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May 26, 2022

# **ACCOMMODATING CLIENTS WITH MENTAL HEALTH DIFFERENCES IN TRIBUNALS**



## **WHAT IS THE CONSENT AND CAPACITY BOARD?**

The CCB's key areas of adjudication consist of matters of capacity, consent, civil (psychiatric) committal and substitute decision-making.

Most of our applicants have or are perceived to have a mental condition, cognitive/ intellectual disability, or other differences.

## WHAT DOES THE CCB DO?

Hearings are initiated (usually) by the person whose rights have been limited because of manifestations of a mental condition.

The majority of hearings involve involuntary admission in a psychiatric facility, incapacity to consent to treatment for a “mental disorder” and community treatment orders. Also hold hearings to review findings of incapacity to manage property and admission to long-term care.

Almost 10,000 applications and 6382 hearings.

Hearings must begin within 7 days.

## THE COURTS

*Mentally ill persons are not to be stigmatized because of the nature of their illness or disability; nor should they be treated as persons of lesser status or dignity. Their right to personal autonomy and self-determination is no less significant, and is entitled to no less protection, than that of competent persons suffering from physical ailments.*

Fleming v. Reid (1991)

*The right knowingly to be foolish is not unimportant; the right to voluntarily assume risks is to be respected. The State has no business meddling with either. The dignity of the individual is at stake.*

*When the state impacts the rights of the individual, that process “must be cloaked with appropriate safeguards and capable of withstanding vigorous review...the dignity of the individual is at stake”*

Re Koch (1997)



# SANISM

*Sanism* is “an irrational prejudice of the same quality and character of other irrational prejudices”

Michael Perlin

ASSUMPTIONS

PATIENCE

RESPECT

BIASES

LANGUAGE

TIME

LISTENING

EMPATHY

ACCOMMODATION

KINDNESS

BOUNDARIES

# THERAPEUTIC JURISPRUDENCE

*Therapeutic Jurisprudence* is a lens to understand how laws are designed and applied (including in rules, procedures and processes as well as legal actors) and seeks to “explore ways in which anti-therapeutic consequences can be reduced, and therapeutic consequence enhanced, without breaching due process requirements.”

Wexler, Perlin, Vols, Spencer & Stobbs



## APPLYING THERAPEUTIC JURISPRUDENCE

Examine policies for unintended barriers

Allow for flexibility in procedures

Identify bright lines

Constantly reflect, collect feedback, be humble and learn





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