

BOOK REVIEW

MENTAL DISABILITY AND THE LAW IN CANADA by Gerald B. Robertson

This new text by Professor Robertson provides a needed reference regarding legal issues and the mentally disabled in common law jurisdictions in Canada. There has been need for a text which focuses solely on common issues which arise in the mental health area including the appointment of committees, guardianship, and committal to mental health facilities.

In the first chapter the term "mental disability" is defined as including any mental disorder and developmental disability such as mental illness, mental retardation and related developmental disabilities. As well, the principle of legal incapacity and how it relates to a person with a mental disability is reviewed. The remainder of the book is divided into three parts: Part One — Committees of Estates and Personal Guardians; Part Two — The Effect of Mental Disability in Specific Legal Areas; and Part Three — Patients in Mental Health Facilities.

Part One consists of Chapters Two to Six. Chapters Two to Four discuss the applicable procedures for the appointment of committees of estates in the common law provinces. The author reviews various practical matters, including service of documents, supporting affidavits, the power of the court to order medical examinations, the requirement for posting security and the cost of such applications. As well, in this Part, the author reviews the court's jurisdiction to declare persons mentally incompetent and to appoint committees and the effect of foreign orders for committees on movable and immovable property. The grounds for appointment of committees and the matters the court will likely consider in appointing such committees are also reviewed. Throughout this Part, the author sets out the unique features, as well as the concerns he has with the law and procedural requirements in the common law provinces.

Chapter three provides an interesting discussion on the appointment of statutory committees. The author sets out the potential impact of the Charter of Rights and Freedoms on statutory committees, in particular, the likelihood that the appointment of such committees infringe sections 7 and 15 of the Charter.

The next chapter provides a good review of issues respecting the powers and duties of the committee of estate including the effect of the appointment of a committee on such matters as contracts and the validity of gifts. Chapters Five and Six focus on the appointment of a guardian and his powers and duties. The Dependent Adult Act of Alberta is set out in more detail as the author sees this legislation as a model for future reform in this area in Canada. The law in the rest of the common law provinces respecting guardianship is compared to the Alberta model. The author foresees an urgent need for reform in legislation relating to guardianship as this area will become more important with the growth in the elderly population and the deinstitutionalization of persons with mental illness. To assist with this reform, Professor Robertson clearly sets out the defects he sees with the present legislation relating to guardianship.

Part Two reviews the effects of mental disability on specific legal issues, including contracts and property. The author provides a useful summary of the law relating to contracts entered into by persons with a mental disability in Chapter Seven. As well, the author very briefly reviews the matter of an "enduring power of attorney" and the alternate methods which might be used to plan for anticipated incapacity where an enduring power of attorney is not available.

Chapter Eight in Part Two provides a practical review of the law regarding succession and the mentally disabled. The author reviews such issues as testamentary capacity to make a will, revocation of a will and the required testamentary capacity to do so, dependant relief legislation and the disabled dependant and the administration of estates with disabled beneficiaries.

Chapter Nine reviews the law relating to tort liability of the mentally disabled including the effect such disability may have on the determination of the applicable standard of care and the liability such person may have for intentional torts.

In Chapter Ten, the effects of a mental disability on various aspects of family law including marriage, divorce and separation agreements are reviewed. The following chapter focuses on issues related to legislation which disqualifies persons from the right to vote or stand for public office on the basis that they have been restrained of their liberty of movement due to a mental disease or that their property is under the control of a committee of estate.

The general principles relating to whether legislation or government action violates the rights of the mentally disabled under subsection 15(1) of the Charter are set out in Chapter Twelve. As well, there is a brief review of human rights legislation. The author acknowledges that the discussion of these topics is not detailed. Information is provided regarding other sources which provide a more in-depth review of these topics.

The last Chapter in Part Two provides a practical review of issues that arise in litigation involving a mentally disabled person.

Part Three consists of two Chapters which focus on legal issues related to patients in mental health facilities. These chapters review issues related to admission procedures, renewal and review of admission certificates, the patient's right to information, legal assistance while in a mental health facility, confidentiality, access by the patient to his records, and consent to treatment. As well, issues relating to the duty of health care professionals to protect patients from harming themselves, and the duty of hospitals to protect others from psychiatric patients who may pose a danger, are also discussed. The author also reviews the impact he sees the Charter having for patients committed to psychiatric facilities and areas where there are likely to be Charter challenges.

The author in the text has provided an overview of the legal issues relating to the mentally disabled. The text, considering the breadth of issues covered, provides sufficient detail to make this book a good

reference source for lawyers whose practice may involve contact with persons who have mental disabilities. As well, Professor Robertson's in-depth knowledge of the mental health area, coupled with his ability to clearly outline the relevant law, make this book a useful reference for practitioners.

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