

CANADA / JUDGMENT

Huang v. Vancouver General Hospital

2020 BCCA 294

COURT

British Columbia Court of Appeal

DECIDED

28 October 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCCA 294 Huang v. Vancouver General Hospital

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Huang v. Vancouver General Hospital,

2020 BCCA 294

Date: 20201028

Docket: CA45996

Between:

Li Ping Huang and Zheng Kun Li

Appellants

(Petitioners)

And

Vancouver General Hospital and South Mental Health Team

Respondents

(Respondents)

And

The Attorney General of British Columbia

Applicant

Before:

The Honourable Madam Justice Saunders

The Honourable Madam Justice Bennett

The Honourable Madam Justice DeWitt-Van Oosten

On appeal from: An order of the Supreme Court of British Columbia, dated March 7, 2019 (Huang v. Vancouver General Hospital, 2019 BCSC 874, Vancouver Docket S1813267).

The Appellants, appearing in person
(via videoconference):

L.P. Huang

Z.K. Li

Counsel for the Respondent, Vancouver General Hospital (via videoconference):

R. Hrabinsky

Counsel for the Applicant, Attorney General of British Columbia (via videoconference):

Z. Froese

Place and Date of Hearing:

Vancouver, British Columbia

September 14, 2020

Place and Date of Judgment:

Vancouver, British Columbia

October 28, 2020

Written Reasons by:

The Honourable Madam Justice Saunders

Concurred in by:

The Honourable Madam Justice Bennett

The Honourable Madam Justice DeWitt-Van Oosten

Summary:

The appeal is from an order dismissing the application, by petition, of the appellants seeking under s. 33 of the Mental Health Act to end Ms. Huang's status as an involuntary patient of Vancouver General Hospital by which she is required to attend the Hospital periodically to receive involuntary treatment. Held: Appeal dismissed. The judge made no error in his application of s. 33 of the Act; the evidentiary record provided a sufficient foundation for his

conclusion that under s. 33 he was required, in the words of s. 33(2) "to reject the application". On a notice of constitutional question filed for the first time in this court, the record is inadequate for a first consideration of the questions.

Reasons for Judgment of the Honourable Madam Justice Saunders:

- [1] The appellant Li Ping Huang is an involuntary patient of Vancouver General Hospital pursuant to a medical certificate issued on May 3, 2017 under the Mental Health Act, R.S.B.C. 1996, c. 288, and renewed from time to time. She is currently released to her home in Vancouver, British Columbia, on extended leave with conditions that include her required attendance at Vancouver General Hospital periodically to receive involuntary treatment.
- [2] Following unsuccessful applications to the medical review panel under s. 25 of the Mental Health Act to end her involuntary detention, Ms. Huang and her husband Mr. Li filed a petition, pursuant to s. 33 of the Mental Health Act, seeking an order to "[e]nd the Extended Leave for Li Ping Huang as an involuntary patient" and to "[d]ischarge Li Ping Huang from the South Mental Health Team". Mr. Justice Brundrett dismissed the petition on March 7, 2019. Ms. Huang and Mr. Li appeal from that order.
- [3] On appeal, Ms. Huang and Mr. Li contend that the judge erred in fact or law in his application of s. 33 of the Mental Health Act. They include, for the first time in their documentation, a notice of constitutional question challenging the constitutional validity of Ms. Huang's involuntary detention and aspects of the Mental Health Act.
- [4] As they did before Justice Brundrett, the appellants dispute in this court the necessity of Ms. Huang's treatment. They allege that her prescribed medication causes Ms. Huang negative side effects and, based on the principle of personal autonomy, say she should be released without condition. In the course of their submissions, the appellants say that the certificates binding Ms. Huang, the determinations of the medical review panel, and the judge's order are all predicated on the false assertion that Ms. Huang brandished a knife during the incident that led to hospitalization in 2017, and the consequent first certificate compelling her involuntary detention and treatment.

The Circumstances

- [5] The background of the case is set out in some detail in the judge's reasons for judgment. On my review of the appeal record, his reasons for judgment accurately reflect the circumstances leading to the current conditions placed on Ms. Huang.
- [6] The reasons for judgment and appeal record disclose:
 - Ms. Huang was diagnosed with schizophrenia prior to 2017;
 - the medical records from 2017 - 19 filed in the proceeding generally indicate that Ms. Huang is subject to angry outbursts, that she has heard voices from ex-coworkers, and that she has had persecutory delusions;

- Ms. Huang was hospitalized at Vancouver General Hospital in May 2017 after an incident in which her daughter called the police and expressed concern for her own safety. Ms. Huang's daughter reported to the police that Ms. Huang had been screaming and waving a kitchen knife, and that Ms. Huang had said she was hearing messages that "one of us must die";
- Ms. Huang was detained at Vancouver General Hospital as an involuntary patient pursuant to a medical certificate issued on May 3, 2017;
- medical records indicate Ms. Huang was discharged on extended leave in July 2017;
- on August 31, 2017, Ms. Huang was hospitalized at Vancouver General Hospital. She and Mr. Li expressed opposition to continued medication and she was discharged in September 2017 on extended leave with mental health follow ups;
- Ms. Huang made her first s. 25 application to a medical review panel in November 2017. The panel determined, with a dissenting opinion, that Ms. Huang's involuntary status should not be continued and she was discharged;
- it appears that Ms. Huang discontinued all psychiatric treatment after she was discharged;
- in March 2018, police again attended at Ms. Huang's home. The police report indicates that on this occasion Ms. Huang's daughter, concerned for her own safety, was unwilling to enter the residence, and that the daughter was worried Ms. Huang would use knives to harm herself, or the police. The report also records the police perception that Mr. Li was "wilfully blind" to Ms. Huang's manner of conduct. On this occasion Ms. Huang was apprehended as a person with an apparent mental disorder who required treatment. She was taken to Vancouver General Hospital where she was admitted, for a second time, as an involuntary patient and detained pursuant to ss. 22 and 24 of the Mental Health Act;
- a discharge report dated May 14, 2018, written by Dr. Leong, psychiatrist, indicates that Ms. Huang was resistant to meaningful psychiatric treatment, that Mr. Li had advocated on Ms. Huang's behalf that she forego medication, and that Ms. Huang's daughter stated that without medication and follow up she thought Ms. Huang would pose a risk to herself or others;
- since her admission to Vancouver General Hospital in March 2018, Ms. Huang has remained an involuntary patient on extended leave pursuant to renewal certificates issued by family physicians under the Mental Health Act; and
- after the incident in March 2018, the appellants made three unsuccessful s. 25 applications to have Ms. Huang's involuntary status reviewed before a medical review panel, the most recent of which was made in early November 2018. When that application was dismissed, Ms. Huang and Mr. Li filed the petition leading to this appeal.

The Mental Health Act

[7] The statute that governs this case is the Mental Health Act. I will describe it in some detail.

- [8] The Mental Health Act provides for admission, examination, and involuntary detention of a person with a mental disorder, including provision for the person's discharge, and review of the person's circumstances. In particular, s. 22 establishes the requirements for involuntary admissions in the following terms:

22 (1) The director of a designated facility may admit a person to the designated facility and detain the person for up to 48 hours for examination and treatment on receiving one medical certificate respecting the person completed by a physician in accordance with subsections (3) and (4).

- (2) On receipt by the director of a second medical certificate completed by another physician in accordance with subsections (3) and (5) respecting the patient admitted under subsection (1), the detention and treatment of that patient may be continued beyond the 48 hour period referred to in subsection (1).
- (3) Each medical certificate under this section must be completed by a physician who has examined the person to be admitted, or the patient admitted, under subsection (1) and must set out
 - (a) a statement by the physician that the physician
 - (i) has examined the person or patient on the date or dates set out, and
 - (ii) is of the opinion that the person or patient is a person with a mental disorder,
 - (b) the reasons in summary form for the opinion, and
 - (c) a statement, separate from that under paragraph (a), by the physician that the physician is of the opinion that the person to be admitted, or the patient admitted, under subsection (1)
 - (i) requires treatment in or through a designated facility,
 - (ii) requires care, supervision and control in or through a designated facility to prevent the person's or patient's substantial mental or physical deterioration or for the protection of the person or patient or the protection of others, and
 - (iii) cannot suitably be admitted as a voluntary patient.
- (4) A medical certificate referred to in subsection (1) is not valid unless both it and the examination it describes are completed not more than 14 days before the date of admission.
- (5) A second medical certificate referred to in subsection (2) is not valid unless both it and the examination it describes are completed within the 48 hour period following the time of admission.

- (6) A medical certificate completed under subsection (1) in accordance with subsections (3) and (4) is authority for anyone to apprehend the person to be admitted, and for the transportation, admission and detention for treatment of that person in or through a designated facility.
- (7) A patient admitted under subsection (1) to an observation unit must be transferred to a Provincial mental health facility or psychiatric unit within the prescribed period after a second medical certificate is received under subsection (2) by the director of the observation unit unless the patient is
 - (a) discharged, or
 - (b) released on leave or transferred to an approved home under section 37 or 38.

[Emphasis added.]

- [9] Section 23 allows for detention of a person admitted under s. 22 for one month after the date of admission, after which the patient must be discharged unless the authority is renewed pursuant to s. 24.

[10] Section 24 provides for renewal of the detention in the following terms:

24 (1) Unless the patient has previously been discharged, authority for the detention of a patient may be renewed under this section as follows:

- (a) from the end of the period referred to in section 23 for a further period of one month;
- (b) from the end of any period of renewal under paragraph (a) for a further period of 3 months;
- (c) from the end of any period of renewal under paragraph (b) for a further period, or further successive periods, of 6 months.

(2) During

- (a) every one month period referred to in section 23,
- (b) every further one month period referred to in subsection (1) (a), and
- (c) the last month of every 3 month or 6 month period referred to in subsection (1) (b) or (c),

the director or a physician authorized by the director must examine the patient and either discharge the patient or record a written report of the examination and include in it the reasons of the director or physician for concluding that section 22 (3) (a) (ii) and (c) continues to describe the condition of the patient.

(2.1) An examination under subsection (2) must include

- (a) consideration of all reasonably available evidence concerning the patient's history of mental disorder including
 - (i) hospitalization for treatment, and

(ii) compliance with treatment plans following hospitalization, and

(b) an assessment of whether there is a significant risk that the patient, if discharged, will as a result of mental disorder fail to follow the treatment plan the director or physician considers necessary to minimize the possibility that the patient will again be detained under section 22.

(2.2) If an examination under subsection (2) concludes that section 22 (3) (a) (ii) and (c) continues to describe the condition of the patient, the director or physician must renew under subsection (2) the authority for the detention of that patient.

(3) The written report referred to in subsection (2) is a renewal of the authority for the detention of the patient referred to in that subsection.

[11] Section 37 of the Mental Health Act allows for leave from the designated facility in the following terms:

37 Subject to section 40 and the regulations, if the director considers that leave would benefit a patient detained in the designated facility, the director may release the patient on leave from the designated facility providing appropriate support exists in the community to meet the conditions of the leave.

[12] Section 39 provides for the recall of a patient who is on leave if the patient fails to meet the conditions of the leave.

[13] The review system established in the Mental Health Act is set out in ss. 24.1 - 25.1. Those sections provide for the establishment of review panels and for hearings that may be requested by the patient or a person on behalf of the patient, the purpose of which is "to determine whether the detention of the patient should continue because ss. 22(3)(a)(ii) and (c) continues to describe the condition of the patient". In the event the review panel determines that those sections continue to describe the condition of the patient, the review panel must still determine whether the detention of the patient should be continued.

[14] The application to the court was made under s. 33 which provides:

(2) A patient, or a person on behalf of the patient, who believes that there is not sufficient reason or legal authority for a certificate respecting the patient may apply to the court for an order under subsection (8) (a), (b) or (c).

(4) On hearing an application under subsection (2), the court may review the evidence, including

(a) all records relating to the patient's admission to or detention in or through a designated facility, and

(b) further evidence it considers relevant.

-
- (5) On hearing an application under subsection (2) concerning a patient detained under this Act, the court must
- (a) consider all reasonably available evidence concerning the patient's history of mental disorder including
- (i) hospitalization for treatment, and
- (ii) compliance with treatment plans following hospitalization, and
- (b) make an assessment of whether there is a significant risk that the patient, if discharged, will as a result of mental disorder fail to follow the treatment plan the director or a physician authorized by the director considers necessary to minimize the possibility that the patient will again be detained under section 22.
- (6) If the review under subsection (4) concludes that section 22 (3) (a) (ii) and (c) continues to describe the condition of the patient, the court must conclude that there is sufficient reason for the certificate.
- (7) If satisfied that there is sufficient reason and legal authority for the certificate, the court must reject the application made under subsection (2).
- (8) If not satisfied that there is sufficient reason or legal authority for the certificate, the court may make any of the following orders:
- (a) that the patient not be apprehended, transported or admitted to a designated facility under the certificate that gave rise to the application under this section;
- (b) that the patient not be apprehended, transported or admitted to a designated facility under a certificate made before the date of the order;
- (c) that the patient be discharged from the designated facility;
- (d) that within 10 days the director named in the order must obtain a report from a psychiatrist, stating
- (i) that the psychiatrist has examined the patient at the director's request on the dates stated in the report,
- (ii) whatever further information the psychiatrist considers relevant, and
- (iii) whether or not, in the opinion of the psychiatrist for the reasons stated in the report, the patient
- (A) is a person with a mental disorder,
- (B) requires treatment in or through a designated facility,

(C) requires care, supervision and control in or through a designated facility to prevent the patient's substantial mental or physical deterioration or for the protection of the patient or the protection of others, and

(D) cannot suitably be admitted as a voluntary patient;

(e) that the patient, if not detained in a designated facility at the time an order under paragraph (d) is made, attend before the psychiatrist for examination at a time and place appointed by the director.

(9) On receiving a report made under an order under subsection (8) (d), the court must

(a) reject the application made under subsection (2) if the court is satisfied that there is sufficient reason and legal authority for the certificate, and

(b) make an order under subsection (8) (a), (b) or (c) if the court is satisfied that there is not sufficient reason or legal authority for the certificate.

(10) If an order is made under subsection (8) (c), the director must immediately discharge the patient.

[Emphasis added.]

The Reasons for Judgment

[15] In his reasons the judge stated that he had reviewed the records relating to Ms. Huang's admission to or detention in or through the designated facility, including "all reasonably available evidence concerning the patient's history of a mental disorder including her hospitalization for treatment, and her compliance with treatment plans following hospitalization" (s. 33(5)). He then said:

[39] Ms. Huang is fortunate to have the benefit of a supportive husband who has made extensive arguments in her favour. Mr. Li has made submissions as to how the health and welfare of Ms. Huang have worsened in the last two years. However, having examined the whole of the evidence I cannot accept his arguments, including his contentions that:

1. The reason for VGH's detention of Ms. Huang is fabricated or false.
2. The medical history record made by the respondents for Ms. Huang is untrue and contains serious false elements.
3. Forcing Ms. Huang to be an involuntary patient does not comply with the MHA.

[40] I note that the standard of proof required in a proceeding under the MHA is the same as with any other civil action, this being a balance of probabilities: see *Robinson v. Hislop* (1980), 114 D.L.R. (3d) 620 (B.C.S.C.) at paras. 21-22; *Hoskins v. Hislop* (1981), 121 D.L.R. (3d) 337 (B.C.S.C.) at para. 16 (both of which cite the analogous "preponderance of the evidence" as the governing standard of proof).

- [41] Assessing the nature of the evidence here, I agree with the respondent that the evidence advanced by Mr. Li in his affidavit expressing concern over the May 2017 and March 2018 incidents, the validity of the medical records and various medical opinions, and the propriety of his daughter calling the police, does not undermine the medical, police and other evidence filed by the respondent which I accept. On a balance of probabilities, Ms. Huang's continued involuntary detention is justified under the MHA.
- [42] I have challenged respondent's counsel with respect to the need for treatment in or through a designated facility and the requirement for ongoing care. However, despite the fact that many months have passed since the most recent incidents of concern, the unanimous professional opinion remains that Ms. Huang still requires ongoing treatment and care.
- [43] As I said, I have sympathy for the plight of the petitioners, but at this time I would not interfere with the course of treatment that the respondent's employees are currently providing to Ms. Huang or the extended leave under which Ms. Huang is currently being treated.
- [44] The question under the MHA is a specific one. Pursuant to s. 33(5) of the MHA, my assessment is that there is a significant risk that Ms. Huang, if discharged, will as a result of her mental disorder fail to follow the treatment plan the director or a physician authorized by the director considers necessary to minimize the possibility that she will again be detained under s. 22.
- [45] As I have concluded that s. 22(3)(a)(ii) and (c) continue to describe the condition of Ms. Huang, I am obligated under s. 33(6) of the MHA to conclude that there is sufficient reason for the certificate. As there is sufficient reason and legal authority for the certificate, I must reject the petition.
- [16] The petition made some reference to the Canadian Charter of Rights and Freedoms. The judge said that he was adjourning that aspect of the petition because the notice requirements of the Constitutional Question Act, R.S.B.C. 1996, c. 68 had not been met.

Discussion

- [17] Before us, Ms. Huang and Mr. Li continue to contest, vigorously, the validity of the conditions placed upon her, and contest aspects of the medical records and the judge's view of Ms. Huang's history of mental disorder. In particular they say that the events of her hospitalizations and releases on conditions have been predicated on a false assertion that in May 2017 Ms. Huang brandished a knife; they say that this assertion is simply false. They say further that properly considered, there is no basis to require the continued treatment, through medication, of Ms. Huang, and they seek her discharge from the certificate now in effect (s. 33(8)).

- [18] On my reading of the reasons for judgment, the judge did not base his decision on the single assertion that Ms. Huang had brandished a knife, although he correctly said that this assertion was found in the materials before him. Rather, the judge reviewed the entire record and based his decision on the criteria set out in s. 33 of the Act. He asked himself in particular whether, if discharged, Ms. Huang "will as a result of her mental disorder fail to follow the treatment plan the physician considers necessary to minimize the possibility that she will again be detained under s. 22". He found that Ms. Huang is a person with a mental disorder, that Ms. Huang requires treatment in or through a designated facility, that she requires care, supervision and control to prevent mental or physical deterioration and to protect Ms. Huang or others, and that Ms. Huang cannot suitably be admitted as a voluntary patient.
- [19] I have summarized the evidentiary record before the judge. It contains the unanimous expert opinions of all physicians treating Ms. Huang since March 2018 that the factors in s. 22(3)(a)(ii) and (c) of the Mental Health Act continue to describe both her mental health and the risk involved in discontinuing the mental health treatment established by the conditions now challenged by Ms. Huang.
- [20] In my view the judge asked himself the right questions, and it was open to him, on a review of all the materials, to accept the professional medical opinions and to conclude, as he did, that the record supported his conclusion that the factors in s. 22(3)(a)(ii) and (c) continue to describe Ms. Huang's condition. This meant that under s. 33(6), the judge was required to find there was "sufficient reason for the certificate" respecting Ms. Huang. This then led to s. 33(7) under which the judge was required to "reject" Ms. Huang's application (there being legal authority for the certificate). I conclude that there is no basis upon which this court may interfere with his conclusion.
- [21] I turn now to the notice of constitutional question, and the submission of Ms. Huang and Mr. Li that we should address the constitutional questions they raise.
- [22] A notice of constitutional question was not before the Supreme Court of British Columbia, and for that reason the judge adjourned that portion of the petition generally.
- [23] The Attorney General of British Columbia has applied for an order that the appellants not be permitted to challenge the constitutionality of the Act because they did not do so (properly) in the Supreme Court of British Columbia. On the issue of the constitutionality of the Mental Health Act, the Attorney General refers us to *McCorkell v. Riverview Hospital (Director)* (1993), 81 B.C.L.R. (2d) 273, which affirmed that the Charter's s. 7 "fair balance" test, both substantively and procedurally, was met by the Mental Health Act.
- [24] Leave is required by a party seeking to advance a new issue on appeal and is only given in exceptional circumstances: *R. v. Lilgert*, 2014 BCCA 493; *Gorenshtein v. British Columbia (Employment Standards Tribunal)*, 2016 BCCA 457. As Mr. Justice Groberman explained in *The Law Society of British Columbia v. Parsons*, 2016 BCCA 435:

- [17] The challenge comes too late in the proceedings. It is long-established that this Court will not usually entertain Charter challenges brought, for the first time, on appeal: *R. v. Ubhi*, [1996] B.C.J. No. 934 (C.A.); *R. v. Olson* (1993), 23 B.C.A.C. 288 and *R. v. Vidulich* (1989), 37 B.C.L.R. (2d) 391...
- [25] The questions that the appellants seek to raise require an evidentiary record that has not been developed in the Supreme Court of British Columbia. Further, the judge adjourned that portion of the petition, so we do not have the benefit of judicial reasoning on the issues now advanced. In these circumstances, I would not give leave for those issues to be raised in this court for the first time and I would grant the order sought by the Attorney General; the record is simply inadequate for our consideration of the constitutional issues.
- [26] As I see no basis upon which we may say the judge erred, I would dismiss the appeal.
- "The Honourable Madam Justice Saunders"
- I agree:
- "The Honourable Madam Justice Bennett"
- I agree:
- "The Honourable Madam Justice DeWitt-Van Oosten"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/20/02/2020BCCA0294.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/huang-v-vancouver-general-hospital-2020>

Prepared on 29 October 2026 · Esheria