

Highlights of the McCorkell decision, 1993

Joseph McCorkell, with the assistance of the Community Legal Assistance Society, challenged the constitutional validity, under the Canadian Charter of Rights and Freedoms, of the provisions of the B.C. Mental Health Act dealing with involuntary committal and detention of mentally ill persons.

The action was dismissed by Justice Ian Donald of the B.C. Supreme Court in a judgement dated June 12, 1993. Mr. Justice Donald's analysis of the case includes the following points:

Any suggestion that involuntary committal and detention for treatment are analogous to criminal detention is rejected by Mr. Justice Donald: "Statutes dealing with criminal law are penal in nature; incarceration is a punishment of culpable individuals and serves the objectives of public safety and denunciation of crime. The Mental Health Act involuntarily detains people only for the purpose of treatment; the punitive element is wholly absent."

The Manitoba Mental Health Act, which Mr. Justice Donald says sets committal criteria "remarkably like" those of the B.C. Act, survived a Charter challenge. Both Acts are designed to allow involuntary committal to protect a mentally ill person from serious harm. Mr. Justice Donald on the Manitoba Act: "[harm] can include harms that relate to the social, family, vocational or financial life of a patient as well as to the patient's physical condition."

In Mr. Justice Donald's view, "The plaintiff has failed to show that the courts have determined "dangerousness" as the only permissible criterion under the Charter."

"As to the standards for committal, I find that they strike a reasonable balance between the rights of the individual to be free from restraint by the state and society's obligation to help and protect the mentally ill."

"Unlike incarceration in the criminal justice system, involuntary committal is primarily directed to the benefits of the individual so that they will regain their health."

"I reject the plaintiff's argument that because the mentally ill are innocent victims of disease they should have their liberty interfered with as little as possible... The extremes of the civil libertarian view have been painfully documented in the United States."

"I am satisfied that there are adequate procedural safeguards in the current Act. The certification by two physicians, each independent of the other other, is preferable to a hearing prior to committal because those who are certifiable are in urgent need of treatment."

Extracted by Rod Pringle, Vernon BCSS, August 19, 1993