

COURT OF APPEAL FOR ONTARIO

CITATION: Robertson (Re), 2012 ONCA 889

DATE: 20121214

DOCKET: C54961

Goudge, Gillese and Pepall JJ.A.

IN THE MATTER OF: JAMES DOUGLAS ROBERTSON

AN APPEAL UNDER PART XX.1 OF THE *CODE*

James Douglas Robertson, appearing in person

Jill R. Presser, *amicus curiae*

Eric Siebenmorgen, for the respondent

Janice Blackburn, person in charge of Waypoint Centre for Mental Health

Heard: December 12, 2012

On appeal against the disposition of the Ontario Review Board dated January 27, 2012.

APPEAL BOOK ENDORSEMENT

[1] The appellant argues that the Ontario Review Board erred in failing to grant him an absolute discharge. We do not agree. The Board concluded that the appellant constitutes a significant threat to public safety and there was ample evidence to support this decision. In our view, it was entirely reasonable for the Board to come to that conclusion and we would not interfere with it.

[2] *Amicus* raises three issues. First, *amicus* submits that the Board erred by failing to ensure that Mr. Robertson had a fair hearing as well as a hearing that gave the appearance of fairness. We do not accept this submission. A thorough review of the record leads us to conclude that the appellant received a fair hearing and, even if the concept properly can be applied to the Board, it did not lack an appearance of fairness. Much of the Board's intervention was driven by considerations of relevance. Other interventions were designed to provide assistance and guidance to the appellant, none in our view was inappropriate. The Board was faced with the challenging task of ensuring that the appellant was able to participate but at the same time ensure that the hearing proceeded in an orderly and fair manner. It has the right to control its own processes within the fairness parameters established by the case law. In our view, it did so here.

[3] Second, *amicus* argues that the Board was unreasonable in failing to issue an order to resolve the treatment impasse that *amicus* says exists between the appellant and the Waypoint Centre. Whether or not this could properly be described as a treatment impasse, in the circumstances here, we see nothing unreasonable in the Board declining to order further treatment options to be made available to the appellant. Waypoint had made available a variety of structured rehabilitation programs to the appellant which he declined. It had also offered an individualized rehabilitation program to him, which could be done only

with his involvement. Again, he declined. It was quite reasonable for the Board to decline to order that anything further be done by the institution.

[4] Thirdly, *amicus* challenges the adequacy of the Board's reasons for dismissing the appellant's *Charter* arguments. Again, we do not agree. The remedies sought in the appellant's Notice of Constitutional Question were, as the Board said, beyond the jurisdiction of the Board to order. In addition, any suggestion that the appellant's *Charter* rights were breached by the failure to order that he be transferred to the Royal Ottawa Hospital for treatment must fail for the same reason. In light of the Board's finding on the appellant's dangerousness, the Board had no jurisdiction to consider ordering his move to the lesser security of the Ottawa hospital.

[5] The appeal must therefore be dismissed.