

AFFIDAVIT OF BRETT ANTHONY COLLINS

31 August 2010

COURT DETAILS

Court	Supreme Court of NSW
Division	Common Law
List	Administrative Law
Registry	Sydney
Case number	2010/62963

TITLE OF PROCEEDINGS

Plaintiff	Saeed Dezfouli
First defendant	Mental Health Review Tribunal
Second defendant	Attorney General for NSW

FILING DETAILS

Filed for	Saeed Dezfouli Plaintiff
Legal representative	Pauline Wright, P J Donnellan & Co
Legal representative reference	PJW.2010082 Dezfouli
Contact name and telephone	Pauline Wright, 4324 3988

AFFIDAVIT

Name: Brett Anthony Collins

Address: 204, 4 Goulburn Street Sydney NSW 2000

Occupation: Primary carer

Date: 31 August 2010

I swear/affirm that:-

- 1 I am the plaintiff's primary carer and friend.
- 2 At a standard six-monthly review of the plaintiff's case by the first defendant ('the Tribunal') on 20 August 2009, the President of the Tribunal, The Hon Mr James SC requested that I provide the Tribunal with a document setting out in writing the matters the plaintiff required the Tribunal to determine.
- 3 On 20 August 2009, I wrote a letter to the Tribunal, which was sent by email and by facsimile setting out in writing the matters the plaintiff wished to put to the Tribunal for determination. A copy of that letter is annexed and marked 'BAC1'.
- 4 By 25 August 2009, I had not received a response, so I sent an email to the President of the Tribunal, a copy of which is annexed and marked 'BAC2'.
- 5 On 28 August 2009, I received a faxed letter from the President of the Tribunal, a copy of which is annexed and marked 'BAC3', advising *inter alia*, that he would respond to the issues raised in my letter of 20 August 2009 following a review by Justice Health of the plaintiff's care and treatment that was hoped to be completed within the next 4-6 weeks.
- 6 I responded to that letter by way of email of the same date giving reasons why determination of the plaintiff's issues ought not be delayed, including that the plaintiff was being forcibly injected fortnightly, and raising some other concerns. A copy of my said email dated 28 August 2009 is annexed and marked 'BAC4', which included copies of my emails to Justice Health dated 19 June 2009 and to Dr Jeremy O'Dea, the plaintiff's treating psychiatrist, dated 6 August 2009.
- 7 Annexed and marked 'BAC5' is a copy of an email I received from the President of the Tribunal dated 31 August 2009 advising that my concerns would be 'taken up appropriately'.

- 8 By 4 September 2009 I had not received a substantive response, so I sent a further email to the President of the Tribunal, a copy of which is annexed and marked 'BAC6'.
- 9 The plaintiff's case was next listed for a standard review by the Tribunal on 11 February 2010.
- 10 At the time of the review hearing of the Tribunal on 11 February 2010, the matters raised in my letter to the Tribunal dated 20 August 2009 had not been determined by the Tribunal. During the course of the Tribunal review hearing on 11 February 2010, I referred Mr R Gulley, the chair of the Tribunal, to that letter, receipt by the Tribunal of which he acknowledged and I also placed before the Tribunal three additional documents as follows:
- a. A profile of the plaintiff, which I prepared which, *inter alia*, requested either the plaintiff's release or that he be held in the least restrictive environment appropriate to his circumstances, a copy of which is annexed and marked 'BAC7';
 - b. A document I prepared entitled 'The Education Rights of Forensic Patients copy of which is annexed and marked 'BAC8' which, *inter alia*, requested that the plaintiff be provided with the opportunity for proper education while in the care of Justice Health; and
 - c. A document I prepared entitled 'The Right to Refuse Treatment for Involuntary Patients' a copy of which is annexed and marked 'BAC9' which, *inter alia*, requested that the plaintiff's forced medication by injection cease.
- 11 On 11 February 2010 Mr Gulley accepted the above documents, asking me to sign and date each one, but indicated that the Tribunal was not in a position to read, digest and consider such lengthy documents received only on the morning of the Tribunal review hearing.
- 12 The plaintiff then asked for an adjournment to provide the Tribunal the opportunity to consider the documents. That application was refused.
- 13 Evidence was heard from me, Mr Dezfouli and members of his treating team, including his treating psychiatrist, Dr O'Dea.
- 14 During the course of the hearing, oral applications were made to the following effect:
- a. That the review hearing be adjourned to allow the Tribunal further time to consider written material produced to it on 11 February 2010;
 - b. That the plaintiff be released into my care;

and, pending his release, directions be given to Justice Health for the plaintiff's care and treatment as follows:

- c. That there be a change of the plaintiff's treating psychiatrist;
- d. That the plaintiff's forced medication by injection cease;
- e. That the plaintiff be given the opportunity for education including being given access to a computer donated to the Forensic Hospital for his use by students of the University of NSW; and
- f. That the plaintiff be allowed access to his support network including support workers from Justice Action.

- 15 From my recollection and from listening to the recording of the review hearing, it was clear that the Tribunal had made a determination on 11 February 2010 that the current arrangements for Mr Dezfouli's care, treatment and detention were to continue with the Forensic Hospital, effectively refusing the applications made as detailed above by the plaintiff at that hearing. It also determined to refuse the plaintiff's application for an adjournment of the proceedings.
- 16 Annexed and marked 'BAC10' is a copy of my email to the Tribunal dated 12 February 2010, sending them digital copies of the three documents referred to in paragraph 10 above. At the top of the copy of this email is a note I wrote after sending the email referring to the attachments.
- 17 Annexed and marked 'BAC11' is a copy of a letter dated 16 February 2010 which I received from the Tribunal.
- 18 Annexed and marked 'BAC12' is a copy of an email I sent to the President of the Tribunal dated 29 March 2010 requesting a copy of the Tribunal's decision and reasons the subject of these proceedings.
- 19 Annexed and marked 'BAC13' is a copy of an email I received from the President of the Tribunal dated 29 March 2010, advising *inter alia* that 'there was no change made nor any sought at the last review' and asking me to advise what decision or determination the plaintiff contended was made from which he was appealing so that the Tribunal might identify what documents were sought. Following receipt of that email, I caused a Notice to Produce for Inspection to be filed and served in these proceedings.
- 20 Annexed and marked 'BAC14' is a copy of my email in response of the same date to the President of the Tribunal, which included a copy of my email sent to the Tribunal on 12 February 2010.

- 21 Annexed and marked 'BAC15' is a copy of a letter dated 10 June 2010 received from the solicitor for the first and second defendants advising, *inter alia*, that they were instructed that 'no decision or order' had been made on 11 February 'in respect of the matters in s47 of the *Mental Health (Forensic Procedures) Act 1990* or otherwise under the Act'.
- 22 The Tribunal's assertion that no relevant decision or order had been made by the Tribunal on 11 February 2010 was incorrect. The Tribunal ultimately produced its reasons for decision dated 3 March 2010, pursuant to the plaintiff's notice to produce filed in these proceedings, a copy of which reasons for decision are annexed and marked 'BAC17', received by the plaintiff's solicitors from the Crown Solicitor's Office with a faxed letter dated 23 June 2010 a copy of which is annexed and marked 'BAC18'.
- 23 The plaintiff receives medication by way of forced injection fortnightly. He does not consent to receiving medication by way of injection. He wishes, firstly, to have the opportunity to have no medication for a period of time, under supervision by a psychiatrist, to determine whether or not medication is still required. If it is determined that medication is still required, he would consent to taking any necessary medication orally. Annexed and marked 'BAC19' is a copy of the plaintiff's solicitor's letter to the Crown Solicitor's Office in that regard dated 23 June 2010, to which there has been no response to date.
- 24 If this matter is remitted for further decision to the Tribunal the plaintiff has no confidence that the Tribunal will make any decision other than that there be no change to the his current order for detention. Although in their letter to the plaintiff's solicitors dated 27 July 2010, a copy of which is annexed and marked 'BAC20', the Crown Solicitors Office advises that their client the Tribunal 'is prepared to give consideration to making orders of the kind set out in paragraph 3 of the orders sought' in the plaintiff's summons (as further amended), in its letter to the plaintiff's solicitors dated 10 August 2010, a copy of which is annexed and marked 'BAC21', the Tribunal has advised *inter alia* that the treating team will make 'an application for no change to the current order for detention' at the next review, which is scheduled to take place on 9 September 2010.
- 25 The plaintiff made arrangements to be examined by psychiatrist Dr Bruce Westmore for the purpose of him preparing a treatment plan to be used in evidence in these proceedings and, if required, in evidence before the Tribunal at the next review. Annexed and marked 'BAC22' is a copy of a letter from Dr Westmore dated 11 August 2010 advising that he was denied access to examine the plaintiff by staff at the

Forensic Hospital because there was no proof that he was a registered practitioner authorised to attend on the plaintiff, notwithstanding the fact that he is a psychiatrist who has visited the Forensic Hospital on numerous occasions in the past and is well-known to Justice Health and the Hospital.

- 26 Annexed and marked 'BAC23' is a copy of a search I conducted which confirms that Dr Westmore is a registered practitioner until 22 March 2011.
- 27 Annexed and marked 'BAC24' is a copy of my email dated 25 August 2010 to Drs Keller and Basson of Justice Health in relation to Dr Westmore's registration.
- 28 Annexed and marked 'BAC25' is an email dated 25 August 2010 received from Dr Keller from Justice Health explaining his error in failing to confirm that Dr Westmore was a registered practitioner.
- 29 Annexed and marked 'BAC26' is an email dated 26 August 2010 received from Dr Westmore's assistant, Judith in relation to the arrangements she attempted to make for Dr Westmore to examine the plaintiff.
- 30 As a result of Dr Westmore's inability to attend to examine the plaintiff, he has to date been unable to prepare a treatment plan and his evidence to be tendered in these proceedings. An appointment has been made for the plaintiff to be examined by Dr Westmore on 10 September 2010. A copy of an email from his assistant Judith dated 30 August 2010 in that regard is annexed and marked 'BAC27'
- 31 Annexed and marked 'BAC28' is a copy of a letter from the plaintiff's solicitors to the Crown Solicitor's Office dated 27 August 2010.
- 32 The plaintiff seeks costs.

SIGNATURE

Sworn/affirmed at Sydney

Before me:

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Brett Anthony Collins

Justice of the Peace/Solicitor
[name]