referred to a number of statutory provisions which, in his submission, indicated that the treatment that he had been receiving in the Forensic Hospital, as well as that he had previously received in the Long Bay Prison Hospital, was in a number of respects contrary to a number of statutory provisions. It was explained to Mr Dezfouli that it was outside the remit of the Tribunal under the statute to embark on prosecutions, anti-discrimination investigations, and determinations of criminal behaviour, matters relating to offences or negligence or matters relating to legal responsibilities, as these were outside the ambit of care, detention and treatment.

Mr Dezfouli provided the panel with a report from Dr Bruce Westmore as a consultant, furnished to Justice Action. That report raised the prospect of Mr Dezfouli being compliant with medication and, in consequence, improving in his mental state such that there may have been a basis for the Tribunal to be able to consider conditional release for Mr Dezfouli at some stage. Mr Dezfouli submitted that now was the appropriate time. The report was dated 16 July 2009. Dr Westmore was plainly not looking to the immediate future, but to a more distant prospect.

Mr Dezfouli embarked on some 14 or so Supreme Court suits, as well as complaints to the Anti-Discrimination Board and various other statutory authorities from which he sought redress for what he perceives to be, on many, many grounds, illegal treatment. He had also sought a change in his treating psychiatrist, and nominated Dr Ventura, psychiatrist, as his preferred treating doctor.

Mr Dezfouli had been refusing oral medication, including his oral cardiac medication, in protest against receiving forcible injections of antipsychotic medication, and had also been protesting against the mode of administration and the occasions of administration of that medication. He complained to the Anti-Discrimination Board concerning such matters. The fact that he complained to the Anti-Discrimination Board, or commenced litigation before the Supreme Court concerning these matters, did not remove the necessity for the Tribunal to enquire into his care, detention and treatment. The Tribunal made no changes to that care, treatment and detention and made an order to that effect on 27 August 2009 pursuant to section 47(1) of the Act.

Registered Victim

There are no registered victims in Mr Dezfouli's case.

ATTENDEES

Mr Dezfouli attended the hearing in person. He was accompanied by his primary carer, Mr Brett Collins of the Justice Action Group.

DOCUMENTARY EVIDENCE

The Tribunal considered the documents listed in the Forensic Patient Exhibit List annexed to these recommendations.

PRESENT CIRCUMSTANCES

At the time of the review Mr Dezfouli was detained at the Clovelly Unit of the Forensic Hospital.

The Tribunal found it very difficult to conduct its review. Part of the difficulties arose as a result of the presence of Mr Collins. Initially, he sought to have the Tribunal give consideration to a substantial amount of written material which he handed to the Tribunal. It was made clear to him that the Tribunal could not and would not be in a position to consider that material at the review and that it would be placed with Mr Dezfouli's file.

Mr Collins continued to engage the Tribunal with submissions which in the opinion of the Tribunal were not relevant to its task of undertaking a review as it was obliged to under the Act. Such an approach did not deter Mr Collins from making further submissions and again the Tribunal questioned the relevance of these submissions but received no assistance from Mr Collins.

The approach adopted by Mr Collins is counterproductive and does not, in the Tribunal's opinion, assist Mr Dezfouli's position. Mr Collins was clearly seeking to advance his cause or causes and in so doing this was to the detriment of the person he was seeking to assist as carer.

The approach adopted by Mr Collins will not, and never will assist Mr Dezfouli to achieve his ultimate goal of release unless Mr Collins changes his attitude. Mr Collins may see some advantage to himself and continuing his present approach.

Mr Dezfouli indicated to the Tribunal that he was of the belief the Tribunal did not undertake its functions properly and it had not given consideration to a number of items which he had raised and that for the last 10 months he had been both assaulted and sexually assaulted presumably by his treating team. He proposed to renounce his citizenship and return to Iran and to that end he was seeking release while awaiting repatriation.

Mr Dezfouli was critical of the multi-disciplinary report of the treating team and asserted that he had not been seen by a treating doctor since November 2007. He objected to the continuation of Dr O'Dea as his treating psychiatrist and required him to be substituted by Dr Ventura, psychiatrist. On that point as far as Dr O'Dea was concerned he was of the view that there was no clinical need for a change in the treating team and the present team will continue to engage with Mr Dezfouli.

The treating team's report indicated some improvement in the condition and approach of Mr Dezfouli in that his attitude had changed marginally towards staff and he was becoming less, it would seem, abusive and was more compliant with their requests. He remains insightful into his mental condition and he continues to maintain an obstructive attitude towards treatment.

Mr. Dezfouli continues to press for release and seeks that he be transferred to Bunya or Morisset. Whilst the staff have indicated they will attend the Forensic Hospital to assess Mr Dezfouli in the near future.

CONCLUSION

Having regard to all the oral material before it and particularly the multi-disciplinary report of 11 February 2010 the Tribunal was of the opinion that the current arrangements for Mr Saeed Dezfouli's care, treatment and detention at the Forensic Hospital should continue.

Signed:


Richard Gulley
Deputy President

Dated this day:

3 March 2010



**Crown
Solicitor's
Office**

BAC17

Facsimile**IFAX**

To: Pauline Wright Acc Spec Local Govt & Planning
Law
P J Donnellan & Co

From: Anina Johnson

Fax No: (02) 4323-1623**Ref:****Pages:** 9 (incl. cover)**Tel:** (02) 9224-5227**Fax:** (02) 9224-5222**My Ref:** T01 201000761**Date:** 23 June 2010**Email:** crownsol@agd.nsw.gov.au**Dezfouli S v Mental Health Review Tribunal - 2010/62963**

Dear Ms Wright

I appeared before Registrar Bradford today on behalf of the second defendant. I mentioned your appearance. I handed up a copy of the short minute of consent orders that you faxed to me yesterday and the Registrar made orders in those terms.

I attach a copy of the short minutes signed by me on behalf of the Crown Solicitor.

As agreed I also attach a copy of the document dated 3 March 2010, produced to the Supreme Court today in answer to the Notice to Produce.

If necessary, I presume that you will ensure that your client is aware of the restrictions which apply to the use of documents produced as part of Court proceedings.

Yours faithfully

Anina Johnson
Senior Solicitor
for Crown Solicitor

This is the Annexure marked "BAC17" referred to in the affidavit of Brett Anthony Collins sworn/affirmed 31 August 2010 before me:

Confidentiality Notice: This facsimile transmission (including any documents accompanying this facsimile transmission) may contain information which is confidential and/or privileged. Therefore, if you are not the intended recipient of this facsimile transmission, any dissemination, copying or action taken in reliance on the contents of this facsimile transmission is strictly prohibited. If you have received this facsimile transmission in error, please notify the sender on the above telephone number.

BAC18

Our ref: PJW. 2010082
Your ref: 201000761 T01 Anina Johnson

23 June, 2010

Anina Johnson
Senior Solicitor
Crown Solicitor's Office
DX 19 SYDNEY

E-MAILED
5.05pm 23.6.10

By email: Anina_Johnson@agd.nsw.gov.au

Dear Ms Johnson

re: **Collins as tutor for Dezfouli v Mental Health Review Tribunal & Attorney General for NSW**
Supreme Court Proceedings No. 2010/62963

We refer to the above and to our letter emailed to you earlier today. We **enclose** for your clients' consideration proposed consent orders to be handed up tomorrow.

As you are aware, our client instructs that he does not wish to be forcibly medicated as scheduled on Tuesday 29 June 2010.

It is his wish not to receive medication for a trial period of three months and that he be monitored over that period. He says that the Clopixol Depot disturbs him. We are instructed that Mr Collins is arranging for the preparation of a case plan for him by appropriately qualified people, with a view to his release from detention. He would also like to be held in the least restrictive environment appropriate for his circumstances pending his release from detention.

Please obtain instructions from your clients as to whether they would be prepared to give an undertaking to use their best endeavours to make arrangements with Justice Health so that Mr Dezfouli is not medicated by way of forced injection next Tuesday.

Yours faithfully
P J DONNELLAN & CO

Pauline J Wright

Us8/2010082 Dezfouli/Crown Sol3.doc

This is the Annexure marked "BAC18" referred to in the affidavit of Brett Anthony Collins sworn/affirmed 31 August 2010 before me:

.....



Crown Solicitor's Office

BAC 19

28 JUL 2010
Your Ref: pjw:2010082
My Ref: 201000761
T01 Anina Johnson
Tel: (02) 9224-5227
Fax: (02) 9224-5222
Email: crownsol@agd.nsw.gov.au

27 July 2010

Ms Pauline Wright
Acc Spec Local Govt & Planning Law
P J Donnellan & Co
PO Box 1207
GOSFORD NSW 2250

Together with the next page
This is the Annexure marked "BAC19" referred to in
the affidavit of Brett Anthony Collins sworn/affirmed
31 August 2010 before me:

By email pwright@pjdonnellan.com.au

Dear Ms Wright

Dezfouli S v Mental Health Review Tribunal - 2010/62963

I refer to your client's further amended summons which was served on me on 21 July 2010.

Supreme Court proceedings

Mr Dezfouli's next review hearing by the Mental Health Review Tribunal under s. 46 of the Act is listed for 5 August 2010.

The Mental Health Review Tribunal instructs me that it is prepared to give consideration to making orders of the kind set out in paragraph 3 of the orders sought in your client's summons at the review hearing on 5 August 2010.

In light of the impending review hearing, it seems to me that your client's claims that he was denied procedural fairness on the last occasion are moot. I say this without making any concession as to the correctness of those claims.

Further, my view is that the Supreme Court would be extremely reluctant to make orders of the kind that your client seeks in paragraph 3 of the Further Amended Summons. I think it is far more likely that the Court will remit the matter back to the Tribunal: s. 77A(9)(b), see also for example *Re R* [2000] NSWSC 886 at [17].

Offer to discontinue

I am therefore instructed that the Attorney (being the only active party in the proceedings) would agree to the Supreme Court proceedings being discontinued with each party to pay its own costs.

Review hearing on 5 August 2010

The Tribunal invites your client to raise any issues of concern at the next review hearing. You are of course entitled to participate as his legal representative.

I am instructed that your client should provide the Tribunal with an indication of the general nature of the orders that your client seeks, so that those who might be affected by the orders can be heard; material concerning whether the orders might be made, obtained; and depending on what is sought, an opportunity provided to the Attorney General or the Minister for Health to appear, if they wish.

A copy of any material on which your client proposes to rely should be provided to the Tribunal 5 days prior to the hearing or as soon as possible. It is essential that a reliable estimate of the length of the hearing from your client's viewpoint be provided to the Tribunal, as it also needs to make provision for hearings for other patients.

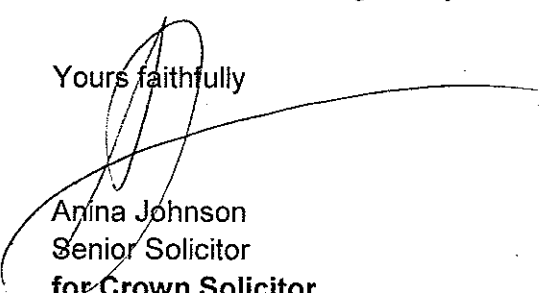
If you or another legal representative are proposing to attend the hearing, please let the Tribunal know as soon as possible, so that it can attempt to make arrangements for you to gain access to the forensic hospital.

Please contact Sarah Hanson at the Tribunal to make the arrangements for the conduct of the review hearing. She can be reached on (02) 8876-6315 or shans@doh.health.nsw.gov.au.

The review before the Mental Health Review Tribunal must occur within 6 months unless the Tribunal extends the period under s. 46(5), which it has not done. However, if for the purpose of performing its statutory review you feel the Tribunal needs to provide you with time to assist it, that is the basis upon which an adjournment could be provided. I suggest that you approach the Tribunal directly in this regard.

I look forward to hearing from you in relation to the Attorney's offer.

Yours faithfully



Anina Johnson
Senior Solicitor
for Crown Solicitor

BAC 20



Mental Health
Review Tribunal

Building 40 Gladesville Hospital, Gladesville
PO Box 2019 Boronia Park NSW 2111
Tel: (02) 9816 5955 Toll Free: 1800 815 511
Fax: (02) 9817 4543
Fax: (02) 9879 6811 (Forensic only)
Website: www.mhrt.nsw.gov.au
Email: mhrt@doh.health.nsw.gov.au

Ms Pauline J Wright
PJ Donnellan & Co
PO Box 1207
GOSFORD NSW 2250

13 AUG 2010

By Facsimile: (02) 43231623

F0825

10 August 2010

Dear Ms Wright

FORENSIC REVIEW

CONCERNING:

DATE AND TIME:

VENUE:

Saeed Sayaf Dezfouli
9 September 2010 starting at 2:30PM
Forensic Hospital
1300 Anzac Parade,
MATRAVILLE NSW 2036

The Tribunal proposes to review your client's case at the above date and location.

The Tribunal has been notified that an application for no change to the current order for detention will be made at this review by the treating team.

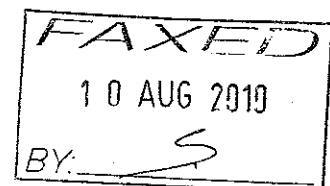
The Tribunal has also been notified via your letter dated 31 July 2010 of the instructions from your client that he will ask the Tribunal to make orders changing his care, treatment and detention as specified in that letter. A further letter from you dated 3 August 2010 notes that Dr Westmore is preparing a treatment plan for Mr Dezfouli, and that document will be provided to the Tribunal after 30 August 2010.

Please send any other documents you wish to rely on to the Tribunal either by email at mhrtforensic@doh.health.nsw.gov.au or by fax on 9879 6811 (Forensic Fax number) at least 2 weeks prior to the hearing.

If you have any enquiries about this hearing, please ring the Tribunal's Forensic Unit on (02) 8876 6305.

Yours sincerely

Shakil Mallick
Senior Forensic Officer



This is the Annexure marked "BAC20" referred to in
the affidavit of Brett Anthony Collins sworn/affirmed
31 August 2010 before me:

BAC 21

Dr Bruce Westmore
MB.BS, M.CRIM, FACLM, FRANZCP
FORENSIC PSYCHIATRIST
ABN 42 104 329 179

Suite 74, 7th Floor
183 Macquarie Street
Sydney NSW 2000
DX 593 Sydney

Tel: (02) 9223.1193
Fax: (02) 9235.0887

11 August 2010

P J Donnellan & Co
DX 7206
GOSFORD

This is the Annexure marked "BAC21" referred to in
the affidavit of Brett Anthony Collins sworn/affirmed 31
August 2010 before me:

Attention: Mr Robert Byrd

BY FACSIMILE 4323 1623

Dear Mr Byrd

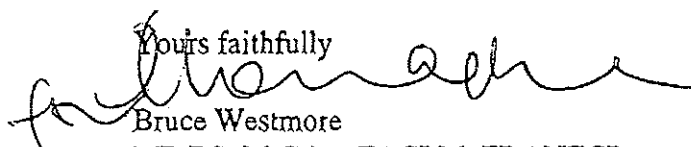
RE: FURTHER EXAMINATION OF MR DEZFOULI

As requested, I made arrangements to re examine Mr Dezfouli in the Forensic Hospital today. These arrangements were initiated by my secretary on Monday 9 August 2010. At 3 pm yesterday she was advised that my request had been received and although I was known at the hospital having been there in the past, there was, for some reason unbeknown to her, no approval for the visit confirmed. That person was going off duty at that time. My secretary suggested that the approval may come after 3 pm and that she would call back today to see if approval had been granted but that was not the case at 8 o'clock this morning.

I understand Mr Dezfouli's current matters are to commence in September 2010 and I was requested to provide evidence on 7 September 2010. I am happy to do that but as I will be out of the country until the end of August I will not be able to re examine Mr Dezfouli before 7 September 2010.

I apologise if this causes you any inconvenience but the matter was out of my control.

Yours faithfully



Bruce Westmore

MB BS, M.Crim, FACLM, FRANZCP

cc: Ms Holly Stenning Crown Solicitor's Office 9224 5211

Mr Saaed Dezfouli Forensic Hospital Matraville

Dictated but unread by Dr Westmore and signed in his absence

BAC 22

Data from <http://www.ahpra.gov.au/Forms/Register-of-Practitioner-Details.aspx?RegistrationNumber=MED0001149298>

| Practitioner Name | Registration Expiry Date | Profession | Division | Principal Place of Practice | Registration Status | Conditions, Undertakings or Reprimands |
|-------------------|--------------------------|----------------------|----------|-----------------------------|---------------------|----------------------------------------|
| Dr Bruce Westmore | 22/03/2011 | Medical Practitioner | | | Registered | No |

Registration Details

Profession: Medical Practitioner
Division(s):
Registration Type: General, Specialist
Registration Subtype:
Registration Status: Registered
Conditions or Undertakings: No
Registration Number: MED0001149298
Date of first registration:
Registration expiry date: 22/03/2011
Qualifications:

-
-
- FELLOW, ROYAL AUSTRALIAN & NEW ZEALAND COLLEGE OF PSYCHIATRISTS, 1985
- BACHELOR OF MEDICINE BACHELOR OF SURGERY, UNIVERSITY OF QUEENSLAND, 1978

This is the Annexure marked "BAC22" referred to in the affidavit of Brett Anthony Collins sworn/affirmed 31 August 2010 before me:

.....

Robert Byrd - Dr Westmore's access to Saeed

From: Brett Collins <brett@justiceaction.org.au>
To: Adrian Keller <adrian.keller@justicehealth.nsw.gov.au>, John Basson <john.basson@justicehealth.nsw.gov.au>
Date: 25/08/2010 5:50 PM
Subject: Dr Westmore's access to Saeed
CC: Robert Byrd <rbyrd@pjdonnellan.com.au>

Together with the next page
This is the Annexure marked "BAC23" referred to in the affidavit of Brett Anthony Collins sworn/affirmed 31 August 2010 before me:

Dear Drs Keller and Basson,

Thanks for your phone call yesterday August 24, to our solicitor Rob Byrd. That was in response to my email, our solicitor's email and the two phone messages he left and the two messages I have left over the past two weeks.

You told us that one of your procedures is to check registration of all attending practitioners and that Dr Westmore did not appear on the digital version of the medical registration list. You said that confirmation was requested but not received in time for the visit, and in fact has not still been received.

That explanation is totally inconsistent with the facts. Dr Westmore wrote to our solicitor and the Crown Solicitor on the same day as he was not permitted to enter. He detailed his attempts to get your permission and contacts on Monday 9/8, the Tuesday 10/8 and Wednesday 11/8 in the letter attached again, that I sent you again early last week. In fact no reason for blocking the visit was provided until a week after the arranged visit. And then it was spurious.

Dr Westmore's office assures us that no discussion about entitlement to enter occurred until Dr Keller rang questioning Dr Westmore's registration last Wednesday 18/8, a week after the visit was intended. They received a call from Dr Keller on Wednesday last week about this matter. He said there is a new procedure regarding national registration and accreditation for medical practitioners and that is why Dr Westmore was not able to see Saeed on 11 August.

Your digital enquiry also was wrong. We have attached Westmore's registration here, downloadable from the website, referred to below. It just rolled over from the previous arrangement as is shown by the other attachment from the website. He has been into the prisons constantly as an examining psychiatrist without any question before.

We are most concerned at your blocking this professional visit which is necessary for Saeed's Supreme Court appeal currently pending. We ask for an immediate explanation for how this most serious breach of your obligations has occurred, why you haven't dealt with this expeditiously when you first became aware of it, and why you haven't documented your justification and ignored the emails which have been asking you for an explanation.

Both our solicitor and I as Saeed's Primary Carer are following this up. Please acknowledge this email, to us both by midday tomorrow. If you wish to disagree with any of this information you have until then to do so. Please stop assaulting Saeed and be kinder to yourselves.

Yours sincerely,

Brett Collins
Coordinator

JUSTICE ACTION

Trades Hall, Suite 204, 4 Goulburn St, Sydney NSW 2000
PO Box 386, Broadway NSW 2007
T 02 9283 0123 ext 14 | F 02 9283 0112 | M 0438 705003
E brett@justiceaction.org.au
<http://www.justiceaction.org.au>

BREAKOUT DESIGNPRINTWEB <http://www.breakout.net.au>
proudly sponsors **Justice Action**

Robert Byrd - RE: Dr Westmore's access to Saeed

From: "Adrian Keller" <Adrian.Keller@justicehealth.nsw.gov.au>
To: "Brett Collins" <brett@justiceaction.org.au>, "John Basson" <john.basson@justicehealth.nsw.gov.au>
Date: 25/08/2010 7:44 PM
Subject: RE: Dr Westmore's access to Saeed
CC: "Robert Byrd" <rbyrd@pjdonnellan.com.au>

Together with the next page
This is the Annexure marked "BAC24" referred to in the affidavit of Brett Anthony Collins sworn/affirmed 31 August 2010 before me:

Dear Mr Collins

I am happy to respond to your email.

My information suggests that the initial request for Dr Westmore to attend the Forensic Hospital was received by one of our ward clerks on the morning of Tuesday 10/8, the day prior to the proposed visit. Within a few hours, I was made aware of this request and explained to the ward clerk that I would need to verify that Dr Westmore is currently a registered medical practitioner and ascertain whether there are any conditions attached to the registration.

I proceeded immediately to check for details of Dr Westmore's registration on the AHPRA website. I could find no evidence from my search. At no stage did I make the assumption that Dr Westmore is not a currently registered medical practitioner, nor did I express that view to anyone. Indeed, I made the comment to all parties concerned throughout this exchange that I feel certain that Dr Westmore is currently registered, and would be glad to receive confirmation of the same.

I asked the ward clerk to contact Dr Westmore's rooms and explain our procedure, based on NSW Health policy, that relates to the requirement to verify that all medical practitioners engaged in any professional interactions with patients in a public health facility need to demonstrate that they are currently registered and are complying with any conditions that might be attached to that registration.

I have email confirmation that the ward clerk spoke to Dr Westmore's secretary on more than one occasion, explained our procedure and the fact that we had been unable to verify his current registration based on our search of the AHPRA database. The secretary replied, on August 11, with words to the effect of "not to worry about chasing this up as Bruce probably couldn't get involved in this case as he was going away."

I heard no more of the matter, but because I was anxious to ensure that the matter was being followed up, I rang Dr Westmore's office on August 18, and left a voice message reiterating our position - that we were waiting for the supply of evidence to verify current medical registration, and once that had been received there would be no impediment to his attending the Forensic Hospital.

The next communication received was on Friday August 20 - my PA informed me that I had received phone calls from yourself and Mr Byrd, and I received an email with an attached letter from Dr Westmore to Mr Byrd. As the matter clearly related to Mr Byrd's original request for Dr Westmore to provide a medicolegal report on Mr Dezfouli, I immediately contacted Mr Byrd. I was informed that he was unavailable and would return my call later that day. Unfortunately my PA had to leave work early on Friday, and I did not receive a return call.

I subsequently spoke to Mr Byrd on the next working day, this Monday past, and explained the situation. He appeared to accept my explanation for why we had been, to this point, unable to approve access for Dr Westmore. I again stressed that Justice Health would gladly approve access upon verification of his current medical registration.

Until your email this evening, I had received no correspondence that addressed the key issue - the verification of Dr Westmore's medical registration. Having reviewed the material you sent me, and having subsequently returned to the AHPRA website, I now understand how this piece of information eluded my search.

The fields for completion when searching for a medical practitioner on the database include - name, profession (i.e. medical practitioner) and principle place of practice. As I do for all medical practitioners, I checked the field 'principle place of practice' as 'NSW'. This search yielded 'no results'. I did it several times to ensure that I was not misspelling the name, each time with the same result. Every other practitioner I have

Dr Westmore's access to Saeed

entered into the database, checking 'NSW' under the field 'principle place of practice', has yielded the desired information.

It is only when one leaves the field 'principle place of practice' blank, that Dr Westmore's registration details appear. The database provides no clues as to the presence of a practitioner that lies hidden but for a single field entry, and I am afraid that my powers of deduction do not extend to being able to divine such information devoid of clues.

I trust that you can now see how I was, legitimately, not able to verify Dr Westmore's registration.

I am now able to confirm, having verified the information required, that Dr Westmore is approved by Justice Health to attend the Forensic Hospital to assess Mr Dezfouli.

I acknowledge that the delay in approving Dr Westmore's access has been regrettable. I am also satisfied that, at all points throughout this process, Justice Health staff have clearly communicated to Dr Westmore's staff the single, key piece of information that we needed to enable the request to proceed and be approved.

Any suggestion that I, or others working for Justice Health, attempted or contrived to "block this professional visit" is manifestly false. This email provides both the explanation as well as the documentation of events as they transpired.

I look forward to an ongoing productive relationship with yourself, as Mr Dezfouli's primary carer.

yours sincerely

Adrian Keller

**Dr Adrian Keller
Clinical Director
Forensic and Long Bay Hospitals**

Ph:97003083

Mob:0417 500 917

Email:Adrian.Keller@justicehealth.nsw.gov.au

BAC 25

From: Bruce Westmore <judithm@people.net.au>
Date: Thu, 26 Aug 2010 09:13:48 +1000
To: Brett Collins <brett@justiceaction.org.au>
Subject: RE: Dr Westmore's access to Saeed

Hello Brett

I can't remember exactly but I am sure I spoke to the ward clerk on the Monday AND the Tuesday. On the Tuesday she phoned me to say that she was leaving at 3 pm and that the authority had not come through. I said to her that I would call early on the Wednesday to see if the approval had come through in the hours she was not there, she told me she would be back on duty at 7 am. I called at 8 am on Wednesday 11 August she told me that the approval had not come through I told her then not to worry any further at that stage.

When she alluded to me early in our discussions that she was having trouble getting approval, I told her I thought it was extremely unusual for that to be case as he has a VIN and regularly attends prisons to psychiatrically examine inmates and that he had been to the forensic hospital in the past to interview Mr Dezfouli.

I DID NOT SAY ANYTHING AT ALL ABOUT HIM NOT GETTING INVOLVED (AS HE CLEARLY WAS ALREADY.. INVOLVED) AND I DID NOT MENTION HIM GOING AWAY TO THE WARD CLERK BECAUSE THAT HAD NOTHING TO DO WITH HER OR ANYONE AT THAT STAGE.

I simply did not want my boss, who is an extremely busy man, to be wasting time trying to get in to see Mr Dezfouli when it clearly wasn't going to happen that day.

Regards Judith

This is the Annexure marked "BAC25" referred to in
the affidavit of Brett Anthony Collins sworn/affirmed 31
August 2010 before me:

.....

BAC 26

From: Bruce Westmore <judithm@people.net.au>
Date: Mon, 30 Aug 2010 16:55:00 +1000
To: Brett Collins <brett@justiceaction.org.au>
Subject: RE: Dr Westmore's access to Saeed

Brett, Dr Westmore will now see Saeed on Friday 10 September at the forensic hospital.

Kind regards
Judith for Bruce Westmore

This is the Annexure marked "BAC26" referred to in
the affidavit of Brett Anthony Collins sworn/affirmed 31
August 2010 before me:

.....

BAC 27

Our ref: PJW. 2010082
Your ref: 201000761 T01 Anina Johnson

27 August, 2010

Anina Johnson
Senior Solicitor
Crown Solicitor's Office
DX 19 SYDNEY

Dear Ms Johnson

re: **Dezfouli v Mental Health Review Tribunal & Attorney General for NSW**
Court of Appeal Proceedings No. 2010/62963

We refer to the above matter in which our evidence is due on 30 August 2010 and to the Tribunal Hearing listed on 9 September 2010.

We advise that our principal evidence in both matters was to be a treatment plan by Dr Westmore.

Dr Westmore sought to attend on Mr Dezfouli on 11 August 2010 but was not granted permission to enter the Forensic Hospital. After investigation by ourselves and Mr Brett Collins on behalf of Mr Dezfouli it appears this was due to an administrative error on behalf of the hospital administration. Unfortunately Dr Westmore has since been absent until next week.

As a result we wish to put you on notice that our evidence will not be available as anticipated. We are currently attending to the matter and will advise as soon as possible when we believe a treatment plan can be prepared.

Yours faithfully
P J DONNELLAN & CO

Pauline J Wright
P:\Us8\2010082 - Dezfouli\Crown Sol10.doc

This is the Annexure marked "BAC27" referred to in
the affidavit of Brett Anthony Collins sworn/affirmed 31
August 2010 before me: