CITATION:	*Hunter v Mental Health Review Tribunal & Anor* [2017] NTSC 92
PARTIES:	HUNTER, Cameron v MENTAL HEALTH REVIEW TRIBUNAL and NORTHERN TERRITORY OF AUSTRALIA
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT exercising Territory jurisdiction
FILE NO:	LCA 36 of 2017 (21738985)
DELIVERED ON:	19 December 2017
DELIVERED AT:	Darwin
HEARING DATE:	17 October 2017
JUDGMENT OF:	Grant CJ

CATCHWORDS:

MENTAL HEALTH – DECLARATION OR FINDING OF MENTAL ILLNESS OR INCAPACITY – CONFINEMENT AND RESTRAINT OF MENTALLY ILL PERSONS AND SIMILAR ORDERS

Appeal by way of rehearing pursuant to s 142 of *Mental Health and Related Services Act* (NT) – application for extension of community management order – adjournment of review hearing to Mental Health Review Tribunal differently constituted – date of expiry of order – definition of "calendar month" – reckoning of time – community management order may be extended only during the currency of the order – order expired prior to commencement of review hearing – adjournment did not operate to extend the currency of the order – order made by the Tribunal to extend the CMO for a further six months set aside.

Interpretation Act (NT) s 17, s 28
Mental Health and Related Services Act (NT) s 6(1), s 3, s 8, s 16, s 123, s 129, s 142

Darwin Broadcasters Pty Ltd v Australian Broadcasting Tribunal (1990) 21 FCR 524, *Essex County Council v Essex Incorporated Congregational Church Union* (1963) AC 808, *Ex parte McGavin; Re Berne* (1945) 46 SR(NSW) 58, *Forest & Forest Pty Ltd v Wilson* (2017) 346 ALR 1, *Hunter v Mental Health Review Tribunal & Anor* (2017) 320 FLR 417, *Julius v Bishop of Oxford* (1880) 5 App Cas 214, *Kuswardana v Minister for Immigration and Ethnic Affairs* (1981) 54 FLR 334, *Minister for Immigration and Multicultural Affairs v Bhardwaj* (2002) 209 CLR 597, *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, referred to.

REPRESENTATION:

Counsel:

Appellant:	L Nguyen
Respondents:	R Brebner

Solicitors:

Appellant:	
Respondents:	Solicitor for the Northern Territory

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Hunter v Mental Health Review Tribunal & Anor [2017] NTSC 92
LCA 36 of 2017 (21738985)

BETWEEN:

CAMERON HUNTER
Appellant

AND:

MENTAL HEALTH REVIEW TRIBUNAL
First Respondent

AND:

NORTHERN TERRITORY OF AUSTRALIA
Second Respondent

CORAM: GRANT CJ

REASONS FOR JUDGMENT

(Delivered 19 December 2017)

[1] This is an appeal from a decision of the Mental Health Review Tribunal ("the Tribunal") under s 142 of the *Mental Health and Related Services Act* (NT) ("the Act"). The appeal is brought against a decision made on 17 July 2017 pursuant to s 123(11)(b) of the Act to extend a community management order ("CMO") in respect of the appellant.

[2] The CMO was originally made by the Tribunal on 4 January 2017 pursuant to s 123(5)(c) of the Act. The appellant brought an appeal against the original decision. On 9 June 2017, this court affirmed that decision and dismissed the appeal.[1] The reasons for decision delivered by Hiley J in that matter provide the relevant background and contain a discussion of those provisions of the Act which governed the making of the order on 4 January 2017.

Nature of the appeal

[3] Those reasons for decision also summarise the operation of the appeal provisions in the following terms:[2]

> [15] Section 142(1) of the Act provides that a person aggrieved by a decision of the Tribunal may appeal to the Supreme Court. Section 412(3) provides that: "An appeal is to be by way of a rehearing." The Court may suspend the operation or effect of a decision being appealed against pending the determination of the appeal [footnote: *Mental Health and Related Services Act 1998* (NT) s 142(4)], and may refuse to hear an appeal where it is satisfied that it is frivolous, vexatious or has not been made in good faith. [footnote: *Mental Health and Related Services Act 1998* (NT) s 142(5).]
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> [16] Section 143 provides that the Supreme Court may make orders affirming, varying or setting aside the decision or order of the Tribunal, make any decision or order that the Tribunal may have made, remit the matter to the Tribunal for further consideration, or make any other order it thinks fit.

[4] Contrary to the contentions put on behalf of the appellant at that time, Hiley J concluded that the appeal was not *de novo* in nature. His

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1 *Hunter v Mental Health Review Tribunal & Anor* [2017] NTSC 43; 320 FLR 417.

2 *Hunter v Mental Health Review Tribunal & Anor* (2017) 320 FLR 417 at [15]-[16].

Honour concluded further that the decision on appeal may only be disturbed if some legal, factual or discretionary error on the part of the Tribunal is established.[3] I respectfully concur with those conclusions.

Conduct of the Tribunal hearing

[5] The conduct of the Tribunal hearing with which the present appeal is concerned may be described briefly as follows.

[6] At the time it made the original CMO on 4 January 2017, the Tribunal fixed 21 June 2017 as the date for review in accordance with the requirement imposed by s 123(5)(c) of the Act. For reasons which will become apparent, the Tribunal did not convene to conduct a hearing for the purposes of the review until 5 July 2017.

[7] On 5 July 2017, the Tribunal constituted by members Ganley, Rysavy and Donsworth convened for the purpose of undertaking the review by conducting a hearing. The Tribunal received evidence and submissions in the course of the hearing. At the conclusion of the hearing the Tribunal indicated that it required further evidence in order to be satisfied that without treatment or care the appellant was likely to cause serious harm to himself or someone else, or suffer serious mental or physical deterioration.[4]

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3 *Hunter v Mental Health Review Tribunal & Anor* (2017) 320 FLR 417 at [18]-[31].

4 The making of a CMO is conditioned on satisfaction of one or other of those criteria: *Mental Health and Related Services Act*, ss 16 and 123(5)(c).

[8] The Tribunal indicated its intention to "adjourn" the hearing to 17 July 2017 to permit further evidence to be adduced in relation to those issues. The legal member of the Tribunal indicated that the matter would most likely come before the Tribunal differently constituted.

[9] As foreshadowed, on 17 July 2017 the matter came before the Tribunal differently constituted. The new legal member at that time observed that the Tribunal as it was constituted on that day was not bound by anything the Tribunal had said or determined on 5 July 2017, and was required to hear all the evidence afresh. The Tribunal embarked on the hearing and received evidence and submissions. At the conclusion of that process the Tribunal determined that the criteria had been satisfied, purported to extend the CMO, and fixed 8 January 2018 as the date for the review in accordance with the requirement imposed by s 123(5)(c) of the Act.

Grounds of appeal

[10] The grounds of appeal in this case may be summarised as follows.

[11] Grounds 1 and 2 in the Notice of Appeal resolve to the contention that the Tribunal did not have the power to adjourn the matter on 5 July 2017 to be finally determined by the Tribunal differently constituted on 17 July 2017.

[12] Ground 3 in the Notice of Appeal resolves to the contention that there was insufficient evidence before the Tribunal on 17 July 2017 on which

it could be satisfied that without treatment or care the appellant was likely to cause serious harm to himself or someone else, or suffer serious mental or physical deterioration.

[13] Ground 4 in the Notice of Appeal asserts an apprehension of bias on the part of the Tribunal as constituted on 17 July 2017. That apprehension was said to arise from the fact that although the Tribunal as constituted on 17 July 2017 was not presented with materially different evidence, it made findings which the Tribunal as constituted on 5 July 2017 considered itself unable to do; and/or because the legal member of the Tribunal as constituted on 17 July 2017 made various comments during the course of the hearing which indicated he had prejudged the matters to be determined on review.

Preliminary point

[14] A preliminary issue was identified during the hearing of this appeal. As Hiley J observed in the context of the previous appeal, the CMO made on 4 January 2017 operated for six months from the date of the order. On his Honour's calculation it would therefore have expired on 3 July 2017 unless extended following a further application of the kind contemplated by s 123(11)(b) of the Act.[5]

[15] As already described, the Tribunal did not first come to consider the matter until 5 July 2017. That raised the question whether the CMO

5 The operation of the *Interpretation Act* (NT) may lead to a slightly different result, which is discussed further below.

had expired at an earlier date and, accordingly, whether the Tribunal had any jurisdiction or power to deal with the matter on 5 July 2017 and ultimately to extend the order for a further period in pursuance of s 123(11)(b) of the Act.

[16] Section 123(11)(a) of the Act provides that a CMO "remains in force for the period, not longer than 6 months, as determined by the Tribunal". The original CMO in this case was made for six months.

[17] Section 123(11)(b) of the Act provides that a CMO "may be extended for periods of not longer than 6 months after considering an application made by an authorised psychiatric practitioner before the order expires".

[18] The Act does not deal expressly with the question whether a CMO may be extended after the date on which it would otherwise have expired. However, there is both textual and contextual support for the proposition that a CMO may only be extended during its currency. First, s 123(11)(a) of the Act clearly contemplates that, without more, a CMO will expire on the effluxion of six months from the date on which it is made (if no shorter term is fixed). Second, the power of extension under s 123(11)(b) of the Act would appear in its terms to be predicated upon the existence of a current CMO. Third, s 129(5A) of the Act provides expressly that "an order that is in force at the adjournment of a hearing [for the purpose of a review] remains in force

during the adjournment despite any earlier date that was fixed for its expiry".

[19] The explanatory memorandum for the Bill by which s 129(5A) was introduced sheds no light on the subjective intention of the legislature when it enacted that provision.[6] It provides only:

> New section 129(5A) clarifies that an order in force during the adjournment of a hearing remains in force irrespective of whether an earlier date had been fixed for its expiry.

[20] On an objective analysis, the provision has two purposes in the context of the review of a CMO. The first purpose is to preserve the protective operation of the CMO during the adjournment period until such time as the Tribunal determines on review whether or not it should be extended. The second purpose of the provision, when read in conjunction with ss 123(11)(a) and (b) of the Act, is to continue the currency of the CMO during the adjournment period in order to preserve the power of extension until such time as the Tribunal determines on the review whether or not it should be extended.

[21] Section 129(1) of the Act provides that the Tribunal "may undertake a review by conducting a hearing". It is unnecessary for these purposes to determine whether that provision has obligatory or discretionary

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6 The second reading speech for the Bill provides no assistance in this respect.

operation.[7] The Tribunal, both in this case and generally, has approached the matter on the basis that a review is to be undertaken by conducting a hearing rather than a review "on the papers". The hearing is conducted in the manner decided by the Tribunal.[8] All questions of law are to be determined by the President.[9] The Tribunal may summon witnesses and order reports.[10] The Tribunal is expressly empowered to adjourn a hearing.[11]

[22] It is an express legislative requirement that the application for extension must be made by an authorised psychiatric practitioner before the order expires.[12] The additional and clear statutory implication is that the Tribunal may only extend a CMO which remains current, either because the term previously fixed by the Tribunal has not yet expired or because the Tribunal has embarked on a review hearing during the currency of the CMO and adjourned that hearing. That implication arises from the interaction between the legislative provisions described above, and from the strict interpretative approach necessarily adopted when dealing with provisions and orders which subject persons to involuntary management and treatment.

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7 As a general proposition, a provision will be interpreted as obligatory where it invests a court or tribunal with a power or jurisdiction for the benefit of a specific class of persons: see *Julius v Bishop of Oxford* (1880) 5 App Cas 214 at 222-3; *Ex parte McGavin; Re Berne* (1945) 46 SR(NSW) 58 at 60-1.

8 *Mental Health and Related Services Act*, s 129(2).

9 *Mental Health and Related Services Act*, s 129(3).

10 *Mental Health and Related Services Act*, s 129(4).

11 *Mental Health and Related Services Act*, s 129(5).

12 *Mental Health and Related Services Act*, s 123(11)(b).

[23] If that proposition is accepted, the first issue to be addressed is the date on which the CMO expired. As already seen, s 123(11)(a) of the Act provides that a CMO "remains in force for the period, not longer than 6 months, as determined by the Tribunal". The CMO was made on 4 January 2017 for a period of six months. Section 17 of the *Interpretation Act* (NT) defines "month" to mean "a calendar month".

[24] Section 28 of the *Interpretation Act* provides that "[w]here in an Act a period of time dating from a given day, act or event is prescribed, allowed or limited for any purpose, the time shall be reckoned exclusively of such day or of the day of such act or event". The six months prescribed by s 123(11)(a) of the Act dates from the day on which the CMO is made.

[25] There is nothing in the language of the Act which would displace the operation of s 28 of the *Interpretation Act*. There is nothing in the terms of s 123(11)(a) of the Act, or elsewhere, which would suggest that a CMO runs "from and including" the day on which it is made.[13] There is no other legislative provision which stipulates that a reference to a period of one month ends on the date in the next month numerically corresponding less one.[14] Those matters being so, the day on which the CMO was made is not to be included in the calculation of

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13 See, for example, *Darwin Broadcasters Pty Ltd v Australian Broadcasting Tribunal* (1990) 21 FCR 524.

14 See, for example, *Acts Interpretation Act 1901* (Cth), s 2G; *Interpretation Act 1984* (WA), s 62(2) and (3).

the period of six months in this case, and that six-month period expired at midnight on 4 July 2017.

[26] The second issue which presents is whether prior to the expiry of the CMO on 4 July 2017 the Tribunal had commenced the process of undertaking a review by conducting a hearing, and had "adjourned" the hearing to 5 July 2017. The evidence in that respect may be found in the affidavit of Victoria Louise Hall made on 31 October 2017. It was received into evidence by consent. That affidavit discloses the following relevant matters.

[27] The deponent is a Deputy Registrar of the Tribunal. On 9 June 2017 the Deputy Registrar received an email from Lyma Nguyen requesting that she be appointed as the appellant's legal representative for the purpose of the review hearing listed for 21 June 2017.[15] The Deputy Registrar approved that request by email dated 13 June 2017.

[28] On or about 16 June 2017, the medical practitioner with responsibility for the appellant's management plan and CMO made contact with the Deputy Registrar and requested that the date listed for hearing be postponed to a later date. The Deputy Registrar advised that she would enquire whether the appellant's legal representative consented to that

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15 It may be noticed in this respect that Ms Nguyen ultimately prepared the Notice of Appeal by which these proceedings originated. She filed that notice in the Supreme Court with her name and contact details endorsed on the back sheet. On the same day that she filed the Notice of Appeal, Ms Nguyen purported to file a Notice of Appearance to that appeal on behalf of the appellant. Ms Nguyen went on to appear for the appellant at the hearing of this appeal.

course. The Registrar's intention was to list the matter for hearing on 28 June 2017.

[29] On making enquiry the Deputy Registrar ascertained that the appellant's legal representative would be overseas on 28 June 2017. Together they determined to list the review for hearing on 5 July 2017. The Deputy Registrar was alive to the requirement that any hearing had to be commenced within the currency of the order. In that understanding, she advised the appellant's legal representative that 5 July 2017 was the last day of the currency of the order, and that the hearing could be held on that day.

[30] That misapprehension arose because the Deputy Registrar calculated a 26 week period from 4 January 2017, rather than six calendar months. The appellant's legal representative appears to have concurred in that calculation, and it was on this basis that the appellant consented to the conduct of the hearing on 5 July 2017. The Tribunal was not convened for the purpose of fixing the date for hearing on 5 July 2017. The Tribunal did not make any order to that effect.

[31] The phrase "adjournment of a hearing" as it appears in s 129(5A) of the Act clearly connotes a postponement or continuation to a later date of a hearing which has already commenced. The hearing in this case did not commence until 5 July 2017, and the administrative listing process which fixed that date for hearing is incapable of characterisation as an

"adjournment" in the relevant sense. It follows that the CMO had expired prior to the commencement of the hearing, and it was not open to the Tribunal to "extend" the CMO in those circumstances.

[32] Counsel for the second respondent put a number of submissions contending for a different result.

[33] First, it was argued that the objects of and interpretative approach to the Act, as set out in ss 3 and 8 of the Act respectively, require the adoption of a construction designed to facilitate the best care and treatment for persons suffering from mental illness. The submission followed that the conduct of the parties at all times up to the ultimate disposition on 17 July 2017 was consistent with that approach. That submission is no doubt correct, but clauses of that nature cannot displace the plain meaning of the legislation. In particular, there is nothing in ss 3 and 8 of the Act which would lead necessarily, or at all, to the conclusion that the currency of an order for involuntary treatment or care may be extended other than in accordance with the terms of the Act. If anything, they militate against such an approach.

[34] Second, it was submitted that an administrative act or decision may be presumed to be valid unless and until it is challenged and set aside.[16] Again, that proposition is no doubt correct in a general sense. In the present case, however, an appeal has been brought against the decision

16 That submission was made in reliance on the observations of Hayne J in *Minister for Immigration and Multicultural Affairs v Bhardwaj* (2002) 209 CLR 597 at 645-6 [150].

of the Tribunal to extend the CMO. Although this preliminary point concerning the currency of the CMO was not identified in the Notice of Appeal, the appellant now also challenges the decision on this ground. Moreover, it is not open to this court to entertain and determine the appeal on the premise that the extension of the CMO fell within power if it did not.

[35] Third, it was submitted that any defect concerning the currency of the CMO at the time the Tribunal commenced the hearing on 5 July 2017 was a technical irregularity which did not bear upon the validity of the extension subsequently made. In *Project Blue Sky Inc v Australian Broadcasting Authority*, McHugh, Gummow, Kirby and Hayne JJ observed:[17]

> An act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it is depends upon whether there can be discerned a legislative purpose to invalidate any act that fails to comply with the condition. The existence of the purpose is ascertained by reference to the language of the statute, its subject matter and objects, and the consequences for the parties of holding void every act done in breach of the condition.

[36] The High Court has recently had occasion to revisit, explain and qualify that statement. In *Forest & Forest Pty Ltd v Wilson*, the majority made the following observations (footnotes omitted):[18]

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17 (1998) 194 CLR 355 at [91].

18 [2017] HCA 30; 346 ALR 1 at [62]-[63] per Kiefel CJ, Bell, Gageler and Keane JJ.

> In *Project Blue Sky*, this Court was concerned with whether a statutory requirement that an administrative agency perform its functions in a manner consistent with Australia's obligations under any convention or international agreement to which Australia is a party was intended to invalidate an act done in breach of the requirement. The majority in *Project Blue Sky* were strongly influenced in reaching a conclusion in the negative by the consideration that the requirement in question regulated the exercise of functions already conferred on the agency, rather than imposed essential preliminaries to the exercise of those functions. Their Honours were also influenced by the circumstance that the provisions did not have "a rule-like quality which [could] be easily identified and applied", many of the obligations relevant in that case being "expressed in indeterminate language". Also important to the decision was the consideration that "public inconvenience would be a result of the invalidity of the act", especially if those affected by non-compliance were neither responsible for, nor aware of, the non-compliance.
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> The present case is readily distinguishable. A consideration of "the language of the statute, its subject matter and objects, and the consequences for the parties of holding void" acts done in breach of the Act, reveals that ss 74(1)(ca)(ii), 74A(1) and 75(4a) imposed essential preliminaries to the exercise of the power conferred by s 71 of the Act. That this was so was made clear by both the express terms and the structure of the provisions as sequential steps in an integrated process leading to the possibility of the grant of a mining lease by the Minister. These provisions were not expressed in indeterminate terms: they imposed rules which could be easily identified and applied. In addition, any inconvenience suffered by treating the requirements of the Act as conditions precedent to the exercise of the Minister's power would enure only to those with some responsibility for the non-observance, whereas (as will be explained) the contrary view would disadvantage both the public interest and individuals who were within the protection of the Act. Finally, and importantly, *Project Blue Sky* was not concerned with a statutory regime for the making of grants of rights to exploit the resources of a State.

[37] Flowing from that explication, a number of observations may be made in relation to the operation of the relevant requirement in this case.

[38] The requirement that the review be conducted within time, and in particular during the currency of the order, was an essential preliminary to the exercise of the review function and the power to extend a CMO, if appropriate, following review. That is reflected in the requirement imposed by s 123(5)(c) of the Act that the Tribunal fix the date for the review of the order at the time it is made. It also explains the Deputy Registrar's understanding that the hearing had to be conducted, or at least commenced, during the currency of the CMO.

[39] The strict limitation on the currency of a CMO and the circumstances in which it may be extended are imposed for the protection of persons affected by those forms of order. Those protections would be undermined if strict compliance was not required. That result would also disadvantage the public interest. That cannot have been the legislative intention.

[40] Quite apart from the protective nature of these provisions, strict compliance is generally required in relation to provisions which lay down procedures and time limits to be followed in the commencement and prosecution of a judicial or quasi-judicial proceedings. That principle applies *a fortiori* where the provision in question also has a substantive rather than a merely procedural operation. Nor is there any concern that a requirement for strict compliance will invalidate a large number of orders made by the Tribunal. It will bear only on the CMO with which this appeal is directly concerned.

[41] The final submission made on behalf of the second respondent was that the appellant, through his legal representative, consented to the listing of the hearing on 5 July 2017 and any procedural irregularity which may have followed from that did not cause him injustice or interfere with his rights. The argument followed that in those circumstances it was not fairly or properly open to the appellant to challenge a process in which he participated voluntarily and which did not subject him to any material prejudice by reason of that participation.

[42] The first point to make in this respect is that the Deputy Registrar, the appellant, and the appellant's legal representative were all operating under the misapprehension that the CMO remained current on 5 July 2017. In that sense, there was no consent to the conduct of the hearing outside the currency of the CMO.

[43] The second point to be made in this respect is that even if it is accepted that a person may waive the requirement for strict compliance with some obligation that is imposed for his or her benefit alone, this is not such a requirement. The requirement strictly limiting the currency of orders for involuntary treatment, and the circumstances in which they may be extended, has a public interest aspect which cannot be unilaterally waived by the person directly and immediately affected by its operation.

[44] The third point to be made in this respect is that if the Tribunal does not have jurisdiction or power to entertain an application for extension because the currency of the order has lapsed, it cannot be vested with that jurisdiction by waiver of the statutory obligation.[19]

Disposition

[45] For these reasons, the CMO had expired prior to the commencement of the hearing on 5 July 2017 and it was not open to the Tribunal to "extend" the CMO in those circumstances. Given that finding, it is unnecessary to go on to determine the grounds of appeal identified in the Notice of Appeal dated 14 August 2017.

[46] To the extent that it may be of some assistance in the future conduct of Tribunal proceedings, no legal, factual or discretionary error may be discerned on the part of the Tribunal in relation to the matters asserted in grounds 3 and 4 of the Notice of Appeal.

[47] The issue raised by grounds 1 and 2 in the Notice of Appeal is more problematic. That issue is whether the Tribunal has power to embark on a hearing for the purpose of a review, and then to adjourn the hearing for continuation and determination by the Tribunal differently constituted. There would appear to be no legal bar to the adoption of that course during the original currency of the order, provided that the Tribunal as differently constituted commences the hearing process

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19 *Essex County Council v Essex Incorporated Congregational Church Union* (1963) AC 808; *Kuswardana v Minister for Immigration and Ethnic Affairs* (1981) 54 FLR 334 at 343.

afresh. However, there may be some difficulty characterising the continuation of a hearing to a later date before the Tribunal differently constituted, as was done in this case, as an "adjournment" for the purposes of s 129(5A) of the Act.

[48] If there is no adjournment in the relevant sense, the order will not remain in force by operation of s 129(5A) of the Act during the period of the postponement beyond the date fixed for its expiry. However, the issue does not arise for determination in this appeal as the Tribunal did not commence conduct of the hearing until after the CMO had expired through the effluxion of time.

[49] That leaves the question of the appropriate disposition. As has already been discussed, s 142 of the Act allows a person aggrieved by "a decision of the Tribunal" to appeal to this court. In some contexts that formulation is taken to suggest there must be a valid decision. The appeal in this case was competent notwithstanding that the decision might be characterised in one sense as invalid for want of power. While a purported decision outside power is properly characterised as a jurisdictional defect for the purposes of judicial review, it may also be characterised in this case as a legal error giving rise to a right of appeal.

[50] The court has a range of dispositive powers where error on the part of the Tribunal has been made out. Not all are open in the present

circumstances. It is not open to this court to make a decision on the extension of the CMO, as that was not a decision or order that the Tribunal could have made in the circumstances. It would not be appropriate to remit the matter to the Tribunal for further consideration, as after 4 July 2017 there was and is no power to extend the CMO which was made on 4 January 2017. In the circumstances, the appropriate course is to set aside the order made by the Tribunal on 17 July 2017 to extend the CMO for a further six months.

[51] Two ancillary matters flow from that. First, the making of any further CMO in respect of the appellant would fall to be addressed under the processes in Part 7 of the Act. Second, it does not follow from anything said in the course of these reasons that the order made by the Tribunal was a nullity or that there was no lawful authority for the appellant's involuntary treatment and care between 4 July 2017 and the determination of this appeal.
