

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

DIVISION

No. S CI

B E T W E E N

Garth Jason Daniels 110 George Street Scoresby Victoria 3179

Plaintiff

-and-

**Eastern Health body corporate 5 Arnold Street, Box Hill Victoria 3128 and
Monash Health body corporate 246 Clayton Road Clayton Victoria 3168
Both bodies corporate established under section 181 of the Victorian
Health Services Act 1988**

Defendant(s)

AFFIDAVIT

Date of Document: 20th April 2016

Filed on behalf of: **Garth Jason Daniels 110 George Street Scoresby Victoria 3179**

Prepared by:

Glenn Floyd 84 Albert Street
Seddon Victoria 3011 Tel: 0407 861 056

I,...Bernard Patrick Daniels.....,of.....110 King Street Scoresby 3179 make oath and say or solemnly and sincerely affirm] as follows:

That I am the **father, guardian, legal-medical Power of Attorney of Garth Jason Daniels** in this matter and I make this affidavit from my own knowledge unless otherwise stated.

ORIGINATING MOTION INJUNCTIVE RELIEF REMEDY SOUGHT:

I seek on behalf of my son Garth Jason Daniels to have immediately ceased ANY/ALL specific acts of all Electric-Shock E.C.T. (Electro Convulsive Therapy) upon Garth Jason Daniels until The United Nations Committee on the Rights of Persons with Disabilities (attachment 'A' communication No. 36/2016 refers) finalizes its current investigation into this matter it has advised Australia as a CRPD ratifying State Party it is closely examining.

This action is brought by Garth Jason Daniels against Eastern Health body corporate 5 Arnold Street, Box Hill Victoria 3128 and Monash Health body corporate 246 Clayton Road Clayton Victoria 3168. Both bodies corporate established under section 181 of the Victorian Health Services Act 1988 are now conducting these levels of **Electric-Shock E.C.T. (Electro Convulsive Therapy)** against Garth Daniels' will.

Because of the potential for imminent life threatening risk to Garth Daniels, the injunctive relief sought against these acts is immediately required for the duration of the current investigation by The United Nations Committee on the Rights of Persons with Disabilities into the potential violations being perpetrated upon Garth Daniels as a disabled person protected under the [United Nations Convention on the Rights of Persons with Disabilities \(CRPD\)](#).

Garth Jason Daniels is a disabled person being involuntarily subjected at Eastern and Monash Health facilities, to life-threatening extreme frequency levels of **Electric-Shock E.C.T. (Electro Convulsive Therapy)** against his will. This unlawful forced most brutal treatment has been independently professionally declared by his family psychiatrist [Niall McLaren \(attachment 'B' refers\)](#); as extremely dangerous treatment that has an exceptionally high probability of killing Garth.

In addition to this most grave declaration of potential imminent death-risk, Dr. McLaren professionally attests Garth Daniels is of very sound mind and has profound mental capacity to reliably be capable of making 'informed-consent' to accept or reject ANY and ALL proposed psychiatric treatments. Garth categorically rejects **Electric-Shock E.C.T. (Electro Convulsive Therapy)** and is in a state of most grave and extreme terror for his life and genuinely feels this most life-threatening level and extreme frequency brutal treatment will cause his death.

In his statement read to the 5 April 2016 Mental Health Tribunal held to continue enforced **Electric-Shock E.C.T. (Electro Convulsive Therapy)**; and its final verbatim statement Garth states, QUOTE: "I'm scared they're going to shock me to death" this demonstrates Garth's genuine fear of real death risk.

Furthermore, this most grave declaration by psychiatrist Dr. Niall McLaren, of Garth's imminent death-risk and him lawfully possessing 'informed-consent capacity' for treatment refusal; is further independently professionally supported by registered psychiatrist Byron Rigby (MBBS MRC Psych Consultant Physician in Psychiatry).

Dr. Rigby, also professionally attests Garth Daniels is of very sound mind and has profound mental capacity to be reliably considered capable of 'informed-consent' to accept or reject ANY and ALL proposed **Electric-Shock E.C.T. (Electro Convulsive Therapy)**. In Dr. Rigby's letter of 24 September 2015 to the Mental Health Tribunal; Dr. Rigby officially attests on examining Garth on 12 and 19 September 2015, by verbatim statement QUOTE: "I considered his state of balance at the time of both examinations was sufficient to gauge that capacity to consent was present".

A further psychiatric professional opinion has been provided from [Dr. David Bell \(attachment 'C' refers\)](#), who attests the frequency and duration of **Electric-Shock E.C.T. (Electro Convulsive Therapy)** against Garth is QUOTE: "horrifyingly excessive" and "An ordinary course of 8 treatments, 12 at the very most, in the right circumstances would be enough, but to my knowledge even those right circumstances do not exist in this case. I understand you have administered 86 treatments so far, with no sense of an upper limit or appreciation of its inadvisability. It would certainly have inflicted detectable brain damage. Your approach equates to the worst excesses practised under the Soviet regime".

Dr. Bell professionally relies on [Health department guidelines](#) that state that "a course of ECT can be up to 12 treatments performed over a period of time that cannot exceed six months". And in order to administer ECT, a patient must also give informed consent, unless they are ruled incapable of doing so.

Garth is acutely aware of these independent psychiatrists stating the imminent death risk for him and this is, inter alia; why the '**United Nations Committee on the Rights of Persons with Disabilities**', under Rules of Procedure, has requested Australia '**to take all necessary measures to ensure the suspension of the forced electroshock therapy (ECT) to Mr. Garth Jason Daniels, while his case is under consideration**'; (attachment 'A' communication No. 36/2016 refers).

Factors that increase the severe risk associated with ECT include:

- recent myocardial infarction
- unstable angina
- poorly compensated congestive cardiac failure
- severe valvular heart disease
- aortic and intracranial aneurysms
- cerebral space occupying lesions with raised intracranial pressure
- recent cerebral haemorrhage and infarction
- retinal detachment and glaucoma
- Anterograde and Retrograde memory effects

NB: This must not be considered a matter of mere 'quantum' of frequency/severity/duration of Electric-Shock E.C.T. (Electro Convulsive Therapy) at all; it IS NOT that.

The matter is solely one of disabled Garth Daniels' human and legal rights being fully violated by forced detention and forced treatment, which is in full blatant violation of the [United Nations Convention on the Rights of Persons with Disabilities \(CRPD\)](#) Australia has fully ratified.

Specifically your close attention is drawn to Australia's Attorney General's clear, concise and unambiguous public statements that Australia has most proud, unqualified, and full unimpeded CRPD obligations and will immediately ensure our United Nations Convention on the Rights of Persons with Disabilities (CRPD) will be immediately implemented **without reservations** as ratified **and further reaffirmed**.

After the most compelling legal research findings of Australia's commitment to and obligations under our CRPD ratification, your attention is respectfully drawn to the most compelling aspects of this matter applying to our obligations towards all disabled citizens. And specifically to Garth Daniels' case; where issues of principle that have been fully U.N. argued, debated, agreed and consequently reaffirmed by Australia as our legal and ethical duty.

In response to U.N. CRPD Committee member Theresia Degener's direct question, whether the 'Interpretive Declarations' were meant only as declarations or as de facto reservations, Australia's Attorney General's Department very proudly and very directly responded on 3 September 2013 with the following; verbatim deepest legal commitment QUOTE: **"Australia is a party to the Convention, all of the articles are binding on Australia and Australia sees itself as obliged to implement all of the articles of the Convention..."**

Therefore our Attorney General publicly categorically states Australia fully accepts the Committee's authority to apply the Convention provisions to Australia and further explicitly states it is **not in any way constrained** by the declarations.

This is Australia's clear statement to the world, we are a humane, caring, loving, fully participating fully democratic nation of highest dignity both fully protecting equally, fundamental human rights and the rights and full dignity of all our disabled; who are fully protected under the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

Accordingly, under this concise unambiguous and binding lawful agreed commitment, the Committee adopted **Concluding Observations** to fully conform to Article 12 with respect to **"a person's right in his or her own capacity to give and withdraw consent to medical treatment", and to repeal the laws allowing compulsory treatment.**

Consequently, as these are now Australian Federal law and CRPD obligations, they fully invalidate and legally nullify Victorian Mental Health Act 2014 laws being applied in Garth's case which have no lawful validity and cannot be applied.

Therefore, Australia's absolute statements of strongly announced full ratification and further fully defined agreements as a State Party, means Garth Daniel's forced incarceration and forced Electro-shock now absolutely violates both our Federal Law and the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Also other HRC and Disability Acts.

In this regard, your attention is drawn to the following legally binding CRPD Articles cited, which collectively directly relates to our obligations for abolition of forced treatment and substitute decision-making from the CRPD Concluding Observations on Australia (2013), UN Doc. No. CRPD/C/AUS/CO/1.

These critical issues of our fully ratified and further publicly clarified and unambiguously stated obligations are most directly 'on-point' for and specifically apply to our agreed obligations towards Garth Daniels' human and legal rights as a disabled person being fully violated and this full discrimination now happening at Eastern Health and Monash Health.

The following CRPD Articles 12, 13, 14 and United Nations Committee on the Rights of Persons with Disabilities points 25, 26, 19, 33, 34 raised, clearly indicates although Australia's Attorney General has stated Australia unambiguously and unreservedly ratifies clear legal obligations under the UN CRPD; there is a large and destructive gulf existing, whereby disabled persons rights are continually violated. This is specifically why the United Nations Committee on the Rights of Persons with Disabilities requests immediate suspension of **Electric-Shock E.C.T. (Electro Convulsive Therapy)** against Garth Daniels in this specific potentially life threatening case until fully investigated.

United Nations Convention on the Rights of Persons with Disabilities (CRPD) Articles 12, 13, 14 and United Nations Committee on the Rights of Persons with Disabilities points 25, 26, 19, 33, 34 raised.

(Article 12)

25. The Committee recommends that the State party effectively use the current inquiry to take immediate steps to replace substitute decision-making with supported decision-making and that it provide a wide range of measures which respect a person's autonomy, will and preferences and are in full conformity with article 12 of the Convention, including with respect to a person's right, in his or her own capacity, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry and to work.

26. The Committee further recommends that the State party provide training, in consultation and cooperation with persons with disabilities and their representative organizations, at the national, regional and local levels for all actors, including civil servants, judges and social workers, on recognition of the legal capacity of persons with disabilities and on the primacy of supported decision-making mechanisms in the exercise of legal capacity.

(Article 13)

29. The Committee further urges the State party to ensure that persons with psychosocial disabilities are ensured the same substantive and procedural guarantees as others in the context of criminal proceedings, and in particular to ensure that no diversion programmes to transfer individuals to mental health commitment regimes or requiring an individual to participate in mental health services are implemented; rather, such services should be provided on the basis of the individual's free and informed consent.

(Article 14)

33. The Committee is further concerned that under Australian law a person can be subjected to medical intervention against his or her will, if the person is deemed to be incapable of making or communicating a decision about treatment.

34. The Committee recommends that the State party repeal all legislation that authorizes medical intervention without the free and informed consent of the persons with disabilities concerned, committal of individuals to detention in mental health facilities, or imposition of compulsory treatment, either in institutions or in the community, by means of Community Treatment Orders.

The urgency of this matter now takes on further most serious dimensions; Garth has been told by nursing staff he will be Electro-shocked a further eight times. Garth is telling his family he is terrified of this life-threatening treatment and he feels it will kill him; he is terror stricken. So is Garth's loving father Barnard, Mother Marilyn and brother Andre. Garth is so very terrified now.

Telling a disabled person this horrendous life-threatening information is a profound emotional torture in itself and utterly defies decency. In addition, Electro-shock MUST be fully evaluated EACH time as even its adherent's state full post voltage evaluation MUST be conducted, it is a monumental impact that causes grand mal brain seizures exceeding epileptic fits and has frequently killed. These Electric-shocks are now set as routine by nursing staff without fundamental psychiatric review between shocks.

Further, Monash Health psychiatric staff have now coldly advised Garth's father Bernard will only be communicated with each Friday at the end of the week; a most disrespectful and cruel bureaucratic act.

Garth's father Bernard sits out on the road gutter daily now while his wife and son visit Garth as Bernard has been prohibited from visiting Garth without any reasons given. There is no doubt whatsoever this arises because Bernard steadfastly fights for Garth's rights against a psychiatric regime that now boasts the third highest death rates after Cancer and Heart-Disease, and now exceeding road deaths. The tragedy is cancer, heart-disease, road deaths are accidental; psychiatry is deliberate.

Continued family and legally supported opposition to this 'we allege unlawful' Electric-shock has been made to three successive Mental Health Tribunal Hearings. In the 5 April 2016 Hearing the Chair was submitted the official request to suspend shocks by The United Nations Committee on the Rights of Persons with Disabilities (attachment 'A' communication No. 36/2016 refers).

Regrettably the Chair stated QUOTE -"we are separate from the justice system". The Tribunal in acknowledging and officially tabling this U.N. document lawfully recognized Australia's signatory/ratification full obligations to protect the disabled's rights and liberty. It also by this official document tabling, demonstrated its absolute known obligations as a State Party' official Tribunal therein. This is full acknowledgement and admission of intent to violate its known obligations to fully uphold Australia's legally binding human rights obligations.

To condense this matter to its essence in point form for clarity, we submit this Originating Motion for consideration by the wisest independent minds of jurisprudence in the Supreme Court of Victoria Melbourne:

- Garth Jason Daniels is a person with fully recognised psychosocial disabilities and the UN CRPD Article 12 obliges all Australian government agencies to immediately respect a person's legal right, in his or her own capacity, to give and withdraw informed consent for medical treatment of **Electric-Shock E.C.T. (Electro Convulsive Therapy)**, and to access justice.
- Garth Jason Daniels is a person with fully recognised psychosocial disabilities and the UN CRPD Article 13 protects his human rights to ensure that no diversion programmes to transfer any individuals to mental health commitment regimes or requiring an individual to participate in mental health services are implemented; rather, such services should be provided on the basis of the individual's free and informed consent.
- Garth Jason Daniels is a person with fully recognised psychosocial disabilities and the UN CRPD Article 12 obliges Australia to provide training, in consultation and cooperation with persons with disabilities and their representative organizations, at the national, regional and local levels for all actors, including civil servants, judges and social workers, on recognition of the legal capacity of persons with disabilities and on the primacy of supported decision-making mechanisms in the exercise of legal capacity.

- Garth Jason Daniels is a person with fully recognised psychosocial disabilities and the UN CRPD Article 14 **Australian agencies now violate Australia’s fully ratified UN CRPD obligations because Garth Daniels is now subjected to medical intervention against his will, and Article 14 prohibits Garth to be deemed to be incapable of making or communicating a decision about his own treatment.**
- Garth Jason Daniels is a person with fully recognised psychosocial disabilities and the UN CRPD Article 14 Australia **has agreed to repeal all legislation that authorizes medical intervention without the free and informed consent of the persons with disabilities concerned.**
- Garth Jason Daniels is a person with fully recognised psychosocial disabilities and under the UN CRPD Article 14 Australia **has agreed to repeal all legislation that authorizes committal of individuals to detention in mental health facilities, or imposition of compulsory treatment, either in institutions or in the community, by means of Community Treatment Orders.**

We accordingly submit the foregoing crucial facts and evidence and legal argument on behalf of Garth Jason Daniels for acceptance as sound grounds supporting the case made.

We fully contest the lawfulness of the **Electric-Shock E.C.T. (Electro Convulsive Therapy)** being conducted on Garth Daniels and prohibiting his lawful access justice and respectfully request immediate injunctive relief as a remedy.

Date of document: 20th April 2016

Filed on behalf of: The Plaintiff

Prepared by: Glenn Floyd

Address: 84 Albert Street Seddon Victoria 3011 Tel: 0407 861 056



Dated the Twentieth.....day of ...April.....2016

Dated the Twentieth.....day of ...April.....2016



Bernard Patrick Daniels father, guardian, legal-medical Power of Attorney for Plaintiff

ATTACHMENT 'A'



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

www.ohchr.org • TEL: +41 22 917 9192 • FAX: +41 22 917 9022 • E-MAIL: petitions@ohchr.org

REFERENCE: G/SO 214/48 AUS (13)
CE/NO/mbe 36/2016

1 April 2016

Dear Mr. Floyd,

I have the honour to inform you that your communication received on 29 March 2016, which you submitted to the Committee on the Rights of Persons with Disabilities, for consideration under the Optional Protocol to the Convention on the Rights of Persons with Disabilities, on behalf of Mr. Garth Jason Daniels, has been registered as communication No. 36/2016. You are kindly asked to refer to the registration number in any future correspondence.

In accordance with rule 70 of the Committee's rules of procedure, a copy of the communication has been transmitted to the State party today, with the request that any information or observation in respect of the question of admissibility and merits of the communication should reach the Committee within six months.

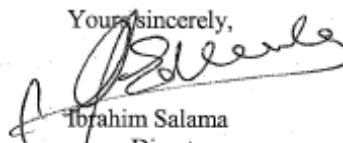
Under article 4 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities and pursuant to rule 64 of the Committee's Rules of Procedure, the State party has been requested take all necessary measures to ensure the suspension of the forced electroshock therapy (ECT) to Mr. Garth Jason Daniels, while his case is under consideration by the Committee. The necessity of maintaining the request for interim measures may be reviewed following receipt of the State party's observations; this request does not imply that any decision has been reached on the substance of the matter under consideration.

Any reply from the State party will be communicated to you in due course to enable you to comment thereon, if you so wish.

You are kindly requested to indicate, in future correspondence, the kind of remedies you would like to obtain from the State party in case the Committee concludes that a violation of the Convention has taken place in the case you have submitted.

Please be aware that final decisions adopted by the Committee on the Rights of Persons with Disabilities are made public. Therefore, if the alleged victim wishes her identity not be disclosed in the final decision, you are kindly requested to so indicate as soon as possible. Kindly note that, due to the level of publicity the Committee's decisions usually receive (including dissemination via Internet, which thus makes the correction and/or deletion of data circulating online virtually impossible), it may not be possible to satisfy requests for anonymity submitted after the publication of the Committee's decision. The Committee shall not be responsible to the author/alleged victim in any manner for any inconvenience, arising out of their failure to notify the Committee in a timely manner about her decision not to have their names disclosed to the public at large.

Yours sincerely,



Ibrahim Salama
Director
Human Rights Treaties Division

Mr. Glenn Floyd
floydaubrey@bigpond.com

ATTACHMENT 'B'

N. McLAREN MBBS FRANZCP
PSYCHIATRIST

CONSULTANT

Provider No. 0202979B

NORTHERN PSYCHIATRIC SERVICES Pty. Ltd.,
A.C.N. 077 835 557

PO Box 5346, Kenmore East Qld 4069
07 3087 5380 Fax 07 3378 8774
jockmclaren@gmail.com

March 23rd 2016

Prof. Paul Katz

Director Mental Health
Eastern Health Region
131 Thames St
Box Hill Vic 3128

Dear Paul

Re: Garth DANIELS dob 26.08.75

Further to our conversations up to and including March 11th, I was under the very clear impression that the hospital was agreeable to Mr Daniels being either discharged outright or given leave of absence until the expiration of his current treatment order in early April. As you know, the family now wish to move to Brisbane and I am agreeable to taking over his management on condition they will assist with accommodation and transport as I cannot deal with that as well. They are very happy with this idea and have arranged to stay with relatives while they find something more permanent. As you probably know, I sent a detailed management plan last week and a supplementary letter advising on transport. At that point, I understood that everything was in place and the transfer would proceed smoothly. However I have just seen an email from Dr Roohi advising that Garth will be transferred to a secure unit in about two weeks so it would appear that discharge is no longer under consideration.

I am not sure what has happened to bring about this change in sentiment but it is immensely disappointing as I have felt that my dealings with you and your staff have been cordial and fruitful. You will be aware that I have very lengthy experience of managing the most difficult patients without backup; in my solo practice I routinely manage men including veterans whom I consider too dangerous to send to a mental hospital. This is because any attempt to admit them against their will is likely to result in a major escalation which can only be counter-therapeutic and damaging to all concerned. The results are good; at the very least it is generally possible to effect an acceptable outcome without the massive expense and disruption that comes from court cases, prolonged admissions and the like. I have not had one of them commit suicide or any serious offence. I often feel that the most effective indicator of a successful outcome is when one of them contacts me later and asks me to see his brother or a close friend. You may ask why I have not published this type of material and I would have to direct you to the editors of the conventional journals because they make the decisions on publication, not me.

Attachment 'B'...Cont'd.

As it happens however, I do not assess Garth Daniels as being in that class of risk. I see him as psychologically manageable in that he is acting out a deep-seated masochistic need which enables him to remain in hospital as a focus of attention thereby avoiding the frightening risks of leading an independent life as a functioning adult. I trust you can appreciate what that means without me spelling it out. His father's involvement is pathological and I think I mentioned the possibility of *folie a deux* or what is now called imposed psychosis. Because of that, part of my agreement with the family is that they will reduce their emotional investment and withdraw to a level of involvement I will determine. In addition, Garth's behaviour is determined by decades of exposure to psychiatric institutions; we know that this tends to induce patterns of behaviour that conforms to the expectations of the observers. Simply, if everybody thinks Garth Daniels is psychotic that is how he will act. I assess him as a master of feeding back to people what he thinks they want to hear. It is actually quite amusing to see him respond when he is caught out doing this.

I can only reiterate that I believe the present course is doomed to failure. MHS Victoria has nothing further to offer in this case and if the log-jam is not broken **he will die in custody**. I know for a fact that if that happens, the repercussions will be endless and expensive. I would therefore ask you as a colleague to reconsider the current plan of moving him to a secure unit as he has been there before to no avail; to cease the ECT because it has no goal and no end; and to permit the family to move to Qld, as is their right.

Kind regards

Yours sincerely

A handwritten signature in blue ink that reads "Jock" followed by a long horizontal flourish.

N McLaren

Re: Garth DANIELS

dob 26.08.75

ATTACHMENT 'C'

Dr. David S. Bell

FRANZCP, FRCPSych
PO Box 296
CREMORNE NSW 2090
Tel: 02 9953 2770
Fax: 02 9904 0709
Email: david.bell@brainaction.com

1 April 2016

Professor Paul Katz
Director Mental Health
Eastern Health Region
131 Thames St
BOX HILL VIC 3128

Dear Professor Katz

Re: Garth DANIELS dob 26.08.75

I write in support of the proposals from Dr. N. McLaren for the management of the above-named patient, Garth Daniels, who I understand is in your care in a hospital in Victoria. I have followed this case for some years now and have seen the patient both in Sydney and in Victoria. I am aware that psychiatrists in the employ of your service refer to his dangerous violence. I have seen no documentation of it and no specific mention beyond the rare effects of his resistance to the prolonged restraint and forced damaging treatments. To my knowledge, he has inflicted nothing more than the superficial effects to be expected of a minor accident. The nurses to whom I spoke in the ward that I visited made no mention of concern about violence from him.

You apparently blame the failure of treatment on him and his family for refusing to take clozapine. It seems that you cannot persuade or even force him to take the drug, but you still have the power to administer electrotherapy. In the light of current knowledge and practice, of which I have almost 60 years of clinical experience, I regard the use of ECT you have authorised as horrifyingly excessive. An ordinary course of 8 treatments, 12 at the very most, in the right circumstances would be enough, but to my knowledge even those right circumstances do not exist in this case. I understand you have administered 86 treatments so far, with no sense of an upper limit or appreciation of its inadvisability. It would certainly have inflicted detectable brain damage. Your approach equates to the worst excesses practised under the Soviet regime.

The alternative available to you for a long time now would be to allow the patient to move to the care of Dr. N. McLaren. That would release you from seeming to stubbornly hang on to your property. I have put to you serious matters for concern and ask you to address them.

Yours sorrowfully,

DAVID S. BELL

cc: Mr. B. Daniels, Mental Health Tribunal

SWORN or AFFIRMED at

in the State of Victoria

this day of 20

BEFORE ME: