



FORM 66
(RULES 16-1 (2))

No.

255986

New Westminster Registry

In the Supreme Court of British Columbia

In the Matter of Peter Cape v. FRASER HEALTH AUTHORITY operating as Burnaby General

PETITION TO THE COURT

ON NOTICE TO:

FRASER HEALTH AUTHORITY
ZOE MCGOWAN
MATTHEW WU
WALID CHAHINE

The address of the registry is:

651 Carnarvon Street, New Westminster, British Columbia V3M1C9

The petitioner(s) estimate(s) that the hearing of the petition will take 90 minutes.

This matter is an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below by

the person(s) named as petitioner(s) in the style of proceedings above.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

- (a) if you were served with the petition anywhere in Canada, within 21 days after service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	<p>The ADDRESS FOR SERVICE of the Petitioner(s) is:</p> <p>Peter Cape 1127 Dominion Ave, Port Coquitlam BC, Canada Fax number address for service (if any) of the Petitioner(s): E-mail address for service (if any) of the Petitioner(s): petercape95@gmail.com</p>
(2)	<p>The name and office address of the Petitioner's(s') lawyer is:</p>

CLAIM OF THE PETITIONER(S)

PART 1: ORDER(S) SOUGHT

1. An order to review the legality of the detention of the Petitioner conducted by the Respondents at Burnaby Hospital on July 11th, 2024;
2. An order to refrain from unlawful detentions inconsistent with the statutory requirements for involuntary admissions pursuant to s 22 of the Mental Health Act;
3. Any other order the court deems just.

PART 2: FACTUAL BASIS

1. The Petitioner Peter Cape resides at 1127 Dominion Avenue, in the City of Port Coquitlam in the Province of British Columbia, and is employed as a waste management technician at 880 Lougheed Highway, in the City of Port Coquitlam in the Province of British Columbia
2. The Respondent FRASER HEALTH AUTHORITY operating a public hospital under the name Burnaby General Hospital, is a hospital operating pursuant to the provisions of the Hospital Act, R.S.B.C. 1996, c. 200, as amended and regulations thereto, with a place of business at 3935 Kincaid Street, in the City of Burnaby in the Province of British Columbia ("the Hospital").
3. The Respondent ZOE MCGOWAN is an Emergency Medicine practitioner at Burnaby Hospital at 3935 Kincaid St. Burnaby, BC V5G 2X6
4. The Respondent MATTHEW WU is an Emergency Room nurse, Patient Care Coordinator, and a Delegate Director of the Mental Health Act at Burnaby Hospital at 3935 Kincaid St. Burnaby, BC V5G 2X6
5. The Respondent WALID CHAHINE was the Director for the Mental Health Act for Burnaby Hospital at 3935 Kincaid St. Burnaby, BC V5G 2X6
6. Concise Summary:
Petitioner was subjected to an improperly conducted involuntary psychiatric admission at Burnaby Hospital on July 11th, 2024. Mental Health Act documents were not signed by the Director or Delegate Director of the Mental Health Act, as statutorily required, until 30 minutes after the admission began and non consensual treatments were applied.
7. On July 11th 2024 the Petitioner went to Burnaby Hospital's Neurology Department to seek treatment for chronic headaches and neck pain. Petitioner has been a patient of Dr. Galina Vorobeychek at Burnaby Hospital since May 2024 and has suffered from these ailments since 2022.
8. Following an examination by an associate neurologist, Petitioner was offered a CT scan and IV infusion in the Emergency Room, and was escorted there by another neurologist.

9. Petitioner was promptly interviewed by ER physician Dr. Chiana Garvida who was conducting a mental health assessment unbeknownst to the Petitioner. Dr. Garvida signed section 1 of a Form 4.1 First Medical Certificate (Involuntary Admission) at 14:05.
10. Following the examination, the Petitioner exited the interview room and was asked by a triage nurse to wait on a hospital bed. The Petitioner told the triage nurse he was leaving the hospital, and began walking out of the Emergency Room. Petitioner was grabbed by the arms by 2 security guards and informed by the triage nurse that he had been certified under the Mental Health Act and was not permitted to leave.
11. Petitioner pleaded for reconsideration and attempted to resist the apprehension before he was forcibly restrained to a hospital bed and injected with Midazolam and Haloperidol on the orders of Zoe McGowan around 14:10.
12. Hospital records show that section 2 of the Form 4.1 First Medical Certificate (Involuntary Admission) and Form 5 Consent to Treatment were signed by Director Delegate Matthew Wu at 14:43, over 30 minutes after the treatments were ordered and applied.
13. The Mental Health Act requires the authorization of a Director of the Mental Health Act, or a Delegate Director at the Designated Mental Health Facility, and the completion of signed Mental Health Act documents to legally begin conducting an involuntary admission, or to order non consensual medical treatment.
14. Section 22(1) of the Mental Health Act states;
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 or nurse practitioner in accordance with subsections (3) and (4).
15. Section 8 of the Mental Health Act states:
Powers and duties of directors
8 A director must ensure
(a)that each patient admitted to the designated facility is provided with professional service, care and treatment appropriate to the patient's condition and appropriate to the function of the designated facility and, for those purposes, a director may sign consent to treatment forms for a patient detained under section 22, 28, 29, 30 or 42,
(b)that standards appropriate to the function of the designated facility are established and maintained, and
(c)if in charge of a Provincial mental health facility, that the orders and directives of the minister are observed and performed.
16. Petitioner was assessed by Psychiatrist Dr. Javaheri at 15:52pm, who deemed that the Petitioner did not meet the requirements for involuntary admission and was subsequently decertified and discharged at 16:39.
17. The statutory requirements to authorize and conduct an involuntary admission pursuant to s 22 of the Mental Health Act were not completed, and therefore the detention of the Petitioner was unlawful and arbitrary.

PART 3: LEGAL BASIS

18. The Petitioner will rely on the following:
 - a) Mental Health Act RSBC 1996 c. 288 s 22
 - b) Health Care (Consent) and Care Facility (Admission) Act RSBC 1996 c.181 s 2
19. The Respondent's decision to involuntarily admit and medically interfere without consent was unreasonable because:
 - a) The Form 4.1 First Medical Certificate (Involuntary Admission) was not completed by the

delegate director until 33 minutes after the admission was ordered and conducted.

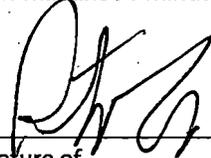
b) Zoe McGowan did not have legal authority to involuntarily admit the Petitioner or to order medical treatments against the expressed wishes of the Petitioner.

PART 4: MATERIAL TO BE RELIED ON

1. Affidavit #1
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

The petitioner(s) estimate(s) that the hearing of the petition will take 90 minutes.

Date: November 21 2024



Signature of

Petitioner

Lawyer for petitioner(s)

[type or print name]

To be completed by the court only:

Order made

in the terms requested in paragraphs

of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____
[date]

Signature of

Judge

Associate Judge