

CANADA / JUDGMENT

Jawadi v. Maerov

2025 ONCA 704

COURT

Court of Appeal for Ontario

DECIDED

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Lauwers, Peter D.; Dawe, Jonathan; Rahman, Moiz

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COURT OF APPEAL FOR ONTARIO

CITATION: Jawadi v. Maerov, 2025 ONCA 704

DATE: 20251017

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Lauwers, Dawe and Rahman JJ.A.

IN THE MATTER of the Health Care Consent Act, 1996, S.O. 1996, c. 2, Sched. A, as amended, and
IN THE MATTER OF ETHAN JAWADI, on appeal from the Consent and Capacity Board of Ontario
(CCB File No. 23-1536-02)

BETWEEN

Ethan Jawadi

Appellant (Appellant)

and

Dr. Phillip Maerov

Respondent (Respondent)

Ethan Jawadi, acting in person

Sarah M. Latimer, appearing as amicus curiae

Sean Petrou and Sarah McLeod, for the respondent

Heard: October 2, 2025 by video conference

On appeal from the order of Justice Jennifer Penman of the Superior Court of Justice, dated February 28, 2025, dismissing an appeal from the decision of the Consent and Capacity Board, dated June 14, 2023.

Dawe J.A.:

- [1] On May 26, 2023, the respondent, Dr. Phillip Maerov, found that the appellant, Ethan Jawadi, was incapable of consenting to or refusing consent to treatment with antipsychotic medication. The Consent and Capacity Board (the “Board”) confirmed this finding after a hearing on June 14, 2023. On February 28, 2025, a judge of the Superior Court of Justice dismissed Mr. Jawadi’s appeal from the Board’s decision. He now appeals to this court.
- [2] The arguments advanced by both the appellant and amicus can be divided into two groups. First, they both argue that the Board should have set aside Dr. Maerov’s finding of incapacity on the basis that Mr. Jawadi was not properly given his statutory entitlement to timely rights advice. Second, the appellant and amicus both contend that the evidence did not support Dr. Maerov’s finding of incapacity, although they make somewhat different arguments in support of this position.
- [3] For the following reasons, I would not give effect to any of these arguments and would dismiss the appeal.

A. Factual background [4] On May 24, 2023, Mr. Jawadi was brought to the Humber River Hospital after a conflict with his parents. A doctor in the emergency psychiatry unit described him as exhibiting “grandiose and paranoid themes”, and noted: “[i]nsight absent and judgment poor.” Mr. Jawadi was involuntarily hospitalized.

[5] Dr. Maerov became Mr. Jawadi’s attending physician on May 26, 2023. His provisional diagnosis was that Mr. Jawadi was affected by a schizoaffective disorder, bipolar type. Dr. Maerov informed Mr. Jawadi of this diagnosis, and concluded that he “lacked insight into the delusional nature of his beliefs”. He explained to Mr. Jawadi that:

[W]ithout treatment he would continue to have a downward functional trajectory and that treatment had a high likelihood of allowing him to function better and to engage better with others.

Dr. Maerov provided Mr. Jawadi with a Form 33, which notified him that he was being found incapable of consenting to treatment with antipsychotic medication. Later that same day a rights adviser met with Mr. Jawadi and completed a Form 50, which indicated that he had received rights advice, but that he did not wish to have the finding of incapacity reviewed by the Board.

[6] A few days later, Mr. Jawadi changed his mind. On May 30, 2023, he told Dr. Maerov that he intended to challenge the finding of incapacity, and that he wanted to file an application with the Board. Dr. Maerov accordingly did not initiate the proposed treatment. He believed that Mr. Jawadi, who still had his electronic devices with him, was capable of making the necessary arrangements himself. Mr. Jawadi was later observed using his electronic devices by nursing staff, and on June 1, 2023, he told a nurse, “I am an executive, I’m not supposed to be here, I am filling out the forms.” However, he did not file an application with the Board until June 2, 2023, after he met again with a rights adviser.

[7] In his application Mr. Jawadi sought to have the Board review both Dr. Maerov’s finding of incapacity and his involuntary admission. However, at a hearing before the Board on June 9, 2023 Dr. Maerov cancelled the involuntary admission Form 4 because he concluded that Mr. Jawadi no longer met the applicable criteria. The hearing was subsequently adjourned and Mr. Jawadi’s application to the Board proceeded solely as a review of Dr. Maerov’s incapacity finding.

[8] A single-member Board heard Mr. Jawadi’s application on June 14, 2023, and declined to rescind Dr. Maerov’s finding of incapacity. Mr. Jawadi’s appeal to the Superior Court of Justice was dismissed on February 28, 2025, with written reasons delivered on March 20, 2025.

B. Analysis 1. Was the appellant denied his statutory entitlement to rights advice? [9] Section 18 of the Health Care Consent Act, 1996, S.O. 1996, c. 2, Sched. A (“the HCCA”) is a provision of general application that governs all health practitioners and applies to all proposed forms of medical treatment. It gives persons who have been found incapable in relation to a proposed form of treatment the right to apply to have the finding of incapacity reviewed by the Board. Section 18(3)

of the HCCA provides that when a person first informs a health practitioner that they intend to apply to the Board, the health practitioner must not begin the proposed treatment for 48 hours. If the person makes an application to the Board, the health practitioner must postpone starting the proposed treatment until the application is either withdrawn or there has been a final disposition of the application and any subsequent appeals: HCCA, ss. 18(3)(b) to (d).

[10] However, the HCCA does not require patients to receive advice about their statutory right to apply to the Board from an independent “rights adviser”. This is a special procedural protection given to persons admitted to a psychiatric facility under the Mental Health Act, R.S.O. 1990, c. M.7 (“the MHA”) and its regulation, R.R.O. 1990, Reg. 741 (“Regulation 741”). The MHA and Regulation 741 require each designated psychiatric facility to have one or more “rights advisers”: see MHA, ss. 1, 80.2; Regulation 741, ss. 1, 14. Sections 15(1) and (2) of Regulation 741 then provide:

- (1) If a person who has been admitted to a psychiatric facility as a patient is 14 years old or older and if the person’s attending physician proposes treatment of a mental disorder of the person and finds that the person is incapable with respect to the treatment within the meaning of the Health Care Consent Act, 1996, the attending physician shall ensure that,
 - (a) the person is promptly given a written notice indicating that he or she has been found by the attending physician to be incapable with respect to the treatment; and
 - (b) a rights adviser is promptly notified of the finding of incapacity.
- (2) A rights adviser who is notified of a finding of incapacity shall promptly meet with the person who has been found incapable and shall explain to the person the significance of the finding and the right to apply to the Board under the Health Care Consent Act, 1996 for a review of the finding.

[11] Subsection 15(4) of Regulation 741 provides further that:

At the request of the person who has been found incapable, the rights adviser shall assist him or her in applying to the Board under the Health Care Consent Act, 1996 for a review of the finding and in obtaining legal services.

[12] There is no dispute that Dr. Maerov complied with his obligations under ss. 15(1)(a) and (b) of Regulation 741. After he diagnosed Mr. Jawadi with a mental disorder and found that the appellant was incapable with respect to the proposed treatment of this disorder, he promptly notified both the appellant and a rights adviser of his finding of incapacity. It is also undisputed that a rights adviser then met “promptly” with Mr. Jawadi later that same day and advised him of his rights, as required by s. 15(2) of Regulation 741. The Form 50 completed on May 26, 2023 indicated that Mr. Jawadi did not intend to challenge Dr. Maerov’s finding of incapacity, and he thus did not request assistance from the rights adviser under s. 15(4) of Regulation 741.

[13] However, four days later, before Dr. Maerov had started the proposed treatment of Mr. Jawadi's diagnosed mental disorder, Mr. Jawadi informed Dr. Maerov that he had changed his mind and now wanted to apply to the Board.

[14] The appeal judge drew an analogy between this case and *M.Z. (Re)*, 2021 CanLII 130880 (Ont. C.C.B.), where a patient who had received prompt rights advice later said that he could not remember receiving it, at which point he was provided with rights advice again. The appeal judge explained:

The Board found that the rights advice was provided promptly within the meaning of the provisions and declined to revoke the finding of incapacity on that issue.

The situation in *MZ* is somewhat more concerning in that *MZ* purported to not remember the rights advice. That was not the evidence before the Board in this case. Mr. Jawadi simply changed his mind and did not lack a recollection of the advice.

[15] When Mr. Jawadi told Dr. Maerov on May 30, 2023 that he now intended to apply to the Board, this triggered Dr. Maerov's duty under s. 18(3)(a) of the HCCA to postpone starting the proposed treatment for 48 hours. There is no dispute that Dr. Maerov complied with this obligation. It is also undisputed that Mr. Jawadi never requested assistance from a rights adviser under s. 15(4) of Regulation 741, although a rights adviser eventually met with him on June 2, 2023.

[16] The appellant and amicus argue that once Mr. Jawadi told Dr. Maerov that he intended to apply to the Board, this should be understood as triggering a further legal duty on Dr. Maerov's part to arrange for Mr. Jawadi to receive fresh rights advice from a rights adviser within the 48-hour window under s. 18(3)(a) of the HCCA. Amicus acknowledges that Regulation 741 did not require Dr. Maerov to do this, but argues that this does not "foreclose a requirement of rights advice on [any] occasion that is needed." Specifically, amicus contends that s. 18(3) of the HCCA should be interpreted as implicitly including this additional legal obligation. Amicus argues that this interpretation would better achieve the HCCA's purposes, which include "enhanc[ing] the autonomy of persons for whom treatment is proposed ... [by] allowing those who have been found to be incapable to apply to a tribunal for a review of the finding": HCCA, s. 1(c)(i).

[17] The Board and the appeal judge both rejected this argument. The Board stated:

The legislation requires a single rights advice visit and there is no requirement to facilitate additional visits once completed. On the facts here, I was in no way persuaded that Dr. Maerov failed to meet any further obligation.

The judge who heard Mr. Jawadi's appeal from the Board agreed, noting that amicus's proposal to recognize an obligation to arrange rights advice for patients within 48 hours after they express their intention of applying to the Board "would introduce a new obligation for additional rights advice that is not set out in the MHA Regulation."

- [18] Since the proper interpretation of s. 18(3) of the HCCA and s. 15 of Regulation 741 involve pure questions of law, the Board and the Superior Court's conclusions on this issue are reviewable on a correctness standard: see e.g., *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 37; *Naus v. Kennedy*, 2025 ONCA 214, 175 O.R. (3d) 687, at para. 38.
- [19] Courts interpreting legislation must apply "a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole": *Piekut v. Canada (National Revenue)*, 2025 SCC 13, 502 D.L.R. (4th) 1, at para. 43, citing *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10. This same approach applies "with appropriate modification, to the interpretation of a regulation": *Gyorffy v. Drury*, 2015 ONCA 31, 123 O.R. (3d) 721, at para. 30; *Echelon General Insurance Company v. Unifund Assurance*, 2025 ONCA 324, 177 O.R. (3d) 26, at para. 20.
- [20] Amicus's proposed interpretation of s. 18(3) of the HCCA is not supported by a textual analysis. The HCCA does not expressly address the provision of rights advice to persons who have been found incapable. It does not require patients to be informed of their rights by an independent rights adviser, nor does it require all health care facilities to have rights advisers on staff. Rather, these are special procedural protections given to patients in psychiatric facilities by the MHA and Regulation 741. The text of s. 18 of the HCCA cannot be read in its grammatical and ordinary sense as imposing a duty on all health practitioners to arrange for patients to receive advice about their rights from a rights adviser, since "rights adviser" is a defined term in the MHA, and only designated psychiatric facilities are required to have rights advisers on staff.
- [21] Amicus's proposed interpretation of s. 18(3) of the HCCA is also not supported by a contextual analysis, which requires the legislative scheme to be examined with the presumption that its different parts "are meant to work together 'as parts of a functioning whole' and form an internally consistent framework" (citations omitted): *Heritage Capital Corp. v. Equitable Trust Co.*, 2016 SCC 19, [2016] 1 S.C.R. 306, at para. 28. The Ontario legislature evidently intended to give more extensive procedural protections to patients in psychiatric facilities, in recognition of their particular needs and vulnerabilities. In essence, amicus is seeking to expand the MHA's rights advice scheme to fill a perceived gap. Whatever merits this proposed expansion might have as a matter of policy, it would be contrary to the overall structure of the legislative scheme to read expanded procedural protections for psychiatric patients into s. 18(3) of the HCCA, which is a provision of general application.
- [22] Finally, the policy justifications for amicus's proposed interpretation of s. 18(3) of the HCCA in tandem with s. 15 of Regulation 741 under the MHA are debatable. The main purposes of the rights advice scheme in s. 15 of Regulation 741 under the MHA are to ensure that psychiatric patients who have been found incapable with respect to a proposed treatment are made aware of their right to apply to the Board for a review of the finding of incapacity and, if they request assistance, to help them with the application process and/or with

obtaining legal services. However, because psychiatric patients who have triggered the 48-hour window in s. 18(3)(a) of the HCCA do so by expressing their intention of applying to the Board, they do not need to be informed of their right to apply to the Board. While some of these patients might still need help preparing the Board application and/or obtaining legal services, s. 15(4) of Regulation 741 entitles them to request this assistance from a rights adviser. In essence, amicus seeks to require attending physicians to arrange a further meeting with a rights adviser even when, as in the appellant's case, the patient has not requested any assistance. The legislators who enacted the HCCA and the MHA, as well as the drafters of Regulation 741, might reasonably have concluded that requiring this would place an undue burden on rights advisers.

- [23] In this regard, it is of some significance that s. 15(6) of Regulation 741 expressly provides that psychiatric patients who have been found incapable with respect to a treatment of a mental disorder, and who have already received rights advice from a rights adviser under s. 15(2), are not entitled to receive further rights advice in relation to “any subsequent finding of incapacity made in respect of the person during his or her stay in the facility pursuant to that admission, whether the subsequent finding is made in relation to the same treatment or a different treatment”. Although s. 15(6) has no direct application in the appellant's case, its existence supports the inference that the drafters of Regulation 741 were concerned about not overburdening rights advisers.
- [24] In summary, I am not persuaded that s. 18(3) of the HCCA can be interpreted as amicus proposes. I accordingly agree with the Board and the Superior Court's conclusion that the appellant was not denied his procedural rights under s. 18 of the HCCA and s. 15 of Regulation 741.
2. Did the Board err by finding that the evidence supported Dr. Maerov's finding of incapacity?
- [25] Under s. 4(1) of the HCCA, a person is capable with respect to a particular treatment if they are “able to understand the information that is relevant to making a decision about the treatment”, and “able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.” People are presumed to be capable with respect to treatment: HCCA, s. 4(2). When a physician's finding of incapacity is under review by the Board, the physician bears the onus of displacing one or both of the two criteria for capacity under s. 4(1) on a balance of probabilities.
- [26] On an appeal from a decision of the Superior Court in an appeal from a decision of the Board, “this court ‘steps into the shoes’ of the Superior Court of Justice and focuses on the tribunal's decision under review”: *B.L. v. Pytyck*, 2021 ONCA 67, at para. 20. As Brown J.A. explained in *B.L. v. Pytyck*, at para. 22:

The Board's identification of the proper statutory test for capacity involves a question of law reviewable on the correctness standard. The Board's application of the statutory test for capacity to the evidence to determine whether a person is capable is a question of mixed fact and law, reviewable on the deferential standard of palpable and overriding error, absent an extricable question of law in the Board's analysis.

[27] In this case, Dr. Maerov has never contended that Mr. Jawadi was incapable under the first prong of the s. 4(1) capacity test – that is, that Mr. Jawadi was unable to understand the information relevant to making a decision about the proposed treatment with antipsychotic medication. Rather, Dr. Maerov's position throughout these proceedings is that the evidence established Mr. Jawadi's incapacity under the second prong of the test – that is, that in May 2023, he was unable to appreciate the reasonably foreseeable consequences of a decision or lack of decision about Dr. Maerov's proposal to treat him with antipsychotic medication.

[28] In *Starson v. Swayze*, 2003 SCC 32, [2003] 1 S.C.R. 722, at para. 79, Major J. emphasized that “a patient need not agree with the diagnosis of the attending physician in order to be able to apply the relevant information to his own circumstances”. He explained further:

While a patient need not agree with a particular diagnosis, if it is demonstrated that he has a mental “condition”, the patient must be able to recognize the possibility that he is affected by that condition. Professor Weisstub comments on this requirement as follows ...

Condition refers to the broader manifestations of the illness rather than the existence of a discrete diagnosable pathology. The word condition allows the requirement for understanding to focus on the objectively discernible manifestations of the illness rather than the interpretation that is made of these manifestations.

As a result, a patient is not required to describe his mental condition as an “illness”, or to otherwise characterize the condition in negative terms. Nor is a patient required to agree with the attending physician's opinion regarding the cause of that condition. Nonetheless, if the patient's condition results in him being unable to recognize that he is affected by its manifestations, he will be unable to apply the relevant information to his circumstances, and unable to appreciate the consequences of his decision.

[29] The appellant and amicus accept that the Board and the Superior Court correctly stated these governing legal principles. However, the appellant argues that they misapplied these principles by conflating his disagreement with Dr. Maerov's diagnosis with a finding that he did not accept the possibility that he was affected by a mental condition.

[30] I am not persuaded that either the Board or the Superior Court made this error. The Board found that the test for incapacity was met on the basis that “[Mr. Jawadi] rejected the possibility that he had a condition, that he was experiencing any manifestations of a mental condition and any possibility that the treatment may offer him any benefit.” I agree with the Superior Court's finding that this was “a conclusion that was reasonable on the evidence.” It is clear from the record, including Mr. Jawadi's testimony before the Board, that he

completely rejected the possibility that he might be affected by a mental condition. In his factum in this court, the appellant states that he is “axiomatically not suffering from any mental health issues”, and dismisses the evidence that he had delusional beliefs as merely reflecting a failure to recognize “the ambitious, unconventional thinking of a young entrepreneur.” I am satisfied that the Board correctly identified the operative legal principles, and made factual findings about Mr. Jawadi’s beliefs that it was entitled to reach on the evidence and that do not reflect any palpable and overriding error.

[31] Amicus argues that the evidence did not establish that Mr. Jawadi was affected by a mental condition. As amicus puts it in their factum:

[I]f a patient can fail the second branch of the test to treatment capacity on the sole basis that the patient denies that they are affected by the mental condition, there must be a sufficient evidentiary basis that they are indeed affected by the mental condition.

Amicus also argues that Dr. Maerov’s own evidence about Mr. Jawadi’s incapacity was not corroborated by some other material evidence, in accordance with s. 14 of the Evidence Act, R.S.O. 1990, c. E.23: see *Anten v. Bhalerao*, 2013 ONCA 499, 366 D.L.R. (4th) 370, at para. 28.

[32] The Board’s reasons make clear that it was satisfied on a balance of probabilities that Mr. Jawadi was experiencing delusions as a result of a mental condition, and that it was also satisfied that Dr. Maerov’s opinion about his mental condition was corroborated by other evidence. The Board explained:

EJ’s behaviours and beliefs were also observed and reported by other physicians and health team members in the emergency department and on the hospital ward. EJ had been admitted to hospital two previous occasions, albeit for short periods of time. In each case, psychiatrists had observed EJ and drawn the conclusion that he was experiencing a mental condition. In each case, the presentations were similar to EJ’s behaviour and beliefs when admitted to [the Humber River Hospital]. Some of the information came from EJ’s family and he testified that his father had improper motives and his mother was mentally ill and abusing him. Yet EJ’s beliefs and behaviours were also observed in hospital by others so not dependent only on the family’s information.

I also found some of EJ’s own evidence corroborative of Dr. Maerov’s assessment although I hesitated to include examples in extensive detail. EJ was correct that believing in oneself is essential, and setting lofty goals and working towards these are important factors in success. However, it was clear at least that EJ was over-valuing some of his abilities, for example, in pointing to his tweets as evidence that he was advising Elon Musk or prescient of eventual business outcomes. These beliefs also coincided with other behaviours and manifestations that were clearly evidence of a mental condition.

[33] The Superior Court found that “[t]he Board’s conclusion that Dr. Maerov had established on a balance of probabilities that Mr. Jawadi suffered from a mental condition was reasonable on the evidence and is entitled to deference.” I agree with this conclusion.

C. Disposition [34] In the result, I would dismiss the appeal, without costs.

Released: October 17, 2025 “P.D.L.”

“J. Dawe J.A.”

“I agree. P. Lauwers J.A.”

“I agree. M. Rahman J.A.”

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