

*This is an edited version of the Tribunal's decision. The forensic patient has been allocated a pseudonym for the purposes of this Official Report*

## **REASONS FOR DECISION**

<b>Forensic Review:</b>	Mr Ephram s46(1) & Review of forensic patients Mental Health (Forensic Provisions) Act 1990 and; 162 of the Mental Health Act 2007
<b>Date:</b>	12 September 2013
<b>Location:</b>	Forensic Hospital
<b>Panel:</b>	Helen Morgan Deputy President Peter Klug Psychiatrist Member Meredith Martin Other Member
<b>Application:</b>	Section 162 application
<b>Decision:</b>	Approved

This is a review of Mr Ephram who is currently detained in the Forensic Hospital on an order of the Mental Health Review Tribunal.

[As part of this review, the Tribunal was asked to make an order under s. 162 of the *Mental Health Act 2007* ("MHA") granting permission to identify the patient by name.]

### **BACKGROUND**

Mr Ephram was found not guilty by reason of mental illness on a charge of manslaughter nearly 10 years ago and was ordered to be detained.

### **TRIBUNAL REQUIREMENTS**

Section 162 of the MHA provides:

162 *Publication of names*

(1) *A person must not, except with the consent of the Tribunal, publish or broadcast the name of any person:*

- (a) to whom a matter before the Tribunal relates, or*
- (b) who appears as a witness before the Tribunal in any proceedings, or*
- (c) who is mentioned or otherwise involved in any proceedings under this Act or the Mental Health (Forensic Provisions) Act 1990, whether before or after the hearing is completed.*

*Maximum penalty:*

- (a) in the case of an individual—50 penalty units or imprisonment for 12 months, or both, or*
- (b) in the case of a corporation—100 penalty units.*

(2) *This section does not prohibit the publication or broadcasting of an official report of the proceedings of the Tribunal that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by this section.*

(3) *For the purposes of this section, a reference to the name of a person includes a reference to any information, picture or material that identifies the person or is likely to lead to the identification of the person.*

The Tribunal is also required under section 46(1) of the *Mental Health (Forensic Provisions) Act 1990* (“the Act”) to review the case of each forensic patient every six months (unless that period has been extended) and may, under section 47, make orders as to:

- a) the patient’s continued detention, care or treatment in a mental health facility, correctional centre or other place, or
- b) the patient’s release (either unconditionally or subject to conditions).

Without limiting any other matters the Tribunal may consider, the Tribunal must consider the principles of care and treatment under section 68 of the MHA as well as the following matters under section 74 of the Act when determining what order to make:

- (a) *whether the person is suffering from a mental illness or other mental condition,*
- (b) *whether there are reasonable grounds for believing that care, treatment or control of the person is necessary for the person’s own protection from serious harm or the protection of others from serious harm,*
- (c) *the continuing condition of the person, including any likely deterioration in the person’s condition, and the likely effects of any such deterioration,*
- (d) .....
- (e) .....

## **DOCUMENTARY EVIDENCE**

The Tribunal considered the documents listed in the Forensic Patient Exhibit List.

## **ATTENDEES**

Mr Ephram attended the hearing accompanied by his lawyer, Mr Peter O'Brien. Also in attendance were:

- Treating Psychiatrist
- Clinical Director
- Psychiatry Registrar
- Justice Health Legal Adviser
- Dr B, Psychiatrist
- Dr L, Psychiatrist
- Primary Carer
- Members of Justice Action
- Staff of the ABC and/or UTS and Griffith University involved in the radio production

## **PRESENT CIRCUMSTANCES**

There was no application for any change to the current order for detention. However two matters arose for the consideration of the Tribunal at this hearing.

### **Application under s. 162 to identify a patient and others**

The first matter the Tribunal considered was an application on behalf of the Australian Broadcasting Corporation, pursuant to section 162 of the Mental Health Act 2007 seeking the consent of the Tribunal to identify Mr Ephram, a "forensic patient" within the meaning of the Act and his primary carer, in the context of a radio documentary presently under production for the ABC Radio National program Background Briefing. It was submitted that although Mr Ephram's opinions would undoubtedly be canvassed in the program, they would be properly contextualised and are not the primary focus of the program.

The issue has previously been considered by Mr Justice Adams in *A v Mental Health Review Tribunal* [2012] NSWSC293. In his judgment at para 32 His Honour stated:

"It seems to me that, amongst the matters that are necessarily relevant to deciding whether consent to the Plaintiffs' application to publish his own name are the principles specified in sect 68 of the Act which are "as far as practicable, to be given effect to with respect to the care and treatment of people with a mental illness or mental disorder". These include receiving "the best possible care and treatment in the least restrictive environment enabling the care and treatment to be effectively given", providing "care and treatment ... designed to assist people with a mental illness or mental disorder, wherever possible, to ...participate in the community, and keeping "to the minimum necessary in the circumstances....any restriction on the liberty of patients...and any interference with their rights, dignity and self respect".

In paragraph 33 His Honour stated that also relevant is the psychiatric health of the plaintiff. The issues that he raised were:

- Does he have the capacity to consent to the publication of his name?
- Is there real risk his mental health will be adversely affected by the publication of his name?

It appeared to the Tribunal that Adams J seems to suggest that there should be minimal restriction to Mr Ephram's rights and therefore the publication of his name unless his care and treatment warrants it.

Mr Ephram's current treating Psychiatry Consultant at the Forensic Hospital where Mr Ephram is presently placed, gave evidence and his report dated 12 September 2013 was before the Tribunal. His diagnosis is that Mr Ephram suffers from a chronic paranoid psychotic illness. The most likely diagnosis is chronic paranoid schizophrenia with a differential diagnosis of delusional disorder. He also exhibits features of narcissistic personality disorder. He has a grandiose sense of self worth, believes that he is unique and can only be understood by higher status people. He has a sense of entitlement, is interpersonally exploitative, lacks empathy and is frequently arrogant and haughty in his dealings with his clinicians. It is not possible, however, to make this diagnosis definitively as the appearance of narcissistic personality disorder can arise from grandiose delusions in the context of a psychotic illness and in Mr Ephram's case little is known of his personality functioning prior to the onset of his illness. Both his treating psychiatrist and the Clinical Director of the Forensic Hospital, indicated their concerns to Mr Ephram's mental state if his name was publicised in the ABC program. They were of the view that any publicity would likely fuel his grandiose delusions. The treating psychiatrist was of the view that the more publicity Mr Ephram receives the more it fuels this condition and it could have an adverse outcome.

Both acknowledged that Mr Ephram's name had been publicised numerous times in other contexts. However they remained of the view that any publicity is likely to fuel his grandiose delusions and have an adverse affect upon his mental health. The doctors were asked what would be the position if the application was refused and whether that would have a likely effect upon Mr Ephram's mental condition. The treating psychiatrist acknowledged that there were two competing risks. He did concede that if the application was not granted in all likelihood Mr Ephram would be very angry and become difficult to manage. The treating psychiatrist also informed the Tribunal that whether the application was granted or not he did not consider that Mr Ephram would alter his perception of being persecuted and his civil rights eroded.

On all the evidence before the Tribunal it seemed that there is a potential risk as well as a potential gain in that, if the application is granted his rights would have been recognised, which he has previously indicated is of great importance to him.

The Clinical Director was concerned with one of the undertakings contained in the ABC submissions before the Tribunal. The Clinical Director's concern was that members of staff and the treating team may be identified in the program.

The ABC gave an undertaking that no members of staff or treating team would be identified in the program without their explicit consent. The lawyer for the ABC also informed the Tribunal that he would redraft the submissions to reflect the undertaking. This was to be in the terms that in the event that the consent sought in respect of Mr Ephram's identity is granted, the ABC undertakes to ensure that the resulting program does not identify any staff member or agent of the Forensic Hospital, the Tribunal or Justice Health other than with the express consent of the person so identified. The Clinical Director indicated that he would be satisfied with the wording and the undertaking given. He also observed that Justice Health would be happy to participate in the program. The ABC had earlier submitted to the Tribunal that it was the ABC's policy to provide a balance of views and responses on particular issues which were expected to be raised in the program and in accordance with the ABC's values it would seek to have an input from Justice Health, the Forensic Hospital and the Tribunal.

It was the Tribunal's view that having regard to the material placed before it, including the written and oral evidence, and the objects of the Act and the principles to be given effect to in respect of the treatment given to people with a mental illness or mental disorder as set out in section 68, together with the wishes of Mr Ephram expressed through his solicitor and as evidenced by his earlier applications both to the Tribunal and the Supreme Court that he wants to have his name publicised in the exercise of his civil rights, it would be appropriate to grant the application made by the ABC pursuant to section 162 of the MHA.

The ABC was informed by the Tribunal that it was minded to grant the application on the understanding that the ABC would provide the Tribunal with an amended undertaking. The amended undertaking was provided to the Tribunal later in the day and that is set out in paragraph 27 of those submissions. This accords with the undertaking given during the course of the hearing.

## **ORDER**

On 24 July 2013 the Tribunal received an application from the Australian Broadcasting Commission to publish and identify Mr Ephram in a 40 minute radio documentary to be broadcast on ABC Radio National's *Background Brief*.

Mr Ephram is a forensic patient within the meaning of the section 42 of the *Mental Health (Forensic Provisions) Act 1990* having been found not guilty by reason of mental illness for the offence of murder under section 38 of the *Mental Health (Forensic Provisions) Act 1990*. On 27 August 2009 Mr Ephram was ordered to be detained pursuant to section 47(1)(a) of the *Mental Health (Forensic Provisions) Act 1990*.

The Tribunal having reviewed the application of the Australian Broadcasting Commission on 12 September 2013 under section 162 of the *Mental Health Act 2007*, consents to the broadcasting of Mr Ephram's name.

Signed:

Helen Morgan  
Deputy President

Dated this day: 1 October 2013