

TRANSCRIPT OF PROCEEDINGS

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MENTAL HEALTH COURT

FLANAGAN J

**DR J.J. SUNDIN and
DR C. GRAY, Assisting**

Court Proceeding No 176 of 2017

APPEAL FROM MENTAL HEALTH TRIBUNAL

ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND Appellant

Respondent

Respondent by Election

DIRECTOR OF MENTAL HEALTH

BRISBANE

REASONS FOR FINDING

RESTRICTED ACCESS TRANSCRIPT

Any Rulings that may be included in this transcript, may be extracted and subject to revision by the Presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: The Attorney-General appeals against the decision of the Mental Health Review Tribunal made [REDACTED]. The Tribunal decided to revoke a forensic order made [REDACTED]. This order was based on a finding of 5 unsoundness of mind as a result of a charge of attempt to unlawfully wound, which offence occurred [REDACTED]. The Tribunal confirmed a treatment support order with the same limited community treatment conditions as applied to the forensic order.

10 The Attorney-General's appeal from the tribunal's decision is brought pursuant to chapter 13, part 3 of the Mental Health Act 2016. Pursuant to section 546(2), the appeal is by way of rehearing. The Court, in deciding the appeal, may, pursuant to section 546(3), either confirm the tribunal's decision, set it aside and substitute another decision, or set aside the decision and remit the matter to the tribunal.

15 The Court requested [REDACTED] to provide a report to inform the appeal against the revocation of the forensic order and replacement with a treatment support order. [REDACTED] 7, notes that the local Assessment and Risk Management Committee, at its recent [REDACTED] meeting, supports the Tribunal's 20 orders.

[REDACTED] notes that [REDACTED] is now 80 years of age with a long history of chronic schizophrenia. [REDACTED] has a significant forensic history which includes offences of assault, indecent behaviour, theft and obscenity [REDACTED]

25 [REDACTED], he was dealt with for unlawful wounding. It is not immediately evident whether that was a separate trial or arose from an appeal from his conviction for manslaughter. It would appear, however, that, as it did not suggest any allegation of death, that the two are separate matters.

[REDACTED], at page 4 of his report, opines as follows:

30 *I consider that [REDACTED] is at low risk of serious harm to others, including those fellow residents which, with age-related disabilities, due to:*

- (1) *lack of current enabling psychiatric conditions which, at the time, included alcohol dependence and acute psychosis;*
- (2) *the continuous and ongoing presence of supports, surveillance and psychiatric expertise;*
- (3) *his cooperation, both in the recent past and present with instruction, redirection, and the terms of his forensic order;*
- (4) *his mental state, which is significantly lacking in concerning features;*
- (5) *his cognitive and functional disabilities and reliance on others;*
- (6) *his lack of motivation and express desire for aggression;*

- (7) his tolerance of environmental and interpersonal conditions which would usually trigger aggression in persons at high risk; and
- (8) the administration of antipsychotic medication.

5 [REDACTED] states that he does not believe that there are grounds for the restitution of the forensic order, as he believes those additional protections are unwarranted on the basis of improvement in the patient's mental state, continuous cooperation, diminution of his ability to harm others, lack of access to alcohol, and the ready and foreseeable continuous availability of specialist-led early intervention in the case of psychotic relapse.

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15 The primary complaint of the Attorney-General, in terms of principle, is that the Mental Health Review Tribunal, in effect, reduced the forensic order to a treatment support order, but kept in place the same conditions of limited community treatment. The Tribunal, of course, in applying section 450, may only impose a treatment support order if they are of the view that a forensic order is not necessary. Implicit in any decision under section 450 of the Tribunal is that the Tribunal must have decided that a forensic order was not necessary, but that a treatment support order was necessary.

20 The primary effect of such a downgrading of an order from a forensic order to a treatment support order is that the Attorney-General no longer has a continuing role. That is a serious matter when one has regard to the nature of the offences for which [REDACTED] has been charged. Those offences including

25 Considerations need to be given to the protection of the community. All those matters were, of course, taken into account by the Tribunal. The Tribunal also took into account the history of [REDACTED] inappropriate sexual behaviour.

30 The Attorney-General, in her submissions, refers to the recent decision of this Court in MGL [2007] QMHC 7, in particular, at paragraph [32] and [33] where the Court stated:

35 *The explanatory notes suggest that one of the purposes of including the option of a treatment support order is to provide a less-stringent option for those patients who had been on forensic orders and their treatment and care needs and risk profile were so reduced such as to subsequently require less clinical management and oversight. A treatment support order may also be appropriate for those patients whose offending was relatively minor.*

40 The Mental Health Act 2016 contemplates the downgrading of a forensic order to a treatment support order by the Tribunal in appropriate circumstances. Those appropriate circumstances include where a forensic order is not necessary.

45 I note that the treatment team does not see any ongoing requirement for a forensic order. That view of the treating team is concurred with by both assisting psychiatrists. As the Court observed in *MGL*:

Whilst the Court ought to impose orders that are the least restrictive of the rights and liberties of a person with a mental illness, they must still be orders that achieve the object of the Act to protect the community from the risk of harm to others.

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Both these objects are, in my view, achieved by the orders made by the Tribunal. █
█ is now 80 years of old. He is only five foot tall. His behaviour in his residential situation is well monitored. He does not demonstrate any indicia of aggressive behaviour. No charges have been laid or no offending has been committed since the index offence, which occurred in February 1991, which is close to 26 years ago. While some sexually inappropriate behaviour has been noted historically in respect of co-residents, such behaviour on the part of █ has been appropriately addressed. In all the circumstances, therefore, I confirm the decision of the Tribunal █.

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ADJOURNED

[3.40 pm]

20 **RESUMED**

[3.41 pm]

HIS HONOUR: Order as per draft initialled by me and placed with the papers.

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