



Right Now – Human Rights in Australia

News

Patrick's Case

BY MORGAN MACDONALD



This article is part of our December theme, which focuses on one of the least appreciated but most fundamental aspects of well-being: housing. Read our [Editorial for more on this theme](#).

Patrick is a 58 year old man who has been an involuntary in-patient in a psychiatric hospital for over seven years. He has received psychiatric services for over 20 years. Prior to becoming an involuntary patient he was living in, and paying off, a house where he lived for a number of years with his wife. After being admitted to hospital, and only being able to leave temporarily with the permission of the hospital managers, he has retained an important connection with his house. He looks after the finances of the house (including the mortgage, bills and taxes) using his only income, a pension. It remains a refuge and a home for him, and something he is proud of.

A recent decision was made by the [Victorian Civil and Administrative Tribunal](#) (VCAT) to appoint an administrator to sell Patrick's home. The order was approved because of his alleged inability to make rational decisions concerning his housing and living, and the need for hospital staff to act in his best interest. When faced with the administration order, he contacted the Mental Health Legal Centre. With their help, the decision was successfully challenged in what has been referred to as "Patrick's Case." The [Supreme Court of Victoria](#) accepted their argument that the order infringed upon Patrick's rights, and overturned the prior decision.

“no sufficient purpose has been shown to justify such a serious infringement of his human rights ...”

Barbara Shalit from the [Mental Health Legal Centre](#), Patrick's lawyer during the Supreme Court challenge, demonstrated that Patrick was capable of managing the finances of the house, and that the decision to take control of Patrick's house and finances was a breach of his human rights. Ms Shalit explained:

there was no evidence that he had stopped paying off his house. He had met all the financial requirements of the house. They didn't give evidence at all that he had forgotten to make payments on his own. If there had been evidence like that you would think “well his mental illness impacts on his ability to make financial decisions”, but there was no evidence.

In the Supreme Court [judgment](#), Justice Kevin Bell affirmed that Patrick “manages his finances and home reasonably well and the administration order unjustifiably interferes with his human rights under the [Charter of Human Rights and Responsibilities Act 2006 \(Vic\)](#).” His Honour also noted that “no sufficient purpose has been shown to justify such a serious infringement of his human rights, as he is not in a crisis (or anything like it) in terms of his health, accommodation or otherwise.”

According to Ms Shalit, there were other considerations influencing the VCAT decision. As she explained:

This was a way of providing compulsory treatment to Patrick without him having to be an in-patient. This would have been a cost-saving for the hospital as they would not have to continue to provide him with a hospital bed. This was not spelled out as blatantly as I'm spelling out now ... they wanted to move him to a nursing home, which would have been very inappropriate because he's too young to go to a nursing home. It would have been a locked facility where there were nurses who could administer medication. Other places had failed, either because they were not locked facilities or they did not have nurses who could administer medication.

In view of the VCAT [decision](#), which does discuss the issue of hospital treatment as a "scarce public resource available only to persons in need of that and only for so long as they receive benefit from that", Ms Shalit's conclusion appears to be well-founded.

... the decision to appoint an administrator was not justified ...

Considerations of Patrick's human rights were made in the original VCAT decision. Submissions were made on the basis of the [Convention on the Rights of Persons with Disabilities](#) as well as the [Victorian Charter of Human Rights](#). The Supreme Court, however, found that the Tribunal's decision was inconsistent with the Convention on the Rights of Persons with Disabilities, and that the decision to appoint an administrator was not justified, when applying the classic test of *proportionality* set out in the Victorian Charter. That is, any *action that infringes the human rights of a person who is an involuntary in-patient should be proportional to the benefits to the individual*, and to a lesser extent if there is a pressing social need.

According to Terry Carney, Professor of Law at the University of Sydney, "proportionality" is an *additional* consideration that courts make, as part of deciding which way to rule on a guardianship case. "But some cases," he noted, "like this [Patrick's] case, are even more finely balanced than others." Decisions over guardianship include a mix of competing statutory considerations, says Professor Carney, but "proportionality must be considered as part of the process of deciding if a protected right in the Charter has been infringed."

In the VCAT decision, the administration order was considered proportional because of the potential benefits to the individual and the community (through lower costs). The order did not meet the requirements of the law, however, as it did not demonstrate that Patrick was unable to look after the finances of the house, and Justice Bell ruled that this decision rested on an incorrect interpretation of the [Guardian and Administration Act](#).

An administration order has to be justified by demonstrating an individual is incapable of managing their finances. In Patrick's case, considerations of proportionality influenced the approval of the administration order, and the subsequent incursion on Patrick's human rights. Justice Bell highlighted the gravity of the earlier finding: "[It] is a very serious step because it transfers complete and exclusive control of a person's estate to the administrator. Such a step engages the human rights, and the fundamental common law rights and freedoms, of persons."

Patrick's case highlights the complex and finely balanced consideration facing hospital managers and courts in cases of administration orders that potentially infringe on an individual's human rights. Fortunately for Patrick, there was recourse available in challenging a decision he felt was unfair. As Justice Bell's judgment shows, a court cannot simply affirm an administration order so as to help an institution save costs; the effect on the human rights of the individual concerned must be seriously considered. Patrick's case is therefore an affirmation of a legal right to housing in Australia. When informed about the Supreme Court decision, Patrick's said he was "over the moon".

1 Comment Right Now

Login

Recommend Tweet Share

Sort by Best



Join the discussion...

LOG IN WITH

OR SIGN UP WITH DISQUS

Name



damien • 6 years ago

p's case

Reply Share

ALSO ON RIGHT NOW

Q&A with Rowena Allen, Gender and Sexuality Commissioner

4 comments • 2 years ago

Dave M — Can you guys just commit suicide already? Literally the only people who agree with you on this stupid shit are your own small clique of halfards.

Australia's Reservations to CEDAW – Irrelevant and Unnecessary

1 comment • 3 years ago

Alexandra Samootin — CEDAW PETITIONS TEAM UNITED NATIONS REFUSE TO PROCESS MY COMPLAINTS SUBMISSIONS TO THEM - RECEIPTED

Theatre – Foley

1 comment • 2 years ago

Arthur Bell. — Gary Foley.>> "As a professor of history, I don't like pulling rank on you folks but my thing is history." Gary Foley. This on "BlackfullaRevolution" re the Australia

Cultural appropriation in food

7 comments • 3 years ago

HoldOnSweetie — I'm half German and Mexican so from now on no more pizza or Chinese take out, only sauerkraut tacos because TRUMP. Can't wait until