



## Sestan v. Director of Area Mental Health Services Waitemata District Health Board

[2006] NZCA 350; [2007] 1 NZLR 767

**Country:** New Zealand

**Region:** Oceania

**Year:** 2006

**Court:** Court of Appeal

**Health Topics:** Health care and health services, Mental health

**Human Rights:** Right to due process/fair trial, Right to liberty and security of person

### Facts

Mr. Sestan had depression and bipolar/schizoaffective disorder, which included manic stages where he would be psychotic. He had been admitted to hospital for his condition numerous times. After a suspected manic episode where Mr. Sestan attempted to force another car off the road and bought two apartment, Mr. Sestan went to the emergency department for assessment at the request of the community health team. S. 9 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (MHCAT) required a support person be present, but Mr. Sestan chose to not call a support person after learning that his mother refused. Mr. Sestan elected to continue with the assessment.

Mr. Sestan was determined to likely be mentally disordered and was ordered further testing and treatment pursuant to the MHCAT. He was admitted to a mental health unit. An assessment the following day found that Mr. Sestan needed a further 14 days of assessment and treatment.

Mr. Sestan made two application for review of his commitment and then applied for a writ of habeas corpus in the High Court at Auckland. This application was dismissed, and Mr. Sestan appealed. Alleging numerous breaches of the MHCAT and the New Zealand Bill of Rights Act 1990 (NZBORA).

### Decision and Reasoning

The Court dismissed Mr. Sestan's appeal.

The Court held that s. 8 of the MHCAT was properly followed as Mr. Sestan volunteered for the assessment and was not detained and there was sufficient evidence to support a finding of being mentally disordered. Mr. Sestan claimed that during the application and certification for assessment (MHCAT s. 8) the doctor violated the MHCAT when they failed to act independently and gave insufficient reasons for their belief that he was "mentally disordered." Mr. Sestan claims that as a result of these violations, he was unlawfully detained throughout this process. The court concluded that Mr. Sestan was not detained prior to the s.9 assessment as the person being evaluated pursuant to s.8 is under no obligation to participate. Mr. Sestan voluntarily entered into the examination process and was only detained once he was required to undergo s. 9 assessment. The Court found that Mr. Sestan's road rage, reckless spending and other actions were sufficient evidence for the finding of mentally disordered and rejected Mr. Sestan's arguments that examining previous medical history or discussing the matter with other medical practitioners meant that the assessor was not acting independently.

The Court held that Mr. Sestan had no statutory rights to a lawyer pursuant to s. 70 of MHCAT ("every patient is entitled to request a lawyer") as he was not a patient until the s. 8 process finished.

Third, Mr. Sestan claims that authorities violated the MHCAT multiple times during the s. 9 process. Contrary to the Act Mr. Sestan did not have present a family member or someone concerned with the welfare of the patient shall be present during the examination. Further, Mr. Sestan says that he was not properly informed of his rights during the assessment. Finally, Mr. Sestan argued that his right to silence protected by NZBORA was violated by forcing him to submit to the examination.

After assessing other alleged procedural non-compliances, including not having a support person during the s. 9 evaluation, the Court held that a violation of the statute did not automatically render the process void. It

noted that a court must consider the seriousness of a violation, why it happened, and recognizing how the statutory requirement fits with the protection of both vulnerable people and the community that the Act intends to do. The court also found that the process cannot be void if Mr. Sestan did not understand his rights as Mr. Sestan had refused written notice of his rights and sometimes the mental condition of the patient will make it impossible to comply with this requirement. Finally, the Court stated that a patient does not have a right to silence because they are not detained for an offence.

### **Decision Excerpts**

“Even if we had found that Mr Sestan had not been adequately informed of his rights generally and his right to counsel specifically it would not necessarily follow that a writ of habeas corpus was the appropriate remedy. We note that the MHCAT provides a remedy in such circumstances in s 75 which provides that, where there is a complaint about a right being breached, the matter shall be referred to a district inspector or an official visitor.” Para. 60.

“Because of the nature of the jurisdiction, it is almost inevitable that there will at times be some variance or deviations from strict statutory requirements. It is important to view any non-compliance in the round rather than from a blinkered focus on isolated provisions which ignore the statutory context.” Para. 89.

“We do not accept that whenever it is demonstrated that there is any degree of non-compliance with a specific provision, the only consequence will be the total invalidity of all subsequent actions. The Court must assess what happened, why it happened and how it happened, remembering that the protection of a vulnerable person, and potentially the community, is at the heart of the legislative framework.” Para. 90.