



High Court Decision

Stuart v Kirkland-Veenstra [2009] HCA 15

April 2009

Facts of *Kirkland*

In *Kirkland*, the Victorian Government Solicitor's Office acted on behalf of two police officers who came upon an individual (the deceased) in the early hours of the morning sitting in his vehicle with a vacuum hose running from his exhaust pipe into his window. After talking with the deceased for some time and making various inquiries, the police officers assessed that he was not at current risk of self-harm. They also formed the opinion that he was rational and coherent and did not appear to be mentally ill. Accordingly, after offering to drive him home, call his wife or take him to a hospital and/or doctor, they permitted him to drive home. The deceased committed suicide later that day in his car via carbon monoxide poisoning. The partner of the deceased (the plaintiff) sued the police officers alleging that they were negligent in not apprehending the deceased pursuant to s10 of the *Mental Health Act 1986* (the Act). She also sued the State of Victoria.

Section 10 of the Act gives police officers a discretionary power to apprehend a person who appears to be mentally ill and has recently attempted suicide (or attempted to cause serious bodily harm to themselves or a third party) or is likely to do so. In assessing whether a person appears to be mentally ill, police officers are not required to exercise any clinical judgment.

Summary

The recent High Court decision in *Stuart v Kirkland-Veenstra*, handed down on 22 April 2009, casts an illuminating spotlight on the powers of Victoria Police in its dealings with the mentally ill and those at risk of self-harm. It also underscores that at common law there is no general duty to rescue.

It was successfully argued in the County Court that the police officers did not owe the deceased a duty of care to prevent the suicide of the deceased in the circumstances. The defendants argued that the imposition of such a duty would be inconsistent with other duties imposed upon police officers by, among other things, the Act and that the proper performance of these duties would be significantly and impermissibly constrained by the imposition of the duty of care to the deceased.

The County Court dismissed the claim against the police officers and the State on the ground that the police officers did not owe the deceased a duty of care in the circumstances. The deceased's partner appealed the decision to the Court of Appeal.

Court of Appeal decision

On 29 February 2008, a majority of the Court of Appeal allowed the appeal by the plaintiff and held that s10 of the Act gave rise to the imposition a common law duty of care on the police officers to prevent the suicide of the deceased.

High Court decision

The police officers appealed the decision of the Court of Appeal to the High Court of Australia. The High Court allowed the appeal. In three separate judgments, the Court determined that the police officers did not owe the deceased a duty of care to prevent him from committing suicide in the circumstances. The Court determined the appeal upon very narrow grounds. As a result, wider questions in relation to the imposition of duties of care have not been resolved. For example, the Court did not consider it necessary to determine whether the imposition of a duty of care upon the police officers in the circumstances would be inconsistent with other duties owed by them in accordance with cases such as *Sullivan v Moody* (2001) 207 CLR 562, or whether the imposition of such a duty would be contrary to public policy in accordance with cases such as *Hill v Chief Commissioner of West Yorkshire* [1989] 1 AC 53.

Justices Gummow, Hayne and Heydon delivered a joint judgment. Their Honours held that s10 of the Act does not impose a duty of care upon police officers to apprehend people who appear to be mentally ill and have recently attempted suicide (or attempted to cause serious bodily harm to themselves or a third party) or is likely to do so.

In essence, their Honours considered that a duty ought not be imposed as the police officers did not have the requisite control over the risk of harm to the deceased: see *Crimmins v Stevedoring Industry Finance Committee* (1999) 200 CLR 1. Their Honours emphasised that it was the deceased and not the police officers who controlled the source of risk.

French CJ and Crennan and Kiefel JJ

Chief Justice French delivered a separate judgment as did Justices Crennan and Kiefel. Their Honours determined the appeal upon an even narrower basis than the other judges. Their Honours considered that no duty of care was imposed upon the police officers in the particular circumstance as they did not have the power under s10 of the Act to apprehend the deceased. Their Honours considered that the preconditions for the exercise of the power had not been met as the police officers had formed the opinion that the deceased did not appear to be mentally ill. Their Honours rejected the finding by the Court of Appeal that it can be inferred that a person who attempts suicide is mentally ill.

Unlike Justices Gummow, Hayne and Heydon, their Honours did not consider it necessary to determine whether the power to apprehend under s10 of the Act imposed a duty of care upon police officers. Accordingly, in our view, these judgments are of less precedential value than the judgment of Justices Gummow, Hayne and Heydon.

No duty to rescue

The High Court held that the law did not support the conclusion that a person who attempts suicide is necessarily mentally ill. Moral and philosophical questions aside, the Court affirmed that at common law there is no general duty to rescue another (in the context of this case, no duty to prevent another person's suicide). The Court's approach reinforces the importance of the value within the common law of personal autonomy.

For further information

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