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Is dementia included as a mental health disease under the *Mental Health Act* R.S.B.C. 1996, c.288

Wealth Preservation Group
Clark Wilson LLP
tel. 604.687.5700

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1. Under the *Mental Health Act*, R.S.B.C. 1996, c.288 ("MHA"), is dementia included as a mental health disease?

The *MHA* does not define "mental health disease", but it defines "patient" as a "person with a mental disorder". The *MHA* defines "person with a mental disorder" as a person who has "a disorder of the mind that requires treatment and seriously impairs the person's ability to react appropriately to the person's environment, or associate with others."

Although this definition is purposefully broad, the following authorities suggest that dementia falls within the *MHA:*

(a) The Canadian Oxford Dictionary defines dementia as "a chronic or persistent disorder of the mental processes marked by memory disorders, personality changes, impaired reasoning, etc., due to brain disease or injury (see *Canadian Oxford Dictionary*, 2d ed., *s.v.* "dementia").

(b) Case law has equated dementia to a mental disorder. See: *Bahry v. Zytaruk*, 2002 CarswellAlta 955, 2002 ABQB 716, 47 E.T.R. (2d) 1; *B., Re.*, 2009 CarswellOnt 8544; and *L., Re.*, 2009 CarswellOnt 7649.

(c) The Canadian Mental Health Association, in its publication entitled "BC Mental Health Guide", includes dementia under its Categories of Mental Illness and Some Common Forms They Take (see: http://www.mentalwellnessbc.ca/images/bc_mhguide.pdf).

2. Is consent under the *Health Care (Consent) and Care Facility (Admission) Act*, R.S.B.C. c.181 ("*HCCFA*") required for involuntary treatment?

Consent is not required under the *HCCFA.*

The *HCCFA* operates in conjunction with the *MHA*. Normal practice under the *HCCFA* protects the right of consent. However, pursuant to section 2 of the *HCCFA*, the *HCCFA* does not apply to the admission of a person to a designated facility or the provision of psychiatric care or treatment under section 22 of the *MHA.*

Section 22 of the *MHA* speaks to involuntary admission. Specifically, it states that 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. On receipt by the director of a second medical certificate completed by another physician ... respecting the patient admitted under subsection (1), the detention and treatment of that patient may be continued beyond the 48 hour period referred to in subsection (1).

The issue of involuntary committal and detention was canvassed in *McCorkell v. Director of Riverview Hospital Review Panel* (1993), 104 D.L.R. (4th) 391 (B.C.S.C.). The plaintiff challenged the constitutionality of s. 20 [now s. 22] of the *MHA*. The plaintiff had been involuntarily committed and detained under the statute and brought a test case with a legal assistance group to challenge the involuntary admission provisions of the *MHA*.

The plaintiff argued that the provisions were contrary to Sections 7 and 9 of the *Canadian Charter of Rights and Freedoms*. Donald J. held that the action should be dismissed. The Court found that involuntary detention under the Act may be a deprivation of liberty within s. 7 of the *Charter*. However, Donald J. held that adequate procedural safeguards were found in the Act. Specifically, the two medical certificates signed by physicians. Therefore, s. 20 [now s. 22] was constitutional and that the meaning of the criteria for admission under the Act was "for their own protection or for the protection of others" and was somewhere between "welfare" and "dangerousness".

The criteria for involuntary admission under the Act were not invalid on the doctrine of vagueness. Donald J., in relying on previous authority, adopted the following statement:

> As to the standards of 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.

Therefore, the statute did not violate s. 7 of the *Charter* and it was unnecessary to examine the issues under s. 1.

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T. 604.687.5700
F. 604.687.6314

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