Court File No. 25-000099970-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

STEVEN LEONARD REYNEN

Appellant

- and -

DR. TABITHA ROGERS

Respondent

- and -

THE PUBLIC GUARDIAN AND TRUSTEE

Respondent

FACTUM OF THE RESPONDENT DR. TABITHA ROGERS

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PART I – OVERVIEW

1. This is an appeal of a decision of the Consent and Capacity Board ("the Board") rendered on May 15, 2025. The Board directed Mr. Steven Reynen's Substitute Decision-Maker, the Public Guardian and Trustee (PGT), to give or refuse consent to treatment with the proposed treatment (i.e. antipsychotic medication), in accordance with section 21(1)(2) of the *Health Care Consent Act*, 1996, S.O. 1996, c. 2, Sched. A, as amended ("*HCCA*") (i.e. in accordance with the patient's best interests).[1]

The outcome of this MAY require Section 37 of the HCCA.

2. The Appellant, Mr. Reynen, has laid out multiple grounds of appeal in his Notice of Appeal. Generally, the appeal is brought on the grounds that the Board erred in fact and in law in directing the Substitute Decision Maker (SDM) to give or refuse consent to the proposed treatment in accordance with s. 21(1)(2) of the *HCCA*.[2]

3. The Respondent, Dr. Rogers, disagrees with the Appellant's grounds of appeal and submissions. She submits that this Court should confirm the Board's decision.

PART II – FACTS

Psychiatric History

Not content as the involuntary patient status will go to be voluntary.

4. Mr. Reynen is a 36-year-old man with a longstanding history of treatment resistant schizophrenia. He is currently an involuntary patient at the Royal Ottawa Mental Health Centre (the Royal).[3]

5. The Respondent, Dr. Rogers, is Mr. Reynen's attending physician at the Royal.[4]

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[1] CCB Decision, Record of Proceedings [ROP], p. 31.
[2] Notice of Appeal, ROP, p. 1.
[3] CCB Summary, Exhibit 5, ROP, p. 227; Outpatient Progress Report of February 25, 2025, Exhibit 1, ROP, p. 195.

6. Prior to Mr. Reynen's current hospital admission, he lived with his parents. He was not employed but performed volunteer work for Meals on Wheels.[5]

7. Between June 2020 and November 2022, Mr. Reynen had six psychiatric admissions, including a lengthy 18-month admission in 2021/2022. During this admission, he was found incapable with respect to treatment with antipsychotic medication. He was started on an oral antipsychotic medication, Clozapine, to good effect.[6] Clozapine is recommended for patients like Mr. Reynen with treatment resistant schizophrenia who responded poorly to at least two prior antipsychotic medications.[7]

8. Following his discharge, Mr. Reynen continued to be treated with Clozapine (250 mg) and was followed as an outpatient of the Royal by Dr. Alexandra Baines.[8]

Clozapine Dose Reduction

9. In June 2023, at Mr. Reynen's request, Dr. Baines agreed to gradually reduce his Clozapine dose.[9] Mr. Reynen stated he was concerned about metabolic side effects but confirmed he did not want his health to deteriorate as it had prior to his last admission. He noted improved communication and closeness with his family with treatment, which was of primary importance to him.[10]

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[4] CCB Hearing Transcript, p. 5.
[5] CCB Decision, ROP, p. 12.
[6] CCB Summary, Exhibit 5, ROP, p. 225; Outpatient Progress Report of February 25, 2025, Exhibit 1, ROP, p. 195.
[7] CCB Hearing Transcript, p. 22.
[8] CCB Summary, Exhibit 5, ROP, p. 225; Outpatient Progress Report of February 25, 2025, Exhibit 1, ROP, p. 195.
[9] Outpatient Progress Report of June 27, 2023, Exhibit 1, ROP, pp. 84-85.
[10] Outpatient Progress Report of June 27, 2023, Exhibit 1, ROP, pp. 84–85.

10. Shortly thereafter, on August 1, 2023, Mr. Reynen recorded a video addressed to his future self, in which he acknowledged the benefits and side effects of Clozapine. He urged himself not to stop treatment if it put his relationship with his family in jeopardy.[11]

Finding of Capacity by Dr. Baines & Mr. Reynen's July 2024 Email

11. One year later, in June 2024, while the Clozapine was still being tapered down, Mr. Reynen asked Dr. Baines to assess his capacity. On assessment, she found Mr. Reynen had reached the criteria for capacity for treatment decisions.[12] Mr. Reynen expressed being "hopeful" that his symptoms could be managed without medication but agreed to monitor his symptoms with the help of his treatment team and family. He again confirmed he wanted to avoid severe relapse and/or hospitalization.[13] Dr. Baines and Mr. Reynen also discussed a potential trial of Cariprazine. Mr. Reynen advised he wanted to consider this medication only if there was a worsening of his symptoms with attempted discontinuation of the Clozapine.[14]

12. In July 2024, Mr. Reynen wrote an email to his parents, case worker, and Dr. Baines, advising that he did not wish to ever again be treated with any psychotropic medication (including any antipsychotic medication) under any circumstance.[15] He also confirmed in this email that he did not believe in suicide or committing violence.[16] Dr. Baines did not assess Mr. Reynen's capacity at the time he sent this email.[17]

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[11] Video of Mr. Reynen, recorded August 1, 2023 (Part 1 & 2), ROP, Exhibits 3 & 4.
[12] Outpatient Progress Report of June 25, 2024, Exhibit 1, ROP, p. 162; Transcript of CCB Hearing, p. 42.
[13] Outpatient Progress Report of June 25, 2024, Exhibit 1, ROP, p. 159 & 166.
[14] *Ibid*.
[15] Mr. Reynen's letter sent July 2024, ROP, Exhibit 2, p. 223.
[16] *Ibid*.
[17] CCB Hearing Transcript, p. 71, line 30.

13. That same month, in July 2024, Mr. Reynen briefly stopped his Clozapine completely, resulting in significant agitation and insomnia with no sleep for 3 nights. He confided this to his mother while they were driving to New Brunswick for a family trip. She contacted the hospital, and the on-call psychiatrist sent a prescription to New Brunswick for Clozapine 75 mg.[18] Mr. Reynen resumed his Clozapine at that dose.[19]

14. Dr. Baines next assessed Mr. Reynen on August 20, 2024. He again confirmed he wished to avoid a severe relapse in his symptoms.[20]

15. From June 2024 (when he was deemed capable) to December 2024, Mr. Reynen increased his Clozapine dose on several occasions due to worsening symptoms:

- **July 2024:** Mr. Reynen increased his Clozapine dose to 75 mg, after stopping the medication and experiencing significant agitation and insomnia. Prior to stopping the medication, Mr. Reynen was taking a 68.75 mg dose.[21]

- **October 2024:** Mr. Reynen increased his Clozapine dose to 50 mg from 25 mg (with one day of no Clozapine whatsoever), after noting increased agitation.[22]

- **December 2024:** Mr. Reynen increased his dose to 75 mg from 37.5 mg, after experiencing increased agitation and beliefs he had experienced "Satanic Ritual

[18] CCB Summary, Exhibit 5, ROP, p. 226; Outpatient Progress Report of August 20, 2024, Exhibit 1, ROP, p. 164.
[19] Outpatient Progress Report of August 20, 2024, Exhibit 1, ROP, p. 164.
[20] *Ibid* at p. 166.
[21] Outpatient Progress Report of June 25, 2024, Exhibit 1, ROP, p. 160; Outpatient Progress Report of August 20, 2024, Exhibit 1, ROP, p. 164.
[22] Outpatient Progress Report of October 15, 2024, Exhibit 1, ROP, p. 175.

Abuse". He agreed to increase his dose after his parents shared their concerns that he was doing less well. [23]

On two of the above occasions (July and October 2024), Mr. Reynen restarted his Clozapine after having stopped it completely.

16. At her last appointment with Mr. Reynen on January 10, 2025, Dr. Baines documented that he was taking 56.25 mg of Clozapine daily. Shortly thereafter, Mr. Reynen stopped his Clozapine completely, contrary to the agreed upon plan to reduce his dose gradually.[24]

Current Hospitalization

17. On January 20, 2025, Mr. Reynen's parents called emergency services and reported that he was increasingly delusional, unable to sleep, and had threatened to harm them and himself with a knife. He was brought to the Ottawa Hospital (TOH) by police for assessment and was admitted to hospital involuntarily.[25] He was noted to have been off his Clozapine for 2 weeks at that time.[26]

18. Mr. Reynen was deemed incapable with respect to treatment decisions. The Board upheld this finding on January 29, 2025. Mr. Reynen's SDM, the PGT, consented to treatment with Invega Sustenna, an injectable antipsychotic medication. Mr. Reynen showed improvement with treatment, primarily with thought process organization.[27]

[23] Outpatient Progress Report of December 10, 2024, Exhibit 1, ROP, p. 188.
[24] CCB Summary, Exhibit 5, ROP, p. 226.
[25] CCB Summary, Exhibit 5, ROP, p. 227; Outpatient Progress Report of February 25, 2025, Exhibit 5, ROP, p. 196; CCB Hearing Transcript, p. 102, line 21.
[26] Mental Health Admission Assessment of March 14, 2025, Exhibit 1, ROP, p. 195.
[27] CCB Summary, Exhibit 5, ROP at p. 227; Outpatient Progress Report, Exhibit 1, ROP, pp. 195–208.

made them aware of with on Feb 25.
See evidence submitted by Dr. Rogers.

19. On February 25, 2025, Mr. Reynen was transferred from TOH to the Royal on a Form 4 (Certificate of Renewal) for continuation of his inpatient stay. He continued to present with poor insight and evidence of delusional beliefs.[28]

20. Mr. Reynen's last Invega Sustenna injection was administered on March 11, 2025.[29] Prior to his next scheduled injection, Mr. Reynen informed his treatment team of the July 2024 wish to never again be treated with psychotropic medication. Dr. Rogers decided to withhold treatment pending clarification regarding this alleged prior wish.[30]

Error in fact
Admission Report dated Feb 5 confirms this.
see Rogers evidence package

21. Since treatment was held, Mr. Reynen has clinically deteriorated. He is increasingly dysregulated and labile. He was deemed to be at increased risk of suicide and self-harm and has demonstrated hostile and threatening behaviour, resulting in loss of his off-ward privileges. At times, he required constant direct observation for safety. On one occasion, he believed he ate a cookie containing peanuts (to which he has a life-threatening allergy), and he refused all treatment in the event of an allergic reaction, including an EpiPen. He has made gestures of repeatedly stabbing himself in the neck, has threatened to bash his head into the wall until he dies if given medication, and has threatened to jump in front of a garbage truck. He frequently asks to be discharged, with plans to live with the Amish or become homeless.[31]

in response to TORTURE

Forcing something upon someone against their religion is TORTURE.
Force food that is Haram upon a Muslim?
Force food that is not kosher upon a Jew?
Force treatment that is SIN upon a Christian?
TORTURE.

[28] CCB Summary, Exhibit 5, ROP at p. 227; Outpatient Progress Report, Exhibit 1, ROP, pp. 195-208.
[29] CCB Summary, Exhibit 5, ROP, p. 227.
[30] Inpatient Progress Report of April 25, 2025, Exhibit 1, ROP, p. 213.
[31] CCB Summary, Exhibit 5, ROP at p. 227; CCB Hearing Transcript, p. 107, line 16, & p. 114, line 14.

Suicide is sin. Suicide is lesser sin than pharmakeia. Stop forcing/threatening incapable client against TORTURE → Suic. Ideation

Board Hearing and Decision

22. Dr. Rogers brought a Form D application, seeking guidance from the Board regarding the applicability of Mr. Reynen's prior expressed wish.[32] Alternatively, she brought a Form E Application seeking permission from the Board to depart from Mr. Reynen's wishes.[33] The PGT took no position on either application.[34]

23. The hearing of the above-noted applications proceeded before the Board on May 14, 2025. A Board Summary prepared by Dr. Rogers, clinical records of Dr. Baines and Dr. Rogers, and Mr. Reynen's August 2023 video were admitted as evidence. Both Dr. Baines and Dr. Rogers testified. The PGT and Mr. Reynen did not attend the hearing. Mr. Reynen's counsel attended on his behalf and gave submissions.[35]

24. Pursuant to s. 37.1 of the *HCCA*, there was no need to review Mr. Reynen's capacity at the hearing, as his incapacity to consent to treatment had been confirmed by the Board on January 29, 2025, i.e. within 6 months of the date of the hearing.[36]

25. At the hearing, Dr. Baines testified that Mr. Reynen's statement in his July 2024 email that he did not want any psychotropic medication "under any circumstance" did not align with their many discussions wherein he expressed that he wished to be off all medications but did not want to change his treatment in such a way that it would jeopardize his health or relationship with his family.[37]

Syndicat Do-Accept
Amalem.

[32] Form D Application, ROP, p. 40.
[33] Form E Application, ROP, p. 44.
[34] Endorsement, dated April 30, 2025, ROP, p. 34.
[35] CCB Decision, ROP, p. 11.
[36] *Health Care Consent Act, 1996, S.O. 1996, c. 2, Sched. A, as amended*, s. 37.1; CCB Decision, ROP, p. 11.
[37] CCB Hearing Transcript, p. 50, line 27.

SCC Case Law

26. Dr. Baines also testified under cross-examination that while Mr. Reynen was under her care, he worked actively to avoid harming himself or others. She noted that Mr. Reynen confirmed in his July 2024 email that he did not believe in suicide or violence.[38] She stated that his behaviour prior to and during his present hospitalization, including threatening himself and his parents with a knife, contradicted these beliefs.[39] She testified that she believed that when Mr. Reynen wrote the July 2024 email, he did not perceive his illness getting to the point where he might harm himself or others.[40]

27. Dr. Baines testified that Mr. Reynen's present circumstance was "a very different circumstance then (sic) in the past".[41] Dr. Baines conceded that Mr. Reynen knew in July 2024 that previous attempts at stopping his medication resulted in suicidal ideation and hospitalization, but she confirmed he had never before made threats to others in the present manner.[42] She stated that "the impairment of his insight now is markedly different from all prior relapses."[43] She also confirmed that, without treatment, Mr. Reynen was now at risk of indefinite hospitalization and this was not a situation she believed he ever wished to find himself in.[44]

28. Dr. Rogers likewise testified that, despite always having delusions, Mr. Reynen had never had any safety concerns involving his family until the current admission.[45]

[38] CCB Hearing Transcript, p. 77, line 24.
[39] CCB Hearing Transcript, p. 74, line 24.
[40] *Ibid*.
[41] CCB Hearing Transcript, p. 75, line 6.
[42] CCB Hearing Transcript, p. 76, line 4.
[43] CCB Hearing Transcript, p. 78, line 29.
[44] CCB Hearing Transcript, p. 87, line 1.
[45] CCB Hearing Transcript, p. 104, line 6.

How is it in BEST INTEREST to TORTURE someone and DRIVE them to SUICIDE?

She confirmed he has suffered a significant deterioration, his prognosis was very poor, and she ultimately believes he will kill himself.[46] IF Canad can't stop TORTURING me this MAY happen IF the treatment DOESN'T kill me first like it was LAST TIME

29. Dr. Rogers also shared a letter written by Mr. Reynen's mother in which she expressed: "There are parts of Steven now that I have never seen before" and "these symptoms are new". She also expressed concerns he may hurt someone and stated: "I know Steven would not want to hurt anyone".[47] TRUE

30. The Board released its Decision on May 15, 2025 and its Reasons on May 22, 2025.[48] On the Form D application, the Board directed Mr. Reynen's SDM, the PGT, to refuse or give consent to the proposed treatment plan (i.e. treatment with antipsychotic medication) in accordance with section 21(1)2 of the *HCCA* (i.e. in accordance with the patient's best interests.)[49] The Board accordingly found the Form E application redundant and dismissed it.[50] On May 23, 2025, Mr. Reynen appealed the Board's decision to this Court.[51] SDM may still REFUSE. D. Rogers MAY then Section 37.

PART III – ISSUES

31. The issue raised in this appeal is whether the Board made a palpable and overriding error in directing Mr. Reynen's SDM to give or refuse consent to treatment with the proposed treatment (i.e. antipsychotic medication), in accordance with section 21(1)(2) of the *HCCA* (i.e. in accordance with his best interests).

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[46] CCB Hearing Transcript, p. 115, line 20.
[47] Telephone Contact Report, dated April 25, 2025, Exhibit 1, ROP, p. 209.
[48] CCB Decision, dated May 15, 2025, ROP, pp 31–32; Reasons for Decision, dated May 22, 2025, ROP, p. 9.
[49] Decision on Form D Application, ROP, p. 31.
[50] Decision on Form E Application, ROP, p. 32.
[51] Notice of Appeal, ROP, p. 1.

Clozapine will KILL me. Any other treatment UNLIKELY to work

PART IV – LAW AND ARGUMENT

(A) Jurisdiction of the Superior Court and Standard of Review

32. The Superior Court has jurisdiction to hear an appeal from any decision of the Board on a question of fact or law or both under section 80(1) of the *HCCA*.[52]

33. On appeal, the Court may exercise all the powers of the Board, substitute its opinion for that of a health practitioner, an evaluator, a substitute decision-maker or the Board, or refer a matter back to the Board, with directions, for rehearing in whole or in part, pursuant to section 80(10) of the *HCCA*.[53] Can the court decide for the SDM to give or refuse HERE?

34. The appellate standards of review are to be applied on an appeal of a decision of the Board to this Court. The standard of review for an error in law is correctness. Where the scope of statutory review includes questions of fact, the appellate standard of review is palpable and overriding error.[54]

35. Mr. Reynen's appeal involves mixed findings of fact and law with no extractable error of law being advanced by Mr. Reynen. Will address this EXPLICTLY in Factum for Court of Appeals.

36. *Amicus Curiae* asserts the Board erred in law by conducting its own capacity assessment going back to Summer 2024. It is unclear whether she asserts that the correctness standard applies. As discussed below, while the Board indeed questioned whether Mr. Reynen was capable when he made his wish, it proceeded based on the

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[52] *Health Care Consent Act,* 1996, SO 1996, c 2, Sched A ["*HCCA*"], s 80(1).
[53] *HCCA*, supra note 52, s 80(10).
[54] *JW v Dr Wadhw*, 2020 ONSC 172 at para 8, citing Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at para 37 ["*Vavilov*"].

presumption he was.[55] The Board did not conduct its own capacity assessment as asserted by *Amicus Curiae*. Rather, it appropriately considered the relevant facts and circumstances at the time Mr. Reynen made his wish to determine whether it applied to his circumstances. This analysis involved mixed findings of fact and law and, pursuant to *Housen v Nikolaisen*, the applicable standard is thus palpable and overriding error.[56]

37. In a 2021 appeal of a Board decision, this Court defined the "palpable and overriding error" standard as follows:

> "The word "palpable" means "clear to the mind or plain to see", and "overriding" means "determinative" in the sense that the error "affected the result". The Supreme Court has held that other formulations capture the same meaning as "palpable error": "clearly wrong", "unreasonable" or "unsupported by the evidence". The standard of palpable and overriding error requires that a reviewing court to move from the process of verifying that inferences made by the trier of fact can be reasonably supported by the evidence to identifying precisely the imputed error and determining whether that error affected the result.[57]

38. This Court has found that the Board is entitled to some considerable deference with respect to its assessment of the credibility and reliability of the evidence it received. The Board is in a unique position of being able to hear from the witnesses and assess credibility in a way that the paper record, on appeal, does not afford. However, the

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[55] CCB Reasons for Decision, ROP, p. 19.
[56] *AS v Sum*, 2021 ONSC 4296 at para 6 ["*AS*"], citing Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65, at para 37 & *Housen v Nikolaisen*, 2002 SCC 33 at para 36 ["*Housen*"].
[57] *KM v. Agrawal*, 2021 ONSC 5748 at para 82, citing *Housen*, supra note 56, at para 5, *Schwartz v. Canada*, 1996 CanLII 217 (SCC), [1996] 1 SCR 254 at para 35, *Salomon v. Matte-Thompson*, 2019 SCC 14 at para 33, *Benhaim v. St-Germain*, 2016 SCC 48 at paras 36-40, *HL v. Canada (Attorney General)*, 2005 SCC 25 at para 55-56, *B.N. v. Beder*, 2021 ONSC 3046, and *Nelson (City) v. Mowatt*, 2017 SCC 8 at para 38.

requirement of deference must not sterilize such an appeal mechanism to the point that it changes the nature of the decision-making process the legislature put in place.[58]

(B) Regard must be had to relevant changes in circumstances

39. Under s. 21(1)1 of the *HCCA*, prior wishes must only be followed if the patient expressed the wish while capable and the wish is "applicable to the circumstances".[59]

40. Pursuant to s. 21(2) of the *HCCA*, prior wishes that do not meet the requirements of s. 21(1), shall still be taken into consideration by the SDM in deciding what the incapable person's best interests are.[60] Thus, even where a patient's wish is deemed inapplicable, the *Act* ensures some recognition and protection of the patient's individual autonomy and right to medical self-determination.

41. Citing the Court of Appeal in *Conway v Jacques*, the Board in this case properly identified that "prior capable wishes are not to be applied mechanically or literally without regard to relevant changes in circumstances. Even wishes expressed in categorical or absolute terms must be interpreted in light of the circumstances prevailing at the time the wish was expressed."[61] (Emphasis added.)

42. The Supreme Court of Canada, citing *Conway*, has confirmed that the requirement that prior wishes only be binding if they are applicable to the patient's current circumstances "is no mere technicality".[62] The Supreme Court further confirmed that "the intended meaning and scope of the wish must be carefully considered. The

[58] *AS*, supra note 56, at paras 7–8, citing *Vavilov*, supra note 56, at para 36.
[59] *HCCA*, supra note 52, s. 21(1)1.
[60] *HCCA*, supra note 52, s. 21(2)(b).
[61] 2002 CanLII 41558 (ON CA) at para 31.
[62] *Cuthbertson v. Rasouli*, 2013 SCC 53 at para 81.

question is whether, when the wish was expressed, the patient intended its application in the circumstances that the patient now faces" (citations omitted).[63]

43. In *MF (Re)*, the CCB decision cited in the Factum of *Amicus Curiae*[64], the Board confirmed that expressed preferences should not be adhered to "slavishly":

> I am sceptical about the extent to which comments of a general nature addressing unforeseeable contingencies are intended by the legislation to be wishes mandated for slavish adherence. Such general outlines of preference may, as life unfolds, not be applicable to the circumstances.[65]

44. Even wishes that appear unequivocal may not apply in certain circumstances. In *Scardoni v. Hawryluck*, this Court noted that a patient's prior wish "to be kept alive in all circumstances" would not necessarily satisfy the requirements of s. 21(1)1 of the *HCCA*; whether it does "depend[s] on the circumstances existing when the wish was expressed, as well as those that subsequently occurred."[66] The Court found it was open to the Board to find that the patient's wish was inapplicable, and it saw no error in the Board's approach of examining whether the patient "had turned her mind to the nature and extent of the effects of [her] disease that have given rise to her present condition".[67]

(C) The Board made no error in finding Mr. Reynen's prior wish was inapplicable

45. In its Reasons, the Board confirmed that the basis for its conclusion that the wish expressed by Mr. Reynen was not applicable to his circumstances was twofold:

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[63] *Cuthbertson v. Rasouli*, 2013 SCC 53 at para 82.
[64] Factum of *Amicus Curiae*, para 45.
[65] *MF (Re)*, 2003 CanLII 54897 (ON CCB) at pp. 7-8
[66] *Scardoni v. Hawryluck*, 2004 CanLII 34326 (ON SC) at para 75.
[67] *Scardoni v. Hawryluck*, 2004 CanLII 34326 (ON SC) at para 74.

(a) the consequences of the wish were inconsistent with Mr. Reynen's other statements and actions (including when he was deemed capable) that he did not want to decompensate or his symptoms to worsen; and

(b) his current circumstances significantly differ from those he was in when he stated the wish, and he could not have envisaged the severity of decompensation he is currently faced with and continues to face untreated.[68]

i. The wish is inconsistent with Mr. Reynen's other statements and actions

46. Mr. Reynen's statement in his July 2024 email, while ostensibly clear, is not unqualified. Taken as a whole, the email also confirms: "I no longer believe in suicide as an option. Nor do I now believe it is appropriate to commit violence." Mr. Reynen thus highlights specific circumstances in which he does not wish to find himself in the future.

OMIT my other statements!!!

47. Moreover, Mr. Reynen's wish not to be treated with psychotropic medication was coloured by his subsequent statements and actions, which confirmed that he did not wish to decompensate.

48. The Board noted that Mr. Reynen's actions (before and after July 2024) showed that, despite wishing to go off medication, Mr. Reynen did not want to decompensate:

- In Mr. Reynen's August 2023 video, he advocated for treatment with Clozapine to avoid decompensation and risking jeopardizing his family relationships.[69]

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[68] CCB Reasons for Decision, ROP, p. 29.
[69] CCB Reasons for Decision, ROP, p. 24; Video of Mr. Reynen, recorded August 1, 2023 (Part 1 & 2), ROP, Exhibits 3 & 4.

All addressed in Oral Argument at SCC hearing.

- Mr. Reynen repeatedly told Dr. Baines he did not want his symptoms to worsen. Upon assessing Mr. Reynen's capacity on June 25, 2024, she documented: "He was aware of discontinuation of medication in the past leading to worsening in his health and hospitalization and wants to avoid that".[70]

- Several of Dr. Baines' clinical notes (including in her note of August 2024) indicate Mr. Reynen "[h]as made a plan with his parents to remind himself of worsening symptoms to avoid severe relapse in symptoms."[71]

- On several occasions (including at every appointment between August 2024 and January 2025), Dr. Baines documented that Mr. Reynen was open to considering a different antipsychotic, Cariprazine, but only if discontinuation of the Clozapine resulted in worsening symptoms[72]; and NO RECOLLECTION. Dr. Baines ALSO PURPORTED TO

- Mr. Reynen continued to take Clozapine after July 2024, even increasing the dose upwards upon experiencing signs of decompensation.[73] Accurate, part of tapering off...

- Dr. Baines testified that, despite wanting off the medication, Mr. Reynen did not want to do anything to "jeopardize his health and his relationships with his family."[74] despite my wishes!

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[70] CCB Reasons for Decision, ROP, p. 24; Outpatient Progress Report of June 27, 2023, Exhibit 1, ROP, pp. 84-85.
[71] CCB Reasons for Decision, ROP, p. 24; Outpatient Progress Report of August 20, 2024, Exhibit 1, ROP, pp. 165–166.
[72] CCB Reasons for Decision, ROP, p. 24; Outpatient Progress Report of August 20, 2024, Exhibit 1, ROP, p. 169; Outpatient Progress Report of September 17, 2024, Exhibit 1, ROP, p. 173; Outpatient Progress Report of October 15, 2024, Exhibit 1, ROP, p. 178; Outpatient Progress Report of November 12, 2024, Exhibit 1, ROP, p. 184; Outpatient Progress Report of December 10, 2024, Exhibit 1, ROP, p. 189; Outpatient Progress Report of January 7, 2025, Exhibit 1, ROP, p. 193.
[73] CCB Reasons for Decision, ROP, p. 24.
[74] CCB Reasons for Decision, ROP, p. 26.

49. The Board concluded: "These statements and actions clearly established that while SR did want to come off his antipsychotic medication, he did not want to suffer any decompensation."[75] It further noted: "If the wish was to be followed it would produce an inconsistent result relative to his expressed desire not to suffer decompensation. The wish was therefore inapplicable to the circumstances."[76]

ii. Mr. Reynen did not appreciate the severity of the potential consequences

50. Consistent with the guidance from the Supreme Court and Court of Appeal that the context of a prior wish must be carefully considered[77], the Board found: "an incapable person should not be deprived of treatment (which is one of the purposes of the *HCCA*) because of a prior wish without making some inquiries into the person's understanding and appreciation of the consequences of the wish."[78]

51. While *Amicus Curiae* asserts the Board improperly "conducted its own capacity assessment of Mr. Reynen going back to the summer of 2024", the Board explicitly confirmed that, while it indeed had its reservations as to whether Mr. Reynen was in fact capable at that time, it was proceeding with its analysis on the presumption he was.[79] While the Board made reference to evidence in Dr. Baines clinical records that Mr. Reynen may not have been capable in June 2024, it confirmed "this observation of mine about Dr. Baines' finding of SR's capacity did not have any impact on my decision."[80]

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[75] *Ibid*.
[76] *Ibid*, ROP, p. 25.
[77] See *Cuthbertson v. Rasouli*, 2013 SCC 53 and *Conway v Jacques*, 2002 CanLII 41558 (ON CA).
[78] CCB Reasons for Decision, ROP, p. 23.
[79] CCB Reasons for Decision, ROP, p. 19.
[80] CCB Reasons for Decision, ROP, p. 21.

52. The Board distinguished the second branch of the test for capacity, which only requires an ability to appreciate reasonably foreseeable consequences, finding: "to make a capable wish applicable to all future circumstances, no matter what the consequences, there needs to [be] more than mere ability to appreciate… Further inquiry is required, especially in the case of an individual who had clearly indicated in the past that he did not want his symptoms to worsen, he did not want to decompensate and suffer..."[81]

53. The Board's approach is consistent with *Scardoni*, *supra*, in which the Board examined whether the patient, in wishing to be kept alive in "all circumstances", had in fact "turned her mind to the nature and extent of the effects of [her] disease." As noted above, this Court found no error with that approach on appeal.[82]

54. Based on the evidence before it, the Board found that, when he expressed his wish in July 2024, Mr. Reynen did not appreciate the severity of the consequences of stopping treatment. It thus found the wish was not applicable.[83]

55. While the Board did not "conduct its own capacity assessment" as suggested by *Amicus Curiae*, it did appropriately consider the totality of circumstances surrounding the wish and provided important context to support its finding that Mr. Reynen did not anticipate the likely outcome of never taking psychotropic medication again. The Board observed that, despite the presumption of capacity, Mr. Reynen's insight into his illness and need for treatment in Summer 2024 was "partial at best."[84] It noted that, while his

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[81] CCB Reasons for Decision, ROP, p. 23.
[82] *Scardoni v. Hawryluck*, 2004 CanLII 34326 (ON SC) at para 74.
[83] *Ibid*, ROP, p. 28.
[84] *Ibid*, ROP, p. 21.

Omitted the relevant reason and many other reasons IN THE FACTUM.

stated reason for not wanting to take antipsychotic medications was the metabolic side effects, his true reason appeared to be that he believed he did not require medication. The Board found he thus "did not anticipate or expect any adverse consequences."[85] The Board characterized Mr. Reynen's long-standing belief that he could manage his illness without treatment as "unrealistic" and found he did not recognize the severe consequences of going off his antipsychotic medication.[86]

Error in FACT

56. Moreover, the Board's conclusion that Mr. Reynen did not appreciate the severity of the consequences of stopping treatment was not only based on its views he lacked sufficient insight. It also found that his current relapse is different from his previous ones and that a relapse of this severity had not been explicitly discussed with him in Summer 2024. In other words, he had not "turned his mind to the nature and extent of the effects" of his disease.[87] Error of FACT/LAW

57. The Board acknowledged that Dr. Baines stated on cross-examination that she would have discussed the "severe consequences" of stopping the Clozapine with Mr. Reynen. Ultimately, however, it preferred her testimony in chief that she would not have "explicitly" discussed the severity of relapse. The Board found that, according to Dr. Baines' notes, the high risk of relapse and rehospitalization was discussed, but "[h]ow severe that relapse would look like was not discussed."[88] This factual finding of the Board is entitled to some considerable deference.[89] Error FACT / LAW

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[85] CCB Reasons for Decision, ROP, p. 25.
[86] CCB Reasons for Decision, ROP, p. 28.
[87] See *Scardoni v. Hawryluck*, 2004 CanLII 34326 (ON SC) at para 74.
[88] CCB Reasons for Decision, ROP, p. 27.
[89] *AS*, supra note 56, at paras 7–8, citing *Vavilov*, supra note 56, at para 36.

58. The Board also reviewed the evidence that Mr. Reynen's current relapse is more extreme than previous ones, noting: "[h]e had never been in this situation before."[90] The Board found Dr. Baines and Dr. Rogers both testified that Mr. Reynen has a very poor prognosis without treatment and is "at risk of harming himself or others and could end up in the hospital indefinitely."[91] It noted that Dr. Baines testified that this "was surely not a situation he wanted to be in" and that "this was a very changed situation" and "a very different circumstance than in the past, when he recognised these risks and would take steps to avoid."[92] ERROR FACT/LAW

59. At the hearing, Dr. Rogers similarly testified that, for the first time, Mr. Reynen showed safety concerns towards his family.[93] She also shared a letter from his mother wherein she expressed concerns about "new symptoms" and the potential Mr. Reynen might harm someone, which she believed he would never want to do.[94]

60. Based on the evidence before it, the Board concluded that while Mr. Reynen "may have had some appreciation there was a risk of relapse he likely did not appreciate the severity of that relapse."[95] (Emphasis added.) The Board thus found the July 2024 wish was not applicable to Mr. Reynen's current circumstances. ERROR FACT/LAW

61. Dr. Rogers respectfully submits that in reaching this conclusion, the Board made no palpable and overriding error and its decision should be upheld.

No talk re: bail intervals Mandatory PARTIES 21(1)2 with entire subsections OMITTED. ERROR OF LAW!!!

[90] CCB Reasons for Decision, ROP, p. 29.
[91] CCB Reasons for Decision, ROP, p. 26.
[92] *Ibid*, ROP, p. 26–27.
[93] CCB Hearing Transcript, p. 104, line 6.
[94] Telephone Contact Report, dated April 25, 2025, Exhibit 1, ROP, p. 209.
[95] CCB Reasons for Decision, ROP, p. 28.

SEE OTHER ARGUMENT CV-25-099730

(D) Mr. Reynen's Constitutional Challenge

62. Mr. Reynen states the *HCCA* violates his freedom of religion and liberty, in addition to several other rights guaranteed by the *Charter of Rights and Freedoms* (ss. 2a, 2b, 7–9, and 12).[96] He further asserts the Act is discriminatory, contrary to s. 15 of the Charter. He has not specifically articulated how his freedoms are violated by the *HCCA* beyond asserting that antipsychotic medications are "sin".[97] The Ontario Court of Appeal has found that the test for capacity set out in the *HCCA* is not unconstitutional.[98] Dr. Rogers respectfully submits that the constitutional challenge is without merit.

PART IV – ORDER sought

63. The Respondent, Dr. Rogers, respectfully requests the following:

(a) An Order dismissing the appeal and upholding the decision of the CCB directing the SDM to give or refuse consent to the proposed treatment in accordance with s. 21(1)(2) of the *HCCA*; and

(b) Such further relief as this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of October, 2025.

Brooke Smith / Emily Bradley

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[96] *Charter of Rights and Freedoms*, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 a.
[97] Factum of the Appellant, p. 2.
[98] *D'Almeida v. Barron*, 2010 ONCA 564.

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *AS v Sum*, 2021 ONSC 4296.
2. *Benhaim v. St-Germain*, 2016 SCC 48.
3. *B.N. v. Beder*, 2021 ONSC 3046.
4. *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.
5. *Conway v Jacques*, 2002 CanLII 41558 (ON CA).
6. *Cuthbertson v. Rasouli*, 2013 SCC 53.
7. *D'Almeida v. Barron*, 2010 ONCA 564.
8. *Housen v Nikolaisen*, 2002 SCC 33.
9. *HL v. Canada (Attorney General)*, 2005 SCC 25.
10. *JW v Dr Wadhw*, 2020 ONSC 172.
11. *KM v. Agrawal*, 2021 ONSC 5748.
12. *MF (Re), 2003 CanLII 54897 (ON CCB)*.
13. *Nelson (City) v. Mowatt*, 2017 SCC 3.
14. *Scardoni v. Hawryluck*, 2004 CanLII 34326 (ON SC).
15. *Schwartz v. Canada*, 1996 CanLII 217 (SCC), [1996] 1 SCR 254.

16. *Salomon v. Matte-Thompson*, 2019 SCC 14.

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. *Health Care Consent Act*, S.O. 1996, chapter 2, schedule A, as amended.

Principles for giving or refusing consent

21 (1) A person who gives or refuses consent to a treatment on an incapable person's behalf shall do so in accordance with the following principles:

1. If the person knows of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, the person shall give or refuse consent in accordance with the wish.

2. If the person does not know of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, or if it is impossible to comply with the wish, the person shall act in the incapable person's best interests. 1996, c. 2, Sched. A, s. 21 (1).

Best interests
(2) In deciding what the incapable person's best interests are, the person who gives or refuses consent on his or her behalf shall take into consideration,

(a) the values and beliefs that the person knows the incapable person held when capable and believes he or she would still act on if capable;

(b) any wishes expressed by the incapable person with respect to the treatment that are not required to be followed under paragraph 1 of subsection (1); and

(a) the following factors:

1. Whether the treatment is likely to,
i. improve the incapable person's condition or well-being,
ii. prevent the incapable person's condition or well-being from deteriorating, or
iii. reduce the extent to which, or the rate at which, the incapable person's condition or well-being is likely to deteriorate.

2. Whether the incapable person's condition or well-being is likely to improve, remain the same or deteriorate without the treatment.

3. Whether the benefit the incapable person is expected to obtain from the treatment outweighs the risk of harm to him or her.

Did not address this ERROR FACT/LAW

4. Whether a less restrictive or less intrusive treatment would be as beneficial as the treatment that is proposed. 1996, c. 2, Sched. A, s. 21 (2).

[…]

Appeal
80 (1) A party to a proceeding before the Board may appeal the Board's decision to the Superior Court of Justice on a question of law or fact or both. 1996, c. 2, Sched. A, s. 80 (1); 2000, c. 9, s. 48.

[…]

Power of court on appeal
(10) On the appeal, the court may,

(a) exercise all the powers of the Board;

(b) substitute its opinion for that of a health practitioner, an evaluator, a substitute decision-maker or the Board;

(c) refer the matter back to the Board, with directions, for rehearing in whole or in part. 1996, c. 2, Sched. A, s. 80 (10).

STEVEN REYNEN
Appellant

-and-

DR. TABITHA ROGERS
Respondent

Court File No. 25-000099970-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

FACTUM OF THE RESPONDENT
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